S. Hrg. 103–471

THE FEDERAL EMPLOYEE FAIRNESS ACT—S. 404

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

S. 404

TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 TO IMPROVE THE EFFECTIVENESS OF ADMINISTRATIVE REVIEW OF EMPLOYMENT DISCRIMINATION CLAIMS MADE BY FEDERAL EMPLOYEES, AND FOR OTHER PURPOSES

MAY 26, 1993

Printed for the use of the Committee on Governmental Affairs

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CONTENTS

WITNESSES

WEDNESDAY, MAY 26, 1993

ALPHABETICAL LIST OF WITNESSES

APPENDIX

THE FEDERAL EMPLOYEE FAIRNESS ACT
S. 404

WEDNESDAY, MAY 26, 1993

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:40 a.m., in room SD–342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn and DeConcini (ex officio).

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. The hearing will be in order.

This morning, the Governmental Affairs Committee is having a hearing on S. 404, the Federal Employee Fairness Act. I introduced this legislation, along with Senators Stevens, Akaka, McCain, Lieberman, and Levin of this Committee, and Senators Mikulski, Rockefeller, and several others, as a direct result of hearings that were held during the 102nd Congress on the Glass Ceiling in Federal agencies. S. 404 has a total of 14 cosponsors.[1]

One only needs to read a newspaper or see a television news program to know that there is often discrimination in the Federal Government workplace. Whether it is the Tailhook scandal, with sexual harassment in the Navy; or allegations of discriminatory practices at the National Institutes of Health (NIH); or the Department of Veterans Affairs; or a "60 Minutes" report of sexual harassment at the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury—the Federal agencies are too often letting their valuable workforce be demoralized not only because of discrimination, but also because of erosion of confidence in the complaint system following discrimination. It is the cruelest of ironies that the very system which should help women and minorities is too often a barrier to their advancement.

S. 404 seeks to level the playing field. Today agencies investigate themselves. Often the managers and supervisors demonstrate too much of the old-boy network, and discrimination has been tolerated.

The only viable course to take when discrimination has been proven is to take the path that the Acting Secretary of the Navy, the Secretary of Veterans Affairs, the Secretary of the Treasury, and the Director of NIH took, and I quote them: "There will be zero

[1] S. 404 appears on page 109.

tolerance for discrimination at this agency." We want to make that a reality.

As egregious as some of these reports have been, it is important that each agency not attempt to just fix their own EEO complaint process without any regard for the fact that the problem is government-wide in nature. S. 404 provides a government-wide solution for all of the Federal agencies and should be preferred to any remedy that only seeks to reform one Federal agency.

Now, that is not to say that I am not complimentary to those who have been sufficiently concerned to go ahead and act on their own. But we feel and I feel that the system itself does need to be fixed.

In balancing the rights of the agency and the rights of the Federal employee, S. 404 seeks to level the playing field. Today agencies investigate themselves and, unsurprisingly, quite often exonerate themselves. Retaliation is often a tool that is used by managers once an EEO complaint is filed. Sanctions, if and when they occur, are often very mild—a mere tap, not even a slap on the wrist, a tap on the wrist sometimes.

Most often the managers or supervisors who commit this violation are promoted in a "business as usual" procedure. S. 404 is intended to change this situation and provide fundamental fairness to Federal employees. At the same time, spurious complaints—false complaints for other reasons—must be dealt with expeditiously so that they do not fester in place and cast false doubts on innocent people.

In testimony before this Committee at the beginning of the year, Comptroller General Charles Bowsher told us that investment in human resources for government operations is one of the critical issues facing the Federal Government. I support that statement. We need to make sure that the people who work in government agencies are treated fairly.

Additionally, the GAO has consistently reported on the Federal Government's shortcoming in the area of job discrimination and the underrepresentation of women and minorities in key jobs, as they will again testify today.

At a time when all of us in the Federal Government are looking to cut the cost of government, it is discouraging to learn that the U.S. Merit System Protection Board estimates in their June 1988 report that sexual harassment cost the Federal Government $267 million during the 2-year period of 1985 to 1987.

Now, it is difficult to quantify something like that, I know, but they make some estimates as far as the lost time, the lost efficiency, and put some dollar figures to it. And whether that $267 million figure is right down to the dollar or not sort of misses the point. We do lose in government efficiency; we do lose in lost time; and it does run up in the hundreds of millions of dollars. And so that is an important figure.

That is only the estimate for sexual harassment. It does not take into consideration racial, age, and disability bias. Therefore, job-related discrimination is not only illegal, it is costly. And who pays the bill for job discrimination? The American taxpayer.

What happens to the perpetrator of these offenses? Too often they are promoted with little or no sanctions imposed on them.

Today we will hear from the General Accounting Office, a special panel of current Federal employees, union representatives of Federal employees, and a civil rights expert. The GAO will tell us of the progress that Federal agencies have made in the promotion of women and minorities. The Committee also asked the Office of Special Investigations (OSI), of GAO to investigate the complaint system at the Bureau of Alcohol, Tobacco and Firearms.

The panel of current Federal employees will tell us about their experiences in filing EEO complaints, and the third panel consists of employee representatives and one of the top legal experts in the country on job discrimination who will wrap up our hearing on this important issue.

The Federal Government should be a model employer. In many ways, it falls far short of that goal. In the underrepresentation of women and minorities in the Federal Government, at first glance it seems that we have steadily improved. However, when we focus on key jobs, women and minorities are vastly underrepresented.

It would be my hope that the administration will support this legislation because I believe it is important that we move to reinvent the EEO complaint system. We are talking about reinventing government, the roles of government? Well, we can start by reinventing the EEO complaint system and make it work fairly for Federal employees and for the American people.

PREPARED STATEMENT OF SENATOR GLENN

This morning, the Governmental Affairs Committee is having a hearing on S. 404, the *"Federal Employee Fairness Act."* I introduced this legislation, along with Senators Stevens, Akaka, McCain, Lieberman, and Levin of this Committee; and Senators Mikulski, Rockefeller and others, as a direct result of hearings that were held during the 102nd Congress on the *"Glass Ceiling in Federal Agencies."* S. 404 has a total of 14 cosponsors.

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S. 404 seeks to level the playing field. Today, agencies investigate themselves. Often, the managers and supervisors demonstrate the old-boy network and discrimination has been tolerated. The only viable course to take when discrimination has been proven is to take the path that the Acting Secretary of the Navy, the Secretary of Veterans Affairs, the Secretary of the Treasury, and the Director of NIH took: "There will be zero tolerance for discrimination at this agency."

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At a time when all of us in the Federal Government are looking to cut the cost of government, it is discouraging to learn that the U.S. Merit System Protection Board estimates in their June, 1988 report that sexual harassment costs the Federal Government $267 million during the 2-year period of 1985–1987.

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It would be my hope that the administration will support this legislation because I believe it is important that we move to reinvent the EEO complaint system and make it work fairly for Federal employees and for the American people.

Chairman GLENN. Senator Barbara Mikulski, one of our distinguished colleagues, has had a long interest in this particular area. She and I have discussed this on occasion in the past, and I knew she was planning to be here. I walked in this morning and started giving my statement and didn't really tune in on who was at the witness table. Barbara, my apologies, and we welcome your statement this morning.

TESTIMONY OF HON. BARBARA A. MIKULSKI, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you, Senator Glenn and my colleagues on the Governmental Affairs Committee.

Mr. Chairman, there are so many witnesses here to testify today. I am just going to ask unanimous consent that my full statement be included in the record.

Chairman GLENN. It will be included in the record.

Senator MIKULSKI. As well as appropriate newspaper clippings.[1]

You will be hearing today from the people who work in the Federal Government. They have distinguished backgrounds from being an FBI agent, a U.S. attorney, people who actually go after crooks and criminals; and then they find that while they are out there defending the American people, their own government has no defense for them.

[1] The articles referred to appear on pages 95–97.

I am here today to testify on behalf of all of the women who suffer sexual harassment in the workplace and all of those women in Maryland who are Federal employees who, out of fear, cannot speak for themselves.

The problem with sexual harassment did not start a year ago when Anita Hill came before this Senate and took our concerns and focus on this to new heights. And it certainly didn't stop there. It is going on every day in all of our Federal agencies.

Mr. Chairman, first I would like to just deal with the concept of sexual harassment. The word "harassment" really doesn't convey what the women endure in the workplace because harassment sounds like an irritating factor. But, in fact, sexual harassment is a form of abuse. It is as abusive as a physical blow. It really is sexual humiliation when one is subject to such treatment because it is obscene, it is vulgar, it is debasing, and it is dehumanizing.

If you talk to victims of abuse the way I have, they will tell you that they are often doubly victimized by both the events in which they are abused and then subsequently by the very EEO system and the way that it treats them.

First, within the agencies themselves, there is an attitude of, well, boys will be boys. Well, I don't know how boys will be boys, but I know that men who will be men do not sexually harass women, and that real men do not pick on women in the workplace.

I think that to condone that as regular male behavior is out of line with the thinking of what we know American manhood to be. Real guys, from where I come from, look out for women. They don't pick on women.

I have heard from my constituents in Maryland who, after filing discrimination complaints, are harassed on the job until they leave their job, and, in fact, there are actual attempts to drive them off of their job. My constituents said they suffer reprisals for filing EEO complaints, experience harassment by managers, and find themselves in extremely hostile work environments. They end up with cases that are not adjudicated in a timely manner, and ultimately they are stifled by top management.

Nowhere was that more evident than by the Veterans Administration in Atlanta, Georgia. For more than 10 years, women were sexually harassed at the Atlanta VA Hospital, and they had nowhere to go because the EEO officer was part of the sexual harassment gang that was going on down there.

When I brought that to the attention of Secretary Jesse Brown and called for an investigation, Secretary Brown responded. He responded not only to the Atlanta situation but to the situation within the VA. But, Mr. Chairman, we can't do it one agency at a time. We have got to do it system-wide. We can't rely upon contemporary managers or gifted and talented Cabinet-level people. Every person within the Federal Government should know that they would be protected.

So, Mr. Chairman, I believe that this bill is an important step in the right direction. What you have done here is to change the law of sexual harassment to empower those people who are injured by it, to give them a fair opportunity to present their complaints instead of treating them as the problem.

Our legislation addresses systematic problems and problems within the EEO complaint system. What you have done is make sure that the complainant has time to do it, that there will be a decision in a timely way, and thank God we are going to change the fact that the agency itself will not investigate itself and, therefore, not do more cover-up or give more excuses.

Mr. Chairman, during the Anita Hill-Thomas hearings, we heard a lot of talk about sexual harassment, and now it is time to take that talk and to put it into action. Time has passed, but the American people have not forgotten. Those hearings left an indelible mark on the psyche of the American people. But I believe that with the passage of this legislation we will once again restore honor to the U.S. Senate and we will restore honor to the Federal Government. And I look forward to working with you on passing this legislation so that never again will women be forced to go to the media to have their complaints taken seriously.

Thank you very much.

Chairman GLENN. Thank you very much, Senator Mikulski. You have been a leader in this area for a long time, and we are glad that you are in favor of this particular bill. We will see, after we have all of our witnesses today, whether further modification is needed. I look forward to working closely with you in getting this thing passed.

Senator MIKULSKI. Thank you.

Chairman GLENN. Thank you very much.

PREPARED STATEMENT OF SENATOR MIKULSKI

Senator Glenn, and my colleagues on the Governmental Affairs Committee, thank you for providing me with the opportunity to testify before the Committee today on the Federal Employee Fairness Act.

I am here today to testify on behalf of all women who have suffered sexual harassment in the work place and for all those women in Maryland and across America who, out of fear, cannot speak out for themselves.

the problem of sexual harassment didn't just start a year and a half ago when Anita Hill came before the Senate and took our awareness of the issue to new heights—and it certainly didn't stop there. It's still going on every day in our Federal agencies.

In fact, the term "sexual harassment" doesn't even come close to describing the full impact of what it means to the person who must endure this type of abuse. And make no mistake—it is abuse.

It is as abusive as a physical blow. It's really "sexual humiliation" when someone is subjected to such treatment because it's obscene and vulgar behavior.

If you talk to victims of abuse the way I have, they will tell you they are often doubly victimized by both the event in which they are abused, and then subsequently by the way the system treats them.

I've heard from constituents in Maryland who, after filing discrimination complaints, are harassed until they leave their jobs.

My constituents have said they suffer reprisals for filing EEO complaints, experience harassment by managers, and find themselves in extremely hostile work environments. They end up with cases that are not adjudicated in a timely manner and ultimately they are stifled by top management.

Over and over I keep hearing about cases of sexual harassment—where women face retaliation for speaking out rather than getting a fair solution.

Here's what happens.

First, the employee makes a complaint and immediately becomes a victim all over again. The employee experiences stress, trauma and discomfort in the one place where they spend the largest part of their day—the work place.

Second, the employee is sent for psychological evaluation, removed from his or her position, and frequently demoted if they don't stop complaining.

And finally, when the employee takes the risk and files an official complaint, they become worn down by the system and suffer extreme frustration because they have no where else to turn.

Their courage in coming forward is met with suspicion and scorn and with unproven and unsupported charges, charges which label them opportunists or mentally unbalanced.

We cannot tolerate this.

The legislation that Senator Glenn and I introduced is a bipartisan effort to do everything we can to change the law on sexual harassment, to empower those people injured by it, and to give them a fair opportunity to present their complaint instead of treating them as the bad guy.

The Federal Employee Fairness Act is designed to fix the complaint system that was so tragically absent when Anita Hill was a Federal Employee suffering sexual harassment.

This bill is an important step in the right direction.

It addresses systematic problems and problems within the EEO complaint system itself.

It establishes timetables for agencies to respond to complaints. No longer will the harasser be able to put it under the rug or hope the complainant will go away. Americans want their complaints to be treated seriously and in a timely way.

Employees will have more time to file their complaints. Now the employee only has 30 days. With this bill they'll get 180 days to file their complaint. When you are victim of sexual battery, you need time to deal with your own feelings and to gather the courage to undergo the ordeal of filing the complaint itself.

This legislation tries to eliminate the risk faced for people who do not come forward because it's risky. It's difficult to stay in the same situation with the same boss whom you are accusing.

That's why under this act, we would see the end of the situation where Federal agencies investigate themselves when complaints are brought.

For the first time, we require sanctions against men or women who intentionally discriminate whether they be managers, supervisors, or co-workers—and sexual harassment is a form of discrimination. But there is another very important feature about this bill—it saves money.

When these changes are fully implemented and the department is up and running, it's been estimated that the Federal Government will save over $20 million a year by operating more efficiently. That's fantastic because we know we cannot afford to waste time and waste money.

Mr. Chairman, during the Hill-Thomas hearings we heard a lot of talk across the United States of America on the issue of sexual harassment. Now it is time to take that talk and put it into action. Time has passed and the American people certainly have not forgotten.

Those hearings left an indelible mark on the psyche of the American people. The problem of sexual harassment was presented then with no solution. It's time for us to show that we did learn something from Anita Hill.

I'd like to think that the lessons we learned have forever changed the way we act.

I'd like to think that never again will women be forced to go to the media to have their complaints taken seriously.

But we know that's just not true. Women—and men—are still forced to come before TV cameras to get attention to this issue.

But we now have the opportunity to send a message to victims everywhere and to those who work in Federal service that on the issue of sexual harassment, the United States of America wants to ensure that the silence on sexual humiliation is broken.

If we do not pass this legislation, as with the Hill-Thomas hearings, the Senate will once again flunk the course.

I wish we could have passed this bill last year because it's long overdue, but I am back again this year and I'll come back for as long as it takes until we pass this bill and make it effective. Women can't wait any longer. They are suffering now.

Mr. Chairman, I know we cannot legislate human behavior and I know this bill alone will not solve the problem of sexual harassment, but it sure will help the victims of harassment and discrimination by making the administrative process much more fair.

Mr. Chairman, you know I feel strongly about this issue. If I can help it, with this legislation, we will see that the process is changed so that people feel the system works for them and not against them.

Chairman GLENN. The next witness is Nancy Kingsbury, Director of Federal Human Resource Management Issues, General Gov-

ernment Division of the U.S. General Accounting Office. Ms. Kingsbury, we welcome you to the hearing this morning. We look forward to your testimony.

Ms. KINGSBURY. Thank you, Mr. Chairman.

Chairman GLENN. If you would, introduce your colleagues who are with you this morning. I did not have a list of them. If you would, introduce them so we have their names in the record, please.

TESTIMONY OF NANCY KINGSBURY,[1] DIRECTOR, FEDERAL HUMAN RESOURCE MANAGEMENT ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY DOUGLAS STONE, ASSISTANT DIRECTOR, GENERAL GOVERNMENT DIVISION; BARNEY GOMEZ,[2] ASSISTANT DIRECTOR, OFFICE OF SPECIAL INVESTIGATIONS; AND CECELIA PORTER, SPECIAL AGENT, OFFICE OF SPECIAL INVESTIGATIONS

Ms. KINGSBURY. Yes, I will be happy to do that. On my left is Doug Stone, who is an Assistant Director with the General Government Division where I work, and who was responsible in large part for the methodology we used in developing the work that we are reporting to you this morning.

On my right-hand side is Barney Gomez and Cecelia Porter, who are investigators with our Office of Special Investigations and did the work for this Committee at the Bureau of Alcohol, Tobacco and Firearms.

What I have done in my prepared statement is give you a fair amount of detail out of our report and the highlights of the OSI work. What I would like to do is deliver a short version of that now, and then we can get to questions, if that is all right with you.

Chairman GLENN. Fine.

Ms. KINGSBURY. At the request of your committee, GAO recently studied, as you mentioned, the progress women and minorities have made in key Federal jobs and examined how the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms has handled sexual harassment and other EEO complaints. Our review of the progress of women and minorities covered 262 key jobs in 25 Federal agencies. These jobs are described as key because they can lead to middle and upper management positions.

We found for the years examined general improvement in the relative number of women and minorities in key jobs. For example, between 1984 and 1990, the numbers of minority women relative to white men increased by 34 percent, and the numbers of white women and minority men relative to white men each increased by 22 percent.

Increases that occurred over time in the relative numbers of women and minorities were generally as large and sometimes larger at upper grades—that is, GS–11 through GS–15, as they were at lower grades. Our recent report which we issued to you in March provides further details of promotions and hiring activity that may have led to that outcome.

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[1] The prepared statement of Ms. Kingsbury appears on page 53.
[2] The prepared statement of Mr. Gomez appears on page 60.

However, even with the progress that was made, we have to recognize that women and minorities are still less well represented in key jobs at upper grades than at lower grades. For example, while there were 1,390 women and minorities for every 1,000 white men at grade 10 or below in these 25 agencies, there were 343 women and minorities for every 1,000 white men at grades 13 to 15.

Many factors probably contribute to or explain these disparities. Identifying these factors and assessing their impact were beyond the scope of our March report. However, civil rights groups, we understand, have told the Committee that the current discrimination complaint processing system may often function as a negative factor, a barrier to the career advancement of women and minorities. Specifically, an employee who raises a discrimination complaint may later receive unfavorable performance ratings or unfavorable job assignments, all of which block career advancement.

In connection with the Committee's concerns about allegations of the mishandling of sexual harassment complaints at ATF, you asked us to examine ATF's procedures and practices for investigating and resolving sexual harassment and other equal employment opportunity complaints. To set the stage for that discussion, we examined the ATF criminal investigator jobs using the same methodology as in our March report.

After decreasing in size in the early 1980's, ATF has grown since then. The number of criminal investigators increased from roughly 1,200 in September 1984 to slightly more than 2,000 in September 1992. Based on our analysis, we can make several general observations about ATF's criminal investigating workforce.

Women and minorities were far better represented in 1992 than in 1984. In 1984, there were 2.5 women and 6.8 minorities for every 100 white male criminal investigators. By 1992, those numbers had risen to 14.6 women and 23.7 minorities for every 100 white male investigators. At grade 13 to 15, where promotions are competitive, women and minorities were promoted in slightly higher numbers relative to white men than the numbers who were employed.

But in spite of these favorable changes, in 1992 women and minorities remained less well represented at upper grades than at lower grades. There were 25 women and 35 minorities for every 100 white men at grade 12 and below in 1992 compared with 6 women and 14 minorities for every 100 white men at grades 13 to 15.

If you convert this into the same scale that we used for the government-wide analysis, that upper grade level is roughly about 60 percent of what it is inthe government as a whole. So ATF still has a long way to go.

Our Office of Special Investigations examined ATF's procedures and practices for investigating and resolving EEO complaints, with an emphasis on complaints of sexual harassment. Specifically, we reviewed 11 reported incidents and interviewed over 50 current and former ATF and Treasury Department employees, including managers and supervisors and individuals directly involved in the complaint process.

ATF's cooperation and responsiveness in ensuring unrestricted access to personnel and documents greatly facilitated this work.

I will summarize here our major observation about ATF's complaint investigation procedures and practices, and we have also provided a comprehensive statement for the record which accompanies my statement.

In brief, ATF has not adequately developed, implemented, or communicated the role of its Offices of Internal Affairs, Equal Employment Opportunity, and Law Enforcement in addressing incidents of alleged sexual harassment and other discriminatory behavior. This has on occasion resulted in separate inquiries of the same incident by these different offices.

The following concerns and observations have surfaced from among the employees we interviewed, or from our analyses, about the confidentiality, objectivity, and independence, or lack thereof, of ATF's inquiries that we reviewed.

The exchange of information about sexual harassment and other complaints among the three ATF offices has created among ATF employees a perceived lack of confidentiality during the internal investigative process. The procedural rights afforded alleged victims of sexual harassment may differ depending on which of the three ATF offices investigates the incident.

In a limited number of cases, our examination revealed different findings in ATF's internal reviews from those in the external reviews done by Treasury and our investigators. From our discussions with complainants and ATF internal investigators and our review of case files, several concerns surfaced about the techniques used by ATF internal investigators.

For example, internal investigators used investigative techniques considered insensitive by some, destroyed review notes that could have been used later to resolve disputes, and failed to interview individuals with relevant information.

Although the ATF Director has issued a policy requiring a harassment-free workplace, enforcement of the policy varied from office to office that we visited during our investigations.

The ATF Director recently tasked a group to help ATF develop a better program for combating discrimination, sexual harassment, and reprisals. The task group has not yet completed its work. We are told that it expects to do so in June.

With that, I would like to conclude my oral statement, Mr. Chairman, and we are all happy to answer your questions.

Chairman GLENN. All right. Thank you very much.

Before I get into some specific questions, in your report, on page 3 of the report——

Ms. KINGSBURY. My report or my long statement?

Chairman GLENN. "Results in Brief," the GAO report,[1] the printed report.

Ms. KINGSBURY. OK.

Chairman GLENN. At the end of that section, which starts on page 2 and goes over on to page 3, "Results in Brief," the last paragraph of that says, "EEOC reviewed a draft of this report and disagreed with our approach to data analysis, which involved computing the ratios of women and minorities to white men. EEOC also believed the approach would be too costly and burdensome for it

[1] The GAO report referred to appears on page 148.

and other agencies to use. Because we believe the approach is sound and practical and can provide valuable information, we are asking the Committee to consider requiring the periodic application of this analytic technique to affirmative employment data."

How we do our data and how we make these studies is very important to understanding the whole thing. Could you go through that and describe it a little more for me so I understand it better? Is this a serious disagreement, or is this minor? In other words, is the statistical analysis and the way you went at this—does EEOC have something to stand on here? Do they have a legitimate complaint, or is this something that we should dismiss?

Ms. KINGSBURY. Well, traditionally in EEOC's reports and the reports that it requires from agencies, data is reported in terms of raw numbers and raw percentages. And while that information can be useful in some situations, we felt when we entered into this work that we needed to take a somewhat more sophisticated approach so that we could develop data that would be comparable across agencies and acrossthe government as a whole.

The technique we use is somewhat more complex than the technique that EEOC uses. It is also new. And as the whole reinventing government debate would have you understand, change is resisted in all places when people don't really understand what its value is.

It is a serious disagreement in the sense that EEOC doesn't, or didn't really want to adopt it, although my understanding is they are now looking at it a little more carefully.

Is that right? Do you want to add something to——

Chairman GLENN. Well, very specifically, you say that they feel it would be too costly and too burdensome.

Ms. KINGSBURY. On agencies?

Chairman GLENN. Would you address that? How costly would it be and how burdensome?

Ms. KINGSBURY. Well, their argument was that the agency officials who do this are not sophisticated in statistical methodology. They can calculate percentages, but the technique that we used for this would be beyond their capabilities. I am not sure that we agree that that is the case. It might take a little training and a computer program that got put together.

Doug, you were a party to that discussion. Do you want to add a little bit to it?

Mr. STONE. It would, in fact, require no new data for them to collect, no different computer software or anything of the sort. It is just taking a slightly different look at things, and in all honesty I doubt it would be either costly or burdensome.

Chairman GLENN. Would it be more costly?

Mr. STONE. There may be a brief period in which, during the start-up of using these techniques, it might require some training, but I don't think it is very extensive training.

Chairman GLENN. Would it require additional people to keep statistics or do computer modeling or anything like that?

Mr. STONE. No, it would not.

Chairman GLENN. Is there any estimate of how costly it would be or how burdensome? I am just trying to get some quantities on your statement here.

Ms. KINGSBURY. We could certainly provide to you what we spent on doing it government-wide in terms of staff days or something like that that would give you an idea of what it would involve.

Chairman GLENN. I would like that.

Ms. KINGSBURY. Sure.

Chairman GLENN. Because just the statement here that they say it is going to be costly and burdensome and you say it is a better system. Apparently they don't disagree, necessarily. They think it is a good system, too. But it is going to be costly and burdensome. If it isn't going to be too costly, too burdensome, then, we can push them to go ahead and do this.

Ms. KINGSBURY. Yes. We will provide that information for you.

Chairman GLENN. Good. Thank you.

The Committee asked that you evaluate the specific efforts of the EEO complaint system at BATF. Your investigators interviewed a number of persons from ATF. Did you get good cooperation there?

Ms. KINGSBURY. Yes, we did, sir.

Chairman GLENN. Was it evident that managers and supervisors took immediate and appropriate action when allegations of sexual harassment were raised?

Ms. KINGSBURY. I would like to defer to the investigators for that because they are the ones that actually conducted the interviews.

Chairman GLENN. Ms. Porter.

Ms. PORTER. Mr. Chairman, good morning. We took a look at both the process from the inception of the allegation through the investigation and the resolutions. Many of the cases are still ongoing and are in civil litigation, in fact, at this point.

However, what we did distinguish is that there was some confusion, both at the management level and the employee level, of exactly what defined sexual harassment, what to do about it when an employee came forward. I don't think this is limited to ATF from our other inquiries we have made at other agencies, however.

The law requires that a manager, when he is informed of an allegation, take immediate and appropriate action to stop the harassment, that is separate and distinct from undertaking an inquiry into the facts, and then taking disciplinary action.

We did find that there was confusion among the managers over the distinction between taking immediate and appropriate action to stop the harassment and waiting until an investigation was done and then taking disciplinary action.

So they didn't understand the distinction there, that they needed to take action, not necessarily disciplinary action because the accused has the right to have a thorough investigation done. So from that standpoint, there was some confusion at the managerial level as to what happens when an allegation comes forward; and, in addition, in our statement for the record, we indicate that the employees in their guides are advised to go to EEO or their EEO counselors. However, the response of some of the management was to send them to the Office of Internal Affairs, which is the office that conducts investigations of misconduct.

So, in summation, there is still some confusion over what to do when these allegations come forward and what constitutes immediate and appropriate action.

Ms. KINGSBURY. I might add, Mr. Chairman, that the confusion about the distinction between acting to end sexual harassment and the complaint process is common in other agencies, as is the use of other processes to resolve these problems.

Chairman GLENN. Did you also attempt to evaluate other agencies at the same time, and how successful were your efforts there?

Ms. KINGSBURY. Well, the only other agency we have done a lot of work in right now is VA, and we are doing that work actually for Senator Mikulski's committee. We found in our recent visits to VA facilities a lot of confusion about what constituted sexual harassment and the use of other administrative processes that left the employees unclear about what their rights were. It is not quite as extreme a situation as the law enforcement situation where the internal review process is more aggressive. But it was certainly confusing to the employees.

Chairman GLENN. Did you have the feeling that investigations were thoroughly and fairly completed on both sides, fair to both sides?

Ms. KINGSBURY. Assuming you are still talking about ATF, I will defer to my colleagues.

Chairman GLENN. Yes.

Ms. PORTER. There were a number of investigations that were conducted. There was the Internal Affairs investigations, which are when there is a misconduct of an ATF employee. There is an inquiry, not an investigation, when the initial complaint comes into the informal EEO process. And then once an individual decides to file a formal complaint, there is a review done or an investigation done by an employee assigned by the Regional Complaint Center of the Treasury Department. So you have an internal and then you have an external once they go—we looked at all three of those investigations. In some cases, there would be, in essence, two or three investigations of the same incident.

Mr. GOMEZ. Mr. Chairman, one of the other things we found was that there were perceptions and concerns on the part of the employees at BATF with the objectivity, thoroughness, and independence with which those inquiries were conducted.

Chairman GLENN. Did they have many cases of spurious complaints, somebody who was complaining about one area because they want to get even in a different area? Are there many complaints like that?

Ms. PORTER. We asked for a list of all of the complaints and got into their database, and I think I did review two of them where there had been a finding that the individual had a performance problem and then made a complaint. That was in one case. The other one is in litigation right now. In that case, the alleged harasser—in two cases, the alleged harasser complained that the agency's Internal Affairs people had not interviewed witnesses that they thought were present at the incident or were relevant from that standpoint.

So with regard to—it is natural for an individual who is accused to complain that he isn't getting a fair shot. In this case, we did see two of those cases.

We would raise the larger issue that the employee perception was that because of the exchange of information between the man-

agerial level and the Law Enforcement Branch, and the IA Branch, Internal Affairs, and EEO, there were concerns on the part of the employees about the independence and the confidentiality of the process.

Certainly the managers, when we confronted them with that information at IA, they did express some concern. They are challenged by this. They are trying to work through the process. No one quite knows what to do with some of these allegations, who should be investigating them.

We did have some concerns over a lack of knowledge of investigative techniques associated with sexual harassment complaints. You need to talk to witnesses that were present, people with whom they confided contemporaneously, those types of things. And we did detail all of that in our statement for the record.

Chairman GLENN. In your report, the published report I referred to a moment ago, you say that advances were greater in the lower grades than in the upper grades. Correct?

Ms. KINGSBURY. Yes.

Chairman GLENN. What grade level constituted your cutoff for upper and lower?

Ms. KINGSBURY. It is grade 10 and below, and grade 11 and above, in that part of the report. That is right.

Chairman GLENN. We got into this a little bit a moment ago, but your report also used 1,000 white males as a benchmark for comparing the progress of women and minorities in Federal agencies. Was the way you developed this information, was that done completely independent of EEOC, or was it done with their cooperation? That is the first question.

The second question is: Do they keep that information available?

Ms. KINGSBURY. Actually, our analysis was based primarily on actual transaction data from OPM central personnel data file. So we were not relying on EEOC information, although during the study EEOC was certainly cooperative when we needed to deal with them.

Chairman GLENN. Do you have any feeling for what interventions are necessary to end the underrepresentation of women and minorities in Federal agencies?

Ms. KINGSBURY. That is a broad question, sir.

Chairman GLENN. I know it is a broad question, but that is the basic question we are facing.

Ms. KINGSBURY. It is the basic question.

My own personal view is that it is a management commitment issue as much as anything else. If managers are determined to end it and take aggressive action to end it and intervene in cases of discrimination appropriately and aggressively, I think it changes over time. And in the agencies that I have experienced in the past where that has been the case, I think you can make considerable progress in relatively short periods of time.

The management environment is very important, and the processes that are in place and the clarity with which employees understand those processes are very important.

Chairman GLENN. And the group most disadvantaged was identified as black women, right?

Ms. KINGSBURY. I don't think that is——

Mr. STONE. I don't believe that is true.

Ms. KINGSBURY. That is not correct. As a matter of fact, in terms of the relative growth, black women had a somewhat better growth rate than black men, and white women, Native American women was the group that didn't progress as rapidly as the others.

Mr. STONE. It is true in terms of representation at the highest of grades, black women are the least well represented.

Ms. KINGSBURY. At the very high grades.

Chairman GLENN. At the upper grades.

Mr. STONE. If we look at the upper grades.

Chairman GLENN. All right.

OSI staff stated that ATF personnel of Internal Affairs and/or EEO section at times did not utilize the proper EEO law when investigating the sexual harassment cases. Did you document those, and were they just unfamiliar with what the law is?

Mr. GOMEZ. One of the things we found in that area is that there are EEO guidelines out there for investigators to use in conducting sexual harassment investigations. There was not an apparent knowledge on the part of some of the investigators about those guidelines or how they should be doing investigations of sexual harassment.

We also found that many of the managers were somewhat familiar with the court law that had been developed in the area, but not sufficiently familiar, at least in my opinion.

Chairman GLENN. Did they just not know of the EEO guidelines, or were the guidelines there and not paid attention to?

Mr. GOMEZ. Well, again, these are guidelines——

Chairman GLENN. They didn't know about them or what?

Mr. GOMEZ. It was not apparent that they knew about—these, again, are EEOC guidelines for the investigators in how to do sexual harassment complaints. It was not apparent that they knew about those guidelines.

Ms. PORTER. And as a follow-up to that, the Office of Internal Affairs had stated to us that they don't do sexual harassment investigations. They do it only when there are allegations of assault. So that was the angle that they were coming on.

We disagreed in some cases. When they are investigating an incident of sexual harassment, then we are saying you have a duty to know what the guidelines are for investigating sexual harassment.

Chairman GLENN. They would not investigate sexual harassment, then, unless it was actual assault; is that correct?

Ms. PORTER. That was the statement that was—in the fall of 1992, ATF senior management convened on this issue and made a determination at that point that the only time Internal Affairs would get involved was when there was physical touching or assault. That was a policy, but that policy has not been communicated to their employees at this point. They are re-evaluating that as a result of the task force.

The point that some of their managers made was that we don't necessarily investigate sexual harassment. We investigate physical touching/assault. That is their position.

Mr. GOMEZ. Mr. Chairman, I just want to make one minor correction. The EEO guidelines are those published in the EEOC

Compliance Manual. It is a public document that is readily available to investigators.

Chairman GLENN. Well, I don't see how they would be investigators unless they were familiar with those guidelines and familiar with all of it. Wouldn't you conclude that, or am I off base?

Mr. GOMEZ. Well, again, the people we were speaking of were those investigators in the Internal Affairs. These are generally occupational series 1811 special agents, not necessarily trained in sexual harassment issues, but to conduct a various general category of crimes. They were not specially trained to be sexual harassment investigators.

Ms. KINGSBURY. Mr. Chairman, it is one of the issues that you address somewhat in your bill. In other agencies, investigators of these kinds of complaints are frequently employees who are doing this on a collateral-duty basis. And while we haven't specifically looked at the question of how many of them have seen the EEOC guidelines, our impression is not very many of them have seen them, the specific instructions about how to deal with sexual harassment investigations.

Chairman GLENN. Well, that is going to have to get brought to their attention, I presume.

Ms. KINGSBURY. Yes, sir.

Chairman GLENN. We talked to Mr. Lader here. We had his confirmation hearing here yesterday. He is the one that is going to be charged with putting the "M" back into OMB, the management function of OMB. And we talked yesterday a little bit about how some of the people are not aware of some of the regulations and so on. I think this is going to be an area that he is going to have to bring to their attention.

Ms. KINGSBURY. Yes, sir.

Chairman GLENN. What investigatory changes would OSI recommend be followed by ATF?

Ms. PORTER. Fundamentally, we think that they need to develop a clear and concise and consistent policy over who is going to conduct these investigations if, in fact, they are going to retain the policy of doing them internally.

If, in fact, they decide that it is going to be a group of 1811's, they need to train those investigators as you would anytime any investigator, what the violations are, what conduct constitutes a violation, how do you investigate it, what the elements of proof are. That has not taken place yet. So they need to make a determination as to who is going to do these investigations, whether it be ATF, Treasury IG, or turning to an external force, because the external Treasury Department investigators do receive some of that training.

So the first thing they need to do is come up with a clear policy, then train people on how to do these investigations.

Chairman GLENN. Did you find evidence of reprisals by supervisors?

Ms. PORTER. At the same time that we were undertaking our inquiry, the Treasury IG had undertaken an inquiry, and we were, in discussions with them, advised that they were going to do some trend analysis between complaints and the opening of internal investigations on people who make complaints. And they were doing

a statistical summary and analysis of that. So we did not do that type of analysis.

When an individual raised a specific complaint of reprisal, then we would look into that.

Once again, we were not re-investigating their cases. We were just looking at those issues. So, to some extent, I had to defer to the findings of the Treasury IG on that issue, which I understand is scheduled to come out very quickly. We did find that once an individual raised an issue, frequently some of their witnesses—and this was not as a result, necessarily, of management doing it, but all of sudden there would be complaints filed against them to Internal Affairs, the people that were involved in the process.

We are not saying, however, that that was at the direction of management. They came in from multiple sources.

Chairman GLENN. Would you comment, Ms. Kingsbury, or anybody else, on the time that we have outlined in this bill? I have been a little concerned that maybe we are too lenient on time. We have discussed it with some of the staff, and we are probably going to discuss it further.

It seems to me on different types of cases that maybe times to file and things like that maybe should be different. On sexual harassment, it is difficult for me to see how, if there is a sexual harassment case, that you have to allow months and months for people to file. They either know they are harassed or they were not, where a racial discrimination may build up over years and so you may need a little more time to develop a case like that if you want to bring it.

Do you think there is a need for different time periods, or do you think that the periods stated in the bill are quite adequate?

Ms. KINGSBURY. Well, I assume the specific time periods you are referring to are the standard that the employee has to face in order to have the standing to file a complaint. Is that right?

Chairman GLENN. That is right.

Ms. KINGSBURY. In the sexual harassment case, I think you have to go back to the distinction. Sexual harassment is a little different from other kinds of discrimination in that the law clearly requires the agency to take steps to end the harassment whenever it is brought to their attention, whether it is something that happened 6 months ago or not. And the lack of understanding of that distinction has led, in another case we have looked at at VA, for example, to a lot of sexual harassment cases being thrown out of the process for not being timely filed, where we think they have an obligation to act whether or not it was timely filed, even under current law. So let me set that aside.

We haven't done any work that would actually pinpoint what is an ideal time, and I am not sure how we would even go about doing that kind of work. I think that agencies, if they are properly managed, should be willing to deal with an issue, whenever it is brought to their attention, if it has merit. You need to set some limits in order to keep your complaint system from being bogged down.

With respect to the times in the bill, I think I am a bit more concerned about the times for the processing of the complaints, be-

cause that is substantively driven by the amount of resources that EEOC would have available to do the work.

Chairman GLENN. Well, that is my next question——

Ms. KINGSBURY. Well, I was afraid of that.

Chairman GLENN [continuing]. And I want to get into that, because I think some of the lengths of time that have been taken in the past are absolutely ludicrous. They are ridiculous.

Ms. KINGSBURY. Yes, sir, they are very long. And because of the nature of the management environment situation, and particularly in the sexual harassment case where the employee may end up continuing to have to work in that environment, those times can be really outrageous and very difficult for the employees to deal with.

Chairman GLENN. One of the objectives of this bill is to speed things up so we can get more timely adjudication of these things.

Ms. KINGSBURY. Yes, sir.

Chairman GLENN. EEOC guidelines provide that Federal agencies have 180 days to determine the appropriateness of a complaint.

Ms. KINGSBURY. Yes.

Chairman GLENN. Based on 1990 data, you found that the average time taken is 418 days.

Ms. KINGSBURY. Yes, sir.

Chairman GLENN. A year-and-a-half, while some agencies, such as the Department of State and Department of Justice, have averaged well over 1,000 days. I think State was 1,100-some days, if I recall correctly.

Ms. KINGSBURY. It is hard to understand. It really is. But in large part, it has to be partly driven by the resources and the commitment to get on with the investigation. And when you have an agency where investigators work on a collateral-duty basis, where they are responsible for their other work, where there is no penalty for not completing things within those time frames, I think you get the kind of experience we have now.

Chairman GLENN. I think when you are approaching 3 years on something like this, that it is just ridiculous.

Ms. KINGSBURY. Yes, sir. I would agree with you.

Chairman GLENN. We either should forget the whole process or make it more timely, one or the other.

Ms. KINGSBURY. I would certainly agree with you.

Chairman GLENN. Did the ATF managers, when you talked to them, understand their legal requirements when confronted by allegations of sexual harassment?

Mr. GOMEZ. It was not readily apparent to us that they understood that concept of immediate and appropriate action. No, sir.

Chairman GLENN. Did you have an opportunity to meet with the ATF task force on this issue and discuss the work that they are doing?

Mr. GOMEZ. We met with them on various occasions to discuss the nature of their work and some of the investigative steps they were taking. However, we were not able to assess the results of that work. We understand it will be completed sometime in early June.

Chairman GLENN. When was that task force formed?

Ms. PORTER. In January of 1993. Mr. Higgins, the Director of ATF, formed it.

Now, we need to make a distinction. There is a Treasury task force with whom we met, which Mr. Gomez was discussing, and then there was an ATF internal task force. And we had a dialogue with the Treasury task force. The internal task force, as Mr. Gomez has indicated, their findings are not complete, and we were not able to review those and make any conclusions on those.

Chairman GLENN. Was it your impression that they formed that task force as a result of the "60 Minutes" broadcast, or was it formed before? Did they have it in planning before that occurred?

Mr. GOMEZ. I don't know that we have that information, Senator.

Chairman GLENN. Well, the "60 Minutes" broadcast was on January 11th of this year, and at least it would appear that the task force was suddenly formed after that broadcast. I don't know whether it was in planning before, but that is what would be apparent.

All right. Thank you. We appreciate your work in this area very much, and we look forward to working with you on this as we try and get this legislation on through.

Thank you very much for being here this morning.

Mr. GOMEZ. Thank you.

Ms. PORTER. Thank you.

Mr. STONE. Thank you.

Ms. KINGSBURY. Thank you, sir.

Chairman GLENN. Our second panel is Diana Miller, Civil Engineer, Department of the Army, Pittsburgh; Marilyn Hudson, Assistant U.S. Attorney, Department of Justice, Knoxville; Curtis Cooper, Internal Affairs Division of BATF, Lisle, Illinois; Suzane Doucette, Federal Bureau of Investigation, Tucson; and Sandra Hernandez, of BATF of Ellicott City, Maryland.

Senator DeConcini has joined us. We are glad to have him join us this morning. I think he was interested in Ms. Doucette, who is here from Tucson. Dennis, do you want to make a comment?

TESTIMONY OF SENATOR DeCONCINI, U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you very much.

First, my compliments, Mr. Chairman, on your bill that we have before us, S. 404, of which I am a cosponsor. I really am grateful that you are moving ahead on this bill. I appreciate it. I am very pleased to be here today at the Governmental Affairs Committee.

This is an important issue of equal employment reform in the Federal system, and, Mr. Chairman, I especially appreciate the leadership that you have demonstrated here, and I am proud, as I said, to be a cosponsor, one of the original cosponsors, of S. 404.

As you know, Chairman Glenn, I have introduced legislation which seeks to improve the enforcement of sexual misconduct claims involving military personnel, S. 816, which has been referred to the Armed Services Committee. This bill would establish an Office of Special Investigations within the Office of the Secretary of Defense and create new Federal criminal penalties for failure to notify this new office of any complaint of sexual mis-

conduct involving active-duty military personnel or failure to cooperate in any sexual misconduct investigation.

I commend this bill to you, Senator Glenn, because you sit on the Armed Services Committee and because of your interest in bringing the leadership in support of S. 404.

Now, Mr. Chairman, today it is an honor for me to be here before this Committee to introduce to you a very brave woman from my home town of Tucson, Arizona, Suzane Doucette, who has been a special agent with the FBI for almost 9 years. Suzane has shown tremendous courage in appearing here to speak to you about the systematic discrimination she has alleged in her written testimony which I have had a chance to review. She is to be commended.

Suzane, I commend you for coming forward with this testimony. It is important for all of us to be aware of the continued need for protection of our Federal employees from abuse within our system.

I commend all the witnesses here today for taking the time and the courage to come forward and give your statements. It has not got to be an easy task at all.

Suzane's testimony, Mr. Chairman, will detail a tragic story of sexual assault by another special agent of the FBI in December 1988, a fellow colleague of law enforcement. Pressured with a threat by this very senior FBI agent, her future and that of her husband, who works for the FBI as well, she did not for a while file a complaint because of this threat.

Beginning in 1989, she applied for inclusion in the FBI's career development program nine times. At this time, this very time right now, management at the Phoenix is and was all male. After several attempts to pursue informal solutions to continued inability to advance, Suzane finally filed a formal EEO complaint in April of 1992.

Within the week, a recommendation for her promotion was withdrawn. This complaint is still not resolved. Suzane has just been advised by the Bureau that she is the subject of an investigation and is accused of providing classified documents to an unspecified attorney. She believes this is being done in retaliation for her actions.

I must say, Mr. Chairman, you have had the GAO, and you are going to review the discrimination problems in ATF. It is likewise interesting, having had a briefing from GAO on that agency, that, yes, there is sexual discrimination there. But, indeed, what happens is the retaliation is so great that the fear of people as to what is going to happen to them if they should file a complaint and the actual things that do happen to them as to their careers is astounding.

So, Mr. Chairman, I urge you and all members to review her testimony as well as that of the other witnesses, and I applaud your leadership, Senator Glenn, and I thank you for the opportunity to participate in these hearings.

Chairman GLENN. Thank you, Senator DeConcini. Glad to have you join us, and you are welcome to stay with us for the rest of the testimony and questioning, if you would like.

Senator DECONCINI. Thank you.

Chairman GLENN. This panel consists of Federal employees who have knowledge of the EEO complaint process at their respective

agencies. The Committee has invited the witnesses to appear. However, I want to make one thing clear: The Committee takes no opinion, we have no opinion on the merits of their individual cases. Some of them are still in the system. So the Committee has not investigated these sufficiently to where we would express an opinion. The individual cases have to go through the regular procedures.

Their testimony is to give their opinion on the agencies' ability to process in a fair and timely way discrimination complaints, and so we are glad to welcome all of you here this morning.

Ms. Miller, if you would proceed, we will go Miller, Hudson, Cooper, Doucette, Hernandez on this, if that is all right. Go ahead.

TESTIMONY OF DIANA MILLER,[1] CIVIL ENGINEER, DEPARTMENT OF THE ARMY, PITTSBURGH, PA

Ms. MILLER. Thank you.

Mr. Chairman, Members of the Committee, staff, and distinguished guests, my name is Diana Miller——

Chairman GLENN. If you would pull that mike right up tight? These are very directional microphones here. So everybody can hear, get it real close to you there.

Ms. MILLER. OK. Is this fine?

Chairman GLENN. Fine. Thank you.

Ms. MILLER. Thank you.

Again, my name is Diana Miller. I am a civil engineer with the Department of the Army, U.S. Army Corps of Engineers, Pittsburgh District. I was hired in June of 1989 and permanently placed in the Waterways Management Branch in December of 1990.

I really loved my job. I got along well with coworkers and got praise from supervisors and coworkers as well. I was a new engineer with ambition, motivation, and high expectations. I expected that working for the Federal Government would be a great experience since I looked at the Federal Government as a model employer. But I was very, very wrong.

On August 25, 1992, five people from my district traveled to Nashville, Tennessee, for an annual meeting with our uniform contractor. My supervisor was emphatic about meeting with the branch engineers while in Nashville. He wanted to discuss the future of our branch. He specifically told me he wanted to discuss my future in the branch as well as my performance appraisal which was upcoming, and also other upcoming meetings.

He emphasized and re-emphasized that we must meet while in Nashville. He told me and the other employee to come to his room for a meeting. He reaffirmed this by calling my room. Not yet having unpacked and being a professional, responsible engineer, I went to attend the meeting. Within 15 minutes into the meeting . . . excuse me.

Chairman GLENN. Take your time. It is all right.

Ms. MILLER. Within 15 minutes into the meeting, I asked where the other engineer was. He told me the other engineer was not coming. I immediately adjourned the conversation and stated we can meet tomorrow. I went to leave the room, and at this time . . . my supervisor came behind me . . . excuse me . . . and made un-

[1] The prepared statement of Ms. Miller appears on page 68.

wanted, unwelcome physical contact with me in very personal areas of my body.

Upon return to Pittsburgh, the reprisal and retaliation was immediate. I did not receive the performance appraisal which I earned.

On September 15, 1992, I reported the sexual assault to his direct supervisors. I was told by his direct supervisors that my supervisor admitted to the assault, and I was told that I would be the one transferred.

After stating that I should not be transferred because I did nothing wrong, I was told that it is easier to place a GS–11 employee than a GM–13.

When I took the stance again that I should not be transferred, my behavior was analyzed microscopically. I was then discouraged from filing an EEO complaint and told that since my supervisor confessed it was unnecessary.

However, I immediately became the defendant and had to endure insensitivity and crude comments, such as, "Hasn't he helped you in the past?" and that I should have let Operations Division handle this. I was also told that he had 28 years of service and a family. I have been labeled a troublemaker, and some employees reached a consensus and petitioned that my supervisor stay if it came to a choice between him and myself.

There were comments made on the fact that I am black and my supervisor is white, and statements that at least I wasn't raped, as if this justified his actions.

After this, my workplace had become tainted and unbearably hostile. Therefore, I felt forced to transfer. I requested to have a meeting with the district engineer, who is a colonel, to seek resolution of this matter. All I requested was permanent transfer that would provide me with a sexual harassment-free workplace, void of retaliation and reprisal, and also time to deal with this traumatic experience. I had been diagnosed and am still currently diagnosed with post-traumatic shock disorder due to this offense by my supervisor.

Instead, I was further retaliated against and discriminated against by being refused a permanent transfer and having to select between punitive, non-viable options, one of which was to stay in Waterways Management Branch with the condition that my supervisor may return, regardless of the fact that he was my sexual offender.

I was told that the district would block any attempt I made to submit a claim to workmen's compensation for traumatic leave. Also in this meeting, the chief of counsel stated that I was a victim trying to extract a pound of flesh from my supervisor. This statement went uncontested by the colonel.

The agency's behavior up to this point clearly showed me that they had taken the viewpoint of blame and punish the victim, and I was forced to seek resolution through the EEO office.

On October 6, 1992, I filed an EEO complaint and submitted my workmen's compensation claim. Since I came forward, another female employee has filed suit against this same person, but he is still the supervisor and I am on leave without pay.

I am currently unable to provide financially for my 2 small children without help from family and friends. This situation forces me back to work with or under my offender's supervision before I am medically released to do so. The agency offered to transfer me permanently only if I dropped my EEO complaint, workmen's compensation claim, absorb medical costs and some attorney's fees. The leave I borrowed and received from leave donations would not be restored or recredited.

My supervisor's actions are continually minimized to a pass. The EEO office seems to merely be an informant who provides a means for the management there to cover up and police itself. During the informal EEO stage, I was misguided and misled, which added to the dragging out of my findings. There was no EEO manager at the time of my filing, and a lot of the improprieties were blamed on the fact that my EEO counselor was inexperienced.

The EEO office was still conducting informal inquiries on January 8, 1993, even though the informal stage was to be completed on November 15, 1992.

There is no recourse for complainants when EEO misses deadlines; however, if I was to miss any deadline, my complaint would be immediately dismissed. And on more than one occasion, I have been threatened with dismissal of my complaint.

The colonel stated in my informal findings that I raised a problem to the attention of management, we investigated, found it to be true, and took a disciplinary action. Unfortunately, the disciplinary action was against me. The colonel also stated that my supervisor made a mistake and in his opinion it was because I am attractive. This in turn removes the responsibility from my supervisor and places the blame on me for what I look like.

People working for the EEO are employees of the agency, and many times their jobs are on the line. Therefore, I don't feel justly represented.

I received badgering letters from supervisors blaming my absence for his inability to manage his workload. He states that I am placing undue hardship on fellow engineers and that my absence is affecting his livelihood.

The retaliation is ongoing, and there is no end in sight. I have been threatened with AWOL; sick leave has been charged against me without my consent or knowledge; and again, there is no recourse.

I have been once victimized by my supervisor and re-victimized by the system. An independent party must be allowed to accept and investigate Federal employee complaints.

Again, Mr. Chairman, in my case, the investigation was found in my favor, they were found to be true, and I have still been punished and continually retaliated against. This is proof perfect that the system is more than flawed. It just does not work on behalf of the people it was designed to help. Anything you can do to change this system, not just for my sake but for the sake of my children and every child who may grow up to work for the Federal Government.

I thank you for the opportunity to come here today and testify. I would not want anyone else to go through this. Thank you.

Chairman GLENN. Thank you, Ms. Miller. I know it is difficult to talk about some of these things. We appreciate your being here today.

Ms. Hudson.

TESTIMONY OF MARILYN L. HUDSON,[1] ASSISTANT U.S. ATTORNEY, U.S. DEPARTMENT OF JUSTICE, KNOXVILLE, TN

Ms. HUDSON. Thank you, Senator Glenn. I, too, welcome the opportunity to address the Committee about S. 404.

Despite the fact that my employer, the U.S. Attorney in the Eastern District of Tennessee, has refused to give me administrative leave to appear here, has refused to pay any of the expenses for my attendance here, he has required that I submit my written statement 24 hours in advance of this Committee for his review, and also required that before I can testify before this Committee, I must read the following disclaimer which was supplied to me through the Executive Office for U.S. attorneys.

The disclaimer is, and I quote: "I am not representing the Department of Justice. Any of my statements to this Committee represent only my personal views and opinions. I have no authority to speak for either the Department of Justice or the U.S. Attorney's Office for the Eastern District of Tennessee. My responses to any questions from any Committee member reflect only my personal point of view and not that of the Department of Justice or the U.S. Attorney's Office."

I believe that when I conclude my testimony you will understand that there would never be any confusion that I do not speak for the Department of Justice.

Chairman GLENN. You mention, though, that they asked you to submit your statement in advance. Did you do that?

Ms. HUDSON. Yes, I did.

Chairman GLENN. And did they suggest changes to you?

Ms. HUDSON. I have not heard from them.

Chairman GLENN. You just submitted it, but you are giving the statement without any changes, they suggested no changes, and you made no changes.

Ms. HUDSON. That is correct.

Chairman GLENN. Thank you. Go ahead.

Ms. HUDSON. I have submitted a 16-page statement, and I would like for that to be made a part of the record of these hearings.

Chairman GLENN. All of your statements will be included in the record in their entirety. I know you prefer to give an abridged version. That is fine with us. But your entire statements will be included. Thank you.

Ms. HUDSON. Thank you, Senator, and I will give an abridged version, although it was already so abridged to bring it down to 15½ pages that I can only give you the tip of the iceberg and assure you that it is a thousand times worse than anything I could describe here today.

I am an assistant United States attorney. I am employed in the Eastern District of Tennessee, and I serve at the Knoxville office. I have been an assistant U.S. attorney for 10 years. Until 2 years

[1] The prepared statement of Ms. Hudson appears on page 72.

ago, I enjoyed a very high reputation for competence. I competed and was seriously considered for judgeships. I received outstanding performance evaluations. I received sustained superior performance awards. I received commendations from the client agencies that I represent. And all that now is down the drain because I invoked the EEO system.

Within the Department of Justice, there are 94 U.S. Attorney's Offices. Those offices are headed by a United States attorney that is presidentially appointed. To assist the management of the personnel of those offices, the Department of Justice has an Executive Office for United States Attorneys, and in our usual government lingo, it is referred to as EOUSA.

This sub-part of the Department of Justice is supposed to coordinate personnel issues, budget matters, and actually personnel staff increases or decreases. They are specifically designated to handle EEO complaints and performance grievances, but that is not what they do.

As I say, for 8 years I had developed a very good reputation as an outstanding attorney. In fact, right before this happened, the Department of Justice had completed an internal audit, and of all the attorneys in my district, the audit reported in writing that four of the attorneys in the office had been singled out for praise by the sitting judges in the district and the client agencies served by my office. I was one of those four.

I was promoted as the first female ever in the history of this district to serve in a supervisory position. I was named the chief of the Civil Division. As chief of the Civil Division, I would supervise attorneys and staff members. Our job was to defend government agencies whenever they were sued and to pursue government interests on behalf ofthe government.

At the same time that I was promoted to this position, there was a new first assistant appointed, and that is the highest level of assistant U.S. attorneys in any U.S. Attorney Office. This first assistant made it clear from the beginning that he would not tolerate females in anything but submissive roles. He has already testified at depositions in my case that he was opposed to my appointment as civil chief. He had preferred a male in the office who had not been in the office even 4 months when I was named and did not have the extensive Federal Government experience that I had had.

I should point out that this first assistant never had any civil case experience. He was promoted from the drug task force, and prior to that, he had been a State prosecutor and handled murder cases, rapes, and street crimes.

Despite that, after he was appointed, he did my performance evaluation. My performance evaluations went from outstanding, which is the highest rating for an assistant U.S. attorney, to minimally successful. That is the next to the lowest. There is a 5-level rating.

I filed the performance grievance with this EOUSA, and I contacted a counselor to invoke the informal EEO process.

One of the points I would like to make, kind of as an aside so that you can better understand how these internal EEO investigations are run, is that the Department of Justice has an EEO office within this EOUSA. It has another EEO office for the Main Justice

attorneys and staff. It has another EEO internal agency for DEA, FBI, the Marshals Service, any of their other sub-agencies.

The week after I contacted the EEO counselor, I was demoted as civil chief. Not content with merely demoting me immediately, I was transferred out of the Civil Division and put into the Criminal Division. There were a lot of side retaliatory reasons for this that I won't go into now, but I was moved into a smaller office, one that had not been occupied previously. As one of the most senior attorneys in the office, I was given the makeshift old furniture, a computer that didn't work. It had to be taken and changed three times, repaired before it would even function. And I became the office pariah. To be seen with me was to risk your own career.

To sum it up is to say that by contacting an EEO counselor, the roof fell in on my career. The agency is not content to give a bad performance rating and to demote. They take no prisoners. They investigate to untold personal limits. I mean, I work for the Department of Justice, and what happened to me should not happen to anyone.

As my case moved through, first of all the EEO counselor tried to conciliate the case with the first assistant. Well, of course, that is a senseless exercise. He rejected any conciliation. His attitude was that I needed to be removed. And to my surprise, every official that has any responsibility with the EEO process has endorsed, embraced that position.

I was given a notice of proposed termination and suspended while that notice of proposed termination was processed. Now, as an attorney—and as an attorney who has handled these cases before—I knew that the suspension—even if everything they said was true—which, of course, it was not—the only way under Federal law and the Code of Federal Regulations that a Federal employee can be suspended pending notice of termination is if there is proof that that employee is either a security threat tothe government or a threat to employee safety in the workplace.

Those weren't even alleged. I mean, they are not beside telling untruths, but they didn't even have to follow the law. They don't have to follow it at any level.

After over $60,000 of legal fees and expenses, finally I was able to have a restraining order that brought me back to work. But when I came back to work, things were worse than ever.

We had a new U.S. attorney appointed by that time, and this U.S. attorney had come out to make statements in my favor. He had thought that it was abhorrent what had happened to me. But that was before he was sworn into his position. Very shortly after he came into office, he was taken aside and basically I guess you would say he was taken to the woodshed and told that this is how the game is played. And from then on, in my opinion, his actions were to offer me up on a silver platter so that he could incur the good graces of this Executive Office.

He has quoted to me and to many others—and he loves to use the word—that he "bastardized" himself by ever supporting me and that he was fearful that he would not have appropriate budget grants and personnel allocations because he had supported me.

As a result, he asked me to do the easy thing. He said he had arranged for me to have a transfer to another office. He called my

friends in the office and asked them to call me and encourage me that it was the right thing to do. But I didn't do that. I came back. And from that day forward, the retaliation, the hostility, the degradation has gone unchecked.

I said I was going to be brief, and I have gone on. I guess I should really cut to the chase, and that is that this performance evaluation that I grieved was ultimately decided in my favor. It was raised to "excellent." Again, Federal law requires that any actions taken on the basis of a grieved performance evaluation where that performance is changed must be withdrawn. Well, I wasn't returned to civil chief. I didn't get even the pay raise that would have come with an upgrading. When an assistant U.S. attorney gets a minimally successful rating, they don't get a pay raise. I still don't have that pay raise. I have asked for it, and I still don't have that pay raise.

The male that this first assistant wanted to be civil chief is now civil chief. I am the only female attorney supervisor ever named. I lasted a little over a year. And to date, there has never been another female attorney in any supervisory capacity in the Eastern District of Tennessee.

The worst of the whole thing never seems to end. When I think I have suffered the worst, something else comes on. The first assistant decided to explain my prior outstanding evaluations in the context of my having given sexual favors to the prior rating official. The prior rating official was the U.S. attorney. The U.S. attorney has been deposed. He certainly has not claimed any sexual favors for having given me these ratings and has taken full responsibility for having given the ratings. When he wouldn't claim sexual favors and support the theory, then the theory changed to, well, even though the U.S. attorney signed the evaluations, he really didn't do them. Someone else that she was sleeping with did them.

The U.S. attorney again has said, "No. I did the ratings." But to this daythe government attorneys are proceeding to defend my case on this basis.

After the court returned me to work, the allegations that were made against me in my notice of termination were sent to the Office of Professional Responsibility. This is sort of the assistant U.S. attorney's version of Internal Affairs in the investigative arms of government.

The OPR investigators went out to ask employees of the Federal Government if they had heard any rumors about my sex life. Now, the allegations that were referred to them didn't involve anything about my sex life. But, again, the system wasn't at all interested in what the issues really were. They were looking for angles, ways to discourage a complainant, ways to humiliate a complainant.

My first contact with the EEO system was on June 1st of 1990. To this minute, no EEO investigator has been assigned to my case. It has never been investigated. But I have had three internal investigations conducted on my alleged misconduct. And when that didn't discourage me, when I didn't leave, then the system started on my witnesses.

One witness was the assistant administrative officer for our office, and when she refused to participate in the retaliation, she was stripped of her position. It was a career ladder position. She is now

in a position with no promotion potential. This is the woman who, a year-and-a-half ago, was here in Washington to receive the Attorney General's Award for Employee of the Year, but now she is incompetent and she can't handle her job because she is my witness.

Another witness for me, 4 months after she received her performance evaluation of excellent, was demoted from paralegal to secretary because she would not participate in retaliation for me—against me.

I think that my biggest surprise was that the Civil Division attorneys assigned to the case have embraced this action. I was surprised that the EEO in this EOUSA was hostile towards receiving complaints, but I held hope that once I filed in court and attorneys from the Civil Division within the Department of Justice were assigned that I would get an objective review. But that has not happened. They see as their sole purpose to discourage my case, to drag it out. I cannot tell you how much money I have had to spend on lawyer's fees and expenses. But I will mortgage my house. I will do whatever I have to do because, Senator Glenn, this cannot continue. It is a horrendous situation.

I do want to add with respect to some of the provisions in the bill. I have been denied leave to attend my own depositions in this case. The only administrative leave I have received is so thatthe government lawyers could depose me. But if I want to attend any of the depositions of any of the other witnesses, I have to take my own leave. I have to take my own leave if I want to prepare my case with my attorney.

We have asked for documents only to find that they have been destroyed.

There is absolutely, at no level, any accountability upon the Federal employee for this behavior. As you said in your opening remarks, this falls to the taxpayer. The taxpayers pay for the attorneys to oppose this. When the claimants do prevail, the taxpayer pays for the claimant's attorney. And now that the Title VII has been amended so that damages can now be awarded to Federal employees, they are going to pay even more.

I note that the statistics that were quoted this morning from 1985 to 1987, Senator Glenn, that was before damages could be awarded.

I ask you to do everything you can to move this bill through, to remove from the agencies any responsibility in connection with these EEO complaints. Thank you.

Chairman GLENN. Thank you, Ms. Hudson. Thank you very much.

Curtis Cooper, Internal Affairs, BATF, Lisle, Illinois.

Mr. Cooper.

TESTIMONY OF CURTIS COOPER,[1] REGIONAL INSPECTOR, OFFICE OF INTERNAL AFFAIRS, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, LISLE, IL

Mr. COOPER. Thank you, Mr. Chairman. I have submitted a written statement for the record. However, I do have some comments I would like to make.

[1] The prepared statement of Mr. Cooper appears on page 76.

Chairman GLENN. It will be included.

Mr. COOPER. Mr. Chairman, for the record, I am represented by counsel regarding my appearance before this honorable Committee. My counsel is David Schaefer, Esquire, of the law firm of Simms, Bowen and Simms, and James William Morrison of the law firm of Berliner, Cochran and Rowe. Messrs. Schaefer and Morrison are present and are sitting immediately behind me.

Mr. Chairman and Members of the Committee, I have been continuously employed by the U.S. Treasury Department's Bureau of Alcohol, Tobacco and Firearms for approximately 24 years. I have been employed as a special agent in St. Paul, Minnesota, and Chicago, Illinois; a first-line supervisor in Detroit, Michigan; an operations officer and program manager in Bureau headquarters, Washington, D.C.; assistant special agent in charge in Nashville, Tennessee; and I am currently the regional inspector for the Midwest Regional Office of Internal Affairs, Chicago, Illinois. In addition, I have served as interim special agent in charge of the Nashville District Office and assistant special agent in charge in Los Angeles, California.

I am one of four GM–15 African-American special agents in ATF. There are no other African-American agents encumbering any higher levels within ATF's law enforcement directory.

In addition to my ATF experience, I served for approximately 5 years as a local police officer with the St. Louis County, Missouri, Police Department. I have served 3 years in the U.S. Army as a military police officer and security specialist in France and Germany. I received an honorable discharge in 1963.

My academic background includes a Bachelor of Arts degree in urban planning from Metropolitan State University, St. Paul, Minnesota. I have also undertaken graduate work in criminal justice at the University of Minnesota, Minneapolis, Minnesota.

I am currently involved in a number of professional organizations. They are the National Organization of Black Law Enforcement Executives, the National Association of Concerned Black Agents and Inspectors of ATF, and the International Association of Chiefs of Police.

During my many years with ATF, I have personally experienced racial discrimination within its ranks. I have participated in the EEO process as a witness in individual cases brought by African-Americans within ATF. I have investigated and managed EEO complaints. I admit to you, Mr. Chairman, however, that I have not received nor am I aware that ATF provides EEO training for its managers.

In 1979, African-American special agents employed by ATF met in St. Louis from throughout the United States to discuss similar racial problems that they were having within ATF. At this meeting it was determined that additional meetings would be held to address and properly resolve discriminatory practices within ATF. Since this meeting, we have met on an annual basis to attempt to resolve EEO problems within ATF.

My experiences with ATF both individually and on behalf of the class of African-American special agents points out serious deficiencies within the Federal EEO process.

First, the current system requires the agency to investigate itself. We presented our concerns of class-wide discrimination against African-American special agents to management almost 10 years ago now, and nothing has happened yet. Even after we brought a formal class administrative complaint with the agency in 1989, the agency failed to act within the 180-day time period as provided by the regulations. In fact, it has been my experience that EEO counselors and investigators are reluctant to make findings of discrimination against the agency because, in effect, they must find that coworkers and supervisors have discriminated.

Second, the agency can simply sit back and do nothing in response to complaints of discrimination. The entire burden lies with the employee. The employee must hire attorneys. They must prosecute the case against the full weight of the Federal Government. The agency is represented by the Department of Justice who puts every obstacle in front of the employees who are trying to litigate their claims. We as a group have spent tens of thousands of dollars individually to prosecute our class-wide claims of discrimination. We individually face significant monetary commitments over the next year just to bring our class action to trial.

The Department of Justice litigates the cases in a manner that requires a massive amount of effort by our attorneys. They have even taken the position that we have to pay for 50 percent of the cost of databases to analyze our claims of discrimination when ATF itself has failed to maintain a race and national origin database as required by Federal law, specifically the Uniform Guidelines to Employee Selection Procedures.

Third, there is no penalty for discrimination in the Federal Government. ATF gets free attorneys, and any judgments are paid out of the Justice Department's judgment fund. Even if ATF is found guilty of discrimination, it does not have to pay. The taxpayer pays. No individual at ATF is held accountable for violating the civil rights laws.

Mr. Chairman and Members of the Committee, the Bureau of Alcohol, Tobacco and Firearms maintains an illegal system of racial discrimination and illegal retaliation for those African-American special agents who speak out against these illegal acts. The individual becomes the problem; as has been previous stated, "you become retroactively incompetent" when you address issues of discrimination and sexual harassment within ATF. In my 24 years with ATF, I have become less competent the more I become involved with the class action racial discrimination complaint. The bottom line is that no effective means exists for Federal employees to address problems of systemic and individual discrimination, without virtually bankrupting themselves with expensive and lengthy litigation in the Federal courts.

I cannot believe that Congress intended to create a system that rewards those who don't complain and penalizes those who do, while still not resolving the problem that is at hand. The system must be changed to make Federal agencies accountable for their violations of the civil rights laws.

Thank you, Mr. Chairman and Members of the Committee, for allowing me to appear here today.

Chairman GLENN. Thank you very much, Mr. Cooper.

Ms. Doucette.

TESTIMONY OF SUZANE DOUCETTE,[1] FEDERAL BUREAU OF INVESTIGATION, TUCSON, AZ

Ms. DOUCETTE. Mr. Chairman, distinguished guests, I would like to thank my home State Senator, Dennis DeConcini, for the very nice introduction that he gave to me today, and also for his support of this bill. Also my home State Senator, John McCain, is a cosponsor of this very important Senate bill.

The Title VII equal employment opportunity process within the Federal system is in need of reform for the protection of all Federal employees.

I work for the Justice Department and am required to provide this disclaimer to you. The statement I am providing to you today is my personal opinion and does not reflect the opinion of the Attorney General, the U.S. Justice Department, or the Federal Bureau of Investigation.

Chairman GLENN. Were you asked to submit a statement in advance?

Ms. DOUCETTE. Yes, sir.

Chairman GLENN. Did you submit the statement?

Ms. DOUCETTE. Yes, sir.

Chairman GLENN. And did they suggest any changes?

Ms. DOUCETTE. I have not heard a response from the Congressional Affairs Office.

Chairman GLENN. Thank you.

Ms. DOUCETTE. I have been employed as a special agent of the FBI for almost 9 years. In December of 1988, I was sexually assaulted by the Arizona special agent in charge of the FBI. When I complained about this sexual attack, the special agent in charge made it clear to me that he was previously charged with discrimination and racial harassment in the Donald Rochon matter. He was not punished for this. The special agent in charge made it clear to me that he was untouchable, both by stating that he was above reproach and by providing me with details of his previous escapades that were unpunished.

I was simply too afraid to pursue my complaints against this high-ranking FBI official. However, the discrimination did not stop because I did not complain further. During 1989, I applied for inclusion in the FBI's career development program as a relief supervisor.

Upon expressing my interest in career development, I was told that I could not enter the program because "Let the guys get to know you." I was further told that the guys don't want a woman on the desk. I asked for inclusion on nine occasions before I was finally allowed access to a voluntary program. It is important to note that male agents less senior than I were immediately accepted into the relief supervisor position.

I believe the allegedly gender-neutral practice of asking for inclusion in the FBI's management program created a disparate impact upon females within my field division in the FBI.

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[1] The prepared statement of Ms. Doucette appears on page 79.

During 1989, when I applied to the career development program, the management breakdown within the Phoenix field division was 100 percent male.

I believe that if I had acquiesced to the sexual demands of the special agent in charge I would have been accepted into management immediately. I believe the special agent in charge exerted influence over my non-selection for the career development program after he sexually attacked me.

After my protected Title VII complaints, I was denied management training. Management training in the FBI consists of several different seminars, but there are a couple of programs called Management Aptitude I and Management Aptitude II.

Management Aptitude I was attended by 1,995 individuals; 57 were women. Management Aptitude II was attended by 535 special agents; 4 of those were female.

From the period of 1975 through 1992, over 1,000 agents were promoted to stationary field supervisor desks; only 23 of these 1,000 were women.

On four occasions, prior to filing my formal EEO complaint, I tried to seek remedy through the informal EEO process within the FBI. On two of those occasions, I was threatened with reprisals, and decided to discontinue the process. During one of the EEO contacts, the EEO counselor I selected told me she had no training as an EEO counselor; further, she did not know how to process my complaint.

Eventually a new special agent in charge was selected for the Phoenix field division. After a period of time, I discussed with him what I believed were subversions of the EEO system, retaliation for protected complaints, discrimination, disparate treatment, and sexual harassment.

In January of 1992, when I told the SAC of my decision to proceed formally through the EEO system, he initiated an Office of Professional Responsibility investigation, or OPR investigation. This is an internal investigation.

I was compelled to provide a lengthy statement, and my requests for access to my privately retained legal counsel were denied. This investigation was promptly misdirected to address issues that were not a part of my EEO complaint, failing to focus on some of the more pertinent issues.

I did not continue the EEO process at this time due to the OPR investigation. I believe the investigation was turned into an investigation of me. When the situation further deteriorated, I asked to see an EEO counselor in February of 1992. Another Office of Professional Responsibility investigation was initiated within 2 hours. I again indicated my desire to pursue this matter through the EEO system. I requested legal counsel. I was denied. I was told that the OPR process has no place for an attorney, and I was compelled to provide a statement to OPR.

I was asked about matters I had previously discussed with my attorney in obvious violation of the attorney-client privilege. However, at this time, I was no longer intimidated, nor was I dissuaded from filing a formal EEO complaint.

I filed a formal complaint of discrimination on April 9, 1992. On April 13th, the EEO counselor informed the special agent in charge of my complaint.

On April 15th, the special agent in charge recommended, in a communication to headquarters, that I be afforded a fitness-for-duty examination to include a complete psychological evaluation. On April 21st, he changed my recommendation for promotion from highly recommended to absolutely no recommendation—a refusal to recommend me.

FBI headquarters did respond to the SAC's request for psychological examination by indicating that it was unwarranted.

I do not question the investigative abilities, motivations, and qualifications of the special agents who were selected as EEO investigators, but I do not believe the FBI is capable of performing an objective, unbiased investigation. The potential conflict of interest is obvious.

The agent-EEO investigator must coordinate interviews with the special agent in charge. The agent-EEO investigators are selected by the special agent in charge. They must also be relief supervisors, which means they are already in the management program. Special agents from the field sit on the FBI headquarters career board that ultimately selects people for further promotion.

In my case, there were two FBI agents who provided statements on my behalf and in support of my EEO claim, but they have asked me never to reveal their identities. They are very afraid of reprisals in this matter.

The FBI provided legal advisers to the individuals interviewed in my complaint at the expense of the taxpayer. When I asked for legal assistance, my requests were denied. I am currently facing the dilemma of raising a $25,000 legal fee that my attorney will require, not for his personal legal services but for his expenses for taking depositions in the matter.

It is not uncommon for the FBI to spend tax money to hire outside experts and legal representatives to defend individuals involved in discriminatory actions.

I filed a Freedom of Information Act request to obtain documents from my personnel file. The documents were released to me and are important to my EEO case because they provide evidence that I was qualified for promotion and that I experienced retaliation. I have two letters I would like made a part of the record.

Chairman GLENN. They will be included in the record.[1]

Ms. DOUCETTE. Thank you. The letters indicate that I was given documents legally.

Many of these documents, legally obtained under the Freedom of Information Act, are performance appraisals wherein I was rated exceptional, the highest rating for an FBI agent. My interpersonal skills were lauded along with descriptions of my patience and skillful handling of cases, aggressive pursuit of individuals. My early applications for promotion carry high praise from the special agent in charge.

Now, 1 year later, as I prepare to go to court on my EEO claim, the FBI has asked me to return these documents that were legally

[1] See pages 220–223.

obtained for alleged national security reasons and because they claim they were inappropriately declassified pursuant to my FOIA request. When I received the newly redacted performance appraisals, I found blank pages, wherein my interpersonal skills are now classified secret. I find it difficult to believe that my interpersonal skills are a matter of national security.

Those of you who are familiar with the *Bernardo Perez* v. *FBI* court decision will remember that the court decided that all FBI career board meetings and discussions will be tape recorded at every level. Pursuant to my Freedom of Information Act request, I was told two Phoenix Division career board tapes are blank. It is astounding to me that a special agent in charge of the FBI, assistant special agents in charge, and supervisory special agents cannot operate a simple cassette recorder.

It should come as no surprise that the FBI rarely issues a finding that it discriminated against one of its employees. It is not in the best interest of the FBI to issue such a finding. Even in an agreement with African-American agents, the FBI never admitted any discrimination. It would "embarrass" the Bureau.

There are two Bureau FBI mottos. They are very informal mottos, but they are very well known. The first motto is "Don't embarrass the Bureau." The second motto, which I believe is how my EEO complaint was handled, is "Admit nothing, deny everything, and make counter-allegations."

In conclusion, on last Friday, May 21, 1993, 5 days prior to my testimony before this Committee, I was advised that I am the subject of an investigation which may either be criminal or administrative in nature. I was advised that the focus of this investigation was an accusation that I provided an unspecified classified document to an unspecified attorney. This allegation is false. I believe this investigation is continued retaliation for my protected Title 7 claims and continued harassment. I also believe the timing of this notification was a subtle message that the FBI did not support my appearance before this distinguished Committee.

Thank you for inviting me to testify today. I strongly support the reforms in S. 404, and I hope that my testimony will provide some perspective into the Federal EEO process.

Chairman GLENN. Thank you, Ms. Doucette. Thank you very much.

Ms. Hernandez, of the BATF, Ellicott City, Maryland.

TESTIMONY OF SANDRA I. HERNANDEZ,[1] BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, ELLICOTT CITY, MD

Ms. HERNANDEZ. Mr. Chairman and Members of the Committee, I would like to thank you for giving me the opportunity to testify here today.

Again, my name is Sandra I. Hernandez. I am employed by the Bureau of Alcohol, Tobacco and Firearms. I have been an ATF agent for about 3 years. Before that, I worked for the Department of Justice's Immigration and Naturalization Service. I held a special agent position for approximately 2 years.

[1] The prepared statement of Ms. Hernandez appears on page 83.

Sitting directly behind me is my representative, David E. Shippers from the firm Shippers and Gilbert in Chicago.

I was born in Puerto Rico and moved to Chicago 15 years ago where I lived in one of the most violent, gang-infested neighborhoods, Humboldt Park. The sounds of gunshots and police sirens were a daily event. I witnessed shootings, and I knew some of the people who were shot personally. Many of my school classmates were gang members and drug dealers. Some died violently, and others grew up to be high-ranking gang members.

Against all odds, I completed college and became a Federal agent, which was my childhood dream. Later on I became an ATF agent to further fulfill the dream. In my wanting to become an ATF agent, I wanted to take on the gun-toting gangs that I had watched destroy so many lives and so many neighborhoods.

I would also like to add that I am the single parent of a 6-year-old daughter.

I was introduced to an ATF agent, a married man, who was a minority recruiter for ATF. This individual was also the EEO counselor for ATF. This agent took my application and later accompanied me to a job interview with his supervisors. I was subsequently interviewed and offered the job, which I accepted. Upon leaving the interview, without warning, this individual grabbed me and kissed me. I pushed him away and told him he had the wrong idea. I had just accepted the job minutes earlier, and although I was embarrassed, I was humiliated, I felt that with 150 agents working in Chicago, I would have very little chance to be working near or with this individual. I had been told when I was hired that I was going to be going to a task force group. Later, this individual telephoned me and told me that he had arranged for me to be transferred to the group that he was in and that he had arranged to be my training officer.

From the first week of my employment through the next 2½ years, I was subjected to repeated unwelcome sexual advances from this individual. These included kissing and grabbing me in a government vehicle, suggestive sexual remarks, offers for money to buy "sexy outfits," requests to date his friends and associates, and requests to have sex with his friends in return for assurances of a promotion.

On numerous occasions, I advised this person that these actions were not welcome. I was afraid to report his actions because, since my first contact with this individual and repeatedly thereafter, he advised me that he was very influential with the special agent in charge, assistant special agent in charge, and other management officials. He repeatedly told me, and I am quoting him: "It is not what you do at ATF, it is who you know."

This individual advised me that if I had sex with him he would ensure that I would get preferred jobs, would—and I am quoting him again—"never have to work the streets," and would not have to work full days.

During this time he attempted to isolate me from both coworkers and my supervisor. He said that other agents should not be trusted and that they did not like me because I was a Hispanic. I became very isolated.

Other agents made comments about him pawing me and about his making sexual remarks. However, when representatives of ATF's Internal Affairs interviewed this same group of agents, they gave written statements that they never observed any inappropriate behavior by this individual.

I did not report this harassment by this individual or my coworkers because I was on probation and I was afraid of losing my job because he repeatedly told me the bosses could fire me for any reason during my probationary year. I was the sole support of my daughter, who was 3 years old at the time, and I desperately needed the income. I endured this relentless sexual harassment while waiting for this individual to be promoted away, as he had said he would be.

Another female agent had reported suspicions of improper conduct by local police officials who worked with ATF and who were friends of this individual. She advised me that she had subsequently received threats against her children. The individual told me she would be destroyed for reporting his friends. He told me of disciplinary action against this agent before it even took place.

After seeing this happen to an agent with 16 years' experience and a record as a top producing agent, I knew that I, with 2 years' experience on the job, would never survive any retaliation from this individual. Shortly after this, the person who harassed me was promoted to a supervisor.

I was terrified of being caught alone with this person. During this period, I was unable to eat and began losing weight. I was constantly nervous, upset, and could not sleep. I began to shake and slur my words. I was constantly depressed and began having suicidal thoughts. One night I began to cry and could not stop. At this point I felt I was breaking down. A friend of mine contacted a group supervisor in whom I had confided earlier. She took me to the hospital where I remained for 9 days. While in the hospital, I was diagnosed as having anorexia nervosa and severe depression.

Upon release from the hospital, the supervisor who had witnessed an incident and in whom I confided met with an assistant special agent in charge and asked that I be transferred to her group. The ASAC related this information to the special agent in charge who instead transferred me to the field division to a clerical-type position.

I would like to add that from time to time they detailed agents to the field division to help with the paperwork that went on at the front office. But I would like to add that I was never asked to be present during any of the meetings that they had for the field division or the activities that were related to the field division work.

Upon reporting to the field division, I told the special agent in charge that I had been repeatedly sexually harassed by a supervisor and that I could not take it anymore. I also reported to him at this time improper conduct which I had witnessed by local law enforcement officials. At that time I refused to identify my harasser and I was never asked by the special agent in charge who that supervisor was or any of the details. After this he was cold and abrupt with me, and on one of the five or so occasions when I tried to meet with him to ask him when I would be sent to a group, he would not answer me or was evasive.

When I could no longer tolerate the stress I was experiencing from the SAC's treatment, I decided to identify the individual who had sexually harassed me. The SAC said he would contact Internal Affairs. I then asked him if there were any other ways in which this matter could be handled. He advised me that there was not.

After a week, I had heard nothing further from anyone in Internal Affairs and felt that this, too, would be swept under the rug and that this individual would get me transferred or even fired. I had an opportunity to be filmed by "60 Minutes," a show which was to air January 10, 1993, and felt maybe if people knew what had happened to me someone would help. I knew that by appearing on the show I would be risking my career, my job, but I felt that I would lose it anyway at this point no matter what I did.

After I reported that this individual who was harassing me, the retaliation was swift. The special agent in charge began to document me and to tell me that I was not working up to my level. Agents began to shun me and my former supervisor, and started spreading false rumors about us. Many people challenged the truthfulness of these allegations and said that my former supervisor must have put me up to this to "get back at this individual."

Later, when ATF Internal Affairs interviewed me about the sexual harassment, they immediately asked me to take a polygraph. I felt humiliated, I felt like a criminal, but I also felt that if I did not take the polygraph at this time no one would believe me. I had no way out. Although I did later take the polygraph and passed it, it did very little to stop the rumors and it did very little to stop the retaliation from everybody.

Following ATF's Internal Affairs investigation on my sexual harassment complaint, I was advised that a final report was forwarded to the special agent in charge for his review. I learned that in addition to the special agent in charge reviewing the report, so did the assistant special agent in charge who took gratuities from this individual, another assistant special agent in charge, and a supervisor, who had no authority to review this report.

I have since learned of other women who this individual sexually harassed. They have been afraid to give statements because they saw what happened to me, how my life, reputation, career were ruined, and how the lives of those who witnessed me being sexually harassed were ruined, and they did not also want to endure this.

In fact, one of the ASAC's knew about one woman who had been sexually harassed by this individual, but did not mention this during his interviews with Internal Affairs, although he had to know how important this information was for my case.

Because of situations which I am not allowed to get into here, the same situation has led me to believe that my life was in danger, and so the life of my daughter. And I had to be relocated from Chicago, away from family, friends, and my entire support system. I was transferred to Maryland where I don't know anybody, and I have no family, nothing.

The Equal Employment Opportunity system was never an option for me since, as I have stated earlier, my harasser was also an Equal Employment Opportunity counselor. He frequently laughed at and made fund of people who contacted him about EEO matters. Information received by him was supposed to be kept confidential,

but it never was. In fact, one of the regional EEO specialists, who is supposed to remain impartial, told people that—and I am quoting him—"I simply misunderstood this individual's intentions."

ATF Internal Affairs is not an option for those reporting sexual harassment because—and I firmly believe this—their office is an extension of and a tool of ATF management. Internal Affairs would and did report the facts of the investigation directly back to the special agent in charge.

I have since sought treatment for my anorexia, and as a result, I have incurred large doctor bills. At this point those bills exceed $4,000, and they keep rising as I continue to seek treatment.

Also, because of the severe depression, I haven't been able to work. I have been off work. At this time I have no sick leave left, about a week or so of annual leave left, and ATF has extended me a portion of leave, which expires in June. After this, they suggest that I take leave without pay. Now, in doing this, how would I live and who will pay the bills? At this time I don't know.

None of the things that happened to me would have ever happened to me, including the near loss of my life, if a system was in place to review complaints fairly and impartially. Neither would an agent be afraid of the loss of his job or of facing financial ruin as a result of making a complaint or being a witness to a complaint. Sexual harassment and the inability to report problems and corruption will remain in ATF until a system is in place that would allow people to tell the truth without fear of reprisal in the forms of transfer, suspension, bad work details, pass-over for a promotion, or many other of ATF's unfair employment practices.

Thank you.

Chairman GLENN. Thank you all. Your statements are all very eloquent. I know you all agree that we need a different system than we have now. That is what we are trying to do with this particular piece of legislation.

I didn't want to interrupt your statements as far as their length went because I wanted you all to have a chance to say whatever it was you wanted to say. We may want to follow up with additional questions to you later on, but let me go ahead with just a few questions here.

Ms. Miller, were you allowed to have a personal representative with you during the meetings with your supervisor?

Ms. MILLER. Not the initial meetings, but afterwards I found that it was in my best interest to do so. My legal representative has been denied access to Army regulations, which we are told are ever changing any time they decide to selectively omit something or to use it as a form of dismissal. But even with legal representation, going up against this system is a long, hard road.

Chairman GLENN. Ms. Hudson, you point out something that we may want to correct in S. 404. We may not cover persons who testify in favor of a colleague who files a complaint. Do you think we ought to make it clear that such supporting witnesses should be covered as far as any possible retaliation goes?

Ms. HUDSON. Absolutely. Both of these witnesses have had to file their own EEO complaints alleging retaliation; and I must add that when the Civil Division attorneys defending the case I filed learned

of this, they said to me directly, "They just filed to try to help your case."

I cannot imagine a more callous attitude.

Chairman GLENN. Mr. Cooper, the Office of Special Investigations at GAO has testified concerning the use of Internal Affairs Division of ATF to investigate sexual harassment complaints. As an agent in the Internal Affairs Division, you have been called on to investigate sexual harassment complaints. Do you think that Internal Affairs officers are equipped and trained to do that?

Mr. COOPER. No, sir, I do not, Mr. Chairman. I don't believe that ATF's Office of Internal Affairs is trained or prepared to conduct investigations of sexual harassment or racial discrimination.

Chairman GLENN. The time to resolve these cases, the average time for agencies to resolve complaints is 418 days. In some of the departments, it goes out to almost 3 years. We have the State Department and Justice exceeding 1,000 days. We try to shorten that up in here. I don't know how we are going to do that, whether it means we have to put a lot more people in there. Or do you think this can be handled adequately if we take this function away from agencies and give it to a different group?

Mr. COOPER. Yes, Mr. Chairman. I believe it would be if you were to utilize the same persons who are doing the investigations from the various branches at this time. From my limited experience, I don't think that additional personnel will be required. The important thing, though, would be to put these particular people in a particular group with some authority and training to conduct those type investigations. But additional resources, perhaps limited, but I don't see that the persons who are conducting them at this time now, I don't believe that——

Chairman GLENN. Well, I don't think that the agencies and departments should have everyone that they have working in this area, I don't think they all should be transferred out. But on the other hand—because I am sure a lot of cases are resolved right there. Something stops, that is it, and it is taken care of and that is that, and it doesn't need to go any further. And all parties agree to that. But cases like we are talking about here this morning that get more extreme, to have the people in the agency investigating themselves, in effect, just doesn't work in cases like this, and it is obvious.

I don't know that we could transfer everyone out, but we could certainly do some of it.

Mr. COOPER. Well, Senator Glenn, I suspect perhaps there could be delay on the part of the people that are conducting the investigations within the agencies currently, by design, perhaps, to cause that delay.

Chairman GLENN. Ms. Hernandez, I understand that your supervisor was also the EEO counselor, right?

Ms. HERNANDEZ. That is correct, Mr. Chairman.

Chairman GLENN. Once the "60 Minutes" program aired, your complaint was investigated. You took and passed a polygraph test. Was your supervisor the subject of your complaint; is that right?

Ms. HERNANDEZ. Yes.

Chairman GLENN. Was that supervisor given a polygraph test at the same time?

Ms. HERNANDEZ. No. I believe he was offered a polygraph, which he rejected.

Chairman GLENN. He declined.

Ms. HERNANDEZ. Yes.

Chairman GLENN. Your future, you felt, was going to be determined by whether you took that polygraph test or not, right?

Ms. HERNANDEZ. I most definitely believe that.

Chairman GLENN. But yet he was not required to even take a test as to whether your allegations were correct?

Ms. HERNANDEZ. No, he was not.

Chairman GLENN. Ms. Doucette, I know it is not comfortable for you to describe some of these things, but you just referred to "sexually attacked." Were you actually physically attacked, or was it remarks, or what was the nature of the attack? I think that is an important point.

Ms. DOUCETTE. Yes, sir. I will provide an abbreviated description of the attack. This special agent in charge waited for me. I was on a special temporary-duty assignment and was at a hotel with a group of other agents. I noticed him making comments to me, and I left the hotel, and I came back about 9:30 p.m. through a side entrance, and he was waiting for me.

I dashed into a ladies' room to try to escape him, and he was waiting for me when I came out of that ladies' room. At that time he placed me in a choke hold with his left hand around my neck, and he started touching me in places that are very sensitive. I had to fight away from him. I sustained bruises.

Then when I was able to escape him—he rubbed himself against me—I went to my hotel room, running and throwing up, and I got there and I called my husband. I was very upset. And as soon as I hung up the phone, my phone rang, and there was heavy breathing on the other line. So I hung up the phone. I went out and borrowed car keys from another agent, and the other agent accompanied me to a restaurant, Denny's, where we drank coffee all night long, because I was afraid to stay in the hotel room.

It is my understanding that this special agent in charge later admitted what he did to me to the young first office agent who accompanied me to the restaurant.

Chairman GLENN. What happened after he admitted it, then?

Ms. DOUCETTE. Oh, nothing, sir.

Chairman GLENN. Nothing?

Ms. DOUCETTE. I was assigned to a resident agency in Tucson, Arizona. Nothing happened to him. Of course, a lot of things happened to me. My husband was assigned to New York, to the field office there, and there were threats made that this special agent in charge would keep my husband in New York and keep me assigned in Arizona. Different threats along that realm were made against me. I just backed down because I did want my husband to join me in the Tucson Resident Agency.

Chairman GLENN. Now, what is the new investigation against you?

Ms. DOUCETTE. Sir, I received notification by the phone on Friday morning that it may be a criminal or administrative investigation. I am not sure which. It is from the FBI's Office of Professional Responsibility. It is into an allegation that I gave an unspecified

classified document to an unspecified attorney. The only documents I have are documents I received under the Freedom of Information Act which were declassified, and I have letters to that effect.

Chairman GLENN. Well, then, were they reclassified? Were the ones in the file reclassified after you had been given a copy of them, or what?

Ms. DOUCETTE. Yes, sir. My attorney received a letter, I believe about a week ago, asking me to return a list of documents including my performance appraisals and my applications for promotion that carried very high praise for me.

Chairman GLENN. The papers weren't anything to do with duty, with investigations, or anything you were performing on behalf of the FBI or things like that? The papers you had requested were papers on your own records?

Ms. DOUCETTE. They were personnel file records, records that management officials were keeping on me. And what happened is when I requested them, they went through a redaction process where everything that was classified was removed from those documents. Some of my investigations have been fairly sensitive investigations that I had been given performance awards for. So the details of those investigations were removed from the documents, but the statements as to my accomplishments were allowed to remain in the documents, in the original documents that I received. But the FBI now has reclassified those documents even though they were declassified previously and has asked for those documents back.

Chairman GLENN. When you were told of this, was it last Friday?

Ms. DOUCETTE. Yes, sir.

Chairman GLENN. Was any reference made to the fact that you were going to be testifying here?

Ms. DOUCETTE. No, sir.

Chairman GLENN. Do you think this was a coincidence that this came out on Friday and you were going to testify here on Wednesday?

Ms. DOUCETTE. No, sir.

Chairman GLENN. You don't think it is a coincidence.

I have page after page of questions here, and we are going to have to move along because we have another panel. I just wanted to check and make sure staff didn't have some other burning issue I had missed here. But I guess to summarize your testimony, it has all been very moving. You have had experiences here that are very hard to describe for some of you, to recount and go through what you have experienced. And I think, as I said starting out, it is not our business here to determine what is right and what is wrong in each one of your cases. That was not our mission. We don't have all the records, and so it is not up to us to do that. But it is incumbent upon us to set up a system that deals more fairly with people like yourselves and make absolutely certain there is a process that will resolve complaints in a fair and timely fashion.

We can pass laws, but I believe it is obvious that some of the people involved in carrying out those laws have a very key role to play. And we have to create a system where we can ensure that every person is treated fairly.

Thank you all very much for being here this morning.

On our next panel this morning are John Sturdivant, President of AFGE, American Federation of Government Employees; Robert Tobias, President of the National Treasury Employees Union; and Joseph Sellers, Esquire, Washington Lawyers Committee for Civil Rights Under Law.

Mr. Sturdivant, welcome this morning. You are no stranger to this Committee. We welcome your testimony again.

Mr. Sturdivant, thank you. You have been very patient this morning, but I didn't want to interrupt the other witnesses. Their testimony was very moving.

TESTIMONY OF JOHN N. STURDIVANT,[1] NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, WASHINGTON, DC

Mr. STURDIVANT. Mr. Chairman, I think that one of the best things for me today was to come here and hear those witnesses and hear those victims. You know, at times in this business that we are in, if you think that perhaps maybe you are not on the right track, hearing activities and hearing behavior in the Federal workplace like we heard this morning, I think, underscores the fact that we are on the right track.

I would just hasten to say I noticed you were talking about transferring some of the human resources in the agencies over to the EEOC, and certainly we support that as part of your bill. While you might want to transfer the resources themselves, I don't know that you would want to transfer the people because I think that some of those folks, if what we heard today, if those allegations are true—and I have no reason based on my experience to believe that they are untrue—then I would think that probably some of those folks need to be transferred out of a job, not transferred over to the EEOC to continue their egregious behavior.

Chairman GLENN. Well, your remark is well taken. Maybe we ought to be transferring slots, not people.

Mr. STURDIVANT. Slots, definitely not people.

Mr. Chairman, I appreciate the opportunity to testify. I am going to just summarize my testimony. We have worked with you a long time on this legislation. We support the Federal Employee Fairness Act of 1993, S. 404.

Previous hearings in both Senate and House committees, communications from government workers, the GAO reports, and stories in the media have revealed significant problems with the current Equal Employment Opportunity process for Federal employees. One AFGE member testified in an earlier hearing about her 11-year struggle to reach a decision on the merits of her race discrimination claim. Many other frustrations, mistreatments, and acts of rank unfairness have been well documented inthe government's own EEO complaint process.

Today's witnesses included a sampling of government workers from various agencies who suffer under routine abuse in an agency-controlled system where: There is an inherent conflict of interest as each agency investigates its own actions and has the option of

[1] The prepared statement of Mr. Sturdivant appears on page 84.

rejecting the findings of discrimination made by administrative judges at the EEOC; where Federal employees must initiate claims of discrimination in an unreasonably brief time frame, yet case processing by the accused agency lingers excessively; where no provisions exist for the consideration of sanctions against a supervisor found to have committed acts of intentional discrimination; and where the unnecessarily complex and lengthy appeal route is mandated upon the "mixed cases," in which allegations of discrimination are raised in arbitrations or MSPB proceedings.

The common problems and abuses routinely experienced in the present system persist despite a major regulatory overhaul of this process that took effect on October 1, 1992. In the past several weeks alone, AFGE has been contacted by numerous employees who could provide further testimony to the chorus of complaints that the system is simply unfair. Indeed, I am struck by the absence of any objection, from practitioners, employees, or even managers, to the need for reform of the current EEO process.

S. 404 is the proper vehicle for reforming this 20-year-old dinosaur.

The Federal Employee Fairness Act of 1993 will provide other needed reforms. For instance, it provides a mechanism by which employees proved to have committed discrimination will be carefully considered for sanctions. Too often, as we have heard today, we see supervisors who have been responsible for discriminatory acts elude any discipline. This experience has been especially frustrating for victims of sexual harassment who continue to face a harasser unpunished for his conduct. At the same time 404 provides new procedures to strengthen protections against retaliation directed at complainants. This legislation also provides additional precautions to ensure that all relevant facts are collected before hearings are held on the discrimination claims.

Thus, this bill presents a true overhaul for a discredited system, and it is long overdue. It is comprehensive, affecting the entire Federal workforce uniformly, preventing a patchwork of different programs for each agency. And it not only makes sense, but in these days of tight budget constraints that we keep hearing about from the administration and, of course, the Congress also, it saves money in its consolidation and simplicity.

We would respectfully suggest that a technical amendment be offered to clarify the question of some coverage of some Department of Veterans Affairs employees. S. 404 retains the same employee coverage as the original 1972 statute that extended the complaint procedures of the Civil Rights Act to the entire Federal workforce. But a 1991 amendment to Title 38, which defines the professional workforce at the VA, could be interpreted by the courts as requiring specific reference for these employees to be covered by the new legislation. Therefore, I suggest that Chapter 74 of Title 38 be mentioned in Section 2(a)(2) of S. 404, under the definition of covered employees, so that no confusion will arise as to the application of this legislation to all employees of the VA.

I am advised by my staff and from my knowledge that there is a way to move to a swifter process. I am advised that arbitrators have found under collective bargaining agreements sexual harassment findings, and I am advised that we just won a big case over

at the Department of Labor, and it took approximately 3 months. So I believe that my colleagues, those of us labor organizations in the workplace, we have a vital role to play. And I can assure you that we will do all we can to root out and search out and destroy, if you will, this regretful and destructive practice in the Federal workforce.

I note that you have been having some discussions with the administration and we have been having some about reinventing government. As I have told those folks in many discussions, we are interested in reinventing government. We are not interested in reinventing the wheel. But certainly reinvention of government has to start with rooting out, defining, finding these practices and making sure that there is no atmosphere, there is no attitude, there is no official sanction of these practices in the Federal Government, and that the message is clear from the top right on down to the lowest-level Federal employee, and that those individuals who are found guilty of these practices are given their due process rights, of course, but are dealt with swiftly to send that signal.

Thank you, Mr. Chairman. I will try to answer any questions that you might have.

Chairman GLENN. Thank you very much, Mr. Sturdivant.

I also meant to make a very short statement just before you all came up as a panel. I wanted to acknowledge that the Committee has been assisted by several groups that have been highly supportive of S. 404, but we were not able to invite all of them today. We just didn't have time to put everybody on, and we are running over now, of course. But I do want to acknowledge the tremendous support of the National Federation of Federal Employees, whose President, Robert Keener, has also shown leadership in this area. So thank you very much.

Mr. Tobias.

TESTIMONY OF ROBERT M. TOBIAS,[1] NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION, WASHINGTON, DC

Mr. TOBIAS. Thank you, Mr. Chairman. I certainly agree with you that your role today in hearing the testimony of the prior witnesses was not to determine guilt or to determine the facts of the case. But one thing that I think came through loud and clear, and that was the pain—the pain and the suffering—and it seems to me that a system has to be created to deal with that pain and to deal with that suffering. I think the goal of any EEO process should be twofold: One is deterrence, and one is providing relief to those who are injured; deterrence of those who would discriminate and relief to the victims who are injured.

Our current system fails abysmally. There is no deterrence. The statistics continue to show that women and minorities are not promoted, that they receive a disproportionate number of disciplinary actions, that they receive disproportionately fewer awards. So the system does not deter.

The process can't deter if it takes so long. I mean, supervisors often know, who are near the end of their career, that they are going to be long retired before any decision is ever made.

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[1] The prepared statement of Mr. Tobias appears on page 86.

We heard so eloquently today these women who were sexually harassed. The supervisors ignored the system and continued to behave as though there was no system. So the system provides no deterrence. And there is no punishment for those who engage in this kind of activity.

Similar to no deterrence, there is little relief because the system is so complicated, it is so slow, the results are so uncertain, that people do not want to put themselves on the line to use the process even when they are the subject of discriminatory action or sexual harassment in the workplace because it takes so much emotional energy to use the system. So it provides no relief.

Now, we believe, Mr. Chairman, that S. 404 is a very, very good bill and that it will address the problems that are so clear and have been so clear for so many years, because it allows people more time to file an initial claim, 180 versus 30 days. It provides some specific time limits for processing the complaint, and that is so critical, so that the agency has to do the investigation. The administrative law judge has to decide. Decisions have to be made in a timely manner as opposed to having no sense of urgency, and that is what this program lacks. There is no sense of urgency.

I think it is critical that the agency is removed from the process. We have heard for so many years that the agencies say, "Don't remove us from the process because we want to resolve these complaints at the lowest possible level." Well, the evidence over the years shows that that is bunk. It doesn't happen. So it seems to me that the time has long since been proven that they be removed from the process.

There is one provision, Mr. Chairman, in S. 404 that I would appreciate your considering, and that is the provision which allows private attorneys of the accused supervisors to be at the hearing. We believe that this delays the hearing, that it is unnecessary because the interests of the agency official and the interests of the agency are the same, and so that process provides protection. Rather, what we would urge is that the supervisors be provided a separate hearing similar to that provided in the House bill where the Office of Special Counsel would investigate and determine whether or not to impose sanctions on a supervisor so that they are not part of the actual hearing process. But other than that minor provision, Mr. Chairman, we support S. 404, and we hope that this Congress will, in fact, enact it and put it into law and really send a message that the kind of behavior that we heard today is unacceptable; and not only that it is unacceptable, but that we are going to correct it. Thank you.

Chairman GLENN. Not only correct it, but penalize those who have been guilty of some of the things. And I am not here to judge any of the cases that we had here today, but I think we have to make sure that people who are doing these sorts of things know that that does not enhance their careers. That is critical.

Mr. Sellers, Washington Lawyers Committee for Civil Rights Under Law.

TESTIMONY OF JOSEPH M. SELLERS,[1] WASHINGTON LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, DC

Mr. SELLER. Thank you, Mr. Chairman. I, too, am here to comment on and express my strong support for the Federal Employee Fairness Act. The bill before you has the backing of 15 national labor and civil rights organizations representing more than 1 million Federal workers. The support is strong, it is broad, it is bipartisan, because the current system, as we have now heard, is fundamentally flawed. It transforms the noble promise of equal employment opportunity in the Federal workplace into a cruel hoax for many.

We have heard about the processing of claims moving at an inhumanly slow pace. We have heard about the intractable conflicts of interest, both that the agencies investigate themselves and they decide the merits of the claims in cases against themselves. We have heard about the same administrative process being replicated at every one of the 119 executive agencies. That results in enormous duplication and substantial cost, and also we find that the EEO staff at many agencies unfortunately are woefully undertrained and overworked.

The bill before this Committee today accomplishes many things and ought to address many of the problems that I think we have heard from the witnesses today. It does set time limits for the agency and the EEOC to complete their work, hopefully ending these interminable delays in the processing of claims. It removes the conflicts of interest, entrusting the fact-gathering to the parties when they appear before the EEOC rather than the agencies unilaterally investigating themselves, as has occurred up until now.

It transfers authority to decide these claims against these agencies, from the agencies themselves to administrative judges who are independent at the EEOC. And by consolidating much of this system at the EEOC, we get the benefits of economies of scale which makes this bill, in fact, a budget saver, as you are well aware, Mr. Chairman. The Congressional Budget Office has reported that this bill may very well save in the neighborhood of $25 million a year if it is enacted. And it increases the accountability for this system to the public and to the Congress.

I want to comment as an aside that I think it is wise that the bill also does not transfer all responsibility from the agencies for handling these claims to the EEOC. It retains a very important role for these agencies, and I think just the right kind of role. It leaves to the agencies the responsibility for trying to conciliate the claims, trying to resolve the claims and gather the documents that they themselves generate in connection with the personnel actions that are in dispute.

This bill also brings the time periods within which to initiate claims in conformity with the private sector and with the time periods for Senate employees to bring EEO claims that were made available under the Civil Rights Act of 1991. And I might add, in response to a question that I think was asked earlier about whether the 180-day period within which to bring these claims might be

[1] The prepared statement of Mr. Sellers appears on page 88.

too long, I would say two things: First, employees, of course, can initiate a claim in fewer than 180 days. They can do it on day one if it turns out that it is a problem that they are sure they want to address. The second point is that for many employees—and I have counseled many and represented many in connection with these proceedings—the decision to initiate some kind of action against your employer may be one of the most difficult questions they face in their entire life. And it is one that many people don't undertake lightly and, for that reason, often take additional time to think about it, think about the personal consequences in their lives, as well as to investigate the claim. So I think the expansion of the time period to 180 days affords them the time needed without requiring them to wait the full time period.

Finally, I want to join Mr. Tobias in raising one concern that I believe may warrant the Committee's additional attention, and that has to do with the disciplinary provisions. It is absolutely essential—and I think the testimony today fully supports this—that there be some mechanism provided, as this bill does provide, for managers who are found to have committed discrimination—not just accused but found to have committed discrimination—to have some appropriate discipline imposed. I think the bill wisely entrusts that responsibility to an independent agency, not to the agencies for whom these people work but to the Office of Special Counsel, which is an independent agency. And as that Office of Special Counsel is now charged in investigating other kinds of Federal employee misconduct, it would be charged with investigating the conduct and determining whether it believes appropriate sanctions are warranted; and if so, it then has to prosecute for civil sanctions before the Merit System Protection Board.

That process has worked very well with respect to where the Office of Special Counsel has acted. It has worked very well on other occasions, and I suggest that it is a process that affords full due process as it currently exists to Federal employees. While I commend this Committee for being sensitive, as I think it must, to the due process rights of Federal managers who are found to have committed discrimination, I respectfully suggest that the additional provision of counsel to every person who is even accused of committing discrimination, so they can participate in these administrative hearings—many of which don't result in findings of discrimination, as we know from the past records—may really unduly protract these hearings. And when we already know, as my written statement reflects and I won't repeat here, there are a number of different procedural protections that these employees already have before the Office of Special Counsel, I question whether the Committee really wants to protract these hearings by adding additional counsel to the hearings when there are other due process rights that already exist and which I think are fully adequate.

So with that one exception which I think the Committee may want to re-examine, I strongly endorse the legislation, and I want to commend you, Mr. Chairman, as well as the Members of the Committee for exercising strong leadership here. These protections have been in effect for 20 years now. They have never worked well. I think that the action that the Committee has taken in the last Congress and I hope will take again here will not only send a sig-

nal, a strong signal that the Congress doesn't tolerate this kind of misconduct in the Federal workforce, but hopefully will provide effective mechanisms for people who are subject to discrimination to address it promptly and efficiently. Thank you.

Chairman GLENN. Thank you very much, Mr. Sellers.

On the subject of leaving an official in the agency and not transferring everybody out, which I favor, I think in a lot of these cases somebody may do something—it may be a pass made at somebody or whatever—and they go see that responsible person within the agency, and that person goes to the offending person, whoever he or she may be, and says, "Look, here is what I have heard, you had better shape up or you are going to be out of here, and that takes care of it and that is it. That never happens again." If that is the case, I don't think it needs to go through much more than exactly that.

So I wouldn't want to rule out that alternative as a solution. I wouldn't want to think that every time somebody has any complaint of any size whatsoever they have to go completely outside the agency and go through other procedures. So I don't favor taking everything out of every agency or department, but I think what we have heard here today indicates we need a different setup.

The House-passed legislation, H.R. 1032, would reform the EEO complaint process at VA. We have taken the approach with S. 404 that we wouldn't enact a policy agency-by-agency; we would do it government-wide and get it set up once and for all, uniformly. I presume you all favor that.

Mr. TOBIAS. We do, totally.

Mr. SELLERS. Absolutely.

Mr. STURDIVANT. You know, Mr. Chairman, the bottom line is if you have got the agency investigating itself, then the process is fundamentally flawed. I was surprised to see that happen over there, but we were real happy to see Chairman Rockefeller as a cosponsor of your bill. Yes, it is just, on its face, from what we have seen and certainly from our own experience in the VA, those folks don't need to be in the business of investigating themselves. I can assure you of that.

Chairman GLENN. One thing came out this morning I had not given much thought to before; that is, anybody in a position like some of these people were here this morning that were testifying probably need substantiation of their problem by other coworkers or someone else, and those people in turn may have——

Mr. TOBIAS. You bet.

Chairman GLENN. Get some retaliation against them. Now, I don't know how far down this list you go. Then you get people supporting the case of the people retaliated against because they had the original support of the original person, if you follow this. I don't know where that chain should end.

Mr. TOBIAS. Well, but retaliation in whatever form should not be tolerated. And if somebody——

Chairman GLENN. Whatever level and however many steps it takes.

Mr. TOBIAS. Exactly. I mean, if I am exercising—if I am telling the truth in the context of an administrative hearing, no matter who I am, I ought not be subject to retaliatory action.

Chairman GLENN. Yes.

Mr. Sellers, there are several organizations that make up an equal employment opportunity reform coalition, and as I said, we couldn't have everybody here today. But I want to make sure they get their full credit. Do you have a list of those for the record so we could include that?

Mr. SELLERS. Yes, Mr. Chairman. In fact, they are named in the first footnote of my written statement, and I offer them there.

Chairman GLENN. Fine. That will be part of our record, then.

Any way we speed things up that we haven't considered that any of you would want to suggest? Mr. Tobias.

Mr. TOBIAS. I think not. I think that the imposition of the time period is going to force people to speed things up in ways that we have never seen before. So I support the approach.

Chairman GLENN. I know you have made a couple of suggestions here, but before we end, any other recommendations you feel would strengthen the bill?

Mr. TOBIAS. We think it is great, other than the things that have been mentioned.

Chairman GLENN. All right. Well, if you think of anything else, why, let us know because we want to make this as good as possible before we bring it before the full Committee for a vote. If you would reply for the record at the earliest possible time, we would appreciate that.

Mr. STURDIVANT. We would hope that the House takes swift action on the companion bill and that the administration strongly gets behind this and that we—everyone ought to be able to agree on the efficacy of this process, and we hope that we can move it swiftly and get strong administration support.

Chairman GLENN. Thank you, gentlemen. We appreciate your being here.

The hearing will stand in recess subject to the call of the Chair.

[Whereupon, at 12:20 p.m., the Committee was adjourned subject to the call of the Chair.]

APPENDIX

PREPARED STATEMENT OF SENATOR AKAKA

Mr. Chairman, I am pleased that the Committee is moving forward on this important piece of legislation. S. 404 seeks to address the current shortfalls in our current equal employment opportunity complaint process by establishing fair guidelines to protect our Federal employees.

Last Congress, this Committee held hearings on the Federal employee complaint process and found that the current system hindered employees seeking redress for discriminatory action and prevented an impartial review of their complaint. Several current and former Federal employees testified that the system merely perpetuated the discrimination they were forced to endure and, in fact, is a promotion barrier for minorities and women in the Federal workforce.

It is not uncommon for complaints, once filed, to take several years before being resolved or even acknowledged by an agency. Oftentimes, no priority is given to equal employment opportunity complaints, and the agencies often assign this duty as a secondary responsibility. Thus, employees are perceived as "grousers" and, in some cases, the defendant is the same individual responsible for reviewing the merits of the complaint.

Victims of discrimination face a double-edged sword when they file a discrimination complaint against a superior or a coworker, because they continue to be victimized by retaliation. Those who file complaints are usually labeled "problem employees" and are forced to endure a multitude of reprisals, ranging from subtle to blatant. The current system fosters unacceptable behavior because it places the burden on the victim and not the victimizer, and agencies have very little recourse to deter retaliatory actions.

A recent General Accounting Office report found that "women and minorities in key jobs were, like women and minorities in the workforce in general, relatively better represented at lower grades than at upper grades." Minorities and women are still being limited in their job opportunities despite our call for change. Today, we have the opportunity to improve the system which protects the rights of minorities and women in the Federal workforce. The equal employment opportunity complaint process must no longer be a barrier to women and minorities.

Mr. Chairman, I commend you for your leadership in this area, and I look forward to working with you and Members of the Committee to ensure job equity for our Nation's women and minorities. Statement of Senator Joseph Lieberman for the Hearing on S. 404, the Federal Employee Fairness Act, May 26, 1993

I would like to commend Senator Glenn for his leadership in again moving forward S. 404, a bill that promises the dual benefit of streamlining government while simultaneously protecting the rights of its employees.

As the Committee has demonstrated, the system currently in place for handling discrimination and harassment complaints filed by Federal employees does not serve anyone well.

First, employees who lodge such claims have no guarantee of receiving a fair hearing. An agency in which an act of discrimination or harassment is alleged is authorized to reject or accept the claim, investigate it and make a ruling. You don't have to be a lawyer to know the dangers of letting a potentially guilty party serve as its own detective, judge and jury.

Indeed, there is considerable evidence to show that Federal employees who have filed complaints are not receiving their due process. This committee has shown that many agencies put little effort into their investigations, move so slowly that the complaints become moot, and even if discrimination is found, rarely impose meaningful sanctions. Between 1988 and 1990, for instance, 1,682 cases yielded findings of discrimination, yet discipline was recommended in only seven, and on only two occasions was the punishment more severe than sensitivity training.

Beyond denying Federal employees a level playing field, the current system also denies taxpayers the right to have their money spent judiciously. The decentralized adjudication process wastes significant time and money, which would be better spent on policy-making instead of policing.

The Federal Employees Fairness Act will eliminate both problems. By transferring the power to review claims to the EEOC from the outset, as well as adopting definite time limits and procedural rules, this bill will provide Federal Employees with the safeguards they rightly deserve.

What's more, this act takes a tangible step toward our goal of reinventing government. Not only does the idea of freeing the 29 civilian agencies in question from playing judge and jury make sense on paper, it makes cents in the ledger—the Congressional Budget Office estimates this bill could save us $25 million annually.

Mr. Chairman, I stand strongly behind this measure, which promises fairness to all involved.

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PREPARED STATEMENT OF MS. KINGSBURY

At the request of the Senate Committee on Governmental Affairs, GAO recently studied the progress women and minorities have made in key Federal jobs and examined how the Department of Treasury's Bureau of Alcohol, Tobacco, and Firearms (BATF) has handled sexual harassment and other EEO complaints.

GAO's review of the progress of women and minorities covered 262 key jobs in 25 Federal agencies. These jobs are described as key because they can lead to middle- and upper-management positions. GAO found, for the years examined, general improvement in the relative number of women and minorities in key jobs. For example, between 1984 and 1990, the number of minority women relative to white men increased by 34 percent, and the numbers of white women and minority men, relative to white men, each increased by 22 percent. Increases that occurred over time in the relative numbers of women and minorities were generally as large, and sometimes larger, at upper grades (11 through 15) as they were at lower grades.

However, even with the progress that was made, women and minorities were still less well represented in key jobs at upper grades than at lower grades. For example, while there were 1,390 women and minorities for every 1,000 white men at grade 10 or below, there were 343 women and minorities for every 1,000 white men at grades 13–15. While this study did not identify reasons for the disparity, GAO is reviewing, at the Committee's request, how agencies go about identifying and addressing barriers to the hiring and advancement of women and minorities.

GAO found that BATF has not adequately developed, implemented, or communicated the role of its Offices of Internal Affairs, Equal Employment Opportunity, and Law Enforcement in addressing incidents of alleged sexual harassment and other discriminatory behavior. This situation has, on occasion, resulted in separate inquiries on the same incident by these offices. As a result, concerns have surfaced about the confidentiality, objectivity, and independence of some of BATF's inquiries that we reviewed. These range from a perceived lack of confidentiality during internal investigative processes to a disparity in the rights accorded complainants during separate BATF inquiries of the same incident. The BATF Director recently tasked a group to help BATF develop a better program for combating discrimination, sexual harassment, and reprisals.

Chairman and Members of the Committee: I am pleased to be here today to participate in this hearing on S. 404, a bill which proposes a new structure for handling employment discrimination complaints of Federal employees. Over the last several years we have undertaken several reviews at the Committee's request regarding the representation of women and minorities in the Federal workforce. Today, I would like to share with you the results of our latest study, which examines the progress women and minorities have made in key Federal jobs, and to provide our observations on how sexual harassment and other equal employment opportunity complaints are handled at the Department of Treasury's Bureau of Alcohol, Tobacco, and Firearms (BATF).

BACKGROUND

As a result of the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972 that amended it, Federal agencies have been required to develop and implement affirmative employment programs to eliminate the historical underrepresentation of women and minorities in the workforce. The Equal Employment Opportunity Commission (EEOC) provides agencies with guidance on their affirmative employment programs and approves agency plans for those programs.

In May 1991, we issued a report and presented testimony to this Committee on the need for better EEOC guidance and agency analysis of women and minority representation.[1] In testimony before this Committee in October 1991, we said that the representation of women and minorities in the Federal work force had improved overall between 1982 and 1990. We also said that their representation in the government's middle- and upper-management levels had improved.[2]

However, in that same testimony we noted that even with that improvement, white women and all minorities were still less well represented in the Federal

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[1] *Federal Affirmative Action: Better EEOC Guidance and Agency Analysis of Underrepresentation Needed* (GAO/GGD–91–86, May 10, 1991) and *Federal Affirmative Action: Better EEO Guidance and Agency Analysis of underrepresentation Needed* (GAO/T-GGD–91–32, May 16, 1991).

[2] *Federal Affirmative Employment: Status of Women and Minority Representation in the Federal Workforce* (GAO/T-GGD–92–2, Oct. 23, 1991).

workforce in 1990 at upper grades (above grade 11), including the Senior Executive Service (SES), than at lower grades. These groups also were often underrepresented in the key jobs, that is those that can lead to middle- and upper-management positions.

I might add that the former Director of the Office of Personnel Management (OPM), Constance Newman, testified at the October 1991 hearing that "the percentages of women and minorities in the SES and the pipeline to the SES are unacceptable."

In our October 1991 testimony, we recommended that EEOC require agencies to analyze hiring, promotion, and other personnel action data to better identify equal employment barriers. Following our testimony, we agreed with the Committee to analyze further the representation of women and minorities in key Federal jobs, including their hiring, promotion, and separation from those jobs. We included the results of these analyses in our March 8, 1993, report to the Committee.[3]

PROGRESS OF WOMEN AND MINORITIES IN KEY FEDERAL JOBS

In doing the work for the March report, our objective was to analyze, by grade, how much change had occurred for women and minorities over recent years in the key job workforce at 25 executive agencies.[4] We analyzed a total of 262 key jobs that were identified in the agencies' affirmative employment plans. These jobs included occupations such as accountant, computer specialist, and criminal investigator.

The data for the March report, as were those for the October 1991 testimony, were from OPM's Central Personnel Data File (CPDF).

Certain data were as of September 1984 and 1990, and other data were for fiscal years 1984 and 1990. All data covered full-time permanent employees.

In this testimony, as in our report, the term "relative numbers" refers to how many women and minority workers there were for every 1,000 white men in a particular category of the key job workforce. We selected white men as the benchmark because they have historically dominated the management levels of the white-collar workforce and because it seemed reasonable to consider how the numbers of women and minorities had changed over time relative to white men.

Our March report presented our detailed results. Let me share with you our general findings.

—In the key job workforce of the 25 agencies, the relative numbers of white women and minority men and women at grade 15 and below increased between 1984 and 1990. As figure 1 shows, the relative numbers of minority women increased 34 percent compared with a 22-percent increase among white women and minority men.

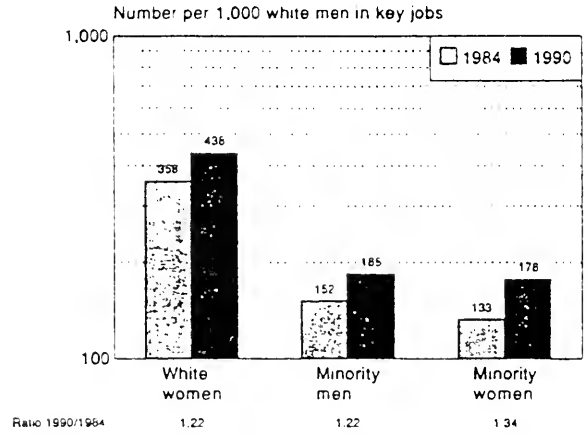

Figure 1: Number of White Women and Minority Men and Women per 1,000 White Men in Key Jobs at 25 Federal Agencies, Fiscal Years 1984 and 1990

[3] *Affirmative Employment: Assessing Progress of EEO Groups in Key Federal Jobs Can Be Improved* (GAO/GGD–93–65, Mar. 8, 1993).

[4] The appendix lists the 25 agencies.

—Among specific minorities, except for Native Americans, women increased in relative number more than men. Increases in representation levels were more pronounced for Asian and Hispanic men and women than for black men and women. The relative number of Native American women did not change over this period, while the relative number of Native American men increased by 8 percent.

—Increases that occurred over time in the relative numbers of women and minorities were generally as large, and sometimes larger, at grades 11 through 15 (upper grades) as they were at grades 1 through 10 (lower grades).[5] Figure 2 shows the increases in the relative number of minority women at various grade levels. Roughly similar changes occurred for white women. Minority men also increased in relative number at all grades, although their increases were smaller.

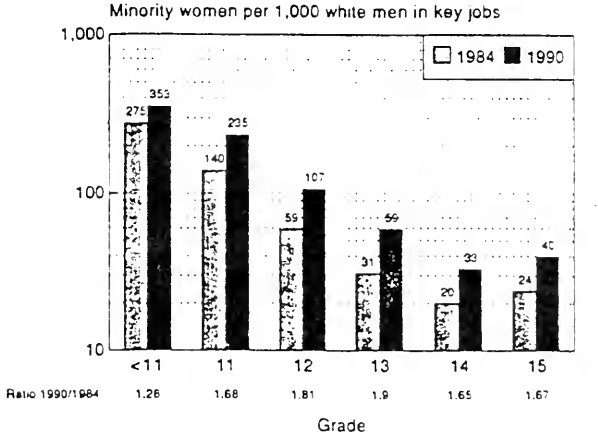

Figure 2: Number of Minority Women per 1,000 White Men in Key Jobs at 25 Federal Agencies, by Grade, Fiscal Years 1984 and 1990

The observations I have presented so far provide snapshots of the key job workforce in September 1984 and September 1990. I will turn now to some of the personnel events—hiring, promotions, and separations—that help to create the snapshots.

—The relative numbers of white women and minority men and women hired into key jobs increased between 1984 and 1990. Figure 3 shows that, in 1990, the relative numbers of white women who were hired into grades 13, 14, and 15 greatly exceeded the numbers already employed and the relative numbers that were separating from those grades. The same was true for minority men and women.

[5] We combined grades 1 through 10 in these analyses. Statements about what happened at lower grades should be understood to imply the aggregated grouping of employees in grades 1 through 10. Upper grades refer to grades 11 through 15.

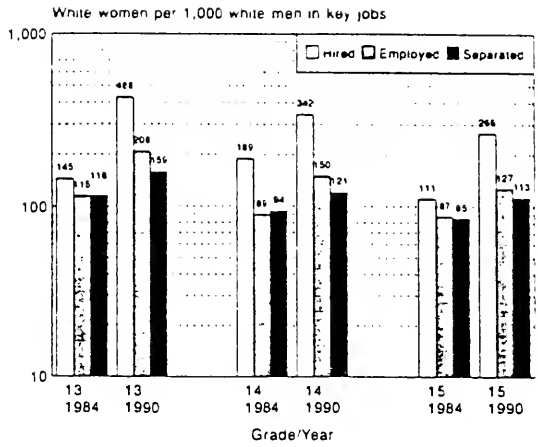

Figure 3: Number of White Women per 1,000 White Men Employed, Hired, and Separated at Grades 13–15 in Key Jobs, Fiscal Years 1984 and 1990

—With respect to promotions in 1984 and 1990, white women, minority men, and minority women all made relative gains at grades 11, 12, 13, and 14. However, only white women experienced a relative gain at grade 15. I say gain because the relative numbers promoted to those grades were higher than the relative numbers already employed at those grades. For example, the relative numbers of white women promoted to grade 15 were 57-percent higher in 1984 and 61-percent higher in 1990 than the relative number of white women already employed in that grade. Figures 4, 5, and 6 show the relative numbers of white women, minority men, and minority women promoted to the various grades, along with the relative numbers of those groups already employed at those grades.

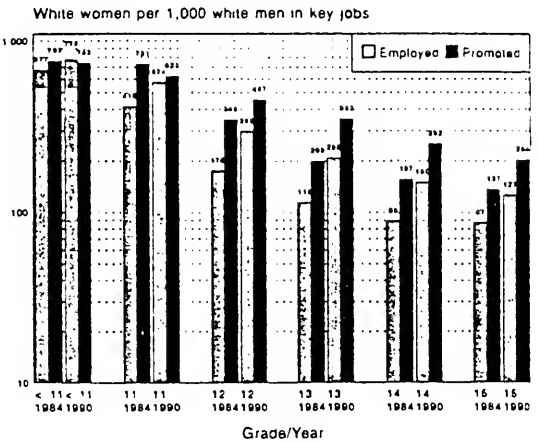

Figure 4: Number of White Women per 1,000 White Men Employed in and Promoted to Different Grades in Key Jobs, Fiscal Years 1984 and 1990

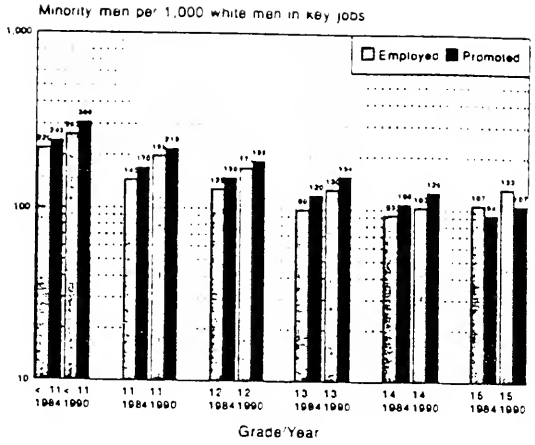

Figure 5: Number of Minority Men per 1,000 White Men Employed in and Promoted to Different Grades in Key Jobs, Fiscal Years 1984 and 1990

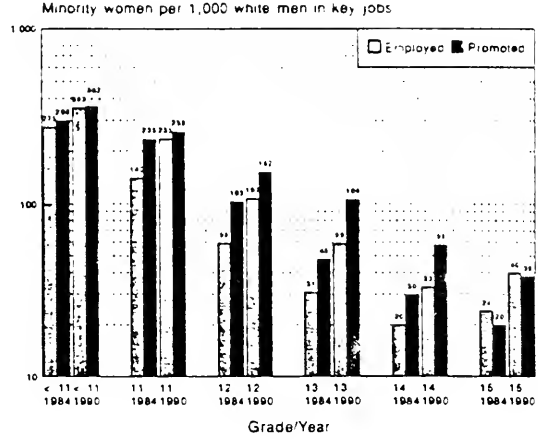

Figure 6: Number of Minority Women per 1,000 White Men Employed in and Promoted to Different Grades in Key Jobs, Fiscal Years 1984 and 1990

Clearly, for the years examined, there was general improvement in the relative number of women and minorities in key jobs and in the upper grades of those jobs. Nevertheless, certain disparities remained.

Women and minorities were still less well represented in key jobs at upper grades than at lower grades. For example, for every 1,000 white men working in key jobs at grade 10 or below in 1990, there were 1,390 women and minorities similarly employed. At grades 13, 14, and 15 in the same year, for every 1,000 white men working in key jobs, there were 343 women and minorities.

Many factors probably contribute to or explain these disparities. Identifying these factors and assessing their impact were beyond the scope of our March report.[6]

However, civil rights groups, we understand, have told the Committee that the current discrimination complaint processing system may often function as a negative factor—a barrier—to the career advancement of women and minorities. Specifically, an employee who raises a discrimination complaint may later receive unfavorable performance ratings and unfavorable job assignments, all of which block career advancement. In connection with the Committee's concerns about allegations of the mishandling of sexual harassment complaints at BATF, you asked us to examine BATF's procedures and practices for investigating and resolving sexual harassment and other equal employment opportunity (EEO) complaints.

PROGRESS OF WOMEN AND MINORITIES IN BATF'S CRIMINAL INVESTIGATING OCCUPATION

A key occupation at BATF is criminal investigating (GS–1811 occupation series). For purposes of this hearing, and to gain insight into women and minority representation in BATF1s criminal investigating occupation, we examined this occupation using the same methodology as in our March report.

After decreasing in size in the early 1980s, BATF has grown since then. The number of criminal investigators increased from roughly 1,200 in September 1984 to slightly more than 2,000 in September 1992.[7] Based on our analysis, we can make several general observations about BATF's criminal investigating workforce.

—Women and minorities were far better represented in 1992 than in 1984. In 1984, there were 2.5 women and 6.8 minorities for every 100 white male criminal investigators. By 1992, those numbers had risen to 14.6 women and 23.7 minorities for every 100 white male investigators.

—At grades 13 through 15, where promotions are competitive, women and minorities were promoted in slightly higher numbers, relative to white men, than the numbers at which they were employed. In 1992, when there were 6 women and 14 minorities employed at those grades for every 100 white men so employed, there were 10 women and 18 minorities promoted for every 100 white men promoted.

—In spite of these favorable changes, in 1992 women and minorities remained less well represented at upper grades than lower grades. There were 25 women and 35 minorities for every 100 white men at grade 12 and below compared with 6 women and 14 minorities for every 100 white men at grades 13 through 15.

OBSERVATIONS ON BATF'S RESOLUTION OF SEXUAL HARASSMENT AND OTHER EEO COMPLAINTS

Our Office of Special Investigations examined BATF's procedures and practices for investigating and resolving EEO complaints, with an emphasis on complaints of sexual harassment. Specifically, we reviewed 11 reported incidents and interviewed over 50 current and former BATF and Treasury Department personnel and private attorneys in 7 States and the District of Columbia. BATF's cooperation and responsiveness in ensuring unrestricted access to personnel and documents greatly facilitated our work.

I will summarize here our major observations about BATF's complaint investigation procedures and practices and provide a comprehensive statement for the record.

In brief, BATF has not adequately developed, implemented, or communicated the role of its Offices of Internal Affairs, Equal Employment Opportunity, and Law Enforcement in addressing incidents of alleged sexual harassment and other discriminatory behavior. This has, on occasion, resulted in separate inquiries of the same incident by these offices. The following concerns and observations have surfaced from among the employees we interviewed or from our analyses about the confidentiality, objectivity, and independence of some of BATF's inquiries that we reviewed.

—The exchange of information about sexual harassment and other complaints among the three BATF offices has created among BATF employees a perceived

[6] In a separate, ongoing study, we are reviewing how Federal agencies go about identifying and addressing barriers to the hiring and advancement of women and minorities. This review is being done at the Committee's request.

[7] These are the number of investigators up through grade 15. Because the numbers of criminal investigators were so small when categorized by race, National origin, gender, and grade, we combined categories in order to be able to make observations. Minority women are counted in two categories: women and minorities.

lack of confidentiality during the internal investigative processes. For example, the identity of an individual who filed an anonymous informal EEO complaint about sexual harassment became apparent to the alleged harasser through offices' sharing of information.

—The procedural rights afforded alleged victims of sexual harassment may differ depending on which of the three BATF offices inquires into the incident. For example, under EEO regulations, complainants have the right to representation during the EEO process. On the other hand, Internal Affairs policy and practices, in a noncriminal inquiry, permit the investigating agent to deny individuals the opportunity to have anyone present during an interview. According to information we gathered from interviews and affidavits, a complainant we spoke with had asked for a BATF employee to be present during the complainant's initial Internal Affairs interview about alleged sexual harassment. The Internal Affairs investigator, however, denied the request.

—In a limited number of cases, our examination revealed different findings in BATF's internal reviews from those in the external reviews done by Treasury and our investigators. In one case, for example, an Internal Affairs investigation into a sexual harassment complaint developed no evidence from other employees who allegedly had been similarly harassed by the individual accused in the case. However, an external EEO investigator was able to develop evidence that the individual had harassed another employee and that at least one manager knew about it.

—From our discussions with complainants and BATF internal investigators and our review of case files, several concerns surfaced about the techniques used by BATF internal investigators. For example, internal investigators (1) used investigative techniques considered insensitive by some of the complainants, (2) destroyed investigative interview notes that could have been used to resolve later disagreements between the investigator and the interviewee, and (3) failed to interview individuals with relevant information.

—Although the BATF Director has issued a policy requiring a harassment-free workplace, enforcement of the policy varied from office to office. For example, some employees told us that harassing conduct still occurs in their offices, while others indicated that management at their location had taken aggressive steps to ensure compliance.

The BATF Director recently tasked a group to help BATF develop a better program for combating discrimination, sexual harassment, and reprisals. He asked the group to assess (1) the degree to which BATF's present system discourages or encourages employee participation, (2) the comprehensiveness of BATF's existing training programs, (3) the uniformity and seriousness of actions taken in response to findings of discrimination, and (4) the degree to which current and departmental policies and guidelines contribute to any weaknesses disclosed. The task group has not yet completed its work; it expects to do so in June.

I would now welcome any comments or questions that you may have.

APPENDIX

AGENCIES INCLUDED IN THIS STUDY

We reviewed the gender, race, and ethnic origin of people in 262 key jobs at 25 Federal agencies. During the phase of our work that resulted in our May 1991 testimony, we reviewed the most recent multiyear affirmative employment plans, covering fiscal years 1988 through 1992, for the 34 largest Federal agencies. In fiscal year 1988, these agencies collectively employed about 98 percent of the Federal workforce. At the request of the Senate Committee on Governmental Affairs, we also included the National Archives and Records Administration's affirmative employment plan in our review.

Twenty-seven of the 35 agencies complied with EEOC requirements and identified major occupations in their multiyear affirmative employment plans. Eight did not. For this phase of our review, we categorized the major occupations of the 27 agencies into key jobs using a definition approved by EEOC. This definition eliminated clerical jobs and jobs with less than 100 employees. EEOC described key jobs as those with 100 or more employees that offer advancement potential to senior-level positions.

CPDF data were available to analyze the key jobs of 25 of the 27 agencies. The data were unavailable for the remaining two agencies. Following is a list of the 25 agencies whose key jobs we reviewed.

Department of Agriculture

Agency for International Development
Department of Commerce
Defense Logistics Agency
Defense Contract Audit Agency
Defense Mapping Agency
Defense Investigative Service
Department of Justice
Department of Energy
Department of Education
Equal Employment Opportunity Commission
Environmental Protection Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
United States Information Agency
Department of the Interior
National Archives and Records Administration
Nuclear Regulatory Commission
Department of the Navy
Office of Personnel Management
Small Business Administration
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

PREPARED STATEMENT OF MR. GOMEZ

Mr. Chairman and Members of the Committee: We are pleased to submit for your hearing today this statement for the record. At your request, we examined certain procedures and practices of the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) for the investigation and resolution of equal employment opportunity (EEO) complaints, with specific emphasis on sexual harassment. BATF's cooperation and responsiveness in ensuring unrestricted access to personnel and documents greatly facilitated the examination.

In brief, we determined that BATF has not adequately developed, implemented, or communicated the roles of its Offices of Internal Affairs, Equal Employment Opportunity (EO), and Law Enforcement and Treasury's Regional Complaint Centers in addressing incidents of alleged sexual harassment[1] and other discriminatory behavior. This has, on occasion, resulted in separate inquiries into the same incident by these offices. On five occasions between February 1989 and January 1993, BATF's Director distributed policy statements to BATF employees requiring a harassment-free working environment. However, implementation of that policy varied extensively in the offices we visited. Concerns and observations surfaced from among the employees we interviewed and from our analysis about the confidentiality, objectivity, and independence of some of BATF's inquiries that we reviewed. In addition, BATF employees' general lack of knowledge about actual or potential BATF actions against harassers compounded the employees' concerns.

METHODOLOGY

Since it is BATF's practice to involve its Offices of EO and Internal Affairs in investigations of alleged sexual harassment[2] incidents, we examined general policy

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[1] Sexual harassment is a form of sex discrimination. Equal Employment Opportunity Commission (EEOC) regulations state, in part, the following:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

—"Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

—"Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

—"Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

[2] BATF's training manual on EEO characterizes allegations of sexual harassment as falling under one of two categories: "quid pro quo" and "hostile work environment." BATF defines quid pro quo as an instance in which a "supervisor asks for sexual favors in exchange for tangible job benefit(s)," and hostile work environment is "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct which creates an intimidating, hostile or offensive working environment."

and procedures of both offices as well as selected cases involving both entities. We also reviewed investigations by BATF's Office of Law Enforcement and Treasury's Regional Complaint Centers. In addition, we conducted a more detailed examination of three specific sexual harassment complaints and reviewed files and conducted interviews concerning eight other reported incidents of alleged discrimination, including allegations of sexual harassment, gender and national origin discrimination, and retaliation.

We interviewed 50 current and former BATF and Treasury personnel and private attorneys in 7 states and the District of Columbia. The interviewees included male/female and supervisory/nonsupervisory personnel involved in each step of the complaint process, including complainants, individuals who allegedly engaged in or condoned sexual harassment, attorneys for each, coworkers, regional and headquarters EO and Internal Affairs managers, and Treasury and Internal Affairs investigators. We also reviewed EO, Internal Affairs, and Regional Complaint Center case files; court documents; personal records; individuals' contemporaneous notes; internal memorandums; and official BATF policy and procedures. On the basis of our overall review of the 11 incidents, we made the following observations.

STATISTICS AND RESOURCES

According to EEO statistics provided by BATF, 198 formal EEO complaints were filed from 1988 to 1993. From 1988 to 1992, 198 employees were counseled. From 1987 to 1993, seven sexual harassment complaints were filed, of which six originated in the Office of Law Enforcement and one, in the Office of Compliance Operations.

In the agency chain of command, BATF's Director of EO works closely with the agency Director, who is charged with administering the EEO program. EO has six regional managers, each of whom has a part-time student co-op as an assistant. These regional managers assist and direct collateral-duty[3] BATF EEO counselors in the various field offices.

BATF EEO COMPLAINT PROCEDURES

A BATF employee who believes he or she has been sexually harassed, and wishes to pursue legal remedies, must first participate in an informal process. That informal process requires the employee to contact a BATF EEO collateral-duty counselor within 45 days of the last discriminatory event. Within the next 30 days, during which the complainant has the right to anonymity, the EEO counselor attempts to resolve the matter informally. If resolution is not reached within 30 days and the parties have not agreed to an extension, the counselor must hold a final interview with the complainant and advise him or her of the right to file a formal complaint within 15 days.

Investigations of formal complaints filed by BATF employees are conducted through the Treasury Department's Regional Complaint Centers where an EEO specialist assigns a collateral-duty EEO investigator. For example, if a BATF Special Agent files a formal sexual harassment complaint, a regional EEO specialist will assign a collateral-duty investigator from the Treasury Department, such as an Internal Revenue Service employee, to conduct the formal investigation. Attachment I depicts BATF's EEO complaint process.

We were given varying reports of the collateral-duty counselors' grasp of the subject knowledge and their availability. Employees cited several cases in which they felt the counselors had been very successful in informal resolution of the issue. However, in one case, an alleged victim complained that she had to contact three counselors before one could be found with either the knowledge or the time to assist.

ROLES OF BATF INTERNAL OFFICES IN ADDRESSING SEXUAL HARASSMENT INCOMPLETELY DEVELOPED, IMPLEMENTED, AND COMMUNICATED

The roles that BATF's internal offices play in addressing sexual harassment are not fully developed, implemented, or communicated to BATF employees. We found no consistency as to when the Office of Internal Affairs or Office of Law Enforcement becomes involved in resolving allegations of sexual harassment.

DEVELOPMENT OF BATF ROLES

According to BATF's EO, since its fiscal year 1992 implementation of a training plan, approximately 53 percent of BATF employees have received training specifi-

[3] A "collateral-duty employee" is an employee who agrees to serve as an EEO counselor in addition to the employee's regularly assigned duties.

cally addressing BATF's policies and procedures for handling EEO and sexual harassment complaints. Our interviews with BATF employees indicated that they were generally familiar with the avenues of redress available for EEO and sexual harassment concerns but not with BATF's policy on the role of internal offices.

The management of Internal Affairs initially advised us that their office investigated only those cases in which an alleged assault or physical touching had occurred and that the decision to examine hostile environment and "verbal harassment" cases was made on a case-by-case basis. We reviewed at least one situation in which Internal Affairs investigated an incident wherein the initial allegation did not involve "physical touching." However, Internal Affairs did not investigate another case whose initial allegation did involve physical touching. subsequently, Internal Affairs management stated that in practice they will get involved whenever requested by BATF management. According to BATF officials, the physical-touching policy was developed at a fall 1992 executive session, at which Office of Law Enforcement management specifically requested Internal Affairs' involvement. This decision was, however, never communicated to BATF employees.

BATF Order 8600.1D states that the Office of Internal Affairs has primary responsibility for investigating allegations concerning employee conduct. Certain minor infractions of the rules may be investigated by the appropriate manager. This determination will be made by the Office of Internal Affairs after a discussion with the appropriate management official, such as an official in the Office of Law Enforcement.

IMPLEMENTATION AND COMMUNICATION OF MULTIPLE INVESTIGATIONS POLICY

Of those individuals who had firsthand experience with BATF's handling of discrimination complaints, a significant number interviewed expressed a general lack of confidence in the independence and objectivity of BATF's process for investigating and resolving complaints. In the majority of cases we reviewed, more than one of the three BATF entities—EO, Internal Affairs, and Office of Law Enforcement management—became involved at some point and, in some cases, separately inquired into the same incident. Many of the individuals we interviewed expressed a concern about the exchange of information between these entities. This exchange included discussions of who had filed complaints, which investigative steps to pursue, and the results of those investigative steps. Such exchanges may not engender employee confidence concerning the independence of subsequent investigations or afford individuals confidence that their concerns for anonymity will be respected.

EO employee guidance on how to address sexual harassment incidents advises the alleged victim of sexual harassment to (1) if possible, confront the harasser directly to make it clear the behavior is not appreciated; (2) document the incident; (3) contact the employee's own supervisor or the alleged harasser's supervisor if the harasser is the employee's supervisor; and (4) if the harasser's supervisor fails to act, contact the BATF EEO counselor or EEO manager. The guidance further states that a supervisor's responsibility is, among other points, to advise employees of their points of contact—their supervisor, EEO Counselor, or Regional EEO Manager—to report sexual harassment.

The guidance does not address notification of Internal Affairs or the Office of Law Enforcement in these situations. However, the practice in four cases we reviewed, was for BATF managers, when notified, to contact Internal Affairs or Office of Law Enforcement management, which then initiated an investigation separate from the EEO process. According to a complainant, when she contacted her supervisor to allege sexual harassment, the supervisor told her that Internal Affairs had to be contacted. When she asked if any alternatives existed, the supervisor told her no.

IMPLEMENTATION OF DIRECTOR'S POLICY OF HARASSMENT-FREE WORKPLACE VARIES

The BATF Director distributed five policy statements requiring "harassment-free" working environments, on February 22, 1989; October 24, 1991; April 6, 1992; January 8, 1993; and January 19, 1993. Supervisory personnel are charged with implementing that policy in their offices. However, implementation varied among the offices visited.

In one office that we visited, some employees stated that the manager had made it clear that unwelcome behavior would not be tolerated and problems brought to his attention would be addressed. In other offices, employees we interviewed cited instances in which supervisory personnel not only tolerated but also initiated such activities as making statements about female employees' anatomy, laughing when strippers were brought into the office, telling sexually explicit jokes, dancing with bikini undergarments on their head, and engaging in other activities that can create a hostile work environment.

In three cases reviewed, female employees stated that they did not want to report the harassment because they did not believe management would support or believe them. In other cases, women stated that because they feared alienating coworkers, they frequently faced harassment by keeping quiet or by responding in kind—joking or making crude comments back.

Federal guidelines and case law require that employers take immediate and appropriate action to stop the harassment. Proportionate disciplinary action, if any, should be taken upon resolution of an investigation. In this regard, the actions of some managers did not appear consistent with their obligations to report the harassment and take immediate and appropriate action. For example, some mid-level managers told us that they did not report the harassment to protect the interests of the victims who had stated that they wanted no action taken because of various concerns, such as fear of reprisal. In one case, a manager knew about an employee being sexually harassed at least 17 months before the complainant finally decided to file a formal sexual harassment complaint. At the request of the employee, the manager did not report the incident because the employee was afraid for her job and concerned that the Special Agent in Charge would not believe her.

The BATF Director, in the January 19, 1993, memorandum, assured BATF employees of fair, professional, and responsive treatment when alleging discrimination, including sexual harassment and reprisal. The memorandum encouraged employees who believe they have been harassed to use the existing system, go to whatever BATF office with which they felt most comfortable, or go directly to him or the EO Director.

CONCERNS RAISED ABOUT BATF INTERNAL INVESTIGATIONS

We noted the following concerns pertaining to BATF's internal investigations. Depending on which BATF office conducts an investigation, the complainant is not afforded the same procedural rights. Some employees perceived a lack of objectivity on the part of Internal Affairs investigators and Office of Law Enforcement management. In addition, Internal Affairs investigators and Law Enforcement managers who conducted investigations did not exhibit full knowledge of investigative elements pertinent to sexual harassment investigations, which could affect the sufficiency of their investigations. Certain investigative techniques—the use of polygraphs, destruction of agents' notes, and insensitive interview techniques—used by Internal Affairs investigators also raised concerns.

SEPARATE INVESTIGATIONS OF COMPLAINTS DO NOT AFFORD THE SAME RIGHTS

We noted, among other things, that the procedural rights afforded alleged victims of sexual harassment may differ depending on which BATF office investigates the incident. Federal EEO regulations entitle federal employee complainants to have a representative during any part of the complaint process. In contrast, Internal Affairs policy and practices in a noncriminal inquiry permit the investigating agent to deny individuals the opportunity to have anyone present during an interview. Exceptions are made for bargaining-unit employees in certain situations in accordance with BATF Orders. In one case we reviewed, after reporting sexual harassment to her manager, one alleged victim was required to participate in an Internal Affairs interview. The alleged victim stated that she had asked for a female employee to be present during her initial interview but her request was refused.

PERCEPTIONS OF LACK OF OBJECTIVITY

EEOC policies provide that employees should have the right to complain about harassment without fear of reprisal and with confidence that the details of their complaints will be given only to those specifically charged with investigating and resolving the issues. However, we received a number of complaints about a perceived lack of objectivity on the part of Internal Affairs investigators and Office of Law Enforcement management. In three cases reviewed, employees stated that they believe a lack of objectivity led the investigating agent to ignore certain investigative leads offered by the employees that may have affected the investigations' outcome. In responses to BATF management after disciplinary action was initiated, two alleged harassers stated that relevant employee statements were not taken. The alleged harassers submitted affidavits from other individuals not interviewed that contradicted or were not consistent with details in other affidavits in the Internal Affairs reports on the alleged incidents.

Our work showed that in one incident, the Deputy Associate Director of the Office of Law Enforcement conducted an investigation of a field office supervisor who reported to him. Because of a prior working relationship between the Deputy and the

supervisor—Special Agent in Charge and Assistant Special Agent in Charge of a field office—the complainant questioned the objectivity of the inquiry.

In this case, the Director of BATF's EO notified the Deputy shortly after an employee had filed an informal sexual harassment complaint and requested anonymity. The Deputy then contacted the alleged harasser, a supervisor, in the context of addressing a potential management problem. Although the Deputy stated that he did not release the complainant's name, the complainant was easily identified through the discussion of the specific incidents involved in the allegation. Thus, the complainant felt her right to anonymity during the informal stage of the EEO process was compromised by the exchange of information between EO and Office of Law Enforcement management. The possible conflict between the right to anonymity and agency responsibility was not, in the complaint's view, adequately addressed.

The Director of BATF acknowledged that the problems created when an individual makes an allegation but wants no one told are a challenge. We appreciate the challenge that BATF faces and acknowledge the Director's concern. However, it is critical that the dilemma be resolved.

CONCERN WITH SUFFICIENCY OF INTERNAL INVESTIGATIONS

One goal of all investigations is to establish the facts surrounding alleged incidents. In our opinion, individuals assigned to conduct investigative activities should have a knowledge of the applicable law, rules and regulations, and pertinent guidelines. EEOC has established investigative guidelines to help its investigators in obtaining relevant facts on alleged sexual harassment. However, some Internal Affairs investigators and Office of Law Enforcement managers that we interviewed did not exhibit an essential understanding of pertinent investigative guidelines, relevant case law, and elements of proof associated with sexual harassment complaints. A senior manager in the Office of Law Enforcement maintained that because Internal Affairs investigated only physical assaults or touching and not sexual harassment complaints, Internal Affairs investigators were sufficiently trained to handle assault-related sexual harassment investigations. As stated earlier, on at least one occasion, however, Internal Affairs investigated an incident of sexual harassment wherein the initial allegation did not involve physical touching.

The list of recent training courses for Internal Affairs showed none that addressed investigations of sexual harassment cases. While the BATF Director and a senior Internal Affairs manager stated that they felt additional training in this area would be beneficial, an Internal Affairs investigator engaged in investigating sexual harassment incidents stated he felt that Internal Affairs' current training had sufficiently equipped him to conduct these investigations.

In three cases, our comparison of BATF's internal reviews with reviews by EEO investigators from outside BATF, who are assigned by Regional Complaint Centers, and our reviews revealed different findings. In two cases, the outside entities obtained corroboration of the allegations that was either lacking or contradicted in the reviews by Internal Affairs and the Office of Law Enforcement. In another case, no coworkers were interviewed about a significant allegation.

EEOC guidelines provide that the investigator in a sexual harassment case should search thoroughly for corroborative evidence of any nature. Supervisory and managerial employees as well as coworkers should be asked about their knowledge of the alleged harassment. Persons with whom the alleged victim discussed the incident, such as coworkers or doctors, should be interviewed. When questioned as to why coworkers had not been interviewed about a significant allegation during the course of an investigation for one case, an Internal Affairs investigator stated a concern for the complainant's and alleged harasser's privacy had precluded them from discussing the issue with coworkers who may have had relevant information. For another case, an EEO investigator told us that there was no evidence that Internal Affairs had interviewed witnesses offered by the alleged harasser in support of the alleged harasser's position. In this same case, we found no evidence that the investigator had interviewed a friend of the alleged victim, although the investigator knew the alleged victim had confided in the friend at the time of the alleged harassment. In a third case, we found no evidence that the investigator had asked the complainant whether, at the time of the incident, the individual had confided in others about the incident. Our inquiry revealed that the complainant had done so. In a fourth case, not all witnesses of an alleged incident of sexual harassment were interviewed before disciplinary action was proposed.

EEOC guidelines also suggest that the investigator should determine whether the employer was aware of other instances of harassment and if so what the management response was. In one case, an Internal Affairs investigation developed no evidence of other employees being similarly harassed by the same individual. However,

the external EEO investigator, assigned to the investigation by a Regional Complaint Center, determined both that an additional individual stated that she had been harassed and that at least one manager had known about the incident. In another case, a BATF management review of alleged harassment cited no evidence of other employees' objections to the alleged harasser's behavior. Our query of staff in the same office yielded information from employees who had also found the statements and behavior unwelcome. Additionally, the individual admitted to us that he had engaged in behavior that he had previously denied when questioned by BATF management.

CONCERNS RAISED ABOUT INTERNAL AFFAIRS INVESTIGATIVE TECHNIQUES

Other procedural issues raised through interviews included BATF's policies regarding the use of polygraphs and destruction of notes made by Internal Affairs agents. In two of the cases reviewed, polygraphs were made available to the alleged victim and harasser. According to one sexual harassment complainant, once Internal Affairs began its investigation, the complainant was asked to immediately take a polygraph. The complainant stated that taking the polygraph made her "feel humiliated and like a criminal." Our review of the two case files and discussions with the investigators revealed a heavy reliance by Internal Affairs investigators on the polygraph results in determining future investigative steps. Additionally, Internal Affairs employees advised us that their agents' notes on noncriminal cases are destroyed when the cases are closed. Thus, when a discrepancy arose about an alleged victim's statement during Internal Affairs interviews, agents' notes could not be reviewed because they had been destroyed.

Two females we interviewed complained of BATF's use of male agents for interviews involving sensitive issues. Further, one female complained of Internal Affairs interviews conducted with her by two males in a hotel room. Internal Affairs officials stated that they will change this practice of two males interviewing females in hotel rooms.

In our opinion, investigators should be sensitized to the psychological ramifications of harassment and how they might affect investigative techniques employed with alleged victims and witnesses. We believe it is appropriate, whenever possible, to use same-sex investigators to discuss sensitive details of alleged sexual harassment. However, as it has historically had, Internal Affairs currently has only 1 female investigator in its total of 24 investigators. Internal Affairs officials indicated they have attempted and have difficulty recruiting women into Internal Affairs investigator positions. No female investigator from Internal Affairs was involved in the cases we reviewed.

EMPLOYEES LACK KNOWLEDGE OF DISCIPLINARY ACTIONS AGAINST HARASSERS

In the BATF Director's October 24, 1991, policy statement to all BATF employees on discrimination, he stated, "I am determined that any overt acts of discrimination by any employee, supervisor, manager or executive will be dealt with severely up to dismissal with special emphasis on racial or sexual harassment." However, in our interviews, employees displayed a lack of knowledge of disciplinary actions the agency had taken or would take against employees engaged in discriminatory behavior.

Although we have not evaluated the recommendations contained in a 1988 report prepared for the Merit Systems Protection Board on sexual harassment, we note that it recommends that agencies state the range of disciplinary penalties that can be taken against harassers and include reinforcing facts. The report notes such reinforcing facts can include summary information about penalties already levied within the agency or at other agencies against harassers. Further, in determining employer responsibility, the courts look to whether the corrective action taken will demonstrate to the employer's other employees that future harassment will not be tolerated. BATF management advised us that sanctions and penalties taken against those who have engaged in discriminatory behavior are not officially communicated to employees.

According to a BATF manager, when an employee is alleged to have engaged in sexual harassment, an investigation is undertaken. A representative of BATF's Office of Chief Counsel stated that if the agency's investigation supports the allegation, it will generally charge the employee with misconduct associated with the act.

We found that discipline actions taken by BATF included the demotion of a supervisory agent for "conduct unbecoming a special agent," which included making inappropriate statements to a job applicant and asking her inappropriate personal questions. Recently a supervisory employee was removed for "inappropriate, unsolicited and unwanted advances toward a female special agent"; and a second was removed

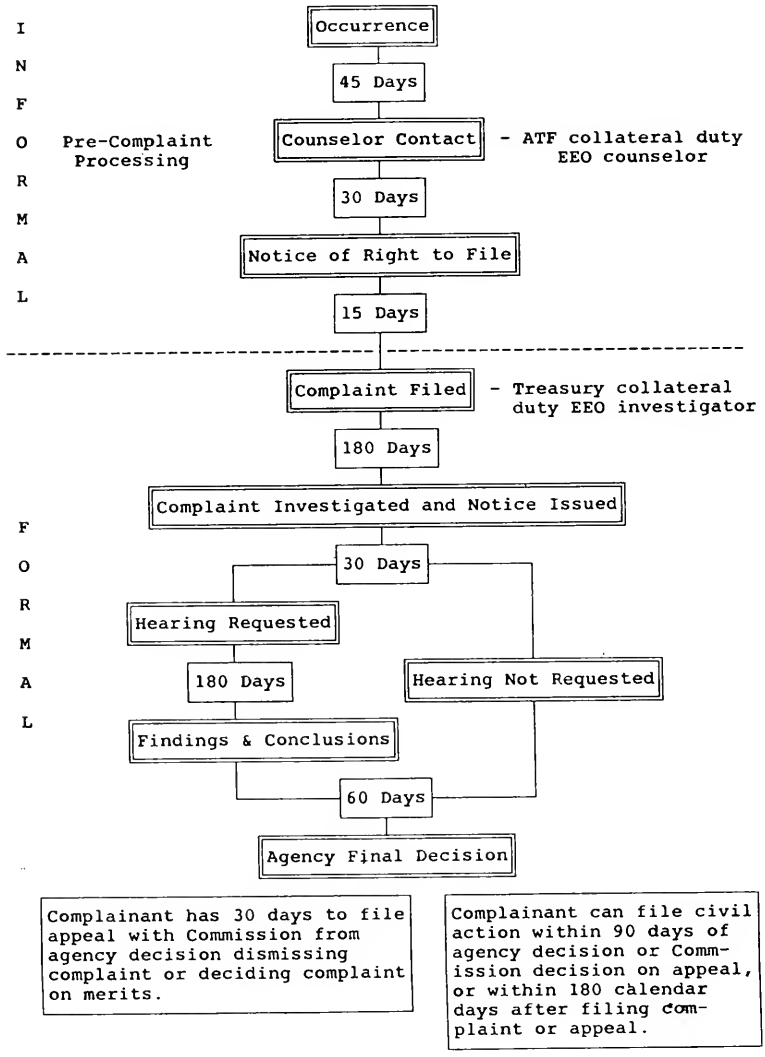
for improper behavior toward two female employees. In these two cases, the allegations ranged from improper, sexually oriented statements and gestures to assault. Another employee was suspended for 14 days without pay for "conduct unbecoming an agent," related to allegations that he had made inappropriate comments to female employees. In the cases we reviewed, we also noted that four alleged victims had been transferred or offered transfers before resolution of their complaints.

Finally, we note that the BATF Director convened a task force to examine the extent to which the present system discourages or encourages employee participation, the comprehensiveness of current training, the uniformity and seriousness of actions taken in response to findings of discrimination, and the degree to which current EEOC and Departmental policies and guidelines contribute to any weaknesses disclosed. The task force findings were not available for review. Findings are expected in early June 1993.

Attachment I

Attachment I

OVERVIEW OF FEDERAL SECTOR COMPLAINT PROCESSING
UNDER 29 C.F.R. PART 1614



PREPARED STATEMENT OF MS. MILLER

Mr. Chairman, Senators, Committee, Staff, and distinguished guests, my name is Diana Miller and I am a Civil Engineer for the United States Army Corps of Engineers, Pittsburgh District located in Pittsburgh, Pennsylvania. I was hired in June of 1989 as an engineering intern and was permanently placed in the Operations and Readiness Division, Waterways Management Branch in December, 1990. This job assignment was my first choice after I completed the internship. I really loved my job, got along well with my coworkers, and made a lot of concrete contributions to my Branch and the District. Until in the matter of one day, all the praise I once received as an engineer turned to scorn, contempt, reprisal, retaliation, and discrimination. This pivotal day was September 15, 1992. On this day I reported to management that on August 25, 1992, my supervisor sexually harassed me on a business trip in Nashville, Tennessee. This day was 2 weeks after the incident occurred. During that 2 week period I reported for duty at our field projects as opposed to being in the office with my supervisor whom I became physically sick when around. For these 2 weeks I suffered nausea, insomnia, loss of appetite, and anxiety while struggling with whether to report the sexual offense or just quit my job for I knew how I would be treated. I feared that since my perpetrator was a white male, 50 years old with a lot of years of service, established in the agency and well liked, I did not have a chance for just resolve of this matter. The deciding factor came when I found out from a female employee that our supervisor harassed her on this same annual business trip the year before. (She has filed a similar EEO complaint against our supervisor since the filing of my complaint.) Knowing how sexual harassment is viewed in this society and knowing that the woman is usually blamed, ridiculed and retaliated against, I was still able to have the courage to report the traumatizing events which started Tuesday, August 25, 1992. Reporting the incident caused trauma and extreme stress which the agency recognized and placed me on administrative leave. On the morning of September 15, 1992, his direct supervisors, the Chief and Assistant Chief of Operations and Readiness Division, called me in their office where I told them what my supervisor did to me in Nashville. Even though they stated to me that my supervisor admitted to unwanted and unwelcomed physical contact that I did not encourage, I provided details of the whole business trip, including the incident, which were some of the worse days of my life. Unfortunately in doing this I had to relieve the pain, fear, threat, and stress by telling exactly what happened. I told them of how he had continuously emphasized throughout the day that he had to meet with our Branch personnel present on this trip while we were in Nashville. He stated he wanted to discuss the upcoming clerks' meeting, tomorrow's uniform meeting, the restructuring of our Branch, my performance appraisal and my future within the Branch. After our group ate dinner, and not being in Nashville for more than 2 hours, my supervisor became emphatic about meeting. He told us to come to his room for a meeting. He reinforced this by calling my room and telling me to come to his room. Not having yet unpacked, as a professional and responsible engineer, I felt it my job so I went to my supervisor's room to attend this meeting. I was the first to arrive. My supervisor and I discussed government business only when after a short period of time I asked where the other engineer was. Once he told me the other engineer was not coming, I adjourned the conversation and began leaving his room. At this time my supervisor came behind me and made unwanted, unwelcomed physical contact with me in my very personal areas. He also kissed me against my will. Fortunately I was able to get out of his grasp and escape the threatening, fearful environment and get to the safety of my hotel room which I locked and barricaded. This is where I vomited, showered so that I could scrub and scrub to try and get the dirty feeling off of me. I continued to explain to the Division Chief and his Assistant everything with detail. I was told by them that my supervisor confessed to what I said. I told them that I could no longer work under my offender's supervision and would rather quit. They encouraged me not to resign and to keep this within Operations and Readiness Division. They stated that since my supervisor confessed I could be transferred anywhere within Operations and Readiness Division. I was told that my supervisor had 28 years of service and a family. It was also stated that it is easier to place a GS–11 than a GM–13. This transfer of me was to come even though I did nothing wrong. When I took the stance that I should not have to transfer since I did nothing wrong the environment within Operations and Readiness became very hostile. I was forced to defend my behavior, which was analyzed microscopically by Division Chiefs and the Colonel, even though I did nothing wrong. I was criticized, scrutinized, and judged on my actions. From these Division heads who are in my direct chain of command I had to endure insensitivity and crude comments such as: why did you wait 2 weeks to tell us, hasn't he helped you in the past, he did not have to admit it,

you should have let Operations handle this, he has a family, he has almost 30 years of service, etc. This clearly showed me their opinion on this matter. Their statements instilled within me fear of retaliation if I worked anywhere within Operations Division.

Therefore, I felt forced to finally agree to transfer in order to try and have a workplace free of sexual harassment, retaliation and reprisal to which I am entitled as a government employee. I requested an official meeting with the Colonel, who is the District Engineer—the head of our agency, to discuss a transfer and seek resolution of this matter. I feel I was very reasonable in what I requested to resolve this. I requested a permanent transfer and time off to get the help I need to deal with this trauma. But all I received at this meeting was more retaliation, reprisal, and discrimination. At this meeting, instead of a permanent transfer I was told to select between punitive options of which none were viable. I was told by the Colonel that I had to choose between a temporary assignment in another Division, stay in Waterways Management Branch with the condition that he may return as my supervisor, or go somewhere else in the District, however there are no vacancies. During this meeting I received brutal, flagrant remarks form the Chief of Counsel. The remark that seemed to show the opinion of the agency is: "here you have a victim trying to extract a pound of flesh from her supervisor." This remark was made in front of the Colonel and went uncontested by him. At this meeting I was also told by the Chief of Human Resources that the District would controvert if I went through with submitting my workman's compensation claim for traumatic leave to the Department of Labor to get the care I required.

This collective behavior of blame the victim coupled with the agency continually trivializing the incident to a "pass" gave me no other option but to seek resolve through the agency EEO office. Immediately after the meeting I filed an EEO complaint.I also submitted my claim for workman's compensation. From this point on the nightmare worsened:

—The agency, as threatened,disputed my compensation claim and used it as punishment and character assassination. The reasons the agency gave for controversion was (1) untimely and (2) not traumatic. The agency deliberately changed my date of injury in an attempt to make me miss the 30 day deadline which an employee has to file compensation claims and thereby creating an untimely submitted claim. None of the agency personnel responsible for the controversion of my claim have MD's or Ph.D.'s but overrode my doctor's directive to place me on traumatic leave and diagnosed that I was not traumatized. Moreover, on the day I reported the sexual offense, two of the people who stated I was not traumatized placed me on administrative leave because I was traumatized. My credibility was attacked, irrelevant personal events were brought up (e.g. family deaths, divorced marital status, single parenting status, events which happened a year ago became recent, etc.) which had nothing to do with the traumatic injury obtained. The agency also sent out biased official documentation to the Department of Labor based on my supervisor's verbiage and in his defense. This documentation was given to the Department of Labor before the EEO office's fact finding inquiries were completed. Division Chiefs made matter of fact statements on the sexual offense and the business trip to Nashville when they were not present. One of the Division Chiefs commented without hearing my account of the incidents. The agency's workman's compensation specialist documented comments on my job performance during a time period when she was not employed with the agency. When I read the letter of controversion which my agency sent to the Department of labor I had to go to the emergency room. An employee of the Department of Labor stated that they have never in their career seen an agency put out an all out attack like this one against an employee seeking compensation. All this was done to me with the confession of breaking the law by my supervisor.

—The agency violated regulations by charging sick leave against me without my consent or knowledge. The Colonel had told me that I was on administrative leave, however a Division Chief who heard the Colonel make this statement to me, was aware that the agency had charged sick leave against me but did not say anything to the contrary. I brought this flagrant violation to the Colonel's attention and informed him that I consider this reprisal and wanted to know what he planned on doing about it. The Colonel defended the action. Not only did I have to use my own leave, I had to borrow more leave and become a leave donor recipient. I should not have had to use my own leave, nor should anyone have had to donate leave to me because my injury is of no fault of my own.

—I was forced to borrow sick leave and request leave donations from Pittsburgh District personnel. I am currently on leave without pay. I am unable to provide

food, clothing, and shelter for me and my children without the help of family and friends. I have been diagnosed with Post Traumatic Shock Disorder caused by my superior's sexual harassment. I am on leave so that I can receive the proper medical attention in dealing with the trauma inflicted upon me by my supervisor and my agency which is ongoing.

—I was threatened with AWOL status and given an unreasonable amount of time to respond.

—I received unwilling assistance and improper guidance from key Branch offices within the District. This blatant refusal to properly assist almost caused me to miss very important deadlines which would have ended in dismissals of my claim. Fortunately, my independent research discovered the correct procedures and guidelines before it was too late.

—I was discouraged from filing an EEO complaint. I was told an EEO complaint was not necessary because my supervisor's confession to the offense.

—During the EEO informal inquiry I was misguided and mislead which added to the dragging out of my findings. I was told that support information would be required in the formal stage only. There was no EEO manager at the time of filing my complaint. There was only an EEO counselor as acting EEO manager. My informal EEO findings were incomplete and not properly queried. Extremely important issues such as the fact that I did not receive the evaluation I earned on my performance appraisal given September 3, 1992, were omitted from my EEO informal report. I was not allowed to provide support information on reprisal which is part of my discrimination complaint. The justification the EEO office gave was that my counselor was inexperienced. The EEO office missed deadlines and dismissed portions of my complaint. The inquiry of the informal stage was to be completed on November 15, 1992 and forwarded to the formal stage, but on January 8, 1993 the EEO office was still conducting informal inquiries even though I did not grant an extension. The agency even stated that my complaint is in both the informal and formal stage. After pressured to do their job and inquire about the ongoing reprisal the agency was made to do a separate report. This type of regulation manipulation and dismissing valid charges is very detrimental to the aggrieved. The reprisals are ongoing in this case but, without my knowledge, the EEO office created a new separate second informal complaint to handle them. This drags the case out even longer. As usual, the EEO office notifies me after the fact of their actions. When I asked questions as to why a separate complaint was created they were unwelcomed and met with great defense of the agency. The EEO office states that this is action within Department of the Army regulation. My representative has been denied these Department of the Army regulations leaving us at an extreme disadvantage. I have been made to suffer because the agency is in transition with a new EEO manager and the counselor was inexperienced. The agency should not have the autonomy to omit serious charges in order to protect the agency.

—The Colonel stated in the informal EEO findings that I raised a problem to the attention of management, we investigated, found it to be true, and took a disciplinary action. Unfortunately, the discrimplinary action was against me, the victim. Along with this the Colonel states that in his opinion my supervisor made a pass at me because I was attractive. This remark is extremely dangerous because it reduces the sexual offense to a pass while taking the responsibility off the offender, the man, and puts the blame on the woman for what she looks like. This is especially dangerous coming from the Colonel of the District because he is responsible for the disciplinary actions imposed in this case. Also, the Colonel sets the tone for the District. With a Colonel of this opinion and tone, I never had a chance for a just resolution.

—The agency EEO is supposed to be a neutral party where an employee can go for assistance and neutrality when believed to have been discriminated against by the agency. But my experience has found that the EEO office is clearly on the side of management and is there to protect management. The EEO office works directly for the Colonel and seems to provide means for the agency to cover up and police itself. The EEO office seems to act as an informant which gets privy to the facts and dismisses whatever information they desire for whatever reason they desire.

—The EEO office manipulates the rules and misses deadlines. The complainant has no recourse and the agency suffers no consequence of missed deadlines. However, if I miss any deadlines or tamper with rules, my case will be dismissed. The EEO office even threatened to dismiss my complaint if I fail to inform them of an address change. The agency intimidated me by offering an unreasonable and insulting settlement offer which threatened that my complaint would be dismissed if I did not accept it. The EEO office has the power to dis-

miss any part of your case. In my case, I was told by my EEO counselor that I had to only provide them with what I considered retaliation and reprisal and why. After this information was compiled and documented, the EEO manager dismissed portions of my complaint stating I did not tell how it harmed me. This type of deceit and trickery unquestionably shows the victim's interest is not being served and fairness is neglected. Furthermore, this creates a situation where the complainant has to appeal causing even more time to get pass the agency level. All federal employees must go through their agency EEO office who has the power to keep your complaint from going to the EEOC. This is not fair because non-federal employees do not have to go through this and the agency is allowed to have unaccountable autonomy over your case.

—The politics of the EEO office leave the employee disheartened and with no place to go. I am on leave without pay and cannot afford to continue to live without income due to 2 small children whom I am financially responsible for. Even though I have not been medically released to return to my agency because of all the wrongdoing and trauma inflicted upon me, the system forces me back there before I am ready. The thought of having to give 110 percent to an agency that is treating me this terrifies me and causes severe stress. Even worse is to have to go back to work for or with my sexual offender. The agency offers to permanently transfer me into another Division only if I withdraw my EEO complaint, drop my workman's compensation claim, hold the agency in no wrong doing, pay all my medical bills incurred, pay attorney's fees during the informal complaint stage, be responsible for the 240 hours of leave borrowed and all leave I used in getting help for this case. It is unbelievable that a human being is forced to do this. The agency has disputed my workman's compensation claim which in June will be the 8th month and no determination. I cannot survive without income. The stigma of sexual harassment follows me and prospective companies look at me as a troublemaker and a risk to employ. I was denied unemployment benefits. This system makes it horrible for the victim. The agency has not been held accountable for any of their improprieties and wrongdoing. I wrote General Colin Powell a letter to try and get some resolution out of this situation.

—I continue to receive badgering letters from a supervisor regarding when I will return to work. He stated that my absence is affecting his livelihood and placing undue hardship on my fellow engineers. He also blames my absence on his inability to manage his workload.

—The agency broke regulations by contacting an independent doctor retained by the Department of Labor to examine me. The Department of Labor told me that my agency had no right to contact the doctor and that any concerns that my agency had should have been addressed to them. The Department of Labor also stated that my agency was given explicit instructions not to contact the doctor. These type of improprieties are what this agency continues to do and get away with.

Due to the ultimate abuse of power and trust by my supervisor, whom I thought was trust worthy and respectable, I suffer nightmares, hair loss, anxiety, nausea, stress, flashbacks, and insomnia, among other things. The initial anxiety I had over how this would be received and dealt with by my agency proved necessary. The difference in race, gender and years of service between me and my offender remain a factor in the treatment and resolution of this complaint. The fact that he confessed to the offense did not seem to matter. The retaliation and reprisal are haunting. This has effected my children and our way of life. My children often say "we want old Mommy back." My life has been devastated due to his sexual offense and the agency's blatant display of the double standard and good old boy network. This terrible incident has taken 8 months out of my career and placed a stigma that will follow me through my professional and personal life. The agency's continuous revictimization of me makes it harder for me to become anything close to the person I was. The agency has the blame and punish the victim attitude. I have been made the defendant; the agency continues to blame me. Since reporting this I went from an excellent employee to bad. The incident is continuously minimized and referred to as a pass by my agency. I heard the comment from employees that "I was not raped" in an attempt to make his law breaking offense okay. The threat of rape was very real and scary. I had to receive counseling from a rape crisis center to deal with this type of violation. I have tried to think of something a woman can do to a man to make him feel the fear involved when the treat of rape is present.

Finally, I conceded because I was unable to think of anything a woman can do to a man to make him fear in that way. The agency's actions have gone unnoticed and unaccounted. Their defense and support of sexual harassment is abominable but yet they continue to send memorandums to all Pittsburgh District employees

stating that sexual harassment will not be tolerated. An independent party must be allowed to accept and investigate federal employee complaints. This current system is inherently biased because the employees administering over the case were hired by the accused agency. These employees, like most employees—including myself, have a loyalty to their employer. A neutral and detached party must be permitted to investigate EEO complaints for federal employees. In my case the final decision is made within the Department of the Army—self policing. The only way to get on fair playing ground and a chance for justice is to go to Civil Court. However, the way the system is set up for federal employees it is a long, hard road to get there. The autonomy the agency and EEO office have provide an open arena for bully tactics and intimidation. No matter what mistakes or problems created by the agency, the complainant suffers. Regardless of how serious the complaint or if the investigation proves your complaint true, you are at the mercy of the agency. Again, in my case the investigation of my allegations were found true and I was still punished and retaliated against. This is proof perfect that the system is more than flawed—it just does not work on behalf of the people it was designed to help.

The treatment I am receiving is exactly why a lot of women do not come forward or drop their complaints. I know I did the right thing by reporting the sexual harassment. I want to prevent this from happening to someone else. However, my agency's handling of this case signal to its employees that not only is sexual harassment tolerated, the EEO office will make it hard for you if you file a complaint. I know I will never be the person I was before August 25, 1992. However, I will do my best to keep this from happening to another person. I urge you to pass this bill so that inequity and injustice like this is forced to stop. Being a victim once is enough, lets end the revictimization inflicted by an agency regulating itself. Thank you.

PREPARED STATEMENT OF MS. HUDSON

I thank you for the opportunity to address this Committee concerning Senate Bill 404. Here with me is my attorney David Shapiro, nationally recognized for his expertise in handling Title VII cases, especially Federal employee cases.

I am an Assistant United States Attorney (AUSA) for the Eastern District of Tennessee and, as one who has experienced firsthand the total ineffectiveness of the present Federal EEO complaint system, I believe that I can speak to almost every proposed amendment in S. 404.

Before I can testify at this hearing, the U.S. Attorney in my district and the Director of the Executive Office for U.S. Attorneys have instructed that I must state the following:

> I am not representing the Department of Justice. Any of my statements to this committee represent only my personal views and opinions. I have no authority to speak for either the Department of Justice or the United States Attorney's Office for the Eastern District of Tennessee. My responses to any questions from any committee member reflect only my personal point of view and not that of the Department of Justice or the U.S. Attorney's Office.

I have been an AUSA since 1983 and until 1990, enjoyed a reputation as an outstanding attorney. I had received outstanding performance evaluations, sustained superior performance awards, been considered for three judgeships, and named in a Department of Justice internal audit report as one of only four AUSAs in the district singled out by the judges and client agencies as outstanding.

In 1989, I was promoted to a supervisory position, the first and only female AUSA in the district ever to serve in any supervisory capacity. Shortly after this promotion, I was promoted to greater supervisory responsibilities as Chief of the Civil Division. At approximately the same time as my promotion to Civil Chief, the U.S. Attorney selected a new First Assistant. This new First Assistant had no experience with civil cases or bankruptcy matters, therefore the U.S. Attorney continued to write my performance evaluations. On my first evaluation following my promotion to Civil Chief, the U.S. Attorney rated my performance outstanding.

The First Assistant did not want a female as Civil Chief or in any supervisory position. He constantly undermined my authority and misrepresented my work to the U.S. Attorney. He convinced the U.S. Attorney to make him the Rating Official for my next performance evaluation. On my next evaluation issued in April 1990, he rated my performance as minimally successful. Again, the First Assistant had no civil experience whatsoever.

I timely filed a grievance with the Executive Office for U.S. Attorneys to contest this unfair performance evaluation and initiated the first step in making an EEO complaint by filing an informal complaint with the EEO officer in the Executive Of-

fice for U.S. Attorneys. The Executive Office is an administrative arm within the Department of Justice. Its purpose is to perform administrative and personnel liaison functions between U.S. Attorney's offices throughout the United States and the Justice Department. It is specifically assigned to address such personnel matters as performance rating grievances and claims of discrimination. How naive I was to think that these procedures could be used to remedy the situation. To date, the Executive Office has consistently acted to facilitate, encourage, and reinforce retaliatory and discriminatory conduct.

Less than a week after I filed the performance rating grievance and the informal EEO Complaint, I was demoted from my position as Civil Chief, removed from the Civil Division, and assigned to the Criminal Division as a line Assistant U.S. Attorney with no supervisory responsibilities. I was removed from my corner office and placed in a previously unoccupied office that was furnished with old and makeshift furniture and equipment. I felt like Chuck Connors in the opening scene of his television series *Branded* when the general rips the stripes from Connors' uniform and banishes him from the fort. Every day since, I have endured hostility, indignity, humiliation, and every act of retaliation imaginable and some not so imaginable.

I honestly had no idea that I had invoked a system that would be used to ruin my professional and personal reputation, crush my spirit and endanger my health.

The informal stage of an EEO complaint is designed conciliate disputed conduct. The EEO counselor assigned to my case was required to attempt conciliation through the First Assistant, who, to no one's surprise, refused to consider any conciliation. My performance rating grievance was likewise reviewed by persons interested in fostering discrimination. The review procedure involves a committee of three. Two of the three committee members for my grievance were Executive Office staff members; the third was my nominee. One of the Executive Office grievance committee members has admitted in deposition that she participated with the First Assistant in the preparation of my minimally successful evaluation. Can you imagine a greater conflict of interest than reviewing the validity of a document you helped to write? Even so, my grievance was so well taken that the committee had no choice but to change the rating. In October 1991, the committee issued a preliminary report that my rating should be raised from minimally successful to excellent. The Code of Federal Regulations requires that any action based on an evaluation that is overturned must be withdrawn. I should have been reinstated as Civil Chief with commensurate pay. This did not happen. What did happen is that the Executive Office withheld filing the final report upon which action can be taken and initiated what it called an "investigation," but which was much more akin to a witch hunt than an investigation.

Just after the preliminary report that my rating should be raised to excellent was issued, someone who identified himself as Special Counsel to the Director of the Executive Office was dispatched to the U.S. Attorney's Office in Knoxville and interviewed over 30 people. He began each interview by announcing he had come to investigate misconduct by me, then he asked each person to share with him anything that might be derogatory about me. He threatened disciplinary action against some of those interviewed when they defended me and disputed his accusations. When he finished interviewing, he advised me and my attorney that he wanted to ask me some questions. He refused to disclose the purpose of his requested interview with me but sneered that "if we were smart, we could figure it out." Under protest, my attorney and I met with this "Special Counsel." He refused to permit a certified court reporter to transcribe the meeting and has since claimed that all records of the notes taken during his interviews have been lost or destroyed. His interview with me was limited to accusations that were either so petty or so obviously false that they would have been laughable, except that it was clear he and the Executive Office intended to use them to justify my termination from employment.

My attorney, at the time, Wanda Sobiesky, became so concerned at this turn of events that she wrote directly to then Attorney General William Barr. She asked him to intervene so that the administrative process of EEO could work. She described this "Special Counsel's" conduct and cited both the provisions of the Privacy Act and case law that prohibit such conduct. The Attorney General never responded to her letter nor did anyone on his behalf. Instead, the alleged misconduct supposedly uncovered by the Special Counsel was dropped as a basis for my termination and different allegations of misconduct were substituted.

The U.S. Attorney and his First Assistant were obsessed with retaliating against me. Even though the U.S. Attorney had not been reappointed by President Bush and the new U.S. Attorney was to be sworn in at any moment, he pursued having me terminated. In November of 1991, just minutes before the swearing in of the new U.S. Attorney, the outgoing U.S. Attorney handed me a notice of intent to propose termination signed by the Director of the Executive Office. This notice directed

that I was immediately suspended from duty during the 30-day notice period. Federal law permits such a suspension only when a Federal employee is either a threat to employees' physical safety or is a security risk. At no time has there ever been any such allegations made against me. I was given 15 minutes to remove 8 years of accumulated personal belongings, stripped of my employee identification, and escorted from the premises like a common criminal. Needless to say, I left shaken and in tears.

The misconduct alleged as the basis for my termination was attributed to statements by two criminal defense attorneys and an FBI Special Agent. Depositions of these individuals have been taken. All three deny any misconduct on my part. Unfortunately, as I believe the testimony that you will receive today will bear out, the truth is often irrelevant to a government agency's defense of a Federal employee's claim of discrimination and/or retaliation.

After I was suspended and my termination noticed, my attorney filed a petition in Federal District Court for injunctive relief to permit my return to work. I thought that when my case reached attorneys in the Civil Division of the Justice Department here in Washington, the system would start to work as intended. Instead, what I found is that the Justice Department attorneys saw as their only responsibility the endorsement and facilitation of any and all discriminatory and retaliatory actions taken by the U.S. Attorney's Office and the Executive Office their "clients." These attorneys have litigated with such unrestrained vigor that I incurred legal fees and costs in excess of $60,000 just to achieve my return to work, not to mention the legal fees and costs involved in prosecuting the merits of my case.

The new U.S. Attorney had been very supportive of me prior to his taking office. He made public statements on the day of my termination that he did not approve of this action. He removed from any supervisory capacity the First Assistant who had sought my removal. Unfortunately, within a few weeks of his taking office, he became intimidated by the Director and Chief Deputy Director of the Executive Office. He has told me and others that he had "bastardized" himself with the Executive Office by supporting me and that he feared he would not receive fair consideration for budget and personnel allocations for the district. Before I actually returned to duty status, he asked me to transfer to another district which he had already arranged with the U.S. Attorney in the Middle District of Tennessee. He even called several of my coworkers and asked them to encourage me to transfer.

I declined the request to transfer and returned to duty status—following a court order prohibiting any firing—only to find the acts of retaliation intensified. The new U.S. Attorney referred the Office of Professional Responsibility (OPR), an office within the Department of Justice, the same allegations set forth in the 30-day notice letter. It has now been fifteen months since his referral to OPR. While the OPR investigators have conducted some interviews, I have not yet even been interviewed about these allegations. It was shocking for me to learn at depositions that the OPR investigators had asked Federal employees in this district what they might know about my sex life. Certainly nothing in the allegations referred to OPR remotely touched on any issue involving sex, except, of course, that I was a FEMALE who dared to be a supervisor and dared to invoke the EEO process to vindicate her rights.

The Executive Office issued the final report on my performance evaluation grievance while I was suspended from duty. Although the report raised my evaluation to excellent, I was not reinstated as Civil Chief, even though this position had not been filled since my demotion nor before my return to duty status. In fact, it was only shortly after my return that the new U.S. Attorney named a male attorney as Civil Chief. Nor did I receive a salary increase commensurate with the corrected rating. Even the corrected rating itself was not reflected in my personnel records for at least six months after the final report, and then only after numerous requests by me that it be placed in my file.

The new U.S. Attorney began delivering to me letters alleging more acts of misconduct that were utterly untrue. At no time did this U.S. Attorney ask me about the alleged improper acts; he simply reduced them to writing as allegations—although they had no basis in fact. A typical example of his allegations of my misconduct is his claim that I insulted a part-time college student working in our office by telling her that her dress made her look like a child. Laying aside how ridiculous it is to have reduced such a matter to writing, another Assistant U.S. Attorney told the U.S. Attorney that she had witnessed the conversation between me and this student. She told him that I had generously complimented the student in response to the student's own statements that her dress made her look like a child. Despite this, the U.S. Attorney chose to make this written allegation anyway. This is the level to which my office has sunk. In March or April of this year, this U.S. Attorney—

now departed from office—referred yet another complaint of alleged misconduct against me to OPR.

Since my EEO complaint was not resolved at the informal stage, I filed a formal administrative complaint, the next step in the administrative process. At this stage, an EEO investigator should have been assigned to gather evidence and make recommendations in a report to the EEO office of the Executive Office for U.S. Attorneys. No investigator was ever assigned to my case, however. I waited the requisite 180-day period, then filed a complaint in Federal District Court for relief under Title VII, the Equal Pay Act, and the Privacy Act.

In addition to damages for the discrimination, retaliation and violations of the Privacy Act, I have sued for a double back pay award under the Equal Pay Act. During the informal stage of the EEO process, I learned that I had been denied an across-the-board raise given in January 1990 to all supervisory attorneys in all U.S. Attorney offices throughout the country. The paperwork for all male supervisor sin my office was promptly processed by the First Assistant who had removed me from the Civil Chief job. To date, the government refuses to pay me any of this salary increase.

When I filed my complaint in district court, I again asked for injunctive relief, this time for protection from retaliation for my witnesses as well as for myself. So bad has this retaliation been that two of my witnesses have been forced to bring their own EEO complaints of reprisal. One of those witnesses is Charlotte Lockwood, who is here with me today at her own expense. Until August 1992, she held the position of Assistant Administrative Officer, a career ladder position with promotional potential to at least a GS–12. Her performance ratings were consistently outstanding and in 1991 she received the Attorney General's award, the highest honor the Justice Department can give one of its employees. Unfortunately for her, she has witnessed incidents of retaliation against me and will not be dissuaded from testifying about them. In a meeting with the new U.S. Attorney and two other supervisors, she refused to participate in retaliation against me. Shortly thereafter, the U.S. Attorney removed her from the Assistant Administrative Officer position and assigned her to a position with little, if any, potential for promotion. She was stripped of her supervisory responsibilities and told she could not be trusted with confidential information because she was my friend. When she complained, she was told my management "you chose to be Marilyn Hudson's friend; you have to live with what happens."

The other EEO reprisal complaint was filed by a paralegal working in the Financial Litigation Unit. I had recommended her hiring and supervised her until my demotion. Her performance ratings were also high, even when written by my male successor. She too refused to participate in retaliation against me. As a result, she was demoted from the position of paralegal to legal secretary just a few months after she received an annual performance rating of excellent. This demotion violated every civil service law known and was blatantly retaliatory. Yet, Justice Department Civil Division attorneys assigned to defend against my complaint scoffed at the complaint filed by the paralegal telling me "she just filed it to try to help your case." I will never understand how anyone could think that a Federal employee would cavalierly invoke this EEO process; it brings with it unrestrained retaliation.

Had any of us not been our own sole means of support, we might well have chosen to leave Federal service rather than suffer this terrible discrimination and retaliation. The unfair performance ratings and outrageous misconduct allegations made it impossible compete for similar positions elsewhere The paralegal demoted to a secretary did transfer to another U.S. Attorney's office, but she transferred as a secretary, not a paralegal. Fortunately, within a very short time after her transfer she was recognized for her obvious competency and promoted. Now, though not yet a paralegal, at least she is again working in a Financial Litigation Unit.

The experiences of these two women with the EEO process were not much different from my own. At the informal stage of counselling, employees of the EEO Office within the Executive Office for U.S. Attorneys discouraged them from proceeding. The paralegal was actually told she had "no case." The counselors treated them and their witnesses with hostility. After the paralegal transferred to another district, an EEO counselor contacted her directly even though this counselor had been told repeatedly to contact her through her counsel, and strongly recommended to the paralegal that she drop her complaint. The officials charged with discrimination and retaliation were the ones with whom the counselling was conducted. Obviously, these cases would never be conciliated at the informal stage.

Unlike my own case, EEO investigators were assigned at the formal stages of my witness' complaints. Both investigators are Assistant U.S. Attorneys in other districts and both were appalled at the intensity of the discrimination and retaliation. One had strongly complained to the EEO Director at the Executive Office and re-

quested that additional investigations be conducted. When the U.S. Attorney threatened in writing to sue me for slander for something he surmised I had said to the EEO investigator during the official conduct of his investigation of Ms. Lockwood's complaint, the investigator again complained to the Executive Office EEO staff. So far, nothing in the office has improved. In fact, the U.S. Attorney has again threatened to sue me for slander. Several of the witnesses have now refused to speak with any EEO investigator for fear of having to defend a law suit. There does not seem to be any end in sight. My case is set for trial August 16 of this year, but even if I prevail, I can expect the hostile environment to continue.

Disciplinary proceedings against persons found to have intentionally discriminated are very much needed. At present, discrimination and retaliation are not punished; indeed, they are rewarded. The First Assistant removed by the new U.S. Attorney in our district transferred to another district as First Assistant with the help of the Executive Office and is now interim U.S. Attorney there. I understand that the Director of the Executive Office who executed my 30-day termination notice and suspension has himself been named in more than one complaint of sexual harassment of subordinate female employees. Although he no longer serves as Director of this office, he remains an employee of the Justice Department, now serving in the Office for U.S. Trustees.

Employees in my office who have been willing to take up the mantle of retaliation and false accusations against EEO complainants have been liberally promoted. I am sure you can imagine how demoralized most of the staff have become given that unfettered discrimination and retaliation have been rewarded for more than 3 years now. It is essential that employees who discriminate and retaliate be disciplined. Only then will discrimination be eliminated form the work-place.

The provisions of S. 404 for paid leave to a complainant are also important. I have been denied paid leave for all of the instances listed at p. 29 of the bill, except I was given paid leave forthe government's attorneys to take my deposition. In all other instances, I have been required to use annual leave, and only then if my supervisor approves it. I had to get a court order to attend the depositions taken in my case. At present, I do not have enough earned leave to adequately prepare for trial and attend each day at the trial.

I am very much encouraged by your interest in improving the EEO process for Federal employees. I am also encouraged by the appointment of Janet Reno as Attorney General. I hope she is dedicated to fairness and "doing the right thing." Enacting S. 404 will greatly assist her in making the EEO complaint process an effective and fair one. Without the amendments of S. 404, I could not encourage any Federal employee to pursue a complaint of discrimination.

I am pleased to answer any questions you may have.

PREPARED STATEMENT OF MR. COOPER

Mr. Chairman, Members of the Committee, my name is Curtis Cooper, and I am an African-American citizen of the United States presently residing in Flossmoor, Illinois. Thank you for inviting me to testify before the Committee today to discuss my experiences and duties with the Bureau of Alcohol, Tobacco and Firearms.

I want to reiterate that I am not a representative or spokesperson for the Bureau of Alcohol, Tobacco and Firearms, the U.S. Department of the Treasury or any other agency or entity. I am appearing before you today as a citizen of the United States, who is concerned with racial discrimination.

By way of background, I have been employed continuously as a Special Agent with the U.S. Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms, since September 8, 1969. I have held a variety of positions during this employment: first, Special Agent (St. Paul, Minnesota and Chicago, Illinois, 1969–1978); second, Group Supervisor, Detroit, Michigan (1978–1980); third, Operations Officer and Program Manager, Bureau Headquarters, Washington, D.C. (1980–1985); fourth, Assistant Special Agent in Charge, Nashville, Tennessee, (1985–1989) . I am currently employed as the Midwest Regional Inspector, Office of Internal Affairs, Chicago, Illinois. I have been so employed since January 1989.

In addition to my ATF experience, I served in the capacity of a local police officer with the St. Louis County Police Department, St. Louis, Missouri, for approximately 5 years.

In addition to my civilian law enforcement experience, I have served in the U.S. Army as a Military Police Officer for 3 years in France and Germany. I received an honorable discharge in 1963.

My academic background include a Bachelors Degree in Urban Planning from Metropolitan State University, St. Paul, Minnesota, as well as attending graduate school in Criminal Justice at the University of Minnesota.

I am a member of several professional and community organizations which have enriched my personal growth, professional development, and managerial resourcefulness.

Among these organizations are: The National Organization of Black Law Enforcement Executives (NOBLE); The National Association of Concerned Black Agents and Inspectors of ATF (NACBAI), and the International Association of Chiefs of Police (IACP)

On September 8, 1969, I began my employment with ATF as a special agent, in St. Paul, Minnesota. I was hired from the Treasury Enforcement Agent examination. Approximately 2 weeks after I began my employment, a white special agent sitting at a desk in front of me talking on the telephone, was overheard to say, "I can't talk to you now, because a nigger is standing here." This, I considered, to be part of my welcome to ATF Law Enforcement.

Administratively, I was assigned less visible, lower profile assignments. These assignments were based on my race. Although, similarly situated white Special Agents were assigned cases to work on by their white supervisors during this period, I was forced to find my own cases to work on, in addition to being assigned a disproportionately large amount of undercover work for white agents.

In 1972, I requested a transfer to St. Louis, Missouri. I was informed that my request could not be granted because I was the only black Agent in St. Paul, Minnesota, and that I was needed there for undercover assignments.

In 1974, a large number of grade 12 promotions were made in the St. Paul District Office. Although fully qualified, I, however, did not receive a grade GS–12 promotion. It was explained to me by my supervisor that I "was never there." I was seldom in St. Paul because I was constantly being sent to various parts of the country by ATF management to do undercover assignments for several months at a time. I did not voluntarily do such undercover assignments.

Later in 1974, I was forced to apply to the National Undercover Pool, although, application to the Pool was allegedly voluntary. I was told that I had to apply for the Pool, because ATF needed another black Agent to do undercover work. I was selected for the Pool.

Between 1973 and 1978, I applied for numerous Group Supervisor/Resident Agent in Charge positions. I was not selected for any of these positions. Between 1972 and 1978, I also applied for Instructor Training. I was not selected for any of these training opportunities. I was informed that I was to valuable as an undercover operative.

In February 1976, I was assigned to an extensive undercover assignment in Atlanta, Georgia. In late June 1976, I was informed by the Special Agent in Charge of the St. Paul District Office, that I had been transferred to the Chicago District Office. The Special Agent in Charge informed me that the transfer would not be effective until I finished my assignment in Atlanta, Georgia. I inquired as to why, in the middle of an assignment, a thousand miles from home, would I be transferred to another city. The Special Agent in Charge informed me that additional black Agents were needed in Chicago to do undercover work. I asked him why didn't ATF simply hire more black special Agents? He made no response. I made the transfer 5 months later, in December 1976, after completing my assignment in Atlanta.

During my 4 years and 9 months in ATF Headquarters (1980–1985), I was never selected to serve as an acting supervisor, although I had requested to do so. Despite the fact that I was a GM–14, white Special Agents who were only at the GS–13 level were assigned to serve as acting supervisor. During my assignment in Headquarters, I was given a 4-month assignment to the Los Angeles

District Office as an Interim Assistant Special Agent in Charge. For this detail, I was given an outstanding evaluation by the Special Agent in Charge. Although, recommended for a Special Achievement Award by the Headquarters Branch supervisor, the Division Chief refused, without comment to approve the award. Although having completed many assignments and details since 1978, I have not received an award since that time. In 1988, while assigned as the Assistant Special Agent in Charge of the Nashville District Office, the Special Agent in Charge was given a 1-day detail to ATF headquarters for field input into ATF computer usage. Several weeks later he received a Special Achievement Award, with a monetary attachment, for this detail.

In 1979, during conversations with a number of African-American Special Agents, it was determined to be mutually advantageous, due to a similarity of problems, to have a meeting to discuss these similar problems. The first meeting was held in St. Louis, Missouri, in the summer of 1979. Fifteen Special Agents and a number of support personnel attended this meeting.

At our 1980 meeting in Detroit, Michigan, the Assistant to the Director for EEO was presented with a list of concerns pertaining to employment practices involving race and sex. The Assistant to the Director for EEO took the concerns to the Director. In a followup response, Director Stephen Higgins informally designated this group as "Concerned Black Agents."

At the August 1983 meeting in St. Louis, Missouri, I, along with a consensus of the African-American Agents in attendance agreed that discrimination existed in ATF. A list of our concerns was formulated and forwarded to Director Higgins on January 24, 1984. The letter described the actions of African-American Special Agents attempting to work within the system to resolve a number of longstanding concerns regarding ATF's policies with respect to hiring, promotions, assignments, training, and the disparity of disciplinary actions on the part of African-American and other minority Agents. Statistical data was developed and included showing that only four-tenths of one percent (0.4 percent) of 259 ATF supervisory and managerial positions in the Office of Law Enforcement were held by African-Americans, and that no African-American had been appointed to a supervisory position in more than 5 years. There were 45 identifiable African-Americans in ATF at the time.

A list of eight recommendations for change was made to Director Higgins. The recommendations included immediate promotions of African-Americans to Special Agent in Charge (SAC), Assistant Special Agent in Charge (ASAC), and Resident Agent in Charge (RAC) positions; increased training; increased hiring of African-American Special Agents; uniform application of punishment; equal promotional developmental opportunities and training; and the elimination of all vestiges of the systematic exclusion of African-Americans and other minorities on the basis of race within the Office of Law Enforcement. I, along with Ronald Hendrix and Frank Sanders were designated as representatives of the Concerned Black Agents.

On March 19, 1984, Regional Inspector, Ronald Hendrix, Group Supervisor Frank Sanders, and I met with Director Higgins, Associate Director Phillip McGuire, Office of Law Enforcement, Associate Director William Drake, Office of Compliance Operations, and Assistant to the Director for EEO Joseph Coleman, to discuss the list of concerns that had been previously submitted to the Director. At this meeting, Director Higgins stated that he had caused several studies to be conducted which revealed; (a) a disparity in the hiring of African-American Special Agents; (b) that African-Americans did not receive the same degree of training as non-African-American Agents; (c) African-Americans were not receiving a fair share of supervisory and managerial promotions; (d) African-Americans performed more undercover work than non-African-Americans, but were not given sufficient credit for such work; (e) insufficient evidence that African-Americans were not being provided the same opportunities to perform the full range of ATF special agent duties; (f) there were insufficient facts to establish that African-Americans were punished more severely than non-African-Americans; and (g) there was insufficient information to establish that African-Americans were appraised differently than non-African-Americans.

Director Higgins appointed Regional Inspector Hendrix, Group Supervisor Frank Sanders, and me to a special task force to develop and submit recommendations in the areas of orientation, training, and work assignments for the full development of African-American Agents; revision of the system for selection and training of African-Americans; sensitizing supervisors and managers to the necessity for fair, impartial and equitable assessments of African-American, female and other minority agents. Recommendations were made, however, they were not acted upon by management.

In the summer of 1989, after numerous meetings and contacts with Director Higgins or his representative, with negative results. On November 16, 1990, a class action complaint was filed in United States District Court for the District of Columbia.

In January 1989, I was appointed to the position of Regional Inspector, Midwest Regional Office of Internal Affairs, Bureau of Alcohol, Tobacco and Firearms. In this capacity, I am responsible for the planning, implementation, and management of investigations into complaints and allegations of misconduct or irregularities concerning ATF employees and non-ATF persons affecting the integrity of ATF. I am responsible for conducting investigations into other matters as requested by the Office of the Assistant Director for Internal Affairs.

My experiences with ATF, both individually, on behalf of the class of African-American Special Agents, points out serious deficiencies in the Federal EEO process. First, the current system requires the agency to investigate itself. We presented our concerns of class-wide discrimination against African-American agents to ATF Management almost 10 years ago now, and nothing has happened yet. Even after we brought a formal class administrative complaint with the agency in 1989, the agency failed to act within the 180 day time period provided by the regulations. In fact, it has been my experience that EEO counselors and investigators are reluctant

to make findings of discrimination against the agency, because in effect they must find that co-workers and supervisors have discriminated.

Second, the agency can simply sit back and do nothing in response to complaints of discrimination. The entire burden lies with the employee—the employee must hire attorneys, they must prosecute the case against the full weight of the Federal Government. The agency is represented by the Department of Justice, who puts every obstacle in front of the employees who are trying to litigate their claims. We, as a group, have spent tens of thousands of dollars individually to prosecute our class-wide claims of discrimination, we individually face significant monetary commitments over the next year just to bring our class action to trial. The Department of Justice litigates the cases in a manner that requires a massive amount of effort by our attorneys, and has even taken the position that we have to pay one-half the cost of creating data bases to analyze our claims of discrimination, when ATF has failed to maintain a race and national origin data as required by Federal law, specifically the Uniform Guidelines of Employee Selection Procedures.

Third, there is no penalty for discrimination in the Federal Government. ATF gets free attorneys, and any judgments are paid out of the Department of Justice's judgment fund. Even if ATF is found guilty of discrimination, it does not have to pay for it—the taxpayers pay. No individual at ATF is held accountable for violating the civil rights laws.

Mr. Chairman, Members of the Committee, the Bureau of Alcohol, Tobacco and Firearms maintains an illegal system of racial discrimination and illegal retaliation for those African-American special agents who speak out against these illegal acts. The individual becomes the problem, as has been previously stated, "you become retroactively incompetent," when you address issues of discrimination and sexual harassment within ATF. In my 24 years with ATF, I have become less competent, the more I become involved with the class action, racial discrimination complaint. The bottom line is that no effective means exists for Federal employees to address problems of systemic and individual discrimination, without virtually bankrupting themselves with expensive and lengthy litigation in the Federal courts.

I cannot believe that Congress intended to create a system that rewards those who don't complain and penalized those who do, while still not resolving the problems. The system must be changed to make Federal agencies accountable for their violations of the Civil Rights laws.

Thank you, Mr. Chairman, and Members of the Committee.

PREPARED STATEMENT OF MS. DOUCETTE

Chairman Glenn, distinguished Senators and guests: I would like to thank my home State Senators, Senator Dennis DeConcini and Senator John McCain, for cosponsoring this very important Senate bill. The Title 7-Equal Employment Opportunity, or EEO, process within the Federal system is in need of reform for the protection of all Federal employees.

The statement I am providing to you today, is my personal opinion and does not reflect the opinion of the attorney general, the United States Justice Department or the Federal Bureau of Investigation.

In December of 1988, I was sexually assaulted by the Arizona Special Agent in Charge of the FBI. When I complained about this sexual attack, the Special Agent in Charge, made it clear to me that he was charged previously with discrimination in the Donald Rochon case and was not punished. He made it clear to me that he controlled my destiny. He told me he could prevent the transfer of my husband, also an FBI agent, to my office of assignment, since my husband was assigned to the New York Field Office during the time that I was sexually assaulted in the Phoenix Field Division. The Special Agent in Charge made it clear to me that he was untouchable, both by stating that he was above reproach and by providing me with details of his previous escapades that were unpunished by FBI headquarters.

When I discussed formalizing a complaint against the Special Agent in Charge with my supervisor, even my supervisor, expressed concerns for his future, my future and the future of a young first office agent who was a witness in the matter. This FBI supervisor was an exceptional supervisor whose opinion I respected. I believed that if he was concerned about retaliation from this Special Agent in Charge, the retaliation would occur.

I was simply too afraid to pursue my complaints against this high-ranking FBI official. However, the discrimination did not stop. During 1989, I applied for inclusion in the FBI's career development program as a relief supervisor. The relief supervisor position was an entry level position for which interested individuals who were qualified, were asked to volunteer.

Upon expressing my interest in the career development program, I was told that I could not enter the program because, "let the guys get to know you." I was further told that the guys don't want a woman on the desk. Although the career development program was a voluntary program, I asked for inclusion on nine occasions before I was finally allowed access to a voluntary program. I was never evaluated for management potential or relief supervisor potential, but instead subjectively evaluated on gender based stereotypes. It is important to note that male agents, some less senior than I, were immediately accepted into the relief supervisor position, while I was denied. Coincidentally, I was advised to seek inclusion in the management program within a few months of an inspection division review of the Phoenix Field Division, because the timing would increase the likelihood of acceptance. I therefore waited until a few months before the inspection of the field division and was finally accepted into the Career Development program.

I believe the allegedly, gender neutral practice of "asking" for inclusion in the FBI's Management program created a disparate impact upon females within my field division of the FBI.

During 1989, when I applied to the career development program, the management breakdown within the Phoenix Field Division was 100 percent white male. The Special Agent in Charge, Asst. Special Agent in Charge, all supervisors and all primary relief supervisors were male. During this time frame, only two females in the division were relief supervisors. I was told that one female relief supervisor previously entered into a close personal relationship with a member of management.

I believe that if I had acquiesced to the sexual demands of the Special Agent in Charge, I would have been accepted into management immediately. For every step an agent takes within the FBI, the recommendation of the Special Agent in Charge is vital. I believe the Special Agent in Charge exerted influence over my non-selection for the career development program after he sexually attacked me.

During 1989, the FBI nationwide, was not a model of diversity. The only statistics available to me are from July, 1992 and January, 1991. Although these statistics reflect minimal participation by female special agents within the management program, it is my understanding that the participation among female agents during 1989 in career development was almost non-existent, further illustrating the absence of diversity within the FBI's management programs.

During July, 1992, the senior executive service within the FBI consisted of 179 positions, of which 2 percent were filled by female special agents. An additional 380 GM–15's, or mid-level managers, were described as eligible for promotion to the senior executive service, of which 2 percent were again female special agents.

Management training within the FBI includes the Management Aptitude Programs, Management Aptitude I, or Map I, and Management Aptitude II, or Map II. As of January, 1991, it is my understanding that 1995 individuals attended Map I. Of this 1,995 total, 57 women were selected for attendance. 535 special agents attended Map II, of which four were females. From the period of 1975–1992 over 1,000 agents were promoted to stationary field supervisory desks, only 23 of the 1,000 were women.

Many female special agents, usually with minimal time in the FBI or already in the management programs, indicate to male coworkers and management that they do not see discrimination within the FBI. These agents are encouraged and rewarded for disbelieving complaints of discrimination. This reminds me of the comments I heard from male agents regarding Hispanic agents who did not participate in the class action lawsuit against the FBI.

The Hispanic agents who chose not to participate in this lawsuit were called "good Mexicans." disparaging comments were made regarding African American FBI agents who chose to exercise their rights under the EEO system. Women who do not complain are more readily accepted because they chose not to challenge the male dominated bureaucracy. I fully understand their choice. I learned about retaliation the hard way when my protected Title 7-EEO complaints were promptly met with reprisals.

On four occasions, prior to filing my formal EEO complaint, I tried to seek remedy through the informal EEO process within the FBI. On two of those occasions, I was threatened with reprisals, and decided to discontinue the process. During one of the EEO contacts, the EEO counselor I selected told me she was never given any EEO training, further indicating she didn't know how to assist me in processing of my complaint.

Eventually a new Special Agent in Charge was selected for the Phoenix Field Division. After a period of time, I discussed with the new Special Agent in Charge my concerns about what I perceived as subversion of the EEO system, retaliation for protected Title 7 complaints, discrimination, disparate treatment and sexual harassment. The Special Agent in Charge informed me that he could work within the sys-

tem to correct problem areas and alleviate my concerns informally. I was so grateful the former Special Agent in Charge was finally gone, I agreed to allow the new SAC to proceed informally. The Special Agent in Charge then asked me what I wanted as a remedy for this discrimination. I told him that I wanted nothing. I also told him I believed I was qualified for promotion on my own merit and sought no special privilege in exchange for the informal resolution of my Title 7 complaints. I only requested the Special Agent in Charge take steps to eliminate the hostile work environment and "consider" in his evaluation of an Assistant Special Agent in Charge what I perceived as insensitivity toward EEO matters and retaliation for my complaints. It is my understanding that no record was made of informal complaints.

I began to apply for promotion to FBIHQ and received support from the Special Agent in Charge. The Special Agent in Charge indicated that I was highly qualified for promotion. I was not selected for positions at FBIHQ and requested an honest evaluation from a career board official as to the prospect for promotion. The career board official examined my files and told me the FBIHQ career board evaluated me highly, but the career board decided I needed more experience as a relief supervisor. He indicated that I should be encouraged by such a positive review, but that it would be unlikely that I would be selected for a supervisory position until such time as I had completed 2 years as a relief supervisor. I decided to proceed with a formal EEO complaint in the hope of mitigating the relief supervisory appointment date. I also planned to complain about the subversion of the EEO system by an Assistant Special Agent in Charge. In January, 1992, when I told the SAC of my decision to proceed through the EEO system, he initiated an office of professional responsibility investigation, or OPR investigation. I was compelled to provide a lengthy statement and my requests for access to my privately retained legal counsel were denied. This investigation was promptly misdirected to address issues that were not a part of my EEO complaint, failing to focus on some of the pertinent EEO issues. I did not initiate the OPR investigation, the Special Agent in Charge initiated this investigation. I believe the investigation was turned into an investigation of me. When the situation further deteriorated, I asked to see an EEO counselor in February, 1992. Another office of professional responsibility investigation was initiated. This OPR investigation was conducted by an Assistant Special Agent in Charge in the Phoenix Field Division and his wife, who was also a special agent. I believe both individuals should have recused themselves from participation in this investigation due to conflicts of interest and a lack of training in Title 7-EEO matters. I again indicated my desire to pursue this matter through the informal phase of the EEO process and requested the assistance of my privately retained legal counsel. I was told that in the OPR process there is no place for an attorney and was again compelled to provide a statement. I was also asked about matters I had previously discussed with my attorney in obvious violation of the attorney client privilege.

However, this time I was no longer intimidated nor was I dissuaded from filing an EEO complaint.

I filed a formal complaint of discrimination on April 9, 1992. On April 13, 1992, the Special Agent in Charge was informed of my complaint by the EEO counselor. On April 15, 1992, the Special Agent in Charge recommended in a communication to FBIHQ that I be afforded fitness for duty examination, with a complete psychological examination. On April 21, 1992, the Special Agent in Charge changed my recommendation for promotion from highly recommended to a refusal to recommend for promotion.

FBIHQ responded to the SAC's request for psychological evaluation by indicating this request was unwarranted.

The FBI's EEO investigation into the April 9, 1992 EEO complaint is still incomplete. In fact, the investigation was not initiated until 1 year after the filing of the complaint.

Although I do not question the investigative abilities, motivations, and qualifications of the agents selected as EEO investigators, I do not believe that the FBI is capable of performing an objective unbiased investigation. The potential conflict of interest is obvious!

The FBI agent—EEO investigator must coordinate interviews with the Special Agent in Charge. In Phoenix and in other field divisions, the agent EEO investigators are selected by the Special Agent in Charge. The agents must also be relief supervisors and as such have expressed an interest in further promotion. Special agents in charge from the various field divisions sit on the FBIHQ career board. The incentive for alienating a Special Agent in Charge when the agent EEO investigator seeks promotion is minimal. Two FBI agents who provided statements on my behalf asked me not to reveal their support, because they were both afraid of retaliation.

The FBI's EEO officer traveled to Arizona, met and lunched with Phoenix management prior to the arrival of the FBI agent EEO investigator. The FBI provided

legal advisors to the individuals interviewed in my complaint at the expense of the taxpayer. When I asked for legal assistance, the EEO office at FBIHQ denied my request. I am currently facing the dilemma of raising a $25,000 legal fee that my attorney will require, not for legal services, but to pay his expenses in this matter, such as deposition expenses. It is not uncommon for the FBI to spend tax money to hire outside experts and legal representatives to defend individuals involved in discriminatory actions.

I filed a freedom of information act request to obtain documents from my personnel file. During May, 1992, 65 pages were released to me under FOIA from my personnel file, while other documents were released from the personal safes of different management officials. These documents are important to my EEO case, because the documents provide evidence that I was qualified for promotion and that I experienced retaliation for my protected Title 7 complaints.

Many of these documents, legally obtained under the freedom of information act, are performance appraisals wherein I was rated exceptional, the highest rating for an FBI agent. My interpersonal skills were lauded along with descriptions of my considerable patience and skillful handling of cases. The supervisor writing the review indicated that all bureau directives and guidelines were followed, that I combined aggressive pursuit of individuals with patient, skillful handling. My early applications for promotion to FBIHQ carry high praise from the Special Agent in Charge.

Now, nearly 1 year later, as I prepare to file litigation, the FBI has asked me to return these documents for alleged national security reasons and because the FBI now claims the documents were inappropriately de-classified pursuant to my FOIA request. When I received the newly redacted performance appraisals, I found blank pages, wherein my interpersonal skills were now classified "secret." I find it difficult to believe that my interpersonal skills are a matter of national security.

I believe that the FBI and Phoenix Division Management cannot defend the discriminatory actions, but have created a fictional-pre-textual defense to illegal discrimination for seriously delaying my inclusion in the career development program as a relief supervisor. The FBI's pre-textual defense was to claim that I had inadequate interpersonal skills. However, the documents legally released to me pursuant to FOIA, praise my interpersonal skills and my work in general.

The FBI has also demanded that I return copies of applications for promotion dated before my EEO complaint, wherein the SAC wrote that I was highly qualified for promotion to FBIHQ. Again I obtained these documents legally under the freedom of information act. These documents are the only evidence of the SAC's statements as to my qualifications. Other applications for promotion, dated after my EEO complaint, reflect the SAC's refusal to recommend me for promotion.

Those of you who are familiar with the *Bernardo Perez v. FBI* court decision, will remember that the court decided that all FBI career board meetings at all levels will be tape recorded to prevent discrimination. Pursuant to my freedom of information act request, I was told two Phoenix Division Career Board tapes were blank. It is astounding that the Phoenix Division Career Board, consisting of supervisory special agents, assistant special agents in charge and the Special Agent in Charge were unable to operate a simple cassette recorder.

During May of 1992, I requested additional career board records pursuant to the freedom of information act. I was recently told that the FBI will require an additional year to "process" those records.

I believe the FBI is the best law enforcement organization in the world, with highly qualified, brave and professional employees. There are FBI managers who are highly sensitive to EEO issues and many individuals with good intentions. However, FBI employees are not perfect. As an organization I do not believe the FBI can investigate itself or its highly placed managers. The FBI agent-EEO investigators answer to bureau management and the EEO office. The EEO office answers to the legal counsel division, the administrative services division, the civil discovery unit, the director's office and the inspection division. Even though the EEO office claims neutrality, every time I have a question, the EEO office must consult with other units at FBIHQ to provide an answer to me.

It should come as no surprise that the FBI rarely issues a finding that it discriminated against one of its employees. It is not in the best interest of the FBI to issue such a finding. Even in an agreement with African American agents, the FBI never admitted any discrimination. It would "embarrass" the bureau. There are two bureau mottos, albeit informal, that every FBI agent eventually hears. The first motto, created by J. Edgar Hoover, was "don't embarrass the bureau." the second informal motto was of more relevance in this matter, "admit nothing, deny everything and make counter allegations . . ." I believe the FBI response to EEO complaints is to "admit nothing, deny everything and make counter allegations."

In conclusion, on last Friday, May 21, 1993, just 5 days prior to my testimony before this committee, I was advised I was the subject of an investigation which may be either criminal or administrative in nature. I was advised that the focus of the investigation was an accusation that I provided an unspecified attorney an unspecified classified document. The allegation is false. I believe this investigation is continued retaliation for my protected Title 7 claims and continued harassment. I also believe the timing of the notification was a subtle message that the FBI did not support my testimony and appearance before this distinguished committee.

Thank you for inviting me to testify today. I support S. 404 and hope my testimony will provide some perspective on the Federal EEO process from someone who has used the EEO process.

PREPARED STATEMENT OF MS. HERNANDEZ

My name is Sandra I. Hernandez. I am employed by the Bureau of Alcohol, Tobacco and Firearms (ATF). I have been an ATF agent for 3 years. Before that, I worked for the Department of Justice's Immigration and Naturalization Service for 2 years as a Special Agent. I am the single parent of a six-year-old daughter.

I was born in Puerto Rico and moved to Chicago 15 years ago, where I lived in one of the most violent, gang-infested neighborhoods, Humboldt Park. The sounds of gun shots and police sirens were a daily event. I witnessed shootings, and I knew some of the people who were shot personally. Many of my school classmates were gang members and drug dealers. Some died violently, and others grew up to be high-ranking and dangerous gang members.

Against all odds, I completed college and became a Federal agent, my childhood dream. I later became an ATF agent to fulfill that dream of taking on the gun-toting gangs that I had watched destroy so many lives and neighborhoods.

I was introduced to an ATF agent—a married man—who recruited minorities for ATF employment. This agent was also an Equal Employment Opportunity Counselor. This agent took my application and later accompanied me to a job interview with his supervisors. I was subsequently interviewed and offered the job, which I accepted. Upon leaving the interview, without warning, this individual grabbed me and kissed me. I pushed him away and told him he had the wrong idea. I had just accepted the job minutes before this; and although I was upset and embarrassed, I felt with 150 agents working in Chicago, I would have little chance of working near or with this individual. I had been told I was being assigned to a task force group. Later, this individual telephoned me and told me he had arranged for me to be transferred to the group he was in and had arranged to be my training officer.

From the first week of my employment through the next two and a half years, I was subjected to repeated unwelcome sexual advances from this individual. These included kissing and grabbing me in a government vehicle, suggestive sexual remarks, offers for money to buy "sexy outfits," requests to date his friends and associates, and requests to have sex with his friends in return for assurances of a promotion. On numerous occasions, I advised this person that these actions were not welcome. I was afraid to report his actions because since my first contact with this individual and repeatedly thereafter, he advised me that he was very influential with the Special Agent in Charge, Assistant Special Agent in Charge, and other management officials. He repeatedly told me, "It is not what you do at ATF, it is who you know."

This individual advised me that if I had sex with him he would ensure I would get preferred jobs, would "never have to work the streets," and would not have to work full days.

During this time he attempted to isolate me from both coworkers and my supervisor. He said other agents could not be trusted and they did not like me because I was a Hispanic. I became isolated.

Other agents made comments about him pawing me and making sexual remarks. However, when representatives of ATF's Internal Affairs interviewed this same group of agents, they gave written statements that they had never observed any inappropriate behavior by this individual towards me.

I did not report this harassment by this individual or my coworkers because I was on probation and I was afraid of losing my job because he repeatedly told me the bosses could fire me for any reason during my probationary period. I was the sole support of-my daughter, who was 3 years old at the time; and I desperately needed the income. I endured this relentless sexual harassment while waiting for this individual to be promoted away, as he had said he would be.

Another female agent had reported suspicions of improper conduct by local law enforcement officials who worked with ATF and who were friends of the individual

harassing me. She advised that she had subsequently received threats against her children. The individual told me she would be destroyed for reporting his friends. He told me of disciplinary action against this agent before it took place.

After seeing this happen to an agent with 16 years experience and a record as a top producing agent, I knew that I, with 2 years experience on the job, would never survive any of his retaliation. Shortly after this, the person who harassed me was promoted to a supervisor.

I was terrified of being caught alone with this person. During this period, I was unable to eat and lost weight. I was constantly nervous, upset, and could not sleep. I began to shake and slur my words. I was constantly depressed and began having suicidal thoughts. One night I began to cry and could not stop. I felt I was breaking down. A friend of mine contacted my former supervisor in whom I confided. She took me to the hospital where I remained for 9 days. I was diagnosed as having Anorexia Nervosa and severe depression.

Upon release, the supervisor who had witnessed an incident and in whom I confided, met with an Assistant Special Agent in Charge and asked that I be transferred to her group. The ASAC related this information to the Special Agent in Charge who instead transferred me to the Field Division to a clerical type position.

Upon reporting to the Field Division, I told the SAC I had been repeatedly sexually harassed by a supervisor and that I could not take it any more. I also reported to him improper conduct I had witnessed by local law enforcement officials. At that time I refused to identify my harasser and I was never asked by the SAC who that supervisor was or any of the details. After this he was cold and abrupt with me; and on one of the five or so occasions when I tried to meet with him to ask him when I would be sent to a group, he would not answer me or was evasive.

When I could no longer tolerate the stress I was experiencing from the SAC's treatment, I decided to identify the individual who had been sexually harassing me. The SAC said he would contact Internal Affairs. I asked him if there were any other ways in which this matter could be handled. He advised me that there was not.

After a week, I had heard nothing further from anyone in Internal Affairs and felt that this, too, would be swept under the rug, and that this individual would get me transferred or fired. I had an opportunity to be filmed by "60 Minutes," a show which was to air January 10, 1993, and felt maybe if people knew what repeatedly happened within ATF, someone would help me. I knew that by appearing on the show, I could be fired but felt I would be fired no matter what I did.

After I reported that this individual had been harassing me, the retaliation was swift. The SAC began to document me, and to tell me that I was not working up to my level. Agents shunned me and my former supervisor and spread false rumors about us. Many people challenged the truthfulness of these allegations and said my former supervisor must have put me up to this to "get back at this individual."

Later, when ATF Internal Affairs interviewed me about this sexual harassment, they immediately asked me to take a polygraph. I felt humiliated and that I was being treated like a criminal. But I also felt that if I did not take the polygraph, no one would listen to me. Although I did later take and pass the polygraph, it did little to stop the rumors that my former supervisor had manipulated me into falsely reporting this individual.

Following ATF's Internal Affairs investigation on my sexual harassment complaint, I was advised that a final report was forwarded to the SAC for his review. I learned that in addition to the SAC viewing the report, so did the ASAC who received gifts from this individual, another ASAC, and a supervisor, who had no authority to review the report.

PREPARED STATEMENT OF MR. STURDIVANT

Mr. Chairman and Members of the Committee: I appreciate the opportunity to testify in support of the Federal Employee Fairness Act of 1993, S. 404. My name is John N. Sturdivant. I am National President of the American Federation of Government Employees, AFL–CIO, which represents more than 700,000 Federal employees in some 42 agencies across the Nation.

Previous hearings in both Senate and House Committees, communications from government workers, General Accounting Office (GAO) reports, and stories in the media have revealed significant problems with the current equal employment opportunity (EEO) process for Federal employees. One AFGE member testified in an earlier hearing about her 11-year struggle to reach a decision on the merits of her race discrimination claim. Many other frustrations, mistreatments, and acts of rank unfairness have been well documented in the government's own EEO complaint proc-

ess. Today's witnesses include a sampling of government workers from various agencies who suffer under routine abuses in an agency controlled system where:

—there is an inherent conflict of interest as each agency investigates its own actions and has the option of rejecting the findings of discrimination made by administrative judges at the EEOC;
—Federal employees must initiate claims of discrimination in an unreasonably brief time frame, yet case processing by the accused agency lingers excessively;
—no provision exists for the consideration of sanctions against a supervisor found to have committed acts of intentional discrimination; and where
—an unnecessarily complex and lengthy appeal route is mandated upon the "mixed cases" (in which allegations of discrimination are raised in arbitrations or MSPB proceedings).

The common problems and abuses routinely experienced in the present system persist despite a major regulatory overhaul of this process that took effect on October 1, 1992. In the past several weeks alone, AFGE has been contacted by numerous employees who could provide further testimony to the chorus of complaints that the system is simply unfair. Indeed, I am struck by the absence of any objection, from practitioners, employees or even managers, to the need for reform of the current EEO process.

S. 404 is the proper vehicle for reforming this twenty-year old dinosaur. It will amend Title VII of the Civil Rights Act of 1964 to create an improved mechanism that will provide both fairness and significant cost savings. First, it will eliminate the conflict of interest created when Federal agencies investigate and adjudicate the EEO claims brought against them, a phenomenon sometimes called "the fox guarding the henhouse." Second, it will streamline the administrative process and eliminate duplicative services performed by each Federal agency, resulting in annual cost savings throughout the government that the Congressional Budget Office estimates to be $25 million. Third, S. 404 will extend the time period within which Federal employees have to file their EEO claims to bring them into conformity with the private sector time periods. Fourth, this legislation will greatly simplify the complex procedures for handling "mixed cases," in which discrimination claims are paired with adverse actions (removals or suspensions of greater than 14 days).

The present "mixed case" appeal process is so complex as to defy logic. In a recent April 23, 1993 decision of the U.S. Court of Appeals for the D.C. Circuit, AFGE Local 2052 and a member who brought a "mixed case" were told that an appeal must be taken to the Merit Systems Protection Board from an arbitrator's decision reinstating the Bureau of Prisons' employee who proved discrimination, but was denied attorney's fees for the successful EEO case by the arbitrator, before seeking court review. The Court recognized that the statute permits an employee to go directly to court on discrimination claims once in the EEO process for 180 days, or in the MSPB process for 120 days. The Court further acknowledged that direct judicial review followed an arbitration according to interpretations found in some EEOC instructional manuals. However, the decision held that another layer of administrative review was nonetheless required under the current statutory scheme before the prevailing complainant could seek complete relief on EEO discrimination claims in Federal district court. *AFGE Local 2052. v. Janet Reno*, No. 91–5317.

The Federal Employee Fairness Act of 1993 will provide other needed reforms. For instance, it provides a mechanism by which employees proved to have committed discrimination will be carefully considered for sanctions. Too often, we see supervisors who have been responsible for discriminatory acts elude any discipline. This experience has been especially frustrating for victims of sexual harassment who continue to face a harasser unpunished for his conduct. At the same time, S. 404 provides new procedures to strengthen protections against retaliation directed at complainants. This legislation also provides additional precautions to ensure that all the relevant facts are collected before hearings are held on the discrimination claims.

Thus, this bill presents a true overhaul for a discredited system, and is long overdue. It is comprehensive, affecting the entire Federal workforce uniformly, preventing a patchwork of different programs for each agency. And, it not only makes sense, but it saves money in its consolidation and simplicity.

We respectfully suggest that a technical amendment be offered to clarify the question of coverage of some Department of Veterans' Affairs employees. S. 404 retains the same employee coverage as the original 1972 statute that extended the complaint procedures of the Civil Rights Act to the entire Federal workforce. But a 1991 amendment to Title 38, which defines the professional workforce at the VA, could be interpreted by the courts as requiring specific reference for these employees to be covered by the new legislation. Therefore, I suggest that Chapter 74 of Title 38

be mentioned in Section 2(a)(2) of S. 404, under the definition of covered employees so that no confusion will arise as to the application of this legislation to all employees of the VA.

This concludes my statement. I thank the Committee for your efforts and I urge your continued support for swift passage of the legislation. I will be happy to answer any questions.

PREPARED STATEMENT OF MR. TOBIAS

Mr. Chairman, Members of the Committee, I am Robert Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 144,000 Federal employees—employees who are not only the victims of invidious discrimination in the Federal work force but also victims to the EEO complaint process which fails to address the discrimination that they experience. NTEU applauds the consideration that you have given to reform of the antiquated EEO process and it is my pleasure to share NTEU's thoughts with you on that reform here today.

NTEU is painfully aware of the fact that discrimination against women and minorities is alive and well in the Federal workplace. These groups are paid less, disciplined more and are under represented in managerial positions. A recent GAO study found that women and minorities comprised the majority of the Federal workforce at grades 2 through 11. However, their presence decreased to about 30 percent for grade 13 positions and continued downward to about 17 percent for the SES positions. The report found that women and minorities were seriously under represented in key jobs—a key job being defined as one that can lead to middle and upper management positions. Yet, there is no viable EEO process in place to remedy this distressing State of affairs.

Although I am here today to speak about the process of adjudicating Federal employees' discrimination claims—the process in place today contributes to maintaining discriminatory practices. For without a viable EEO process in place, employees find it useless to file a complaint or are intimidated by the procedures and managers are free to engage in illegal decision making on the basis of race, sex and national origin.

Members of the Committee, I know that you too are aware of the current problem before us. In recent years, this Committee conducted hearings on the shortcomings of the EEO administrative process. In the most recent hearing, you heard from an NTEU member and employee of the Bureau of Alcohol, Tobacco, and Fire Arms. This woman had been sexually harassed by her supervisor and denied promotional opportunities. She was brave enough to challenge her supervisor's actions and call into question the integrity of the Agency's hiring practices through filing an EEO complaint. Many other employees dare not enter into a system impossible for a lay person to understand and rampant with bias.

The time is right for legislative change. Our Nation, in the recent past, had its consciousness raised about sexual harassment on the job. Most likely, few people realized the administrative nightmare that Anita Hill would have undergone if she had filed a complaint. Ironically, (Clarence Thomas) her supervisor in a June, 1987, Congressional Hearing, repudiated the administrative process. When Mr. Thomas was asked about a Federal employee's choice to go to Federal Court or file an administrative complaint; he replied: "If there is a way to circumvent that process (in reference to the EEO process)—and that includes going to Federal court—until that is corrected, then I would have to suggest that would be the best way to go."

While we applaud the efforts of the EEOC to address the shortcomings of the EEO administrative processes in its most recent regulations, we regard the regulations as a step in the right direction, but still failing to remedy many of the existing problems in the process. Moreover, many of the problems afflicting the EEO process are structural in nature and therefore legislation would be the more appropriate vehicle.

The National Treasury Employees Union believes that S. 404, The Federal Employee Fairness Act, is a necessary step in oar overall goal to eliminate discrimination in the Federal workplace. This bill would help to correct some of the major weaknesses in the current process.

First, the bill places more equitable time schedules on both the Agency, EEOC and the employee. Under the current system, an employee must file a complaint within thirty days or waive his or her right to any substantive claim. Thirty days is simply not enough time for an employee to realize the affect of the discriminatory actions taken upon them and to develop a strategy to fight back. The new bill would give the employee 180 days to file the complaint.

While the employee, under the current system, must act within thirty days, the Agency has almost no time limits imposed upon them. The average time to fully adjudicate an EEO claim in the Federal sector was 607 days in Fiscal Year 1988, the most recent year for which figures are available. Some Agencies take much longer; the Department of Justice averaged 1,631 days, or 4 112 years and the Department of State averaged 1,350 days. Each day, week, month and year passes, with the employee feeling more and more defeated and demoralized in a process that never seems to end. This legislation would impose much needed time limits on the Agency immediately after the employee files the complaint, on the administrative law judge for the length of time in which he/she must make a decision and upon the Commission to review an Administrative Law Judge's finding.

For an employee to wait for years to have his or her discrimination claim adjudicated is unconscionable. When one learns what the employee has waited for during these years, one finds it difficult to believe that such a system can still exist. No where else do we ask the wrongdoer to be the Judge and Jury of their own wrongdoing. The Agency first makes a preliminary finding as to whether or not it discriminated; it then conducts its own investigation of its wrongdoing and based on this investigation again makes a finding as to whether or not it discriminated; the employee then has the right to a decision by a neutral administrative judge; however, the Agency must then again determine whether or not it agrees with the Judge's determination that it discriminated. Finally, often years later, the employee may appeal to the EEOC for review of the Agency's decision.

The results of such an inherently biased system are not difficult to predict. In 1988, the U.S. Postal Service rejected 65 percent of the findings of discrimination and accepted 100 percent of the findings of no discrimination. That same year the VA rejected 82 percent of the findings of discrimination. The legislation before us corrects this problem. It allows an investigation through the discovery process of the parties and additional evidence can be obtained through the ALJ, and most importantly the ALJ makes a final decision which either party may appeal to the Commission. The bill would place integrity in the administrative process by ending the practice of the fox guarding the chicken coup.

When an employee is able to successfully complete the long, complicated, arduous EEO process, he/she often finds him/her self working for the same supervisor or worse yet has found that while he/she has waited for a successful decision for years, the alleged discriminating official has received various promotions. The proposed legislation would insure that the discriminating official would receive the appropriate punishment for his or her actions.

However, I respectfully request that the Committee review the provision concerning sanctions for a proven discriminating official. Because the provision mandates sanctions against a proven discriminating official, it seeks to ensure that the accused has all the necessary due process protections. S. 404 permits the alleged discriminating official to have his/her own private attorney at the time of the EEO hearing on the merits.

At first glance, this appears to be a reasonable accommodation. However, upon further scrutiny it is clear that it will elongate the process substantially and provide very little benefit. The Agency and the alleged discriminating official have the same interest in the case. The Agency, the named party in the case, will only be exonerated, if it can prove that the discriminating official did not engage in illegal activity. Secondly, in the past, the EEOC allowed the alleged discriminating official to have a representative at the hearing. The EEOC changed the policy on this issue because it lengthened the hearing substantially. We can all imagine three attorneys in one room.

We recognize the due process concerns for the accused discriminating official. We believe that the companion House bill, as reported out of the Post Office and Civil Service Committee in the 102nd Congress, strikes the appropriate balance between due process, equitable sanctions and an efficient EEO process. In the House legislation, after a finding of discrimination is made by the Administrative Judge, the Office of Special Counsel investigates the case. After a full due process inquiry, including the right to call and cross examine witnesses, the OSC determines whether sanctions are appropriate for the discriminating official. This procedure does not tie up the EEO hearing and affords the appropriate due process for all the parties.

Finally, the legislation would correct the Byzantine system of mixed case processing. It would permit Federal employees to choose from several, simplified processes.

Thank you for your efforts to reform the EEO process on behalf of all Federal employees. In an era of cost cutting, this legislation not only saves $25 million annu-

ally, but also provides for a greatly enhanced EEO process. I urge its rapid passage. I will be happy to answer any questions you might have.

PREPARED STATEMENT OF MR. SELLERS

I am pleased to appear before the Committee on Governmental Affairs to comment Upon the Federal Employee Fairness Act, introduced as S. 404, and upon the urgent need for such legislation. I am delighted to offer my enthusiastic support of this legislation, which already has the support of 15 national labor and civil rights organizations who represent more than one million Federal workers.[1]

There can be little doubt that the existing administrative process, by which Federal workers may challenge employment discrimination to which they have been subject, is fundamentally flawed. Under Federal law, discrimination in the Federal workplace is prohibited on grounds of race, color, sex, ethnicity, religion, age and disability. Unfortunately, ever since these protections were extended to Federal employees in 1972, this system has poorly served the Federal Government and its employees. More than a dozen hearings have been held about the defects in this system and work to formulate the legislation that is now before this Committee began more than 7 years ago. Near the end of the last Congress, this Committee held a markup on legislation that is identical to S. 404 pending before the Committee today. On a Voice vote, the bill was reported favorably by the Committee.[2] It is time to reform this system and I and my colleagues urge this Committee and the Senate to act favorably on this legislation as soon as possible.

I. *The Federal EEO Administrative Process Remains Fundamentally Flawed*

It is not hard to find compelling evidence that the existing EEO administrative process is replete with defects. This Committee, and several Committees in the House, have heard extensive testimony from victims of discrimination as well as professionals intimately acquainted with this process, which demonstrates that this system needs to be completely overhauled. Virtually every Chair of the EEOC since 1972, when the protections against employment discrimination were first extended to Federal employees,[3] has recognized that the system has fallen far short of the high expectations that Congress has had for it. Not surprisingly, therefore, strong bipartisan support exists to reform the system.

At a hearing held before this Committee on October 23, 1991, witnesses described in great and disturbing detail the various ways in which this complaints processing system failed them:

> Virginia Stiehl Delgado was subject to sexual harassment at the Department of Navy. The administrative processing of her complaints of discrimination took 3 years, during which the Navy Department investigated the claims against itself and found no evidence of discrimination. Five years after her discharge, a Federal court found that discrimination had occurred. Her supervisor who committed the discrimination, and who was the Director of EEO, was never punished and continued to receive promotions.
>
> Elaine McKoy claimed to have been subject to race discrimination and reprisal at the National Archives and Records Administration. She testified that her supervisor warned her repeatedly against pursuing her discrimination claims. Great delay marked the processing of her claim. During this period, her supervisor received high promotions.
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> Donald Rochon was subject to racial harassment and reprisal at the Federal Bureau of Investigation. His discrimination claims were processed by officials whom he had identified as perpetrating the discrimination. After he filed his

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[1] The organizations whose support of this legislation has been formally recorded are: American Association of Retired Persons; American Federation of Government Employees; Blacks in Government; Federally Employed Women, Inc.; Federally Employed Women Legal & Education Fund; IXAGE; Leadership Conference on Civil Rights; Mexican-American Legal Defense & Education Fund; NAACP Legal Defense & Educational Fund, Inc.; National Federation of Federal Employees; National Treasury Employees Union; National Women's Law Center; Terris, Pravlik & Wagner; Washington Lawyers' Committee for Civil Rights and Urban Affairs; and the Women's Legal Defense Fund.

[2] *See Report of the Committee on Governmental Affairs to Accompany S. 2801*, S.R. No. 102–484, 102d Cong., 2d Sess., at 13 (1992) ("Senate Report").

[3] The Age Discrimination in Employment Act (ADEA) was extended to Federal employees in 1974. *See* Pub. L. 93–259, 88 Stat. 74 (1974). And, the protections against discrimination because of disability were extended to Federal employees in 1978. *See* Pub. L. No. 95–602, §505 (a)(l) (1978).

discrimination claim, he was threatened with "mutilation and death." Most of the officials implicated in his claims were never punished and flourish in their careers.

Loretta Davis Thomas claimed to have been subject to race discrimination and reprisal at the Internal Revenue Service. Once she filed her discrimination complaints, she experienced severe reprisal practiced against her.

Penny Susan Patterson claimed to have been subject to extensive sexual harassment and reprisal at the Bureau of Alcohol, Tobacco & Firearms. Her complaint of discrimination was investigated by a man who failed to interview many of the witnesses she identified and who was himself engaged in improper sexual conduct.[4]

A similar record has been compiled in the House. At a hearing jointly held on March 1, 1990 before Subcommittees of the House Committee on Education and Labor and the House Committee on Post Office and Civil Service, extensive evidence was presented of the deficiencies in the Federal sector EEO administrative process.[5] Since then, the same House Subcommittees have heard from victims of this process at hearings held on August 1, 1990 and November 20, 1991, at which time we were reminded of the high price that is daily paid in pain and suffering by those victims of discrimination for whom the noble promise of this complaints processing system is really a cruel hoax.[6] And, years before, a Subcommittee of the House Government Operations Committee conducted a series of four hearings on the shortcomings of this process.[7] Together, the evidence compiled in these hearings comprises hundreds of pages of documentation in painful detail of the extensive and entrenched problems that have for years undermined the legitimacy and effectiveness of this system.

In addition, Chairpersons of the EEOC, the agency entrusted with responsibility for administering this process, have observed that the system is badly in need of repair. Former Chairman Evan J. Kemp, Jr. testified 3 years ago that:

> As a former Federal employee who filed a complaint of discrimination against my agency, I know well the shortcomings of the current system from a complainant's point of view. The criticisms heard most often are:
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> 1. The system is too complex; there are too many steps and pitfalls for the unwary;
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> 2. There is a perceived conflict of interest in having the accused agency control the development of the record;
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> 3. There are inordinate delays to get to a final decision; and
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> 4. There is a lack of sanctions against agencies for inadequate investigations and inexcusable delay.

These problems with the process disadvantage everyone involved, most particularly Federal workers.[8]

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[4] This Committee held an earlier hearing on May 16, 1991 to examine the results of a two-year investigation conducted by the General Accounting Office into the processing of EEO complaints by Federal agencies and the EEOC.

[5] *See* Subcommittees on Employment Opportunities & Civil Service, *Joint Oversight Hearing on Equal Employment Opportunity Commission's Proposed Reform of Federal Regulations*, 101st Cong., 2d Sess. (1990).

[6] *See* Subcommittees on Employment Opportunities & Civil Service, *Joint Oversight Hearing on Equal Employment Opportunity Complaint Process*, 101st Cong., 2nd Sess. (1990) ("First Joint House Oversight Hearing"); Subcommittees on Employment Opportunities & Civil Service, *Joint Oversight Hearing on Victims of EEO Complaints Process*, 102nd Cong., 1st Sess. (1991) ("Second Joint House Oversight Hearing").

[7] The first hearing was conducted on October 8, 1985 and the proceedings are reported in Subcommittee on Employment & Housing, *Processing EEO Complaints in the Federal Sector—Problems and Solutions*, 99th Cong., 1st Sess. (1985) ("First Hearing"). The second hearing was held on June 17, 1986 and its proceedings are reported in Subcommittee on Employment & Housing, *Processing EEO Complaints in the Federal Sector—Problems and Solutions (Part 2)*, 99th Cong., 2d Sess. (1986) ("Second Hearing"). The third hearing was held on September 25, 1986 and its proceedings are reported in Subcommittee on Employment & Housing, *Processing EEO Complaints in the Federal Sector—Problems and Solutions (Part 3)*, 99th Cong., 2d Sess (1986) ("Third Hearing"). The fourth hearing was held on June 25, 1987 and its proceedings are reported in Subcommittee on Employment and Housing, *Processing of EEO Complaints in the Federal Sector: Problems and Solutions*, 100th Cong., 1st Sess. (1987) ("Fourth Hearing").

The findings and recommendations from these hearings were reported on November 23, 1987 and appear in Committee on Government Operations, *Overhauling the Federal Complaint Processing System: A New Look at a Persistent Problem*, H.R. Doc. No. 100–456, 100th Cong., 1st Sess. (1987).

[8] *See* Second Joint House Oversight Hearing, at 7 (Statement of Evan J. Kemp, Jr.).

Before him, Clarence Thomas, who was then Chairman of the EEOC, repudiated this administrative process. Chairman Thomas was asked: "tI)s the message to Federal workers that if you can afford to hire an attorney you're better off doing so and going to court right away?" He replied:

> The amount of time that it takes for [the complaint process) to end and then be reviewed by EEOC admittedly—I think there is enough blame to go around for everybody—it takes too long. If there is a way to circumvent that process—and that includes going to Federal Court—until that is corrected, then I would have to suggest that would be the best way to go.[9]

And, Eleanor Holmes Norton, who has been the Chair of the EEOC and is now a member of the House Committee on Post Office and Civil Service, testified that:

> The inherent conflicts of interest, the time delays, the complexity of the machinery, and the lack of sanctions have produced a situation in which government workers are not afforded the rights that are available to workers in the private sector. The irony is that Federal employees are second-class citizens in a complaint system that is supposed to eliminate second-class status. . . . I cannot overestimate the urgency of change. It is appalling that the government allows itself what it does not permit or countenance in the private sector.[10]

Together, this documentation and these disturbing observations from former Chairs of the EEOC spanning the political spectrum compel the conclusion that there are common and enduring problems afflicting the EEO complaints adjudication process which require an immediate legislative solution.

These problems, documented over more than a decade, continue to plague the system. Although there are many ways to demonstrate the currency of the defects of this system, two examples should suffice:

First, the pace at which complaints are adjudicated in this system has been intolerably slow. In Fiscal Year 1991, the most recent year for which data is publicly available from the EEOC, the average time consumed in processing EEO claims through an adjudication on the merits was 534 days.[11] Moreover, the pace has not improved over time. The average time to adjudicate claims on the merits in fiscal year 1990 was 526 days,[12] the average for processing claims on the merits in fiscal year 1988 was 607 days and in fiscal year 1983 it was 524 days.[13]

These time delays are intolerable, robbing the complaints processing system of any legitimacy as an effective means to resolve EEO claims. They are the product of a system with too many steps, administered by different staff at different stages, in which there have been no effective incentives for agencies to complete the processing of claims in a timely fashion. In addition, since the complaints processing is conducted separately at each agency, there are complaints adjudication systems operating simultaneously at 119 Executive agencies, some more efficiently than others, but none operating with any real accountability to the EEOC or the Congress.

Second, the current system entrusts to the agencies the investigation and adjudication of the claims brought against them, creating the perception, and unfortunately the reality at times, of a serious and debilitating conflict of interest. Even though claimants may elect to have their claims tried before independent administrative judges at the EEOC, those judges issue decisions that are merely recommendations which the agencies are free to reject or modify. Therefore, the agencies decide the cases that are brought against them, relying largely upon evidence obtained from investigations that these agencies also conduct.

The effect of this conflict of interest can be measured by comparing the receptivity of the agencies to findings of discrimination, recommended by EEOC administrative judges, with their receptivity to recommended findings of no discrimination. Agencies that approach discrimination findings with impartiality would be expected to treat these findings alike, rejecting and accepting these findings with comparable frequency. The reality, however, falls far short of this expectation. In Fiscal Year 1991, for example, executive agencies as a group rejected 50.8 percent of the recommended findings of discrimination while rejecting only 0.1 percent of the recommended findings of no discrimination. This disparity is of staggering significance.

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[9] Fourth Hearing, at 59–60.

[10] *See* First Joint House Oversight Hearing

[11] *See* EEOC, *Federal Sector Report on EEO Complaints and Appeals, fiscal year 1991*, at 42 (1991) (EEOC Report for fiscal year 1991).

[12] *See* EEOC, *Report on Pre-Complaint Counseling & Complaint Processing for fiscal year 1990*, at 39 (1990).

[13] *See* EEOC, *Report on Pre-Complaint Counseling & Complaint Processing for fiscal year 1989*, at 34 (1989).

It indicates that executive agencies are nearly 500 times more willing to reject a finding of discrimination than a finding of no discrimination.[14]

This problem also appears to be entrenched. Disparities of dramatic proportions have recurred each year for which the EEOC has made this data publicly available. In Fiscal Year 1990, for example, executive agencies rejected 60 percent of the recommended findings of discrimination and only 0.5 percent of the recommended findings of no discrimination, reflecting that these agencies were 120 times more receptive to findings of no discrimination.[15] Similarly, in Fiscal Year 1989, executive agencies rejected 58.5 percent of the findings of discrimination while rejecting only 0.2 percent of the findings of no discrimination, revealing that the agencies were 290 times more receptive to findings of no discrimination.[16]

No legal system can achieve legitimacy, even if it had no other shortcomings, with disparities in treatment of this magnitude. It is not surprising, therefore, that complainants report an overwhelming desire to avoid this administrative process and either proceed through the negotiated grievance process, when they are covered by a collective bargaining agreement, or go to the Federal courts at the earliest possible time. Few, however, have the benefit of legal representation or the resources to engage in protracted and expensive litigation. To most complainants, then, this process affords the only forum in which their claims of discrimination can be heard. These claimants deserve a level playing field.

Conflicts of interest and time delays are only two of the many flaws in the current complaints adjudication system which Federal employees are required by statute to use. Other problems with the system range from the inadequacy of the factual records compiled by the agency when it investigates itself and the limited authority of administrative judges to compel attendance of witnesses at hearings of these claims, to the overly complex and slow system for the adjudication of EEO claims mixed with alleged civil service violations, to the frequent fears of reprisal that claimants and those who seek to assist them feel and the reluctance of agencies to discipline officials whose conduct has been found to be discriminatory. Together, these apparent weaknesses in the current system and the broad, bipartisan consensus that this system poorly serves our government, should ring a clarion call for prompt and fundamental legislative reform.

II. *The Federal Employee Fairness Act*

The profound and intractable defects afflicting the current complaints adjudication process and the modest impact of the new EEOC regulations compel the conclusion that comprehensive reform of this system is needed, and it is needed now. While some regulatory improvements in the system have been achieved by new regulations issued by the EEOC, the current system is rooted in a flawed structure that is created by statute. Accordingly, only legislation holds any promise of ultimately remedying the many defects of this system.

A list of these fundamental and persistent defects, which the EEOC's new regulations fail to address, confirms the need for legislation:

1. It is fundamentally unfair for agencies, against which EEO claims are pending, to investigate and adjudicate those claims themselves. Therefore, it is necessary for the factual development and the adjudication of these claims to be conducted by some other means.
2. The investigations that the agencies conducted have often created files that, although voluminous, omit information which is essential to the full and fair adjudication of the EEO claims. Therefore, it is necessary to devise another way to develop the facts with which the parties may present their positions at hearings on the EEO claims.
3. The time period within which complaints may initiate the process for pursuing an EEO claim should be expanded to permit reflection and an opportunity to review suspicions of discrimination before any action is taken. The EEOC regulations expand from 30 to 45 days the time from the last discriminatory incident within which complainants must contact an agency counselor to begin pursuing a claim. This time period must be considerably expanded.
4. Deadlines are needed within which the agency, the EEOC and the complainant must discharge their respective responsibilities within the complaints

[14] *See* EEOC Report for fiscal year 1991, at 62–63.

[15] *See* EEOC Report for fiscal year 1990, at 50–51.

[16] *See id.* Disparities of comparable magnitude have appeared every year for which this data has been published. In fiscal year 1983, for example, agencies rejected 39.4 percent of the findings of discrimination while rejecting only 0.4 percent of the findings of no discrimination and in fiscal year 1985, agencies rejected 45.5 percent of the findings of discrimination while rejecting only 1.3 percent of the findings of no discrimination. *See id.*

adjudication system. The deadlines established by the section 1614 regulations are a good start but fail to create any real incentive for agency compliance.

5. Employees whose claims encompass both an EEO claim and a challenge under the civil service rules, and who therefore present a "mixed case," are compelled to proceed before another agency, the Merit Systems Protection Board, and then may present their EEO claim to the EEOC. Where those agencies differ, the claim is submitted to a special panel. This system is enormously complex and time consuming and requires modification.

6. Too often, employees who commit acts of discrimination do so with impunity, retaining their employment and sometimes reaping promotions instead of receiving punishment for illegal conduct. Legislation is needed to ensure that persons found to have committed acts of discrimination are subjected to appropriate sanctions.

7. There are several judicial interpretations given to the statutes and rules governing this system that have warranted revision for years and which legislation must address.

I support the Federal Employee Fairness Act because it offers fundamental revisions to the current complaints processing system and I regard its approach as providing the best hope of transforming this system into one that will fairly and promptly address the Federal sector claims of discrimination. While there are many facets of this legislation that warrant its commendation, several should be noted here.

First, the removal from the executive agencies of the responsibility for investigating and adjudicating complaints of discrimination is to be applauded.[17] For the first time since 1972, when Title VII coverage was extended to Federal employees, the fox would no longer guard the chicken coop; the stain from the conflict of interest which inevitably taints the complaints adjudication system would finally be removed. The Act would entrust authority to issue final decisions, rather than simply recommendations, to the Administrative Judges of the EEOC.[18] The Act wisely consolidates much of this complaints adjudication process into one agency, the EEOC, which operates independently of the other executive agencies against which EEO claims are lodged.[19] In addition, the centralization of the complaints adjudication process will yield other significant benefits. The staff handling these claims can, and will, be regularly and properly trained.[20] The assignment of these functions to a single agency also should increase the accountability for the operation of this system to the Congress and the public. And, the Act will create economies of scale which ensure that the complaints adjudication system can be fully and properly funded.

The Congressional Budget Office has reported that enactment of this legislation "could result in savings to the Federal Government of as much as $25 million annually. . . ."[21] This report is based upon a study, conducted by the General Accounting Office (GAO) in which it surveyed the costs associated with processing discrimination complaints at 29 of the 119 Federal Executive agencies which administer the complaints processing system.[22] In a report issued in March, 1992, the GAO concluded that those agencies, alone, expended $139 million on this complaint adjudication process. Even minor modifications to the existing system, therefore, will yield significant cost savings.

Second, the Act would create a new system by which the facts relating to claims of discrimination, and the defenses to such claims, are collected and examined. Under the current rules, the agencies conduct investigations of themselves, creating another conflict of interest that the EEOC's section 1614 rules do not eliminate. The current process for conducting investigations also suffers from another serious defect that the Act addresses. Investigations often result in the compilation of files which,

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[17] Since Title VII expressly entrusts final action on complaints of discrimination to the executive agencies, removal of this function from those agencies requires legislation. *See* 42 U.S.C. §2000e–16 (c).

[18] Of course, either party should be entitled to and the Act provides for appeals from the judges' final decisions to the EEOC.

[19] Of course, the Act must afford employees of the EEOC with discrimination claims the opportunity, if they so choose, to have the factual development and adjudication of those claims conducted by another agency.

[20] Toward that end, I encourage an enhancement in the grade levels for Administrative Judges and other staff affiliated with the Federal complaints adjudication systems that will ensure that the EEOC can attract and retain qualified staff.

[21] *See* Letter to the Honorable John Glenn, Chairman, Senate Government Affairs Committee from Robert D. Reischauer, Director, CBO (Aug. 20, 1992), *reprinted in* Senate Committee Report, at 21.

[22] *See* GAO, "Federal Workforce: Agencies' Estimated Costs for Counseling and Processing Discrimination Complaints" (March, 1992).

although voluminous, omit facts that in the preparation for the hearing the parties or the Administrative Judge discover are relevant and should have been collected. Moreover, the quality of the investigations vary significantly; some are conducted more vigorously than others.

The Act would transfer the principal fact gathering responsibility from the agencies, which have handled it alone in the past, to the parties under the supervision of an Administrative Judge.[23] I applaud this approach since it entrusts this important responsibility to the parties; that is, the complainant and the agency, who have the greatest interest in seeing it conducted properly. And, it permits the parties, with involvement from the administrative judge who will hear the claim, to define the scope of the discovery and to identify the facts that are needed to prove and rebut the claims.

When a complainant is unrepresented, the Act wisely contemplates that the Administrative Judge will require that the record be sufficiently developed and, if necessary, will identify the discovery needed by the complainant to ensure that a full and fair hearing is conducted. This provision for the discovery of facts where the complainant is unrepresented is critical to the protection of these rights guaranteed by the Federal equal employment laws. We are hopeful that the discovery process provided by the Act will improve the quality of the fact-finding upon which the hearings must rely.

Third, the Act expands the time period within which claimants must initiate the complaint process. Under current rules, claimants must initiate the process within 45 days of the last incident of discrimination that is alleged.[24] Employees in the private sector, however, are entitled to a minimum of 180 days within which to initiate the process available to them.[25] And, even more closely related, the Civil Rights Act of 1991 affords employees of the U.S. Senate 180 days before they must initiate the complaints adjudication process available to them.[26] Employees of executive agencies should be accorded, and the Act provides, the same time period of 180 days within which to initiate the complaint process. This additional time affords employees the opportunity to deliberate, to consult legal counsel, and to informally investigate the circumstances surrounding the incident that they may challenge.

Fourth, deadlines are needed within which the agency and the EEOC as well as the complaint will be obligated to complete the tasks assigned to them by the complaints adjudication system. Here the EEOC's new regulations make a significant contribution, creating for the first time limitations applicable to the agencies and to the EEOC.[27] But, as long as the agencies retain final decisionmaking authority, they remain at liberty to reject any sanctions that an Administrative Judge might impose for noncompliance with the time deadlines. By entrusting the authority to render final decisions to the Administrative Judges, as well as prescribing the consequences that would flow from noncompliance with the deadlines, the Act would substantially increase the likelihood that the deadlines would be honored.

Fifth, the current system for handling mixed cases, by which claims of discrimination are joined with challenges arising under the civil service rules, is hopelessly complex and long. Employees, agency employers, and the administrative agencies involved in the mixed case procedure spend a great deal of time and effort attempting to resolve often simple cases, with inconclusive results. The central idea of the mixed case procedure, that the EEOC and Merit Systems Protection Board (MSPB) could both resolve the same case, with each having parity with the other, seems in retrospect to have been doomed from the start. This splitting of jurisdiction was rooted in uncertainty over how well the newly created institutions would do their jobs, and a mistrust of the ability of EEOC and MSPB to decide matters outside their own jurisdiction. Fortunately, these concerns have proven to be largely misplaced, and the track records of these decision-making entities provide a basis for employees to evaluate the appropriate forum for a particular case.

To rectify the extraordinary delays and procedural confusion which now characterize the processing of mixed cases, the Act permits employees to choose the forum—MSPB, EEOC, or grievance arbitration—in which they wish to proceed. Rather than

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[23] I also believe, and the Act seems to recognize, that the agencies should continue to play an important role in the fact finding process. The agencies are necessarily more familiar with the documents created in connection with any challenged personnel action. It is important, therefore, that the agencies continue to have responsibility for the collection of documents relevant to proving, and rebutting, claims of discrimination. In addition, the agencies should retain, and the Act seems to provide for, the opportunity for brief investigation of the allegations that may facilitate the conciliation of those claims.

[24] *See* 29 C.F.R. § 1614.105.

[25] *See* 42 U.S.C. § 20003–5 (e); 29 U.S.C. § 626(d).

[26] *See* Pub. L. No. 102–166, 105 Stat. 1071, § 305(a) (Nov. 1991).

[27] *See* 29 C.F.R. §§ 1614.105, .106, .108, .109, .110.

have several different agencies engage in a separate and time-consuming review of each other's decisions, the Act allows the chosen forum—the MSPB, the EEOC, or a collective bargaining agreement—to decide all the issues presented to it in accordance with established case law.[28] At the end of the process, employees alleging discrimination retain the right to de novo review of that claim. The Act will resolve mixed cases far faster than under the old system, and allow for more consistency in the adjudication of discrimination claims.

Sixth, agencies are often reluctant to punish employees who are found by either an administrative or judicial forum to have committed discrimination. The witnesses who testified at an earlier hearing before this Committee confirmed a suspicion which many have held that managers who commit discrimination are rarely punished. Not surprisingly, the failure to discipline proven discriminators breeds contempt, or at least disregard, for the EEO laws. Managers are left with the impression that they can commit discrimination with impunity and the employees they supervise become demoralized and reluctant to exercise their rights under the equal employment laws in the belief that no improvements will ensue. While some agencies are undoubtedly diligent in imposing penalties where the commission of acts of discrimination has been proved, there are enough occasions when this does not occur to warrant a change.

The Act would create an important system by which officials found to have committed acts of discrimination would be subject to investigation by the Office of Special Counsel and, where the evidence warrants, subject to disciplinary action. In entrusting the investigation and the choice whether to seek disciplinary action to the Office of Special Counsel, the Act adopts procedures that currently exist to treat employees who are charged with engaging in other forms of prohibited personnel practices.[29] As a result, officials found to have committed acts of discrimination are properly afforded all the due process available to employees accused of other misconduct.

Accordingly, those officials proved to be discriminators are entitled to representation and an opportunity to present their defense during the investigation conducted by the Office of Special Counsel. In the event the Special Counsel commences a disciplinary action, the official found to have committed discrimination is afforded: (1) an opportunity to respond to the charges; (2) a right to be represented; (3) a hearing before the Merit Systems Protection Board ("MSPB") or an administrative law judge appointed by the Board; (4) a transcript of the hearing proceedings; (5) a written decision, setting forth reasons for the determination whether disciplinary action is taken; and (6) a right of appeal an adverse decision to the U.S. Court of Appeals for the Federal Circuit.[30] Thus, existing law affords persons found to have committed acts of discrimination abundant procedural protections before they can be subject to disciplinary action.[31]

In light of these very substantial procedural protections already made available by existing law, the additional procedure added by amendment at the Markup in the last Congress is unnecessary and will very likely undermine other benefits that the legislation is designed to achieve. By amendment, the legislation now provides that all persons accused of committing acts of discrimination are entitled to appear at the hearings and be represented by counsel at those hearings.[32] However, most hearings do not result in findings of discrimination and, even where discrimination is proved, an investigation must be conducted and a hearing held before any discipline is imposed. On the other hand, the introduction of additional legal counsel in every administrative hearing will inevitably complicate and protract the proceedings.[33] Since one of the central benefits of this legislation is the expedition of EEO administrative proceedings, the delay caused by the introduction of additional coun-

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[28] Of course, the EEOC will be obligated to defer to the interpretations of civil service law construed by the MSPB, while the MSPB will be obligated to defer to the interpretations of the equal employment laws given by the EEOC.

[29] *See* 5 U.S.C. § 1215.

[30] *See* 5 U.S.C. § 1207.

[31] In addition to the procedural protections identified above, officials accused of committing discrimination are also assisted by the legal representation, at no charge to them, that is afforded by agency counsel during the administrative hearings before the EEOC. Naturally, persons charged with committing discrimination typically have the same interest as the agency employing them in defending the complaint of employment discrimination. Therefore, these persons accused of committing discrimination enjoy the benefits of free legal representation before a finding of discrimination is even made.

[32] *See* S. 404, at 18, lines 20–25.

[33] Indeed, the EEOC discontinued its practice years ago of allowing persons charged with committing discrimination to appear at the hearings with legal representation because it expanded and complicated the proceedings. *Citation.* The same undesired results may be achieved by the additional procedures provided by the legislation.

sel in every hearing will undermine this important goal. Accordingly, the provision of legal representation to persons accused of committing discrimination affords little benefit and will likely aggravate problems that the legislation is designed to ameliorate.

Seventh, the Act provides for a number of minor revisions to the existing complaints adjudication system, each of which addresses an important shortcoming. As an example, claimants who fail within the time allowed to name the head of their agency as the defendant in actions filed in the courts will have their case dismissed.[34] Simple lapses committed by unwary complainants, particularly those unable to retain legal counsel, therefore lead to draconian results. The Act should, and does, provide for relief from such amendment to this technical defects as it does for other such obstacles that have arisen in the interpretation and application of the Federal equal employment laws.

III. *Conclusion*

More than 20 years have passed since Title VII was amended to extend the protections against employment discrimination to Federal employees. The complaints adjudication system, which was created with the noble ambition that it afford an inexpensive, speedy and fair means of resolving EEO claims, has fallen far short of each of these goals. We have the benefit of an extensive record that documents the nature and extent of the entrenched defects in this system. The Federal Employee Fairness Act offers an outstanding opportunity to make fundamental reforms to this system which are sorely needed. I look forward to working with you in this important effort.

ARTICLE FROM USA TODAY

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AUGUST 17, 1992

Sharon Capell says she was harassed by a male supervisor at a VA hospital in Decatur, Ga., for six months last year.

"At first it was verbal. Then there was physical contact," she says.

Capell, 35, a purchasing clerk, quit because she believed that the hospital's equal opportunity officer wasn't sympathetic. She later filed a formal complaint and was reinstated in another job with back pay.

Capell is among at least two dozen employees whom investigators begin interviewing today amid charges of widespread sexual harassment at the Decatur hospital involving at least five top male officials.

Stories like Capell's are being heard at other VA hospitals, plus complaints of career-damaging retaliation from agency officials:

—A Mountain Home, Tenn., pharmacist says staff tried to cover up her harassment. After the offender resigned, court papers say, Rebecca Ainlay's new boss "created an extremely hostile work environment . . . calculated to make her quit."

—An administrator at Lyons VA Medical Center near Plainfield, N.J., says she had a prime office with a secretary and "prestige." Now, Donna Grabarczyk is in a tile-floored basement with "a littler window."

Some, fearing similar actions, remain silent about abuses at the nation's 368 VA hospitals and centers.

Others, concerned that the VA allegations follow the Navy Tailhook Scandal and sexual assault reports from the Persian Gulf war, are speaking out. "We have to make sure the atmosphere is conducive to treating women veterans," says Rep. Lane Evans, D-Ill., head of the House VA investigations panel.

Veterans Affairs' top equal opportunity official, Gerald Hinch, says most reprisal charges are "due to the environment that's created and the estrangement of the parties than an actual, deliberate retaliation."

Some aren't convinced. Grabarczyk says retaliatory action "builds up, and the first thing you know, your career is destroyed." That's how a Tennessee district judge

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[34] This result occurs because Title VII provides that the head of the agency shall be named as the defendant in judicial actions and requires that such actions be filed within 90 days of final agency action. *See* 42 U.S.C. §2000e–16 (c), as amended by the Civil Rights Act of 1991. The failure to name the agency head, or otherwise put the agency head on notice of action, within the 90 day allotted period has been grounds for dismissal of the action. *See, e.g., Johnson v. Burnley*, 887 F.2d 471 (4th Cir. 1989); *Johnson v. Horne*, 875 F.2d 1415 (9th Cir. 1989).

said the VA responded in Ainlay's case. She testified that her boss, Thomas Mann, made lewd remarks, threw her to the floor and jumped on her.

Mann denied the charges but eventually resigned and paid $5,000 in damages. Yet Ainlay's work hours were changed, she was denied promotion and she often was belittled by her new supervisor.

The court found the VA guilty of retaliation and ordered it to stop. But, says Ainlay's lawyer, Debra Wall, "it has gone on." Neither the VA nor Wall would discuss a new retaliation complaint, now pending.

Wall, who has spoken with lawyers in other VA cases, says retaliation is "a major problem" in the agency. As soon as complaints are made, women "immediately suffer adverse consequences from their supervisors."

ARTICLE FROM THE ATLANTA JOURNAL AND CONSTITUTION

JANUARY 20, 1993

HEADLINE: VA probe cites top officials in harassment Report: Decatur hospital's chief did nothing to stop it

BYLINE: By Ellen Whitford, Staff Writer

Two of the most powerful men at the Veterans Affairs Medical Center in Decatur harassed female employees, and the hospital's director at the time apparently did nothing to stop them, according to a report issued by a federal investigative agency.

The scathing report, written by the VA Office of Inspector General (IG), accuses the hospital's former associate director—Robert E. Long—and chief medical officer—Dr. Wendell Musser—of blatant sexual harassment. The two men were the second and third most powerful officials at the hospital.

Mr. Long retired three days before the IG made its first visit to the hospital. Dr. Musser was transferred last week—when the report was made public—to another division of the VA.

OFFICIALS TRANSFERRED

When VA officials released the report Friday, sections were blacked out, covering up job titles and other identifying information. An unedited version of the report was obtained anonymously Tuesday by The Atlanta Journal-Constitution.

The report also identifies the hospital's top personnel administrator, Regis Massimino, and the former Equal Employment Opportunity (EEO) coordinator, Tommy Clack, as having harassed women.

Mr. Massimino was transferred at the same time as Dr. Musser. Both men are working at the VA Regional Director's Office in Atlanta, said spokeswoman Lupe Dominguez. Neither was demoted, she said.

Mr. Clack was reassigned in August to another department within the hospital; his pay was downgraded in October.

The report also is critical of the associate director of the VA's Rehabilitation Research and Development Center, Bruce Blasch, who is still in the same job.

None of those identified in the report could be reached for comment. Mr. Long has an unlisted number; Mr. Clack, Mr. Blasch and Dr. Musser did not return phone messages, and Mr. Massimino declined to comment, referring all questions to his attorney, Joyce Kitchens. Ms. Kitchens, a former VA lawyer, will also be representing Dr. Musser in any appeals.

"My clients got caught up in an avalanche of anger and frustration, but they're innocent," Ms. Kitchens said.

Jeannie McCleary, who worked for Mr. Massimino from 1986 through 1991, said Tuesday that she doubted the VA would punish the alleged harassers severely enough.

"I don't trust the system," she said. "I think they're going to put them some place for six months or a year, and before you know it they'll be back in similar positions.

"At the minimum, I think they should be demoted," she said, "not transferred."

The report was sharply critical of the hospital's former director, Glenn Alred, who retired in December after several months on medical leave.

The IG investigators interviewed 24 VA employees who said they knew of incidents of sexual harassment involving Mr. Long, the report said.

But even after employees complained about Mr. Long to the district counsel and to the IG hotline, Mr. Alred "apparently found no reason for convening an administrative investigation into the Associate Director's conduct," the report said.

"The Associate Director was named in about half of our interviews as sexually harassing women, and the Director was made aware of some of the behavior by the Associate Director, yet no apparent actions were ever taken," the IG report said. Such behavior, the agency wrote, "set the tone" at the hospital.

Mr. Alred could not be reached for comment.

The IG investigators, who first visited the hospital in July, interviewed 37 women who said they had been harassed. Some of the allegations go back 10 years.

Mr. Long was associate director of the hospital from 1986 until he retired in August; Dr. Musser has been chief of the medical staff since June 1980; Mr. Massimino has been chief of personnel since November 1985; Mr. Clack began working at the hospital in 1979 and became EEO officer in 1986; and Mr. Blasch came to the hospital in 1986.

ARTICLE FROM THE ATLANTA JOURNAL AND CONSTITUTION

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APRIL 27, 1993

HEADLINE: Former VA worker sues over alleged harassment Seeks $8 million in federal court

BYLINE: By Bill Montgomery, Staff Writer

A former research architect at the Veterans Affairs Medical Center in Decatur has sued the VA and top hospital administrators for $8 million, alleging that persistent, humiliating and demeaning sexual harassment drove her to quit her job.

The suit on behalf of Deborah Hayes Hyde charges that supervisors and policies at the Clairmont Road facility created a "hostile working environment" so severe that Mrs. Hyde and other female workers were forced to accept it "as a condition of employment."

The suit, filed Monday in U.S. District Court, names the VA and six officials, including Secretary of Veterans Affairs Jesse Brown, medical center Director Larry R. Deal, and Mrs. Hyde's former supervisor, Bruce Blasch. The suit charges that Mr. Blasch kept a female mannequin adorned with pasties and "other forms of sexually provocative feminine attire/lingerie" in his office, and referred to some of his female employees, including Mrs. Hyde, as members of the "itty bitty titty club."

Mr. Blasch's alleged conduct was fully known to his supervisor, Franklyn E. Coombs, the suit added. Mr. Blasch was formally reprimanded by Director Deal in January, after a report by the VA inspector general.

Mrs. Hyde left her job under duress in 1991, after nearly three years on the job, the suit says.

MONEY NOT 'MAIN THING'

"The money isn't the main thing; the people who allowed this situation are by and large still there, and have never even apologized. This makes me furious," said Mrs. Hyde Monday evening. "If all I recover are attorneys' fees but these men are called to account and the system changed, I would be satisfied."

Decatur attorney Charles Lako, who filed the suit, said VA employment grievance policies were designed to "stifle" any successful protest to sexual harassment. The suit alleges that Mrs. Hyde, upon filing an Equal Employment Opportunity Commission complaint, was told there she would have a face-to-face meeting with her alleged harassers.

"That's like telling the sheep to take her complaint to the wolf," said Mr. Lako.

ARTICLE FROM THE WASHINGTON POST

FEBRUARY 26, 1993

HEADLINE: Top Officials at VA Hospital Harassed Women, Probe Says

Subheadline: Pattern of Abuse Covering Decade Is Cited

BYLINE: By Bill McAllister, Washington Post Staff Writer

ATLANTA—Debrah Hyde, a Ph.D. candidate at the Georgia Institute of Technology, will not soon forget the summer day in 1988 when she showed up for work at the big blue and white brick veterans hospital that sits on a red clay hillside near a piney woods.

"Oh, look. Oh Good," she said her male supervisor announced. "We've got another member of the itty bitty titty club."

"I was so shocked. I said: 'I beg your pardon?' I couldn't believe what he said," Hyde recalled.

As remarkable as Hyde found her welcome, Federal investigators have said it was typical of the way scores of female employees were treated for more than a decade at one of the largest hospitals run by the Department of Veterans' Affairs. The Atlanta Veterans Affairs Medical Center in suburban Decatur, according to an investigation by the VA's inspector general made public last month, was the site of a pattern of sexual harassment that lawyers who are experts in the field say is probably unrivaled at any Federal facility in the nation.

Top officials here harassed women for more than 10 years, according to inspector general Stephen A. Trodden. In his report, which has led to disciplinary action against five hospital employees, Trodden accused:

—Deputy director Robert E. Long of harassing 13 women, inviting some for weekend trips or lunches alone at his house. Once he grabbed a woman's wrist and began "sniffing . . . up to the level of her breast," investigators said. "I don't know what you're wearing but it certainly does things for me," the report said Long told the startled woman.

—Senior medical officer Wendell Musser, the hospital's No. 3 official, of harassing seven women over 10 years. Musser was said to have frequently hugged women against their wishes, "playfully" tugged at undergarments and touched women inappropriately. When questioned about his behavior, Musser laughed out loud, women and other hospital employees reported.

—Chief of personnel Regis Massimino of harassing six women over six years with unwelcomed hugging and prolonged discussions about sex.

—Associate research director Bruce Blasch of harassing women in the rehabilitation research center at the hospital for four years, deeming some—as he did with Deborah Hyde—members of an "itty bitty titty club" and making crude remarks to a woman who was pregnant.

Perhaps most significantly, the inspector general accused Tommy Clack, a member of hospital director Glenn Alred Jr.'s staff, a leader of veterans' groups and the hospital's equal employment opportunity (EEO) coordinator since 1979, of approaching as many as 20 women with sexual requests.

Clack, who is married and has a child, told the women, the inspector general said, that his wife was having difficulty getting pregnant and he urgently needed their assistance to get a sample of his sperm to the hospital laboratory. While at work in the hospital, Clack asked the women to help him masturbate and investigators said at least two "relunctantly complied."

"He has a way of making you feel sorry for him," one of the first women Clack approached said in an interview. "I was a friend of Tommy's and he needed help," said the woman, who said she rebuffed his advances.

How this behavior—at what former VA employee Debbie Monis called "the hospital from hell"—went undetected for so long illustrates both the imperfections of the government's equal employment opportunity complaint process and the difficulty VA executives have faced for decades in running the department's far-flung system of hospitals. "To be honest, we don't understand why it went on so long," said James W. Holsinger Jr., the chief medical officer of the Department of Veterans' Affairs.

A key reason was what many investigators described as a "Catch-22 situation." Hospital director Alred, the longtime head of the Atlanta facility and a man with close ties to members of the Georgia congressional delegation, had established criteria that made it unlikely that any woman's accusation would be heard outside the hospital.

Under Alred's edict, only formal EEO complaints—those where a woman was willing to confront her alleged harasser—would be investigated. Since that would have required taking on the hospital's top administrators, inspector general investigators said most women feared for their jobs and kept silent. The result: "Only one" woman filed a formal complaint in the four years before the inspector general launched his inquiry.

"We were toys, we were things they had to be played with," said Sharon Conley, who left the Atlanta hospital last year after 17 years with the VA. "It boggles my mind I stayed as long as I did."

The Atlanta facility, like many VA hospitals, was run by what one senior official described as the "classic old boy network" of administrators and physicians.

For example, after Clack approached her, on woman went to director Alred who, according to investigators, acknowledged having referred Clack to the hospital psychiatrist about 10 years ago and cited the woman's complaint of inappropriate behavior. Investigators said whatever treatment Clack received was short-lived, and Alred kept him on as the EEO coordinator.

After a break of several years, inspector general investigators said Clack once again began approaching women with similar requests. Alred was informed and did nothing, the investigators said. A VA psychiatrist also expressed "little concern," saying that Clark's actions were "an understandable attempt at reaffirmation that the EEO coordinator is intact bodily," the investigators said of the Vietnam veteran.

Why local VA officials shielded such behavior for more than a decade, officials in Washington said, illustrates one of the difficulties in running what is at once one of the Federal Government's largest and most provincial agencies. With 171 hospitals and 259,549 employees, the VA is the largest health care system in the nation, but officials said it often takes the discovery of scandalous behavior to push the hospitals out of what former VA secretary Edward J. Derwinski has described as the "'circle the wagons' mentality" of its administrators.

The sexual harassment investigation has resulted in disciplinary proceedings against five VA employees and a separate criminal investigation has been launched at the hospital by the inspector general into how officials may have used an affiliated research foundation that spent thousands dollars in research money on travel, remodeling offices and other activities.

The criminal investigation apparently was triggered by complaints from Arthur Koblasz, an associate professor of civil engineering at Georgia Tech who worked part-time as a researcher at the Atlanta VA hospital. Koblasz said in an interview that he and a Georgia Tech lawyer first attempted to warn director Alred about sexual harassment and spending questions at the hospital in 1989. Their complaints were greeted with laughter and ridicule, Koblasz said. He said while he was working at the hospital, employees and students he sent there—including doctoral candidate Hyde—told him of the harassment. In his report, the inspector general said the harassment was common knowledge among female workers.

Koblasz later mailed many of the same allegations anonymously to the VA inspector general's office in Washington but IG officials said they were unable to corroborate his complaint. Later, in March 1992, then-Rep. Ben Jones (D-Ga.) sent a letter from a constituent to then-VA Secretary Derwinski complaining that hospital deputy director Long had sexually harassed a female employee.

A senior VA official who asked not to be named said Holsinger, the department's chief medical officer, proposed that the Atlanta hospital allegations be dealt with by transferring the accused men. In an interview, Holsinger denied proposing this, saying he wanted an investigation that would "dig up everything."

Derwinski ordered the inspector general to conduct a full-scale inquiry.

Eight months later, investigators said that their sexual harassment inquiry found clear violations of the government's laws against sexual harassment. Investigators said that the number of women who were harassed at the 2,000-employee hospital, where 61 percent of the staff is female, may never be known because many women workers declined to talk with them.

Since the inspector general's report was released last month, the harassment scandal has rocked the VA's medical hierarchy. Both Alred and Musser were well regarded as leaders in the department. "This little cabal there [in Atlanta] was a bunch of old-time VA cronies," said a senior VA official, who was present last March when the complaint from Jones reached Derwinski.

Neither the VA's chief medical officer, Holsinger, who is resigning Sunday, nor Anthony J. Principi, who succeeded Derwinski as VA secretary in the final weeks of the Bush administration, disputed the notion that "historically, we have had an old boy network," as Holsinger put it. But Holsinger said he believes the system is changing and said women were being moved into top hospital jobs.

When the report was circulated in November for comment, VA officials said that medical administrators were furious that it contained statements drawn from women who would not allow their names to be used. Inspector general Trodden insisted that his report be issued to show the full extent of the harassment at Atlanta. Holsinger said he feared the report would make allegations that could not be sustained in disciplining hospital employees.

Washington officials had clashed with Alred, head of the Atlanta hospital since 1980. Atlanta was "once of our chronic headache hospitals," said Derwinski, citing budget problems and difficulties with its affiliated medical schools.

"We received calls from members of Congress who said: 'Don't touch Glenn Alred,'" Principi said. He declined to name the lawmakers but VA workers in Atlanta and Washington said that Alred was renown for his political ties and efforts to get Georgia lawmakers to appeal for extra money for his hospital to ease what one official said were frequent fourth-quarter deficits.

But at the Atlanta hospital, there was another political power to contend with: Alred's close friend Tommy Clack.

One VA supervisor said he knew of complaints against Clack but that Alred would not take action against the EEO coordinator. "Tommy Clack is why we are here. Without Tommy Clack we would not have our jobs," the supervisor quoted Alred as having told department heads.

An ex-high school track star, Clack returned from Vietnam in 1967 a triple amputee. He was grad marshal of Atlanta's 1970 July Fourth parade and was lionized in the press for his role in what remains a popular war in the South. Nine years later, when fellow Georgian Max Cleland took charge of the Veterans' Administration, Cleland backed Clack for a job at the local hospital. "I thought he was a super guy and it was a great idea," said Cleland, now Georgia secretary of state.

After the IG investigation, Clack was removed as the EEO officer at the hospital and moved to a position in the prosthetics department at a lower salary.

Alred and Long, however, retired with full benefits before the inspector general report was issued, actions that VA officials say prevent any disciplinary action. The two men refused to be interviewed.

A VA spokesman here said that none of the five officials recommended for disciplinary action would agree to be interviewed. The five—Musser, Massimino, Blasch, Clack and Franklyn K. Coombs, the director of the hospital's rehabilitation research and development center—are reported to be appealing the proposed punishments.

Blasch, who was issued a letter of reprimand, has denied in a memo given hospital officials that he referred to Hyde as a member of "an itty bitty titty club." Coombs, who supposedly was present, also has filed a memo denying he heard the remark.

Three lawyers familiar with sexual harassment cases involving government workers said they were unable to recall another situation where so many senior government officials at one site had participated in sexual harassment for so many years.

Larry R. Deal, a VA administrator whom Holsinger picked to run the Atlanta hospital in September after Alred's departure, said, "I don't think that the problems that occurred here or are alleged to have occurred here are any different from what would have happened in any large organization." The Atlanta VA hospital is "no better or no worse than you'll find in all of society."

But in Washington, VA executives dispute the idea that Atlanta is typical of the VA's other 170 hospitals, Holsinger said, "If that's not an exception, I'm in a world of hurt."

PREPARED STATEMENT OF DONDI ORTIZ ALBRITTON

Mr. Chairman, Members of the Committee, my name is Dondi Ortiz Albritton, and I am a Special Agent with the Bureau of Alcohol, Tobacco, and Firearms. Thank you for allowing me to submit my statement to the Committee to be included in and made a part of the permanent records of these hearings. My statement focuses on the Federal Employee Fairness Act. By way of background, I am an African-American citizen of the United States presently residing in the city of Wichita, Sedgwick County, Kansas. I have been so employed continuously as a Criminal Investigator (Special Agent), (GS/GM–1811, by the U.S. Treasury Department, Bureau of Alcohol, Tobacco and Firearms (ATF), since September 17, 1984. I was a Special Agent in Oklahoma City, Oklahoma, prior to my transfer to Wichita, Kansas. I am currently employed as a Supervisory Criminal Investigator (Resident Agent in Charge), (GM–1811–14, and have been employed since June 4, 1989, at the Wichita, Kansas, Field Office. In addition to my present duties, I am the team leader for the Kansas City Field Division Special Response Team (SRT). The team is composed of numerous special agents and a supervisor who are trained in specialized high risk entries and arrest techniques during the execution of Federal Arrest and Search Warrants for firearms and narcotics violations.

In addition to my ATF experience, I was previously employed by the U.S. Naval Investigative Service/Naval Intelligence as a Special Agent, GS–1811, for approximately 3 years. My duties included investigating crimes of violence to include but not limited to rape, aggravated assault, murder, narcotics violations, espionage and counterintelligence operations, arson, protective service operations, etc. I have also served for extended periods of time outside the continental United States on special assignments to include a massive protective service operation in Naples, Italy, on senior Marine Corps and Naval Officers. This operation was initiated after the kidnapping of Brigadier General Dozier and the threat posed by the terrorist group "Red Brigade". I was also assigned collateral responsibilities to include Firearms Instructor, Unarmed Self-Defense Instructor and Technical Equipment Custodian. Prior to my previous employment, I served in the capacity of a local police officer

for approximately 3½ years. My assignments included Patrol Officer, Narcotics Investigations and Acting Relief Supervisor.

In addition to my civilian law enforcement experience, I have served as an enlisted and commissioned officer in the Tennessee Army National Guard and the U.S. Army Reserves in the Infantry Branch, Special Operations Command (SOCOM), and Military Intelligence Corps. I have held a variety of military supervisory and management positions for the past 18 years. My specific assignments have included Counterintelligence Agent (Sgt), Paducah, Kentucky; G–3 Assistant Test Officer (2LT), Oklahoma City, Oklahoma; Tactical Intelligence Officer (1LT), Olathe, Kansas; J–2 HUMIT Officer, (1LT), Republic of Korea; Platoon Leader (1LT), Collection and Jamming Company, Olathe, Kansas; and IEWSE Liaison Officer (CPT), 135th Military Intelligence Battalion (CEWI), Olathe, Kansas.

My military schools/training in support of military assignments also relates to my civilian work at ATF, which include completion of the following courses: Track Vehicle Mechanic Course, Fort Knox, Kentucky; Nuclear, Biological and Chemical Officer/Enlisted Course, Camp Shelby, Mississippi; Radiological Monitoring Course, Camp Shelby, Mississippi; Primary Leadership Course, 2074th U.S. Army Reserve School, Paducah, Kentucky; Counterintelligence Officer/Technician/Agent Course, Fort McCoy, Wisconsin; Army Precommissioning Course, The Army Institute for Professional Development (correspondence), Fort Eustis, Virginia; Naval Orientation Course, Naval Education and Training Program Development Center (correspondence), Pensacola, Florida; Intelligence in Terrorism Counteraction Course, U.S. Army Intelligence Center and School, Fort Huachuca, Arizona; Terrorism Instructor's Qualification Course, U.S. Army Command and General Staff College, Fort Leavenworth, Kansas; Military Intelligence Officer Basic Course, The Army Institute for Professional Development (correspondence), Fort Eustis, Virginia; Low Intensity Conflict Course, U.S. Army Command and General Staff College, Fort Leavenworth, Kansas; Infantry Officer Basic Course, Fort Benning, Georgia; and the Military Intelligence Officer Advance Course, Fort Huachuca, Arizona.

My military decorations include the Army Service Ribbon, the National Guard Individual Achievement Ribbon, the Army Reserve Component Achievement Medal with (1) Oak Leaf Cluster, the Armed Forces Reserve Medal, the Army Reserve Overseas Training Ribbon and the National Defense Medal for service during the Gulf War Crisis (Desert Storm).

My academic background includes a Bachelor of Science Degree in Criminal Justice from the University of Tennessee.

I am a member of several professional and community support organizations which have enriched my personal growth, professional development, and managerial resourcefulness. The following is a partial listing of these organizations: 1) The National Organization of Black Law Enforcement Executives (NOBLE), 2) The National Association of Concerned Black Agents and Inspectors, Inc. (ATF), 3) The National Association for the Advancement of Colored People (NAACP), 4) The International Association of Bomb Technicians and Investigators, 5) The Tactical Response Association, 6) The Kansas Peace Officers Association, 7) Jacksonville Lodge #50 (Masonic), 8) Zarah Temple #151 (Shriner), 9) T.P. Haroldson Consistory #94 (Masonic), and 10) The United Supreme Council, Grand Inspector General of the 33rd Degree.

On September 17, 1984, I reported to the Oklahoma City Field Office as a GS–9 Special Agent. I was hired under the Schedule A hiring authority which exempts qualified minority applicants from taking the Treasury Enforcement Agents Examination (TEA). Even though ATF has Schedule A hiring authority, African-American applicants are routinely required to take this outdated examination, which in itself is an outright form of discrimination. Non-minority agents have been hired under Schedule A; however, ATF refuses to hire African-American applicants under Schedule A unless they have taken and passed the TEA examination. This is one of many tactics that ATF uses successfully to discriminate against African-Americans.

When an African-American agent is hired under Schedule A, they are subjected to ridicule from non-minority agents because they were hired under Schedule A. They are subjected to comments such as "you could not pass the TEA and the only way that you were hired was under Schedule A". African-American agents are routinely hired and sent to predominantly non-minority offices. Although ATF had offices in Tulsa, Oklahoma, and Oklahoma City, I was the only African-American agent in the State. This is another tactic that ATF uses to segregate African-American agents to "maintain control". During an African-American agents probationary period, they are expected to work only the cases that are assigned to them by their training officer. If an African-American agent takes the initiative to develop liaisons and work with other law enforcement agencies, the African-American agent is admonished by their training officer and/or supervisor for working without the train-

ing officers approval. If an African-American agent disagrees or questions their training officer about certain practices or makes suggestions, the African-American agent is labeled as "not being a team player or a radical". If an African-American agent refuses to socialize with the "group", then he/she is labeled as being "anti-social". If an African-American agent places any awards or certificates on their office wall, they are labeled as being a "show-off".

On March 25, 1985, I reported to the Federal Law Enforcement Training Center in Glynco, Georgia, to begin New Agent Training (NAT). I was assigned to NAT–502. An orientation briefing was scheduled for 9:00 p.m., in Building 94 for all students. The class coordinators for NAT–502 were Resident Agent in Charge (RAC) Raymond Eugene Rightmyer and Special Agent Ernest Stanford. At the conclusion of the briefing, RAC Rightmyer requested that all students meet with him at the student center. I was outside of Building 94 talking to another African-American female agent, and I asked her if she would like to ride over to the student center. RAC Rightmyer overheard our conversation and stated "no, she will not ride over with you". RAC Rightmyer stated "you were born trash, live trash and die trash". I immediately told Special Agent William Stringer what RAC Rightmyer had said and we went over to the student center. Special Agent Stringer and I were over at the bar talking to Special Agent Larry Stewart, an ATF agent who was temporarily assigned to the Federal Law Enforcement Training Center as an instructor, when RAC Rightmyer walked over and repeated the phrase.

RAC Rightmyer and Special Agent Stanford had a cookout at their townhouse 1 weekend and invited all of the students. RAC Rightmyer stated if anyone was having problems with the academics, he would review the material. Prior to the first examination, Special Agent Stringer and I went over to the coordinator's townhouse because we did not understand the material that was presented in class. RAC Rightmyer was not in but Special Agent Stanford stated that he would go over the material with us. Special Agent Stanford was explaining the material to us when someone knocked on the door. Special Agent Stanford answered the door and three non-minority students walked into the townhouse.

The students asked for RAC Rightmyer and Special Agent Stanford told them that he had left. They left the townhouse and Special Agent Stanford continued to explain the material to us.

On the morning of the test, Special Agent Stringer and I had heard rumors that Special Agent Stanford had allegedly given us the answers to the examination. At the conclusion of the examination, the tests were turned in to RAC Rightmyer for grading. Special Agent Stringer and I along with other students waited on RAC Rightmyer to grade the examinations. Special Agent Stringer started out with a test score in the high 80's; however, when RAC Rightmyer finished regrading his examination, Special Agent Stringer's final test score was in the lower 70's. Special Agent Stringer and I were told by other students that several students in the class had a meeting with RAC Rightmyer and stated that Special Agent Stringer and I had the answers to the examination.

Whenever RAC Rightmyer wanted to talk to Special Agent Stringer, he would give me the message. I told RAC Rightmyer that he was the class coordinator and I was not a messenger. RAC Rightmyer demanded that all students eat lunch in the cafeteria together. RAC Rightmyer also demanded that all students go to the beach together on the weekends during their free time. After the first examination, RAC Rightmyer would xerox the examinations on the morning of the scheduled test. I asked Special Agent Stanford what was going on and he stated that RAC Rightmyer believed that he had given Special Agent Stringer and I the answers to the first examination. Special Agent Stanford stated that RAC Rightmyer prohibited him from grading the examinations. During one of the examinations, Special Agent Stringer and RAC Rightmyer left the room. At the conclusion of the examination, I asked Special Agent Stringer what was going on. Special Agent Stringer stated that RAC Rightmyer told him to step outside and take a smoke break because "blacks cannot take examinations like whites".

RAC Rightmyer walked into the classroom one morning interrupting the instructor and stated that Mr. Paul Lucas, Chief, ATF Academy, wanted to see Craig Lee, Cheryl Montgomery, Eugene Fleming, William Stringer and myself. RAC Rightmyer stated that Mr. Lucas wanted to see us now. Everyone got up and as we were walking out of the classroom, the other non-minority agents were wondering what was going on. RAC Rightmyer singled all five African-American agents out of a class of twenty-four students.

We reported to Mr. Lucas, and he stated that Special Agent Theodore Royster wanted to meet with us. We went into an office and Special Agent Royster introduced himself. Special Agent Royster stated that Associate Director (Law Enforcement) Phillip McGuire, Bureau Headquarters, had appointed him as the ombuds-

man for the African-American agents. Special Agent Royster stated that Bureau Headquarters had heard that the African-American agents were having a problem, and he was sent down to investigate the situation. Special Agent Royster was informed that there was no problem, and everyone left the room and immediately went into Mr. Lucas' office to meet with RAC Rightmyer and Special Agent Stanford. The group asked Mr. Lucas what was going on because all five African-American agents had been singled out of the class in the presence of the other students. We informed Mr. Lucas that there was no problem among the African-American agents and we went back to class. Upon returning to the class, we were informed that the students were at the practical exercise pad conducting a bomb scene investigation. Upon arriving at the practical exercise area, Special Agent Stringer advised the instructors that the African-American agents wanted to meet with everyone in the class. The practical exercise was stopped and a meeting was held. Special Agent Stringer informed everyone that there was no problem among the African-American agents.

During one of the examinations, RAC Rightmyer positioned his desk in front of and facing Special Agent Stringer's desk because he thought he was cheating on the examination.

During the undercover practical exercises, Special Agent Stringer and I were always separated into different groups. During the last undercover exercise, Special Agent Stringer and I were paired up together to do the undercover. Special Agent Stringer and I suspected that something was up when they paired us together because we were deliberately separated by the coordinators during the undercover exercise. During the undercover briefing, Special Agent Stringer and I were told to park the car under a street light to conduct the undercover transaction. Special Agent Stringer and I conducted the undercover operation without incident. During the debriefing, NAT Coordinator Dave Carmen criticized the tactics that Special Agent Stringer and I utilized. This was done in an attempt to embarrass Special Agent Stringer and I in front of the class.

The class party was held at Mr. Carmen's house on St. Simon Island, Georgia. Special Agent Stringer and I were approached by various students who told us about the meetings that were held between RAC Rightmyer and several students. We were informed that several students complained to RAC Rightmyer that they did not understand why Special Agent Stringer and I were making good grades on the examinations since we did not attend any study sessions. Special Agent Stringer and I talked to RAC Rightmyer during the class party. We informed RAC Rightmyer that we knew who the students were that met with him and lied about us cheating on the examinations. RAC Rightmyer admitted that he was approached by several students who felt that Special Agent Stringer and I had cheated on the examinations because of our test scores. Special Agent Stringer and I told RAC Rightmyer that he tried everything in his power to get us dismissed from the academy. RAC Rightmyer also admitted that he used poor judgment in the way he singled the African-American agents out of the classroom.

Special Agent Stringer and I were subjected to continual harassment by RAC Rightmyer throughout the entire duration of the academy. On May 16, 1985, I graduated from the ATF Academy with a ninety average. After graduation, Special Agent Stringer and I informed RAC Rightmyer that we were going to informally make a complaint against him upon returning to our respective offices.

Upon returning to Oklahoma City, I informed RAC K.R. Klepinger that I wanted to schedule a meeting with Special Agent in Charge (SAC) Richard Garner, Dallas Field Division. RAC Klepinger informed me that a meeting had been scheduled with Assistant Special Agent in Charge (ASAC) Watson Cummings Beaty, Dallas Field Division. On May 21, 1985, RAC Klepinger and I flew to Dallas, Texas, to meet with ASAC Beaty concerning the incidents at Glynco, Georgia. I informed ASAC Beaty that I wanted to talk to him about the way Special Agent Stringer and I were treated by RAC Rightmyer while students at the ATF Academy. ASAC Beaty informed me that this problem could be handled in one of three ways: I could elect to do nothing; however, it was obvious that I was concerned because I had requested a meeting with him, file a formal complaint which would involve Internal Affairs or I could file an informal complaint. ASAC Beaty stated if I elected to file an informal complaint, he would review the facts and send a memorandum to Associate Director McGuire after he had met with Special Agent Stringer and Group Supervisor Jimmy Wooten. I chose to file an informal complaint for several reasons: I was an African-American agent currently on probation, I was hired under the Schedule A hiring authority, and I felt that ATF would have retaliated against me for filing a formal complaint against a non-minority supervisor. I related all of the above facts to ASAC Beaty. ASAC Beaty stated that he would interview Special Agent Stringer and forward a memorandum of his findings to Associate Director McGuire. ASAC

Beaty stated that he would call me after he had written the memorandum to verify the facts. ASAC Beaty also stated that he would forward a copy of the memorandum to me which I never received. ASAC Beaty called and read the memorandum to me and I told him that it was factual. These types of incidents regarding African-American agents are not isolated and are common throughout ATF.

Another incident happened at the Federal Law Enforcement Training Center that I failed to mention. During NAT–502, I had heard a rumor that RAC Rightmyer said "it would be a cold day in hell before he worked for a nigger". I was told that RAC Rightmyer made this statement to Special Agent Curtis Cooper. During the surveillance practical exercise, Special Agents Stringer, Stanford and I were in the ATF Academy building when the teletype came out announcing that Special Agent Cooper had been promoted to ASAC, Nashville Field Division. RAC Rightmyer walked by us, and I asked him had he seen the teletype. RAC Rightmyer turned cherry red and mumbled something under his breathe as he walked away.

On January 21, 1987 thru March 9, 1987, I was detailed to the Dallas Field Division Group I to assist Special Agent Stringer on an Jamaican Organized Crime Drug Enforcement Task Force (OCDETF) investigation. Special Agent Stringer initiated this investigation and I was assisting him in the undercover operations. During this period, I stayed at the Lexington Hotel Suites, Room 225, Dallas, Texas. On February 11, 1987, Special Agent Stringer set up an undercover meeting with the violator in my room to purchase crack cocaine. All of the members on the cover team were told to meet in my room prior to the undercover meeting. Special Agent Stringer rented another room next to my room for the cover team. I was standing on the balcony when Group Supervisor Wooten told me that I had to move out of the hotel for security reasons. I asked Group Supervisor Wooten if I could move to another room and he said no. Group Supervisor Wooten gave me a direct order to move out of the hotel. I informed Special Agent Stringer that Group Supervisor Wooten had ordered me to move out of the hotel. Special Agent Stringer talked to Group Supervisor Wooten and stated that I could stay in the hotel if I moved to another room. Group Supervisor Wooten also informed me that I did not have to move out of the hotel if I moved to another room. I walked down to the front desk and obtained a key to room 325. After the undercover meeting was over, I moved some of my clothes up to room 325. I spent the night in room 325 and Special Agent Stringer came by the following morning to help me move. Special Agent Stringer and I left the hotel and went into the office, and Group Supervisor Wooten called me into his office and shut the door. Group Supervisor Wooten stated that he thought he had made himself clear that he did not want me to stay in my old room. Group Supervisor Wooten stated that if I could not follow directions, he did not want me in his office and I could go back to Oklahoma City. Group Supervisor Wooten gave me a verbal admonishment about disobeying an order. I informed Group Supervisor Wooten that I did not stay in room 225. I informed him that I did not remove all of my clothes out of the room for a reason. I told Group Supervisor Wooten that the bathroom and closet would be checked by the violator to verify that the room was actually being occupied. I then showed Group Supervisor Wooten a copy of the hotel receipt where I had changed rooms on the same night that he told me to do so.

I was sitting in Special Agent Stringer's office one morning when he was called into Group Supervisor Wooten's office. Special Agent Stringer walked back to his office and told me he had to go with Group Supervisor Wooten over to the Division Office to see ASAC Beaty. Approximately 45 minutes later, Special Agent Stringer returned to the office. Special Agent Stringer stated that ASAC Beaty was debating whether to call Internal Affairs because he had allegedly given ASAC Beaty's name to the violator. Special Agent Stringer and I walked back to the equipment room to make an undercover telephone call to the violator. Special Agent Stringer paged the violator and she called him back on the undercover line. Special Agent Stringer asked her if she had attempted to contact him and she said yes. The violator stated that she could not remember his name (undercover), and she was given ASAC Beaty's name by accident. After the conversation was completed, Special Agent Stringer walked back over to ASAC Beaty's office and played the recorded conversation. Special Agent Stringer stated that he gave ASAC Beaty a copy of the tape and he placed the original tape into evidence.

On March 9, 1987, I returned to Oklahoma City, Oklahoma. On March 12, 1987, I submitted my travel voucher to Group Supervisor Wooten for approval. Approximately 1 week later, I called the Lexington Hotel Suites and made reservations because I was travelling to Dallas, Texas, on personal business. I arrived at the hotel late on a Friday night. When I checked in, I had a message to call the manager at home, and Group Supervisor Wooten's business card was stapled to the message. I called the manager and he stated that Group Supervisor Wooten had been out to

the hotel several times the following week asking questions about my bill. The manager stated that Group Supervisor Wooten wanted to know if I had used any free coupons to obtain a room for my personal use. The manager stated that he did not know what was going on but he was a military retiree and he was familiar with this type of investigation. The manager stated that Group Supervisor Wooten was on a fishing expedition attempting to dig up anything that he could possibly find.

I was in my office working one morning when RAC Klepinger walked in and stated that ASAC Beaty wanted to talk with the both of us on the telephone. I picked up the telephone and ASAC Beaty stated that he had a problem with my travel voucher. ASAC Beaty stated "we know after the fifth nights lodging, the sixth night is free." ASAC Beaty also stated "we know that you received free coupons while staying at the hotel". ASAC Beaty asked me why did I elect not to use the free coupons and charge the government for lodging. I told ASAC Beaty that I do not accept anything free and under the old travel regulations, lodging had to be shown in order to receive full per diem. ASAC Beaty stated that the travel regulations had been changed, and I should have used the free coupons. ASAC Beaty asked me what did I do with the free coupons and I told him I placed the coupons in my filing cabinet where I keep my travel vouchers. I asked ASAC Beaty was he insinuating that I had filed a false claim and he replied no. ASAC Beaty said he would not have called me if he thought I had filed a false claim. ASAC Beaty told me to write a memorandum explaining why I chose not to use the free coupons and to send the memorandum and the coupons to him. On March 27, 1987, I sent the memorandum and coupons to the Division Office.

The Jamaican QCDETF investigation that Special Agent Stringer and I worked received national attention and was a high profile investigation in Bureau Headquarters. Group Supervisor Wooten attempted to do everything in his power to make Special Agent Stringer and I look bad. This is the type of investigation that every agent dreams about because of it's high visibility. Special Agent Stringer initiated and wrote the OCDETF proposal which was approved. Even though Special Agent Stringer initiated this investigation, Group Supervisor Wooten assigned a non-minority GS–13 agent to this investigation. Group Supervisor Wooten did everything in his power to take this investigation away from Special Agent Stringer. When this investigation ended, Special Agent Stringer and I were not invited to participate in the arrests. Neither Special Agent Stringer nor I received any type of recognition for our work. This is not an isolated incident and is a continuing pattern and practice for ATF.

During the time that I was assigned to assist Special Agent Stringer on this OCDETF investigation, another significant incident happened. Upon arriving in Dallas, Texas, I was assigned a white Pontiac Firebird to use as an undercover vehicle. This vehicle was originally assigned to Special Agent Sharon Wheeler. After I was assigned this vehicle, Special Agent Stringer and I conducted a thorough inspection of the vehicle and noted any and all damages that were found prior to me driving the vehicle. This was done to preclude anyone from accusing me of failing to report any type of damage done to the vehicle. I drove to work one morning and I parked the vehicle in the garage which was located across the street. Special Agent Stringer walked into the office a short time later and told me that when he was parking in the garage, Group Supervisor Wooten, Tactical Operations Officer Charlie Wernette and Special Agent Wheeler were inspecting the white Firebird. Special Agent Stringer stated that he walked over to the group and asked what was going on. Special Agent Stringer stated that Special Agent Wheeler said that I had done some damage to the undercarriage of the vehicle. Special Agent Stringer said that he told Special Agent Wheeler that was a lie and that we both had inspected the vehicle upon reassignment. Special Agent Stringer said that Group Supervisor Wooten decided that the damage was not recent and I would not be written up.

The paragraphs outlining my work performance and subsequent performance appraisals are examples of how African-American agents' performance appraisals are consistently lower than non-minority agents and do not reflect the performance level of the minority agents. African-American agents have to work twice as hard as non-minority agents just to receive a fully successful appraisal. African-American agents are expected to work undercover investigations for non-minority agents; however, they receive no monetary reward or case recognition. Non-minority agents with less experience and qualifications are constantly being promoted ahead of African-American agents. African-American agents are drafted and detailed to major metropolitan cities to work undercover investigations for non-minority agents.

In June 1988, I coordinated a joint ATF/Oklahoma County Sheriff's Department 2-week seminar which included a series of four 2-day seminars for law enforcement and fire service personnel on booby traps and explosives recognition and two 1-day seminars on street gangs and extremist groups. Approximately 300 law enforcement

and fire service personnel from throughout the Central United States attended these seminars. In preparation of these seminars, I coordinated with the Oklahoma County Sheriff's Department, who provided two bomb technicians and numerous support personnel. I coordinated with the Oklahoma City, Oklahoma, Police Department, who provided three bomb technicians. I coordinated with the Norman, Oklahoma, Police Department who provided one bomb technician. I coordinated with the Commanding General, Tinker Air Force Base, Midwest City, Oklahoma, for the Security Police to conduct a demonstration utilizing their bomb dogs. I arranged for the professional printing of brochures and certificates of training. I also obtained funds to purchase additional explosives for the seminar. The entire seminar was video taped, and I forwarded a memorandum along with volumes of tapes to the ATF Audio/Video Section at the Rockville, Maryland, laboratory requesting that a 2-hour training film be produced.

On September 25, 1987, I graduated from a one-week instructor training course conducted by ATF at the Federal Law Enforcement Training Center, Glynco, Georgia. Upon returning to Oklahoma City, I was certified by the Oklahoma Council on Law Enforcement Education and Training (CLEET) as an instructor. I was certified by the State of Oklahoma to teach basic law enforcement.

In October 1987, I assisted the Oklahoma County Sheriff's Department in sponsoring a three-day Street Survival Seminar conducted by Caliber Press, Inc.

In November 1987, I was presented with a Certificate of Appreciation for outstanding contributions in the field of drug law enforcement by Special Agent in Charge (SAC) Phillip Jordan, Drug Enforcement Administration, Dallas Field Division.

On September 20, 1988, I received my 1988 Performance Appraisal covering appraisal period 4–13–87 thru 7–25–88 from RAC Delbert Knopp. My overall rating for this period was fully successful.

After reviewing my performance appraisal, I told RAC Knopp that I disagreed with my overall rating and he responded by stating that I had been a GS–12 for only 1 year, and he did not want to hurt my by giving me a higher rating. RAC Knopp admitted that my work exceeded the fully successful level, and he expected that my next evaluation would reflect the higher rating. RAC Knopp justified my overall rating by stating that he had recommended me for a $350.00 cash award.

During the above mentioned rating period, I conducted 11 separate investigations and submitted 3 criminal case reports which were recommended for prosecution. I seized one machinegun, three silencers and a Pontiac Trans Am. This vehicle was forfeited to the government.

In July 1988, I was the undercover agent on a major OCDETF investigation involving the Crips and Bloods Street Gang in the metropolitan Oklahoma City area. These gang members had ties directly back to Los Angeles, California. I made numerous undercover purchases of crack cocaine from gang members who were subsequently convicted in Federal and State court.

Along this same time frame, I initiated and wrote a fifteen page OCDETF proposal pertaining to Jamaican Narcotics and Firearms Trafficking in the Western Judicial District of Oklahoma. This proposal was accepted and approved by the Department of Justice as a task force investigation. I was also doing my own undercover buys in this investigation.

In August 1988, I was the undercover agent on a task force investigation involving a major firearms dealer in the Dallas, Texas, area who was selling firearms to known Jamaican narcotics dealers. I made numerous undercover purchases of firearms from this firearms dealer without having the proper identification as required by law. I testified in Federal court against the violator and he was subsequently convicted. I did not receive any type of recognition or acknowledgement from the Dallas Field Division regarding my participation in this investigation.

During the latter part of 1988, I was the sole undercover agent on an Immigration and Naturalization Service (INS) OCDETF investigation involving Cuban individuals operating a major drug and firearms trafficking organization based in Kansas, Oklahoma and Florida. I made numerous undercover hand-to-hand purchases of crack cocaine from the head of this organization, and upon the conclusion of this lengthy undercover investigation, approximately 30 defendants were arrested on State firearms, narcotics and conspiracy charges, and the head of this organization was sentenced to three (3) 40-year consecutive prison terms.

In January 1989, I was detailed to the Los Angeles Field Division and assigned to the Drug Task Force. I was drafted to Los Angeles for thirty days to work in an undercover capacity with two other Mexican-American agents on an OCDETF investigation of the Crips and Bloods. I did not volunteer to go to Los Angeles and I informed RAC Knopp that I was not the case agent. I informed RAC Knopp that I was working on my own Jamaican investigation and I had too many other investiga-

tions going on to go to another city and help someone else. RAC Knopp told me that I was going anyway and that would be good experience for me.

In March 1989, I was promoted to RAC, Wichita, Kansas, Field Office with a reporting date of June 4, 1989. Prior to departing Oklahoma City, I informed RAC Knopp that my performance appraisal was due in April 1989. RAC Knopp stated that he would write my appraisal and forward it to me. After reporting to Wichita, Kansas, I recontacted RAC Knopp to remind him about writing my appraisal. RAC Knopp again stated that he would write my appraisal. In December 1989, I again recontacted RAC Knopp regarding my appraisal. RAC Knopp again promised that he would write my appraisal. In January 1990, I contacted Assistant Special Agent in Charge (ASAC) Hubert Wilson, Kansas City Field Division. I explained to ASAC Wilson that I had not received my departing performance appraisal from RAC Knopp. I further informed ASAC Wilson that I had contacted RAC Knopp about my appraisal on several occasions. ASAC Wilson stated that he would take care of it.

On February 16, 1990, I received my 1989 Performance Appraisal covering appraisal period 4–13–88 thru 4–13–89. My overall rating for this period was fully successful. On this same date, I contacted RAC Knopp and informed him that I was highly dissatisfied with my overall rating. I told RAC Knopp that my overall rating should be at least exceeds fully successful if not outstanding. I told RAC Knopp that he failed to mention in my appraisal that I was detailed to Los Angeles for thirty days and he replied "I'm sorry but I forgot". I asked RAC Knopp what does an agent have to do to get an exceeds fully successful or outstanding appraisal and he stated that I needed to work more complex investigations. I told RAC Knopp that I had worked just as hard if not harder than any other agent in the office and he agreed. RAC Knopp stated that my appraisal was a high fully successful and not a low one. I told RAC Knopp again that I disagreed with my overall rating and he stated that his mind could be changed; however, he asked if I would give him until Wednesday to review the appraisal. RAC Knopp stated that he would call me on Wednesday and render a decision. On Thursday, February 22, 1990, at approximately 1:15 p.m., I contacted RAC Knopp and he stated that he could not honestly change my appraisal because he had standards to go by. I asked RAC Knopp how was it that the two senior GS–13 agents (non-minority) in the office were the only agents that received exceeds fully successful and outstanding appraisals and he stated that they worked more complex investigations.

On April 8–12, 1991, I attended an OCDETF Conference in Osage Beach, Missouri. Upon arriving at the hotel, I saw RAC Knopp in the hospitality suite. RAC Knopp and I sat at a table and had a casual conversation. I told RAC Knopp that he screwed me on my departing appraisal and he replied "yes big guy I did". RAC Knopp stated that I had received a promotion and I should not worry about my appraisal. RAC Knopp also stated that I will always get an appraisal that I don't agree with.

Between December 1987 and March 1989, I applied for 10 GS/GM–1811–13 positions in various cities throughout the United States. I made the Best Qualified List (BQL) 5 times and in March 1989, I was finally promoted to my present position.

Between May 1990 and October 1992, I have applied for approximately 20 GS/GM–1811–14 positions in various cities throughout the United States and out of the continental United States. I have made the BQL each time; however, I have not been promoted. The BQL is good for up to 6 months after certification by the Personnel Division; however, since becoming eligible to apply for a GM–14 (June 4, 1990), ATF has filled approximately 40 vacancies from this list of candidates. On November 15, 1992, my present position was upgraded to a GM–1811–14.

I have consistently informed upper management officials in the Kansas City Field Division that I would like to go to Headquarters. African-American agents are routinely denied opportunities for advancement and to be placed in high profile positions.

On October 4, 1991, I filed an EEO complaint against ATF for discrimination against me in the form of reprisal, retaliation and harassment for exercising my constitutional rights to participate in the present Class Action Lawsuit filed against ATF on behalf of all Concerned Black Agents in the Office of Law Enforcement.

On March 10, 1992, I filed an EEO complaint against ATF for discrimination against me in the form of reprisal, retaliation and harassment for my active participation in the present Class Action Lawsuit, non-selection and cancellation of a GM–14 Headquarters Operations Officer's position.

On April 22, 1992, I filed an EEO complaint against ATF for discrimination against me in the form of reprisal, retaliation and harassment for my active participation in the present Class Action Lawsuit and non-selection to a GM–14 Headquarters Program Manager and Special Agent in Charge position.

On June 1, 1992, I filed an EEO complaint against ATF for discrimination against me in the form of reprisal, retaliation and harassment for my active participation in the present Class Action Lawsuit and non-selection to a GM–14 Headquarters Program Manager and Group Supervisor's position.

On June 1, 1992, I filed an EEO complaint against ATF for discrimination against me in the form of reprisal, retaliation and harassment for my active participation in the present Class Action Lawsuit and exclusion from being in a training film that was being produced at the Federal Law Enforcement Training Center, Glynco, Georgia.

On May 4, 1993, I filed an EEO complaint against ATF for discrimination against me in the form of reprisal, retaliation and harassment for my active participation in the present Class Action Lawsuit and for my non-selection to the position of Headquarters Operations Officer, Explosives Division, GM–1811 Bureau Headquarters.

These discriminatory activities have intensified as a direct result of my participation in the present Class Action Lawsuit (*Larry D. Stewart, et. al.,* v. *Nicholas F. Brady,* C.A. No. 90 2841), and consequently becoming a *named plaintiff* in the First Amended and Supplemental Complaint. ATF retaliated against me for my active role in organizing and developing the class to include my participation as a class representative in the purported settlement negotiations that convened at Bureau Headquarters in Washington, D.C., during the week of Saturday, September 29th thru Friday, October 5, 1990. ATF has retaliated against me for testifying at Larry Stewart's (named plaintiff) Administrative EEO Hearing (EEOC Case numbers 033–91–1231X and 033–91–1232X).

I was selected to attend the National Organization of Black Law Enforcement Executives (NOBLE) Conference in Houston, Texas, beginning Saturday, July 14th thru Friday, July 20, 1990.

The reprisal, discriminatory and retaliatory activities by ATF have been continuous since returning from the NOBLE Conference in July 1990, and have since escalated in direct proportions with progressive activities involving the class action developments and my individual complaints.

DONDI O. ALBRITTON

NOTICE

Mr, Chairman, Members of the Committee, my name is Dondi Ortiz Albritton , and I am a special agent employed by the Bureau of Alcohol, Tobacco and Firearms (ATF). I am submitting this written statement to be included in and made part of the permanent records of these hearings. My statement focuses on the Federal Employee Fairness Act. I am not representing myself either in my prepared written statement or by any comments here today as a spokesperson (be it official or unofficial) for the U.S. Treasury Department, ATF or any other agency, body or entity, but as a concerned citizen who is concerned with the effective and efficient operation of our law enforcement community.

103D CONGRESS
1ST SESSION

S. 404

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 5), 1993

Mr. GLENN (for himself, Ms. MIKULSKI, Mr. STEVENS, Mr. SIMON, Mr. DECONCINI, Mr. WOFFORD, Mr. AKAKA, Mr. FEINGOLD, Mr. CONRAD, Mr. MCCAIN, Ms. MOSELEY-BRAUN, Mr. LIEBERMAN, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employee Fairness Act of 1993".

SEC. 2. AMENDMENTS RELATING TO ADMINISTRATIVE DETERMINATION OF FEDERAL EMPLOYEE DISCRIMINATION CLAIMS.

(a) DEFINITIONS.—Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended—

(1) in paragraph (f) by striking "The term" and inserting "Except when it appears as part of the term 'Federal employee', the term"; and

(2) by adding at the end the following:

"(o) The term 'Commission' means the Equal Employment Opportunity Commission.

"(p) The term 'entity of the Federal Government' means an entity to which section 717(a) applies, except that such term does not include the Library of Congress.

"(q) The term 'Federal employee' means an individual employed by, or who applies for employment with, an entity of the Federal Government.

"(r) The term 'Federal employment' means employment by an entity of the Federal Government.

"(s) The terms 'government', 'government agency', and 'political subdivision' do not include an entity of the Federal Government.".

(b) EEOC DETERMINATION OF FEDERAL EMPLOYMENT DISCRIMINATION CLAIMS.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended—

(1) in subsection (b)—

(A) in the second sentence, by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(B) in the fourth sentence, by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(C) by designating the first through fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively, and indenting accordingly;

(D) in paragraph (2) (as designated by subparagraph (C) of this paragraph)—

(i) in subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) by striking "and" at the end;

(ii) in subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) by striking the period and inserting "; and"; and

(iii) by adding after subparagraph (C) the following:

"(D) require each entity of the Federal Government—

"(i)(I) to make counseling available to a Federal employee who chooses to notify such entity that the employee believes such entity

has discriminated against the employee in violation of subsection (a), for the purpose of trying to resolve the matters with respect to which such discrimination is alleged;

"(II) to assist such employee in identifying the respondent required by subsection (c)(1) to be named in a complaint alleging such violation;

"(III) to inform such employee individually of the procedures and deadlines that apply under this section to a claim alleging such discrimination; and

"(IV) to make such counseling available throughout the administrative process;

"(ii) to establish a voluntary alternative dispute resolution process, as described in subsection (e)(1), to resolve complaints;

"(iii) not to discourage Federal employees from filing complaints on any matter relating to discrimination in violation of this section; and

"(iv) not to require Federal employees to participate in such counseling or dispute resolution process."; and

(E) by inserting after paragraph (2) (as designated by subparagraph (C) of this paragraph) the following:

"(3) The decision of a Federal employee to forgo such counseling or dispute resolution process shall not affect the rights of such employee under this title.";

(2) by striking subsection (c);

(3) in subsection (d)—

(A) by striking "(k)" and inserting "(j)";

(B) by striking "brought hereunder" and inserting "commenced under this section"; and

(C) by striking ", and the same" and all that follows and inserting a period and the following: "The head of the department, agency, or other entity of the Federal Government in which discrimination in violation of subsection (a) is alleged to have occurred shall be the defendant in a civil action alleging such violation. In any action or proceeding under this section, the court, in the discretion of the court, may allow the prevailing party (other than an entity of the Federal Government) a reasonable attorney's fee (including expert fees and other litigation expenses), costs, and the same interest to compensate for delay in payment as a court has authority to award under section 706(k).";

(4) by redesignating subsections (d) and (e) as subsections (m) and (n), respectively;

(5) by inserting after subsection (b) the following:

"(c)(1)(A) Except as provided in subparagraph (B) a complaint filed by or on behalf of a Federal employee or a class of Federal employees and alleging a claim of discrimination arising under subsection (a) or paragraph (4) shall—

"(i) name as the respondent the head of the department, agency, or other entity of the Federal Government in which such discrimination is alleged to have occurred (referred to in this section as the 'respondent'); and

"(ii) be filed with the respondent, or with the Commission, not later than 180 days after the alleged discrimination occurs.

"(B) A complaint described in subparagraph (A) shall be considered to be filed in compliance with subparagraph (A), if not later than 180 days after the alleged discrimination occurs, the complaint is filed—

"(i) with such department, agency, or entity; or

"(ii) if the complaint does not arise out of a dispute with an agency within the intelligence community, as defined by Executive order, with any other entity of the Federal Government, regardless of the respondent named.

"(2) If the complaint is filed with an entity of the Federal Government other than the department, agency, or entity in which such discrimination is alleged to have occurred—

"(A) the entity (other than the Commission) with whom the complaint is filed shall transmit the complaint to the Commission, not later than 15 days after receiving the complaint; and

"(B) the Commission shall transmit a copy of the complaint, not later than 10 days after receiving the complaint, to the respondent.

"(3)(A) Not later than 3 days after the respondent receives the complaint from a source other than the Commission, the respondent shall notify the Commission that the respondent has received the complaint and shall inform the Commission of the identity of the Federal employee aggrieved by the discrimination alleged in the complaint.

"(B) Not later than 10 days after the respondent or the Merit Systems Protection Board receives the complaint from a source other than the Commission, the respondent or the Board shall transmit to the Commission a copy of the complaint.

"(4)(A) No person shall, by reason of the fact that a Federal employee or an authorized representative of

Federal employees has filed, instituted, or caused to be filed or instituted any proceeding under this section, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of this section—

"(i) discharge the employee or representative;

"(ii) discriminate against the employee or representative in administering a performance-rating plan under chapter 43 of title 5, United States Code;

"(iii) in any other way discriminate against the employee or representative; or

"(iv) cause another person to take an action described in clause (i), (ii), or (iii).

"(B) Any Federal employee or representative of Federal employees who believes that the employee or representative has been discharged or otherwise discriminated against by any person in violation of subparagraph (A), may file a complaint in accordance with paragraph (1).

"(d)(1) Throughout the period beginning on the date the respondent receives the complaint and ending on the latest date by which all administrative and judicial proceedings available under this section have been concluded with respect to such claim, the respondent shall collect and preserve documents and information (including the com-

plaint) that are relevant to such claim, including not less than the documents and information that comply with rules issued by the Commission.

"(2) If the complaint alleges that a person has—

"(A) participated in the discrimination that is the basis for the complaint; or

"(B) at the time of the discrimination—

"(i) was a supervisor of the Federal employee subject to the discrimination;

"(ii) was aware of the discrimination; and

"(iii) failed to make reasonable efforts to curtail or mitigate the discrimination,

the respondent shall ensure that the person shall not be designated to carry out the requirements of paragraph (1), or to conduct any investigation related to the complaint.

"(e)(1)(A) The respondent shall make reasonable efforts to conciliate each claim alleged in the complaint through alternative dispute resolution procedures during—

"(i) the 30-day period; or

"(ii) with the written consent of the aggrieved Federal employee, the 60-day period,

beginning on the date the respondent receives the complaint.

"(B) Alternative dispute resolution under this paragraph may include a conciliator described in subparagraph (C), the respondent, and the aggrieved Federal employee in a process involving meetings with the parties separately or jointly for the purposes of resolving the dispute between the parties.

"(C) A conciliator shall be appointed by the Commission to consider each complaint filed under this section. The Commission shall appoint a conciliator after considering any candidate who is recommended to the Director by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters.

"(2) Before the expiration of the applicable period specified in paragraph (1)(A) and with respect to such claim, the respondent shall—

"(A) enter into a settlement agreement with such Federal employee; or

"(B) give formal written notice to such Federal employee that such Federal employee may, before the expiration of the 90-day period beginning on the date such Federal employee receives such notice, either—

"(i) file with the Commission—

"(I) a written request for a determination of such claim under subsection (f) by an administrative judge of the Commission;

"(II) if such claim alleges an action appealable to the Merit System Protection Board, a written request electing that a determination of such claim be made under the procedures specified in either subparagraph (A) or (B) of section 7702(a)(2) of title 5, United States Code; or

"(III) if such claim alleges a grievance that is subject to section 7121 of title 5, United States Code but not appealable to the Merit Systems Protection Board, a written request to raise such claim under the administrative and judicial procedures provided in such section 7121; or

"(ii) commence a civil action in an appropriate district court of the United States for de novo review of such claim.

"(3) Such Federal employee may file a written request described in paragraph (2)(B)(i), or commence a civil action described in paragraph (2)(B)(ii), at any time—

"(A) after the expiration of the applicable period specified in paragraph (1)(A); and

"(B) before the expiration of the 90-day period specified in paragraph (2).

"(f)(1)(A) If such Federal employee files a written request under subsection (e)(2)(B)(i)(I) and in accordance with subsection (e)(3) with the Commission for a determination under this subsection of the claim described in subsection (a), the Commission shall transmit a copy of such request to the respondent and shall appoint an administrative judge of the Commission to determine such claim.

"(B) If such Federal employee files a written request under subclause (II) or (III) of subsection (e)(2)(B)(i) and in accordance with section (e)(3), the Commission shall transmit, not later than 10 days after receipt of such request, the request to the appropriate agency for determination.

"(2) Immediately after receiving a copy of a request under subsection (e)(2)(B)(i), the respondent shall transmit a copy of all documents and information collected by the respondent under subsection (d) with respect to such claim—

"(A) to the Commission if such request is for a determination under this subsection; or

"(B) to the Merit Systems Protection Board if such request is for a determination under the procedures specified in section 7702(a)(2)(A) of title 5, United States Code.

"(3)(A)(i) If the administrative judge determines there are reasonable grounds to believe that to carry out the purposes of this section it is necessary to stay a personnel action by the respondent against the aggrieved Federal employee, the administrative judge may request any member of the Commission to issue a stay against such personnel action for 15 calendar days.

"(ii) A stay requested under clause (i) shall take effect on the earlier of—

"(I) the order of such member; and

"(II) the fourth calendar day (excluding Saturday, Sunday, and any legal public holiday) following the date on which such stay is requested.

"(B) The administrative judge may request any member of the Commission to extend, for a period not to exceed 30 calendar days, a stay issued under subparagraph (A).

"(C) The administrative judge may request the Commission to extend such stay for any period the Commission considers to be appropriate beyond the period in effect under subparagraph (A) or (B).

"(D) Members of the Commission shall have authority to issue and extend a stay for the periods referred to in subparagraphs (A) and (B), respectively. The Commission shall have authority to extend a stay in accordance with subparagraph (C) for any period.

"(E) The respondent shall comply with a stay in effect under this paragraph.

"(4)(A) The administrative judge shall determine whether the documents and information received under paragraph (2) comply with subsection (d) and are complete and accurate.

"(B) If the administrative judge finds that the respondent has failed to produce the documents and information necessary to comply with such subsection, the administrative judge shall, in the absence of good cause shown by the respondent, impose any of the sanctions specified in paragraph (6)(C) and shall require the respondent—

"(i) to obtain any additional documents and information necessary to comply with such subsection; and

"(ii) to correct any inaccuracy in the documents and information so received.

"(5)(A) After examining the documents and information received under paragraph (4), the administrative judge shall issue an order dismissing—

"(i) any frivolous claim alleged in the complaint; and

"(ii) the complaint if it fails to state a nonfrivolous claim for which relief may be granted under this section.

"(B)(i) If a claim or the complaint is dismissed under subparagraph (A), the administrative judge shall give formal written notice to the aggrieved Federal employee that such Federal employee may, before the expiration of the 90-day period beginning on the date such Federal employee receives such notice—

"(I) file with the Commission a written request for review of such order; or

"(II) commence a civil action in an appropriate district court of the United States for de novo review of such claim or such complaint.

"(ii) Such Federal employee may commence such civil action in the 90-day period specified in clause (i).

"(6)(A)(i) If the complaint is not dismissed under paragraph (5)(A), the administrative judge shall make a determination, after an opportunity for a hearing, on the merits of each claim that is not dismissed under such

paragraph. The administrative judge shall make a determination on the merits of any other nonfrivolous claim under this section, and on any action such Federal employee may appeal to the Merit Systems Protection Board, reasonably expected to arise from the facts on which the complaint is based.

"(ii) In making the determination required by clause (i), the administrative judge shall—

"(I) decide whether the aggrieved Federal employee was the subject of unlawful intentional discrimination in a department, agency, or other entity of the Federal Government under this title, section 102 of the Americans with Disabilities Act of 1990, section 501 of the Rehabilitation Act of 1973, section 4 of the Age Discrimination in Employment Act of 1967, or the Equal Pay Act of 1963;

"(II) if the employee was the subject of such discrimination, contemporaneously identify the person who engaged in such discrimination; and

"(III) notify the person identified in subclause (II) of the complaint and the allegations raised in the complaint.

"(iii) As soon as practicable, the administrative judge shall—

"(I) determine whether the administrative proceeding with respect to such claim may be maintained as a class proceeding; and

"(II) if the administrative proceeding may be so maintained, describe persons whom the administrative judge finds to be members of such class.

"(B) With respect to such claim, a party may conduct discovery by such means as may be available in a civil action to the extent determined to be appropriate by the administrative judge.

"(C) If the aggrieved Federal employee or the respondent fails without good cause to respond fully and in a timely fashion to a request made or approved by the administrative judge for information or the attendance of a witness, and if such information or such witness is solely in the control of the party who fails to respond, the administrative judge may, in appropriate circumstances—

"(i) draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party who fails to respond;

"(ii) consider the matters to which such information or such testimony pertains to be established in favor of the opposing party;

"(iii) exclude other evidence offered by the party who fails to respond;

"(iv) grant full or partial relief to the aggrieved Federal employee; or

"(v) take such other action as the administrative judge considers to be appropriate.

"(D) In a hearing on a claim, the administrative judge shall—

"(i) limit attendance to persons who have a direct connection with such claim;

"(ii) bring out pertinent facts and relevant employment practices and policies, but—

"(I) exclude irrelevant or unduly repetitious information; and

"(II) not apply the Federal Rules of Evidence strictly;

"(iii) permit all parties to examine and cross-examine witnesses;

"(iv) require that testimony be given under oath or affirmation; and

"(v) permit the person notified in subparagraph (A)(ii)(III) to appear at the hearing—

"(I) in person; or

"(II) by or with counsel or another duly qualified representative.

"(E) At the request of any party or the administrative judge, a transcript of all or part of such hearing shall be provided in a timely manner and simultaneously to the parties and the Commission. The respondent shall bear the cost of providing such transcript.

"(F) The administrative judge shall have authority—

"(i) to administer oaths and affirmation;

"(ii) to regulate the course of hearings;

"(iii) to rule on offers of proof and receive evidence;

"(iv) to issue subpoenas to compel—

"(I) the production of documents or information by the entity of the Federal Government in which discrimination is alleged to have occurred; and

"(II) the attendance of witnesses who are Federal officers or employees of such entity;

"(v) to request the Commission to issue subpoenas to compel the production of documents or information by any other entity of the Federal Government and the attendance of other witnesses, except that any witness who is not an officer or employee of an entity of the Federal Government—

"(I) may be compelled only to attend any place—

"(aa) less than 100 miles from the place where such witness resides, is employed, transacts business in person, or is served; or

"(bb) at such other convenient place as is fixed by the administrative judge; and

"(II) shall be paid fees and allowances, by the party that requests the subpoena, to the same extent that fees and allowances are paid to witnesses under chapter 119 of title 28, United States Code;

"(vi) to exclude witnesses whose testimony would be unduly repetitious;

"(vii) to exclude any person from a hearing for contumacious conduct, or for misbehavior, that obstructs such hearing; and

"(viii) to grant any and all relief of a kind described in subsections (g) and (k) of section 706.

"(G) The administrative judge and Commission shall have authority to award a reasonable attorney's fee (including expert fees and other litigation expenses), costs, and the same interest to compensate for delay in payment as a court has authority to award under section 706(k).

"(H) The Commission shall have authority to issue subpoenas described in subparagraph (F)(v).

"(I) In the case of contumacy or failure to obey a subpoena issued under subparagraph (F), the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence.

"(7)(A)(i) The administrative judge shall issue a written order making the determination required by paragraph (6)(A), and granting or denying relief.

"(ii) The order shall not be reviewable by the respondent, and the respondent shall have no authority to modify or vacate the order.

"(iii) Except as provided in clause (iv) or subparagraph (B), the administrative judge shall issue the order not later than—

"(I) 210 days after the complaint containing such claim is filed on behalf of a Federal employee; or

"(II) 270 days after the complaint containing such claim is filed on behalf of a class of Federal employees.

"(iv) The time periods described in clause (i) shall not begin running until 30 days after the administrative judge is assigned to the case if the administrative judge

certifies, in writing, that such 30-day period is needed to secure additional documents or information from the respondent to have a complete administrative record.

"(B) The administrative judge shall issue such order not later than 30 days after the applicable period specified in subparagraph (A) if the administrative judge certifies in writing, before the expiration of such applicable period—

"(i) that such 30-day period is necessary to make such determination; and

"(ii) the particular and unusual circumstances that prevent the administrative judge from complying with the applicable period specified in subparagraph (A).

"(C) The administrative judge may apply to the Commission to extend any period applicable under subparagraph (A) or (B) if manifest injustice would occur in the absence of such an extension.

"(D) If the aggrieved Federal employee shows that such extension would prejudice a claim of, or otherwise harm, such Federal employee, the Commission—

"(i) may not grant such extension; or

"(ii) shall terminate such extension.

"(E) In addition to findings of fact and conclusions of law, including findings and conclusions pertaining spe-

cifically to the decision and identification described in paragraph (6)(A)(ii), such order shall include formal written notice to each party that before the expiration of the 90-day period beginning on the date such party receives such order—

"(i) the aggrieved Federal employee may commence a civil action in an appropriate district court of the United States for de novo review of a claim with respect to which such order is issued; and

"(ii) unless a civil action is commenced in such 90-day period under clause (i) with respect to such claim, any party may file with the Commission a written request for review of the determination made, and relief granted or denied, in such order with respect to such claim.

"(F) Such Federal employee may commence such civil action at any time—

"(i) after the expiration of the applicable period specified in subparagraph (A) or (B); and

"(ii) before the expiration of the 90-day period beginning on the date such Federal employee receives an order described in subparagraph (A).

"(G) The determination made, and relief granted, in such order with respect to a particular claim shall be en-

forceable immediately, if such order applies to more than one claim and if such employee does not—

"(i) commence a civil action in accordance with subparagraph (E)(i) with respect to the claim; or

"(ii) request review in accordance with subparagraph (E)(ii) with respect to the claim.

"(g)(1) If a party timely files a written request in accordance with subsection (f)(5)(B)(i) or (f)(7)(E)(ii) with the Commission for review of the determination made, and relief granted or denied, with respect to a claim in such order, then the Commission shall immediately transmit a copy of such request to the other parties involved and to the administrative judge who issued such order.

"(2) Not later than 7 days after receiving a copy of such request, the administrative judge shall transmit to the Commission the record of the proceeding on which such order is based, including all documents and information collected by the respondent under subsection (d).

"(3)(A) After allowing the parties to file briefs with respect to such determination, the Commission shall issue an order applicable with respect to such claim affirming, reversing, or modifying the applicable provisions of the order of the administrative judge not later than—

"(i) 150 days after receiving such request; or

"(ii) 30 days after such 150-day period if the Commission certifies in writing, before the expiration of such 150-day period—

"(I) that such 30-day period is necessary to review such claim; and

"(II) the particular and unusual circumstances that prevent the Commission from complying with clause (i).

"(B) The Commission shall affirm the determination made, and relief granted or denied, by the administrative judge with respect to such claim if such determination and such relief are supported by substantial evidence in the record taken as a whole. The findings of fact of the administrative judge shall be conclusive unless the Commission determines that they are clearly erroneous.

"(C) In addition to findings of fact and conclusions of law, including findings and conclusions pertaining specifically to the decision and identification described in subsection (f)(6)(A)(ii), the Commission shall include in the order of the Commission formal written notice to the aggrieved Federal employee that, before the expiration of the 90-day period beginning on the date such Federal employee receives such order, such Federal employee may commence a civil action in an appropriate district court

of the United States for de novo review of a claim with respect to which such order is issued.

"(D) Such Federal employee may commence such civil action at any time—

"(i) after the expiration of the applicable period specified in subparagraph (A); and

"(ii) before the expiration of the 90-day period specified in subparagraph (C).

"(h)(1) In addition to the periods authorized by subsections (f)(7)(F) and (g)(3)(D), an aggrieved Federal employee may commence a civil action in an appropriate district court of the United States for de novo review of a claim—

"(A) during the period beginning 300 days after the Federal employee timely requests an administrative determination under subsection (f) with respect to such claim and ending on the date the administrative judge issues an order under such subsection with respect to such claim; and

"(B) during the period beginning 180 days after such Federal employee timely requests review under subsection (g) of such determination with respect to such claim and ending on the date the Commission issues an order under such subsection with respect to such claim.

"(2) Whenever a civil action is commenced timely and otherwise in accordance with this section to determine the merits of a claim arising under this section, the jurisdiction of the administrative judge or the Commission (as the case may be) to determine the merits of such claim shall terminate.

"(i) A Federal employee who prevails on a claim arising under this section, or the Commission, may bring a civil action in an appropriate district court of the United States to enforce—

"(1) the provisions of a settlement agreement applicable to such claim;

"(2) the provisions of an order issued by an administrative judge under subsection (f)(7)(A) applicable to such claim if—

"(A) a request is not timely filed of such claim under subsection (g)(1) for review of such claim by the Commission; and

"(B) a civil action is not timely commenced under subsection (f)(7)(F) for de novo review of such claim; or

"(3) the provisions of an order issued by the Commission under subsection (g)(3)(A) applicable to such claim if a civil action is not commenced timely

under subsection (g)(3)(D) for de novo review of such claim.

"(j) Any amount awarded under this section (including fees, costs, and interest awarded under subsection (f)(6)(G)), or under title 28, United States Code, with respect to a violation of subsection (a), shall be paid by the entity of the Federal Government that violated such subsection from any funds made available to such entity by appropriation or otherwise.

"(k)(1) An entity of the Federal Government against which a claim of discrimination or retaliation is alleged under this section shall grant the aggrieved Federal employee a reasonable amount of official time, in accordance with regulations issued by the Commission, to prepare an administrative complaint based on such allegation and to participate in administrative proceedings relating to such claim.

"(2) An entity of the Federal Government against which a claim of discrimination is alleged in a complaint filed in a civil action under this section shall grant the aggrieved Federal employee paid leave for time reasonably expended to prepare for, and participate in, such civil action. Such leave shall be granted in accordance with regulations issued by the Commission, except that such leave shall include reasonable time for—

"(A) attendance at depositions;

"(B) meetings with counsel;

"(C) other ordinary and legitimate undertakings in such civil action, that require the presence of such Federal employee; and

"(D) attendance at such civil action.

"(3) If the administrative judge or the Commission (as the case may be), makes or affirms a determination of intentional unlawful discrimination as described in subsection (f)(6)(A), the administrative judge or Commission, respectively, shall, not later than 30 days after issuing the order described in subsection (f)(7) or (g)(3), as appropriate, submit to the Special Counsel the order and a copy of the record compiled at any hearing on which the order is based.

"(4)(A) On receipt of the submission described in paragraph (3), the Special Counsel shall conduct an investigation in accordance with section 1214 of title 5, United States Code, and may initiate disciplinary proceedings against any person identified in a determination described in subsection (f)(6)(A)(ii)(II), if the Special Counsel finds that the requirements of section 1215 of title 5, United States Code, have been satisfied.

"(B) The Special Counsel shall conduct such proceedings in accordance with such section, and shall accord to

the person described in subparagraph (A) the rights available to the person under such section, including applicable due process rights.

"(C) The Special Counsel shall impose appropriate sanctions on such person.

"(l) This section, as in effect immediately before the effective date of the Federal Employee Fairness Act of 1993, shall apply with respect to employment in the Library of Congress."; and

(6) by adding at the end the following new subsections:

"(o)(1) Each respondent that is the subject of a complaint that has not been resolved under this section, or that has been resolved under this section within the most recent calendar year, shall prepare a report. The report shall contain information regarding the complaint, including the resolution of the complaint if applicable, and the measures taken by the respondent to lower the average number of days necessary to resolve such complaints.

"(2) Not later than October 1 of each year, the respondent shall submit to the Commission the report described in paragraph (1).

"(3) Not later than December 1 of each year, the Commission shall submit to the appropriate committees of the House of Representatives and of the Senate a report

summarizing the information contained in the reports submitted in accordance with paragraph (2).

"(p)(1) The Commission, in consultation with the Director of Central Intelligence, the Secretary of Defense, and the Director of the Information Security Oversight Office of the General Services Administration, shall promulgate regulations to ensure the protection of classified information and national security information in administrative proceedings under this section. Such regulations shall provide, among other things, that complaints under this section that bear upon classified information shall be handled only by such administrative judges, Commission personnel, and conciliators as have been granted appropriate security clearances.

"(2) For the purposes of paragraph (1), the term 'classified information' has the meaning given the term in section 606(1) of the National Security Act of 1947 (50 U.S.C. 426(1))."

SEC. 3. AMENDMENTS TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

(a) ENFORCEMENT BY EEOC.—Section 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a) is amended—

(1) by striking subsections (c) and (d); and

(2) by inserting after subsection (b) the following:

"(c)(1) Any individual aggrieved by a violation of subsection (a) may file a complaint with the Equal Employment Opportunity Commission in accordance with subsections (c) through (m), and subsections (o) and (p), of section 717 of the Civil Rights Act of 1964.

"(2) Except as provided in subsection (d) and paragraph (3), such subsections of section 717 shall apply to a violation alleged in a complaint filed under paragraph (1) in the same manner as such section applies to a claim arising under section 717 of such Act.

"(3) The Equal Employment Opportunity Commission, and the administrative judges of the Commission, shall have authority to award such legal or equitable relief as will effectuate the purposes of this Act to an individual described in paragraph (1) with respect to a complaint filed under this subsection.

"(d)(1) If an individual aggrieved by a violation of this section does not file a complaint under subsection (c)(1), such individual may commence a civil action in an appropriate district court of the United States for de novo review of such violation—

"(A) not less than 30 days after filing with the Equal Employment Opportunity Commission a notice of intent to commence such action; and

"(B) not more than 2 years after the alleged violation of this section occurs.

"(2) On receiving such notice, the Equal Employment Opportunity Commission shall—

"(A) promptly notify all persons named in such notice as prospective defendants in such action; and

"(B) take any appropriate action to ensure the elimination of any unlawful practice.

"(3) Except as provided in paragraph (4), section 717(m) of the Civil Rights Act of 1964 (as redesignated by section 2 of the Federal Employee Fairness Act of 1993) shall apply to civil actions commenced under this subsection in the same manner as such section applies to civil actions commenced under section 717 of the Civil Rights Act of 1964.

"(4) The court described in paragraph (1) shall have authority to award such legal or equitable relief as will effectuate the purposes of this Act to an individual described in paragraph (1) in an action commenced under this subsection.".

(b) OPPORTUNITY TO COMMENCE CIVIL ACTION.—If a complaint filed under section 15 of the Age Discrimi-

nation in Employment Act of 1967 (29 U.S.C. 633a) with the Equal Employment Opportunity Commission is pending in the period beginning on the date of the enactment of this Act and ending on December 31, 1993, the individual who filed such complaint may commence a civil action under such section not later than June 30, 1994.

SEC. 4. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

(a) GRIEVANCE PROCEDURES.—Section 7121 of title 5, United States Code, is amended—

(1) in subsection (a)(1) by inserting "administrative" after "exclusive"; and

(2) in subsection (d)—

(A) by inserting "(1)" after "(d)";

(B) in the first and second sentences by striking "An" and inserting "Except as provided in paragraph (2), an"; and

(C) in the last sentence by striking "Selection" and all that follows through "any other" and inserting the following:

"(3) An employee may commence, not later than 120 days after a final decision, a civil action in an appropriate district court of the United States for de novo review of a"; and

(D) by inserting after the second sentence the following:

"(2) Matters covered under section 7702 of this title, or under a law administered by the Equal Employment Opportunity Commission, may be raised under the negotiated grievance procedure in accordance with this section only if an employee elects under subclause (II) or (III) of section 717(e)(2)(B)(i) of the Civil Rights Act of 1964 to proceed under this section.".

(b) ACTIONS INVOLVING DISCRIMINATION.—Section 7702 of title 5, United States Code, is amended to read as follows:

"§ 7702. Actions involving discrimination

"(a)(1) Notwithstanding any other provision of law, in the case of any employee or applicant for employment who—

"(A) is affected by an action which the employee or applicant may appeal to the Merit System Protection Board; and

"(B) alleges that a basis for the action was discrimination prohibited by—

"(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

"(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

"(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791);

"(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631 and 633a); or

"(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph, the employee or applicant may raise the action as provided in paragraph (2).

"(2) For purposes of paragraph (1), the employee shall raise the action by filing a complaint with the Equal Employment Opportunity Commission in accordance with section 717 of the Civil Rights Act of 1964 and shall make a request under section 717(e)(2)(B)(i) selecting the procedures specified in one of the following subparagraphs:

"(A) The administrative and judicial procedures provided under sections 7701 and 7703.

"(B) The administrative and judicial procedures provided under section 7121.

"(C) The administrative and judicial procedures provided under section 717 of the Civil Rights Act of 1964.

"(3) The agency (including the Board and the Equal Employment Opportunity Commission) that carries out such procedures shall apply the substantive law that is applied by the agency that administers the particular law

referred to in subsection (a)(1) that prohibits the conduct alleged to be the basis of the action referred to in subsection (a)(1)(A).

"(b)(1) Except as provided in paragraph (2), the employee shall have 90 days in which to raise the action under the procedures specified in subparagraph (A) or (B) of subsection (a)(2), if—

"(A) an employee elects the procedures specified in subsection (a)(2)(C); and

"(B) the Equal Employment Opportunity Commission dismisses under section 717(f)(5)(A) of the Civil Rights Act of 1964 a claim that is based on the action raised by the employee.

"(2) No allegation of a kind described in subsection (a)(1)(B) may be raised under this subsection.

"(c) If at any time after the 120th day following an election made under section 717(e)(2)(B)(i) of the Civil Rights Act of 1964 to raise an action under the procedures specified in subsection (a)(2)(A) of this section there is no judicially reviewable action, an employee shall be entitled to file, not later than 240 days after making such election, a civil action in an appropriate district court of the United States for de novo review of the action raised under subsection (a).

"(d) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a)(1) after a judicially reviewable action.".

SEC. 5. ISSUANCE OF PROCEDURAL GUIDELINES AND NOTICE RULES.

Not later than 1 year after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall issue—

(1) rules to assist entities of the Federal Government in complying with section 717(d) of the Civil Rights Act of 1964, as added by section 2 of this Act, and

(2) rules establishing—

(A) a uniform written official notice to be used to comply with section 717 of such Act, as added by section 2 of this Act; and

(B) requirements applicable to collecting and preserving documents and information under section 717(d), as added by section 2 of this Act.

SEC. 6. TECHNICAL AMENDMENTS.

(a) CIVIL RIGHTS ACT OF 1964.—Subsections (b) and (c) of section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16 (b) and (c)) are amended by striking

"Civil Service Commission" each place it appears and inserting "Commission".

(b) CIVIL RIGHTS ACT OF 1991.—The second sentence of section 307(h) of the Civil Rights Act of 1991 (2 U.S.C. 1207(h)) is amended by striking "section 15(c)" and all that follows and inserting "section 15(d)(4) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(d)(4)).".

SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on January 1, 1994.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act (other than sections 3 and 4) shall apply only with respect to complaints filed under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) on or after the effective date of this Act.

○

United States General Accounting Office

GAO

Report to the Chairman, Committee on Governmental Affairs, U.S. Senate

March 1993

AFFIRMATIVE EMPLOYMENT

Assessing Progress of EEO Groups in Key Federal Jobs Can Be Improved

GAO/GGD-93-65

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-249148

March 8, 1993

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

In October 1991, we testified before your Committee on the representation of women and minorities in the federal workforce.[1] At that time, we agreed to analyze further the representation of women and minorities in key jobs, including their hiring, promotion, and separation—voluntary or involuntary departure—from those jobs.[2] Key jobs are those that are or can lead to middle and upper management positions. This report, which covers a total of 262 key jobs in 25 of the largest federal agencies, provides that information.

Background

Federal agencies have been required, as a result of the Civil Rights Act of 1964 and the Equal Employment Opportunity Act of 1972 that amended it, to develop and implement affirmative employment programs to eliminate the historical underrepresentation of women and minorities in the workforce. Identifying and removing barriers to the entry and progression of women and minorities in the federal workforce are part of affirmative employment efforts. Conducting affirmative recruitment for those specific occupations and grades in the federal workforce in which women and minorities are underrepresented has been required since the Civil Service Reform Act of 1978.

The Office of Personnel Management (OPM) is responsible for overseeing and assisting agencies in their affirmative recruitment efforts. The Equal Employment Opportunity Commission (EEOC) is to provide agencies with guidance on their affirmative employment programs and also to approve agency plans for those programs. Agencies are required to analyze their workforces and compare the representation of women and minorities in them with the representation of these groups in the civilian workforce. EEOC also requires agencies to examine the representation of women and minority employees at the different pay grades and in key jobs. Key jobs

[1]Federal Affirmative Employment: Status of Women and Minority Representation in the Federal Workforce (GAO/T-GGD-92-2, Oct. 23, 1991).

[2]In our analyses, we included permanent hires, voluntary and involuntary separations, and permanent and temporary, or term promotions. Expanded definitions of these personnel events are given in appendix I.

are defined by EEOC as nonclerical jobs held by 100 or more employees that have advancement potential to senior-level positions.

In May 1991, we issued a report and presented testimony to the Senate Committee on Governmental Affairs on the need for better EEOC guidance and agency analysis of women and minority representation.[3] In our October 1991 testimony, we said that the representation levels of women and minorities in the federal workforce had improved overall between 1982 and 1990 and that their representation in the government's middle and upper management levels had also improved.[4] However, we noted that in 1990, white women and all minorities were still less well represented at the upper grades (i.e., grades 11 to 15) of the federal workforce. These groups also were often underrepresented in the key jobs that can lead to middle and upper management positions.

Results in Brief

Women and minorities in key jobs have made substantial progress in their relative levels of representation, particularly in the upper pay grades.[5] All of the groups of minority men and women we looked at, except for Native American women, were better represented among key job workers in 1990 than they were in 1984. All of these groups, including Native American women, were better represented at upper grades in 1990 than they were in 1984.

Increases in the relative representation of women and minorities in the federal workforce resulted in some but not all cases from the hiring of women and minorities at levels that exceeded their separation levels. In upper grades, increased representation of women and minorities resulted from the favorable relative rates at which these groups were promoted. In spite of these favorable trends, women and minorities in key jobs were, like women and minorities in the workforce in general, relatively better represented at lower grades than at upper grades. In addition, while the relative numbers of minority men and women at grade 15 were quite low, the relative numbers promoted to that grade, both in 1984 and in 1990, were lower than the relative numbers employed at that grade. Further, minority women, in general, and black women, in particular, were

[3]Federal Affirmative Action: Better EEOC Guidance and Agency Analysis of Underrepresentation Needed (GAO/GGD-91-86, May 10, 1991) and Federal Affirmative Action: Better EEOC Guidance and Agency Analysis of Underrepresentation Needed (GAO/T-GGD-91-32, May 16, 1991).

[4]GAO/T-GGD-92-2, Oct. 23, 1991

[5]The term relative means relative to white men, which is the benchmark we used for comparison purposes.

separating in higher relative numbers than those at which they were employed. This latter finding could have deleterious effects on the affirmative employment of minority women in key jobs in the federal workforce, in general, were it to continue in years in which separations greatly exceeded hires.

EEOC reviewed a draft of this report and disagreed with our approach to data analysis, which involved computing the ratios of women and minorities to white men. EEOC also believed the approach would be too costly and burdensome for it and other agencies to use. Because we believe the approach is sound and practical and can provide valuable information, we are asking the Committee to consider requiring the periodic application of this analytic technique to affirmative employment data.

Objectives, Scope, and Methodology

In keeping with the agreement in our October 1991 testimony, our objective was to analyze, by grade, how much change has occurred over recent years in the key job workforce of 25 executive agencies. Specifically, we sought to (1) analyze the equal employment opportunity (EEO) profile of the key job workforce in fiscal years 1984 and 1990 to determine the size and direction of change in the relative numbers of women and minorities in key jobs and (2) compare the relative hiring, promotion, and separation levels of women and minorities with their existing employment levels in key jobs in each of these years to determine the influence of such personnel actions on the composition of the key job workforce.[6]

The data for this report, like those for the October 1991 testimony, are from OPM's Central Personnel Data File (CPDF). The workforce data that we used to develop the EEO profile of key job workers provided "snapshots" of the key job workforce as of September 30, 1984, and September 30, 1990. The personnel events data that we used to analyze key job hirings, promotions, and separations provided information on these events for all of fiscal years 1984 and 1990. When we began our review, fiscal year 1990 data were the most recent data available for a full fiscal year. We selected fiscal year 1984 as the comparison year because it was the most distant year for which we had data in which separations were identified in CPDF the same way as they were in 1990.

[6]We identify the 25 agencies and how we selected them in appendix I.

To determine how much change occurred in representation levels between 1984 and 1990 for particular EEO groups, we divided the number of key job workers in a particular EEO group by the number of white men in each year and then took ratios of those numbers across years. When we examined changes by grade level, we divided the number of women and minority key job workers at a given grade level by the number of white men in that same grade in the same year. White men were selected as the benchmark because they have historically dominated the management levels of the white-collar workforce and because it seemed reasonable to consider how the numbers of women and minorities had changed over time relative to them. Throughout the text, the term relative numbers refers to how many women and minority workers there were per 1,000 white men in a particular category of the key job workforce.

We used a ratio-based technique to estimate the relative numbers of women and minorities in key jobs and involved in certain personnel events in each year. The technique, which involves comparing ratios of numbers in differing categories or EEO groups, enabled us to perform analyses that were more sensitive to changes in the relative numbers of women and minorities than traditional descriptive statistics. Appendixes II and III provide detailed results obtained from the analyses. Appendix IV provides an expanded discussion of the advantages of measuring change in terms of ratios rather than percentages.

As an example of how relative numbers were computed, in 1984, there were 86,879 white women and 242,731 white men in key jobs in the 25 agencies we reviewed. The resulting ratio of .358 (86,879/242,731) can be interpreted to mean that in 1984 there were 358 white women for every 1,000 white men in key jobs. In 1990, there were 438 white women for every 1,000 white men in key jobs. The magnitude of the increase over time was then computed by taking ratios of the relative numbers. So, the increase in the number of white women relative to white men can be calculated to be 1.22 (438/358). In other words, the relative numbers of white women increased by a factor of 1.22, or 22 percent, between 1984 and 1990.

The analyses presented in this report are useful for depicting the direction and magnitude of changes over time, and they are especially well suited to comparing the relative changes in workforce representation across groups of very different sizes. These analyses must be interpreted with caution, however. They do not permit us to draw definitive conclusions about the net effect of personnel actions on the composition of the key job

workforce.[7] Nor do they enable us to determine whether affirmative action, as opposed to other factors, caused the observed changes. Data and resource limitations did not allow us to track cases over time, to determine who was not promoted, to ascertain who was not hired, or to know who was converted to permanent positions. We also did not verify the workforce data obtained from OPM's CPDF nor the bases of each key job designation by the agencies.

Our review was performed in accordance with generally accepted government auditing standards from January to October 1992.

Relative Standing of Women and Minorities in Key Jobs

In the key job workforce of the 25 agencies, the relative numbers of white women and minority men and women increased between 1984 and 1990 at all grades.[8] Increases in the relative numbers of minority women in key jobs were greater, overall, than increases in the relative numbers of white women and minority men. The relative numbers of minority women increased by approximately 34 percent compared to a 22-percent increase among white women and minority men.

Among minority women, the largest gains were made by Asian and Hispanic women, whose relative numbers in key jobs increased over the 6-year period by 73 percent and 63 percent, respectively. Among men, Asians and Hispanics were also the EEO groups with the largest relative gains. The relative numbers of Asian and Hispanic men in key jobs increased by 41 percent and 33 percent, respectively. Black men and women, by comparison, increased in relative numbers by 11 percent and 29 percent, respectively. With 11 Native American women per 1,000 men in key jobs in both 1984 and 1990, this was the only EEO group to exhibit no change relative to white men.

Increases that occurred over time in the relative numbers of women and minorities were generally as large and sometimes larger at grades 11 and above as they were at the lower grades. These greater increases in the relative numbers of women and minorities at upper grades diminished somewhat the disparity in the relative numbers of women and minorities

[7] In meetings with OPM officials, we learned that there are typically large numbers of conversions from temporary to permanent positions. This fact may explain why the workforce as a whole grew between 1984 and 1990, despite the fact that the number of separations from the workforce exceeded the number of hires into the workforce.

[8] We combined grades 1 through 10 in these analyses. Statements in the report about what happened at lower grades should be understood to imply the aggregated grouping of employees in grades below 11. Upper grades refer to each of grades 11, 12, 13, 14, and 15.

at lower grades versus upper grades, though a pronounced disparity persisted in 1990.

Our analysis of the data on specific personnel events revealed that hirings, separations, and promotions variably affected women and minority representation across the pay grades. In both 1984 and 1990, white women and minority men, with the exception of Native American men, were hired into key jobs at relatively higher levels than those at which they were already employed in those jobs. In general, therefore, the EEO composition of new hires helped improve the relative numbers of white women and minority men in key jobs. In contrast, minority women were hired into key jobs in generally lower relative numbers than those at which they were employed, although the difference in the relative numbers hired and employed was smaller in 1990 than in 1984.

In both 1984 and 1990, both white and minority women were hired into pay grades below 11 at lower relative numbers than those at which they were employed. Among minority women, it was primarily blacks who accounted for this finding. In upper grades, on the other hand, white and minority women, like minority men, were hired at much higher levels than the level at which they were employed. In 1990, white women at grade 12 and up, minority men at grades 14 and 15, and minority women at grades 13 and up were hired at roughly twice the relative number at which they were employed.

With respect to separations, white women and minority men and women were separating in 1990 at relatively higher levels than those at which they were already employed in key jobs. For example, among key job workers in 1990, 438 white women were employed for every 1,000 white men employed, but white women were separating at a rate of 522 per 1,000 white men separating. Among minorities, it was blacks who primarily accounted for the finding that relative separation levels exceeded relative employment levels. Further, the relatively higher levels of separation occurred primarily at grades 11 and under. In 1984, minority men and women, overall, separated at levels that were lower than the relative numbers already in key jobs.

With respect to promotions, white women in grades 11 and above in 1984 and 1990 were promoted to key jobs at levels that exceeded their prevailing employment levels at those grades. For example, the relative numbers of white women promoted to grade 15 were 57 percent higher in 1984 and 61 percent higher in 1990 than the relative number of white

women already employed in that grade. The promotion levels of minority men were less favorable. At grade 15 in 1984 and 1990, there were fewer minority men promoted per 1,000 white men than the relative number employed at that grade. Minority women were also promoted to grade 15 in lower relative numbers than the number already employed at that grade, but the relative numbers of minority women promoted to grades 12, 13, and 14 were higher than the relative numbers already employed at those grades in both years.

Notwithstanding the general improvement in the relative numbers of women and minorities in key jobs in the federal workforce, certain disparities remain. Women and minorities are still less well represented in key jobs at the upper grade levels than at grade 10 or below. For example, for every 1,000 white men working in key jobs at grade 10 or below in 1990, there were 1,390 women and minorities similarly employed. At grade 15 in the same year, for every 1,000 white men working in key jobs, there were 300 women and minorities. These numbers are useful in clarifying where disparities persist and where affirmative employment and recruitment efforts can be appropriately focused.

Further Application of Ratio-Based Techniques for Affirmative Planning

EEOC issues directives to agencies on affirmative employment planning. In our 1991 work for the Senate Committee on Governmental Affairs, we recommended ways in which EEOC could improve the government's affirmative employment planning.[9] We believe that the ratio-based approach we have used in this report provides a further means for improving affirmative employment planning.

In accordance with EEOC instructions, agencies commonly compare their workforces for the current year with their workforces for the previous year. Agencies also compare their workforces in a given year with the civilian workforce. These comparisons are undertaken to discern whether EEO groups (e.g., black males or Hispanic females) are underrepresented in the workforce as a whole, in certain occupational categories, or at certain grades, and/or whether EEO groups are decreasing or increasing. Usually these comparisons involve simply looking at whether the percentages of an agency's workforce in the various EEO groups have changed over time or are greater or smaller than in the comparable civilian workforce.

The disadvantage of assessing EEO progress by looking at percentage differences in representation is that it is difficult to see whether EEO

[9]GAO/GGD-91-86, May 10, 1991, and GAO/T-GGD-91-32, May 16, 1991

groups that constitute a smaller percentage of the workforce are making the same progress as those that constitute a larger percentage of it. We show in appendix IV, for example, that changes in the percentages of key job workers who were white women or minority men or women between 1984 and 1990 would produce the conclusion that white women exhibited greater progress over that period than minority men or women. In fact, we show, using our ratio-based approach, that minority women increased in relative number more than white women and minority men and that the increases in the relative numbers in these latter two groups were virtually identical.

The ratio-based approach also has the advantage of directly comparing the numbers of each EEO group relative to a benchmark, in this case, white men. The percentage of black women may increase from one year to the next, either at the expense of other women and/or other minorities or at the expense of white men. From an affirmative employment perspective, knowing which type of change occurred is of considerable importance. Percentage differences do not reveal which was the case, while ratios do. As we show in appendix IV, ratios derived from relative numbers and ratios derived from percentages are of equal value in describing and comparing representation levels across groups and over time. We therefore believe there is a benefit in using ratios rather than percentage differences when comparing the relative progress (or change in representation) of groups that are very different in size.

Conclusion

All of the EEO groups we considered, except for Native American women, were better represented in key jobs in the federal workforce in 1990 than in 1984. Further, all of the groups were better represented in key jobs at upper grades in 1990 than in 1984. This increased representation at upper grades was both the result of favorable hiring rates for women and minorities at upper grades and the fact that most were promoted to upper grades in greater numbers, relatively speaking, than those at which they were already employed in those grades.[10]

As we have noted, however, women and minorities do remain less well represented in key jobs at upper grades than at lower grades, and agencies will need to pay close attention to whether the progress we have reported here continues. In monitoring such progress, we think ratio-based techniques, using one of the EEO groups as a benchmark, are a better tool

[10]The only exception to this pattern was at grade 15. Minority men and women were promoted to that grade in both years in lesser relative numbers than the relative number at which they were already employed

than percentage differences with no benchmark for discerning change in the representation levels of different EEO groups. The ratio-based approach ensures that when groups of widely varying size are compared, the results are interpreted consistently. In other words, similar differences will appear similar regardless of whether the group is large or small. For example, a gain in representation in a small group from 1 percent to 2 percent is a doubling, just as a gain from 10 percent to 20 percent is in a large group.

In addition, by stating a ratio relative to a benchmark, another dimension of change is simultaneously controlled. In the present study, we used white men as a benchmark because white men have historically dominated management levels of the white-collar workforce and because we wanted to control for the possibility that an increase in the representation level of one minority group occurred at the expense of another minority group. In the absence of such a benchmark, it would have been difficult to discern whether real EEO progress had occurred or whether there may have been a redistribution in representation levels such that some minority groups gained while others lost. In other representation studies, it may be preferable to use a group other than white men as the appropriate benchmark. For example, if black women were overrepresented in the secretarial ranks of a particular agency, they might be an appropriate benchmark for assessing change in the representation of various EEO groups among secretaries.

In this report, we have focused on changes over time in the numbers of women and minorities relative to white men and on differences in those relative numbers in upper and lower grades among workers in key jobs in the federal workforce. We think these analyses impart useful information for agency management to discern whether and among which EEO groups progress has been made. However, these analyses are not intended to supplant or diminish the need for making comparisons with the appropriate civilian workforce. The ratio-based techniques used here to examine changes over time and across grades would also be appropriate for comparing EEO group representation in the federal workforce with the civilian workforce. Moreover, they are just as useful in addressing more general questions about the representation levels of various groups. For example, they can examine differences between the representation levels of men and women or minorities and whites as well as more specific differences between EEO groups relative to white men.

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In advocating the use of ratio-based techniques, we are not suggesting that comparisons be made on different groups than in the past. Rather, we are advocating that comparisons be made differently, by computing ratios of relative numbers or ratios of percentages rather than differences in percentages. This method will provide a better management tool for discerning how much and among which EEO groups progress has occurred. In turn, affirmative employment planning could more specifically identify areas needing greater attention and on which EEO efforts should be focused.

EEOC Comments and Our Evaluation

Because of EEOC's responsibility for directing the government's affirmative employment program, we provided EEOC officials with a draft of this report for review and comment. The draft contained a proposed recommendation to EEOC that it use ratio-based techniques to assess representational changes and differences.

The Chairman of EEOC commented on that draft in a January 19, 1993, letter. He expressed the view that our ratio-based approach is grounded in incorrect assumptions and would be burdensome and costly for EEOC to implement.

According to the Chairman, it is inappropriate to use white male employees as a benchmark because the appropriate comparison for affirmative employment purposes and the comparison EEOC employs is the civilian workforce. The Chairman said that our ratio-based comparisons make the unrealistic assumption that all groups of differing race, ethnicity, and gender should have the same occupational patterns in the federal government as white men and that they have the same qualifications and interest. Because most jobs in the government have specific experience or education requirements, a simple comparison to the pattern of white men is inappropriate.

We agree with the Chairman that affirmative employment progress in the federal government should be compared with that in the civilian workforce. However, the civilian workforce data that EEOC requires agencies to use are not always current.[11] In addition, when studying the

[11]There are different approaches to determining the appropriate civilian workforce. The approach most widely used in the federal government relies on decennial census data, and EEOC has required agencies to use those data even when they became outdated. For that reason, we recommended to EEOC in our October 1991 testimony (see footnote 1) that it develop, in cooperation with certain other agencies, an inventory of databases that agencies may draw from and apply in appropriate circumstances to assess the representation of their workforces (e.g., using Bureau of Labor Statistics data to update decennial census information). EEOC agreed with the recommendation.

distribution of women and minorities across federal pay grades, civilian workforce data have not been available at all.

More importantly, however, we believe that the Chairman may not have understood that our use of white males as a benchmark was intended to standardize the analyses and not to serve as a replacement for civilian workforce comparisons. The focus in our analyses was on key job workers in the federal government, particularly those at the upper grade levels. Our rationale for using white men as a benchmark in these analyses was to discern whether and to what extent groups that had been historically underrepresented relative to white men had made progress. As we indicate in this report, the group which is used as a benchmark may differ in different studies, depending on the research questions and what makes sense.

Contrary to the Chairman's claim, we make no assumption that all EEO groups should have the same qualifications, education, or occupational patterns as white men. Our analyses were designed to determine where disparities in the relative numbers of different EEO groups existed in a particular year or where they persisted over time. Our comparisons did not permit us to say why they existed or persisted. Explanations of why representation levels stand as they do and the extent to which education, experience, or discriminatory practices account for existing representation levels would require additional data and other types of analysis.

We feel that this ratio-based approach is superior to computing raw percentage differences in representation levels because the results it produces, unlike percentage differences, are unaffected by the size of the groups being compared. In appendix IV, we provide a concrete example of how looking at differences in proportions, as EEOC typically does, can result in misleading interpretations of results when group sizes vary substantially.

The Chairman of EEOC also noted the types of analyses we proposed would be too costly to EEOC in terms of dollars and staff time and would detract from the time EEOC spends on essential functions it is already performing. He noted that the task of training EEO staffs at federal agencies would be much more difficult and time-consuming than we seemingly suggest. He said the agency staffs have differing degrees of experience and that experience may not always be sufficient to thoroughly understand the types of analyses recommended. He believed that substantial funds would

be required to develop a computer program and that EEOC personnel would spend substantial time learning to use the program, enter data, and interpret the results. He also said that EEOC staff would have to devote much of their time and effort to correcting the resultant errors in agency reports to EEOC.

In our draft recommendation, we expressed the view that agencies should adopt over time the ratio-based technique as a standard part of their affirmative employment analyses. Our belief that the adoption of the ratio-based approach would not be costly or burdensome is based on the fact that it would require no new data collection or data entry efforts. In this regard, EEOC prepares annual reports to Congress on the employment of women and minorities in the federal workforce, and these annual reports contain raw data to which the ratio-based approach we suggest can be applied. The source of the data used in this report is OPM's CPDF, which also contains data on promotions, hires, and separations. These computerized data are available to EEOC.

We also believe that our suggestion for taking a ratio-based approach would not be costly or burdensome because it is as computationally simple as the procedures that agencies and EEOC are already using. Because EEOC has access to CPDF data and because our proposal involves nothing more than dividing certain numbers by one another, we do not believe that funding for other significant EEOC enforcement activities would have to be cut to implement our proposal. Computing the ratios we suggest can be accomplished via a simple computer program. We would be willing to assist EEOC in developing this computer program.

Moreover, we believe it is worthwhile for EEOC and agencies to adopt the ratio-based approach because of its computational simplicity, its strength as an analytic tool for assessing the relative status of women and minorities, and its potential for contributing to EEOC's efforts to systematically track progress in federal affirmative employment.

Appendix VI contains a copy of EEOC's January 19, 1993, letter and our additional discussion of its comments.

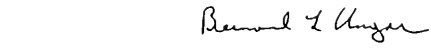
Matter for Consideration by the Senate Committee on Governmental Affairs

Because of EEOC's opposition to our draft, we have made no recommendation to EEOC in this report. However, we continue to believe that the ratio-based approach provides the opportunity to gain greater understanding of the status and progress of federal affirmative employment efforts. As such, the Committee may wish to require EEOC to use the technique when providing its annual report to Congress on the employment of women and minorities in the federal government. Because progress is incremental, we believe it would be sufficient to perform ratio-based analyses on a periodic basis, such as every 3 to 5 years. In time, as more use is made of the technique, agencies may wish to adopt it on their own to analyze federal workforce information.

As arranged with the Committee, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Chairman of EEOC, the Director of OPM, and other interested parties. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix VII. If you have any questions, please contact me at (202) 512-5074.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human Resource
Management Issues

Contents

Tables

Figures

Abbreviations

CPDF	Central Personnel Data File
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
OPM	Office of Personnel Management

Appendix I

Identification of Agencies and Definition of Personnel Events Included in the Study

The purpose of this appendix is to identify which 25 agencies were included in our review and how we selected them and to explain our definitions of the three personnel events we examined—hires, separations, and promotions.

Agencies Reviewed

We reviewed the gender, race, and ethnic origin of people in 262 key jobs at 25 federal agencies. During the phase of our work that resulted in our May 1991 testimony, we reviewed the most recent multiyear affirmative employment plans, covering fiscal years 1988 through 1992, for the 34 largest federal agencies.[1] These agencies, in fiscal year 1988, collectively employed about 98 percent of the federal workforce. At the request of the Senate Committee on Governmental Affairs, we also included the National Archives and Records Administration's affirmative employment plan in our review.

Twenty-seven of the 35 agencies complied with EEOC requirements and identified major occupations in their multiyear affirmative employment plans. Eight did not. For this phase of our review, we categorized the major occupations into key jobs using a definition approved by EEOC. This definition eliminated clerical jobs and jobs with less than 100 employees. The EEOC described key jobs as those with 100 or more employees that offer advancement potential to senior level positions.

CPDF data were available to analyze the key jobs of 25 of the 27 agencies. The data were unavailable for the remaining two agencies. The names of the 25 agencies whose key jobs we reviewed follow.[2]

Department of Agriculture
Agency for International Development
Department of Commerce
Defense Logistics Agency
Defense Contract Audit Agency
Defense Mapping Agency
Defense Investigative Service
Department of Justice
Department of Energy
Department of Education

[1]GAO/T-GGD-91-32, May 16, 1991.

[2]One of the largest federal agencies, the U.S. Postal Service, is not among the 25 agencies. The Postal Service's affirmative employment plan was among the plans we reviewed, but the Postal Service did not identify major occupations and does not report data to CPDF.

Equal Employment Opportunity Commission
Environmental Protection Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
United States Information Agency
Department of the Interior
National Archives and Records Administration
Nuclear Regulatory Commission
Department of the Navy
Office of Personnel Management
Small Business Administration
Department of Transportation
Department of the Treasury
Department of Veterans Affairs

Personnel Events

All of our analyses of personnel events were restricted to those involving full-time permanent federal employees who held key jobs in the 50 United States in 1984 and 1990. CPDF contains multiple codes that identify various types of hires, separations, and promotions. Because we exercised some judgment in determining which codes to use to define the population of employees who were hired, separated, and promoted, we present here a full explanation of the categories included in our definitions.

Hires

In our definition of permanent hires, we included only the following types of appointments: career, career-conditional, excepted, reinstatement-career, and reinstatement-career-conditional.

Separations

We included both voluntary and involuntary separations from federal employment. Involuntary separations comprised the following categories: mandatory retirement, retirement due to disability, retirement in lieu of involuntary action, resignation in lieu of involuntary action, removal, termination due to disability, expiration of appointment, involuntary termination, termination, discharge during probation/trial period, and discharge. Voluntary separations comprised voluntary retirement, special option retirement, resignation, termination due to sponsor relocating, and termination due to military service. Termination due to transfer from one agency to another and separation due to death were not included in our definition of separation.

Promotions

Promotions included permanent promotions and temporary or term promotions. They also included promotions obtained competitively and promotions obtained noncompetitively.

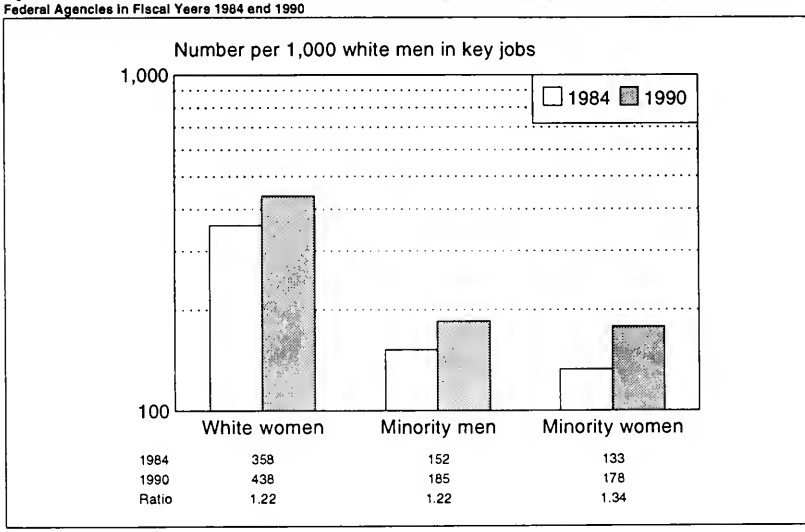
Key Job Profile for 1984 and 1990

Figure II.1 indicates that the relative numbers of white women and minority men and women in key jobs increased between 1984 and 1990.[1] The relative number of minority women (i.e., the number of minority women relative to white men) increased by a factor of 1.34, or by 34 percent. The relative numbers of white women and minority men both increased by 22 percent.[2]

[1]Graphically, results from loglinear analyses, which involve comparing ratios of numbers in differing categories or EEO groups, are depicted using a multiplicative scale. A chart with a multiplicative scale has no fixed zero point at its base, and the bars on the chart are interpreted only relative to their height on the scale. On a multiplicative scale, distances between two sets of points are equal when their ratios are equal. So a change from 10 per 1,000 to 20 per 1,000 will appear similar in size to a change from 100 per 1,000 to 200 per 1,000. Both involve a doubling, or an increase in magnitude, by a factor of 2.

[2]The change over time in relative numbers is obtained by dividing the relative number in 1990 by the relative number in 1984. From figure II.1, the change in relative numbers of white women is calculated as 438/358 = 1.22, which is interpreted to be a 22-percent change. For minority men, the 1990 to 1984 ratio is 185/152 = 1.22, also a 22-percent change. For minority women, the ratio is 178/133 = 1.34, a 34-percent change.

Figure II.1: Numbers of White Women and Minority Men and Women per 1,000 White Men Among Workers in Key Jobs at 25 Federal Agencies in Fiscal Years 1984 and 1990



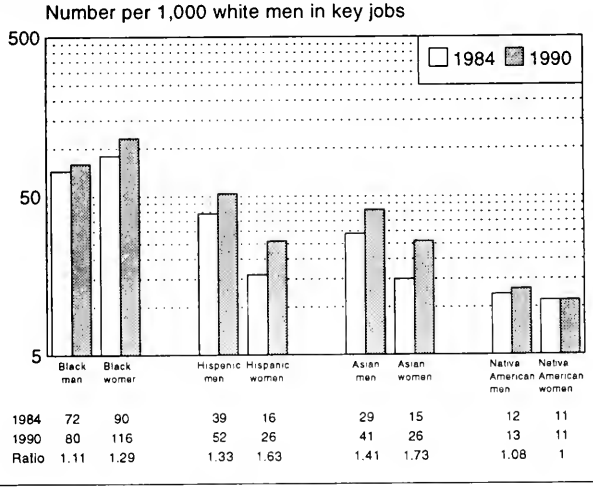
	White women	Minority men	Minority women
1984	358	152	133
1990	438	185	178
Ratio	1.22	1.22	1.34

Source: OPM data

Figure II.2 shows changes in the relative numbers for each of the specific categories of minority men and women. All EEO groups except for Native American women showed increases in relative numbers in key jobs between 1984 and 1990. Increases for Native American men and black men were slight, involving increases of 8 percent and 11 percent, respectively. The relative numbers of Hispanic and Asian men showed more sizable increases over time, involving gains of 33 percent and 41 percent, respectively. The relative numbers of black, Hispanic, and Asian women all increased more than their male counterparts. Increases for Hispanic

and Asian women were largest, involving gains of 63 percent and 73 percent, respectively.

Figure II.2: Numbers of Specific Minority Men and Women per 1,000 White Men Among Workers in Key Jobs at 25 Federal Agencies in Fiscal Years 1984 and 1990



	Black men	Black women	Hispanic men	Hispanic women	Asian men	Asian women	Native American men	Native American women
1984	72	90	39	16	29	15	12	11
1990	80	116	52	26	41	26	13	11
Ratio	1.11	1.29	1.33	1.63	1.41	1.73	1.08	1

Source: OPM data

The relative numbers of minority men and women shown in figure II.2 also imply that blacks were the only group in which the number of women in key jobs exceeded the number of men. Furthermore, the difference was even greater in 1990 than in 1984. There were 1,250 black women for every

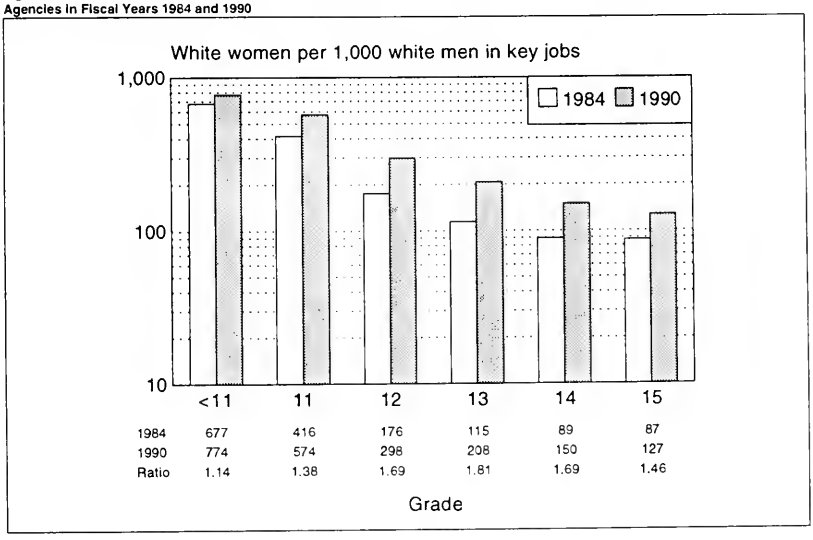
1,000 black men in key jobs in 1984.[3] In that same year, there were roughly 2,400 Hispanic men for every 1,000 Hispanic women and 1,900 Asian men for every 1,000 Asian women. The fact that the relative number of women in key jobs grew more than the relative number of men in all three of these minority categories implies that the disproportion in the number of women among blacks increased, while the disproportion in the number of males among Hispanics and Asians decreased. In 1990, there were 1,450 black women in key jobs for every 1,000 black men, 2,000 Hispanic men for every 1,000 Hispanic women, and 1,600 Asian men for every 1,000 Asian women. The numbers of men and women among Native Americans were fairly comparable in both years.

Figures II.3, II.4, and II.5 show that the relative numbers of white women and minority men and women in key jobs increased at every grade level between 1984 and 1990. Further, increases in the relative numbers for all three groups were greater at virtually all grades at or above grade 11 than below it.[4] At grades 12 and above, the gains in key jobs made by white and minority women exceeded considerably the gains made by minority men. At grade 13, for example, there were 81-percent, 90-percent, and 31-percent increases, respectively, in the relative numbers of white women and minority men and women. At grade 14, the relative gains were 69 percent for white women, 65 percent for minority women, and 11 percent for minority men.

[3]The number of black women per 1,000 black men is obtained by taking the number of black women per 1,000 white men, divided by the number of black men per 1,000 white men, and multiplying that ratio by 1,000 (i.e., 90/72 X 1,000 = 1,250).

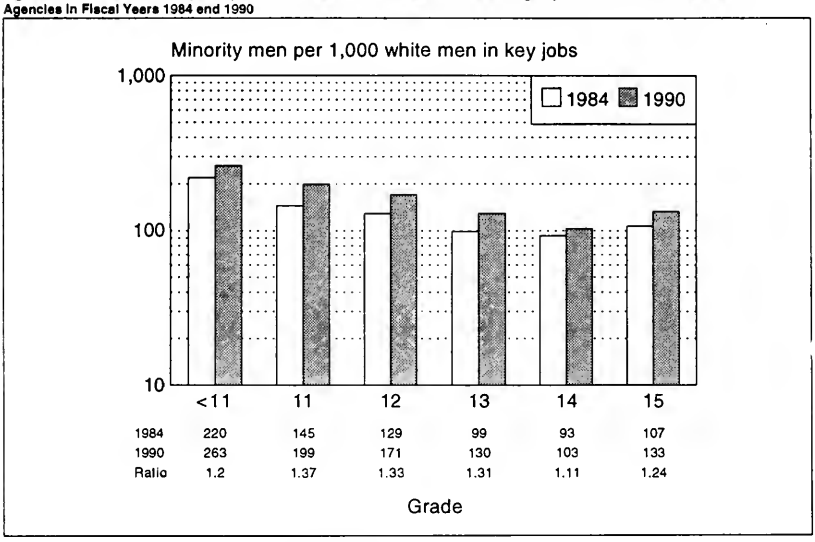
[4]The only clear exception to this involved the 11-percent increase in the relative number of minority men at grade 14, which was less than the 20-percent increase in the relative number of minority men below grade 11.

Figure II.3: Number of White Women per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



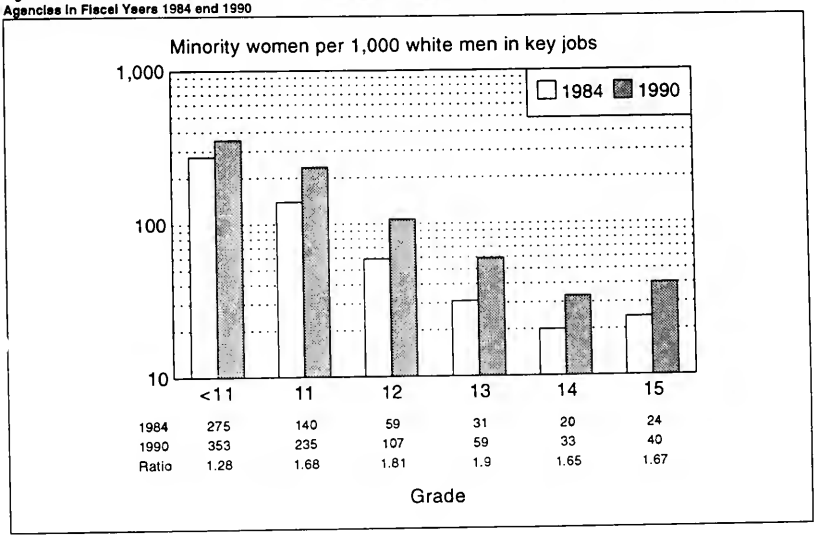
Source: OPM data

Figure II.4: Number of Minority Men per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



Source: OPM data

Figure II.5: Number of Minority Women per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



Source: OPM data

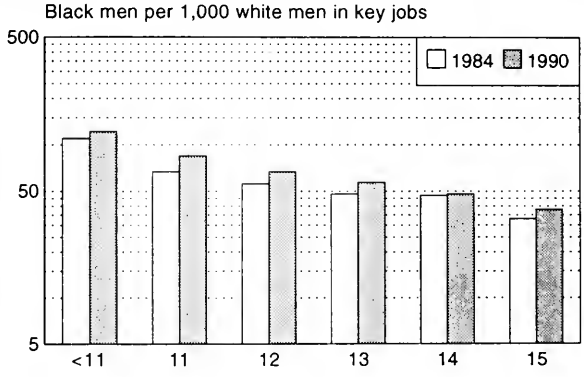
Figures II.3, II.4, and II.5 also show that the relative numbers of women and minorities in key jobs at upper grades were much smaller than those at lower grades. The greater increases over time in relative numbers at upper grades diminished these differences across grades somewhat. Nonetheless, even in 1990, the lower relative numbers at upper grades of each group, and especially of the two groups of women, remained pronounced. In 1984, the relative numbers of white women and minority men and women in key jobs were higher below grade 11 than at grade 15

by factors of 7.8, 2.1, and 11.5, respectively.[5] In 1990, the corresponding numbers for these three groups were 6.1, 2.0, and 8.8, respectively.

In figures II.6 through II.13, in which minorities are separated into specific subgroups, we can more closely examine where changes occurred among key job workers. At virtually all grades, relative numbers of minorities among key job workers increased between 1984 and 1990, with women generally showing greater increases than men. Indeed, at many grades above 10, the relative numbers of black, Hispanic, Asian, and Native American women nearly doubled or more than doubled. Among men, increases by a factor of 1.5 were the highest, and these occurred among Hispanic men and women in grades 11, 12, and 13 and Asian men and women in grade 11.

[5]These numbers are obtained by computing the ratio of the relative numbers below grade 11 and those at grade 15. The 1984 ratio for white women is computed from figure II.3 as 677/87 = 7.8. The ratio for minority men is computed from figure II.4 as 220/107 = 2.1. The ratio for minority women is computed from figure II.5 as 275/24 = 11.5.

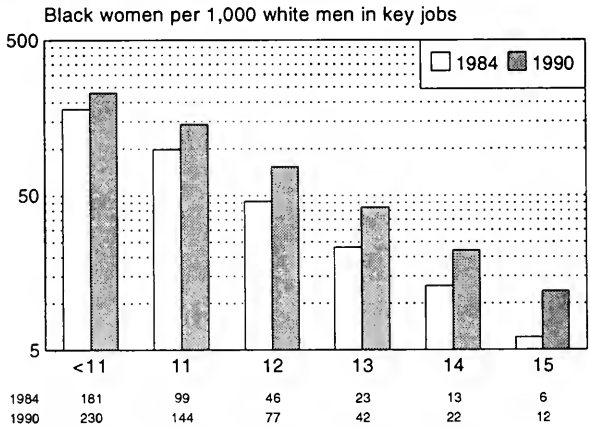
Figure II.6: Number of Black Men per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



	<11	11	12	13	14	15
1984	110	67	56	48	47	33
1990	122	85	67	57	48	38
Ratio	1.11	1.27	1.2	1.19	1.02	1.15

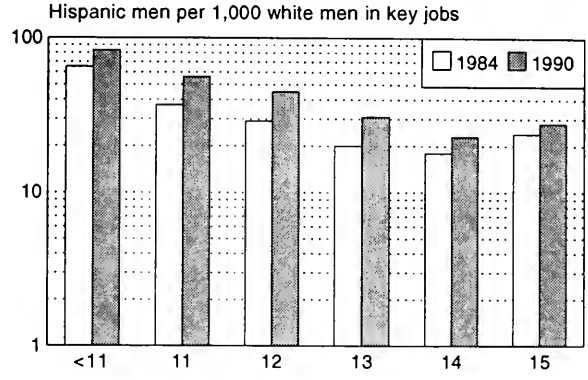
Source: OPM data

Figure II.7: Number of Black Women per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



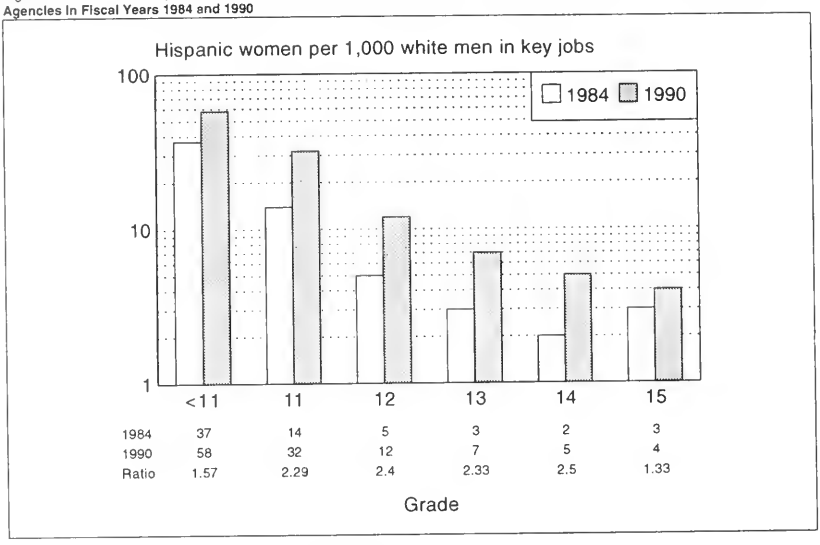
Source: OPM data

Figure II.8: Number of Hispanic Men per 1,000 White Men at Different Gradee Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



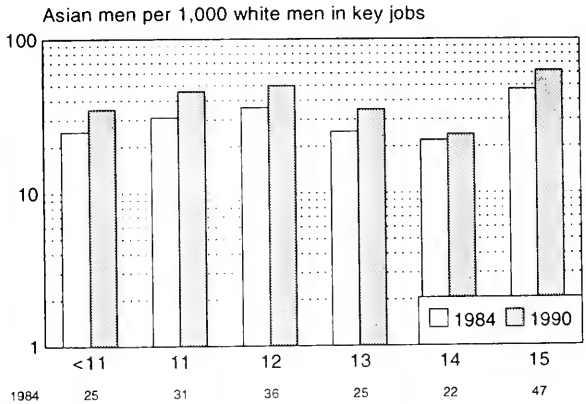
Source: OPM data

Figure II.9: Number of Hispanic Women per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



Source: OPM data

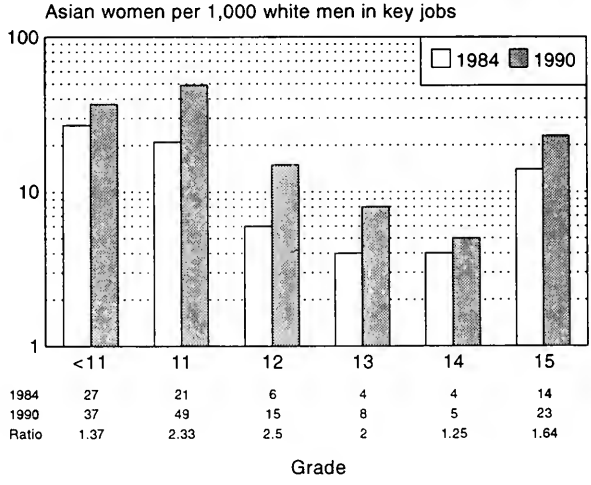
Figure II.10: Number of Asian Men per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



	<11	11	12	13	14	15
1984	25	31	36	25	22	47
1990	35	46	50	35	24	62
Ratio	1.4	1.48	1.39	1.4	1.09	1.32

Source: OPM data

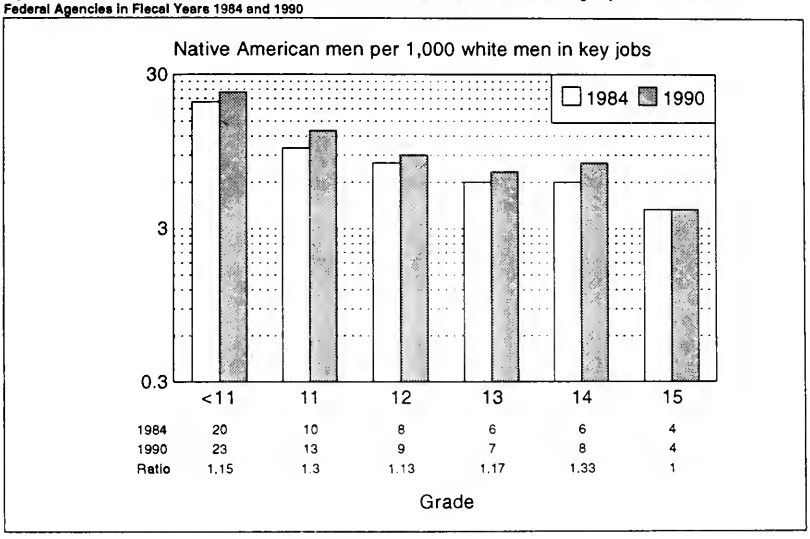
Figure II.11: Number of Asian Women per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



	<11	11	12	13	14	15
1984	27	21	6	4	4	14
1990	37	49	15	8	5	23
Ratio	1.37	2.33	2.5	2	1.25	1.64

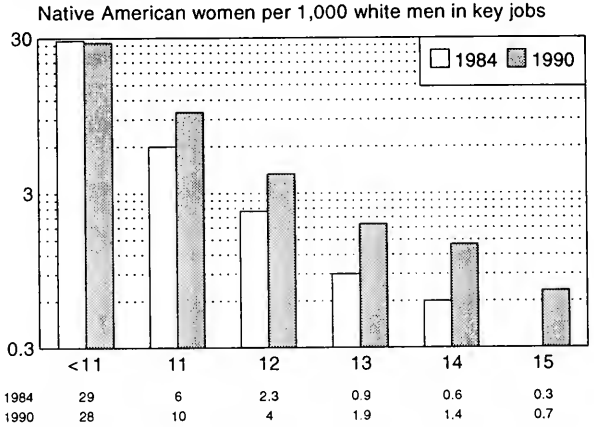
Source: OPM data

Figure II.12: Number of Native American Men per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



Source: OPM data

Figure II.13: Number of Native American Women per 1,000 White Men at Different Grades Among Key Job Workers at 25 Federal Agencies in Fiscal Years 1984 and 1990



Source OPM data

With the exception of Asian men and women, we again found substantial differences across grades in the relative numbers of women and minorities occupying key jobs. These disparities were particularly large for women. Comparing the relative numbers of black, Hispanic, and Native American women below grade 11 with those at grade 15 revealed the extent of this disparity. The relative numbers of black, Hispanic, and Native American women below grade 11 exceeded those at grade 15 by factors of 30, 12, and 96, respectively, in 1984. The comparable numbers for 1990 were 19,

14, and 40, respectively. The differences in the relative numbers of black and Native American women at the bottom and top of the grade distribution have diminished somewhat between 1984 and 1990, again because of the larger increases over time in relative numbers of these groups at upper grades than at lower grades. However, the differences in the relative numbers of women at the bottom and top of the grade distribution have hardly disappeared.

In both 1984 and 1990, there were relatively more Asian men at grade 15 than at any grade below 15, and there were relatively more Asian women at grade 15 than at grades 12, 13, or 14. There were relatively three times as many black and Hispanic men below grade 11 as at grade 15 in both years, while the relative number of Native American men was roughly five times as great in 1984 and six times as great in 1990 at grades below 11 as at grade 15.

Personnel Events in 1984 and 1990

Our second set of analyses focused on the involvement of various EEO groups in certain critical personnel events that affect the composition of the workforce and the distribution of these groups across the various grades of the workforce. We looked at the relative numbers of each group that were hired to key jobs in 1984 and 1990, at the relative numbers that were separated in both years, and at the relative numbers that were promoted.[1]

It is important to note that these analyses cannot directly account for the overall changes that took place in the composition of the key job workforce over the 1984 to 1990 period. Accounting for those changes would require, at a minimum, year-by-year calculations of numbers of each EEO group added and subtracted through hires and separations, and we did not have data for all years. Additionally, data on hires and separations alone do not account for changes in the numbers in the full-time federal workforce, in general, or in the key job segment of that workforce. Many workers are converted from part-time or temporary positions to full-time; we had no data on such conversions.

Despite data limitations, analyses of hires and separations data can nonetheless yield useful information about factors that affect the composition of the workforce. Such analyses help ascertain whether the relative numbers hired or separated differed in 1990 from 1984 or whether they vary across EEO groups or across grades in ways that might, favorably or unfavorably, affect the attempt to improve the numbers of women and minorities in the workforce. Similarly, these analyses can help to suggest whether the relative numbers of the different EEO groups promoted have affected, favorably or unfavorably, the distribution of these groups across grades.

Hires

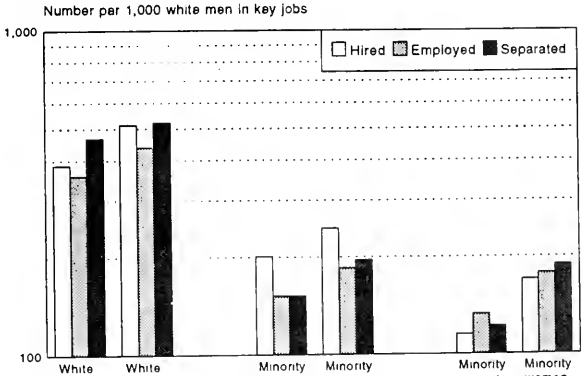
White women and minority men and women were all hired to key jobs at relatively higher levels in 1990 than in 1984 (see fig. III.1).[2] Moreover, the relative numbers of white women and minority men hired in both years exceeded the relative numbers of white women and minority men employed in key jobs. In 1990, for example, there were 246 minority men hired to key jobs for every 1,000 white men hired at a time when there were 185 minority men working in key jobs for every 1,000 white men so

[1]In appendix I, we explain how we defined hires, promotions, and separations for the purposes of this study.

[2]We do not report the relative numbers of specific minority groups hired at each grade level because the numbers of employees at some grades were very small.

employed. Minority women, by comparison, were in both years employed in key jobs in higher relative numbers than they were hired to key jobs. In both of these years, in other words, white women and minority men were hired at rates that would (disregarding separations and conversions) have increased their relative numbers in the workforce, while minority women were not.

Figure III.1: Numbers of White Women and Minority Men and Women per 1,000 White Men Employed in, Hired to, and Separated From Key Jobs in Fiscal Years 1984 and 1990

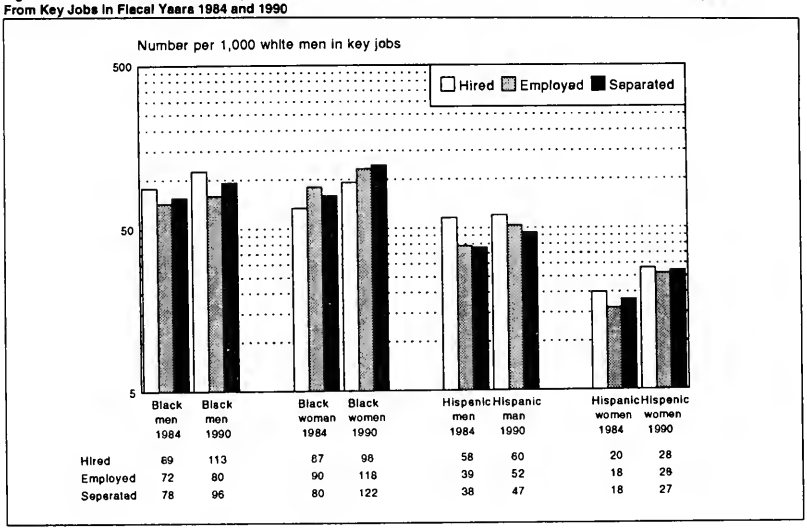


	White women 1984	White women 1990	Minority men 1984	Minority men 1990	Minority women 1984	Minority women 1990
Hired	386	514	201	246	115	170
Employed	358	438	152	185	133	178
Seperated	467	522	152	198	122	189

Source: OPM data

Figures III.2 and III.3 indicate that each of the specific categories of minority men and women were hired to key jobs in relatively higher numbers in 1990 than in 1984. While black men and Hispanic and Asian men and women were hired in both years at relatively higher levels than those at which they were employed, the relative number of black women hired in both years was lower than the relative numbers employed. In 1990, for example, when there were 116 black women employed for every 1,000 white men employed in key jobs, there were only 96 black women hired to key jobs for every 1,000 white men hired. For black women, then, new hires would not—disregarding separations and conversions—have increased their relative numbers in the key job workforce in either year. The same was true for Native American men in both years and for Native American women in 1984 but not in 1990.

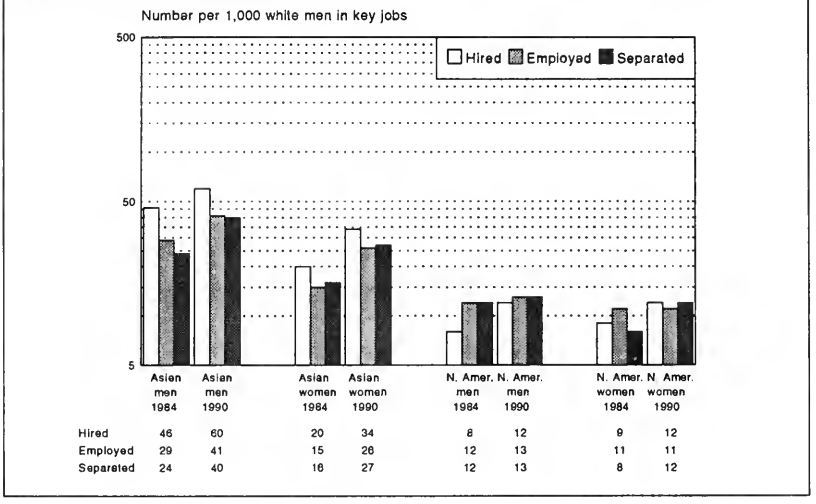
Figure III.2: Numbers of Black and Hispanic Men and Women per 1,000 White Men Employed in, Hired to, and Seperated From Key Jobs in Fiscal Years 1984 and 1990



	Black men 1984	Black men 1990	Black woman 1984	Black women 1990	Hispenic men 1984	Hispanic man 1990	Hispanic women 1984	Hispenic women 1990
Hired	69	113	87	98	58	60	20	28
Employed	72	80	90	118	39	52	18	26
Seperated	78	96	80	122	38	47	18	27

Source OPM data

Figure III.3: Numbers of Asian and Native American Men and Woman per 1,000 White Men Employed in, Hired to, and Separated From Key Jobs in Fiscal Years 1984 and 1990

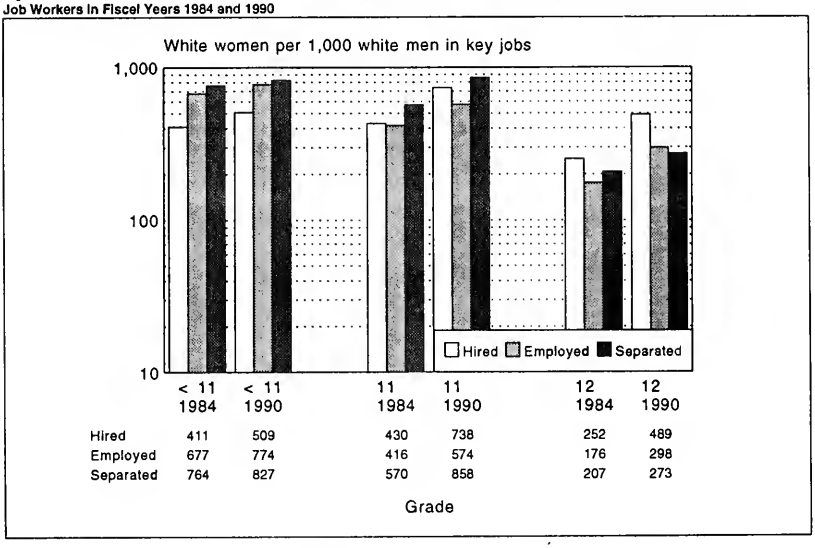


Source: OPM data

Figures III.4 through III.9 show that increases between 1984 and 1990 in the relative hiring of white women, minority men, and minority women occurred at virtually all grades. The only exception involved the relative number of minority men hired at grade 11. One pattern that emerges fairly consistently from these six figures is that at the lowest grades, in which each of the three groups was employed in the largest relative numbers, none of the groups was hired in relative numbers that greatly exceeded the relative numbers in which they were employed. In fact, in both years, white and minority women were hired in considerably smaller relative

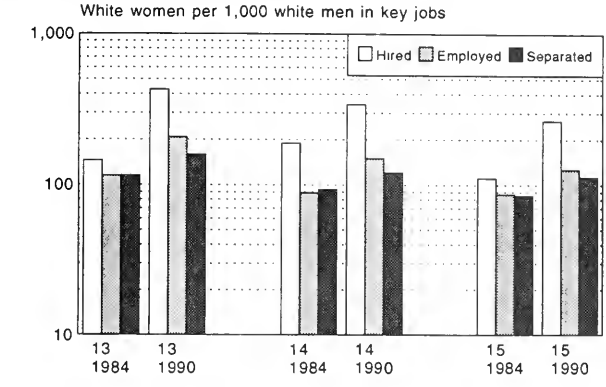
numbers than those at which they were employed below grade 11. At the highest grades, however, where these groups were employed in the lowest relative numbers, their relative hiring levels greatly exceeded in both years the relative numbers at which they were working. At grade 15 in 1990, for example, 127 white women, 133 minority men, and 40 minority women were working in key jobs for every 1,000 white men working in key jobs. In that same year and grade, 266 white women, 246 minority men, and 78 minority women were hired for every 1,000 white men hired to key jobs. The latter numbers were, in all cases, nearly double or more than double the former.

Figure III.4: Numbers of White Women per 1,000 White Men Employed, Hired, and Sepereted Below Grade 13 Among Key Job Workers in Fiscel Years 1984 and 1990



Source: OPM data

Figure III.5: Numbers of White Women per 1,000 White Men Employed, Hired, and Separated at Grade 13 and Above Among Key Job Workers In Fiscal Years 1984 and 1990



	13 1984	13 1990	14 1984	14 1990	15 1984	15 1990
Hired	145	428	189	342	111	266
Employed	115	208	89	150	87	127
Separated	116	159	94	121	85	113

Source: OPM data

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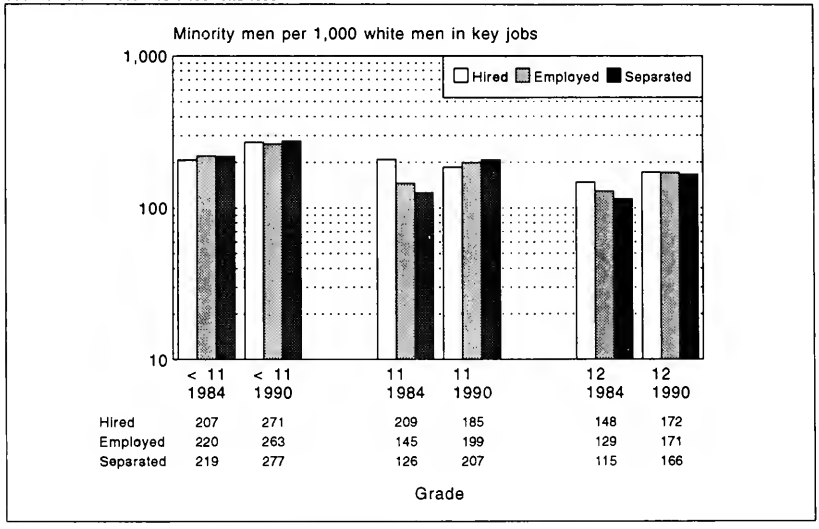
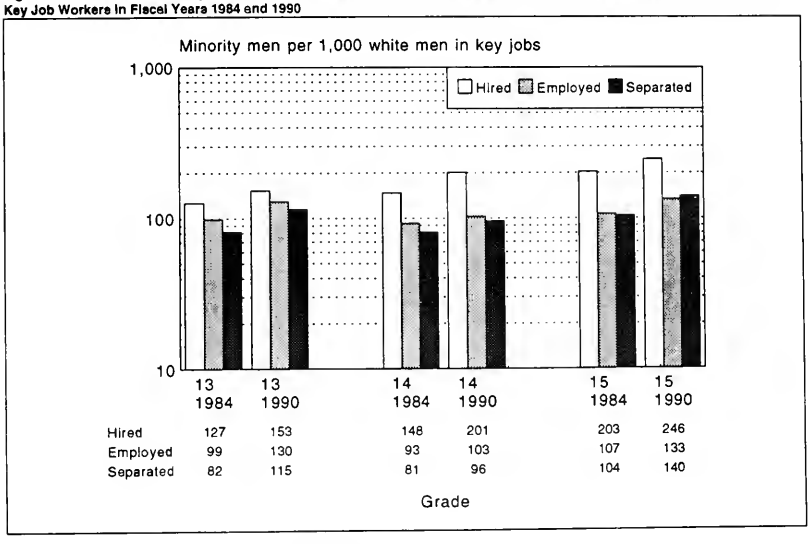
Figure III.6: Numbers of Minority Men per 1,000 White Men Employed, Hired, and Seperated Below Grade 13 Among Key Job Workers in Fiscal Years 1984 and 1990



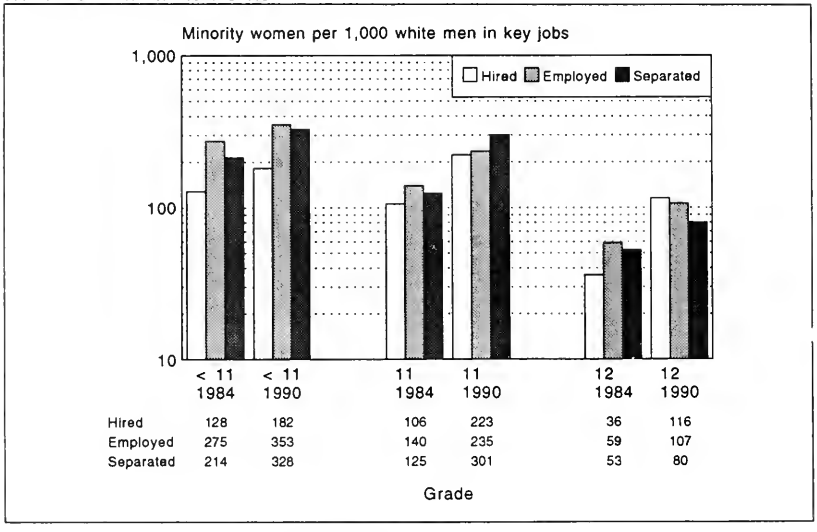
Source: OPM data

Figure III.7: Numbers of Minority Men per 1,000 White Men Employed, Hired, and Separated at Grade 13 and Above Among Key Job Workers in Fiscal Years 1984 and 1990



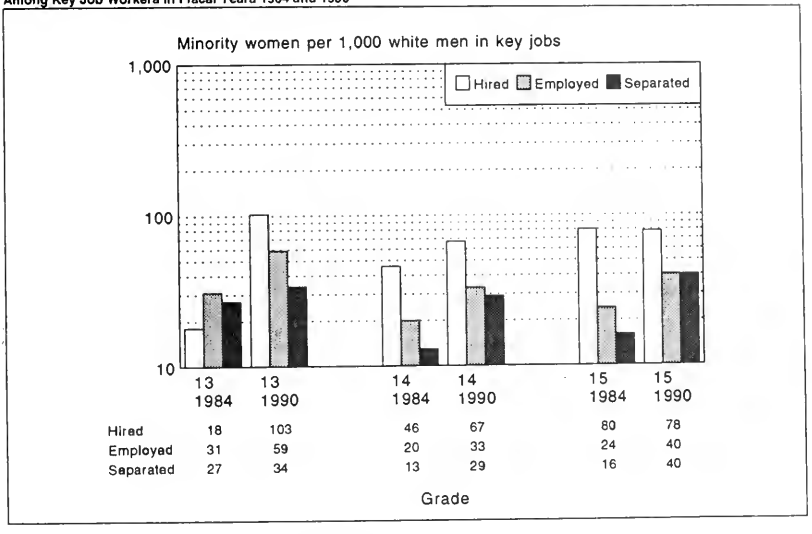
Source: OPM data

Figure III.8: Numbers of Minority Women per 1,000 White Men Employed, Hired, and Separated Below Grade 13 Among Key Job Workers in Fiscal Year 1984 and 1990



Source: OPM data

Figure III.9: Numbers of Minority Women per 1,000 White Men Employed, Hired, and Seperated at Grede 13 and Above Among Key Job Workers in Fiscal Years 1984 and 1990



Source: OPM data

Separations

The relative numbers of white women, minority men, and minority women separating from key jobs were greater in 1990 than in 1984 (see fig. III.1).[3] Furthermore, the relative numbers of white and minority women separating were somewhat greater than the relative numbers hired in both years, while the relative number of minority men separating was considerably lower than the relative number hired in each year. This was true of all groups of minority men except Native American men (see figs. III.2 and III.3).

[3]We do not report the relative numbers of specific minority groups separating at each grade level because the numbers of employees at some grades were very small

The data for black women were the primary reason for the finding that minority women separated at relatively higher levels than they were hired. Among Hispanic, Asian, and Native American women, the relative numbers hired in both years were as large or larger than the relative numbers separating.

Figures III.4 through III.9 indicate that the relative numbers hired compared to those separating were quite different at different grades for white women and minority men and minority women. The one clearly discernable pattern in these figures is that in both years at grades below 11, the relative numbers of white women and minority men and women hired to key jobs were smaller than the relative numbers separating from key jobs. At grades 14 and 15, however, in which each of these groups has been historically less well represented, the relative numbers hired greatly exceed the relative numbers separating.

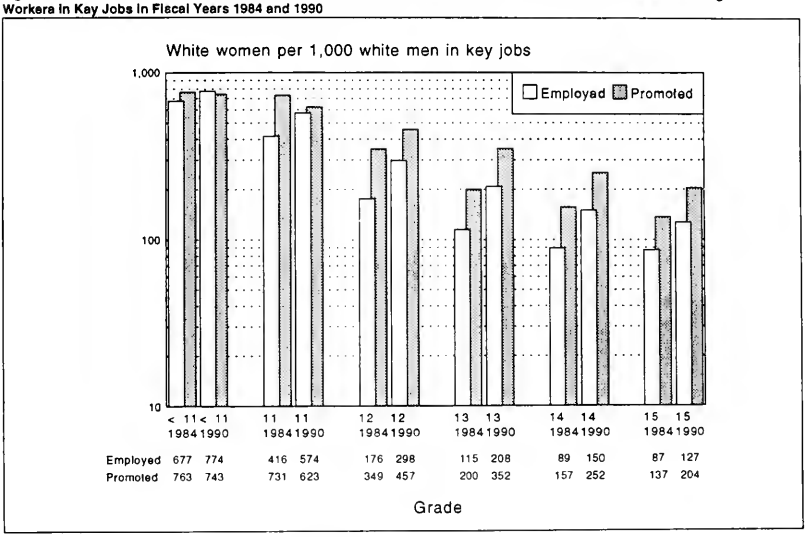
Promotions

Unlike hires and separations, promotions do not affect the composition of the federal workforce, inasmuch as promotions neither add to nor subtract from the workforce population. At the same time, promotions can affect the distribution of different groups across the various grades in the federal workforce, since it is through promotions that workers move from one grade to another. In fact, because considerably larger segments of the workforce are promoted in a given year than are hired or separated, promotions have the potential to make a considerably greater impact on the distribution of women and minorities than do either hires or separations.[4]

Figure III.10 shows that white women were promoted to grades 12 and up in 1990 in relative numbers that exceeded by more than 50 percent the relative numbers of white women already employed in those grades. The same was true in 1984 for white women promoted to grades 11 and up. The relative numbers of white women promoted to grade 15 were 57 percent higher in 1984 and 61 percent higher in 1990 than the number of white women already employed in that grade.

[4]In 1984 and 1990, the numbers hired to key jobs involved roughly 5 percent of the workforce in key jobs, while the numbers separating represented a slightly higher percentage (5.5 to 6 percent). By comparison, the numbers promoted were roughly 17 and 19 percent of key job workers, respectively.

Figure III.10: Numbers of White Women per 1,000 White Men Employed in and Promoted to Different Grades Among Workers in Key Jobs in Fiscal Years 1984 and 1990

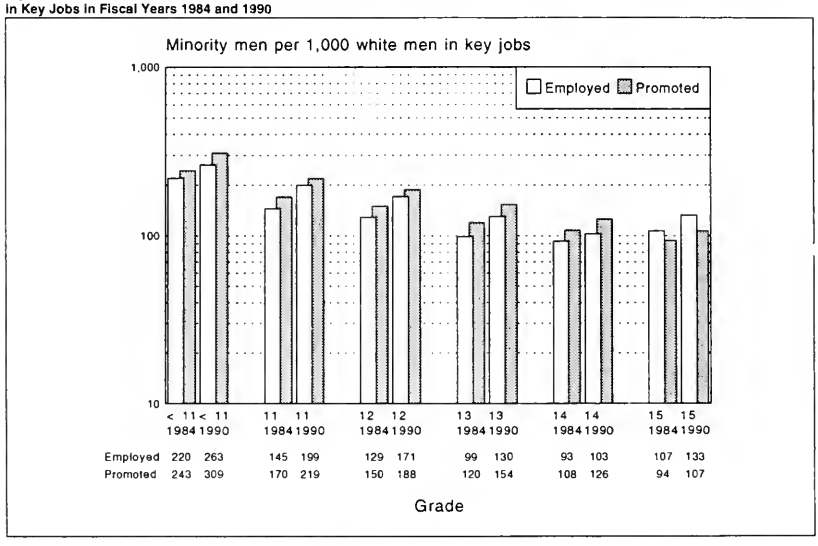


Source: OPM data

Figure III.11 reveals that the promotion levels of minority men were less favorable than those of white women. Both in 1984 and 1990, the relative numbers of minority men promoted to grade 15 per 1,000 white men promoted were lower than the relative numbers employed at that grade. As indicated in figure III.12, minority women were also promoted to grade 15 at lower levels in 1984 than their relative employment level at grade 15. In 1990, the relative number of minority women promoted to grade 15 was roughly equal to the relative number employed at that grade. However, the

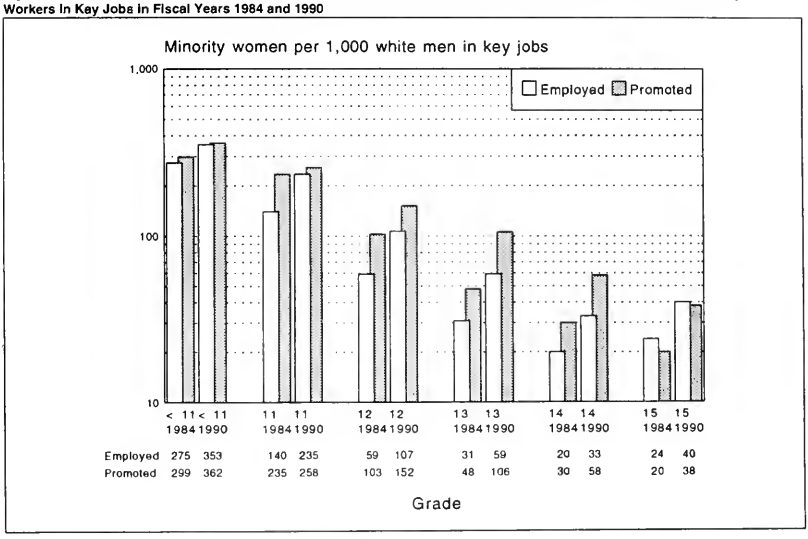
relative numbers of minority women promoted to grades 12, 13, and 14 were considerably higher than the relative numbers of minority women already employed at those grades in both years.

Figure III.11: Numbers of Minority Men per 1,000 White Men Employed in and Promoted to Different Grades Among Workers in Key Jobs in Fiscal Years 1984 and 1990



Source: OPM data

Figure III.12: Numbers of Minority Women per 1,000 White Men Employed in and Promoted to Different Grades Among Workers In Key Jobs in Fiscal Years 1984 and 1990



Source: OPM data

Figures III.10 through III.12 indicate that at virtually all grades, in both years, the relative numbers of white women and minority men and women promoted to a given grade exceeded the relative numbers that were employed at that grade. The only exception involved white women below grade 11 in 1990 and minority men and women at grade 15 in both years. Differences between the relative numbers promoted to and employed in grades 11 through 14 are somewhat greater among white and minority women than among minority men. Again, however, all three groups

appeared, in general, to be promoted in higher relative numbers than those at which they were employed. Although this does not imply that women and minorities were favored over white men in terms of promotions or promoted out of a given grade at a higher rate than white men, it does imply that the relative numbers of women and minorities would increase in the various grades that women and minorities were promoted to as a result of promotions alone.

Appendix IV

Computing Representation Levels Using Relative Numbers: Ratios With Benchmarks Compared With Percentages Without Benchmarks

The purpose of this appendix is to provide an understanding of our rationale for using loglinear techniques to analyze the key job workforce data. Results from loglinear techniques, which rely on ratios to indicate the relative number of workers in various EEO groups, are interpreted differently from results based on percentage differences. The following discussion illustrates differences between the two techniques and describes the advantages provided by loglinear methods to discerning change or difference when groups vary greatly in size.

The conventional method for determining the relative representation of EEO groups in the key job workforce would involve dividing the number of key job workers in a particular EEO group by the total number of key job workers in the workforce. The result would indicate the percentage that each group represents of the total key job workforce. Table IV.1 shows the percentages of the key job workforce that were white men and women and minority men and women. The table shows that the percentage of white men among key job workers declined between 1984 and 1990 from roughly 61 percent of key job workers to 55.5 percent. The percentage of white women, minority men, and minority women increased slightly between the 2 years.

Table IV.1: Numbers and Percentages of Key Job Workers in 1984 and 1990 in Different EEO Groups

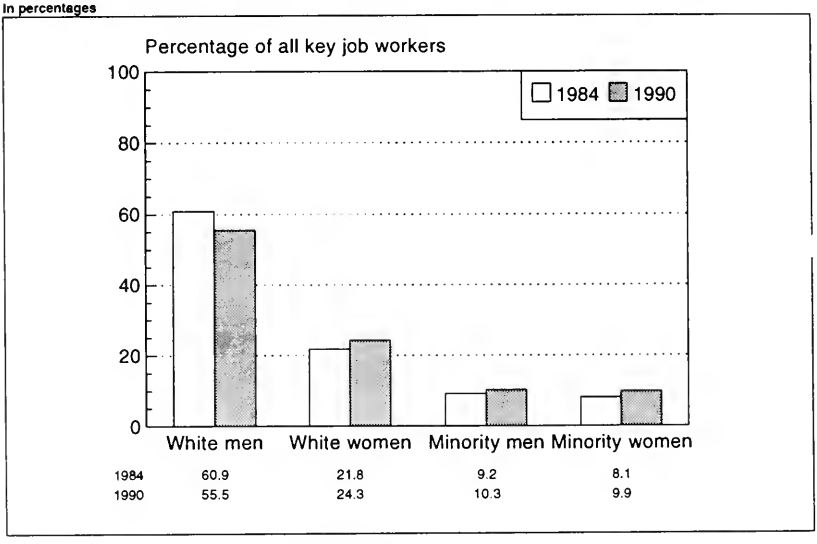
Fiscal year	White men	White women	Minority men	Minority women	Total
1984	242,731	86,879	36,836	32,218	**398,664**
	60.9%	21.8%	9.2%	8.1%	**100.0%**
1990	251,724	110,180	46,591	44,778	**453,273**
	55.5%	24.3%	10.3%	9.9%	**100.0%**

Although there is nothing technically erroneous in these results, this type of presentation has two disadvantages. First, the slight increases in the percentages of white women and minority men and women do not convey directly how little or how much these groups have gained relative to white men, whose percentage in the workforce declined over time. Second, the absolute differences in these percentages, which reflect change over time, are constrained in the following two ways: (1) the percentages are bounded in that they cannot be smaller than 0 or greater than 100 and (2) changes that are proportionally the same will appear different in large versus small subgroups in the workforce. Groups that comprise a small percentage of the population will appear to change less over time than groups that undergo a similar change but comprise a larger percentage of

the population.[1] Figure IV.1, which graphically depicts the data in table IV.1, illustrates the situation when group sizes are very different.

Figure IV.I: Representation Levels of Different EEO Groups in Key Jobs at 25 Federal Agencies in 1984 and 1990

In percentages



Source: OPM data

On the basis of figure IV.1, we would conclude that the 1984 to 1990 increase in the percentage of white women, while small, nonetheless

[1]Statisticians refer to the general problem involved in using such percentage differences to convey the magnitude of the change over time as "marginal dependence."

exceeded the even smaller increases in the percentages of minority men and women. Such a conclusion, which considers only a single group's change over time, is technically correct. However, the ratio-based approach of loglinear analysis enables us to not only compare change over time but concomitantly to assess change in one group relative to change in another group. With this approach, our conclusion concerning which group made the greater gains between 1984 and 1990 would be quite different.

To use a ratio-based approach, the following steps were taken. Using the data in table IV.1, we divided the numbers of white women and minority men and women employed in key jobs in each year by the number of white men similarly employed in each year. In 1984, the ratio of white women to white men was 86,879/242,731 = .358, while in 1990 this ratio was 110,180/251,724 = .438. In similar fashion, the ratios of minority men to white men were .152 and .185 in 1984 and 1990, respectively, while the ratios of minority women to white men were .133 and .178 in those 2 years.[2] Then we divided the 1990 ratio by the 1984 ratio to determine the relative magnitude of change between the 2 years. Thus, the amount of change in the relative number of white women was .438/.358 = 1.22; in the relative number of minority men, it was .185/.152 = 1.22; and in the relative number of minority women, it was .178/.133 = 1.34. These two sets of divisions enabled us to examine change over time relative to white men. These calculations also produced the conclusion that the relative number of minority women increased by a factor of 1.34 (or by 34 percent), whereas the relative numbers of minority men and white women both increased by a factor of 1.22.

As opposed to the conclusion based on percentages that the representation level of white women increased more than that of minority men and women, the conclusion from the ratio-based calculations is that relative to white men, the representation level of minority women increased more than that of white women and minority men. The greater the difference between the sizes of groups being compared (for example, white women and Native American women), the greater the difference between estimates of change derived from percentage differences versus ratios.

[2]Multiplying these numbers by 1,000 enabled us to make the following interpretation. In 1984, 358 white women were employed in key jobs for every 1,000 white men employed in key jobs, while in 1990, 438 white women per 1,000 white men were so employed. Per 1,000 white men, respectively, 152 minority men in 1984 and 185 minority men in 1990 were employed, and 133 minority women in 1984 and 178 minority women in 1990 were employed.

In Figure II.1, we presented, on a multiplicative scale, the findings obtained when ratios or relative numbers are calculated from the data.[3] The figure depicts visually the same pattern we described mathematically.

Adopting a ratio-based approach for making comparisons does not require altogether abandoning the use of percentages, with which most analysts are more familiar. The same results we report using relative numbers and their ratios can be obtained by computing the ratios of percentages rather than percentage differences. Calculating the ratio of percentages using the data in table IV.1, for example, reveals increases in the percentages of white women and minority men and women by factors of 1.11 (i.e., 24.3/21.8), 1.12 (i.e., 10.3/9.2), and 1.22 (i.e., 9.9/8.1), respectively, and a decrease in the percentage of white men by a factor of 0.91 (i.e., 55.5/60.9). Taking the ratios of white women and minority men and women to that of white men, we find, as before, that relative to white men, the percentages of white women, minority men, and minority women increased by factors of 1.22 (i.e., 1.11/0.91), 1.23 (i.e., 1.12/0.91), and 1.34 (i.e., 1.22/0.91), respectively.

Because the results we achieved by using percentages differ from those using relative numbers only as a result of rounding error, it makes little difference, mathematically speaking, whether we take one approach or the other. Taking ratios of relative numbers is somewhat more efficient, however, because raw numbers need not be converted to percentages before they are compared. Moreover, the plotting of relative numbers to convey changes graphically does, we believe, provide a clearer understanding of how the representation levels of certain groups have changed in relation to other groups.

[3]There are two primary differences between the additive scale in figure IV.1 and the multiplicative scale in figure II.1. First, while the additive scale has a fixed zero point at its base, the multiplicative scale does not. Because the base for multiplicative scales is arbitrary, the height of a given bar above that base (or above the horizontal axis) is not in itself meaningful. What is meaningful is the level of that bar in relation to the vertical axis, which is scaled multiplicatively. That is the second primary difference. Whereas distances between two pairs of points on the additive scale are equal when the additive differences between them are equal (e.g., 80 - 60 = 40 - 20 = 20), the distances between two sets of points on the multiplicative scale are equal when the multiplicative differences or ratios between them are equal (e.g., 400/200 = 200/100 = 2). On a multiplicative scale, a change from 10 per 1,000 to 20 per 1,000 will appear similar in size to a change from 100 per 1,000 to 200 per 1,000. Both involve a doubling, or an increase in magnitude by a factor of 2

Appendix V

Data Tables

In table V.1, we provide the numbers of key job workers in each of the 10 EEO groups we considered as of September 30, 1984, and September 30, 1990. In tables V.2, V.3, and V.4, we provide the numbers in the 10 EEO groups who were hired, separated, and promoted, respectively, in fiscal years 1984 and 1990.

Table V.1: Numbers of White and Minority Men and Women Employed in Key Jobs at Different Grades at 25 Federal Agencies in 1984 and 1990

Year	Grade	White men	White women	Black men	Black women	Hispanic man	Hispanic woman	Asian men	Asian women	Native American men	Native American women
1984	<11	76,469	51,791	8,384	13,857	4,967	2,867	1,882	2,029	1,558	2,254
	11	46,159	19,208	3,085	4,556	1,705	644	1,430	983	456	282
	12	49,518	8,728	2,788	2,260	1,423	243	1,792	281	375	115
	13	35,414	4,060	1,697	805	721	118	873	134	228	32
	14	21,001	1,861	991	275	369	47	464	84	127	12
	15	14,170	1,231	463	92	336	42	671	202	51	4
Total		**242,731**	**86,879**	**17,408**	**21,845**	**9,521**	**3,961**	**7,112**	**3,713**	**2,795**	**2,699**
1990	<11	68,174	52,800	8,290	15,665	5,670	3,952	2,407	2,490	1,589	1,932
	11	47,132	27,033	3,991	6,810	2,641	1,495	2,173	2,315	590	459
	12	53,598	15,954	3,581	4,134	2,391	639	2,668	783	503	204
	13	40,404	8,399	2,304	1,716	1,261	266	1,394	337	281	78
	14	26,359	3,950	1,265	570	618	119	638	135	203	37
	15	16,057	2,044	615	196	454	68	997	366	67	12
Total		**251,724**	**110,180**	**20,046**	**29,091**	**13,035**	**6,539**	**10,277**	**6,426**	**3,233**	**2,722**

Table V.2: Numbers of White and Minority Men and Women Hired to Key Jobs at Different Grades at 25 Federal Agencies in 1984 and 1990

Year	Grade	White men	White women	Black men	Black women	Hispanic men	Hispanic women	Asian men	Asian women	Native American men	Native American women
1984	<11	9,436	3,881	944	721	586	212	350	179	73	92
	11	1,006	433	60	59	55	16	83	25	12	7
	12	640	161	22	9	22	6	45	6	6	2
	13	339	49	12	1	8	0	18	3	5	2
	14	196	37	8	4	4	0	15	5	2	0
	15	261	29	8	3	13	3	32	15	0	0
Total		**11,878**	**4,590**	**1,054**	**797**	**688**	**237**	**543**	**233**	**98**	**103**
1990	<11	7,905	4,022	1,040	830	547	247	462	247	97	113
	11	1,091	805	79	124	47	38	63	66	13	15
	12	924	452	73	67	27	15	47	23	12	2
	13	600	257	34	36	13	7	39	15	6	4
	14	313	107	19	8	15	5	23	8	6	1
	15	293	78	17	5	15	1	39	17	1	0
Total		**11,126**	**5,721**	**1,262**	**1,070**	**664**	**313**	**673**	**376**	**135**	**134**

Table V.3: Numbers of White and Minority Men and Women Separated From Key Jobs at Different Grades at 25 Federal Agencies in 1984 and 1990

Year	Grade	White men	White women	Black men	Black woman	Hispanic men	Hispanic women	Asian men	Asian women	Native American men	Native American women
1984	<11	5,295	4,043	642	728	316	175	123	134	80	98
	11	2,264	1,291	123	199	75	38	60	40	28	7
	12	2,110	437	112	77	49	12	54	17	27	6
	13	1,539	178	81	32	17	4	22	5	6	0
	14	1,070	101	41	9	16	2	17	3	13	0
	15	816	69	24	5	22	3	35	5	4	0
Total		**13,094**	**6,119**	**1,023**	**1,050**	**495**	**234**	**311**	**204**	**158**	**111**
1990	<11	4,497	3,719	671	972	318	221	193	177	64	107
	11	2,093	1,795	195	398	122	92	81	114	35	25
	12	2,308	631	185	131	74	17	93	23	31	13
	13	1,847	293	89	36	47	11	61	10	15	5
	14	1,206	146	52	16	22	7	30	11	12	1
	15	860	97	39	14	21	2	52	17	8	1
Total		**12,811**	**6,681**	**1,231**	**1,567**	**604**	**350**	**510**	**352**	**165**	**152**

Table V.4: Numbers of White and Minority Men and Women Promoted in Key Jobs to Different Grades at 25 Federal Agencies in 1984 and 1990

Year	Grade	White men	White women	Black men	Black women	Hispanic men	Hispanic woman	Asian men	Asian woman	Native American men	Native American women
1984	<11	15,010	11,448	1,731	3,133	1,125	749	614	412	174	201
	11	7,211	5,271	549	1,163	336	206	291	282	51	41
	12	5,750	2,006	351	416	247	64	226	87	41	24
	13	4,062	811	214	143	135	28	113	20	25	6
	14	2,370	371	120	41	72	15	46	15	17	1
	15	935	128	33	7	24	2	25	10	6	0
Total		**35,338**	**20,035**	**2,998**	**4,903**	**1,939**	**1,064**	**1,315**	**826**	**314**	**273**
1990	<11	15,477	11,496	2,244	3,620	1,537	1,136	742	529	259	310
	11	8,767	5,459	865	1,396	527	388	442	407	88	75
	12	8,240	3,762	639	825	446	182	382	189	86	55
	13	5,617	1,975	372	408	260	83	179	82	53	20
	14	3,425	864	226	136	99	30	77	24	28	9
	15	1,404	286	64	26	34	6	42	18	10	4
Total		**42,930**	**23,842**	**4,410**	**6,411**	**2,903**	**1,825**	**1,864**	**1,249**	**524**	**473**

Appendix VI

Comments From the Equal Employment Opportunity Commission

Note GAO comments supplementing those in the report text appear at the end of this appendix

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20507

OFFICE OF THE CHAIRMAN

JAN 19 1993

Mr. Bernard L. Ungar
Director, Federal Human Resource
Management Issues
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Ungar:

The Equal Employment Opportunity Commission (EEOC) was asked to comment on a draft report prepared by your staff entitled "Progress of Women and Minorities in Key Federal Jobs". While I appreciate the time and effort it took to prepare this report, its findings and recommendations were developed without regard to some fundamental concerns of this agency.

See pp 11-12.

First, the EEOC does not have the funds available to develop computer programs and conduct extensive training for Federal agency staff, governmentwide, on the use of the type of analysis your report recommends without reducing funding for other significant enforcement activities. Second, EEOC's staff is small. Any time that they might devote to the additional analyses suggested by the GAO would detract from time spent on essential functions that they are already performing.

See comment 1

Third, the types of analyses currently performed by the EEOC when reviewing Federal agency affirmative employment programs are the standards currently used by the courts, including the Supreme Court, experts in this field and all of the Federal government. Finally, because EEO staff at Federal agencies possess differing degrees of experience, which may not always be sufficient to understand thoroughly the analysis your report recommends, the EEOC believes that the task of training those staff would be much more difficult and time-consuming than the GAO appears to believe.

The GAO draft was reviewed by the EEOC's Research and Analytical Services staff and by Office of Federal Operations staff who are very experienced with the analytical techniques used to measure affirmative employment. Our comments follow.

EEOC believes the GAO's determination that the use of a ratio-based approach to our analysis of Federal agency workforce data using Federal white male employees as a benchmark is inappropriate, for the following reasons:

See comment 2

- In an analysis of Federal hiring, the appropriate comparison is the distribution of the various race/ethnic/sex groups in the Civilian Labor Force. The objective of an affirmative employment analysis should be the comparison of hiring and promotion actions with the pool of persons who are qualified for and interested in the jobs being analyzed. The proposed ratio comparisons assume that all race/ethnic/sex groups should have the same occupational patterns in the Federal government as white men and that they have the same relative qualifications and interest. This is simply not realistic. Most jobs in the Federal government have specific experience or education requirements and the number of persons who possess this experience and education varies widely by race, ethnic group, and sex. A simple comparison to the pattern of white men is often very misleading.

See comment 2

  For example, in an analysis of hiring of electrical engineers, the appropriate comparative group for Hispanic women is the proportion of Hispanic women among persons who are electrical engineers or, possibly, persons who have recently graduated with degrees in electrical engineering. In either case, the availability of Hispanic women for electrical engineering positions is much lower than their availability for many other positions, as there are relatively few Hispanic women with experience or degrees in electrical engineering. Since the vast majority of electrical engineers are white men, a ratio comparison of female Hispanic and white male electrical engineers in a Federal agency would not help EEOC evaluate the agency's affirmative employment efforts. While the differences may not be so extreme in all Federal jobs, in the vast majority of jobs, relative differences persist among race/ethnic/sex groups in their Civilian Labor Force representation.

See comment 3

- Similarly, a ratio analysis of employees at different levels within the Federal workforce often has little meaning. Comparison of persons below grade 11 with those above grade 11 again ignores the qualifications of the higher level jobs. The vast majority of persons below grade 11 possess neither the experience nor the education

to qualify for grade 11 positions. Even a comparison of persons in grades 11 to 13 with those in grades 14 and 15 may have no meaning if the higher grades require experience and education that the persons in the lower grades do not possess. Moreover, to the extent that persons in grades 14 and 15 are hired from outside the Federal government, the appropriate comparative group would be persons with the necessary experience and education.

See comment 4

- It is not necessary to use a ratio-based analysis comparing groups of minorities and women to white males to discern the proportionality differences that arise from within-group comparisons over time of small versus large groups. Such differences in proportionate increases are taken into account when the affirmative employment progress reports of Federal agencies are evaluated. Thus, for the purpose of recruiting efforts, requesting egencies and EEOC to perform an additional analysis that does not support this objective results in unnecessary use of scarce resources.

See comment 2

- In many cases, ratio-based or any other comparisons of women and minority groups to white males in the Federal government, rather than to the Civilian Labor Force, are inappropriate for measuring progress in affirmative employment. The most significant comparison for affirmative employment purposes is to the Civilian Labor Force, and not to the representation of the same group at an earlier time. For example, Hispanic representation in an agency may have doubled in the Professional category of PATCOB between 1984 and 1990 and still be well below their Professional representation in the Civilian Labor Force, while representation of Professional women may increase by 10 percent during the same period and also be well below their Civilian Labor Force representation at the time the analysis is made. The smaller group, Hispanics, shows a larger proportional increase. Are we to say, then, that the agency should concentrate more on recruiting Professional women than Professional Hispanics, because the proportional increase of women was less? Rather, the alternative is to instruct the agency to put their efforts into recruiting Professional Hispanics and women, since both groups are underrepresented as compared to their Civilian Labor Force availability. The relevant and appropriate benchmark is the Civilian Labor Force at the time each comparison is made.

3

Statement was deleted as noted in comment 5. No new page number exists.

- Apart from the essential question of appropriate comperative measures, GAO states that the work of creating and anelyzing the ratios is not difficult and is easily performed. The GAO report states on page 18 that a simple computer program can help ensure that the correct ratios are accurately computed. We have estimated that the development of a computer program to calculate the ratios requires considerably more computer knowledge than implied by this statement. In EEOC, the preperation of a computer program in a programming language or an application for a software package such as Quattro Pro would require substantial personnel resources. To implement it governmentwide is even more complicated given the variety of automated systems and the lack of technical expertise in this area of the EEO staffs.

See pp. 11-12.

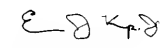
- In addition, GAO does not account for the number and complexity of the analyses currently performed by OFO in reviewing affirmative action plans. OFO personnel would spend substantial time learning to use the computer program, entering data into the program, and interpreting results. Even more worrisome, EEO staff in Federal agencies would spend a significant amount of time calculating ratio-based anelyses if the reporting responsibility were placed upon them, as GAO suggests, and OFO staff would have to devote much of their time and effort to correcting the resultant errors in agency reports to EEOC.

  EEOC is concerned that agency reporting requirements should not become so burdensome that they detract from agency efforts to develop and operate good affirmative employment programs. The function of EEOC's Affirmative Employment Division is to improve the quality of affirmative employment programs in federal agencies. That function can be exercised more effectively by identifying and providing technical assistance to agencies with severe problems in the area of affirmative employment than by performing additional arithmetic calculations that have marginal analytic value.

4

Thank you for providing this opportunity to comment on your staff's draft report. As you can see from our preceeding comments, EEOC is hesitant to implament a naw system as set forth in your staff's draft report.

Sincerely,



Even J. Kamp, Jr.
Cheirman

5

GAO Comments

1. We do not believe that the use of ratio-based techniques alters or affects the standards currently used by the courts. Nor do we think they defy the standards used by experts in the field. Because the calculations we advocate are a more refined way of analyzing data rather than a replacement for the analyses typically done, they do not violate existing standards.

2. Nothing about the ratio-based approach questions or challenges the appropriateness of making comparisons with the civilian workforce in analyzing hiring or any other personnel event. We made such comparisons in our October 1991 testimony. We were unable in this report to make the kinds of civilian workforce comparisons that we agree would be useful because there are no data that we or EEOC are aware of that would permit such comparisons by grade levels.

Our focus on key job workers and special interest in upper grades resulted from findings we reported in our October 1991 testimony, which indicated that white women and all minorities were less well represented at the upper grades of the federal government than at lower grades, particularly in key jobs. Because of the historical predominance of white men in the upper grades, it made sense in this report for us to choose white men as the benchmark for assessing change in the other groups. From a mathematical standpoint, which group serves as a benchmark is completely arbitrary and involves no more assumptions than the calculation of percentages. Dividing the number of employees in one EEO group by that of another group tells us simply what the ratio is and not, as EEOC suggests, what it should be.

We agree with EEOC that there can be legitimate reasons, such as limited availability of applicants, for differences between the representation levels of white males versus women and minorities in different federal occupations. Our purpose in this report, however, was not to determine why disparities existed in the representation levels of women and minorities across the pay grades of the federal government.

EEOC's example of hiring Hispanic women electrical engineers is an appropriate one for demonstrating that computing relative numbers using white men as a benchmark would, in fact, be useful for tracking the affirmative employment progress of agencies. As a hypothetical example, assume that for every 1,000 white male electrical engineers in a particular agency, the agency employed 100 Hispanic women electrical engineers in 1984 and 200 Hispanic women electrical engineers in 1990. Suppose,

further, that for every 1,000 white male electrical engineers, the civilian workforce employed 150 Hispanic women electrical engineers in 1984 and 600 in 1990. From such relative numbers, the following information can be gained: (1) In 1990, the relative number of Hispanic women electrical engineers in the agency was double that in 1984. (2) In 1990, the relative number of Hispanic women electrical engineers in the civilian workforce was quadruple that in 1984. (3) In 1984, the relative number of Hispanic women electrical engineers in the civilian workforce was 50 percent greater than that in the agency. (4) In 1990, the relative number of Hispanic women electrical engineers in the civilian labor force was three times greater than that in the agency. (5) Hispanic women electrical engineers increased in representation in both the agency and the civilian workforce, but the gain in the civilian workforce was twice as great as that in the agency.

It is logical to make these kinds of inferences using ratio-based techniques. The technique is equally appropriate for comparing federal government data with civilian workforce data as it is for comparing EEO groups with one another. In both instances, we believe that EEOC's ability to evaluate the affirmative employment programs of agencies would be enhanced.

3. We noted on pages 7 and 8 that comparisons across grades allow us to determine where disparities in the relative numbers of different EEO groups existed in a particular year or where they have persisted over time. Those comparisons, however, do not permit us to say why they existed or persisted. Certainly, they may result from differences in experience or education or from discrimination, but our analyses were not designed to address these issues.

Ultimately, answering the "why" question will require estimating differences across grade levels after statistically controlling for differences in qualifications, education, and experience. Our ratio-based technique can be extended to undertake analyses of that sort, whereas looking at proportionate differences, as EEOC does, cannot. Making comparisons across grades as a prelude to those more sophisticated analyses is nevertheless appropriate and useful for establishing status and progress in representation levels.

4. EEOC has informed us that while it does not, in its annual reports, make the explicit kinds of comparisons we advocate, it does consider proportionate increases made by different EEO groups relative to their representation in the civilian workforce. We believe that more precise

analyses involving the computation of ratios should be done explicitly and systematically.

5. The statement EEOC cited from page 18 of the draft it reviewed has been deleted. It was part of the proposed recommendation to EEOC that we no longer make. However, we still believe that a simple computer program can help ensure that the correct ratios are computed. We are willing to help EEOC write the program.

In our draft report, we asked EEOC to use ratio-based techniques to analyze affirmative employment data reported to it by federal agencies. Much of the data, EEOC has informed us, are provided by agencies as tables printed on paper rather than in automated form. This may be why EEOC believes the ratio-based technique would be costly to implement. However, EEOC can obtain computerized data from CPDF. EEOC already does so for its annual report to Congress on the federal employment of women and minorities. The annual report contains raw data to which the ratio-based approach we suggest can be applied. In addition, CPDF contains data on promotions, hires, and separations. We have changed our report to clarify that EEOC need not automate the reports submitted to it by agencies but instead can apply the ratio-based technique to CPDF data.

Appendix VII

Major Contributors to This Report

General Government Division, Washington, D.C.	Eva L. Rezmovic, Assistant Director Douglas Sloane, Analyst-in-Charge Anthony Assia, Senior Evaluator Kiki Theodoropoulos, Writer-Editor Pamela Curry, Editorial Assistant Tracy Harris, Editorial Assistant

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No

201 East Indianola, Suite 400
Phoenix, Arizona 85012
May 20, 1992

Special Agent Suzane J. Doucette
Federal Building
301 West Congress
Room 8V
Tucson, Arizona 85701

Dear Mrs. Doucette:

Reference is made to your Freedom of Information/ Privacy Act request dated May 4, 1992, as subsequently narrowed through discussions between yourself and the Phoenix Office Field Privacy Control Officer (FPCO), and form FD-488 (Employee Privacy Act Request), which you completed on May 15, 1992, when you reviewed your Field Office Personnel File.

Enclosed please find copies of 65 pages of materials from your personnel file which you requested. Excisions have been made in order to protect materials which are exempted from disclosure pursuant to Title 5, United States Code, Section 552 and/or Section 552a as follows:

(b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(b)(2) related solely to the internal personnel rules and practices of an agency

(b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy

A review of Phoenix Division indices in response to your request also located two (2) Office of Professional Responsibility (OPR) files pertaining to you. These files are currently in a pending status and are therefore being denied at this time. This decision is based upon the following subsection of Title 5, United States Code, Section 552:

(b) (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings

With respect to your request for Career Board Records, please be advised it is necessary for you to specify the exact records you want vis-a-vis the position(s) you applied for. Please furnish this information to Principal Legal Advisor (PLA) Stephen E. Suter as soon as possible.

Your request for any notes or loose mail maintained by the Special Agent in Charge (SAC), either of the Assistant Special Agents in Charge (ASAC), and the Supervisors/Relief Supervisors and employees whom you identified is presently being addressed and any releasable records will be furnished to you in the near future.

If you desire, you may submit an appeal from any denial contained herein. Appeals should be directed in writing to the Assistant Attorney General, Office of Legal Policy (Attention: Office of Information and Privacy), United States Department of Justice, Washington, D.C. 20530, within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the name of the office to which your original request was directed.

Sincerely,

James F. Ahearn
Special Agent in Charge

Enclosures (65)

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

201 East Indianola, Suite 400
Phoenix, Arizona 85012
June 1, 1992

Special Agent Suzane J. Doucette
Federal Building
301 West Congress
Room 8V
Tucson, Arizona 85701

Dear Mrs. Doucette:

Reference is made to your Freedom of Information/ Privacy Act (FOIPA) request dated May 4, 1992, and to my letter dated May 20, 1992, advising you that this office was processing your request for any notes or loose mail maintained by the Special Agent in Charge (SAC), either of the Assistant Special Agents in Charge (ASACs), and selected Supervisors/Relief Supervisors and employees.

The Field Privacy Control Officer (FPCO) of this office, Principal Legal Advisor (PLA) Stephen E. Suter, contacted myself, both ASACs, five Supervisors, twelve Agents (including seven Relief Supervisors), and one Support Employee to identify any documents responsive to your request. This search also included documents maintained in electronic storage.

For your information, the FPCO determined that neither myself nor either of the ASACs maintain any notes or loose mail responsive to your request, other than notes or documents maintained as part of either of the two Office of Professional Responsibility (OPR) files pertaining to you. As you were previously advised, these files are currently in a pending status and access is being denied at this time.

With respect to the five Supervisory employees, the FPCO located one memorandum consisting of two pages maintained by your former Supervisor. This memorandum has been declassified, and a copy is enclosed with this letter. Excisions have been made in order to protect materials which are exempted from disclosure pursuant to Title 5, United States Code, Section 552 and/or Section 552a as follows:

(b)(2) related solely to the internal personnel rules and practices of an agency

(b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy

The FPCO also located documents/loose mail in your Personnel Folder maintained by your current Supervisor, and he has agreed to make these available to you for review and copying.

With regard to the twelve Special Agents (including seven Relief Supervisors) and one Support Employee, four Agents maintain "notes" falling within the parameters of your FOIPA request. The FPCO reviewed these "notes" and determined them to be personal notes and not agency documents. In view of this determination, you are not entitled to access these personal notes.

Lastly, your request for Career Board records cannot be processed until you specify the exact records you want vis-a-vis the position(s) you applied for. Please furnish this information in writing to the FPCO, Principal Legal Advisor Stephen E. Suter, as soon as possible.

If you desire, you may submit an appeal from any denial contained herein. Appeals should be directed in writing to the Assistant Attorney General, Office of Legal Policy (Attention: Office of Information and Privacy), United States Department of Justice, Washington, D.C. 20530, within thirty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the name of the office to which your original request was directed.

Sincerely,

James F. Ahearn
Special Agent in Charge

Enclosures (2)

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