OVERSIGHT HEARING ON THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION
AND CIVIL RIGHTS

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

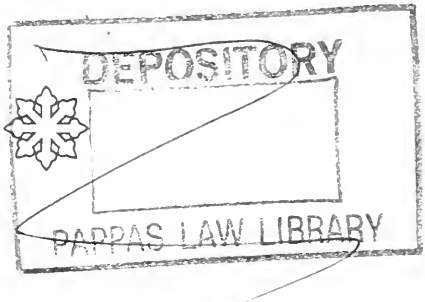
ONE HUNDRED THIRD CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, MARCH 24, 1994

Serial No. 103-85

Printed for the use of the Committee on Education and Labor



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-045954-0

83-150 O - 94 - 1

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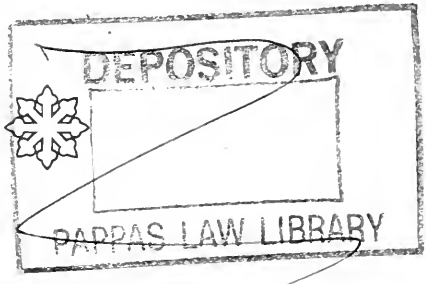

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OVERSIGHT HEARING ON THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

THURSDAY, MARCH 24, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SELECT
EDUCATION AND CIVIL RIGHTS,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., Room 2261, Rayburn House Office Building, Hon. Major R. Owens, Chairman, presiding.

Members present: Representatives Owens, Scott, and Ballenger.

Staff present: Maria Cuprill, Wanser Green, Gary Karnedy, Marc Lampkin, and Tim Butler.

Chairman OWENS. The hearing of the Subcommittee on Select Education and Civil Rights is now in session. Today we will hear individual complaints related to discrimination.

It takes a courageous individual to bring a civil rights claim against their employer or educational institution. We understand that the individual is filled with fears of retribution from the discriminatory supervisor, or fears of termination, or an irrevocable taint on their career.

Most cannot afford to retain an attorney to advise them of the strength of their case. Uncertain of the likelihood of prompt, appropriate relief, many individuals simply suffer on; or they accept defeat and quit their jobs or university studies, believing it is the only way to avoid further discrimination.

The Equal Employment Opportunity Commission, the Offices of Civil Rights in Federal Agencies, and the Office of Federal Contract Compliance Program within the Department of Labor, were created to protect the civil rights of these individuals. The only real hope of justice for victims of discrimination who are unable to afford an attorney to take their complaint to Federal District Court is to have these agencies investigate and enforce their civil rights.

The testimony we hear today will illustrate the frustrations some individuals have had with the timeliness and quality of civil rights enforcement by these agencies. These individuals provide a human face to civil rights enforcement which is often lost in the statistics and budgetary calculations of these agencies.

Although this subcommittee has long advocated for additional funding for civil rights enforcement, we are also focusing on ways to address the very frustrations which our witnesses will be speaking of today, frustrations which additional funds may not address.

I would like to thank you, witnesses, for coming here to testify, and we look forward to your comments.

[The prepared statement of the Honorable Major R. Owens follows:]

STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

It takes a courageous individual to bring a civil rights claim against their employer or educational institution. The individual is filled with fears of retribution from the discriminatory supervisor, termination, or an irrevocable taint on their career. Most cannot afford to retain an attorney to advise them of the strength of their case. Uncertain of the likelihood of prompt, appropriate relief, many individuals simply suffer on; or they accept defeat and quit their jobs or university studies, believing it is the only way to avoid further discrimination.

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I would like to thank our witnesses for coming here to testify today, and look forward to their comments.

Chairman OWENS. I yield to Mr. Scott for an opening statement.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you in convening this hearing to further examine concerns about inadequacies in enforcement of civil rights laws by Federal civil rights agencies. I commend you on your determination to address complaints of deficiencies of these agencies.

The testimony of witnesses today will give further insight into the problems of enforcement that we've been hearing about. Now, this insight will be part of the framework upon which we can erect solutions.

In addition to the concerns of the timeliness of these agencies in responding to and concluding complaints, I'm aware of concerns about the quality of the responses. The laws these agencies are charged to enforce were hard fought and hard won. We must not allow them to be eroded through inefficient or ineffective agency operation.

If we are to develop the competitive workforce necessary for this country to maintain its prominence in the world, we must ensure that barriers to inclusiveness and diversity and prolonged distractions from productivity are minimized.

Mr. Chairman, I applaud you and fully support your efforts to ensure the vital responsibilities entrusted to civil rights enforcement agencies are vigorously and effectively pursued. I look forward to hearing the testimony today and working with you in these efforts. Thank you, Mr. Chairman.

Chairman OWENS. Thank you. Our first panel consist of Mr. Lonnie Bedell, Wallington, New Jersey who is accompanied by Joann DeGrosa; Ms. Linda Lewis from Arlington, Virginia; and Mr. John Kolterman from Tampa, Florida. We have your written testimony

which will be entered into the record in its entirety. Please feel free to read it or to make other comments to highlight it. We'll begin with Mr. Bedell.

STATEMENT OF LONNIE BEDELL

Mr. BEDELL. Thank you, Chairman Owens. I'm going to read off of the statement that I made because I submitted the documentation which I realize is part of the record. I don't speak too much around a microphone, so let me know if you can't hear me.

I would like to thank the committee for allowing me to be here and hope that I can let you see within the next five minutes the loss I have incurred over the last eight years.

In 1986 I came to the aid of a coworker who had continuously been sexually harassed in a nonunion office position for a large union organized transporter. The girl tried without success to eliminate harassment and was terminated from her job.

I contacted my friends within the union and they gave her a job within their offices. The woman had already filed sexual harassment charges within the New Jersey EEOC office and once the charge was sent out, the company forced the union officer who had hired her to terminate her.

They were able to do this because they were the largest contributor to the benefit funds, employed the largest number of union members, was in negotiations and threatening to move out of the union's jurisdiction which could have caused the union's demise.

One of the terminal managers was on the union funds board of trustees. Also, one of the individuals named in the EEOC charge was the person on the pension welfare. My friend was terminated again.

I proceeded to try and talk to the union official and was told to have the woman, Joann DeGrosa, drop her charges, or else. Well, the or else was that I was retaliated against from that date to the present. I can't begin to explain the threats, accusations, defamation and harm, both financially and emotionally, that I have gone through since that offer of help to a coworker.

The union eventually hired a connected attorney specifically for charges identified within the New Jersey EEOC. I was a definite threat since I was once friendly with that union official, the president, who gave my coworker the job in his offices.

In the State of New Jersey, if a person wants to file a charge against their employer for certain reasons, and they are most familiar with the name EEOC and civil rights, they contact the EEOC. If they are lucky enough to get through to someone, they are told to come into the office to file a complaint. There are no rules describing the procedures or branches that may be more reasonable in certain matters—responsible. Sorry.

The common man does not understand work share agreement or National Labor Board or State board of mediation. They make their complaint, try to explain incidents that have occurred and trust that the interviewer is capable, knowledgeable, and knows the law. They type a brief description of what has happened, ask you to look at it and sign it. You are not aware that you cannot get certain compensation when filing in EEOC.

You are not aware that the process doesn't include you or your wishes. In my friend's case, she could not name these individuals responsible, she was only entitled to limited compensation by going to the EEOC.

I understand if you go through the Division of Civil Rights with your complaint, you may be entitled to punitive damages as well. Joann didn't realize that. The entities were typed improperly on the EEOC charge which caused a legal delay that the EEOC couldn't control even though their clerk didn't name the entities properly and it was an error on the EEOC's part.

When a person goes to the EEOC or the New Jersey Division of Civil Rights, they expect that a lawyer will be reviewing these charges, that they are proper when they are filed, that someone with some kind of legal knowledge in EEOC and Civil Rights is handling your case. This is not so in my State and I am told there are only about four attorneys handling cases for the entire State in the New Jersey Civil Rights Division.

I filed my case in New Jersey EEOC in January of 1988, and an additional case in February of 1988. The events that had occurred regarding those two cases is documented and so great that I cannot detail them in this brief time, but can have them available at your request.

There has been so much power play involved in my cases that the EEOC became helpless to proceed properly and I was not aware that the EEOC signed an agreement on my behalf with the union attorney's assistants on 8/10/92. I was not even notified that this had taken place and found out by accident. I was never mailed a copy of this agreement and had to locate the same in the court's records.

Witnesses came forward regarding my retaliation case and were not interviewed by the EEOC attorney assigned to my case until the intervention of the Committee of Education and Labor. The EEOC went into this agreement without interviewing any of my witnesses. At the present time, the EEOC is going for the breach of this agreement because the union is continually retaliating against me.

Once again, because of the intervention of the subcommittee, Chairman Owens, staff director, Ms. Maria Cuprill, and staff, the EEOC filed for breach of this agreement. At that point I realized that I was not being given the proper help or information, and proceeded to write to the EEOC and the New Jersey Division of Civil Rights, the Attorney General in the State of New Jersey, my district representative as well as to State representatives and committee members, Members of Congress, the Department of Labor, the Department of Justice, the FBI, the president-appointed trustee of the IBT, even the Attorney General, Ms. Reno, because of the ongoing retaliation and conspiracy, the collusion, and the violation of my civil rights.

After all of these years of hardship, and after knowing that I did not get the proper help, I continue to pursue my crusade against my retaliation and injustices caused by the handicaps of the EEOC and the Division of Civil Rights. As I provided witnesses to be interviewed, and the witnesses were named, these witnesses have

hence been retaliated against. There are now at least three other cases pending as a result.

One of these cases was filed with the New Jersey Division of Civil Rights in October of 1991. To this day, no interviews, no response, no decision and the person had to, like some others, retain an attorney. Most attorneys want at least $10,000 up front in order to ensure their rights.

That attorney has been requesting information from the States since January 1993 has not been able to get answers and the female withdrew the case to go into court. Even with that, the attorney has not been able to review the Division's notes on our clients or the file and may have to subpoena the same.

One other witness's attorney was told that there are politics involved in these cases. The retaliation is so severe that the one claimant walked into the Attorney General's office in New Jersey, submitted a request for intervention, and cited the statute that says the Attorney General may bring civil action if he or she finds cause. No response to this request since 1992.

In the State of New Jersey, it appears that certain people have the ability to come and manipulate files in the division. This can be detailed for any Member that request same, and I would be happy to meet with you or have the parties speak to you.

Again, I cannot list all the horrible events that have taken place, but will reiterate once EEOC or Civil Rights goes for help at the time of panic and confusion, and trusts the division's ability to work for them and to protect them. We do not understand the inner workings or know that they are revealing information to others who have the availability to obtain same and use it in a form of further retaliation.

When you are without income and you must go against a large corporation with corporate counsel on retainer, or a large organization with unlimited funds, and all you have is an administrative person who is overloaded, unadvised, politically intimidated, you quickly learn that you are advised that you will be in the system for years unless you withdraw, settle, keep quiet or walk out. Overall, they would prefer that you go away rather than make more work or noise about their shortcomings or interferences.

Most employers post rules and laws regarding worker's compensation claims within the work area, but nowhere are there rules regarding civil rights or the fact that you only have a certain number of days to make a claim regardless of the fact that you are devastated at that time; no one tells you that you should have about $10,000 available for legal counsel or else you die within the system.

No one tells the individual that the corporation gets unlimited legal fees while you are waiting for your job back, and if you can hold out long enough, they arrange for a settlement agreement that financially forces you to sign or stay in the system longer and not to disclose the details of the charge.

Because you find out they have so many of these charges made against them, they settle them so they do not appear to violate the laws on civil rights as a habitual offender. This is so in the New Jersey cases that I am aware of and will be happy to provide information to any Member that may wish to interview those claimants.

Again, I thank you for the concern and hopefully your help. I'll be happy to provide you with details as requested. May I suggest that another GAO study, like the October 1988 HRD 89–11, "Equal Employment Opportunity, EEOC and State Agencies Did Not Fully Investigate Discrimination Charges," be taken. The new study should be compared to the October 1988 study.

I thank you, Chairman Owens, and the subcommittee.

[The prepared statement of Lonnie Bedell follows:]

Major R. Owens, Chairperson
Committee on Education and Labor
U.S. House of Representatives
Annex #1
Room 518
Washington, D.C. 20516

Subcommittee Oversight Hearing
on the EEOC
March 24, 1994
Time: 9:30 a.m.

Summary of Events of Cases Filed with the EEOC Newark, N.J. Office Philadelphia, Pa. Office

and

Summary of Events of Case Filed with the New Jersey Division of Civil Rights

Joann De Grosa
and
Lonnie Bedell

Joann De Grosa vs. Yellow Freight System, Inc. - Carlstadt, N.J.

EEOC Case #'s 022-86-0748 filed 8/29/86 - retaliation - discrimination -sexual harassment EEOC Case #'171-87-0064 filed 10/27/86 - retaliation

Joann De Grosa vs. Local 641 Welfare Fund, Secaucus, N.J.
EEOC Case #171-87-0065 filed 10/27/86 - retaliation

The above mentioned charges were all filed in the Newark, New Jersey EEOC.

I was hired as a Sales Secretary/Dispatcher for Yellow Freight System, Inc., January 27, 1986 and fired July 11, 1986. I filed the charges of discrimination, sexual harassment and retaliation against the Terminal Manager and Sales Manager. Yellow Freight Systems, Inc., (YFS) is one of the largest trucking company in the country.

The EEOC never contacted the people who wrote affidavits in my behalf; these people wanted to talk directly to the investigator via the phone or, on a one-to-one basis in person and I was told to tell them it was not necessary. It is my opinion that they did not take into consideration any of the information that was submitted for me, or the character letters I received from my present employers. They did not go into YFS workplace to investigate. It seems to me that Ms. Maria Tommaso, Area Director, believed what YFS told her and made her decision solely on that basis.

At the present time Maria Tommaso is employed at the Philadelphia EEOC. She reports to Mr. Johnny Butler, Area Director who stated that there is NO NEXUS between the charges that both Lonnie Bedell and I have filed, even inasmuch as the company and the union officials are one in the same. The EEOC continued with that theory to include the retaliation charges filed by Wayne Riche, Nigel Baptiste, Edward Rush, and Joseph Ercolano all co-workers of Lonnie Bedell's at Yellow Freight who openly opposed the treatment that Lonnie received.

In correspondence written to the Honorable Bill Bradley, Senator (D-NJ) from Ms. Maria Tommaso Area Director of the EEOC in 1987, she stated that "retaliation charges have top priority". If this is a true statement then why were all of these EEOC charges dragged on?

From the time that both Lonnie Bedell and myself filed charges with the EEOC we have requested assistance from our State Senator, Bill Bradley along with the Chairmen, Augustus Hawkins, Matthew Martinez, Carl Perkins and Major Owens. The only time that the EEOC seemed to move our cases along is when the above mentioned intervened on our behalf. In fact, the EEOC in Newark and Philadelphia became irate over the inquiries that they had to answer.

August 1987 - I retained private counsel to work with the EEOC on my above charges. My legal fees continually mounted and there was no resolution of these cases at the EEOC, as they just dragged on. I had no choice but to end the retainer with my lawyer, after paying her close to $6000.00 in legal fees.

July 14, 1988 - a bogus fact finding hearing was to be held in Newark regarding my YFS case. Yellow Freight just complied with the law by coming into the hearing. The lawyer for Yellow wanted to tape record the hearing, if he could not have that then he wanted a

court stenographer - all of which he was denied by the EEOC. The fact finding conference was canceled.

November 10, 1988 - received a letter from Maria Tommaso, Area Director, regarding my case and **it was determined to have no merit.** I appealed this case to the Determinations Review Board in Washington, DC. on November 15, 1988.

December 15, 1988 -I received a letter from the EEOC Review Board, Washington, DC. which stated, "The acceptance of the request for review of this field office's determination means that the commission's administrative processing of this charge has not been completed."

June 22, 1989 and August 25, 1989 - wrote letters to the Determinations Review Board asking status of my case.

September 29, 1989 - received a reply from Howard Kallem, Acting Director that my case was assigned for review.

December 7, 1989 - James Troy, Director Office of Program Operations found cause against Yellow Freight System, Inc. - Violation of Title VII.

October 30, 1990 - I wrote to Joy Cherian, Commissioner, EEOC asking for a follow up on the status of my charges, as I was informed by the EEOC in Newark that the Commissioners are reviewing my charges.

December 19, 1990 - received a letter from the Newark EEOC stating that they **filed a civil action with the court - Docket #90-4026 on October 16, 1990. The EEOC in Newark decided to litigate my case September 27, 1990.**

Note: The time frame from when I received Mr. Troy's letter of cause finding to the letter which I received from the EEOC in Newark stating they filed a civil action is ONE YEAR AND TWELVE DAYS.

December 15, 1988 - is when I first wrote to the Honorable Augustus Hawkins explaining to him the cases that I filed with the EEOC and how my charge was never investigated. The article which was written in the New York Times regarding the GAO Study, "EEOC and State Agencies Did Not Fully Investigate Discrimination Charges, GAO/HRD-89-11 (October 1988), was so parallel to my cases.

October 27, 1986
EEOC Case #'171-87-0064 filed 10/27/86 - retaliation - Yellow Freight System, Inc.

Joann De Grosa vs. Local 641 Welfare Fund, Secaucus, N.J.
EEOC Case #171-87-0065 filed 10/27/86 - retaliation

My second charge is against (YFS) for retaliation (171-87-0064) in connection with my charge against Teamsters Local 641 (retaliation) (171-87-0065). I was fired from (YFS) on July 11, 1986. I started working for Teamsters Local 641 Welfare Fund, September 26, 1986. the Terminal Manger for YFS is also a Trustee on the Board for Local 641. He walked into the office of Teamsters Local 641 for a Trustee Meeting on October 15, 1986, said to Mary Ann Bunn, Manager, "What is she doing here?" On Friday, October 17, 1986, I was terminated.

Two days after I was hired at Local 641, Mr. G. (Sonny) Musso, President of Local 641, asked Mr. Lonnie Bedell to ask to me drop my charges against YFS and the Terminal Manager. Mr. Musso stated to Mr. Bedell that he did not want to lose Ken Dore as a Trustee on the Pension and Welfare Panel. I refused to drop my EEOC charges against Yellow Freight System, Inc. and the Terminal Manager.

Local 641 Welfare Fund never answered to the charges when they were initially filed in October 1986. In the summer of 1988 is when the EEOC followed up on this.

December 15, 1988 - Letter to the Honorable Augustus Hawkins, advising him that my three charges are not being handled properly.

March 3, 1989 - Wrote to the Honorable Matthew Martinez, under the direction of The Honorable Augustus Hawkins. I advised him that the first and last status report that I received with regard to my Local 641 Welfare Fund EEOC charge was in July 1987. The investigator informed me that my charge was in Washington, D.C. With regard to my other charges, I had requested that they be linked together - they never were.

One of my witnesses (a co-worker at Yellow Freight) in my Yellow Freight Case had wanted to speak to my investigator . She could not call the investigator from work, so I had asked if my witness could call after hours, or if she would call my witness at home. This was impossible on the part of the investigator. I was told that if my witness takes a day off from work, or leaves work early to try and get her at the EEOC. I had also asked that my investigator go to Yellow Freight and talk to the people - make an investigation. This never happened.

March 1, 1989 - Chairman Martinez makes an inquiry on my behalf to Clarence Thomas, EEOC.

Note: From the time I filed my charges in 1986 to 1993 four investigators handled my cases - .Miss Mejas, Miss Hernandez, Miss Upshaw, and Miss Rosa (all of the Newark EEOC Office). Mr. Rodriquez an attorney for the EEOC handled my case in court when the Judge ruled that the Welfare Fund had under 15 employees, therefore no jurisdiction.

In the Philadelphia Office my files were handled by two attorneys Miss Santiago and Mr. Holmes.

May 1, 1989 - Letter to Chairman Martinez - advising him that I never received a reply from Washington, D.C., on his inquiry of March 1, 1989, nor have I heard from the EEOC in Newark on the status of my cases. Advised him that there are witnesses who would come forward for the both of us but are in fear of loosing their jobs.

May 26, 1989 - I wrote to Maria Tommaso, Area Director in Newark, regarding my other two charges filed in October of 1986. As of the May 26, 1989 letter I was never informed of the status of these charges by the EEOC written or verbally.

June 5, 1989 - I received a letter from Deborah Graham , Director of Communication and Legislative Affairs in response to my letter of May 24. I was advised that my YFS case was to be assigned an investigator and Charge #171-87-0065 - Welfare Fund was in subpoena posture. Remember I filed this charge in October of 1986.

December 1, 1989 - Letter to Chairman Martinez advising him that the Federal Court decided that the EEOC has no jurisdiction over my charge #171-87-0065 Local 641

Welfare Fund because the fund has under 15 employees. This has taken over three years to come to this determination. I wrote to the N.J. Division of Civil Rights (September, 1989) requesting under the work sharing agreement that the division handle the case. I was informed by the N.J. Division of Civil Rights that they had to decide whether or not they will handle it.

February 6, 1990 - Letter to Chairman Martinez advising him that the N.J. Division of Civil Rights took my charge against the Welfare Fund (Docket #EJO09JU-29025).The lawyers for Local 641 Welfare Fund wrote to the Director of the NJDCR Mr. Ollie Hawkins asking that this case be dismissed. I was told by the Supervisor at the Civil Rights that Mr. Hawkins can make a determination not to handle the case at all. I answered the motion filed by Linda Colligan with the Civil Rights pro se.

February 15, 1990 - Fact Finding Conference to be held at the NJDCR - Canceled by Local 641.

April 12, 1990 - Letter to Ollie H. Hawkins, Director N.J. Div. of Civil Rights from Chairman Martinez regarding the status of my charge. Chairman Martinez expresses the lack of professionalism and intimidation towards me by Linda A. Colligan, Esq. for Local 641. "Ms. Colligan's intimidation and actions on behalf of her firm appear to be unprofessional and uncalled for." Asking that Mr. Hawkins takes all of the facts into consideration when he responds to the motion to dismiss my case.

March 1991 - Fact finding conference NJDCR is canceled by Local 641.

July 10, 1991 - Fact finding conference is held at the NJDCR.

During this time period Margaret Zinno, former Administratrix for Local 641 Welfare Fund, comes forward on my and Lonnie Bedell"s behalf, and told of how she was forced to fire me from my job at the Local by the President of the Local because I would not drop my charges against Yellow Freight System, Inc. She also made the NJDCR aware of how the Union was tracking Lonnie Bedell and continually retaliating against him for coming forward for me. It was also stated that the Executive Board of Local 641 was making sure that Lonnie did not get any work with any of the companies that come under the umbrella of Local 641 or any other Teamster Local.

Margaret Zinno, was retaliated against and fired in April of 1991. She also has charges filed with the NJDCR against Local 641, Local 641 Pension and Welfare Funds - naming the entire Executive Board/Trustees past and present. Another individual who filed charges with the NJDCR against Local 641 Welfare and Pension Funds (and is still employed at the Fund) in December of 1991 for sexual harassment and retaliation, still has not received a determination from the State, neither has Mrs. Zinno for that matter. When these individuals question as to why it is taking so long for a determination the reply they always receive is that they are backlogged.

January 31, 1992 - I was notified by the NJDCR that the division found probable cause and credit my allegations filed against Local 641 Welfare Fund. My file is given to Jeffrey Burstein, Esq. of the Civil Rights for litigation.

February 1993- during this time frame and prior I continually advised the Civil Rights of the ongoing retaliation of Lonnie Bedell by Local 641 and nothing was done on his behalf. Mr. Bedell was my witness in this case also. In fact he is mentioned in the Civil Rights Stipulation of Statement.

February 10, 1993 - A settlement was agreed upon between Local 641 Welfare Fund and myself.

February 7, 1991 - My present employer/custodian of records receives a subpoena for deposition on February 13, 1991, with regard to my job performance, employment records, disciplinary records, etc. My immediate supervisor (the Director of Training and Development) was to attend. This deposition was to last two days. He canceled his training session in our Boston Facility to attend. The last minute Yellow Freight canceled these depositions. I told Miss Santiago, Esq. of the EEOC of the attitude change of my immediate supervisor towards me and how I was being scrutinized. I told her that YFS is determined to get me fired from this job. She told me to come in and file another charge. I told her that I would not do that to live this nightmare once again with the EEOC dragging its feet since 1986. That is my point, the EEOC makes the public disgusted so that they will not follow through with regard to their charge. When witnesses see that retaliation is alive and well, and that the EEOC does nothing to protect those from retaliation who have come forward, of course they think twice about assisting their fellow worker/brother/sister union member.

April 15, 1991 - Letter to Chairman Carl Perkins - As of this writing I do not have a court date for my Yellow Freight Charge. The EEOC is not getting the cooperation from Yellow Freight to move on with my case. I was told that they will subpoena information. This was over three months ago.

September 10, 1991 - (YFS) Depositions taken in Mr. Pasek's office in Philadelphia. This is 105 miles from my home. I requested the depositions to be taken in Newark, N.J. which is 15 miles from my home and was denied. Driving this distance was a hardship for me. During depositions Mr. Pasek was badgering me. I complained to Miss Santiago of this line of questioning and asked that the depositions be concluded. They were not. I was told by the EEOC that Mr. Pasek is a very aggressive lawyer.

October 18, 1991 - Letter to Chairman Perkins - How the EEOC is allowing YFS attorney to have copies of my 1986-1990 Federal Tax Returns. My argument why should YFS have these documents when my case has not gone to court yet, and never have they mentioned a settlement agreement with me. I asked that Mr. Pasek be removed from the case and another lawyer from his firm handle the depositions. Mr. Pasek would not agree. I feel that Mr. Pasek is biased against me. He is the same lawyer who was assigned to Lonnie Bedell's cases. I told Miss Santiago that depositions are meant to gain information and not meant to abuse and interrogate the plaintiff. I am not a criminal and I am being treated as such. I have been under doctor's care for stomach pains and cardiac irregularity due to stress. I was fitted with a heart monitor to wear for 24 hours which Santiago is aware of.

December 15, 1991 - Letter to Chairman Carl Perkins - Iris Santiago, Esq. spoke to two of my witnesses and implied to both that they have to get to the truth. She seemed not to believe my witnesses. Another witness tried to call her on four separate occasions and her calls were not returned. When one witness finally reached Miss Santiago, she told my witness that she would call back on a particular day and even gave her the time. Miss Santiago never called back. This took place approximately October 1991. Miss Santiago has not spoken to all of my witnesses including Mr. Bedell. Miss Santiago threatened me with advising the EEOC to drop my case. Miss Santiago did not believe me so how can I possibly win this case? She has a definite attitude towards me. Miss Santiago was intimidated by Mr. Pasek and Miss Kline, legal counsel for Yellow Freight. My

telephone bills tell the story of how I try to keep informed by the Commission on my case.

January 1992 - May of 1993 - Miss Santiago was removed from my YFS case and another lawyer was assigned Mr. Michael Holmes. During this time frame depositions were taken from witnesses, and continued with me. Mr. Pasek went as far as to subpoena my 77 year old father who has a heart condition. My father's doctor had written a letter to the EEOC advising them of his poor state of health. I requested of the EEOC a protective order against this subpoena. The EEOC requested a protective order from the court and was denied. My father still had to be deposed. Since the protective order denied by the court this is what finally broke my spirit and I lost all of my fight. I would not allow my father to be deposed and play GOD with his well being. This decision is what forced me to once again retain outside counsel, and settle with Yellow Freight System, Inc, in May of 1993.

If the case was handled correctly and timely, and the cases between Lonnie Bedell and myself and his witnesses crossed referenced my case would have never dragged on for almost seven long years. It is my strong opinion that because of the politics involved in the State of New Jersey, that whenever YFS requested anything from the court, for example my tax returns, my father being deposed, they were always granted what they motioned for. Yet when the EEOC went to court on a motion they were always denied.

The more you pursue your case the more indignant the Commission becomes. I feel that they give you a hard time so you will just walk away from it all, and they can meet there quota of EEOC cases handled for the month. It is much easier to find no cause for the plaintiff than cause. If just cause is found there is more work to be done. It's easier to go along with the employer and take their word for it.

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Lonnie Bedell, a co-worker at YFS openly opposed sexual harassment and discrimination against me by the Terminal Manager and the Sales Manager. He assisted me in filing with the EEOC. He was #1 man on the seniority list at Yellow Freight and also a member of the International Brotherhood of Teamsters since 1957. During the time period of when he came forward for me to the time he filed his own charges in 1988, the EEOC was aware of the retaliation being shown him by the company and that he was not being supported by his Local Union which is Local 641. Mr. Bedell grieved the disparate treatment he was receiving to his union, but they turned a deaf ear. Mr. Bedell spoke to my investigator on a couple of occasions, telling her of the disparate treatment, harassment and discrimination being shown him by Yellow Freight.

The charges filed against Local 641 by Mr. Bedell were not crossed referenced either. The charges were ongoing retaliation charges. - One charge stemmed off the other. Mr. Gigante, Director of the EEOC office in Newark said, "Consequently, there is no casual connection between Charging Party filing a previous charge and the union's actions." To this date the Commission will not see the conspiracy and collusion between Yellow Freight and Local 641.

Several witnesses had written letters to Chairman Kemp, Johnny Butler of the EEOC in Philadelphia and Clarence Thomas of the retaliation being shown individuals at YFS, requesting an investigation, this was to no avail.

January 19, 1988, he filed a charge with the EEOC in Newark for discrimination. Charge Number 171-88-0140 Yellow Freight System, Inc.

February 3, 1988- he filed another charge with the EEOC for retaliation/discrimination. On February 3, 1988, he was terminated by Yellow Freight System, Inc. #171-88-0161.

September 11, 1988 - he filed another charge with the EEOC for retaliation as the Local Union did not want to appeal the arbitrator's decision. #171-89-0094.

September 14, 1988 - he filed another charge with the EEOC for ongoing retaliation as the Local Union did not represent him properly in the arbitration hearing #171-88-0522. Mr. Bedell had to get outside counsel for this arbitration as the attorney for Local 641 disqualified herself after preparing for this hearing for four months. The Local also refused to pay the legal fees of the attorney that Lonnie Bedell had to engage to represent him.

November 28, 1988 - NLRB hearing against Yellow Freight System, Inc. - for an unfair labor practice. November 28-29-December 5 & 20, 1988. At this hearing his shop stewards, business agent and assistant shop stewards testified against him.

November 29, 1988 - Wayne Riche filed an EEOC charges against Yellow Freight System, Inc. for being retaliated against for openly opposing and coming forward for Lonnie Bedell his co-worker. Charge **#171-88-0568**. Investigator Busund tried talking him into withdrawing the charge. The Commission determined a no merit decision. Mr. Riche did not pursue appealing his charge because of sheer disgust with the EEOC.

May 3, 1989 - Nigel Baptiste writes a letter to Clarence Thomas of the EEOC asking that Yellow Freight be investigated for the ongoing retaliation.

January 9, 1989 - Edward Rush filed an EEOC charge against Yellow Freight System, Inc., for being retaliated against for openly opposing and coming forward for Lonnie Bedell his co-worker. **Charge #171-89-0198**. Mr. Rush wrote a letter to Chairman Martinez regarding the mishandling of his case and how Investigator Bonono stated that he spoke to Mr. Rush on the telephone, this was quite impossible as Mr. Rush was in Africa attending college. In Chairman Martinez's letter to Chairman Kemp he states, "Serious misgivings as to how his case was handled by the NJ EEOC Office." (See attachment)

The EEOC disgusts the complaints to the point of not wanting to continue with the charge because of the dragging of their feet and also how the EEOC believes the employer rather than the employee. Both Mr. Baptiste and Mr. Riche saw what the EEOC has put Mr. Bedell through and decided not to go through the appeal process.

May 4, 1989 - Lonnie Bedell filed an EEOC charge against Local 641 for not referring him out on jobs as it does other members. Charge **#171-89-0456 - Docket #90-4412.** A settlement agreement was signed by the EEOC without Mr. Bedell's knowledge. A thorough explanation will be detailed later in this summary.

May 18, 1989 - The NLRB Administrative Law Judge ruled that Yellow Freight System, Inc. violated Section 8(a)(1) and (3) of the National Labor Relations Act (Case #22-CA-15817) by discharging Lonnie Bedell from its employ because he assisted another employee in filing a charge against Respondent with the U.S. EEOC and because he filed a charge with EEOC alleging that Respondent then retaliated against him, both of which are matters assertedly covered by a collective bargaining agreement Respondent has with a labor organization. The award to Lonnie Bedell was to be made whole, back wages, back pension and welfare, and to be reinstated at Yellow Freight.

Yellow Freight appealed this decision to the United States Third District Circuit Court. The Court enforces in full the NLRB's Order of the Administrative Law Judge - **April 11, 1991.**

Yellow Freight then appealed the decision of the United States Third District Circuit Court to the United States Supreme Court where they were denied Writ of Certiorari.

The continual process of appeal took several years since the initial filing with the NLRB in 1989.

June 1989 - When the EEOC was made aware that the Administrative Law Judge found cause against Yellow Freight System, Inc., they in turn found merit in Mr. Bedell's cases against Yellow Freight Title VII. The EEOC was going to litigate these cases, but Mr. Bedell decided to take a Right To Sue letter since he saw how the Commission was dragging its feet with my case, and the poor attitude that Supervisor Rosenberg of the Newark EEOC office had with Mr. Bedell. Mr. Rosenberg said to Mr. Julian Martinez, Mr. Bedell's investigator, "What is he doing here?" Mr. Rosenberg was annoyed whenever Mr. Bedell went to the EEOC to drop off information to Mr. Martinez to support his case.

May 22, 1989 - Lonnie wrote a letter to Chairman Martinez asking for assistance with regard to his charges filed against YFS and mentioning the poor attitudes of the EEOC supervisors whenever Congressional people intervene. He also gave him example of the poor handling of the cases.

June 9, 1989 - Lonnie filed another EEOC charge against Local 641 for putting him on withdrawal from the Union after he was awarded reinstatement by the NLRB. Charge #171-89-0524. The Newark EEOC investigator found cause with this charge and recommend that this charge be litigated. When it was sent to the Philadelphia Office it was turned around to a no merit case. **June 2, 1990, appealed to the Determinations Review Board the no merit decision by the EEOC on 5/21/90.**

November 26, 1990 - Letter to Chairman Kemp from Chairman Martinez regarding status of charge #171-89-0524, and stated in this letter how the Philadelphia Office mishandled his charge in overturning the decision made in favor by the Newark EEOC Office.

May, 1991, Determinations Review Board states that I can pursue this matter further by filing a private action in Federal District Court.

June 12, 1989 - **Nigel Baptiste** filed an EEOC charge against Yellow Freight System, Inc., for being retaliated against for openly opposing and coming forward for Lonnie Bedell his co-worker. Charge **#171-88-0528.** Mr. Baptiste received a decision of no merit. Because of his disgust with the EEOC and the mishandling of his charge, he did not pursue appealing this to the Determinations Review Board.

March 1991-Lonnie Bedell files Third Party Charges with the EEOC on behalf of two more of his witnesses (Shawn Ortega and Barbara Lewane) that are being retaliated against by Yellow Freight Systems, Inc.

June 1991 - Joseph Ercolano filed an EEOC charge against Yellow Freight System, Inc., for being retaliated against for openly opposing and coming forward for Lonnie Bedell his co-worker. Charge **#171-91-0668**. Mr. Ercolano filed with the NLRB for an unfair Labor Practice against Yellow Freight System, Inc. The NLRB was going to litigate his case to trial. At this hearing it would have been told how the same managers who retaliated against Lonnie at Yellow Freight wanted Mr. Ercolano to make a false statements about different things that Lonnie Bedell did at Yellow. If Mr. Ercolano would go along with this, he was promised a supervisor's job at another terminal. Mr. Ercolano declined the request. Two days before his NLRB hearing YFS attorney Jeffrey Pasek, Shop Steward George Bell , Branch Manager of Yellow Freight and Joseph Ercolano was on a conference call. These individuals convinced Mr. Ercolano to drop his charges against Yellow which included dropping his charges at the NLRB and EEOC - **Nov. 12, 1991**. He was intimidated by these individuals into this action. This hearing of Mr. Ercolano's would have helped my case and Mr. Bedell"s cases against Yellow Freight and the union. It would have shown the underhandedness of both the company and the union, and how they work hand in hand to conspire against individuals who come forward. Mr. Bedell has proof that this telephone conversation place between Mr. Ercolano and the individuals listed above.

The two cases listed below are the most current EEOC cases still pending.

July 9, 1993 - Lonnie Bedell files another EEOC charge #170-93-1593 - see last pages for full explanation.

May 4, 1989 - Lonnie Bedell filed an EEOC charge against Local 641 for not referring him out on jobs as it does other members. Charge **#171-89-0456 - Docket #90-4412.** A settlement agreement was signed by the EEOC without Mr. Bedell's knowledge.

Except of letter written to The Honorable Major Owens - November 1993

1) Above mentioned charge filed in Newark on **5/4/89** - Investigator Amparo Mejas - found cause. This is the same person Lonnie spoke to while still employed by Yellow Freight telling her he was being retaliated against. She asked Lonnie what was his union doing for him. Ms. Mejas also found cause on Lonnie's other charge against Local 641. When this was sent up to the legal department in Phila., it was turned around to have no merit by Tommaso and Butler.

2) **11/7/90** - case filed with the Federal District Court in Newark, N.J. please note that this is one year and six months later. Miss Swanson had the complete file from Ms. Mejas. From the time when Miss Swanson was assigned to Lonnie's case to the time she was removed from his case February 1993 - she never interviewed any of his witnesses, and made false statements that she did. All of the individuals below also wrote affidavits on Lonnie's behalf.
The witnesses are as follows: Messrs., Robert Mennecucci, Joseph Murphy, Thomas Zupicich, Al Robinson, Gary Congilose, Larry Malanga, Michael Benisz, Peter Cuccionilli, and Mrs. Margaret Zinno. Please note that Mr. Cuccionilli and Mrs. Zinno spoke to Miss Swanson briefly because they called her. They both said that Miss Swanson had an attitude and that she did not want to listen, or hear the truth of the matter. In fact, Mr. Cuccionilli said to Miss Swanson,

"Whose side are you on anyway?" Mr. Michael Benisz would need to be subpoenaed because he has been intimidated by Mr. Robert Contini, President of Local 641. Mr. Benisz has not returned any of Lonnie's telephone calls to him, and avoids him like the plague. The affidavit that was written by Mr. Benisz to Gillian Swanson (11/12/92) was copied and mailed to U. S. Federal Court Judge David Edelstein.

In Miss Swanson's letter dated 11/4/92 she stated that she interviewed two of Lonnie's witnesses, Mr. Mennecucci and Mr. Zupicich, which was false. Chairman Perkins was advised of this false statement and received a letter back from Ann Colgrove, Director of Communications and Legislative Affairs EEOC, December 17, 1992. Lonnie Bedell wrote to Miss Colgrove on January 15, 1993 quoting her letter stating, "We regret any misunderstandings, whether the EEOC interviewed the two witnesses mentioned by Mr. Bedell in his November 1992 letter to you." Please keep in mind that as of January 15, 1993, Lonnie's witnesses are still not contacted. Ann Colgrove also states in her letter that there is no nexus between the Bedell and De Grosa cases.

Miss Swanson was also very rude to an attorney who called her on LB's behalf as written in the letter to Ms. Colgrove dated January 15, 1993. This letter was carbon copied to Evan J. Kemp and the Honorable Carl C. Perkins.

3) **5/1991 - EEOC and Local 641 Negotiating an Agreement.**
5/31/91- Letter to Swanson with attachment from Joseph Garruba, Esq. written 12/2/88 which states that Local 641 is acting more like an adversary.
6/7/91 - Swanson sends LB agreement to sign
6/18/91 - LB wrote a letter back to Miss Swanson stating that in good conscience he would not sign the agreement because of the ongoing retaliation which she has known about all along and he kept complaining about, and the gag order which would have restricted him from talking to members of Local 641 or anyone for that matter about this case and the retaliation shown him.
7/1/91 - LB letter to Swanson telling her retaliation is ongoing and asking her when she will interview his witnesses.

4) **8/6/91 - District Court Order of Dismissal because EEOC & 641 in process of settlement agreement.**

Requested on several occasions to Miss Swanson to review LB file to see what was submitted by Local 641, so he could better assist Miss Swanson with his case. All along, he told Miss Swanson of the actions that Local 641 was going to take, each and every step of the way. She did not take heed to this information. He also told her to review the NLRB hearing transcripts that would show the lies, collusion and conspiracy between Yellow Freight and Local 641 - she never requested them. He also requested to see the interrogatories that were being prepared for 641 to answer. He was denied. Also asked to be present when former President of Local 641 Girolemo Sonny Musso was deposed and was denied.

LB requested on several occasions for a cease and desist order to be filed against Local 641 because of the ongoing retaliation and all she would talk about was the settlement agreement. **6/4/92** - LB went to Trenton, N.J. to look up his file and was appalled to find that his case was **dismissed in August of 1991.** He

was never notified by the EEOC that this had transpired. He was told by the Clerk in the U.S. Court House in Newark that his file had been sent to Trenton. LB continually told Miss Swanson that Sonny Girolemo Musso and Robert Contini needed to be deposed.

5) **7/31/92 -Filed case to be reopened.**

Lonnie requested to attend the hearing as to whether the case would be reopened - he was denied. What transpired here is that when Local 641 received the paperwork on the motion to reopen the case which was filed by the EEOC, the Commission told Local 641 you never signed the agreement (this is one year later). The Commission let the cat out of the bag by telling Local 641 they never signed instead of going straight to Judge Lechner with this unsigned document. Even at this point Lonnie's witnesses were not interviewed. Affidavits and testimony went by the wayside on Lonnie's behalf because the EEOC only took into consideration Local 641's lies. How could the commission go into an agreement when they were told numerous times of the ongoing retaliation and the witnesses were never interviewed? The incompetence of the EEOC also is that when they filed this motion to reopen this case, they should have written that the retaliation was on-going.

July 31, 1992- Whittaker Clark and Daniels - Local 641 has a collective bargaining agreement with this company. LB went to this job site seeking employment and he was told by the manager he had to get a job application from Local 641. This is what his case is about job referral and ongoing retaliation. Local 641 as stated by former President of Local 641, Sonny Musso does not refer members on jobs, he signed a certification to this affect. Robert Contini, President Local 641 states they refer out on occasion. Whittaker Clark and Daniels' manager telling me and another member that the application for work has to be filled out in the union hall. LB has this conversation on tape, and a witness who will verify same. When he told Miss Swanson that he had this on tape she told him that she did not want to know about or hear any tape. What does this tell you? LB made Miss Swanson aware of these facts and did not take them into consideration. The end of September **1992** LB went back to Whittaker Clark and Daniels for a job. October 22, 1992, Michael Benisz and LB went to see Robert Contini President of Local 641 and asked him for the job application for Whittaker Clark and Daniels. Contini said he didn't know what I was talking about. In correspondence to the I.B.T. President, Contini lies and said he spoke to a person by the name of Julia from Whittaker Clark and Daniels on the telephone (speakerphone) and not this person named Wiley, as both LB and Michael Benisz heard. Miss Swanson was aware of this newest fabrication also.

July 1992 - New Penn Trucking - Miss Swanson was aware of the continuing blackballing of LB on this job at New Penn. He was called a S--m Bag, by the Shop Steward Jan Katz, and told him that he would never work there again. Carmen Nesta, Terminal Manager, Pat Giallorenzo, Dock Supervisor fabricated stories about LB's work performance, so therefore they would not work him on that job anymore. These individuals will continue to rely on Mr. Kroll, Attorney for Local 641, to continually fabricate the truth. Charlie Crotto and Matty of New Penn Trucking did not have a problem with LB's performance on the job. Mr. Nesta, Mr. Giallorenzo, and Mr. Katz worked along with Mr. Contini in a ploy to continue to retaliate against him by making up stories of his job

performance. Prior to LB going on this job he told Miss Swanson how they would set him up so he would not work more than eight days. When LB told her what had happened, her reply to LB was, "Well at least they referred you out." (meaning Local 641). She did not give a second thought to the ongoing retaliation on this job by Local 641.

6) **8/13/92 - Agreement Executed** - Letter dated 8/7/92, postmarked 8/10/92 P.M. from South Jersey from Miss Swanson asking LB what he felt he was entitled to and to submit all doctor, hospital bills, drug bills, amount of vested pension, W-2 forms, etc. LB responded back to her in his letters dated 8/18/92 and 9/8/92, enclosing what she had requested. LB was never notified that the agreement was executed on 8/13/92. Why did she send him this letter when on 8/10/92 Kroll signed the agreement.

7) **9/16/92** - Filed Motion to reopen the case - LB was never told that the case was dismissed by Judge Lechner. In his correspondence he ordered the Commission to demand a signed release from LB pursuant to the settlement agreement between the Commission and Merchandise Driver's Local 641. Prior to 9/16/92 Miss Swanson was going to have a conference with Judge Lechner. LB requested to be present and was denied. How could Swanson present a case before the Judge without interviewing any of his witnesses? What type of a case did she present to Judge Lechner? When Mrs. Zinno contacted Miss Swanson, she told her of how 641 has been retaliating against Lonnie Bedell, As I mentioned earlier on, she is one of the individuals who submitted an affidavit on Lonnie's behalf. What was said that made this Judge so hostile towards LB, by demanding that he sign the release? He was told by Miss Swanson to stay by the telephone on September 11, 1992, that she would get back to him, she never did. LB called the EEOC on September 16 to find out the outcome of the conference with Judge Lechner, and she told him that he would be receiving a letter in the mail. LB told Miss Swanson on several times that he would like to write to Judge Lechner to state his case before him, and was told he could not. Yet, Al Kroll, Attorney for Local 641 writes a letter to the EEOC and copies Judge Lechner, and in this letter states that Lonnie Bedell is uncooperative. **LB learned of this document when he finally was allowed to review his file in July of 1993.**

8) **10/23/92 - Settlement Agreement filed in Court** - Lonnie Bedell was never made aware that the Settlement Agreement was filed in court until his meeting with Cynthia Locke and Wanda Flowers both of the EEOC in February 23, 1993. Margaret Zinno one of Lonnie's witnesses attended this meeting and she told Ms. Flowers and Ms. Locke of the ongoing retaliation and blackballing of Lonnie by Local 641. At this same meeting Lonnie played the tape recording of what had gone on at Whittaker Clark and Daniels, with regard to him filling out an application for work at the union hall.

9) **Joseph Ercolano - filed EEOC (#171-91-0668) dated 7/6/91** and NLRB (22-CA-17786) charges 6/24/91. His EEOC investigator was never available on Monday because she was allowed to work at home on Mondays. Mr. Ercolano explained that his day off was on Monday and it would be difficult for him to come to the EEOC to speak to her on any other day because he car pooled to work from South Jersey to Elizabeth. His investigator made no concessions to try and meet him on his day off. Mr. Julian Martinez took the charge from

Mr. Ercolano. Mr. Ercolano recognized Mr. Martinez from when he came to Yellow Freight to make an inspection with regard to Lonnie's case against Yellow Freight. Mr. Martinez asked Mr. Ercolano what is the union doing to help you. Mr. Ercolano told Mr. Martinez that they were doing nothing because of Lonnie Bedell and that he (Mr. Ercolano) signed and submitted an affidavit on behalf of Lonnie Bedell with his Yellow Freight case. **All along I was telling the EEOC Miss Santiago/Mr. Holmes about Mr. Ercolano's charge and how he was being retaliated against because he came forward for Lonnie Bedell who in turn came forward for me. A continuing domino affect. Everyone at the EEOC turned a deaf ear.**

Lonnie Bedell was mentioned in the body of Mr. Ercolano's charge against Yellow Freight with both the EEOC and the NLRB.

The NLRB was going to litigate Mr. Ercolano's charge on November 12, 1991. The truth would have prevailed as to how Yellow Freight set up and fired Lonnie Bedell with the help of the union. Yellow Freight wanted Mr. Ercolano to lie and say that Lonnie Bedell did not do his job, and jeopardized the drag line. If he would state that in an affidavit, and testify to same, he was promised a supervisor's job with Yellow in another terminal. Remember that one of the two supervisor's (Dore & Curley) Dore was the former Trustee of Local 641 Pension and Welfare Funds, he is also the same individual who fired me from my job, Lonnie Bedell from his job, and also walked into a Trustee Meeting at Local 641 saw me sitting there, and two days after I was fired from my job at the Welfare Fund. The day before Mr. Ercolano's NLRB hearing Yellow Freight's attorney along with Shop Steward for Local 641 George Bell had a meeting with Joseph Ercolano and was intimidated into dropping his NLRB and EEOC charges. At the time Mr. Ercolano did not realize the positive impact that his hearing would have had both on Lonnie Bedell's case or my cases.

10) **February 1, 1993** - Lonnie receives a letter from the EEOC, Cynthia Locke, Esq. that she has been assigned to Lonnie's case.

11) **February 23, 1993** - A meeting is held between Lonnie Bedell, Wanda Flowers and Margaret Zinno, Lonnie's witness at the EEOC in Newark. At this meeting he learns that the Settlement agreement was filed in U. S. District Court. He was never made aware of this happening in October of 1992.

12) Retaliation and blackballing continue - Local 641 has continually breached the agreement before during and after they signed it. This fact has been told to the EEOC, Gillian Swanson, Esq., Deborah Mc Iver Floyd, Michael Holmes, Cynthia Locke, Esq., Iris Santiago, over and over again. (Michael Holmes and Iris Santiago were the lawyers assigned to my case).

13) **March 15, 1993** - LB wrote a letter to Cynthia Locke, pertaining to meeting of February 23, 1993 and what was discussed. Also mentions possibly filing another charge against Local 641 and its officers and agents. Advises Miss Locke in this letter that Local 641 has a non-discriminatory clause in their union contract which they violated. Also information given with regard to how a union member wants to sue him on behalf of Local 641, and how the membership is hostile towards him.

14) **March 1993** -Letter to Cynthia Locke from Joann regarding LB and the ongoing retaliation.

15) **May 4, 1993** - Commission sought hearing from the court to determine the validity of the agreement. Cynthia Locke on the advice of Deputy Clerk, Selecky, told her to write to Judge Lechner with regard to the breach of the agreement, instead of filing a motion for same. LB feels that Deborah McIver-Floyd should have advised her to go forward with the filing of the motion. **I sent you a copy of the August 27, 1993 letter with the most recent letter written by Lonnie Bedell to Cynthia Locke requesting the status of the breach.**

16) **June 7, 1993** - Letter to Cynthia Locke from Lonnie Bedell - regarding Civil Rights Act, deprivation of rights, Advising her that Mr. Kroll attorney for Local 641 is fighting Lonnie with his own union dues, as Al Kroll is paid from Local 641. Also mentions mishandling of case and how EEOC has taken the side of Local 641 all along by not investigating properly.

17) **June 16, 1993** - Letter to Cynthia Locke from Joann advising her to read of the depositions of Margaret Zinno and Gayle Loftis, as there is pertinent information regarding Lonnie Bedell and the retaliation being shown him by Local 641. (You have a copy of this letter in the file).

Cynthia Locke told Lonnie that Ms. Tomasso and Mr. Butler suggested that he go to Phila to file a new charge.

Peter Cuccionilli called Deborah McIver Floyd to tell her of the ongoing retaliation. She told Mr. Cuccionilli that she would have Cynthia Locke call him. He left his telephone number, Miss Locke never returned his call.

18) **July 9, 1993** - Lonnie Bedell and Joann De Grosa go to Phila. to file a new charge #170-93-1593.

19) **July 31, 1993** - letter from Joann De Grosa to Major Owens with regard to the chain of events of the blunders already made by the EEOC with this newest charge filed by Lonnie.

20) **August 14, 1993** - letter to Rita Epperson, EEOC - Phila. Investigator assigned to Lonnie's new case. This letter was from Lonnie regarding several telephone calls made to Miss Epperson, regarding his charge and that he never received a final copy of same. **NOTE: July 9, 1993 this new charge was filed.**

July 9, 1993 - Lonnie Bedell files another EEOC charge #170-93-1593 - Except of letter written to the Honorable Major Owens, July 31, 1993.

Item #1 - Filing of the new charge July 9, 1993 - EEOC - Philadelphia.

On July 9, 1993, Lonnie Bedell went to Philadelphia to file a new charge against Merchandise Driver's Local 641 - I accompanied him there. The reason for us going to Philadelphia is because he told Miss Locke of his disappointment with the EEOC in Newark and the only way he would feel comfortable with the Newark Office is if Mr. Julian Martinez would have taken his charge. (Mr. Martinez is the person who took Lonnie's charge against Yellow Freight System Inc and pursued his investigation to the fullest extent). Of course, Mr. Bedell was denied his request for having his charge taken by Mr. Martinez on the day that Mr. Martinez would have been on the floor taking

charges. Miss Locke said that the director and Maria (Butler & Tomasso) recommended that Lonnie should go to Philadelphia to file this charge.

July 9, 1993 - Lonnie Bedell and myself drove to Philadelphia which is 105 miles from his home, where the Newark EEOC office is only 10 miles away. Mr. Bedell made Miss Locke aware that he did not want to come to Philadelphia to file this charge if he was going to get the run around. The cost of the tolls, parking and gas for that day cost approximately $50.00.

The intake officer who took notes and documents from Mr. Bedell was Rita Epperson. She told Mr. Bedell that she would not finish the charge that day (writing it up) that she would mail him the charge and that he should receive it by Wednesday July 14. During the time when Miss Epperson was taking notes she was interrupted by a co-worker who kept asking her when she was going to take lunch. I would like to approximate the time at 1:30 p.m.

July 14 came and went - so did **July 15 , July 16**, no charges were received by Mr. Bedell in the mail. So on **Friday, July 16 and Monday, July 19** Mr. Bedell called and asked for Miss Epperson and he was told both times that she was out of the office. Each time he called for Miss Epperson, he also asked to speak to Dolores Benjamin, the Supervisor and she was not available. Mr. Bedell left his telephone number and never received a telephone call back from either Miss Epperson or Miss Benjamin. He also called for Miss Locke twice during the **week of July 19th** and she never called him back. On or about **July 21** Mr. Bedell still had not received his charge. So he again called the EEOC and this time asked for Deborah McIver-Floyd, Regional Attorney. He told Mrs, McIver-Floyd of his dissatisfaction as to the chain of events and also not receiving the charge in the mail as promised. Mr. Bedell said to Mrs.McIver-Floyd, " Is this a ploy to stretch me out even more?" Mrs. McIver-Floyd said she would have someone call him back. Mr. Alfred Harris who is an enforcement officer at the EEOC called Mr. Bedell back and told him that Miss Epperson was on vacation. This is the first time that Mr. Bedell was made aware of Miss Epperson being on vacation. No one from the EEOC ever got back to him to let him know this. Mr. Harris told Mr. Bedell to contact Miss Epperson on **Monday, July 26.** Mr. Bedell called her on July 26 and she wasn't in. He asked to speak to Miss Benjamin the Supervisor and she wasn't available, so Mr. Bedell demanded to speak with someone. They put another supervisor on the phone by the name of Mr. King. Mr. King told Mr. Bedell that Miss Epperson would be in on **Tuesday, July 27**, and that Miss Epperson would call Mr. Bedell. The day was going by on Tuesday, July 27 and Miss Epperson never placed that call to Mr. Bedell so he called her and finally spoke to her.

Miss Epperson told Mr. Bedell that she would work on his charge on Tuesday, July 27 and finish it up by Wednesday, July 28. Mr. Bedell called her on July 28 and she said she was going to try to have it done by the end of the day, if not the latest Thursday, July 29. She told him that she would fax it on Thursday, July 29 so that Mr. Bedell could review it. Please take note that this is 20 DAYS AFTER OUR INITIAL TRIP TO PHILADELPHIA. This charge HAS NOT BEEN HANDLED PROPERLY OR IN A TIMELY MANNER. Even inasmuch as Miss Epperson seemed to have absorbed all of the details regarding this charge, there is no excuse for this type of delay. Someone should have had the common courtesy of letting Mr. Bedell know that Miss Epperson was on vacation and not have him call Philadelphia, which are toll calls.

On **Friday, July 29**, Miss Epperson left a message on Mr. Bedell's answering machine stating that she wanted to fax the charge to him but she had the wrong number. She did not leave a time that she called. Mr. Bedell called her at approximately 1:45 p.m. and

she was away from her desk. Someone took a message. He called again at 2:30 p.m. and left word on Miss Epperson's answering machine. She still did not return the call. Mr. Bedell called her again around 3:45 p.m. and she answered her phone. She faxed the charge to a local printing company in the next town which he had to pick up. The time on the fax cover sheet was 4:46 p.m.

Mr. Bedell has to make modifications to what she wrote, call her on Monday August 2, 1993 to go over this charge and make arrangements to fax it back to her. After that, I don't know what arrangements will be made for Mr. Bedell to receive the final and completed document. After the document is signed then it has to be mailed to the Local Union within ten days, so we are talking over a month's time to file a charge!

How does this agency get away with being so lax? As you realize time is of the essence when filing a charge, because every day that goes by that this does not get signed and notarized, the charging party (Lonnie Bedell) looses another incident as to back up with this charge. I truly cannot understand this.

Remember you had asked me if Mr. Bedell received any kind of receipt from the EEOC that he filed charges on July 9th? Well, the answer is NO. He received nothing. The only proof we have is the document that Mr. Bedell gave Miss Epperson, as she said she would date stamp that in.

March 5, 1994 - letter to Miss Rita Epperson, EEOC Investigator - asking when during the week the depositions will take place and who is being deposed. Also listing reasons why Mr. Albert Kroll and Mr. Raymond Heineman should not be in attendance during the deposition.

March 18, 1994 - letter to Miss Rita Epperson, EEOC Investigator - disappointment that once again the depositions of the Executive Board of Local 641 are canceled. According to Mr. Johnny Butler the depositions were to be completed by December of 1993. Advise me in writing when they will take place

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Lonnie Bedell - New Jersey Division of Civil Rights

June 25, 1993 - A letter was sent to Mr. Torres of the N.J. Division of Civil Rights by Joann De Grosa stating how the union breached the settlement agreement in her Civil Rights case against Local 641 Welfare Fund. Mr. Torres was advised of the ongoing retaliation shown me by the same Local Union, from the time that I came forward for her up to and including the present time..

October 12, 1993 - upon the suggestion of Mr. Burstein of the Civil Rights, I was told to come in and file a charge with the Division. I was interviewed by Miss Quoddas and left my paper work with her. I did not leave the Division with a charge in my hand as she had to speak to Mr. Burstein.

March 18, 1994 - I wrote a letter to Gregory Stewart, Director of the New Jersey Division of Civil Rights regarding my letter to Anne Whitley asking of the status of my cases within the State under the work sharing agreement. I never received a reply to my original letter to Miss Whitley of May 12, 1993. I requested to Mr. Stewart to make an inquiry as to why the Division did not file a copy of my complaint dated October 12, 1993.

.I would hope that the Sub Committee on Select Education and Civil Rights will strongly consider a new General Accounting Office Study of the EEOC and the Civil Rights to be compared with the Study done in October of 1988 (GAO/HRD-89-11)

Thank you for this opportunity to speak about the misgivings of the EEOC and Civil Rights, and how it has effected not only our lives adversly but those of our families and witnesses.

Any person who is in receipt of this summary, I will be glad to furnish any documentation upon request.

Lonnie Bedell

Mr. Lonnie Bedell
14 Nelkin Drive - Apt. 131
Wallington, N.J. 07057
Phone: 201-778-6799

Joann De Grosa

Ms. Joann De Grosa
51 Grove Street
South Hackensack, N.J. 07606

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
502 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

April 12, 1990

The Honorable Evan Kemp
Chairman
Equal Employment Opportunity Commission
1801 L Street, N.W., Room 9024
Washington, D.C. 20507

Dear Chairman Kemp:

I am writing in regard to a retaliation charge filed by Mr. Edward Rush against Yellow Freight in New Jersey (charge #171-89-0198).

Mr. Rush has asked me to contact you regarding the reopening of his charge. He feels that his case was mishandled by the EEOC New Jersey office.

After filing his retaliation complaint with the EEOC Mr. Rush left to attend college in Kenya, Africa. At this time he sent a letter to Mr. William Busund of the EEOC New Jersey office informing of his new address and giving him written permission to notify Lonnie Bedell as to the status of his investigation. Mr. Rush attempted several times to contact Mr. Busand by phone, his calls were never returned.

Mr. Rush was not notified as to the status of his charge at any time by the EEOC office in New Jersey. It was only after his return and several attempts that he finally reached Mr. Busand. He was informed at that time that his case had been closed and issued a no cause finding. Mr. Rush was never notified as to the status of his case nor was he notified of the no cause finding. He requested a copy of the determination. The determination was addressed to Mr. Rush's address in New Jersey, was undated, was unsigned and there were blanks in the body of the letter. If Mr. Rush was properly notified, why was he sent a copy of a determination letter that was incorrectly addressed and not appropriately filled in and signed by the EEOC?

Mr. Rush informs me that the EEOC New Jersey District Director, Mr. Corrado Gigante, claims that an investigator, Mr. Bonomo, spoke with Mr. Rush on March 31, 1989. It seems that this is impossible since Mr. Rush was in Africa at that time attending

school and had never received any contact from the EEOC let alone a phone call in Africa.

After hearing from Mr. Rush I have serious misgiving as to how his case was handled by the New Jersey EEOC office. I would appreciate knowing the status of Mr. Rush's request to re-open his charge.

Your attention to this matter is greatly appreciated. If you have any questions, please contact Tammy Harris of my subcommittee at 225-7594.

Sincerely,

Matthew G. Martinez
Chairman

April 5, 1994

Major R. Owens
Sub Committee on Select
Education and Civil Rights
U.S. House of Representatives
Annex #1
Room 518
Washington, D.C. 20515-6107

Fax#1-202-225-3675

Attn: Maria A. Cuprill, Director

Ref: Added Documentation for the Record
Subcommittee Oversight Hearing - March 24, 1994

Dear Chairman Owens,

We want to take this opportunity to formally thank you, the Sub-Committee, Miss Cuprill and your staff for inviting us to testify at the hearing on March 24, 1994. It was a pleasure meeting all of you including Mr. Reilley, and making us feel part of your family. With your encouragement and positive attitude with regard to our situations with the EEOC and Civil Rights, it makes us want to continue the fight, not only for ourselves but the others who will follow behind us. Enclosed is a copy of the article which ran in the New Jersey Star Ledger on Thursday, March 25, 1994.

Since I was the first speaker I felt that I wanted to be a messenger for a lot of people. I felt that there were plenty of stories like mine, and perhaps stories even worse than mine. I was humiliated, retaliated against, discriminated against not only by Yellow Freight System, Inc., Local 641, but also the EEOC and N.J. Division of Civil Rights. I wanted to convey a message to the Subcommittee as to why another GAO study is needed, so the people who file charges with the EEOC do not become so disgusted that they walk away and the company wins. Each one of the stories that were told were so parallel in the mishandling and how the EEOC overlooks what they want to, including collusion and conspiracy as in my cases.

For the record I want to expand on the humiliation and hardships that I encountered ever since I came forward for Joann in 1986. During this time frame, Yellow Freight System, Inc. retaliated against me, and Local 641 did not come to my assistance at all. I was given more ardent work loads, was made to work in the hazardous area of the dock, inhaling fumes and breathing the dust from drums and bags that were broken and leaking. When I complained to my shop steward I was told, "What do you expect, you are not a friend of Ken Dore's." Another instance is that the shop steward told me to have Joann drop her charges. One of Yellow's supervisors told me, "You are going to get yours." As you must realize all of the complaints of this disparate treatment went unheard by the union officials. This type of treatment did not stop. It continued with my being number one man on the seniority list being told to clean up the coffee room, being made to walk my freight the length of a football field, while the other employees/members were able to use this mechanical device called a "drag line". The freight was put on this device and mechanically pulled up the dock. This was all done of course to get a rise out of me so that I would loose my temper so that the company would fire me. This treatment was done to humiliate and degrade me in front of my fellow co-workers/members. Yellow Freight and the union wanted to make an example out of me by showing the other employees what would happen to

them if they came forward for another co-worker/brother-sister member. The treatment became worse when I filed my own EEOC charges January 19, 1988 for discrimination, harassment and retaliation. Thirteen days later, February 3, 1988, I was set up and fired. I then filed another EEOC charge. I also filed NLRB charges as described in the original testimony, which the Administrative Law Judge found cause against Yellow Freight for an unfair labor practice and disparate treatment.

I would now like to bring in different points as to how the EEOC discriminated against Joann and myself by making the working of our cases even more difficult

Mr. Julian Martinez was assigned to investigate my retaliation cases against Yellow Freight System, Inc. Mr. Rosenberg, EEOC Acting Director at the Newark, N.J. Area Office, intervened between Mr. Julian Martinez, Investigator, and Yellow Freight System, Inc. Mr. Rosenberg pressured Mr. Martinez into closing the case. Mr. Martinez did not because he felt the case was incomplete and he wanted to make a physical inspection of the terminal. The company kept procrastinating if they would let him make the inspection or not. Finally the company did agree to this inspection. Also, Mr. Martinez was in the process of a conciliation between the EEOC and Yellow Freight when Mr. Rosenberg intervened again. When this happened, the conciliation was lost. (See attached letter dated 11/14/89 to Mr. Martinez). On several different occasions I had to meet Mr. Martinez downstairs in the lobby of the EEOC building. This was due to the fact that Mr. Rosenberg did not like the idea of me going to the EEOC to give Mr. Martinez information pertaining to my case, he was annoyed. Mr. Martinez told me to call him whenever I wanted to bring in documentation, that he would meet me downstairs. During this time period is when I told Mr. Martinez about the cause finding by the Administrative Law Judge at the NLRB. Mr. Martinez advised me to bring in the decision to the EEOC. Up to that time, the EEOC was dragging its feet regarding a finding. When Mr. Martinez presented the Administrative Law Judge's finding, is when the EEOC found probable cause against Yellow Freight with my two EEOC cases. I took a Right-to-Sue letter because I saw how the Commission was dragging its feet with Joann's case, and also because of the interference of Mr. Rosenberg, who I did not trust. Mr. Rosenberg was appointed Acting Director by Maria Tomasso. I am enclosing a copy of a letter which I wrote to Mr. Martinez on May 3, 1989 with regard to his dedication, time and patience he put into investigating my case.

At this point in time and prior, we were telling the commission to cross reference the charges and they were not. *According to the GAO October 1988 EEOC and State Agencies Did Not Fully Investigate Discrimination Charges - GAO/HRD-89-11, page 18 it states: Obtain critical evidence necessary to: compare the charging party to others in a similar work situation, interview relevant witnesses and verify the critical evidence obtained.* None of this was done with regard to my case and Joann's nor, my other witnesses who filed EEOC charges against Yellow Freight. They were all retaliated against for coming forward. I filed third party charges on behalf of two of my witnesses against Yellow Freight System, Inc. Shawn Ortega and Barbara Lewane-Suto. Last evening I was talking to Barbara Lewane-Suto and her husband Ernie. They both told me that when they were speaking to Miss Santiago, Joann's attorney from the EEOC in Philadelphia, they both said to her, " **whose side are you on anyway?**" In fact, Mr. Suto asked her who was paying her, Yellow Freight? They both expanded on the poor attitude of Miss Santiago - she was rude, did not believe either one of them and how she didn't believe Joann. Once again, another EEOC lawyer is questioned as to whose side are they are on. These same words were asked of Miss Swanson with regard to my case by my witness, Peter Cuccionilli.

The day after the Subcommittee Hearing, March 24, I was informed by my witness Mr. Peter Cuccionilli that Cynthia Locke, Esq., who is handling the breach of agreement of my EEOC charge had called different individuals that I named in my documentation at the New Penn job. These are the same people who I told Miss Epperson who is handling the charge that I filed in July of 1993 to depose under oath,

individually, and that they should be sequestered. Miss Locke started making telephone calls to different individuals when the EEOC in Philadelphia was made aware of the documentation that was given to your office for the hearing. With Miss Locke calling these individuals, she jeopardized my case that Miss Epperson is handling. The letters which were written to both Miss Epperson and Miss Locke (March 1994) you were carbon copied on, I would also like these letters to be part of the ongoing testimony. It appears that when the documentation was made available to the EEOC, Wednesday, March 23, 1994, submitted by Joann, myself and the other people who testified is when Miss Locke started to contact individuals in my case. Also she made several calls on Thursday, March 24 and that evening also. It is my opinion that with the EEOC employees in attendance at the hearing, who heard our testimony, read the documentation that was made available to them on Wednesday March 23, tried to make up for their shortcomings in being so lax with these cases.

When I was awarded reinstatement and to be made whole by the NLRB, Local 641 turned around and put me on withdrawal. I made the EEOC (Charge ##171-89-0524) aware of the fact that case law teaches that a dischargee's active pursuit of a cause of action protesting such discharge is sufficient to meet the requirement to stay in the union as an active member (Cf. Brennan v. Lift Truck Builders, 490 F.2d 213 (7th Cir. 1974); Brock v. UTU, 126 LRRM 3340 (N.D. Ind. 1987). Again, with the mishandling of this case by the EEOC, believing the labor organization Local 641, has caused me harm. This is one of the cases that the union is using as an example to the membership that I file frivolous suits.

Another instance I want to bring to your attention is that even inasmuch as the EEOC continually said NO NEXUS between Joann's case and mine, this did not stop Jeffrey Pasek, Esq. for Yellow Freight to depose me on the same day on both my and Joann's Yellow Freight cases. Michael Holmes, Esq. was assigned to sit in on this deposition by the EEOC since Miss Santiago was not available. First off, the EEOC should have never allowed Mr. Pasek to depose me on both cases in one day. Secondly, the deposition with regard to Joann's case should have been canceled altogether since Miss Santiago was not available, and Mr. Holmes was not familiar with Joann's case. Mr. Pasek continually during this deposition cross referenced both of these cases. This is the same thing that the EEOC said had NO NEXUS, yet Mr. Holmes did not object to Mr. Pasek's line of questioning. **The decision of NO NEXUS stemmed from Mr. Butler and downward of the Philadelphia EEOC office to the Newark, New Jersey office. In fact, this NO NEXUS even went as far as the EEOC in Washington, D.C. to a Miss Ann Cosgrove of Legislative Affairs. Your office has a copy of this letter in my file.**

I was made aware that Mr. Pasek, Yellow Freight's attorney was meeting with Local 641 Executive Board and attorneys with regard to my and Joann's Yellow Freight EEOC cases and her case filed against Local 641 Welfare Fund. I made the EEOC aware of these meetings and tried to make them see the conspiracy and collusion between the company and Local 641. Jack Barnes Business Agent for Local 641 instructed Peter Enrico, Shop Steward and others to meet with Mr. Pasek of Yellow Freight at a particular hotel in Newark, N.J. Jack Barnes was very instrumental in setting up these meetings and working against me.

Joseph Ercolano - EEOC charge #171-91-0668 filed 7/6/91- Mr. Julian Martinez took the EEOC charge of Mr. Ercolano and he was also interviewed by him. Mr. Ercolano was familiar with Mr. Martinez because he remembers seeing him the day that he came to Yellow Freight to inspect the premises. Mr. Ercolano was looking forward to have Mr. Martinez as his investigator. Mr. Martinez was very familiar with the names submitted in affidavits on my case. In fact, statements were sent directly to Mr. Martinez and signed by some of my witnesses (See attached letters dated August 22, and August 31, 1988). (Joseph Ercolano signed the August 31, 1988 letter - Mr. Wayne Riche, Mr. Edward Rush, Mr. Shawn Ortega signed the August 22, 1988 letter.)

03-150 O - 94 - 2

Mr. Martinez was also aware of the managers named in both Joann and my cases. Mr. Martinez was never assigned any of the cases that were filed by the individuals who came forward for me. They were all assigned to different investigators. The Newark Office would not allow Mr. Martinez to handle any of the cases that were submitted. In at least three of these case I was named in the body of the charge. In at least three of the four cases Mr. Martinez took the charge, and the same violations against Yellow Freight System, Inc. was reoccurring, and these witnesses again were not getting any assistance from the union. A continual pattern of retaliation, collusion and conspiracy. **The EEOC in Newark and Philadelphia WOULD NOT SEE THE PATTERN BETWEEN YELLOW FREIGHT SYSTEM, INC. AND LOCAL 641. In fact the EEOC still cannot/will not see the pattern since 1986. I was devastated when the NLRB and the EEOC allowed Mr. Ercolano to drop his charges against Yellow Freight System, Inc. This was my last ray of hope that Justice would finally prevail and that Yellow Freight would be on the hot seat. Because of the devastation I felt, I settled with Yellow Freight.**

I am enclosing a copy of a letter which was written to Mr. Butler in the Philadelphia Office dated August 17, 1989 by Wayne Riche with regard to his disappointment of his charge (#171-88-0568 - 9/29/88) being "disposed of" and also asking for help with investigating Yellow Freight. His letter seeking assistance and requesting that the EEOC charges filed against Yellow Freight System, Inc. all be linked together was also ignored.

Up to and including the date of my testimony, Yellow Freight System, Inc. its representatives, attorneys have assassinated my character along with Local 641 and its representatives and attorneys and the EEOC has helped them with this character assassination from the Newark, New Jersey Office to the Philadelphia, Pennsylvania Office.

In my original documentation I mentioned "**Another individual who filed charges with the NJDCR against Local 641 Welfare and Pension Funds (and is still employed at the Fund) in December of 1991 for sexual harassment and retaliation, still has not received a determination from the State. " At her fact-finding conference it was mentioned by Mr. Sincaglia that Politics were involved in her case. Miss Cynthia Santangelo along with her lawyer, Rene Steinhagen were present when this was said. Mr. Sincaglia was referring to Mr. Albert Kroll, attorney for Local 641 and the Political Clout he has in the State of New Jersey since he is General Counsel for the AFL-CIO for the state.**

Chairman Owens had asked one of the individuals who testified if the EEOC needed someone to review their actions. I would definitely say YES. The EEOC needs a watchdog. I would be one of many who would attest to that.

We need a Chairman to be appointed by President Clinton to the EEOC - a person who will enforce the Civil Rights Laws and discourage the violations of people's civil rights. A person who is dedicated and involved as Chairman Owens - <u>He is the man for the job!!!</u>

Very truly yours,

Joann De Grosa
51 Grove Street
South Hackensack, N.J. 07606

Very truly yours,

Lonnie Bedell
14 Nelkin Drive - Apt. 131
Wallington, N.J. 07057

Attachments:

Letter to Mr. Julian Martinez dated August 22, 1988 (co-workers signatures)
Letter to Mr. Julian Martinez dated August 30, 1988 (co-workers signatures)
Letter from Mr. Wayne Riche dated August 17, 1989 to Mr. Johnny Butler
Letter to Mr. Julian Martinez dated May 3, 1989 from Lonnie Bedell (letter of appreciation)
Letter to Mr. Julian Martinez dated November 14, 1989 from Lonnie Bedell (letter regarding Right to Sue Letter and Conciliation Mr. Rosenberg)
New Jersey Star Ledger Newspaper Article dated March 25, 1994

Via: U.S. Express Mail #EF032959859US

August 22, 1988

Mr. Julian Martinez
Field Investigator
E.E.O.C.
Newark Area Office
60 Park Place - Room 301
Newark, New Jersey 07102

Dear Mr. Martinez:

We are aware of what happened to Lonnie Bedell in the arbitration award, and we consider this decision highly unfair. We have already submitted affadavits to the EEOC on behalf of Lonnie Bedell and these affadavits are confidential to the commission.

Now that we are aware of what they did to Lonnie Bedell, we no longer want to remain confidential.

We want you to know, Mr. Martinez, that if we have to testify in a court of law we are willing to do so.

Name	Address	Telephone #
Peter B. Stephens	300 LIBERTY ST APT 7 LITTLE FERRY N.J. 07643	201-440-5485
Wayne Ricks	43 Flagship Cove Belleville NJ 07109	201 759-5975
Richard D [illegible]	Rt. #5 Box 273-5 Freehold NJ 07728	(201) 462-0867
John [illegible]	9 Trystan ST Little Ferry [illegible]	
Thos. P. Ortega	360 Kirkland Pl Perth Amboy, N.J. 0861	

August 31,1988

Mr. Julian Martinez,
Field Investigator,E.E.O.C.
Newark Area Office,
60 Park Place, Room 301,
Military Park Building,
Newark, N. J.,07109

Dear Mr. Martinez,

We the undersigned are aware of what happened to Mr. Lonnie Bedell in the arbitration award and we consider this decision highly unfair. We want you to know, Mr. Martinez, that if we have to testify in a court of law on behalf of Mr. LOnnie Bedell, we are willing to do so. We witnessed the unfair treatment, discrimination, and harresment of Mr. Lonnie Bedell, at Yellow Freight System Incorperate, Elizabeth New Jersey terminal.

NAME	ADDRESS	PHONE
Peter B. Stughan	30-Liberty St Apt 7	440-8485 - Little Ferry N.J. 07643
[illegible]	387 [illegible] Ave	751-1982
Joe McDonald	5 east end place	355-4507
[illegible]	40 pilgrim ave Tinton Fall	918-9623
[illegible]	66 [illegible] Ave Jackson NJ 08527	(201) 367-4552
[illegible]	56 [illegible] Ave Carteret NJ [illegible]	969-3357
[illegible]	[illegible]	[illegible]
Michael Searice	363 Washington St P.A. N.J	442-9461
Joseph E. [illegible]	58 [illegible] B'Klyn N.Y. [illegible]	(718) 837-5344
Gene Weeks	202 A Harding R.N Freehold NJ 07728	409-2506
Tony [illegible]	21 Greenway → Brick Town	840-4127
[illegible]	155 [illegible] Rd Brooklyn NY. 11204.	
[illegible]	226 [illegible]	

AMES HOPKINS 400 SEATON AVE, ROSELLE PARK, N.J. 07204 241-2637

8/17/89 page 1

Mr Johnny Butler
District Director
EEOC
Philadelphia District Office
1421 Cherry Street - 10th Floor
Philadelphia, Pa 19102

Subject: Charge #171-88-0568 dated 9/29/88

Dear Mr Butler

I am writing this complaint letter to be part of my file and my charge against Yellow Freight System, Inc.

Firstly, I was very disappointed that my charge was dismissed by the EEOC office in Newark, and I feel that it was not properly handled or investigated. I was very disappointed that the EEOC disposed of my charge

A quick overview as to the events that

lead me to the Newark office to file a complaint against YFS as follows:

In June 1988, I submitted to the EEOC Newark, an affidavit on behalf of Lonnie Bedell, a former co-worker, that I witnessed the treatment of retaliation and discrimination by the YFS supervisors towards Lonnie Bedell. This affidavit was taken by Mr Martinez I found Mr. Martinez to be very professional, courteous & knowledgeable..

September 29, 1988 - I filed a charge with the EEOC office in Newark. Ms. Martinez took my charge, was very helpful, and also explained the procedures of the commission. I am very surprised that Mr. Martinez was not assigned my case since he is familiar with what was/has happened at Yellow Freight System, Inc. My charge

does stem from Lonnie Bedell's case.
I was then assigned Mr. William Busund
as my investigator. I found this out
through a letter sent by him requesting
that I call him, which I did on several
occasions. I finally reached him in
November of 1988 and gave him the
information which he requested of me.
I also submitted to him written information.

I was then asked by Mr Busund if I
wanted to withdraw my charge. I was
furious to think that he thought I
would want to drop my charge against
YFS. I spoke with Mr Busund on
the phone and told him I had no
intention of dropping my charge.

Approximately six months later, June 1989,
I received a phone call from Mr. Busund
asking me if I had any witnesses that
would sign affidavits for me verifying the

page 4

treatment I received from the supervisors at YFS. I questioned him as to why all of a sudden after so much time had gone by was he asking me if I had any witnesses. He replied that his supervisor was on his back about my charges. I then gave him my opinion on him handling my charge which was not very pleasant. I said that it was about time that he start investigating my case and that the EEOC should investigate YFS & link the other charges by employees together. He went on to tell me that the commission was investigating YFS. Approximately two weeks after Ms. Busund's request, affidavits were mailed to him by my co-workers, Peter Stigliano and John Buchmueller.

Recently, I received notice that my charge was being dismissed, which made me very ANGRY. I have been

page 5

working long, hard hours and days to survive and I do not have time to go to the Newark area office to complain in person, and that is why I am writing this letter to you also, to let you know what is going on in the Newark office which is under your jurisdiction.

It is my deep gut feeling that for whatever reason the Newark office is separating all of the charges against YFS instead of putting them all together including all of the documentation and affidavits that the Newark office has from each one of us. My affidavits alone contain information on at least two other charges.

As a former YFS employee, and having filed a charge of retaliation and

discrimination against this company I feel that the EEOC should investigate them and start to believe the charging parties and not the supervisors who would lie through their teeth to keep their jobs

There have been five people who have currently filed charges against YFS. As far as I know, and believe me, only one of those employees remains, it's only a matter of time before he gets his walking papers.

As of this writing, the company is still retaliating against any employee that opposed the treatment shown to Lonnie Bedell.

If your office can not initiate an investigation into YFS, Elizabeth terminal, please respond to me as soon as possible in writing, as to what

office I can write to and to whose attention I should write.

I am sending this letter via U.S. mail certified, to be assured that your office did receive this correspondence.

Thank You for your time,

Wayne Richo

May 3, 1989

EEOC
Newark Area Office
Military Park Building
60 Park Place Room 301
Newark, New Jersey 07102

Attn: Mr. Julian Martinez
EEOC Field Investigator

Dear Mr. Martinez:

As you stated to me, you have submitted my case to your supervisor for review, so I am taking the liberty of writing this letter with sincere appreciation and thanks for all of the time, patience and dedication you have shown me throughout this investigation. You showed genuine understanding and concern with regard to me being discharged from Yellow Freight System, Inc., just two weeks after I originally filed a retaliation charge, and of course being a family man with responsibilities.

Again, I am repeating myself but I truly appreciated the times you stood after your work hours to meet and interview my witnesses, after their work day was done. Also, the times you let me see you without an appointment so I could give you affidavits signed by witnesses in my behalf. You were always very accommodating to my needs regarding this case. One example which comes to mind is taking the time to re-explain some issues that I was truly not clear on. You helped me get through some very flustrating times. The EEOC in Newark is very fortunate to have you as an investigator, one of the many reasons is because you go beyond the call of duty of being a public servant. There are alot of people in this world who will not go the extra mile for another person, but you go extra miles to be of service. This definitely has to be commended.

I have more witnesses and affidavits to submit to the commission with regard to my case. One of the witnesses is Nigel Johan-Baptiste, who is available to come in anytime that is convenient for you.

Thank you again for all of your help, understanding and dedication.

Very truly yours,

Lonnie Bedell

Lonnie Bedell
14 Nelkin Drive - Apt. 131
Wallington, New Jersey 07057

November 14, 1989

EEOC
Newark Area Office
Military Park Building
60 Park Place Room 301
Newark, New Jersey 07102

Attn: Mr. Julian Martinez
EEOC Field Investigator

Re: EEOC Charges: YFS 171-88-0140 & 171-88-0161

Dear Mr. Martinez:

I understand that my two above mentioned charges are presently in the Legal Unit in Washington, D.C., pending approval for litigation. I am requesting from the Commission a Right-to-Sue letter with regard to these charges as I would like to expedite these matters as soon as possible.

I spoke to Brenda Collins, Attorney, in the Legal Unit in Philadelphia who was reviewing the cases, and she agreed with you that these are cause cases. She forwarded my charges to Washington, D.C and was recommending that Washington litigate. She informed me that it would take a period of time for Washington to decide whether or not they would litigate the charges.

I want to take this opportunity to thank you for your efforts to conciliate this matter.

It appeared to me that you were not handling the conciliation alone. It was my impression that if you were the only one handling the conciliation hearing, that it would have been successful, and I would have been back to work by now.

I resent the fact that your supervisor, Mr. Rosenberg, also conciliated and negotiated with YFS's attorney. When YFS's attorney spoke to Mr. Rosenberg they said to him they did not want me back, and that they offered $40,000. in back pay, and an additional $10,000. for me to waive my reinstatement. I was told this by Mr. Rosenberg during a telephone conversation.

When I questioned you whether YFS quoted any figures and if anything was mentioned as to them not reinstating me, you replied that at no time did YFS's attorney say to you that they would not reinstate me. Because if they had, there would not have been a need for a conciliation hearing, according to the EEOC procedures which I previously questioned you about.

You asked me why I was questioning you with regard to this, and I, at that point informed you of Mr. Rosenberg's conversation with YFS's attorney pertaining to figures and no reinstatement. You did not know of this conversation between YFS and Mr. Rosenberg. There was too much contradiction as to what YFS's attorney told you and told Mr. Rosenberg At this point, I was totally confused as to what the real intention of YFS was.

Mr. Martinez, I want to make this perfectly clear to you that in no way am I complaining of the way you handled my charges during the investigation and conciliation hearing. I resent the fact that there were too many concilators.

Sincerely,

Lonnie Bedell
14 Nelkin Dr. Apt. 131
Wallington, N.J. 07057

cc: Brenda Collins, Attorney Philadelphia Legal Unit

Certified Mail #P 040-253-935

March 26, 1994

EEOC
Philadelphia District Office
1421 Cherry Street - 6th Floor
Philadelphia, Pa. 19102

Attn.: Ms. Cynthia Locke, Esq.

Ref.: EEOC vs. Merchandise Drivers Local 641
EEOC Chg. #171-89-0456 (Civil Action #90-4412)
Breach of Agreement Settlement #93-5622
Filed with the U.S. District Court 12/22/93

Dear Miss Locke:

I want to recap our telephone conversation of today's date.

First off, I want to advise you of what I wrote to Miss Epperson with regard to the depositions of the Executive Board and the individuals I mentioned, e.g. Shop Steward, Jan Katz, Manager Pat Giallorenzo, Carmen Nesta, Charlie Crotto of New Penn and others:

Listed below are points that I want to bring to your attention regarding their sworn depositions:

1). Mr. Albert Kroll and/or Mr. Raymond Heineman MUST NOT BE in attendance when any member of the Executive Board past or present, is deposed. As I am sure you are aware that the reason for this request is legal counsel named above will coach the other members who have not yet been deposed and accommodate their answers to your questions accordingly.

2). Mr. Kroll is named in my charge and must be subpoenaed for deposition also. Therefore, no one from his firm, including Mr. Heineman should be present when Mr. Kroll is deposed for the same reasons as stated above in item number one. Mr. Kroll must be sequestered also. As I mentioned to you several times -- how Mr. Kroll lied to the EEOC through a letter which was written to Ms. Mejas, Investigator on January 30, 1990. I have proof and documentation of this.

3). Each individual who has been subpoenaed for deposition MUST BE deposed on a one-on-one basis. In other words, there should not be more than one Executive Board Member deposed at one time. The reason for this is so that they will not hear the other persons answer to your questions and of course agree with what the first individual had to say.

4). Each individual whose deposition is taken MUST BE sequestered as to the line of questioning and their answers. Each one of these individuals MUST NOT BE ALLOWED to discuss any part of the proceedings with one another.

Would you also please advise me when the deposition of Mr. Girolemo Sonny Musso will be taking place. I would also like to know when you will be deposing under subpoena the balance of the individuals mentioned in my letters, e.g., Shop Steward Jan Katz, Manager, Pat Giallorenzo, Carmen Nesta of New Penn., Mr. Peter Enrico, and Mr. George Bell of Yellow Freight Systems, Inc. As I have mentioned to you before, I have a tape recording of Carmen Nesta saying that Pat Giallorenzo said he could not work me alone. Also the managers from Whittaker Clark and Daniels stating that you have to go to Local 641 for an application. Both Miss Locke and Miss Flowers

heard this tape recording in the meeting that I had with them in Newark, where Mrs. Zinno was also in attendance.

It is my strong opinion that due to the fact that you have spoken on the telephone to Carmen Nesta, (Peter Cuccionilli advised me of this) and Charlie Crotto, these individuals will talk among themselves and shore up their stories against me, and pass the word onto the Executive Board. **This is exactly what I DID NOT WANT TO HAPPEN. As I told Miss Epperson, one will lie and the rest will swear to it.** This is the game that will be played, believe me, I know, and I have continually advised the EEOC of the tactics involved. No one at the EEOC listens. Because of the telephone interviews, this jeopardizes my other case that Miss Epperson is handling. Both Miss De Grosa and myself were made aware by Miss Epperson that you and she were working on these two cases together.

Repeating myself, both you and Miss Flowers heard the tape recording regarding Whittaker Clark and Daniels in the meeting that was held in February of 1993. The voice that you heard was a MAN'S VOICE and NOT A FEMALE SECRETARY. I also told you that I had the tape recording of Mr. Contini calling Whittaker, Clark and Daniels, in the presence of myself and Michael Benisz. Mr. Contini spoke to someone by the name of WILLY not JULIA.

I request of both you and Miss Epperson to read over the transcripts from Miss De Grosa's case - Mrs. Zinno and Miss Loftis. Has this happened yet? Repeating myself, this is to show the Commission of the collusion and conspiracy between Local 641 and Yellow Freight System, Inc.

During our telephone conversation you asked me where did I go looking for a job. I told you that it is NOT WHERE I WENT - WHERE DID MR. CONTINI SEND ME? You are aware of the campaign literature that was circulated during the 1992 campaign - I sent you copies. This union maligned me and Joann. This campaign literature was sent to the membership. The employers were aware of this literature also through the membership that according to Local 641, I file frivolous suits. What company is going to hire me even for a day with the type of slander the Local put out against me. The burden of proof is on the Local not on myself. The Local breached this settlement agreement not me. Remember, I did not even know it was being signed.

Why is the charging party penalized because of the errors the EEOC Commission makes, especially when the Commission was aware of the ongoing retaliation shown towards me by Local 641 Executive Board and Trustees on the Pension and Welfare Funds?

It also appears to me that Local 641's attorneys Kroll and Heineman are delaying the depositions/interviews under oath until the discovery in the case which you are handling is completed. In other words, they will sit back and wait to see what you come up with so they can strategize the case which Miss Epperson is handling. Local 641 and its attorneys will do anything possible to jeopardize both of these cases. I always forewarned Miss Swanson of the next moves of Local 641 and its attorneys - unfortunately for me she never listened - and I the charging party was effected - case in point - signing of an agreement between the EEOC and Local 641. How could I sign an agreement or condone same when the same people continually retaliate against me?

The EEOC Commission's offices in both Newark and Philadelphia, including the Legal Department, totally disregarded my and Joann De Grosa's request to cross reference these cases for years. These include both of our Yellow Freight cases, Miss De Grosa's New Jersey Division of Civil Rights case against Local 641 Welfare Fund and my cases filed against Local 641. The Commission and the State Agency have enough information to pursue these case vigorously if they choose to.

Its really a SAD DAY when both Miss De Grosa and myself have been requesting for years of the EEOC investigators and attorneys to cross reference affidavits and transcripts between these cases, and it was never done. WHY?

The EEOC Legal Department in Philadelphia was aware of the ongoing retaliation when Miss Swanson and Miss McIver-Floyd signed an agreement with Local 641. Both of these individuals were being told this by Miss De Grosa and myself. In fact, Miss De Grosa continually told Miss Santiago and Mr. Holmes of the ongoing retaliation. These two attorneys handled Miss De Grosa's case.

My case has been handled with incompetence and no regard or concern for me, the charging party, along with my witnesses who have been retaliated against. I totally agree with Chairman Owens of the Sub Committee on Select Education and Civil Rights. Cases are mishandled by disinterested and incompetent personnel both at the Local EEOC Offices and Regional Offices.

When charging parties, witnesses, and interested parties contact the EEOC in Washington, D.C. asking for the Commission to make a complete investigation of a particular company for the disparate treatment individuals are receiving, you receive a letter back telling you to go and file a charge, at your nearest EEOC office. Why would interested parties want to file a charge? Again, disinterested and incompetent personnel.

I will state this for the record, the employees of the EEOC will never have to worry about not having enough of work because of the way the cases are handled. Discrimination will never go away, or even be reduced until the word enforcement is used instead of just being stated in pamphlets.

Please advise me in writing the next steps you are planning to take with regard to my case, as time is of the essence. One of my witnesses has passed on and another doesn't have a long time left, he is dying with cancer.

Very truly yours,

Lonnie Bedell
14 Nelkin Drive - Apt. 131
Wallington, N.J. 07057

U.S. Certified Mail P-521-757-580
RRR

cc: The Honorable Major R. Owens
Sub Committee on Select Education & Civil Rights
U. S. House of Representatives - Annex #1 - Room 518
Washington, D.C. 20515-6107
Attn.: Maria Cuprill, Director

March 5, 1994

Miss Rita Epperson
Investigator
EEOC
Philadelphia District Office
1421 Cherry Street - 10th Floor
Philadelphia, Pa. 19102

Ref: Charge #170-93-1593 - Merchandise Driver's Local 641

Dear Miss Epperson:

Thank you for taking the time and speaking to Joann De Grosa, on Tuesday, March 1, 1994, who as you know is one of my witnesses. I hereby give you permission to speak to Joann when you cannot get in touch with me, as she is my representative with regard to my above mentioned charge.

Please let me know via my telephone answering machine or in writing the names and the date(s) as to who will be deposed during this coming week. Listed below are points that I want to bring to your attention regarding their sworn depositions:

1). Mr. Albert Kroll and/or Mr. Raymond Heineman MUST NOT BE in attendance when any member of the Executive Board past or present, is deposed. As I am sure you are aware that the reason for this request is legal counsel named above will coach the other members who have not yet been deposed and accommodate their answers to your questions accordingly.

2). Mr. Kroll is named in my charge and must be subpoenaed for deposition also. Therefore, no one from his firm, including Mr. Heineman should be present when Mr. Kroll is deposed for the same reasons as stated above in item number one. Mr. Kroll must be sequestered also. As I mentioned to you several times -- how Mr. Kroll lied to the EEOC through a letter which was written to Ms. Mejas, Investigator on January 30, 1990. I have proof and documentation of this.

3). Each individual who has been subpoenaed for deposition MUST BE deposed on a one-on-one basis. In other words, there should not be more than one Executive Board Member deposed at one time. The reason for this is so that they will not hear the other persons answer to your questions and of course agree with what the first individual had to say.

4). Each individual whose deposition is taken MUST BE sequestered as to the line of questioning and their answers. Each one of these individuals MUST NOT BE ALLOWED to discuss any part of the proceedings with one another.

Would you also please advise me when the deposition of Mr. Girolemo Sonny Musso will be taking place. I would also like to know when you will be deposing under subpoena the balance of the individuals mentioned in my letters, e.g., Shop Steward Jan Katz, Manager, Pat Giallorenzo, Carmen Nesta of New Penn., Mr. Peter Enrico, and Mr. George Bell of Yellow Freight Systems, Inc. As I have mentioned to you before, I have a tape recording of Carmen Nesta saying that Pat Giallorenzo said he could not work me alone. Also the managers from Whittaker Clark and Daniels stating that you have to go to Local 641 for an application. Both Miss Locke and Miss Flowers heard this tape recording in the meeting that I had with them in Newark, where Mrs. Zinno was also in attendance.

I am enclosing a copy of past President of Local 641, Sonny Girolemo Musso's sworn affidavit with regard to his certification. I am sure that you and Miss Locke have a copy of this lengthly certification of Mr. Musso's in my file. Please remember that when this certification was signed

by Sonny Musso, the entire Executive Board was aware of what he was signing; a document containing false statements. So therefore, the Executive Board aided and abetted with Mr. Musso pertaining to the false certification.

As Ms. De Grosa mentioned to you during your telephone converstion, the depositions of both Mrs. Zinno and Miss Loftis must be read to support both this charge and the breach of agreement which Miss Locke is working on.

As a dues paying member, I am entitled to review the Collective Bargaining Agreements which Local 641 has with the different companies. These documents also list the name and address of each company. When I requested in writing to review same, I was given by Margaret Zinno, then Administratrix of the Fund, copies which had the names and addresses whited out. I am enclosing copies of the Collective Bargaining Agreements, which I paid for (copies). I am submitting a copy of a memo stating what charges were incurred for the copying expense of these Collective Bargaining Agreements. The request to review these Collective Bargaining Agreements was awhile ago. With the names of the companies being whited out, shows the continuing pattern of conspiracy/harassment, since the inception of the EEOC charges filed. I am sure that when you question Mrs. Zinno about this she will inform you that she was told to do this upon the orders of the Executive Board. Through a complaint which I filed with the U.S. Department of Labor, as this was a violation of my rights as a dues paying member, (whiting out the names and addresses of the companies) I was then allowed to see the agreements in their entirety (names and addresses included). Once again, this proves the only time that Local 641 complies is when they are forced to by the law.

As you recall, because time was of the essence the day I came to Philadelphia and you took my charge, the word conspiracy was not stated in my charge, but in my documentation it was definitely stated. Because of the acts of Local 641, Yellow Freight System, New Penn Trucking , Whittaker Clark and Daniels -- suppressing evidence, this constitutes a conspiracy and is a violation of my civil rights. *My civil rights have been violated in accordance with Civil Rights Act of 1871 (42 U.S.C. Sections 1983 and 1985, derived from Act of April 20, 1871, Ch.22, Sections 1 &2, 17 Stat. 13.) Section 1983 - Civil Action for Deprivation of Rights and Section 1985 Conspiracy to Interfere with Civil Rights.*

Pleaseremember that Local 641 -- its Executive Board/Agents/Representatives and Yellow Freight System, Inc. not only conspired against me but they also conspired against Joann De Grosa with regard to the EEOC charges that she and I filed. A continuing pattern of retaliation, discrimination, conspiracy and collusion.

Very truly yours,

Lonnie Bedell

Lonnie Bedell
14 Nelkin Drive - Apt. 131
Wallington, N.J. 07057

via: U. S Certified Mail #P-521-757-575

Encl.

cc: The Honorable Major R. Owens
Sub Committee on Select Education & Civil Rights
U. S. House of Representatives - Annex #1 - Room 518
Washington, D.C. 20515-6107
Attn.: Maria Cuprill, Director

Chairman OWENS. Thank you.
Ms. Lewis.

STATEMENT OF LINDA M. LEWIS

Ms. LEWIS. Good morning. I am Linda Lewis, and I am currently a scientist for the United States Department of Agriculture. Thank you, Chairman Owens, and committee members for inviting me to testify as a concerned citizen on this very important issue.

In 1989, I was hired out of the Emergency Management Program at the University of North Texas by Argonne National Laboratory to work as an environmental engineer. Argonne National Laboratory was established as part of the Manhattan project and is run by the University of Chicago for the Department of Energy. It is funded solely through contracts with Federal agencies, such as the Department of the Army and the Federal Emergency Management Agency.

My job at Argonne was to help ensure that this country is prepared to respond effectively to nuclear and chemical accidents. I had gone back to get an Emergency Management degree at age 36 because I want to make a difference in my community.

However, the energy I had planned to devote to loftier tasks were for my three years at Argonne devoted to warding off the sexual advances and retaliation of male Argonne employees.

My supervisor, John Eley, who was married, asked me out repeatedly, despite my repeated refusals to see him outside of work. On one occasion, he arranged to have us spend the night together on a business trip in the converted basement of a coworker. When I objected to such sleeping arrangement and asked to stay in a hotel, he became hostile. Later, my work assignments dropped off, he criticized my performance and eventually, he would not talk to me.

Another man, Stephen Meleski, who also was married, began his harassment by constantly asking me questions about my personal life, including questions about the men I knew. He told me he didn't get together much with his wife, asked me out to dinner and insisted I wanted to date him. Among other incidents, he began putting his arms around me and telling me he cared for me.

On a business trip to Chicago, he told me he had arranged for his room to be moved next to mine. He also told me that affairs were commonplace in Washington. Although I currently am a Virginia resident, I had a conservative upbringing in Ohio.

When I failed to respond to his advances and told him I wished only to have a professional relationship with him, Mr. Meleski became verbally abusive to me. Among other things, he told me I needed to be put in a mental institution. He later told upper management that I wanted to have an affair with him. When I complained to Argonne management, I was told my complaints were bothersome, that I was picking on Mr. Meleski, and that I needed to get along with him. I was then told that if I did not see a company psychiatrist, I would be terminated. Eventually, I was terminated by Argonne, despite the fact that my performance was superior to that of my harasser's. He is still employed there.

During this time, I lost 25 pounds, resorted to sleeping pills to sleep and developed heart problems. I lost all the confidence I once

had in my ability to perform as a scientist and lost my capacity to just enjoy life. I am told by my friends and family that I still am not the woman I used to be.

After I got myself somewhat together emotionally and financially, I filed a charge with the EEOC in February 1993. Although I discussed my case with EEOC personnel on several occasions, I was surprised by how little information they said they needed. I later discovered that the information I had supplied was incorrectly recorded in their notes. Even a superficial investigation would have uncovered the fact that women scientists at Argonne had been meeting together for years to try to resolve issues of gender discrimination throughout Argonne, including sexual harassment.

After several weeks, I received a call from the EEOC investigator who said that Argonne wanted to settle with me. She asked me what I wanted. I said I needed to discuss this with my attorney, who was out of town, and that I needed to go over my pay records, which were in storage. I was on crutches at the time and planning surgery and I could not access them.

The investigator called back about three weeks later and said she needed an answer immediately. When she informed me that the EEOC was going to settle my case without my participation, I begged for more time, explaining my situation.

When my attorney called me back, he said the EEOC had "settled" my case. I was shocked. He said the settlement consisted of Argonne posting two 8 by 11 inch pieces of paper with a sexual harassment policy on them. When I asked "What else?", he said, "That's all."

Needless to say, I was devastated. I had come to the EEOC hoping to obtain redress for the discriminatory treatment that had affected me over three years. Instead, I was left feeling the same as I had each time I had complained to my employer—ignored. The EEOC called the resolution of my case a "negotiated settlement," even though I was afforded no relief whatsoever by this settlement and I did not agree to it.

Since my disappointing experience with the EEOC, I have been forced to seek help through the courts and I have had to file a lawsuit against Argonne and my harassers. Now, however, Argonne is able to discover all of my conversations with the EEOC investigators although when I asked for information concerning the conversations between the EEOC and Argonne, my request was refused.

I hope that with the help of the information you obtain through these hearings you are able to make the EEOC the kind of advocate for civil rights it was designed to be.

Thank you.

[The prepared statement of Linda Lewis follows:]

STATEMENT OF LINDA M. LEWIS

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I hope that with the help of the information you obtain through these hearings you are able to make the EEOC the kind of advocate for civil rights it was designed to be.

Thank you.

Chairman OWENS. Thank you.

Mr. BALLENGER. I hate to say this, but I've got a hearing on Mexico in Foreign Affairs.

Chairman OWENS. Okay. Mr. Kolterman.

STATEMENT OF JOHN C. KOLTERMAN

Mr. KOLTERMAN. Distinguished Congressmen, my name is John C. Kolterman. I appreciate the opportunity to testify before this committee and to provide you with my first-hand account of the difficulties I faced in dealing with the Equal Employment Opportunity Commission. I hope my testimony will assist you in determining what changes should be made in the administrative process.

I live in Brandon, Florida, just outside of Tampa. I am here today with my attorneys, Adrienne Fechter and Tom Dickson, who practice solely in the area of employment discrimination and civil rights. I am 66 and I am the plaintiff in an age discrimination lawsuit against my former employer, Wal-Mart. My lawsuit is currently pending in Federal Court in Tampa, Florida.

I understand that I have been asked to testify before you today concerning my dealings with the Equal Employment Opportunity Commission, and specifically concerning problems I encountered with the Commission prior to retaining my current labor and employment counsel.

Before I turn to the specific problems I encountered with the EEOC, let me provide you with some background on myself. Beginning in the 1950s, I owned and operated several Ben Franklin variety stores in Red Oak, Iowa. In many ways, my experience was much like that of Sam Walton, the founder of Wal-Mart, in his early days in Arkansas.

In addition to operating these businesses, I served on many foundations and boards and served as a city councilman, as a church trustee, as a community college trustee, and as the president of the chamber of commerce. I was active in many civic and community projects.

After years of success as a businessman in Iowa, my wife and I decided to relocate to central Florida. I sold my stores and moved to Florida in 1977.

In 1986, I applied for and was hired as an assistant store manager for a Wal-Mart store in Brandon, Florida. At the time I was hired, I was 58 years old.

As an assistant store manager for Wal-Mart, my duties were to oversee the operation of various departments in a Wal-Mart store in a bedroom community outside Tampa, Florida, and later in Ruskin, Florida. Also, on occasion, I was asked to help with setting up of a new store in the Central Florida area. I performed successfully as an assistant store manager for the next five years, always receiving performance reviews that indicated my performance met expectations.

Also, as an assistant store manager, I enrolled in and completed Wal-Mart's management training courses, and I received the sec-

ond highest score in my class in the third and final phase of Wal-Mart's Management Development Seminar in May of 1991.

Only, thirteen days later, and without warning, Wal-Mart terminated my employment. I was told simply that I would not be able to adapt to coming changes. I was 63 years old. Ten minutes or so later, another assistant store manager in my store was discharged. He was 52 years old at the time.

The remaining assistant store managers in my store after this gentleman and I were fired were all under the age of 45. In fact, only one was under the age of 35.

A short time later I learned from a friend of mine that a meeting had been called of all department managers in my store shortly after I was discharged. At that meeting, the gentleman who had fired me advised those present that I and the other older assistant store manager were fired because we were not Wal-Mart material. He then said that he intended to hire some younger assistant managers who were "go-getters."

After hearing this, and because I knew that I had performed my job duties well as an assistant store manager for five years, I filed a charge of age discrimination with the Tampa office of the EEOC. I described these facts to the EEOC, and the fact that I had often been referred to by my store manager—in what I though was a somewhat derogatory fashion—as "old man" and "pops."

I also gave the EEOC the names of witnesses who could attest to my performance, and to the statements made about me by the store manager and the district manager.

For almost a year and a half, I dealt with the EEOC on my own. I believe that as a successful and reasonably intelligent businessman I could provide adequate information and guidance to the EEOC investigator without the assistant of counsel, especially since I understood that the EEOC process was designed to be utilized by individuals unrepresented by counsel.

In fact, I was told by the EEOC investigator that I did not need an attorney. I did my best during this time to encourage the investigator assigned to my case to talk to the witnesses I had identified and to obtain the documents in Wal-Mart's possession that would support my case.

I put together a package for the investigator that outlined my employment history at Wal-Mart, my job responsibilities, my performance, my successful management training and the age-biased statements made at the time of my discharge. I even submitted to the EEOC a handwritten affidavit from a Wal-Mart employees who had attended the meeting during which the district manager who fired me said he was going to replace me with "younger, go-getters."

Despite these efforts, after the EEOC had my charge of discrimination for well over a year, and with only two months before my time to file suit was going to run out, I understood from the investigator that the EEOC simply was going to close the case because the statute of limitations was running out.

The investigator advised me that she had no choice but to issue a "no cause" determination. I could not understand this until I learned that the EEOC had not talked to even one of the witnesses I had identified. I was flabbergasted since the statement made by

the district manager at the meeting he held after my discharge was a clear admission that my age was a factor in Wal-Mart's decision to discharge me.

At this point, I realized that I needed assistance in dealing with the EEOC. So I retained my current attorneys in the spring of 1993.

My attorneys talked to the EEOC investigator and her supervisor concerning the investigation of my case and the importance of the testimony of the witnesses who heard the district manager's statements. In response, the investigator told my attorneys that she did not believe there was time to interview those witnesses and that she intended to conclude her investigation within the month. Remember, my case had already been at the EEOC for more than 18 months.

My attorneys made numerous calls to the EEOC in an attempt to convince the investigator and her supervisor that it was worthwhile to interview at least one of my witnesses to the discriminatory statements. It took a great deal of persistence to find a time convenient for the EEOC to interview one of my key witnesses. Ultimately, on my attorneys' advice, I went to the EEOC's office in Tampa with one of my witnesses and sat in the waiting room.

On this visit, the supervisor greeted us, but advised us that she was too busy to take my witness' statement. My attorneys persisted. We returned to the EEOC, and on this visit, only a month before the statute of limitations on my claim against Wal-Mart was to expire, the EEOC finally heard the evidence that clearly indicated that Wal-Mart fired me because of my age.

Shortly after this meeting, the EEOC advised my attorneys that the EEOC would be issuing a determination in my favor, would be initiating conciliation, and would consider filing suit on my behalf. My attorneys then filed my lawsuit, just prior to my limitations period running out. Wal-Mart never engaged in conciliation.

It was amazing to me how quickly the EEOC changed its tune once I hired an attorney. I still don't understand why the EEOC—if it is intended to be an agency that unrepresented individuals can work with to pursue their claims—would virtually disregard my input, but respond so quickly to that of my attorneys. Never again would I attempt to navigate my way through such an important process without the help and advice of counsel. This is a sad commentary when you consider the great number of unemployed individuals who cannot afford an attorney.

I urge this committee to take a critical look at the administrative procedure created by Congress in discrimination cases. Too much time passes from the time of the challenged employment action, witnesses disappear and memories fade. Who knows how long this entire process will take or if I will live long enough to see it through? The EEOC's mission should be to uncover evidence of discrimination if it exits.

If the EEOC cannot find its way clear to interview witnesses and review direct evidence actually deposited on its doorstep—like in my case—how can we expect to discover the evidence needed to prove discrimination in a case where discrimination is not so obvious.

Just one other thing. This is a little booklet I put together for the EEOC, and it goes through pretty much step by step on it. And one other thing I'd like to add in is that right now we're in the process of asking Wal-Mart to supply information that Wal-Mart has estimated that it is going to cost my attorneys and myself in excess of $100,000 to substantiate my case.

It's information which should have been asked for and supplied to the EEOC. I'm not a man of means that can afford that kind of expense and I am not going to ask my attorneys to do it either, but I feel like the EEOC was quite negligent in this area.

I'll be glad to answer any questions if there are any questions.

[The prepared statement of John C. Kolterman follows:]

STATEMENT OF JOHN C. KOLTERMAN

My name is John C. Kolterman. I appreciate the opportunity to testify before this committee and to provide you with my first-hand account of the difficulties I faced in dealing with the Equal Employment Opportunity Commission. I hope my testimony will assist you in determining what changes should be made in the administrative process.

I live in Brandon, Florida, just outside of Tampa. I am here today with my attorneys, Adrienne Fechter and Tom Dickson, who practice solely in the area of employment discrimination and civil rights. I am 66, and I am the plaintiff in an age discrimination lawsuit against my former employer, Wal-Mart. My lawsuit is currently pending in Federal Court in Tampa, Florida.

I understand that I have been asked to testify before you today concerning my dealings with the Equal Employment Opportunity Commission, and specifically concerning problems I encountered with the Commission prior to retaining my current labor and employment counsel.

Before I turn to the specific problems I encountered with the EEOC, let me provide you with some background on myself. Beginning in the 1950s, I owned and operated several Ben Franklin variety stores in Red Oak, Iowa. In many ways, my experience was much like that of Sam Walton, the founder of Wal-Mart, in his early days in Arkansas. In addition to operating these businesses, I served on many foundations and boards, a well as serving as a city councilman, as a church trustee, as a community college trustee, and as the president of the chamber of commerce. I was active in many civic and community projects.

After years of success as a businessman in Iowa, my wife and I decided to relocate to central Florida. I sold my stores and moved to Florida in 1977.

In 1986, I applied for and was hired as an assistant store manager for a Wal-Mart store in Brandon, Florida. At the time I was hired, I was 58 years old.

As an assistant store manager for Wal-Mart, my duties were to oversee the operation of various departments in a Wal-Mart store in a bedroom community outside Tampa, Florida, and later in Ruskin, Florida. Also, on occasion, I was asked to help with the setup of a new store in the Central Florida area. I performed successfully as an assistant store manager for the next five years, always receiving performance reviews that indicated my performance met expectations.

Also, as an assistant store manager, I enrolled in and completed Wal-Mart's management training courses, and I received the second highest score in my class in the third and final phase of Wal-Mart's Management Development Seminar in May of 1991.

Only, thirteen days later, and without warning, Wal-Mart terminated my employment. I was told simply that I would not be able to adapt to coming changes. I was 63 years old. Ten minutes or so later, another assistant store manager in my store was discharged. He was 52 years old at the time.

The remaining assistant store managers in my store after this gentleman and I were fired were all under the age of 45. In fact, only one was under the age of 35.

A short time later I learned from a friend of mine that a meeting had been called of all department managers in my store shortly after I was discharged. At that meeting, the gentleman who had fired me advised those present that I and the other older assistant store manager were fired because we were not Wal-Mart material. He then said that he intended to hire some younger assistant managers who were "go-getters."

After hearing this, and because I knew that I had performed my job duties well as an assistant store manager for five years, I filed a charge of age discrimination

with the Tampa office of the EEOC. I described these facts to the EEOC, and the fact that I had often been referred to by my store manager—in what I though was a somewhat derogatory fashion—as "old man" and "pops." I also gave the EEOC the names of witnesses who could attest to my performance, and to the statements made about me by the store manager and the district manager.

For almost a year and a half, I dealt with the EEOC on my own. I believed that as a successful and reasonably intelligent businessman I could provide adequate information and guidance to the EEOC investigator without the assistant of counsel, especially since I understood that the EEOC process was designed to be utilized by individuals unrepresented by counsel. In fact, I was told by the EEOC investigator that I did not need an attorney. I did my best during this time to encourage the investigator assigned to my case to talk to the witnesses I had identified and to obtain the documents in Wal-Mart's possession that would support my case. I put together a package for the investigator that outlined my employment history at Wal-Mart, my job responsibilities, my performance, my successful management training and the age-biased statements made at the time of my discharge. I even submitted to the EEOC a handwritten affidavit from a Wal-Mart employee who had attended the meeting during which the district manager who fired me said he was going to replace me with "younger, go-getters."

Despite these efforts, after the EEOC had my charge of discrimination for well over a year, and with only two months before my time to file suit was going to run out, I understood from the investigator that the EEOC simply was going to close the case because the statute of limitations was running. The investigator advised me that she had no choice but to issue a "no cause" determination. I could not understand this until I learned that the EEOC had not talked to even one of the witnesses I had identified. I was flabbergasted since the statement made by the district manager at the meeting he held after my discharge was a clear admission that my age was a factor in Wal-Mart's decision to discharge me.

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Thank you for your attention. I will be happy to answer your questions.

Chairman OWENS. Thank you.

Mr. KOLTERMAN. Thank you.

Chairman OWENS. This is a booklet you put together as a result of your case?

Mr. KOLTERMAN. This is one I put together and furnished to the EEOC, yes, sir.

Chairman OWENS. May we have a copy for the record?

Mr. KOLTERMAN. You certainly may, sir.

Chairman OWENS. Thank you. Your case now has been going for how many years?

Mr. KOLTERMAN. I started it in May—I can't remember the exact date. It's either the 18th or 19th of May of 1991.

Chairman OWENS. May of 1991?

Mr. KOLTERMAN. Yes, sir.

Chairman OWENS. And Ms. Lewis, your case was started when?

Ms. LEWIS. In the EEOC case?

Chairman OWENS. Yes.

Ms. LEWIS. In February of 1993.

Chairman OWENS. And Mr. Bedell and Ms. DeGrosa.

Ms. DEGROSA. My sexual harassment began in July of 1986——

Mr. SCOTT. Could you give those dates again, please.

Chairman OWENS. She filed in 1986.

Ms. DEGROSA. I filed in July 1986, and settled one EEOC case in May of 1993 and the New Jersey Division of Civil Rights case against the union in February of 1993.

Chairman OWENS. And your retaliation case?

Mr. BEDELL. For my retaliation, I had the case in 1988 against Yellow Freight, and my cases against Local 641 in 1989, and are pending through your system, Major Owens, and your committee and as the kind lady sitting up there, Maria Cuprill, your staff person carries a big stick, I believe. I appreciate all of your help.

Chairman OWENS. We appreciate your testimony; I understand how emotionally wrenching it must be for you to even discuss this experience.

Am I to understand correctly, Mr. Bedell, that your witnesses were never interviewed as promised by the EEOC district office?

Mr. BEDELL. As a matter of fact, I have a letter which was submitted to your office in which the attorney stated that she interviewed three of my witnesses, and when I asked my witnesses if they were interviewed, they were outraged. They called this attorney at the EEOC in Philadelphia and said, "Whose side are you on"? I have an exhibit in my paperwork that I submitted with another instance where the EEOC investigator in Newark said that he spoke to one of my witnesses, Edward Rush. Mr. Rush was in Africa at the time, I believe it was Kenya, and there was no way that the EEOC could have spoken to him.

As a matter of fact, there is a letter on record from the college to the director, Mr. Genjenty in Newark, the EEOC office, that Ed Rush was at college. I find that there are many misstatements which are crude lies by the Newark and Philadelphia EEOC offices. These are people that are supposed to be representing the people and enforcing the civil rights laws, and it's not being done.

Chairman OWENS. Were you being treated differently after the EEOC learned that this subcommittee was apprised of your case?

Mr. BEDELL. Yes, I was.

Chairman OWENS. In what way?

Mr. BEDELL. My case was just about closed. Through your subcommittee's intervention, the EEOC filed for breach of agreement which they had gone into with the union which I explained before that I knew nothing about. Yeah, they know someone is watching.

Before you, there was Chairman Perkins, before that, Matthew Martinez and originally it was the Committee on Labor and Education. I believe it was in the New York Times that Augustus Hawkins, God bless him, had ordered a GAO study in 1988 which came out in 1989. And that's what I'm saying. If there's a GAO study and it's compared to what they didn't do, in 1988 and 1989, you would see that in my cases and Joann's cases, they haven't changed; they haven't complied with any of the shortcomings that they had at that time.

I would like to make one statement. I mentioned a fine investigator in Newark by the name of Julian Martinez, who was even retaliated against. I believe what occurred is they suppressed him from ever getting a promotion because he vigorously investigated my case with Yellow Freight. They didn't want him to go onto the job site. I had many, many witnesses and he had said to me, "You have a good case, Bedell." And I'll tell you what. It's something. When they want to do their job, it's like the people upstairs.

Chairman OWENS. Ms. DeGrosa, you wanted to——

Ms. DEGROSA. What I was going to interject was with a subcommittee like yourself overseeing the EEOC and asking the status of cases, the individuals at the EEOC of course complied to answer you, but we both have found that the supervisors at the EEOC in Newark become very disgruntled over it, too, and then take the worst attitude toward you.

They are hostile to you to begin with because they don't like you pursuing your own case. They want to see you shelf your case and walk away just out of sheer disgust. Someone like me and Mr. Bedell weren't getting out of their hair and they didn't seem to approve. We just wouldn't walk away and let a corporation and a Teamsters local get away with what they did.

Chairman OWENS. Ms. Lewis, why do you feel that the EEOC pressured you to sign off on a negotiated settlement agreement without you or your attorney being present?

Ms. LEWIS. They signed it without my presence and without my input, and I was told that it was being settled because they were under pressure to settle and close these cases.

Chairman OWENS. Never mind about you and your rights.

Ms. LEWIS. Right.

Chairman OWENS. You struggled through an EEOC investigation, had to leave your job and are still litigating your case in the Federal courts. Are you aware of what has happened to your former supervisor since you came forward?

Ms. LEWIS. My former supervisor?

Chairman OWENS. Yes, ma'am. The last one. I think you mentioned he's still working with the company.

Ms. LEWIS. Yes. I mentioned one of the gentlemen I discussed is still working there. To my knowledge, the other is still working there. I do not have details at this time.

Chairman OWENS. You mentioned a group of women who were meeting because of sexual harassment and other problems they were having. Do you know whether that group is still in existence in the Argonne lab?

Ms. LEWIS. I've been told that it is.

Chairman OWENS. Have they at any time agreed to testify on your behalf or assist with your case?

Ms. LEWIS. There have been agreements to provide affidavits by those parties.

Chairman OWENS. Do you feel that hiring an attorney and going to court is the only way at this point to have a discrimination claim properly addressed; would your experience lead you to conclude that is the case?

Ms. LEWIS. I think if my attorney and I had had the opportunity to provide input, it would have made a big difference.

Chairman OWENS. That's most unfortunate that we have to come to that conclusion because this agency was set up, as we pointed out, as all of you pointed out, to avoid that and to make sure every citizen, regardless of whether employing an attorney, would be able to have the benefit of a fair hearing.

Mr. Kolterman, do you think the EEOC investigator was incompetent in failing to initially interview the witnesses in your case, or was the investigator overburdened with too many other cases, or did he have some other reason?

Mr. KOLTERMAN. Well, she pleaded being overburdened with other cases. Every time I was in there, she was busy, I will say that, so I have no reason to doubt that she wasn't overburdened.

Chairman OWENS. That would lead us to suspect that all cases were not being treated properly?

Mr. KOLTERMAN. I feel like that's probably true.

Chairman OWENS. So it negates the reason for the agency existing; doesn't it?

Mr. KOLTERMAN. Yes, very much so.

Chairman OWENS. Do you believe your experience at Wal-Mart is an isolated incident or part of a larger systemic age discrimination which the EEOC should investigate in the case of that particular company?

Mr. KOLTERMAN. Well, I don't feel like I'm an isolated case by any means and that's one reason I pursued this to the point I have, because I feel that if it doesn't help me, maybe it will help somebody down the road.

Chairman OWENS. Well, I thank you very much for you statements. I would like to give you the opportunity to have the last word. Is there any other item you would like to add to the record while you're here? Yes, Ms. DeGrosa.

Ms. DEGROSA. With regard to Mr. Bedell and myself, the EEOC and Civil Rights were apprised of the fact that the attorney for Yellow Freight and the attorney for Local 641 were setting up meetings and exchanging information among themselves to use in the investigations against us, and nothing was done with that either.

When the EEOC had to subpoena information, all of the time, they were knocked down within the clerk's office with their motions, and yet Yellow Freight and the pull of the union attorney,

everything they had wanted motionwise, they always received and the EEOC never received on my part what they were after.

For example, the only reason I settled with Yellow Freight and did not go forward with this is because they had subpoenaed my father who is 77 years old and has a severe heart condition and Yellow Freight's lawyers wanted to depose him on my sexual harassment case. My father has lived this nightmare and still is since the inception of my filing and I wasn't about to play God with his life because the doctor had written a letter to the EEOC stating that it would be detrimental to his health for him to be deposed.

The EEOC put in a protective order but they were knocked down. To be very honest with you, Ms. Santiago, the lawyer, had told me if he doesn't get deposed, he's going to go to jail. I said, "Well, no, I'll go sit in jail, but I'm not going to play God with my father's life, let him get in a stressful situation and then, God forbid, die."

I said that Yellow Freight isn't worth it, and that's what forced me to go into a settlement, otherwise I was ready to stay out there and keep fighting, but they broke me. They broke my spirit and my father means more to me, that's for sure.

Chairman OWENS. The horror of this case keeps multiplying. You have collusion between the union and the employer. That kind of tactic is almost criminal harassment to force you into that position.

Any other formal comments you would like to make?

Mr. KOLTERMAN. I would like to make one comment. It looks like in all of our cases here, we're all working against some large corporate entities in America which have deep pockets and can hire some very powerful legal advice. We went to the EEOC trying to prove our case and the EEOC had to interface with these strong powerful attorneys. I don't know, but it looks to me like they could have been easily intimidated and swayed in some of their decisions, negating some of our allegations to that extent. Thank you.

Chairman OWENS. Thank you. This might be good information you'd like to know, and this is nothing partisan on you. I've been on the Education and Labor Committee for the last 11 years and I've sat in on hearings on EEOC for all of those years, during the years when EEOC was under Clarence Thomas, and the Reagan Administration was in office. We pointed out then that we had clear evidence that there were directives from the top, from the White House, that EEOC was to minimize its enforcement role in all of these cases.

It is not by accident that the agency has been devastated; it's not by accident that certain attitudes have been compounded within the lower levels of the agency. They got that direction from the top that corporations were not to be disturbed. EEOC was looked upon as a nuisance by the very government executives who were supposed to be implementing it. That came right out of the White House, so we have to turn around something that has festered for 12 years under Reagan and Bush.

I must say, I'm disappointed that this administration is not moving very rapidly to do that, but we understand the job that this committee has to do and your testimony today puts a human face on the problem and it inspires us to go forward. I hope to impress upon the White House and other people how urgent it is to revamp

this agency from top to bottom. Thank you very much for your testimony.

Our next panel consists of Robert Goodstein, Esquire, of Goodstein and West, New Rochelle, New York; Patricia Mulligan, Mulligan & Sipser, New York, New York; Wayne Outten, Esquire, President, New York Chapter, National Employment Lawyers Association, New York. Please be seated. We have copies of your written testimony which will be entered in its entirety into the record. Feel free to highlight, elaborate in any way you wish.

We'll begin with Mr. Goodstein.

STATEMENT OF ROBERT GOODSTEIN

Mr. GOODSTEIN. Congressman Owens, thank you very much for this opportunity to testify here today. You already have my written statement. I'm not going to repeat it, although I will comment about perhaps some of the same cases that I site within it. I have been doing employment discrimination law in New York for 18 years.

I have seen the inner workings of the New York State Division of Human Rights. For approximately three years I was the assistant counsel of the division. I've been in private practice since 1981 and therefore I've had dealings with both the Division of Human Rights in the State of New York and with the EEOC.

It is my view, based on New York, and I can't comment on any other States, that EEOC should be abolished. It is an absolute waste. What it does, very simply, is serves as a barrier for an individual to go to Federal court. With a fear of a jury trial, is the only thing that forces an employer to settle, or perhaps to be able to have some case eventually won.

It is my view that EEOC, both because of institutional guidance and inbred attitudes specifically, is the anti-charging party. I do not believe that it is solely related to the fact that there are too many cases, and we all know the financial stranglehold that's happened to both the EEOC and the Division of Human Rights. My understanding is that originally when Title VII was passed, it was passed predicated upon the experience of New York's Senator Javitz, at the time at the New York State Division of Human Rights in the early 1960s where it was a functioning, viable agency.

Well, that agency has been destroyed by Governor Kerry and his administration in the 1970s to such an extent by starvation, that the agency doesn't exist; that the backlog grew so great that no one in their right mind could manage that agency. But, EEOC has an attitude against complainants that the Division of Human Rights does not have.

Now, you have to remember, I'm an attorney, and I've done this for 18 years, and I'm an aggressive attorney, so because of that, as the other witnesses said, EEOC reacts to me differently, but their attitude to me is negative. If their attitude to me is to create barriers for charging parties, imagine what they're doing to plain people who do not have attorneys.

For example, the statute says you have to file a charge, which in the State of New York has to be notarized. It's under penalties of perjury. EEOC has now started demanding in New York, and I

don't know for how long they've been doing this, I think it's about a year, that the charging party supply a specific additional affidavit explaining in excruciating detail with names of witnesses, times, dates, locations, every event of discrimination, and they will not handle the case unless you give them this type of affidavit.

Now, I refuse to have my clients give them that affidavit. Why? I view EEOC as a barrier in the way to Federal court. I want to get through this as quickly as possible. Once I get through with it in my 180 days that I have to leave for them, then anything in their file can be used and gotten through the FOIA that can be used against my client, so I'm not going to give them an affidavit in such detail because if something is left out or there's something different in the deposition, it will be negative for my client.

Now, with the new ADA, this Federal Government, I think, is starting to do what New York State did which is increase the jurisdiction of the agency without giving them additional funds to handle the new influx of cases so no cases get done. That happened in the Division of Human Rights in the 1970s when disability was added there.

What ends up happening is that they're acquiring detailed statements from medical care providers, even in cases where there's no question that there's a disability which is life affecting; it's an on-the-job injury and the person is receiving worker's compensation and the employer knows about it; It's a police case, a 207-C case, where the employer knows about it. The employer is not going to fight that there really is a disability. If they fight about that, then of course you may have to supply something, but why do it at the beginning? Why refuse to handle a case? Why send people what they call the "33-day letter?" The 33-day letter says, "You're not cooperating. If you don't give us this information, we're kicking you out." Why? Because they don't care about complaints. They have no feeling at all for complainants, and I don't know if it started under Ronald Reagan or before. I don't know if it's caused by overwork. All I know is that the organization doesn't have enforcement power at the end. What good is it? What good is it in New York?

Now, you can state the same thing about the State Division of Human Rights. The State Division does have enforcement power, as Your Honor, knows after a hearing. In addition, I have been told that because of their enforcement power, they have started an internal conciliation unit. In the last year, they have settled 700 cases after reasonable cause findings; 700 cases in the last year. This is the information I was given by the people at the Division of Human Rights, with awards up to $60,000 for individual complainants.

Now, it's my view that the Division of Human Rights should be treated as the equivalent of a small claims court or a civil court. If you have too small a claim or there's a question where an attorney won't get involved, then the case should be there. If the case is a good enough case for an attorney to be involved, then EEOC shouldn't exist because they serve no useful purpose and you should be allowed to go directly to court.

Now, I have been involved in something called NELARS in New York, and so has Mr. Outten, but I'm going to speak about it. NELARS is a project of the National Employment Lawyers Associa-

tion in New York State. It's a lawyer's referral service, and the State Division of Human Rights has helped us with this because they also believe the concept might work.

As everybody said, the sooner the complaint is introduced in the system, the greater likelihood that the agency is going to do something and that the employer is going to react. So, what we have created is a lawyers referral service made up of lawyers who have expertise in employment discrimination. Not everybody can get on the panel; you are interviewed and you have to prove that you have some competence in the area. For $25, which is about as nominal as we could go, an individual can get an interview with an attorney who will discuss your complaint, tell you if you have a possible case, and what the case involves. Then you have the issue of whether you want to retain that attorney or not.

The issue there, number 1, is if the attorney tells you don't have a case, there's a possibility that cases that are clogging the system that have no merit will be dropped, and number 2, if you have a good case, the attorney will take the case and you'll get right to Federal court, leaving the middle ground cases—where an attorney will not get involved either because of the amount of money or other reasons—in the hands of an agency which can serve as kind of a small claims court by procedure.

We have printed up booklets which we have given to the State Division of Human Rights, and they are giving it out to every single complainant who comes in—a charging party complaint is the same thing, but under a different agency—with their packet of information.

People call us. Sometimes they contact us, sometimes they don't. It's their option. If there are other lawyer referral services, that's their right to be involved too. The whole concept here is the early introduction of a lawyer will talk about two things: The really good cases that should go to Federal court, and hopefully the case that has no merit because a lawyer will tell you it has no merit.

Let me just end—I don't know how long I've talked, probably too long—with one concept. Don't blame EEOC only for this. There is a horror story that I relate in my written testimony. I have a client—had a client—the case is finished now—who in 1986 alleged that she was discriminated against because of her sex in a school district in New York State. She filed with EEOC and then filed a retaliation.

EEOC gave the case to Justice in 1989 because it involved a public entity. We contacted Justice: "What's happening. Give us a notice of right to sue." Justice said, "Wait a second. We're investigating. We may take the case. If you want a notice of right to sue, we'll give it to you, but that will cut off our investigation."

My client was out of work. She was living on welfare, and I didn't want to litigate against a governmental agency with deep pockets which could kill us in depositions, and we made a conscience decision to wait for Justice's investigation. How long could it take? They're investigating it. Nineteen ninety: "Hello Justice. What's happening?" "You want a notice of right to sue? Fine, but we're still investigating." Nineteen ninety one: what's happening? The same story.

In January of 1992, I get a call that there is a Federal case that has been filed called the United States versus the School District. They didn't even tell us. They didn't even warn us.

You know what's fun about it? Once we moved to intervene, the first issue was the retroactive effect of the 1991 amendments to the Civil Rights Act. And Justice, my friend who came to represent us, supported the other side.

We finally settled the case in 1993. I think my client got a very good settlement. She received a fairly large sum of money.

The basic concept here is that these agencies are not equipped. They're modeled after the NLRB; they're modeled after unemployment; they're modeled after worker's compensation. Employment discrimination is the most difficult area of litigation one can get into.

There are court cases that say that they're the hardest thing to prove, and if you really believe that, then this is not a place for an administrative agency that maybe can understand an unemployment insurance claim or a worker's compensation claim. My view is to set up the equivalent of a small claims court, give the States, at least New York, money to do that in addition to what they do now.

Take the really good cases off and have those cases tried in court with a jury trial and hopefully tell people that they don't have a case early in the process through a lawyer so it doesn't clog the system.

Thank you.

[The prepared statement of Richard Goodstein follows:]

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The following testimony is predicated upon 18 years of experience practicing employment discrimination law. It is based upon individual cases where I have represented charging parties before the New York State Division of Human Rights, the Equal Employment Opportunity Commission, and Federal Court.

The New York State Division of Human Rights operates approximately 8 offices throughout the State of New York where individual complainants may file a charge of employment discrimination. Through the work sharing agreement with the Equal Employment Opportunity Commission, an individual who files a charge with the State automatically dual files it with the Equal Employment Opportunity Commission. Although the State has more offices then E.E.O.C. (E.E.O.C. has 2 offices in New York), New York State requires an appointment for prospective charging parties. Individuals are not allowed to "walk in" and file their complaints. Intake is not properly trained regarding the E.E.O.C. statute of limitations. Thus charging parties are told to return after the expiration of 240 days but before the 300th day. During this period, if the State does not waive initial processing, the individual charging party loses their right to file under Federal Law.

Filing with the State is an election of remedies. An individual charging party has the right under New York Law to either proceed in Court or before the administrative agency, the New York State Division of Human Rights, not both. Once the charging party has filed with the administrative agency, they are trapped and cannot bring their action in either Federal or State Court without a "administrative convenience dismissal." Although an attorney can procure this type of dismissal to proceed in Federal Court fairly easily, charging parties who are unrepresented may ask for a regular dismissal in an effort to go to Court. This mistake will cost them their cause of action.

The advantages of going to Federal Court are many. Under the New York State Human Rights Law, a complainant is entitled to

trial by jury. In my experience it is the threat of a jury trial which drives individual employers to settle rather than litigate claims of employment discrimination. Additionally, in Court, the plaintiff is entitled to compensatory damages. Predicated upon the recent United States Supreme Court Decision in U.S. v. Burke, this money is probably tax free. Finally, the statute of limitations for filing under the New York State Human Rights Law in Court is 3 years, the longest statute of limitations available to an aggrieved employee.

Contrasting this with the administrative procedure, it is obvious that a charging party who is represented should go to Court. The administrative agency has a 7 year wait from the filing of a case until a order by the commissioner. Additionally, one is not allowed a jury before the administrative agency; an administrative law judge makes a recommendation and the Commissioner of the State Division of Human Rights makes the final determination. The question as to the tax treatment of awards and settlements before the administrative agency has yet to be determined. Finally, the statute of limitations before the New York State Division of Human Rights is only one year.

This election of remedies provision has resulted in the following problems. An individual on their own filed a case of employment discrimination with the New York State Division of Human Rights in White Plains. They alleged sexual harassment. Additionally, they had a claim for back commissions due and owing. As the Division did not have jurisdiction over the Commission claim, it could not be brought before the administrative agency.

The individual retained my law firm to represent them. We requested a Notice of Right to Sue and filed a case in United States District Court. However, because the act of sexual harassment occurred prior to November 21, 1991, the amendments to Title VII were not applicable. Accordingly, my client could not receive compensatory damages for mental anguish and humiliation. It was important that we utilize her State claim to recover such monies. I requested that the Division of Human Rights issue "an administrative convenience dismissal." This request was predicated upon the fact that we were already in Federal District Court and that it would not be in the State's best interest to continue to pursue this matter. An administrative convenience dismissal was granted. The matter was settled for $30,000.00 as compensatory damages, as well as the payment of $18,000.00 in back commission. It was the threat of a jury trial in Federal Court which generated this settlement.

In another case, a client of mine was sexually harassed. However, she was terminated for non-related reasons. As the acts of sexual harassment predated the 1991 amendments to Title VII, my client's Title VII case was dismissed in Federal Court. However,

because she had never filed with the New York State Division of Human Rights, she was able to bring her case in State Court and request a jury trial. Accordingly, this matter may be settled.

Leaving a charge with the New York State Division of Human Rights in my view, is malpractice. The Division of Human Rights moves with the speed of a glacier. An individual client filed a case in 1980. In 1982 the New York State Division of Human Rights found probable cause and referred the case to public hearing. In 1985 a public hearing occurred. A decision of the Commissioner was finally issued in 1989. In 1992 the Appellate Division Fourth Department confirmed the finding of discrimination. In the interim, the employer had died. Since 1992 the Division of Human Rights has attempted to collect the judgment. To date, it has been unsuccessful. Accordingly, after litigating for almost 15 years, my client has still not received one penny as compensation for being discriminated against.

The Equal Employment Opportunity Commission in New York has 2 offices. It allows individuals to "walk in" and file complaints. Further, filing a complaint with the Equal Employment Opportunity Commission is a condition percedent to going to Court pursuant to Title VII. Because of recent amendments to the New York State Human Rights Law, if a charging party files a case with the E.E.O.C., rather than the Division of Human Rights, a deferral pursuant to Section 706 does not qualify as an election of remedies under the New York State Human Rights Law. Thus, as it is my goal to get to Federal District Court as soon as possible, with my State claim intact, I file charges with E.E.O.C. by mail on behalf of my individual clients.

In one case, my client who was a secretary to the partner of a major law firm, alleged she was sexually harassed. She filed a notarized Complaint with the Equal Employment Opportunity Commission. However, the individual investigating her charge, immediately demanded that she supply a written Affidavit specifying every single act of discrimination, the date and place it occurred, and the witnesses to this act. As such an Affidavit would be available to the employer in the Federal Court proceeding, and would serve as the basis for cross examination during discovery, I advised my client not to supply this Affidavit. Additionally, when the employer responded to my client's charge, E.E.O.C. refused to furnish me a photocopy of said response. Clearly, the employer receives a copy of the Complaint. They could use this document to craft their response. However, unlike the Division of Human Rights which has an open files policy allowing individual complainants to see employer's responses, the E.E.O.C. investigator is only authorized to read a paraphrased version of the response over the telephone to either charging party or his/her representative. As some responses are 50 pages long or more, responding to the paraphrased answer is not sufficient. Accordingly, rather than argue with the Equal

Employment Opportunity Commission, my client in this case asked for and received a Notice of Right to Sue.

E.E.O.C. has grafted other non-statutory requirements. Complaints under the A.D.A. are not sufficient unless accompanied by a note from a health care provider certifying the existence of a disability. There may be cases in which such a note is required. However, this blanket demand in cases where the employer would readily admit the existence of a covered disability, is just another burden upon the charging party.

In my practice I only take a case if we are going to go to United States District Court. Accordingly, I wish to go through E.E.O.C. as fast as possible with as little harm to my clients' position to procure a Notice of Right to Sue. At one time, E.E.O.C. issued a Notice of Right to Sue before the expiration of 180 days. However, this practice was declared illegal. Recently, E.E.O.C. has determined to again issue Notices of Right to Sue before the expiration of 180 days with a certification that it would not be able to investigate the matter within the statutory time period. It is my view, that Congress should amend the act to allow E.E.O.C. to issue such certification so that individuals who wish to proceed directly to Court do not tie up the system. In fact, the investigators from E.E.O.C. seem to take perverse pleasure in adversely affecting complainants. In one case, I notified the investigator that I intended to ask for a Notice of Right to Sue as soon as the 180 day waiting period had expired. I suggested that he spend his time working on other matters in which charging parties were not represented by counsel or wished to utilize E.E.O.C. Instead, I received a 33 day demand letter, and the threat that E.E.O.C. was going to dismiss my case for failure to cooperate if I did not supply the required Affidavit.

Employers settle employment discrimination cases at a fear of facing a jury. If one has an attorney, this shows that the charging party is serious and the employer may settle early in the process. The threat of a jury trial and compensatory damages forces the employer to confront the likelihood of losing the discrimination case and increases the odds on settlement. In a recent case, I represented an African American secretary who was the only African-American employed at a particular brokerage house. Because of economic conditions, lay offs were occurring. However, she was offered a position in another department. Before she could accept this position and be transferred, she was laid off. Luckily, my client was able to find another position which paid more than her prior salary. By filing in Federal District Court, and demanding a jury trial, we settled the matter for the tax free payment of $20,000.00.

Settlement is especially likely when the attorney has utilized other sources to freeze the employer's testimony before an attorney can be consulted. I have been successful in utilizing

unemployment insurance hearings to establish cases of employment discrimination. In one case, during the unemployment hearing I was able to establish that the employer saw my client's comments that there was an error in a particular piece of work and that an investigation should occur. In Federal Court, when the employer attempted to deny that this document was written contemporaneously with the rest of the documents in the file, I was able to utilize the unemployment insurance transcript to establish that its own witness admitted that the document had been written contemporaneously with the remainder of the file. Predicated upon this transcript, my client who made $18,000.00 a year was able to procure the payment of a $60,000.00 tax free settlement.

In another matter, a 33 year employee was terminated by a bank allegedly for failure to follow procedures. At unemployment I was able to establish that the employer was not aware as to whether or not the client actually failed to follow procedures, but only that the client had failed to put 4 check marks on the bottom of different pieces of paper. Knowing that a jury would determine that failure to put check marks on the bottom of certain pieces of paper would serve as a pretext for discrimination, the employer settled the matter. My client who made $30,000.00 a year received a tax free payment of $52,500.00.

Occasionally, the charging party can utilize disciplinary proceedings to establish that discrimination has occurred. In a recent case, a female correction officer was charged with conduct unbecoming for screaming at her supervisor in a hallway. The client alleged that prior to her outburst, she had been sexually harassed and touched by the supervisor. Through cross examination at the disciplinary hearing, a record was developed which proved that sexual harassment had occurred. The Administrative Law Judge in the disciplinary hearing dismissed the charges against the individual client. This dismissal, as well as the transcript, served as the basis of the charge of employment discrimination. The City of New York has offered $26,000.00 to settle this matter; charging party will accept no less than $56,000.00. A Magistrate recommended the $56,000.00 sum. Presently, we are waiting to see whether or not the City of New York Comptroller's office will acquiesce to this demand.

Finally, the situation regarding timeliness of review does not improve if the employer is a public entity and the Department of Justice is involved. In 1986 a client of mine filed a charge of discrimination with the E.E.O.C. She claimed, that she was denied the position of janitor because of her sex. Later, she amended her charge to include retaliation. The charge languished with the E.E.O.C. and the Department of Justice. This firm was retained in 1990. We contacted Justice requesting a Notice of Right to Sue. We were told that Justice was investigating the matter and was determining whether or not to bring litigation. As the client was on welfare, and did not have money to afford court reporter's

fees, it was determined that we would wait to see if Justice brought litigation. In 1991, again Justice was contacted; again the same result. Justice informed us that they would issue a Notice of Right to Sue, but that would close their investigation. Again, because of financial reasons, a Notice of Right to Sue was not sought.

Finally, in January of 1992, Justice initiated litigation against the School District. This firm, representing the charging party, moved to intervene in the litigation. During calendar 1993, the matter was settled for the payment of $60,000.00. However, charging party had waited 7 years from the filing of her Complaint with the E.E.O.C.

Based on my experience, I have found that the State Division of Human Rights, the Equal Employment Opportunity Commission, and the Department of Justice move the deliberate speed of a glacier. These agencies constantly deny charging party's speedy determinations regarding their cases. Small employers can utilize this delay to go out of business and deny the individual complainant all relief.

Presently, I can see only 2 solutions to this problem that do not involve the expenditures of additional funds and the hiring of more staff at both the Equal Employment Opportunity Commission and the State Division of Human Rights. The first solution is to ensure that charging parties have legal representation which will move their cases from the administrative agency directly to United States District Court. Additionally, if an attorney is involved in the matter at an early stage, it is more likely to be settled and if without merit, more likely to be withdrawn by the charging party. To this end, in New York, I have helped to establish the NELARS referral system. NELARS is a project of the New York Chapter of the National Employment Lawyers Association. Brochures, announcing the NELARS referral service, at a price of $25.00 consultation for a 30 minutes consultation, are distributed at local offices of the New York State Division of Human Rights. It is hoped that this early intervention of plaintiff's attorneys in individual cases will lead to utilization of administrative resources towards meritorous cases where the damage awards are too small to permit charging party to procure legal representation.

Additionally, the State Division of Human Rights has been very successful in a pre-hearing conciliation process. I have been informed that in the last year over 700 complaints have been settled before public hearing and after a finding of probable cause by a special unit of the Division of Human Rights. This unit has settled individual cases for payments of as much as $60,000.00 to the charging parties. Hopefully, E.E.O.C. could use this as an example and initiate a similar conciliation unit. However, the New York State Division of Human Rights has enforcement power. The Commissioner, after a hearing, is able to

assess both compensatory damages, back pay, and order the complainant reinstated. E.E.O.C., of course, has no power. Without teeth, conciliation is more difficult. However, it is my belief, that professional trained mediators could resolve many complaints filed with the E.E.O.C. to the satisfaction of all parties.

RESUME

ROBERT DAVID GOODSTEIN
203 Forest Avenue
New Rochelle, New York 10804
(914) 632-1626

Admitted to practice
May, 1976
Admitted to Northern, Eastern and Southern U.S. District Court, U.S. Court of Appeals for the Second Circuit, U.S. Supreme Court

EMPLOYMENT

April 1985 to date: Partner in the firm of GOODSTEIN & WEST
56 Harrison Street, Suite 302
New Rochelle, New York 10801

My practice with the above firm is predominantly in the area of employment discrimination law. The firm has and presently represents police officers, correction officers, and other public employees. Further, I have represented a myrid of private sector employees earning between $20,000 and $300,000 per year. I have successfully argued before the U.S. Court of Appeals for the Second Circuit and have successfully represented clients before the U.S. Supreme Court.

September 1981 to April 1985: In private practice at 271 North Avenue, New Rochelle, New York. The practice was predominantly employment law in the public sector.

March 1981 to September 1981: General Counsel, Glatzer Industries, New Rochelle, New York.

General federal court litigation, brief writing, appellate work.

March 1978 to March 1981: Senior attorney, Assistant Counsel, State of New York, Division of Human Rights, 2 World Trade Center, New York, New York 10047.

My assignment with the Division was as supervisor of the Division Initiated Complaint Unit. Further, I defended Article 78's, tried cases and wrote legal opinions. I argued appeals in every Appellate Court in the State of New York, enforced subpoenas and responded to Freedom of Information Law Requests.

May 1976 to January 1, 1978: Staff counsel, New York Civil Liberties Union, Westchester Chapter.

EDUCATION

1975 St. Johns University School of Law--Juris Doctor

1971 University of Wisconsin--Master of Arts

1969 University of Wisconsin--Bachelor of Arts

ORGANIZATIONS

National Employment Lawyer's Association
(New York Executive Board)
Chair, Regional Advisory Council
State of New York Division of Human Rights
New York Civil Liberties Union
Westchester Chapter (Legal Director)
New Rochelle Human Rights Commission,
Commissioner

PROMINENT LITIGATION

Hispanic Society v. City of New York
Represented the Guardians Association of the Police Department of the City of New York. Settled litigation for a quota for African Americans for promotion to the position of Sergeant in the New York City Police Department. Litigated colateral attack on consent decree to United States Supreme Court.

Berl v. County of Westchester
Decision of the Circuit Court of Appeals, Second Circuit outlining burden on employer after plaintiffs establish their case by direct proof of discrimination. This case, which predates Price Waterhouse, was cited with approval in the majority opinion in the Price Waterhouse Supreme Court decision.

Barbano v. Madison County
A decision of the Court of Appeals for the Second Circuit which established that discriminatory comments made during an employment interview qualify as direct proof of discrimination as well as illegal inquiries.

Baccus v. Karger
Consititutional lawsuit challenging rule of the New York State Court of Appeals requiring law students to begin the study of law after their eighteenth birthday. Mr. Baccus graduated law school when he was sixteen years ten months, and thus could not commence his study of law after his eighteenth birthday.

Reynolds v. State of New York
Ms. Reynolds, a correction officer, filed a case with the New York State Division of Human Rights. The Division of Human Rights found a BFOQ permitting the State to refuse her employment in a facility with male inmates. The Appellate Division Second Department affirmed. Ms. Reynolds brought an action in Federal Court predicated upon Title VII. The State claimed a Kremmer v. Chemical Construction Corp. defense. Ms. Reynolds was successful on the motion for summary judgment. She is the sole plaintiff who successfully defeated a Kremmer summary judgment motion.

People of the State of New York
et al. v. Merlino
A real estate agent who was sued by three women for sexual harassment. Merlino settled this case for $105,000.00. It is the sole case in which a real estate agent has been held liable pursuant to Title VIII for sexual harassment.

State Division of Human Rights v. New York
Roadrunner's Club
Litigated for the State Division of Human Rights the issue of whether the New York City Marathon could bar individuals in wheelchairs from competing in the New York Marathon.

Velez v. White
First successful challenge to a New York City Police promotional examination on civil service grounds since 1970. The 1989 Lieutenant's promotional examination declared null and void.

Smith v. Fairchild Republic Corporation
First successful Title VII litigation brought against Fairchild Republic Corporation.
First successful Title VII litigation decided by Judge Wexler of the United States District Court, Eastern District of New York.

Chairman OWENS. Thank you. Ms. Mulligan.

STATEMENT OF PATRICIA MULLIGAN

Ms. MULLIGAN. I'd also like to thank you, Congressman Owens, for inviting me here to testify regarding the Equal Employment Opportunity Commission. I've been asked to discuss the issue of attorney representation before the agency, and how attorney representation impacts on both the timeliness of investigations and the quality of investigations.

Before doing so, I'd just like to give you some of my background to give you a sense of how it would relate to this topic. I am currently an attorney in private practice in New York City with the firm of Mulligan & Sipser.

Prior to entering private practice recently, I was the director of the Equal Employment Opportunity Office for a large municipal agency. As such, I was responsible for the investigation of nearly 500 complaints of employment discrimination. These complaints were filed with both the EEOC and the State Division of Human Rights.

As you're aware, the EEOC has a work-sharing agreement with the State Division of Human Rights, and as such it frequently refers cases to the State Division for investigation. Consequently, I believe that some discussion of the State Division cases would be relevant to the overall issue here.

When considering the issue of attorney representation before the EEOC, as I said, a discussion of the timeliness and the quality are necessary. In an attempt to assess these two factors, I went back and analyzed the 500 cases that I handled while the director of EEO, and what I found is that during the course of approximately two and a half years, I had processed to conclusion approximately 108 cases out of those 500 which were filed with these agencies.

A majority of those 108 cases were deferred to the State Division of Human Rights through their work-sharing agreement.

We should note that while complainants who have had the cases transferred to the State Division, may make an application to have them returned to the EEOC, many of those complainants, particularly those who appear pro se, choose not to attempt this process and instead accept the jurisdiction of the State Division of Human Rights.

Therefore, it's necessary for us to consider the timeliness and quality of the State Division investigation to the extent they impact on the sufficiency of the current work-sharing system, and the impact on the victims of discrimination who initially seek out intervention by the EEOC to redress the harm that they have suffered in the workplace.

A review of the data that I looked at for the 108 cases processed, does indicate a protracted process inherent in the disposition of these employment discrimination complaints. Of the 108 cases, 33 were filed and investigated by the EEOC.

These cases broke down as follows: Eight of these cases were resolved in approximately three years; five in four years; and three in approximately five years. In sum, 16 of these cases or approximately 48 percent took between three to five years for resolution.

Now, a review of the data for the State Division cases revealed a similar pattern. Of the 108 cases reviewed, 75 were investigated by the State Division. Those cases broke down as follows: Twelve were resolved in approximately three years; eight cases took four years; four cases took five years; an additional four cases took approximately six years; two were resolved in approximately in seven years; one case in eight years; and one case in 12 years.

In sum, 32 cases or 42 percent of those cases took between 3 to 12 years for resolution which I think is a telling sign of the problems that are in place at the EEOC and the State Division of Human Rights.

Clearly, the overall process suffers from extended delays. The issue now is whether the timeliness of any given investigation is affected by the introduction of attorney representation to the process. My experience in this area is that it definitely has.

While the process is designed to allow for independent and impartial investigation by the EEOC, attorney participation during the pendency of an investigation has, in my experience, translated into a more expeditious handling of the complaints.

For example, attorney participation has resulted in some instances in a closer monitoring of the respondents submitting an answer to the complaint which often times can take anywhere from two months to a year, sometimes longer; and a more expeditious scheduling of conferences designed to conciliate complaints. Often times, conciliation efforts take five years before any effort is made by the EEOC or the States to reach out to a complainant.

And finally, I would say that simply more attention is devoted to complaints where there's a third-party monitoring the process.

We are all familiar with the crises that face our civil rights enforcement agency today: Inadequate staff and funding, and historical lack of attention and support for the EEOC and it's critical mission have placed the investigators in a reactive position rather than a proactive position which I think is critical.

The next and final issue that I've been asked to comment upon involves attorney representation and the impact, if any, on the quality of the investigation. Again, I'm going to address this issue from the vantage point of someone who has had an opportunity to participate in the investigative process where counsel for the complainant has and has not been a factor.

As we are all aware, discrimination is an invidious and subtle offense committed against persons in the workplace, usually without witness. In instances where there is a chance for corroboration, employee witnesses frequently fear retaliation, loss of their job and the security that their job brings to their families.

Consequently, these employees turn a blind eye on the wrong done, making the investigative process even more difficult. What is needed by our investigative bodies is a much more attentive and sharp and probing process involved when investigating these allegations of discrimination.

Unfortunately, I believe that many, if not all, of the investigators' ability to vigorously investigate these allegations has impaired many of the persons who you have heard testified today because of the volume of work which demands attention at these agencies.

I believe that the impact of introducing an advocate into the process would be beneficial to the complainants without question; specifically, an attorney in his or her role as an advocate often times devotes time to investigation, to the interview of witnesses, the exploring and researching company policy, and in many, if not all, instances, offers this information to the investigator to help the case along.

An attorney in this role often also maintains a continuous line of communication with the investigator, which whether consciously or unconsciously, draws the investigator's attention to that particular complaint; therefore, helping it to move along a little faster.

Unfortunately, my experience has shown that cases which do not have the benefit of active counsel really languish in these agencies.

And what I would ask Congressman Owens and the committee to do in examining the system in place at the EEOC is to consider the problems that I've discussed today. I'd like to note that I realize these problems don't stem from any individual or collective failing of those at the EEOC, but in my opinion really just stem from a neglect of the agency as Congressman Owens pointed out earlier under the Reagan and Bush Administrations where not only was there not serious attention paid to these issues, but there was an intent to discard the agency and not have it interfere with corporations.

I believe we need a reversal in this area. Thank you.

[The prepared statement of Patricia Mulligan follows:]

Patricia M. Mulligan

I have been invited here today to discuss the Equal Employment Opportunity Commission (hereinafter referred to as the EEOC) and more specifically to address the issue of Attorney Representation before this Agency. Before doing so, however, I would like to provide you with some of my professional background as it relates to this topic.

I am currently an attorney in private practice with the New York City law firm of Mulligan & Sipser. Approximately 50% of the firm practice is devoted to the area of Labor & Employment law. Prior to recently entering private practice, I was the Director of the Equal Employment Opportunity Office for a 14,000 member municipal agency. As such, I was responsible for the investigation of nearly 500 complaints of employment discrimination many of which were filed with the EEOC or the State Division of Human Rights (hereinafter referred to as the SDHR). As you are aware, the EEOC has a work-sharing agreement with the SDHR and as such frequently refers complaints initially filed with the Commission to the SDHR. Consequently, some reference will be made to cases handled at the SDHR when discussing the issue of attorney representation, as statistics in this area will be relevant to the overall discussion.

When considering the issue of Attorney Representation before the EEOC, a

discussion of the impact of Attorney Representation on the timeliness and quality of an investigation is necessary. In an attempt to assess these two (2) factors, I have analyzed the nearly 500 cases I handled while serving as the Director of EEO together with a review of cases handled as private counsel. During the course of approximately 2 1/2 years, I processed to conclusion approximately 108 complaints of discrimination filed with the EEOC or the SDHR, a majority of the latter having been deferred to the SDHR through their work sharing agreement. (The remainder of the cases were filed in other forums). While complainant's who have had their cases transferred to the SDHR may make application to return them to the EEOC, most, particularly those appearing pro se in their complaints, do not attempt this process, but instead accept the Division's (SDHR) jurisdiction. Therefore, it is necessary to consider the timeliness and quality of SDHR investigations to the extent they impact on the sufficiency of the current work sharing system and on those victims of discrimination who initially seek the intervention of the EEOC for redress for harm suffered in the workplace.

A review of the data maintained for the 108 cases I processed indicates a protracted process inherent in the disposition of employment discrimination complaints filed with these agencies. Of these 108 cases, 33 were filed and investigated by the EEOC. The breakdown of these cases is as follows:

- 8 were resolved in approximately 3 years;

- 5 were resolved in approximately 4 years; and
- 3 were resolved in approximately 5 years.

In sum, 16 of these cases or approximately 48%, took between 3-5 years for resolution. The remainder of cases were concluded in less than three years.

A review of data for the SDHR which frequently receives complaints for investigation from the EEOC reveals similar patterns. Of the 108 cases reviewed, 75 were investigated by the SDHR. The breakdown of these cases is as follows:

- 12 were resolved in approximately 3 years;
- 8 were resolved in approximately 4 years;
- 4 were resolved in approximately 5 years;
- 4 were resolved in approximately 6 years;
- 2 were resolved in approximately 7 years;
- 1 was resolved in approximately 8 years, and
- 1 was resolved in approximately 12 years.

In sum, 32 cases or approximately 42%, took between 3-12 years for resolution.. The remainder of cases were concluded in less than three years.

Clearly, the overall process suffers from extended delays. The issue now is whether the timeliness of any given investigation is affected by the introduction of

attorney representation into the process. My experience in response to this query is that it is. While the process is designed to allow for independent and impartial investigation by the EEOC into allegations of discrimination, Attorney participation during the pendency of an investigation has, in my experience, translated into a more expeditious handling of a complaint. For example, Attorney participation in some instances has resulted in closer monitoring of submittal of Respondent's Answer, expeditious scheduling of conferences designed to conciliate complaints, and quite simply more attention devoted to those complaints where a third party (Attorney) is monitoring the process.

We are all familiar with the crises facing our Civil Rights Enforcement Agencies today. Inadequate staffing, funding and a historical lack of attention and support for the EEOC and its critical mission have placed Staff Investigators in a *Reactive* rather than a *Proactive* position. Every Investigator is burdened with a crushing workload and, in an ideal world, would normally handle each complaint in the order in which it was received. This however is not always the case. When faced with the daily pressures of meeting deadlines and closing cases, an investigator often has little time to handle calls or answer letters regarding the status of a complaint. Consequently, a persistent attorney who continually contacts an investigator regarding the status of an investigation has, in the past, been successful in prompting the investigator to more expeditiously close a case simply to remove the weekly, bi-weekly, or monthly queries

of an attorney. In fact, during my 2 1/2 years with a city agency, I had on several occasions heard this refrain from exasperated Investigators who were eager to close a case for this very reason.

The next and final issue that I have been asked to comment on involves attorney representation during the process and its impact, if any, on the quality of an investigation. Again, I will address this issue from the vantage point of one who has had an opportunity to participate in the investigative process in instances where counsel for the complainant has, and has not, been a factor. As we are all aware, Discrimination is an invidious and subtle offense committed against persons in the workplace, usually without witnesses. In instances where there is a chance for corroboration, employee witnesses frequently fear employer retaliation, the loss of a job and the security their job brings to their families. Consequently, these employee witnesses frequently turn a blind eye on the wrong done, making the investigative process even more difficult. What is needed of our Investigative bodies is sharp, thorough, attentive and probing investigation of all allegations of discrimination. Unfortunately, an investigator's ability to vigorously investigate allegations of discrimination is often impaired by the volume of work demanding attention.

The impact of introducing an advocate into this process, therefore, has the potential for improving the entire EEOC process. Specifically, an attorney in his/her role as advocate devotes time to investigation, interviewing potential

witnesses, exploring and researching company policy and in many instances will offer this information to assist the investigator. An attorney in this role will maintain a line of communication with the investigator which will, consciously or unconsciously, draw the investigator's attention to the complaint. Unfortunately cases which do not have the benefit of active counsel generally did not receive the same urgency of attention as those who had secured the benefit of an attorney's representation.

As you examine the system now in place at the EEOC, I would urge you to consider the problems I have discussed above. The problems stem not from an individual or collective failing with respect to the mission of the EEOC, but rather derive from a historical neglect of the exploding needs of an agency responsible for meeting the increasing demands of our society to root out and eliminate discriminatory conduct in the workplace.

Chairman OWENS. Thank you. Mr. Outten.

STATEMENT OF WAYNE OUTTEN

Mr. OUTTEN. Good morning. Thank you for inviting us here today. I have submitted a fairly lengthy written statement and I'm not going to go through that exactly. I'm going to hit some of the high points. I'm here today as a representative of the National Employment Lawyers Association, both the New York chapter and the national organization itself.

NELA is a bar association of lawyers who represent individual employees in employment matters, including a great deal, of course, in employment discrimination cases. We're the ones on the front line representing all the people who file charges with the EEOC and the State Division. We have over 1,800 members around the United States and over 130 in the State of New York. We deal day in and day out, each of us, in our individual practices, with the problems of litigating these cases and handling the administrative problems in these cases.

It's, as often been said, a David and Goliath situation. You've got an individual, often under extreme financial distress, unemployed or with a reduced income under emotional distress, unable to afford counsel, generally, fighting against a wealthy or at least a secure company which can afford to pay counsel.

In that battle, the EEOC is supposed to be trying to level the playing field a little bit on behalf of the individual. I don't think it's doing the job that it should be doing. I disagree with my friend, Robert Goodstein, who says it should be abolished. I think it should be fixed and improved, not abolished because the private bar simply cannot, and will not be able to, handle all of the discrimination claims that are out there and take them to court.

The courts can't handle that; the economics of practicing in this area don't allow it or justify it. There has to be a place to handle the charges of discrimination from all the people whose cases don't involve enough money or aren't so strong that they won't be able to obtain private counsel. So, I think the problems need to be addressed and fixed.

In the paper, we set forth some suggestions, and that's what I'm going to talk about for a couple of minutes. I'm not going to spend a lot more time talking about the problems. You've heard about many of the problems, but I do want to point out that they are even worse than has been indicated because more of the problems that have been alluded to today are historical, going back into the 1980s and the early 1990s and things are getting worse as we speak. It's not because of a malevolence on behalf of the EEOC personnel, it's because of changes in their workload with the advent of the Americans with Disabilities Act and the Civil Rights Act of 1991. The case load has jumped just in the last year and a half.

I'm told that the number of open charges, that is, charges that have been filed and not resolved, has jumped from about 50,000 to 80,000 in a year and a half, and the average case load for an individual investigator in the last year and a half has jumped from 62 to 102, a jump of more than 50 or 60 percent; whereas, a couple of years ago, the agency was resolving roughly as many charges as it was taking in on a calendar basis, that is no longer true.

In the last couple of years, the agency is receiving more charges by a good percentage that it is resolving. So the situation we've been hearing about today is not getting better, it's not even staying the same. It's getting worse because of the increased work load and frankly no additional staff. The agency has not had a staff increase in several years.

So some of the suggestions that we have to improve the agency, obviously could be addressed with more money and more staff, but putting that aside, there are practical administrative suggestions that we have which I'm just going to outline briefly here.

One is in the intake process. People who walk into the EEOC don't know whether they have a good discrimination case or not. They're not lawyers; they don't understand the law which is very complicated and subtle as we all know, and many of them are discouraged from actually filing a charge. The agency doesn't want to take in charges that it doesn't think are worth it, so with an inadequate intake process, many people are sent away without actually filing a charge not realizing that they have a right to file a charge.

So, we suggest that people should be told that they do have a right to file a charge even if the intake interviewer discourages them from doing so.

We also think that people who walk in don't know whether they have a discrimination case or not, and also don't know whether they have any other kinds of rights. The EEOC's job is not to ascertain and advise people on other rights they may have, but certainly people should be advised that they in fact have other rights under State law, under other statutes, and particularly under common law, tort causes of action, for example.

Many times sexual harassment victims and race harassment victims have common law rights, for assault, for intentional infliction of emotional distress and so forth, but they don't have a clue. They've been to the government, they think they're being taken care of and they're not.

So I think that there should be some kind of information given to people to apprise them that they may have other legal rights that are outside the jurisdiction of the agency and that if they think they might, they should consult a lawyer to find out.

Moreover, a persistent problem that everybody in this area knows about is the fact that people have an obligation to mitigate their damages; that is, to try and find a job and to reduce their damages. When you get to court and you're fighting your case, a lot of times you'll find out that the documentary evidence to prove the effort to find a job is not there because nobody ever told the charging party at the beginning that they should be keeping these records.

We think that a charging party should be told in writing about their mitigation obligation and told how to go about documenting their efforts to find a job. That will save a lot of trouble later and improve their ability to collect the full measure of damages.

And finally, another issue is, as Mr. Goodstein mentioned and as Ms. Mulligan mentioned, that a lot of times there is an important supplemental role for a private attorney for the individual. This is because the person may decide they want to leave the agency and go to court at some point or the attorney can assist in the inves-

tigative process as Ms. Mulligan just testified or the person may have claims outside the jurisdiction of the EEOC.

Rather than discouraging people, which seems to be the case, from contacting private counsel, we think the agency should be encouraging people to consult private counsel. In fact, as Mr. Goodstein just mentioned, in New York, we set up a full-blown referral service specifically to address that situation and connect people in the public with a lawyer who will meet with them for only $25 to give them some idea of their rights.

There are a lot of problems with the EEOC investigation process and you've heard some of them already. The probable cause or reasonable cause finding rate is very, very low. There are a lot of reasons for that. I think one of the reasons is that too much deference is given to employer statements.

A charging party—not a lawyer—comes in and files a short charge and maybe an affidavit based on this intake interview. Then what happens is it's sent to the company and the company's lawyers—experienced employment lawyers—prepare very thorough, very convincing, very powerfully written position statements. Then you have these two things: a persuasive piece written by a professional employment lawyer compared to that produced by an individual who doesn't know his or her rights.

Too often, too much weight is given to the persuasive advocacy piece from the lawyer as opposed to the sworn statement of the individual. As I say in my outline, one of the things that I think should be done is to require employers and employers' witnesses to put in sworn statements.

If an employee is required to sign a sworn charge and to put in a sworn affidavit, as Mr. Goodstein talked about, then so should the respondent be required to put in sworn statements by persons with personal knowledge, not lawyer's letters which can be disclaimed and disavowed and supplemented and added to, but affidavits from persons with personal knowledge.

For a lot of reasons I won't go into now, this can make a big difference on the credibility issues, on making the respondents be forthcoming and honest in what they say, and also can be used effectively later in litigation.

A lot of people have said here today, and I've heard it many, many times, that the EEOC investigators simply don't interview all of the important witnesses. I've had that happen so many times. The person gives names, phone numbers, and addresses of potential witnesses and they never get called. They just don't get called. Obviously you have the charging party's word against the respondent's word, and the respondent's word is given more weight than it should because there hasn't been corroboration follow through by the investigators.

One of the other concerns which I'm not going to spend much time talking about are the litigation efforts of the EEOC. According to the numbers that I've seen, less than 1 percent of all the charges that are filed in EEOC end up with the EEOC ever filing a lawsuit. Less than 1 percent.

Obviously you don't expect a huge percent because there's conciliation and because some cases just don't have merit, but that's a surprisingly low percentage and it can only suggest to me that the

standards that are set by the EEOC for deciding which cases to litigate and how often to litigate are unreasonably high.

One suspects that they will only take cases that are sure winners, that they'll only take cases where they direct evidence of discrimination instead of relying on the harder indirect methods of proving discrimination under the McDonnell-Douglas and Hicks standards where you're proving through circumstantial evidence and so forth. So, I think that the EEOC has to take in a look at the standards that they use in deciding which cases to take.

Related to that is the methodology by which the cases are selected. As I understand the system internally in EEOC at this point, every single lawsuit that the EEOC files has to be approved through an arduous chain of command right up to the commissioners themselves individually, on every single case.

As a result, there is a tremendous amount of effort spent internally from the local office to the Washington office right up to the commissioners on a series of presentation memoranda and so forth, and that every single case gets approved by the commissioners. That seems to me to be an inordinately convoluted and slow process. The time that's spent doing that could be better spent litigating cases locally.

So, we suggest that there should be more authority delegated to the regional attorneys to select and pursue routine cases at least without having to go through this arduous chain of decision making.

Another important point which has been touched on by previous speakers is the role of the private bar in this area. It would be nice if there really wasn't much of a role for the private bar. It would be nice if everybody could walk in and file a charge and the agency would take the ball and run with it and weed out the good cases from the bad cases and litigate in court those that are good that don't settle beforehand.

The reality is that it just doesn't happen and therefore there is an important role for the private bar in helping the charging parties and in helping the agencies. Unfortunately, it seems too often that there's resistance by the investigators to having a private lawyer involved. They would rather not have somebody looking over their shoulder and second guessing what they're doing; they would rather have just the charging party. I think that's just upside down and backwards.

The investigator should be encouraging people to get private counsel if they think they want it or to work with private counsel simply because the private counsel can help the investigator do a better job and make sure that witnesses are called and so forth.

One other thing I've heard EEOC people say is that they're reluctant to put their effort into an investigation if they think that the charging party is just going to get a right to sue letter and go to court, so "why should we try?" I don't think that's the right reasoning at all.

The investigator should do a good and thorough job even if the party may end up going to court because it will facilitate the charging party in gathering the information. By going through the process, EEOC will be able to make a better decision about which cases to take to court and which ones not to.

Finally, there are a few relatively minor administrative points that are set forth in the outline that we think would improve the process. Using certified mail with return receipt requested for the charges that are sent to employers, so it's easier to prove when the employer got the charge, and for letters of determination so it's easier to prove exactly when the charging party got the letter of determination becomes important for counting the days in subsequent proceedings.

One other thing that should be fixed by regulation or statute is to declare that the letters of determination are not admissible in court. An undue amount of time is spent litigating this issue in Federal court as to whether or not a finding of no reasonable cause should or should not be admitted into evidence—we think it should not be. Therefore, that whole area of litigation should be averted by a clear statement of that principle.

Finally, one of my pet peeves is the fact that during the process of the investigation, the charging party is not allowed access to the position statement from the company or the documents supplied by the company.

They're not allowed to even read it, to say nothing to getting a copy. How is the charging party, who is the one who has lived this and knows the facts and evidence, going to provide effective assistance to the investigator and make good suggestions on what the leads are and who to talk to without participating actively in reading the position statement put in by the company and looking at the documents in order to help the investigator take the next step in the investigation?

I've never understood the reasoning behind that. The first time the charging party can ever get a copy of the file is after the case is closed and letters of determination have been issued. The charging party can then ask for a copy of the file under the Freedom of Information Act. These things should be provided during the course of the investigation to make it a better investigation.

A final point, and I think the agency is beginning to look at and should look more at, is the effort to settle and conciliate and mediate. I know there's a pilot project that the EEOC has tried on mediation. The report is not out on that, but I understand it's been successful in settling about half the cases that were mediated in this pilot project.

I've been using mediation in another context. Sometimes it works, sometimes it doesn't, but a lot of times it's almost magical the way that it can resolve a dispute early and with less cause and less expense and less aggravation for everyone involved.

Finally, two collateral points I just want to mention, off the subject slightly. One is on the subject of compulsory ADR, compulsory arbitration of employment discrimination claims, which I understand is within the jurisdiction of this committee.

That is something that NELA has very, very strong feelings about. We understand there is going to be a GAO report on this subject. We stand ready and are anxious to discuss this with the committee because this is an area which has the potential for undermining due process rights for thousands, hundreds of thousands of people in one fell swoop.

One other point: I commend to you an article that was in this week's National Law Journal written by Eric Schnaper of the NAACP Legal Defense Fund, entitled "Advocates Deterred by Fee Issue" in which he points out the economic barriers to persons with employment discrimination complaints in getting private counsel for a whole multitude of reasons.

And finally, I would of course be happy to answer any questions if I can.

[The prepared statement of Wayne Outten follows:]

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March 24, 1994

The Honorable Major Owens
Chair, Subcommittee on Select
Education and Civil Rights
Committee on Education and Labor
U.S. House of Representatives
518 O'Neill House Office Building
Washington, DC 20515

Re: Testimony of National Employment Lawyers Association ("NELA") and NELA/New York

Dear Representative Owens and
other Honorable Members of the Committee:

Thank you for inviting me, as President of the New York affiliate of the National Employment Lawyers Association and as an officer of the National Employment Lawyers Association, to submit the following statement to the Subcommittee on Select Education and Civil Rights of the Committee on Education and Labor of the United States House of Representatives.

I. INTRODUCTION:

The National Employment Lawyers Association ("NELA") is a non-profit professional organization comprised of over 1,800 lawyers throughout the United States who represent employees in work-related matters. NELA's New York affiliate ("NELA/NY") has more than 135 members in New York State. As a group, NELA attorneys have represented hundreds of thousands of individuals seeking equal job opportunities. In fact, as noted herein, it is the private sector and NELA attorneys - rather than the EEOC - who have accounted for approximately 94% of the civil rights litigation in the federal court system. NELA is one of a limited number of organizations dedicated to protecting the rights of all employees who rely on the Equal Employment Opportunity Commission and the courts for protection against from discrimination and wrongful discharge.

As a group, NELA practitioners have represented clients before the Equal Employment Opportunity Commission ("EEOC") with great frequency. Accordingly, NELA is well qualified to comment on the quality and timeliness of the EEOC's performance, and NELA/NY is well qualified to comment on such issues in the EEOC's New York district office.

The EEOC plays a pivotal role in the enforcement of our anti-discrimination laws. For most charging parties, an EEOC proceeding is the only available avenue for redress under federal law, because litigation is too expensive or risky. And the EEOC should be at the vanguard of rooting out and eradicating unlawful discrimination. Unfortunately, we believe that the EEOC is failing to perform its role adequately. For example, its investigations take far too long, are often inadequate, and result in too few determinations of cause.

The reason for these shortcomings are numerous. While the EEOC has many dedicated and capable staff members, effective leadership is sometimes lacking. (This is especially true now inasmuch as the EEOC has lacked a permanent Chair and a permanent General Counsel for many months.) Moreover, many of the EEOC's problems can be attributed to insufficient funds and staff to handle a burgeoning caseload. Others can be attributed to questionable or inappropriate policies and procedures. While many of these problems could be ameliorated by providing additional funding -- which could be used to increase the number of investigators, supervisors, and lawyers and to improve on training and education -- some problems could be addressed by changes in policies and procedures that would cost nothing (and may even save money). Some problems and some suggestions for improvement will be discussed in further detail later.

II. DISCRIMINATION COMPLAINTS IN NEW YORK:

I was specifically asked to review the advice I give to clients in proceeding with discrimination complaints in New York, so I will do so at the outset.

Most experienced practitioners in New York prefer to file discrimination charges with the EEOC rather than the State Division of Human Rights ("SDHR") for two main reasons:

First, for somewhat arcane procedural reasons, if you contemplate bringing a lawsuit, it is better to file a charge with the EEOC -- even if it is later referred to the SDHR for investigation -- rather than with the SDHR. The New York Human Rights Law contains an election-of-forum provisions under which a person can either file a charge with the SDHR or file a lawsuit in court (as contrasted with the federal scheme, which requires an EEOC charge as a prerequisite to filing a

lawsuit). Thus, a person who files with the SDHR may be precluded from later asserting a state law claim in court (though this result can be avoided in certain circumstances); this preclusion does not apply, however, when a charge is filed with the EEOC, even if the EEOC refers the charge to the SDHR for processing. Accordingly, to preserve state law rights, it is preferable not to file with the SDHR if you have any expectation of bringing a lawsuit. Notably, however, these considerations are less significant now than they used to be because the Civil Rights Act of 1991 enhanced the remedies available under federal law, making the preservation of state law claims less important.

Second, though the EEOC's district office suffers from many of the problems of the EEOC generally (e.g., slow and ineffective investigations), it is still better than the SDHR. Without belaboring the point here, suffice it to say that investigations in the SDHR are notoriously slow and ineffective. Sometimes an investigation does not even start for several years after the filing, and the period between a determination of reasonable cause and a hearing is several more years. Accordingly, whenever I file a charge with the EEOC, I specifically ask that the matter not be referred to the SDHR for processing; and on several occasions, I have requested that the SDHR discontinue an investigation and transfer the case to the EEOC district office for processing.

As a result of these considerations, many discrimination charges are filed initially or retained in the EEOC that might otherwise be processed in the SDHR. Moreover, given the SDHR's serious problems, I suspect that the New York district office may not refer as many cases to the SDHR as it might otherwise, thereby adding to the EEOC's own workload.

In New York City, the City Human Rights Commission ("CHRC") is available as an alternative. Generally speaking, the CHRC, which itself has funding and administrative problems, is considered preferable to the SDHR. Its case processing, while often slow and uneven, can be thorough and effective sometimes. And its early mediation program generally has been considered a success at resolving some charges relatively quickly and fairly. At this time, the future of the CHRC is in doubt as the new Guiliani Administration considers whether to reduce or eliminate its role.

For these reasons, in New York -- as in many parts of the country -- the EEOC is the most important agency in the fight against unlawful discrimination in employment. The rest of this presentation will be devoted to outlining some of its problems and making some suggestions for improvement.

III. SUMMARY

The suggestions that NELA offers to the Committee for improvement of the EEOC basically fall into eight categories, each of which is discussed in detail in Section V.*

A. Improvement of the EEOC's Charging Party Intake Process;

B. Increase in cause findings and more effective EEOC investigations;

C. Substantial increase in EEOC litigation;

D. Increased use of Temporary Injunctions

E. Increased delegation of decision-making authority to the Regional Attorneys;

F. Better communication and liaison with members of the private plaintiff's bar;

G. More effective administrative procedures;

H. More effective settlement/conciliation efforts.

IV. THE PROBLEMS:

The problems at the Equal Employment Opportunity Commission can be summarized as follows:

A. Lack of Speedy and Effective Investigations

The length of time to process an EEOC charge has gone from bad to worse. At the end of the 1992 fiscal year ("FY 92"), the average processing time for a case was 219 days; at the end of the 1993 fiscal year, it was 262 days; as of January 1, 1994, it was 321 days. Not surprisingly, during the last year and a half, the EEOC's inventory of open charges has grown from 48,650 to 80,229.

The reasons for this disturbing trend are not hard to identify. During the past two years, the number of charges filed with the EEOC has grown from 63,898 (FY 91) to 87,942 (FY 93). Most of the increase has come from charges under the American with Disabilities Act (15,274 in FY 1993), which went

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* Most of these same suggestions were made in April 1992 in testimony by Janette Johnson, Esq. (Dallas, TX) on behalf of NELA before the Subcommittee on Employment and Productivity of the Committee on Labor and Human Resources of the United States Senate.

into effect in July 1992. Meanwhile, the EEOC's staff has remained virtually unchanged: 2,796 in FY 91 and 2,831 in FY93. Not surprisingly, the average caseload of an investigator has grown from 62 at the end of FY 92 to 102 as of January 1, 1994. The situation is deteriorating; during the calendar quarter ending December 31, 1993, the EEOC closed only 71 cases for every 100 that were opened.

These figures indicate that, however problematic the EEOC's performance has been historically, it is losing ground at an accelerating pace. Something must be done to reverse the trend. While changes in administration and procedures can help (as discussed below), it is apparent that the EEOC desperately needs additional funding so it can hire and train more staff to handle its growing caseload.

B. Insufficient Reasonable Cause Determinations

The records of the EEOC* indicate the following "merit resolutions" (e.g., findings of "reasonable cause" to believe the law has been violated) for each of the following years:

Year	Merit Resolutions	Percent of Total Resolutions
1987	1,412	2.6%
1988	1,938	2.7%
1989	1,941	2.9%
1990	2,973	4.4%
1991	1,735	2.7%

Thus, the EEOC found "merit" or "reasonable cause" in a range from a mere 2.6% through 4.4% of its case resolutions during that five year period. The same figures were noted in a 1989 General Accounting Office report that was critical of the EEOC's investigative processes.** This rate of cause findings is mediocre.

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* Statistics are taken from the EEOC Office of Program Operations Enforcement Statistics FY 1981-1991. (More current figures were not readily available for this presentation.)

** GAO, Equal Employment Opportunity EEOC and State Agencies Did Not Fully Investigation Discrimination Charges (GAO/HRD-89-11).

These EEOC results contrast markedly with those of a sister federal agency in the labor/employment field. The National Labor Relations Board (NLRB), an agency with a similar workload and a similar mandate, had a total case intake of 39,828 cases in FY 1989.* In contrast to a merit factor of 2.9% in 1989 at the EEOC, in that same year, the NLRB had a merit factor of 35.7 percent of its charge filings.**

While certainly no two agencies are entirely comparable,*** the mandate, budget and types and complexity of the laws enforced by the two agencies are similar. Given that, the marked difference between a 35% merit factor and a 2.9% merit factor suggests that the EEOC does not manage its talents and resources as well as it could.

C. Inadequate Litigation Efforts

The EEOC litigation statistics are also disappointing. The EEOC handles two types of litigation: direct suits on the merits and subpoena enforcement actions. Inasmuch as the subpoena enforcement actions are ancillary to the investigative process and fairly perfunctory, they are not noted herein. With respect to litigation on the merits, the EEOC figures**** indicate the following:

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* NLRB, GC Memorandum 87-1, Summary of Operations For Fiscal Year 1986, p.3.

** NLRB, GC Memorandum 90-3, Summary of Operations (Fiscal Year 1989), p.4. The NLRB further notes at p.4 of the Memorandum, "In general, over the years, the merit factor has normally fluctuated between 31 and 34 percent."

*** For example, the EEOC does "administratively close" a significant number of cases when charging parties ask it to do so in order to obtain a "right to sue" letter.

**** Statistics indicating the number of EEO charges and the number of EEOC Direct Suits/Interventions filed have been complied from figures prepared by the EEOC's Office of Program Operations. Statistics as to the total number of civil rights employment suits filed (not including age discrimination suits) have been provided by the Statistics Division, Analysis and Reports Branch, Administrative Office of the U.S. Courts, Washington, D.C. 20544 (202) 633-6036.

Year	EEOC Suits	Total Suits Filed	EEOC Percentage of Suits Filed	EEOC Total Charges
1987	430	8,991	4.8%	65,844
1988	438	8,563	5.1%	63,778
1989	484	9,000	5.4%	50,411
1990	524	8,413	6.2%	62,135
1991	487	8,140	5.9%	62,880

Contrasting the litigation case filings with the EEOC charge filings, it appears that the EEOC engaged in litigation on the merits on behalf of employment discrimination victims in less than 1% of the cases filed.

These figures indicate that the EEOC largely ceded the enforcement of federal anti-discrimination laws to private sector attorneys, such as those represented by the National Employment Lawyers Association. Thus, as the statistics in the above chart indicate, the EEOC has filed a mere 4.8% to 6.2% of all federal district court employment discrimination cases during the five year period shown. Most individuals are left unrepresented or are forced to expend their own limited financial resources to hire a private attorney to do what the EEOC should have done - effectively investigate and litigate each employment discrimination claim.

V. SUGGESTIONS FOR IMPROVEMENT:

NELA contends that the EEOC can and should achieve a far higher degree of performance, both in the timeliness, methods and results of its investigations, and in an expanded litigation program. To achieve those objectives, we recognize that the EEOC needs substantially more funding for more staffing. In addition, we make the following concrete suggestions for improvement:

A. INTAKE:

NELA members have reported complaints from potential Charging Parties asserting that they went to an EEOC Office to file a charge but were turned away without having filed a charge and without being told of their right to insist on filing a charge. Such individuals are in danger not only of waiving their right to EEOC assistance but also of losing their statutory right to institute an employment discrimination suit, as their right to sue may be lost for failure to file a timely EEOC charge.

Moreover, many Charging Parties are given inadequate information about their legal rights and obligations. NELA has the following suggestions for improvement of the EEOC Intake Process:

1. Intake Information Sheet: Potential Charging Parties should be given an intake information sheet advising them in writing that they have the right to insist on a charge being filed that day if they so choose.

2. Non-discrimination Claims: Potential Charging Parties should also be advised in writing at Intake (a) that they may have claims under state tort or contract law or under other federal or state statutes (whether or not they have colorable discrimination claims), (b) that such claims have statutes of limitations that are not tolled by the filing of an EEOC charge, and (c) that, if they have any questions concerning such claims, they should contact an attorney.

This is especially true in sex and race harassment cases. Many Charging Parties lose their right to file state tort claims (e.g., assault and intentional inflication of emotional distress) because the statute of limitations expires while they wait for the EEOC to conclude its investigation.

3. Mitigation Obligation Information: Charging Parties should be advised in writing at Intake of their obligation to mitigate damages and should be instructed to save all tax returns, payroll stubs, resumes, employment applications, rejection letters, etc. Much mitigation evidence is inadvertently lost due to the failure of the EEOC to notify individuals of this obligation early in the process.

4. Lawyer Referral List: It remains exceedingly difficult for Charging Parties to obtain the services of a qualified private attorney. Although some offices of the EEOC maintain a lawyer referral list, EEOC employees sometimes use a piecemeal approach, parcelling out one or two names at a time. For the average individual, it may take ten to twenty attorney inquiries to obtain an attorney -- if the Charging Party is able to obtain any help at all. Accordingly, the entire attorney list should be provided to Charging Parties; and where a well-run bar association referral service exists, the individual should be so notified. Any other practice unnecessarily discourages the Charging Party.

B. INCREASE IN CAUSE FINDINGS/MORE EFFECTIVE INVESTIGATIONS:

EEOC INVESTIGATIONS: The published data of the General Accounting Office and the EEOC show that the EEOC issues a "reasonable cause" determination in less than 5% of

the charges.* A reasonable cause finding rate this low suggests that the EEOC investigators -- whether through press of time or lack of analytic ability -- merely adopt the reasons and rationale contained in the Employer's position paper rather than fully investigating the charges.

As Congress realized in the debates on the Civil Rights Act of 1991, employment discrimination cases are difficult to prove and for the most part are proved by circumstantial evidence or other indirect means. Accordingly, there was intense debate as to the proper standards of proof and the shifting burdens of production and presumptions in employment discrimination cases. In its investigative procedures, however, the EEOC often appears to overlook such shifting burdens, requiring direct evidence of employment discrimination -- a "smoking gun" as it were -- before issuing a reasonable cause finding. Unfortunately, the EEOC often fails to delve adequately into the Employer's articulated reasons to determine whether such reasons are pretextual.

As the EEOC itself will undoubtedly concede, it takes more investigative and analytic resources to investigate and process a case to a "reasonable cause" finding than to a "no cause" finding. With the increase in the EEOC's investigative workload from the Americans with Disabilities Act and the Civil Rights Act of 1991, NELA fears that the percentage of "reasonable cause" findings will drop even further. The present rate of reasonable cause findings is unacceptable, and any further reduction cannot be tolerated.

Investigative Suggestions:

5. Insistence on Sworn Affidavits: The EEOC should insist on sworn affidavits from all employer witnesses, as well as from the Charging Party. Determinations are often made on the basis of mere notes of telephone interviews of witnesses or on the basis of assertions in unsworn position papers written by an employer's counsel. Material witnesses should be required to swear under oath based on personal knowledge. Unsworn evidence should not be relied upon to defeat a Charging Party's sworn charge or statement.

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* Admittedly, the EEOC resolves many of its cases for administrative reasons prior to the determination stage. In most of these resolutions, however the Charging Party receives minimal, if any, relief. Many of the withdrawals or dismissals are because the Charging Party can no longer be located, the Employer has filed for bankruptcy, or the Charging Party has given up on the EEOC process and requested a right to sue letter.

6. Credibility Resolutions: Some EEOC investigators and administrators seem too quick to resolve credibility disputes against Charging Parties. This problem is especially acute in sex harassment cases, where the evidence sometimes consists mainly of the Charging Party's accusations and the alleged harasser's denials. Such cases should not be dismissed for lack of corroboration, unless the Charging Party's allegations are plainly not credible.

7. In Cases of Disagreement as to Ultimate Finding, the Case Should be Referred to Legal Unit For Analysis: Although each district office has a staff of attorneys under the supervision of a Regional Attorney, too few cases are submitted to them for legal review analysis or review. In some offices, cases are submitted for legal review and analysis only if both the investigator and the supervisor recommend a cause finding. Since cause is found in less than 5% of the cases, it is estimated that the attorneys review less than 10% of the case investigations. The EEOC should change its procedures so that if either the investigator or the supervisor recommends a "cause" finding, the case will be reviewed by the legal unit.

C. INCREASED LITIGATION:

8. NELA recommends that this Committee the EEOC district offices to increase their litigation case filings. The EEOC received 50,110 employment discrimination charges in 1986,* but it filed only 526 lawsuits that year.** This is a rate of only about 1%, or only slightly more than ten cases per state per year. These numbers remained substantially unchanged in the years 1987 through 1991.

By its apparent insistence on impossibly high standards of proof as its own litigation standard, rather than reliance on the traditional shifting burdens of proof and persuasion established by statute and Supreme Court precedent, the EEOC has effectively left many claimants with no champion in court.

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* Goodman, EMPLOYEE RIGHTS LITIGATION: pleading and practice, 13-61, n.7 citing EEOC Office of Program Operations, Annual Report FY 1986, Appendix 3, EEOC Receipts by Statute for Title VII, for FY 1982 through FY 1986.

** Goodman, EMPLOYEE RIGHTS LITIGATION: pleading and practice, 13-60, n.4 citing Johnny J. Butler, General Counsel (EEOC)(acting), A Report on the Operations of the Office of General Counsel; October 1985 through September 1986 (1987, Table 2 at 4.

D. INCREASED USE OF TEMPORARY INJUNCTION:

9. The EEOC has let its temporary injunction powers atrophy. A temporary injunction halting retaliation against a charging party or intimidation of witnesses during the investigative process would result in increased respect for the EEOC and more effective investigations by EEOC investigators. Injunctions are particularly appropriate in retaliation cases.

E. DELEGATION OF AUTHORITY AT THE REGIONAL ATTORNEY LEVEL:

10. The decision-making authority on complaint issuance for relatively routine cases should be delegated to the Regional Attorneys, similar to the authority of Regional Attorneys at the National Labor Relations Board.

At the present time, the entire EEOC Commission (e.g., each Commission member) reviews and votes on the decision to litigate each case, whether it involves a single discharge of a minimum wage worker or a multi-million dollar class action. This lack of proper delegation of authority to the Regional Attorneys wastes the scarce time and resources of the EEOC Commissioners and of many staff members -- time and resources that could be better spent on more important functions.

This lack of delegation adds many "non-value added" steps to the process. Too much lawyer's time at the local level is spent on internal decisional processes rather than on actual litigation. Elimination of these unnecessary steps would free EEOC attorneys to engage in the increased litigation necessary to fulfill the EEOC's enforcement mandate. As an example of such "non-value added" steps, the EEOC requires a "Presentation Memorandum" for each litigation recommendation, no matter how small the case. Each Presentation Memorandum entails untold staff hours -- usually at least three layers of lawyer review at the local level, plus additional review and recommendations at the General Counsel's office in Washington, and then presentation to the Commissioners.

While major class actions and impact cases should receive Commission approval, the decision to litigate routine cases should be delegated to the Regional Attorney, whose attorneys will litigate the cases.

F. WORK WITH PRIVATE PRACTITIONERS:

11. Although it is a maxim of attorney-client relations that a represented individual should be contacted only through the attorney, NELA members frequently find that EEOC investigators contact the Charging Party directly. EEOC investigators should be firmly instructed that, absent exceptional circumstances, they should not contact a Charging

Party who is represented by counsel, but should contact the attorney.

12. EEOC Investigators should be admonished to refrain from advising Charging Parties that they "do not need an attorney," unless they also advise Charging Parties that the EEOC issues a reasonable cause determination in less than 5% of the cases and actually litigates in less than 1% of the cases.

13. If an investigator thinks that a Charging Party may have statutory or common law claims other than or in addition to a discrimination claim, the Investigator should suggest that the Charging Party contact an attorney.

G. MORE EFFECTIVE ADMINISTRATIVE PROCEDURES:

14. Increased Use of Certified Mail:

a. Initial Charges: Employer retaliation after receipt of an EEOC charge remains a substantial problem. Yet, in a minor "cost saving" move, the EEOC changed its previous certified mail policy and no longer sends the notice of charge to the Employer by certified mail, return receipt requested. Any "cost savings" at the front end are offset by increased litigation at the back end on the issue of the date and time that the employer first learned of the EEOC charge. The EEOC's actions have made proof of such knowledge more difficult in retaliation cases.

b. Letters of Determination and Notice of Right to Sue: Much litigation could be prevented if the EEOC sent dismissal letters and Notices of Right to Sue by certified mail, return receipt requested. This is the procedure followed by the Department of Justice for issuance of Notices of Right to Sue for municipal employees. Since the Charging Party has only 90 days to file a lawsuit after receipt of the Notice, the exact date the Charging Party received the Notice has been the subject of much unnecessary litigation, at great expense to all parties.

15. Non-admissibility of Letters of Determination: Introduction of Letters of Determination as "evidence" in a lawsuit unfairly prejudices the party who did not prevail at the administrative stage; and it opens the door to substantial collateral litigation on the exact meaning of the Letter as well as the adequacy of the EEOC investigative process underlying such finding.

Letters of Determination are not final findings of fact on the merits; they merely reflect that the EEOC did or did not find "reasonable cause" to believe a violation had occurred. The EEOC should issue regulatory guidelines

articulating that standard and stating that Letters are not to be considered "evidence" on the merits because their limited relevance and probative value are far outweighed by their prejudicial impact. Such Letters have no place in a private lawsuit and the EEOC should take a leadership position on this issue.

16. Disclaimer Language on Letters of Determination: Further, such Letters of Determination should indicate in bold letters language to this effect:

> CAUTION: THIS IS NOT A FINAL DETERMINATION ON THE MERITS OF YOUR CASE. WHILE THE EEOC WILL NOT ENGAGE IN FURTHER INVESTIGATION OF YOUR CASE, THE FACT THAT THE EEOC HAS DISMISSED YOUR CHARGE IS NOT A REFLECTION ON THE ULTIMATE MERITS OF YOUR CASE. UPON REVIEWING ALL OF THE EVIDENCE AND HEARING ALL OF THE WITNESSES IN PERSON, A JUDGE OR JURY COULD REACH A DIFFERENT RESULT.

17. Access to Opposing Party Documents: Charging Parties should be allowed to ask for and receive copies of all position statements and other documents supplied to the EEOC by employers, so the Charging Party can more effectively and efficiently provide responsive evidence to the Investigator.

18. FOIA/Section 83 Rights: Although Charging Parties have the right under the Freedom of Information Act to review and obtain copies of their ADEA file and the right under EEOC Section 83 to review their Title VII file after closure, no one informs them of that right. The EEOC should advise Charging Parties in writing of that right with the Notice of Right to Sue or Letter of Determination, as well as the name and address of the person to whom the written request should be addressed. Moreover, the EEOC should adopt regulations requiring the Agency to adhere to the same ten-day deadline for providing information under its internal "Section 83" rule as it is required to do for requests under the Freedom of Information Act, and it should adhere to that deadline in all instances.

H. MORE EFFECTIVE SETTLEMENT/CONCILIATION EFFORTS

19. Settlement rates at the EEOC are too low. In fiscal year 1980, 32.1% of the cases were settled, whereas in fiscal year 1989 only 13.9% of the cases were settled.*

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* Women Employed Institute, EEOC Enforcement Statistics (1991).

Compare this to the record of the National Labor Relations Board (NLRB), a sister federal labor relations agency, where the settlement rates surpassed 90% for each fiscal year from 1982 through 1988.* The EEOC's pilot program on early mediation of charges should be expanded and enhanced.

VI. CONCLUSION:

The critical role of this Committee in the legislative oversight process cannot be overestimated when dealing with an agency responsible for ensuring equal employment opportunities. While problems of the EEOC -- as perceived by private practitioners who represent Charging Parties -- are many, we trust that our suggestions may be helpful. NELA stands ready to assist this Committee in any way possible to improve the EEOC.

Thank you for the opportunity to address these issues today.

Respectfully submitted,

NATIONAL EMPLOYMENT LAWYERS ASSOCIATION and NATIONAL EMPLOYMENT LAWYERS ASSOCIATION/NEW YORK

By: Wayne N. Outten
Secretary, NELA
President, NELA/NY

2523N/5503q

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* NLRB, GC Memorandum 89-5, Quadrennial Report of the General Counsel (Fiscal Years 1984-1988) and Summary of Operations (Fiscal Year 1988), p.2 of Summary of Operations.

CALIFORNIA INSTITUTE OF TECHNOLOGY EMPLOYMENT PROFILE

PROFESSIONAL CATEGORY

YEAR	TOTAL POPULATION	WHITE MEN	BLACK MEN	HISPANIC MEN	ASIAN MEN	NATIVE AMERICAN MEN	WHITE WOMEN	BLACK WOMEN	HISPANIC WOMEN	ASIAN WOMEN	NATIVE AMERICAN WOMEN
1981	2850	2089 73.30%	56 1.96%	76 2.67%	225 7.89%	17 0.60%	300 10.53%	23 0.81%	13 0.46%	49 1.72%	2 0.07%
1983	241	129 53.53%	2 0.83%	2 0.83%	11 4.56%	0 0.00%	83 34.44%	3 1.24%	2 0.83%	9 3.73%	0 0.00%
		1984 OOL-OFCCP COMPLIANCE REVIEW									
1985	314	170	4	3	16	1	105	3	2	10	0
1987	330	175 53.03%	6 1.82%	4 1.21%	19 5.76%	0 0.00%	113 34.24%	0 0.00%	2 0.61%	11 3.33%	0 0.00%
1989	384	177 46.09%	4 1.04%	7 1.82%	24 6.25%	0 0.00%	138 35.94%	7 1.82%	7 1.82%	20 5.21%	0 0.00%
1991	434	187 43.09%	4 0.92%	7 1.61%	33 7.60%	0 0.00%	155 35.71%	8 1.84%	11 2.53%	29 6.68%	0 0.00%

CALIFORNIA INSTITUTE OF TECHNOLOGY EMPLOYMENT PROFILE

CONTRACTOR CATEGORY

YEAR	TOTAL POPULATION	WHITE MEN	BLACK MEN	HISPANIC MEN	ASIAN MEN	NATIVE AMERICAN MEN	WHITE WOMEN	BLACK WOMEN	HISPANIC WOMEN	ASIAN WOMEN	NATIVE AMERICAN WOMEN
1981		DATA NOT AVAILABLE									
1983	577	462 80.07%	1 0.17%	4 0.69%	39 6.76%	0 0.00%	65 11.27%	0 0.00%	1 0.17%	5 0.87%	0 0.00%
		1984 OOL-OFCCP COMPLIANCE REVIEW									
1985	335	295	0	2	14	0	22	1	0	1	0
1987	327	230 70.34%	0 0.00%	1 0.31%	13 3.98%	1 0.31%	19 5.81%	1 0.31%	1 0.31%	1 0.31%	0 0.00%
1989	363	292 80.44%	0 0.00%	5 1.38%	25 6.89%	0 0.00%	38 10.47%	0 0.00%	0 0.00%	3 0.83%	0 0.00%
1991	357	293 82.07%	1 0.28%	3 0.84%	18 5.04%	0 0.00%	35 9.80%	0 0.00%	0 0.00%	7 1.96%	0 0.00%

Attachment I(b)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

DEC 10 1992

Mr. Gregory Richard
233 South Hobart Blvd.
Apt. 101
Los Angeles, California 90004

Dear Mr. Richard:

This letter transmits the final results of our research into available reports filed with EEOC by the Jet Propulsion Laboratory (JPL) of the California Institute of Technology (CIT). The release of this information and the reports filed by CIT was approved by the EEOC Legal Counsel on November 3, 1992 based on your litigation in the U.S. Central District Court of California under Case Number CV924299 WMR.

The California Institute of Technology is an institution of higher education, and is therefore required by EEOC to file the Higher Education Staff Information (EEO-6) report. EEO-6 reports are due biennially in the odd-numbered years. Following the filing of its 1981 EEO-6 report, CIT discontinued the inclusion of JPL since it is not a teaching installation. That is fully acceptable according to the instructions which accompany the EEO-6 form. However, when that decision was made, JPL then became responsible for filing the Employer Information Report (EEO-1) compliance report, on an annual basis, beginning in 1982.

Our records show that JPL did not begin filing EEO-1 reports until 1990. Their 1990, 1991 and 1992 reports are enclosed with this letter.

Sincerely,

Joachim Neckere, Director
Program Research and Surveys Division
Operations Research and Planning
Programs

Enclosures

CALTECH-JPL EMPLOYMENT PROFILE

YEAR	TOTAL POPULATION	WHITE MEN	BLACK MEN	HISPANIC MEN	ASIAN MEN	NATIVE AMERICAN MEN	WHITE WOMEN	BLACK WOMEN	HISPANIC WOMEN	ASIAN WOMEN	NATIVE AMERICAN WOMEN
1989	5885	3481 59.15%	149 2.53%	267 4.54%	393 6.68%	28 0.48%	1098 18.66%	160 2.72%	117 1.99%	175 2.97%	17 0.29%
1990	6071	3546 58.41%	165 2.72%	288 4.74%	408 6.72%	31 0.51%	1118 18.42%	172 2.83%	136 2.24%	190 3.13%	17 0.28%
1991	6267	3616 57.70%	184 2.94%	306 4.88%	429 6.85%	32 0.51%	1168 18.64%	169 2.70%	146 2.33%	200 3.19%	17 0.27%
1992	6317	3590 56.83%	198 3.13%	313 4.95%	457 7.23%	26 0.41%	1175 18.60%	173 2.74%	164 2.60%	204 3.23%	17 0.27%

CALTECH-JPL EMPLOYMENT PROFILE OFFICIALS & MANAGERS

YEAR	TOTAL POPULATION	WHITE MEN	BLACK MEN	HISPANIC MEN	ASIAN MEN	NATIVE AMERICAN MEN	WHITE WOMEN	BLACK WOMEN	HISPANIC WOMEN	ASIAN WOMEN	NATIVE AMERICAN WOMEN
1989	NOT REPORTED	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPOR NA	NOT REPORTED NA	NOT REPORTED NA
1990	1656	1139 68.78%	27 1.63%	44 2.66%	75 4.53%	10 0.60%	288 17.39%	31 1.87%	17 1.03%	21 1.27%	4 0.24%
1991	1689	1133 67.08%	31 1.84%	45 2.66%	80 4.74%	12 0.71%	307 18.18%	36 2.13%	18 1.07%	22 1.30%	5 0.30%
1992	1702	1119 65.75%	33 1.94%	44 2.59%	89 5.23%	11 0.65%	313 18.39%	36 2.12%	24 1.41%	27 1.59%	6 0.35%

CALTECH-JPL EMPLOYMENT PROFILE PROFESSIONALS

YEAR	TOTAL POPULATION	WHITE MEN	BLACK MEN	HISPANIC MEN	ASIAN MEN	NATIVE AMERICAN MEN	WHITE WOMEN	BLACK WOMEN	HISPANIC WOMEN	ASIAN WOMEN	NATIVE AMERICAN WOMEN
1989	NOT REPORTED	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPORTED NA	NOT REPOR NA	NOT REPORTED NA	NOT REPORTED NA
1990	3370	2125 63.06%	92 2.73%	170 5.04%	306 9.08%	15 0.45%	418 12.40%	53 1.57%	41 1.22%	144 4.27%	6 0.18%
1991	3536	2204 62.33%	104 2.94%	183 5.18%	324 9.16%	14 0.40%	454 12.84%	50 1.41%	46 1.30%	151 4.27%	6 0.17%
1992	3588	2210 61.59%	110 3.07%	196 5.46%	347 9.67%	9 0.25%	452 12.60%	55 1.53%	52 1.45%	152 4.24%	5 0.14%

Attachment II(a)

Greg K.Richard
233 S. Hobart Blvd., #101
Los Angeles, CA 90004

Dec. 7 1992

Ms. Debra Katc
Subcommittee on Employment Opportunities
616 O' Neal Bld. HOB
U.S. House of Representatives
Washington D. C. 20515

Dear Ms. Katc:

Below are listed the following problems I have with the Department of Labor- OFCCP.

After a 1984 compliance review of California Institute of Technology - Jet Propulsion Laboratory (CalTech - JPL), the OFCCP found that CalTech - JPL underutilized the Black and Hispanic population in their employment practices. The Department of Labor OFCCP explicitly told CalTech - JPL to increase their employment utilization of Blacks and Hispanics and CalTech - JPL agreed to do so in a letter to Mr. Lou C. Midrid (DOL-OFCCP) from Mr. R.J. Parks (CalTech - JPL) dated March 22, 1984. Also, within the March 22, 1984 letter CalTech - JPL agreed to match employment utilization of Blacks and Hispanics with their availability within the Los Angeles Metropolitan Area. Based on EEO-6 reports filed by CalTech to the EEOC & OFCCP and EE0-1 reports filed by CalTech - JPL to EEOC & OFCCP, there has been **no negligible** change in employment utilization of Blacks and Hispanics at CalTech and CalTech - JPL since the 1984 compliance review. **In essence, CalTech & CalTech - JPL lied to the OFCCP about their plans to increase Black and Hispanic employment utilization at CalTech & CalTech - JPL. In addition, the DOL -OFCCP is negligent because they failed to monitor CalTech and CalTech - JPL after the 1984 compliance review. Why did the DOL - OFCCP not monitor CalTech's EEO-6 employment stats and CalTech - JPL's EEO-1 employment stats after the 1984 compliance review???**

The second problem of concern with OFCCP is that the DOL - OFCCP do not have CalTech's 1989 & 1991 EE0-6 documents within their database (As of August 1992) in Washington D.C. Also, they do not have CalTech - JPL's EEO-1 documents for the years 1981 thru 1991 inclusive as of Aug. 1992. **There are over 6000 employees at CalTech - JPL who have not been accounted for by means of EEO-1 documentation within a time period of over 9 year. How can the DOL - OFCCP have let this happen???**

Attachment II(a)

I am very curious to know how the DOL - OFCCP conducted their 1984 compliance review without these necessary employment profile statistics. I am also curious to know how the DOL - OFCCP is conducting their current compliance review (Began in Feb. 1992) of CalTech - JPL without the necessary employment profile statistics (EEO-1 documents) in their national database. In addition, Why haven't DOL-OFCCP **not** begun a compliance review of CalTech (Parent Company)**???**

CalTech has received over **8 billion dollars** in taxpayer funds for government contracts during the past 12 years. Based on EEO-6 and EEO-1 employment profile statistics submitted by CalTech and CalTech - JPL for years 1981 thru 1991 inclusive, which I obtained from the Equal Employment Opportunity Commission by way of the Freedom of Information Act, It appears that CalTech (Parent Company) and CalTech - JPL (Subsidiary of CalTech) have been running **"rough-shot"** with the taxpayers money by committing **premeditated comvert racism** with respect to violations of Executive Order 11246 signed into Law by President Johnson in 1965 and Title VII of the 1964 Civil Rights Act. CalTech and CalTech - JPL have systematically raped the Black and Hispanic communities of jobs mandated to them by law through E.O. 11246 and Title VII of the Civil Rights Act of 1964.

As a taxpaying member of the African American community of Los Angeles, I would like to know what is going to be done about the blatant negligence of the Department of Labor - Office of Federal Contract Compliance for allowing CalTech and CalTech - JPL to get away with their **premeditated covert racism for at least 11 years???**

Sincerely,

Greg K. Richard

cc: The Honorable Congressman Henry Waxman
The Honorable Congresswoman Maxine Waters
The Honorable Congressman Carlos J. Moorhead
DOL - OFCCP Helene Haase (Regional Dir.)
DOL - OFCCP Robert Greaux (National Office)
DOL - OFCCP Roscoe Ballard (District Dir.)
DOL - OFCCP Joe Leverret (Asst. District Dir.)
DOL - Inspector General - Mr. Crowe
General Accounting Office - Mr. Allen Roberts
NASA Procurment - Mr. Paul McCaul
Foothill Leader - Ms. Margie Nelson
Pasadena Star-News - Ms. Lisa Wilson
Los Angeles Times - Denise Hamilton

Attachment III
(a)

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington D.C. 20210

SEP 3 1993

Mr. Gregory K. Richard
5320 Riverton Avenue, #3
North Hollywood, California 91601

Dear Mr. Richard:

This is in response to your FAX of August 18, 1993, addressed to Secretary of Labor, Robert Reich. Your FAX asked for responses to five questions about the California Institute of Technology, Jet Propulsion Laboratory's (CIT-JPL) responsibilities under Executive Order 11246.

Your first question asked about the Office of Federal Contract Compliance Programs' (OFCCP) monitoring of a letter of commitment from a 1984 compliance review. The requirements of Executive Order 11246 would not expect a company to reflect the race and gender mix of the general population of any area. Rather, it would expect companies located in the area to make a good faith effort to meet goals based on the race and gender mix of the labor market with the requisite skills for the job groups for which the goals were set. Depending on the job group, labor markets could be local, regional, statewide or nationwide.

Your second question asks why the OFCCP failed to enforce Title 41 of the Code of Federal Regulations, Chapter 60-1.a, by not requiring CIT-JPL to file Employer Information Reports (EEO-1) for the years 1982 through 1989. Because CIT-JPL is part of an institute of higher education, they are allowed to file a Higher Education Information Report (EEO-6) in lieu of the EEO-1. They decided to do so during the period in question (1982 through 1989).

Regarding your third question, OFCCP has already responded to you in detail on the issue of the Exemplary Voluntary Efforts Award to CIT-JPL. It is our position that the criterion was followed.

Your fourth question asked why CIT-JPL was allowed to use 1980 Census data for their 1991 affirmative action plan. In 1991, the best available data on the civilian workforce with requisite skills were the 1980 Census of the Population. The occupational data from the 1990 Census of the Population was not generally available until after January 1993. Regarding your question

about inconsistent data in CIT-JPL's EEO-1 report and affirmative action plan. When contractors submit their affirmative action program for an audit, a determination is made of its acceptability at that time. In accordance with their contractual agreements with the government, all deficient plans must be corrected before an acceptable compliance status is awarded. Please rest assured that CIT-JPL was held to the standard to use the most current employment data, as all other contractors in their area.

I hope this answers all of your questions.

Sincerely,

Donna L. Copeson

for John R. Fraser

Attachment III
(b)

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington D.C. 20210

OCT 7 1993

Mr. Gregory K. Richard
5320 Riverton Avenue, #3
North Hollywood, California 91601

Dear Mr. Richard:

This is in response to your letter of September 21 to the Secretary of Labor. Specifically, you expressed concerns about the filing of employment reports by the California Institute of Technology Jet Propulsion Laboratory.

The Higher Education Staff Information Report (EEO-6) and the Employee Information Report (EEO-1) are joint reporting forms used by both the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission. We rely on the EEOC to collect these reports for us and forward the data file once they have compiled the data. We were not aware until 1990 that JPL had not been included under the EEO-6 report submitted by CIT.

Since JPL is now filing these data in an EEO-1 report, we are satisfied that they are complying with the requirements of 41 CFR Chapter 60.

Regarding your invoice for services rendered, the Department of Labor and the Employment Standards Administration has no authority to reimburse citizens for efforts they may have voluntarily undertaken.

Sincerely,

John R. Fraser

Attachment IV

JET PROPULSION LABORATORY California Institute of Technology • 4800 Oak Grove Drive, Pasadena, California 91109

March 22, 1984

Mr. Lou C. Madrid
L. A. Area Office Director
Office of Federal Contract
Compliance Programs
845 South Figueroa Street
Suite 550
Los Angeles, CA 90017

Reference: Your Letters dated February 24 and March 5, 1984

Dear Mr. Madrid:

This is in response to your letters dated February 24 and March 5, 1984 in which you report the results of your compliance review at JPL and summarize the "open issues" requiring a response from this office. Dr. Allen has asked me to address these issues for JPL.

Each of the open issues were reviewed to insure that JPL was in compliance with the requirements of 41 CFR 60-2, Affirmative Action Programs.

The responses (attached) are identified as Items 1 through 9 as follows:

Item 1. Affirmative Action - Goal Achievement

Item 2. Job Groups

Item 3. Availability Estimates of Section VI of JPL's FY 1984 AAP Plan

Item 4. Goals and Timetables

Item 5. Black and Hispanic FY 1984 Annual AAP Goals

Item 6. Identification of Problem Areas

Item 7. Action Programs

Item 8. Personnel Actions Monitoring System

Item 9. Salary Analysis

Attachment IV

As stated throughout the attached responses, JPL is an equal opportunity employer and is committed to achieve parity equal to the availability percentages in the Los Angeles - Long Beach Standard Metropolitan statistical area.

JPL, as a center of excellence and the only organization chartered to do deep space exploration, does have very high technical requirements. These high skill requirements are an absolute necessity in order to achieve the advanced State of the Art which JPL has accomplished in past years. Therefore, it is very difficult to hire specialized staff for deep space exploration and the high technology programs for the Department of Defense. However, JPL will continue with a strong effort to seek out highly qualified minorities and women throughout the country as a key part of its recruiting program.

We believe this submittal is fully responsive to all open issues contained in your referenced letters and provides the necessary information to demonstrate compliance and good faith effort.

Unless we hear otherwise from you by month end, we will assume that this response satisfies all of the open issues communicated in the referenced letters. Immediately after the end of this month, we will take steps to implement the actions described herein.

Sincerely,

R. J. Parks
Deputy Director

Attachment

reaffirms it's commitment to achieve parity equal to the availability percentages in Los Angeles-Long Beach Standard Metropolitan Statistical Area for each job category where underutilization exists as defined by the Eight Factor Analysis and considering requisite skills, education and experience.

Item 5: Black and Hispanic FY 1984 Annual AAP Goals

Referring to 41CFR 60-2.12(1), you have suggested that separate hiring goals for Blacks and Hispanics be set "when they are underutilized". That section of the regulation only anticipates separate goals when "there is a substantial disparity in the utilization of a particular minority group..."

Although there is underutilization in the categories as indicated in Section VII, pages 7 - 15, JPL does not find substantial disparity of utilization of a particular minority group or men or women an defined in 41CFR 60-2.12(1). For example, the extent of Black underutilization in the Officials and Managers category is nearly identical to the extent of Hispanic underutilization. The extent of underutilization of these groups in the Professional category is also comparable. While Blacks and Hispanics may be underutilized, that factor alone does not trigger the need for separate goals and timetables; "a substantial disparity" in relative utilization of these groups is required. Lacking the "substantial disparity" in utilization required by 41CFR 60-2.12(1), we are aware of no obligation to set particularized goals.

We will, nevertheless, give particular attention to the employment and advancement of Black and Hispanic employees as discussed in Items 6 and 7. It should also be noted that the employment projections reflected on Attachment (A) do contain particularized projections for Blacks and Hispanics.

Attachment IV

Item 6: Identification of Problem Areas

You have asked that Black and Hispanic employment levels be addressed in the event our job groups are reconstituted. The data presented in Attachment (A) does indicate the need for continued efforts to increase the utilization levels of Blacks and Hispanics, particularly in the Officials and Managers job groups, as well as in the Professional job groups at above the first levels.

As the Affirmative Action Plan states in pages 7-14 through 7-16, JPL is making efforts, through specialized recruiting and special internal programs, to overcome these areas of underemployment. These efforts are discussed in Section IX and X of the FY '84 AAP Plan. Considerable emphasis has and continues to be directed toward improving our hire rate of Blacks and Hispanics in all job groups.

Attachment (B) (an addendum to our 1984 AAP) explains problem areas found at the division level which, because of the matrix management structure, are extremely difficult to identify or analyze at lower organizational levels. JPL's organization is in a constant state of flux with realignments resulting from new funding sources, revised program emphasis, new contract commitments and the like.

Concentration on increasing the employment levels of Blacks and Hispanics continues to be JPL's major thrust. In the Los Angeles-Long Beach SMSA the competition is fierce for the small number of Black and Hispanic graduates. Approximately 40% of all the government work in the U.S.A. is done in Los Angeles-Long Beach SMSA and contractors compete very hard to hire the limited number of Black and Hispanic engineering and science graduates locally and nationally.

Thus, several factors continue to hamper the successful recruitment of Blacks and Hispanics industry-wide; (1) there continues to be a small number of graduates, (2) high industry competition for the small number of graduates, and (3) a report from the issue dated January-February 1984 MANPOWER COMMENTS (Scientific-Engineering-Technical) published by the Scientific Manpower Commission states that "the enrollment trend in engineering and science courses for Blacks and Hispanics suggests that they are not likely to increase their share of any graduate degree".

JPL's concentrated effort continues, however, in the Officials and Managers and Professional job groups which comprises 79% of our total workforce. This is reflected in the goals submitted in Item 5, which show of the total net increase of 21 projected for the various job levels in the Officials and Managers (Administrative) groups, three are Black and two are Hispanic. For Officials and Managers (Technical), there is a projected net increase of 31, with a goal of seven consisting of three Blacks and four Hispanics.

Figure III.2: Racial/Ethnic Groups in Aerospace Employment Nationwide (1979-86)

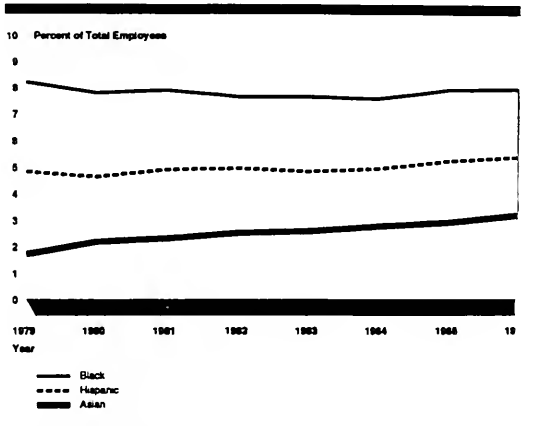


Table III.2: Distribution of Racial/Ethnic Groups in the Nation and Aerospace Industry (1979 and 1986)

	Representation (percent)									
	Nation[a]				Aerospace[b]					
	Population[c]		EEO database		National		Los Angeles		Seattle	
Racial/ethnic group	1979	1986	1979	1986	1979	1986	1979	1986	1979	19
White	86	85	81	79	85	83	74	71	92	
Black	12	12	12	12	8	8	12	11	2	
Hispanic	5	8	5	6	5	5	9	11	2	
Asian	2	3	1	2	2	3	4	7	3	

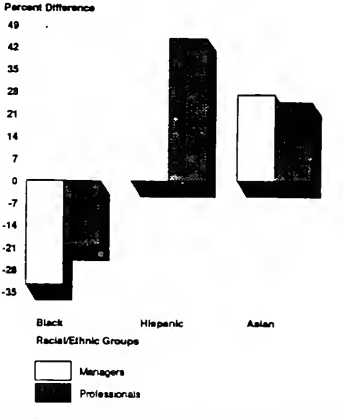
[a]Source: Joint Reporting Committee (EEO data on employees remaining after we selected aerospace establishments)

[b]Source: Joint Reporting Committee (EEO data on aerospace industry employees)

[c]Source: Bureau of the Census (Data are collected from households according to Census criteria for nonmutually exclusive racial and ethnic categories. Data in the Joint Reporting Committee database collected from employers in mutually exclusive categories.)

Minority managers and professionals comprised less than 13 percent aerospace employees in each category in 1986 (see fig. III.4)

Figure III.8: Minority Managers and Professionals in the Aerospace Industry Compared With the National EEO Database, by Racial/Ethnic Group (1986)

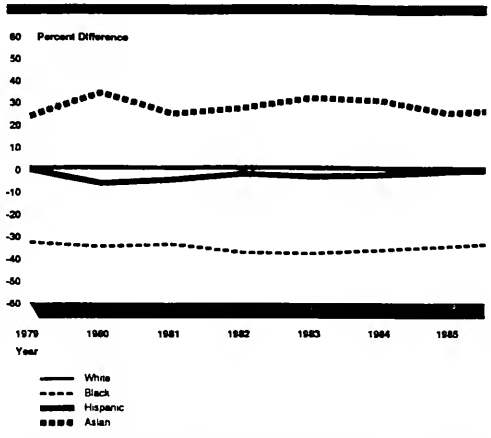


Note: On this chart, zero indicates the point at which an aerospace group would have the same re sentation as in the national EEO database. Bars above this point indicate higher representation, w bars below indicate less representation than in the national EEO database.

information on the proportion of aerospace professionals and manag who were engineers. Thus, we could not account for this factor in ex ining the proportion of minorities in aerospace relative to the nation EEO database.

If this information were available, we could determine the represent tion of aerospace minority professionals relative to the engineering l pool. For example, if in 1986, professionals consisted of 60 percent e neers and 40 percent nonengineers, and 3 percent of engineers were black and 12 percent of nonengineers were black (the percent of bla in the general population), we then could calculate the estimated rat black professionals as follows. Representation of black professional (60 percent engineers x 3 percent blacks) + (40 percent nonengineer 12 percent blacks) = 6.6 percent blacks. (This example is simplified discussion purposes and does not include all relevant factors.)

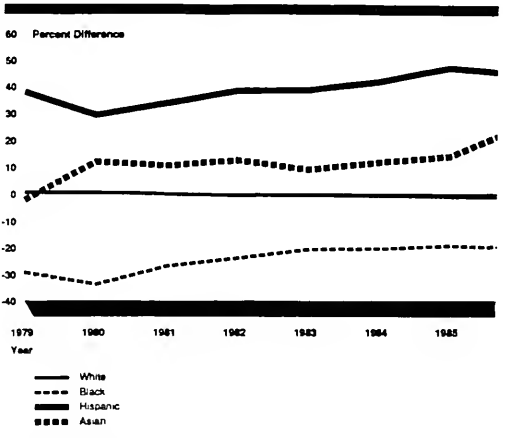
Figure III.9: Racial/Ethnic Groups as Managers in the Aerospace Industry Compared With the National EEO Database (1979-86)



Note: On this chart, zero indicates the point which an aerospace group would have the same n lation as in the national EEO database. Plotted lines above and below zero indicate the minorit more or less represented in the aerospace industry.

We then could compare this to the data for aerospace professional this case 3.8 percent in 1986, and conclude that the proportion of among aerospace professionals was lower than expected accordin adjusted labor pool data. On the other hand, if technical fields, su engineering, with a lower proportion of blacks comprised the vast majority of professionals or managers, 3.8 percent might have rep sented a higher proportion than would be expected by comparison adjusted labor pool data.

Figure III.10: Racial/Ethnic Groups as Professionals in the Aerospace Industry Compared With the National EEO Database (1979-86)



Note: On this chart, zero indicates the point at which an aerospace group would have the same r sentation as in the national EEO database. Plotted lines above and below zero indicate more or l representation in the aerospace industry.

EEO in Small, Medium, and Large-Sized Companies

When we examined national EEO patterns for aerospace establishme by size—small (50-999 employees), medium (1,000-9,999), and larg (10,000 or more)—we found few differences in their EEO patterns f managers and professionals.[1] This was true for all categories—the racial/ethnic groups, as well as managers and professionals. The pe centages of representation of the racial groups were similar to thos the entire nation. Where there were differences based on size, the s and medium establishments differed from the large. Generally, the establishments reflected the EEO pattern of the aerospace industry overall.

Regardless of size of establishment, minority groups among manag fell into a range of about 1 to 3 percent. Greatest in order of manag

[1]There were 272 small establishments with a total of 76,475 employees, 82 medium establish with 289,272 employees, and 18 large establishments with 313,033 employees. These three g made up 11, 43, and 46 percent, respectively, of the employees in the aerospace database.

Mr. SCOTT. Do you have copies of what you just——

Mr. OUTTEN. I'll be happy to give you this copy. I just got this yesterday.

Mr. SCOTT. Thank you.

Chairman OWENS. Thank you very much. As you were talking, Mr. Outten, I asked my assistant how many amendments have there been to this legislation to perfect and overhaul it. He pointed out there had been very few—in fact, in only one instance in 1991.

Basically, regulations, not legislation, determine how the agency is run. It sounds like a good case where Congress needs to do some more micromanaging. We're always accused of micromanaging. Here's a case where some obvious corrections need to be made, and the only way we're going to do it is by micromanaging.

I neglected to acknowledge Ms. Mulligan. A special thanks to you for appearing. Please give my regards to your partner who is a friend of mine, Billy Sipser.

Ms. MULLIGAN. I will.

Chairman OWENS. Of all the individuals who seek your help in discrimination claims, what percentage do you represent? Roughly, of all those who come to you, how many do you accept, how many do you turn down?

Mr. GOODSTEIN. How many do I take?

Chairman OWENS. Yes, a percentage over all requests for your assistance.

Mr. GOODSTEIN. I would estimate that I take about 5 percent, and basically, I would estimate that 90 percent fell under the laws as they are presently constituted in New York. Now, what happened to them was unfair because New York does not have a tort of wrongful discharge. Wayne knows those better than I do. I say it's unfair, but I say it's not illegal.

Chairman OWENS. You take 5 percent. I just want to get this on the record. Ms. Mulligan, what would you estimate?

Ms. MULLIGAN. I would say our percentage is higher. It's probably about 50 percent. We do a lot of work in situations where the complainant is not in a position to afford an attorney. For a nominal fee, we will assist them in being more effective through the entire administrative process as an alternative to turning them away completely.

So in that respect we're able to do more work with people who have been victims of discrimination. I've done that because of my experience in dealing with the agencies. I feel that I can be a little more effective for people who otherwise have no avenues of redress.

Chairman OWENS. Mr. Outten.

Mr. OUTTEN. I have a two-part answer. I have a tremendous volume of calls to my office from people with employment problems, especially discrimination problems. The actual number for whom I file lawsuit compared to the number of calls I get is well less than 5 percent. Probably 1 or 2 percent actually result in filed lawsuits, but like Ms. Mulligan, I don't feel comfortable just turning people away.

Either it's a lawsuit or it's nothing. I try to assist people in other ways like helping them through the administrative process through some kind of hourly fee, modified contingency, or contingency arrangement, whatever seems workable, even though I'm not commit-

ted to file a lawsuit and probably may never do so because of the economics of the situation.

Sometimes I will simply try to negotiate a severance package and avoid the whole administrative process simply because it's so slow and uncertain.

Chairman OWENS. If you abolish the EEOC, what happens to the individuals who can't get an attorney?

Mr. GOODSTEIN. I would send money to the State Division of Human Rights, and I'll tell you why. Number 1, there was testimony here that EEOC finds no probable cause if it's the respondent's word versus the employee's word. The employer says one thing, the employee says something else. EEOC finds for the employer and issues a no probable cause. That's the exact opposite of what the State Division of Human Rights does.

The specification they use is the word probable cause instead of reasonable cause. They say if there's some scintilla of evidence that would support the case, including the employee's own word, that's sufficient.

In addition, they have open files. They allow people to respond to what the employer put in. They let you see it, they show it to you, they photocopy it for you and give it to you for free if it is below 20 pages.

Chairman OWENS. So if the EEOC were to adopt those procedure——

Mr. GOODSTEIN. But there's something else.

Chairman OWENS. Yes, go ahead.

Mr. GOODSTEIN. Once they find probable cause under New York law, you get an attorney. It's assigned to you as a matter of right. Unlike EEOC where somebody has to buck it off the system, it is automatic.

With probable cause, you get an attorney, and because you get an attorney who's intervening and is in there at that stage, I think it's a much more effective mechanism for the case in the middle, between one that an attorney would take versus one that has no merit.

Unless Congress is willing to guarantee an attorney for every single charging party where there is reasonable cause and appropriate the money to pay for those attorneys, then I think that you can't fix the system because EEOC has no teeth.

You go to the very end, you go through all the hoops, it's all down, it's reasonable cause, you won, Hip-hip-hurray! And the employer says, "So what?" At least in the State, you go to a hearing—I'm not saying they're the best in the world—but you go to a hearing, you have an attorney—I'm not saying they're always the best, but some of them try hard—who is paid for by the State to represent you. So, once you win, that's that. You've got a possibility.

Now, I just want to make one thing clear because I heard the different comments about the 5 percent—about cases I take. If I take a case, it's based on the merits, and unlike a lot of other people, I take complete contingency cases.

And everybody knows that if I take a case, I take it to the very end. I don't do this thing with the administrative agency because it seems to me that if you have a good enough discrimination case. If you're discriminated against, it should end up in Federal court

and you should be able to take advantage of the jury trial provisions and you should get a proper settlement.

Wayne talked about settling cases in front of EEOC. I don't trust them to settle cases. You heard horror stories here today. I heard one lady testify that they settled for two pieces of paper against her will. If the individual charging party doesn't have an attorney are you going to let those people settle a case mandating some sort of medication? I don't trust them. I think they'd sell everybody down the tubes. I'm not saying the State Division is always better.

It's not in my testimony, but I had a very old case. In 1980 a woman applied for a job as director of veterans affairs for an upstate county. She came in and they specifically said to her, "What, another woman applying? Oh, no, what are we going to do?" They asked her questions like, "What would your husband think about you tramping around the county with a bunch of male veterans?" You know what happened? She went to the Division of Human Rights and they tried to get her to settle it for $250 because how bad were those statements? So what if she didn't get the job; they are just statements. She came to me. I took the case and we won it in front of Judge McAvoy in Federal District Court in the prejury trial days. Then they appealed and we won in front of the 2nd Circuit and she ended up getting $75,000.

Chairman OWENS. Could you give me some short answers on these questions?

Mr. GOODSTEIN. Okay.

Chairman OWENS. You've been in practice 18 years. Have you seen any change in EEOC in the last 12 years?

Mr. GOODSTEIN. Yes, it's gotten worse.

Chairman OWENS. The first six years different than the——

Mr. GOODSTEIN. Yes, it's much worse. And the——

Chairman OWENS. The first six were much worse than the last 12?

Mr. GOODSTEIN. No, no. Now. And the few investigators that I thought were really good, that really cared, suddenly got fired.

Chairman OWENS. For the record, what is a contingency fee?

Mr. GOODSTEIN. Contingency fee means I don't do what Wayne does, I don't ask for any money. I take it purely on the basis that if we win, we get money; if we don't win, I don't charge you a penny. So, if somebody is poor, it's based on the merit of their case rather than their own economic situation.

Mr. SCOTT. I think he was looking for the percentage.

Chairman OWENS. I didn't ask that, but he's the attorney.

Mr. GOODSTEIN. Normally it's the same thing as negligence, it's a third.

Chairman OWENS. I want to make it clear that my distinguished colleague from Virginia, who's an attorney, should not be associated with these questions I'm about to ask.

Since a lot of this is very detailed processing and intervention which forces to expect schedules and do certain routine things, it is possible that we could create some kind of midwife here, a certified equal employment advocate, class of people who could handle the cases and frighten the agency into doing what's right before they have to go to an attorney?

Mr. OUTTEN. If you have some trained people who learned the law, that would——

Chairman OWENS. I imagine you use a lot of paralegals, don't you?

Mr. OUTTEN. Well, paralegals are used in the area just as much on the plaintiff's side as on the defense side because plaintiff's lawyers have to be mean and lean because of the economics of the practice. Paralegals are used and that sort of thing probably is a good idea.

Chairman OWENS. So for us to create some kind of recognition for a certified equal employment advocate is not a bad idea?

Mr. GOODSTEIN. It's not a bad idea, except for the fact that I think they would probably starve. Because of the economics of the practice I don't think that you will be able to win enough cases front of the agency or to win on a contingency fee basis and make a living, because the clients don't have enough money to pay.

Chairman OWENS. It is possible we could change the whole culture of the agency, the whole way in which they see their role, and frighten them into a different posture—frighten may be the wrong word—but let them understand that the mechanisms are different and you have to behave differently.

I have been contacted by a group of people who felt they've been wronged in the process. They've established an organization among themselves to advocate for equal employment cases. What do you think of giving government grants to nonprofit agencies to serve as advocate agencies?

Mr. OUTTEN. Well, it's interesting you should suggest that. I'm a founding member of a not-for-profit corporation, The National Employee Rights Institute, that was founded a month ago. One of the plans that we hope to try is to get some grants and foundation money to provide advocates for people who can't afford lawyers through the private bar mechanism.

We have a number of projects that we have in mind, but that's one of them. From the low end of the spectrum you have some people who qualify for legal services or legal aid, then you have some people on the higher end who can afford private counsel, and then you have a vast majority of people in between who don't fit in either category and are not being properly served. The EEOC which is supposed to provide investigations into the merits of their cases without cost, simply isn't doing the job. So, there's got to be some way to provide more due process on these claims.

That's one of the reasons we founded this organization. We're going to be sending out our grant applications within the next few months for that reason.

Chairman OWENS. Ms. Mulligan, do the cases that you cite in your written testimony that took the EEOC and the State office eight or even twelve years to resolve, did they generally involve an unrepresented complainant?

Ms. MULLIGAN. Yes, they did. Those cases were the majority, if not all, cases where people were not represented by counsel. In the cases where I did deal with counsel, then my position was the person preparing the position statement, which Wayne referred to, for the respondent agency; I was the person who was putting together

this legally correct and factually specific response that the agency would give much deference to.

I found that where there was opposing counsel—counsel for the complainant who would in effect be opposing me—it really did affect the timeliness of those investigations. The investigator handling the case would be on the phone with me once a week, twice a week pushing the case. I would sometimes say, "What about these other 15 cases that are five years old that I'd really like to close out?" And the response often was, "Well, I've got this attorney breathing down my neck and I want to close this out because I've got to move on to case B."

I don't think it's fair. Personally, I think it should be done in the order of receipt, so that everyone gets a fair shot.

Chairman OWENS. Do attorneys outside of New York have similar concern with the EEOC process? All of you are from New York. Do you think this is peculiar to New York?

Mr. OUTTEN. I can say to an absolute certainty that that's the case.

Chairman OWENS. Probably worse?

Mr. OUTTEN. Well, some local FEP agencies are better than the one we have in New York. As Robert Goodstein just said, the State Division of Human Rights did have a gloried time in the 1970s, but it's fallen on very hard times. All the things he described——

Chairman OWENS. I'm sorry. I was going on and on. I did want to give you an opportunity to ask questions.

Mr. SCOTT. I think you asked everything that I wanted to ask. I want to express my appreciation with this work. This is excellent testimony.

I did have one question. We heard allegations of political influence in the previous panel.

Mr. OUTTEN. I don't know whether it's occurred or not, but I have not seen that in my cases.

Chairman OWENS. On behalf of employers, you have never run into the situation?

Mr. GOODSTEIN. I have never seen that in front of EEOC. I cannot say the same thing in terms of the Division of Human Rights.

Ms. MULLIGAN. I have not seen that myself.

Mr. GOODSTEIN. Although I had a situation once where to stop the hearing, the court granted an ex parte injunction against the State agency which was clearly forbidden by statute in New York. So, sometimes people who have influence are able to use it in many different forms. I don't think it's unique.

Mr. SCOTT. Thank you, Mr. Owens.

Chairman OWENS. I'm sorry I interrupted you.

Mr. OUTTEN. No, that's okay. I'll just briefly finish up.

I was saying that what Mr. Goodstein described in the State Division about appointing counsel at the end of the process is good in theory, but in practice it just won't work because they don't have enough money. From the time that you get a reasonable cause or probable cause finding until you get a hearing is years and years because they just don't have enough lawyers to handle the cases.

In terms of your question about the national concerns, I did present testimony today on behalf of the National Employment Lawyers Association which was actually based in part on testimony

that was provided two years ago to the Senate oversight subcommittee by a colleague from Texas. That testimony had been reviewed and talked about with lawyers from all over the country. So these are not parochial concerns in New York. These are concerns that pervade the country.

Mr. GOODSTEIN. I can tell you through my contact at the Division of Human Rights that from the day a complainant with a meritorious complaint files that complaint, if they are unrepresented or represented, until the commissioner's order, which is the end of the Division of Human Rights process, the average is seven years as of today.

That includes the cases that are settled before a hearing. As I told you, they've done a very good job this year with the new conciliation.

Chairman OWENS. And would you say justice delayed is justice denied in terms of most settlements; by the time you reach them, the emotional expenditure, the wear and tear on an individual is such that whatever you get doesn't compensate for it?

Mr. GOODSTEIN. Absolutely. In the Human Rights law, there are time limits that don't exist within EEOC Title VII. Originally, the time limits were very short, and a court ruled that you could only breach them by so much; if the agency breached them by more than that, the complainant's case was dismissed, even though the complainant did nothing to cause that.

This happened once in history to a specific woman, I forget her name. The Court of Appeals in New York dismissed her case because the Division of Human Rights took too long.

She already had a decision of discrimination, so she had something against the employer. She then sued the Division in the court of claims and got her money from the State of New York.

I have a case that's taken 15 years. We have gone to the appellate division twice. They trying to enforce it now. The person who was suing died. The reason that it's in front of the Division is they only had four employees, so it's below the listing for EEOC.

But the real issue in this case is, if I don't collect the money, I intend to sue the Division of Human Rights for taking so long. For three years they didn't do anything at all, and the case just sat there waiting for an administrative law judge's decision.

Mr. OUTTEN. If I may say that justice delayed is justice denied. People go through enormous pain and aggravation and frustration while they're waiting, but substantively, the results are changed. Witnesses die, people move away, companies go out of business, evidence is lost. The result is affected, as well as the frustration that the charging parties suffers, and I'm sure the respondents are aggravated about the delays, too, although it generally works to their advantage to draw out things and to delay.

Chairman OWENS. Thank you very much. Your testimony will be useful as we move toward implementing our oversight responsibilities. It's obvious we're going to have to come to a logical conclusion that we need some amendments to revamp the law. Thank you very much for your testimony.

Our next panel consists of Margaret Jakobson, Fargo, North Dakota; Mr. Greg Richard, North Hollywood, California. Please be seated.

Feel free to highlight your testimony or any other aspect of your case you wish to address.

Ms. Jakobson, would you like a little bit more time to prepare?

Ms. JAKOBSON. Yes.

Chairman OWENS. Mr. Richard, would you like to go first?

Mr. RICHARD. Oh, sure. No problem.

STATEMENT OF GREG RICHARD

Mr. RICHARD. Good morning, Major Owens. Good morning to the select committee. My name is Greg Richard.

By education and training, I am an engineer with a specialty in mechanical engineering. I am the first individual in seven generations, from either side of my family, to graduate from a college or university.

In 1977, I qualified for and received an academic scholarship in mechanical engineering to attend the University of Tennessee at Knoxville. I received a Bachelor of Science Degree in Mechanical Engineering on March 18, 1983. The University of Tennessee's College of Engineering is rated as one of the top 10 engineering colleges of the south.

The technical organizations with which I have associated are the American Society of Mechanical Engineers, the American Institute of Aeronautics and Astronautics, and the National Society of Black Engineers. I have also passed the eight-hour national qualifying exam for certified engineer-in-training, and I am registered as such with the State of Tennessee.

Prior to May of 1991, I had nine years of cooperative and professional engineering experience in the areas of manufacturing engineering, industrial engineering, quality assurance, statistical analysis, and technical writing.

I have been employed at Martin Marietta Aerospace in Orlando, Florida; Gulf Oil Corporation in Port Arthur, Texas; Pratt & Whitney Aerospace in West Palm Beach, Florida; Duracell Batteries in Cleveland, Tennessee; Babock & Wilcox Naval Nuclear Fuel Division in Lynchburg, Virginia; and Sverdrup Technology Corporation located on Eglin Air Force Base, Florida. I have held a Department of Energy "Q" clearance and a Department of Defense Secret Clearance during my career.

In addition, I have worked on government projects such as the F100 jet engine, the nuclear reactor core propulsion system for the Sea Wolf Attack Submarine, and the Advanced Medium Range air-to-air missile.

On June 9, 1990, at an Urban League-sponsored job fair, Federal Contractor California Institute of Technology-Jet Propulsion Laboratory Quality Assurance managers Don Howard and John Vasbinder, both white males, interviewed me and offered me employment as a member of the technical staff in the Quality Assurance Flight Systems Section.

Daryl Parker, an African American, was also hired into the same section as a result of this job fair. After working at Caltech-JPL for approximately three months, I observed that of the 63 employees in my section, Daryl Parker and I were the only "professional" African Americans there. Referencing Caltech-JPL employment record obtained by the Equal Employment Opportunity Commission, I

learned that none of the white technicians had bachelor of science engineering degrees.

In fact, the persons that hired me, Don Howard, the section manager, and John Vasbinder, the section supervisor, did not possess engineering degrees.

Although I was classified as an "engineer" by Caltech-JPL, I performed the same job duties as the white "technicians" within my section. It appears to me that officials of Caltech-JPL were misrepresenting my job title/classification and actual work duties to suit the statistical need of their EEO–1 report and their affirmative action plan.

I have subsequently learned that Daryl Parker and I were the first African-American professionals to be employed in Caltech-JPL's quality assurance section based on company employment records dating back to the earlier 1960s.

After I identified and reported the numerous technically shoddy and unethical work practices such as outdated engineering working drawings being used in the spacecraft system assembly, Caltech-JPL terminated my employment on May 1, 1991 for reasons of "budget constraints."

I subsequently learned that the section in which I was employed, expanded by hiring three additional white employees two weeks before my layoff went into effect. It is contradictory for a section to have budget constraints and lay off personnel while hiring additional people to do the same work.

None of the white employees hired subsequent to my layoff possessed bachelor of science engineering degrees. In fact, one of the new employees, Carl Drye, was given a training course so that he would be certified to do the same quality assurance inspection which I was already qualified by NASA to perform.

On June 30, 1992, I requested copies of California Institute of Technology's EEO–1 and EEO–6 reports for 1978 through 1992, from the Department of Labor Office of Federal Contract Compliance Programs. The OFCCP responded, but never granted my Freedom of Information Request. OFCCP officials gave no reason why my FOIA request for Caltech's EEO–6 report was not granted.

During this same time period, I requested the EEO–1 and EEO–6 reports from the Equal Employment Opportunity Commission, also. The EEOC did in fact send me contractor Caltech's EEO–6 reports for 1981 through 1991 in October of 1992. I then proceeded to compile a workforce utilization summary analysis of these reports.

The EEOC informed me that federally-funded private educational institutions such as Caltech are required by law to submit their employment profiles biannually on an EEO–6 form while all other Federal contractors must submit their employment profiles annually.

After comparing Caltech's 1981 and 1983 EEO–6 reports, I identified a decrease of 2,609 employees, 92 percent of the University/Laboratory professional work force. This decrease continued through subsequent biannual years through 1991. I could not figure out what happened to the unrecorded 2,609 professional employees working on government contracts at Caltech.

I subsequently learned that in 1982, Caltech split its company into a subsidiary called California Institute of Technology-Jet Propulsion Laboratory. Reacting to this new information, I requested copies of Caltech-JPL's 1982 through 1992 EEO–1 reports from the EEOC.

In a letter dated December 10, 1992, the EEOC sent me copies of subsidiary Caltech-JPL's 1990 through 1992 EEO–1 reports. The EEOC informed me that they had no record of Federal contractor Caltech-JPL filing EEO–1 reports for the years 1982 through 1989.

In essence, subsidiary Caltech-JPL was in violation of 41 CFR Chapter 60–1.7 (a)(1) for eight years by not filing EEO–1 reports, while parent company Caltech accepted over $6 billion in Federal contract money with the OFCCP's approval.

It is evident that the Office for Civil Rights and Center for Statistics of the Department of Education, the Office of Federal Contract Compliance Programs of the Department of Labor, and the Equal Employment Opportunity Commission that form the "Joint Reporting Committee" have refused to communicate or operate effectively in the critical task of compliance review in Federal contracting.

In July of 1992, I also began to study the history of Caltech-JPL and their prior involvements with the OFCCP. I learned that the OFCCP conducted a compliance review at both parent company Caltech, and its subsidiary Caltech-JPL in 1984. The results of the compliance review at both companies revealed that the OFCCP found a substantial disparity of underutilization of African Americans and Latinos in the EEO job categories of Officials and Managers, and Professionals. The OFCCP advised both Federal contractors to increase their employment representation of African Americans and Latinos in these categories.

Caltech and Caltech-JPL both agreed to comply with the OFCCP recommendations, but the actual racial/ethnic group statistics within their EEO–6 and EEO–1 reports subsequent to 1984 reveal that very little was done to increase the recruitment or utilization of African Americans in the higher paying Officials & Managers and Professionals job categories that the OFCCP specified in 1984.

Please note that the utilization information calculated from the EEO–6 and EEO–1 reports both the parent company Caltech and subsidiary Caltech-JPL's reveal evidence that African Americans have been historically not recruited, not trained, and not promoted in the higher paying job categories. Caltech-JPL's excuse, as reported to the OFCCP in 1984, for the substantial underutilization of African Americans and Latinos was that, "There continues to be a small number of graduates," and "They are not likely to increase their share of any graduate degrees."

In February of 1993, I obtained a copy of Caltech-JPL's 1991 Affirmative Action Plan. After reviewing the plan, I noticed that they were using 1980 census data as a base reference to perform the eight-factor analysis in determining if minorities and women were being underutilized. The census data used by the contractor was over 12 years old and should not have been used as a baseline for evaluation. The OFCCP had been conducting their compliance review at Caltech-JPL for over a year at this point, and had not men-

tioned to the contractor that they should be using 1990 Census data for baseline comparisons and evaluation purposes.

After I brought my observation to the attention of the OFCCP, they finally requested that Caltech-JPL use 1990 census data in the eight-factor analysis within their 1993 Affirmative Action Plan.

By not performing a separate eight-factor analysis of African Americans, the OFCCP is assisting Caltech-JPL in masking their policy and practice of employment discrimination against African Americans in the Officials & Managers and Professional EEO job categories.

Caltech-JPL's 1992 EEO–1 report reveals that white employees comprised 80 percent of the company work force whereas white Americans represent only 40 percent of Los Angeles County's population per 1990 census data. Furthermore, it is my estimation that Caltech's white employees earn 90 to 95 percent of the overall payroll. You, Members of Congress, are not hearing about coincidence, you are hearing about deliberate falsification, wrongful and illegal discrimination, collusion and preferential treatment of the highest and traditional order being given to white Americans at Caltech-JPL.

The integrity of Caltech-JPL's commitment to law, especially Affirmative Action, is at least suspect when comparing their past practice of misusing government contract money in schemes reported to Congress by the General Accounting Office, such as: Using $750,000 of government contract money over a three-year period, to finance Caltech-JPL upper management children's college tuition expenses; the possible procurement, using government expense account, of alcoholic beverages during working meetings; and billing the government $150,000 for coffee and donuts over a two-year period.

On a more personal level, Caltech-JPL management had Daryl Parker and me sign blank time cards for a period of nine months. We do not know what projects or how many hours were billed to the government by Caltech-JPL for our services. Suspicion of fraudulent behavior demonstrated by Caltech-JPL's management also filters into other areas of national trust and commitment.

Adding insult to injury, the OFCCP gave Caltech-JPL their EVE award in September of 1991. My investigation revealed that Caltech-JPL DID NOT SATISFY THE NOMINATING CRITERIA for the 1991 EVE award as specified by transmittal number 154, signed by the Department of Labor-OFCCP Director. When I inquired about the nomination criteria oversight, I was informed by Ms. Annie Blackwell, Director, Division of Policy Planning and Program Development, that there were special overriding factors used in determining Caltech-JPL's eligibility for the 1991 EVE award. In my estimation, for whatever reason, the director ignored the eligibility criteria set forth in OFCCP transmittal number 154 in order to award California Institute of Technology-Jet Propulsion Laboratory the 1991 EVE award.

Caltech-JPL immediately commenced to showcase their bogus EVE award in several of the employment discrimination lawsuits filed against them during 1992–1993, including my own. By awarding Caltech-JPL the 1991 EVE award, the OFCCP assisted them in creating an illusion of being an outstanding Federal contractor

in the area of equal employment and opportunity, while in reality California Institute of Technology-Jet Propulsion Laboratory has been ruthlessly discriminating against African Americans in the Officials & Managers and Professional high paying EEO job categories for years.

Underutilization of African Americans in the Official & Managers and Professional EEO job categories reflected in EEO–6 and EEO–1 documents of Caltech in Caltech-JPL clearly reveals the end results of an unsophisticated ploy to deprive African Americans of higher wage positions at their federally-contracted facilities. Why hasn't the OFCCP been able to identify and correct this situation?

On numerous occasions OFCCP officials have stressed their battle cry to me that they do not enforce quotas. In contract, the quota paradox is that Federal contractors, such as California Institute of Technology have been exercising a hidden agenda of misclassifying and over employing whites and Asians in the high paying positions of Officials & Managers and Professionals while deliberately underutilizing highly qualified African Americans and blocking their entry into high paying EEO job categories.

On May 15, 1992, I filed an employment discrimination lawsuit against California Institute of Technology-Jet Propulsion Laboratory for violating my civil rights in the workplace. Though no onsite investigation was conducted by the Equal Employment Opportunity Commission in terms of my individual complaint at the time of my termination from Caltech-JPL, supposedly the EEOC is to conduct an onsite investigation of Caltech-JPL regarding my second complaint of reprisal by the end of March 1994.

Members of Congress, I submit to you that during the course of my litigation, California Institute of Technology requested, under NASA contract as part of an overhead account, that they be reimbursed for all their employment discrimination litigation expenses incurred by my Federal lawsuit. It appears that Caltech wants the taxpayer, you and me, to finance their individual corporate litigation expenses related to their employment discrimination practices. It is ironic that California Institute of Technology's litigation expenses for violating the Nation's civil rights laws, along with my individual civil rights, are being financed by the Federal Government and protected by Federal agencies which use taxpayer dollars to employ highly paid Federal workers at the Officials & Managers and Professional level—black and white, who do not do their simple non-technical administrative jobs of requiring compliance by Federal contractors.

It is even more ironic and painful that I, an unemployed former California Institute of Technology-Jet Propulsion Laboratory employee, should be reporting to you at my further financial expense of $40,000 over a 2.5 year period, the failure of Federal agency responsibility in achieving compliance with the Nation's laws, and that Caltech-JPL, with the billions of Federal dollars they receive, has the power to so completely take actions of reprisal and retaliation against me, a highly qualified engineer and achieving African American who has been unable for three years to gain meaningful employment. I thank you, Members of Congress.

[The prepared statement of Greg Richard follows:]

STATEMENT OF GREG K. RICHARD

By education and training, I am an engineer with a specialty in mechanical engineering. I am the first individual in seven generations, from either side of my family, to graduate from a college or university. In 1977, I qualified for and received an academic scholarship in mechanical engineering to attend the University of Tennessee at Knoxville. I received a Bachelor of Science Degree in Mechanical Engineering on March 18, 1983. The University of Tennessee's College of Engineering is rated as one of the top 10 engineering colleges of the south.

Although African Americans represented only 5 percent of the student population while I attended the University of Tennessee, I chose to attend it over such African-American institutions as Tennessee State University, Prairie View Agriculture & Mechanical University, Tuskeegee University, and Howard University because engineering in the U.S. is not predominantly African American, i.e., I wanted an academic experience that would culturally parallel life in the U.S. engineering work force.

The technical organizations with which I have associated are the American Society of Mechanical Engineers [ASME], the American Institute of Aeronautics and Astronautics [AIAA], and the National Society of Black Engineers [NSBE]. I have also passed the eight-hour national qualifying exam for certified engineer-in-training, and I am registered as such with the State of Tennessee. Prior to May of 1991, I had nine years of cooperative and professional engineering experience in the areas of manufacturing engineering, industrial engineering, quality assurance, statistical analysis, and technical writing.

I have been employed at Martin Marietta Aerospace in Orlando, Florida; Gulf Oil Corporation in Port Arthur, Texas; Pratt & Whitney Aerospace in West Palm Beach, Florida; Duracell Batteries in Cleveland, Tennessee; Babock & Wilcox Naval Nuclear Fuel Division in Lynchburg, Virginia; and Sverdrup Technology Corporation located on Eglin Air Force Base, Florida. I have held a Department of Energy "Q" clearance and a Department of Defense Secret Clearance during my career. In addition, I have worked on government projects such as the F100 jet engine, the nuclear reactor core [propulsion system] for the Sea Wolf Attack Submarine, and the Advanced Medium Range Air-to-Air Missile.

On June 9, 1990, at an Urban League-sponsored job fair, Federal Contractor California Institute of Technology-Jet Propulsion Laboratory [Caltec-JPL] Quality Assurance managers Don Howard and John Vasbinder [both white males] interviewed me and offered me employment as a member of the technical staff in the Quality Assurance Flight Systems Section. Daryl Parker, an African American, was also hired into the same section as a result of this job fair.

After working at Caltech-JPL for approximately three months, I observed that of the 63 employees in my section, Daryl Parker and I were the only "professional" African Americans there. Referencing Caltech-JPL employment records obtained by the Equal Employment Opportunity Commission [EEOC], I learned that none of the white technicians had bachelor of science engineering degrees. In fact, the persons that hired me, Don Howard, the section manager, and John Vasbinder, the section supervisor, did not possess engineering degrees.

Although I was classified as an "engineer" by Caltech-JPL, I performed the same job duties as the white "technicians" within my section. It appears to me that officials of Caltech-JPL were misrepresenting my job title/classification and actual work duties to suit the statistical need of their EEO–1 report and their affirmative action plan.

I have subsequently learned that Daryl Parker and I were the first African-American "professionals" to be employed in Caltech-JPL's quality assurance section based on company employment records dating back to the early 1960s.

After I identified and reported to Caltech–JPL officials numerous technically shoddy and unethical work practices such as outdated engineering working drawings being used in spacecraft system assembly, Caltech-JPL terminated my employment on May 1, 1991 for reasons of "budget constraints." I subsequently learned that the section in which I was employed, expanded by hiring three additional white employees two weeks before my layoff went into effect. It is contradictory for a section to have "budget constraints" and lay personnel off while hiring additional people to do the same work. None of the white employees hired subsequent to my layoff possessed bachelor of science egineering degrees. In fact, one of the new employees, Carl Drye, was given a training course so that he would be certified to do the same quality assurance inspections which I was already qualified by NASA to perform.

I reported this employment discrimination to the EEOC on May 16, 1991.

On June 30, 1992, I requested copies of California Institute of Technology's EEO–1 and EEO–6 reports for 1978 through 1992, from the Department of Labor Office

of Federal Contract Compliance Programs. The OFCCP responded, but never granted my freedom of information request. OFCCP officials gave no reason why my FOIA request for Caltech's EEO–6 report was not granted.

During this same time period I requested the EEO–1 and EEO–6 reports from the Equal Employment Opportunity Commission [EEOC], also. The EEOC did in fact send me contractor Federal Contractor Caltech's 1981 through 1991 EEO–6 reports in October of 1992. I then proceeded to compile a workforce utilization summary analysis of Caltech's 1981 through 1991 EEO–6 reports [See Attachment I(a)). The EEOC informed me that federally-funded private educational institutions such as Caltech *are required by law* to submit their employment profiles biannually on EEO–6 forms while all other Federal contractors must submit their employment profiles annually.

After comparing Caltech's 1981 and 1983 EEO–6 reports, I identified a decrease of 2,609 employees, [92 percent of the University/Laboratory professional work force]. This decrease continued through subsequent biannual years through 1991. I could not figure out what happened to the unrecorded 2,609 professional employees working on government contracts at Caltech.

I subsequently learned that Caltech split their company into a subsidiary in 1982 called California Institute of Technology-Jet Propulsion Laboratory. Reacting to this new information, I requested copies of Caltech-JPL's 1982 through 1992 EEO–1 reports from the EEOC.

In a letter dated December 10, 1992, the EEOC sent me copies of subsidiary Caltech-JPL's 1990 through 1992 EEO–1 reports. The EEOC informed me that they had no record of Federal contractor Caltech-JPL filing EEO–1 reports for the years 1982 through 1989.

In essence, subsidiary Caltech-JPL was in violation of 41 CFR Chapter 60–1.7 (a)(1) for eight years by not filing their EEO–1 reports, while parent company Caltech accepted over $6 billion in Federal contract money with the OFCCP's approval.

It is evident that the Office for Civil Rights [OCR] and Center for Statistics of the Department of Education, the Office of Federal Contract Compliance Programs [OFCCP] of the Department of Labor, and the Equal Employment Opportunity Commission [EEOC] that forms the "Joint Reporting Committee" have refused to communicate or operate effectively in the critical task of compliance review in Federal contracting.

In July of 1992, I also began to study the history of Caltech-JPL and their prior involvements with the OFCCP. I learned that the OFCCP conducted a compliance review at both parent company Caltech, and its subsidiary Caltech-JPL in 1984. The results of the compliance review at both companies revealed that the OFCCP found a "substantial disparity of underutilization" of African Americans and Latinos in the Officials and Managers, and Professionals EEO job categories. The OFCCP advised both Federal contractors to increase their employment representation of African Americans and Latinos in Officials & Managers and Professional job categories.

Caltech and Caltech-JPL both agreed to comply with the OFCCP recommendations, but the actual racial/ethnic group statistics within their EEO–6 and EEO–1 reports subsequent to 1984 reveal that very little was done to increase the recruitment *or* utilization of African Americans in the higher paying Officials & Managers and Professional EEO job categories that the OFCCP specified in 1984.

Please note that the utilization information calculated from both parent company Caltech and subsidiary Caltech-JPL's EEO–6 and EEO–1 reports reveal evidence that African Americans have been historically *not recruited, not trained,* and *not promoted* in the higher paying Officials & Managers and Professional EEO job categories. Caltech-JPL's excuse, as reported to the OFCCP in 1984, for the substantial underutilization of African Americans and Latinos was that, "There continues to be a small number of graduates," and "... They are not likely to increase their share of any graduate degrees."

In February of 1993, I obtained a copy of Caltech-JPL's 1991 Affirmative Action Plan. After reviewing Caltech–JPL's plan, I noticed that they were using 1980 census data as a base reference to perform the eight-factor analysis in determining if minorities and women were being underutilized. The census data used by the contractor was over 12 years old and should not have been used as a baseline for evaluation. The OFCCP had been conducting their compliance review at Caltech-JPL for over a year at this point, and had not mentioned to the contractor that they should be using 1990 Census data for baseline comparisons and evaluation purposes.

After I brought my observation to the attention of the OFCCP, they finally requested that Caltech-JPL use 1990 census data in the eight-factor analysis within their 1993 Affirmative Action Plan.

By not performing a separate eight-factor analysis of African Americans, the OFCCP is assisting Caltech-JPL in MASKING their policy and practice of employment discrimination against African Americans in the Officials & Managers and Professional EEO job categories.

Caltech-JPL's 1992 EEO–1 report reveals that white employees comprised 80 percent of the company work force, whereas white Americans represent only 40 percent of Los Angeles County's population per 1990 census data. Furthermore, it is my estimation that Caltech's white employees earn 90 to 95 percent of the overall payroll. You, Members of Congress, are not hearing about coincidence, you are hearing about deliberate falsification, wrongful and illegal discrimination, collusion and preferential treatment of the highest and traditional order being given to white Americans at Caltech-JPL.

The integrity of Caltech-JPL's commitment to law, especially Affirmative Action, is at least suspect when comparing their past practice of misusing government contract money in schemes reported to Congress by the General Accounting Office, such as: Using $750,000 of government contract money over a three-year period, to finance Caltech-JPL upper management children's college tuition expenses; the possible procurement, using government expense accounts for the purchase of alcoholic beverages during "working meetings"; and billing the government $150,000 for "coffee and donuts" over a two-year period.

On a more personal level, Caltech-JPL management had Daryl Parker and me sign blank time cards for a period of nine months. We do not know what projects or how many hours were billed to the government by Caltech-JPL for our services. Suspicion of fraudulent behavior demonstrated by Caltech-JPL's management also filters into other areas of national trust and commitment.

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Underutilization of African Americans in the Officials & Managers and Professional EEO job categories reflected in EEO–6 and EEO–1 documents [1978 through 1992] of Caltech and Caltech-JPL clearly reveal the end results of an unsophisticated ploy to deprive African Americans of higher wage positions at their federally contracted facilities. Why hasn't the OFCCP been able to identify and correct this situation?

On numerous occasions OFCCP officials have stressed their battle cry to me that they do not enforce quotas. In contract, the "quota paradox" is that Federal contractors such as California Institute of Technology have been exercising a hidden agenda of misclassifying and over employing whites and Asians in the high paying positions of Officials & Managers and Professionals while deliberately underutilizing highly qualified African Americans and blocking their entry into high paying EEO job categories.

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Members of Congress, I submit to you that during the course of my litigation, California Institute of Technology requested, under NASA contract [NAS7–918] as part of an overhead account, that they be reimbursed for all their employment discrimination litigation expenses incurred by my Federal lawsuit. It appears that Caltech wants the taxpayer, you and me, to finance their individual corporate litiga-

tion expenses related to their employment discrimination practices. It is ironic that California Institute of Technology's litigation expenses for violating the Nation's civil rights laws, along with my individual civil rights, are being financed by the Federal Government and protected by Federal agencies which use taxpayer dollars to employ highly paid Federal workers at the Officials & Managers and Professional level—black and white, who do not do their simple non-technical administrative jobs of requiring compliance by Federal contractors.

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I thank you, Members of Congress.

Chairman OWENS. Ms. Jakobson.

STATEMENT OF MARGARET JAKOBSON

Ms. JAKOBSON. I'd like to thank my copanel member, Mr. Richard, for giving me time to set up.

Ladies and gentlemen, Chairman Owens and honorable members of the Subcommittee on Select Education and Civil Rights, my name is Margaret Jakobson, Department of Education, Office for Civil Rights Complainant. I'm happy that my mother, Joann, is able to make it with me here today as she has been through the continuing two-year process of what it means to be a Department of Education Office for Civil Rights Complainant.

Prior to becoming 05922099, only a number, I was just a female student who transferred to Moorehead State University of Moorehead, Minnesota, specifically to compete in intercollegiate speech in 11 category events including drama, poetry, prose, dramatic duo and public speaking events.

During my third year in 1991–1992, I began complaining about preferential treatment given to male students in obtaining competition selections and models, the processes which excluded females from competitive opportunities, and the hostile educational and coaching environment. It began verbally on the basis of our sex and it continued throughout the year.

Some of the voiced statements by coaches to females were, "Women are the dumbest species on the face of the earth." "If you don't like my coaching methods, you can just leave." "You would be an embarrassment to Moorehead State University." "You're such a mess." "This is not college material." "We're canceling night practice because just two women showed up." "You will be the recipient, the recipient of whatever negativity is perceived." "Yeah. And I say suck it up, Okay."

In October of 1991 I went to the department chair to complain about the hostile environment. The Monday immediately following, the director and the assistant director stated that no one had to go to the department chair anymore and instead, the two male coaches stepped up the level of harassment.

I discontinued practice sessions with the assistant director to stop the verbal harassment. In return, on December 6, 1991 at a tournament function he insisted that I dance with him. I refused and he persisted, and as I told DOE–OCR, while dancing with me,

he became increasingly and excessively suggestive, sexually familiar and erotic until I walked away from him.

He proceeded to remove his clothing while continuing to dance erotically in an exhibitionistic manner. As one of my female teammates stated, Larry stripped this weekend. Females continued to leave the team. In February of 1992, I and a female last removed from competition were taken out of further rounds. We would never compete in national tournaments that we qualified for.

Now, the male members of our team in the university land ogled Playboy while the van traveled down the road at 45 to 65 miles per hour and I was physically restrained in a seat belt. The president of the college, Roland Dill, has answered the Minnesota Department of Human Rights by saying that written articles from Playboy are considered a legitimate resource of material in forensics.

Immediately following the incident, the criteria for travel to the State tournament voiced by the coaches was: "Are you fun in a van?"

During the past five years, the university has maintained a 60 percent plus female undergraduate enrollment—fee payers that are assessed to support athletic and academic competitive teams. From the time I began complaining about discrimination on the basis of sex as the visual aid shows, my team consisted of 31 female team members. Now there are only seven.

In the past two years, I haven't even been at that university. Now, this is at a 60 percent plus female undergraduate enrollment school. After I complained about the hostile environment and about the discrimination, the university sentenced me to seven weeks of psychological counseling for not being supportive of all team members and a positive representative of Moorehead State University.

I appealed the removal of myself and female number 17 to the department chair, the division dean and president of the college. I requested a specific explanation of how I was not supportive and positive on eight different occasions. At no time was a list of charges ever produced. There was no hearing for myself nor for female number 17 under the Minnesota University board regulations and our year of competing ended.

In March 1992, I filed with DOE–OCR Region 5 as a female member of a speech team protected under Title IX of the educational amendments of 1972. Title IX states that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Because we competed in an academic competitive sport, I am not granted the same rights under Title IX as a basketball player. There is no proportionality testing for academic competitive teams. In its investigation of my complaint, DOE–OCR obtained no actual records from the school, no tournament cumulative score sheets, trip reports, practice sheets, sign-up sheets, financial records, no affirmative action plan or university compliance reports.

DOE–OCR relied on a 13-page letter containing misrepresentations, out and out lies and a well-constructed scheme to justify denying female students their rights, which put Moorehead State

University into compliance with DOE–OCR, and the recipient of $5.8 million.

DOE–OCR investigator Tom Adams stated the DOE–OCR has no subpoena power and they take no sworn testimony. Catherine Martin, the branch chief, said it would not be necessary to interview female students treated differently.

Finally after the persistent requests of senators and congressmen, they interviewed two out of the 33 female students that we had documented. DOE–OCR has refused complainants a notetaker or investigator taping complainants or witnesses to prevent material facts from being omitted from the case file such as when the department chair admitted to my DOE–OCR investigator that I went to her in October and complained about the hostile environment.

DOE–OCR stated that procedures disallow complainants from taping two-party conversations so that there will be an accurate record of what is actually transpiring. From April to May 1992, DOE–OCR separated the complaint into eight allegations.

In May of 1992, the allegation of sexual harassment was deemed complete and we provided the additional information as to all of these allegations, and an additional allegation was added as to the psychological gauntlet I and female members of MSU forensic survived.

In July of 1992, DOE–OCR notified us that contrary to what they had told us previously, they would not investigate the allegations of sexual harassment or seven of the other allegations that they had located; instead, they chose one allegation.

All of the evidence regarding the hostile educational and coaching environment was not to be discussed as part of the foundation evidence as to female members being denied participation in and benefits of the AFA district qualifier. DOE–OCR's Tom Adams stated that DOE–OCR has to be myopic. Myopic is defined as a lack of insight or discernment. Obtuse. Lacking in sharpness of intellect.

Now, let me tell you that's exactly what I'm looking for in an investigator. Give me that myopic one any day. Sometimes when I am talking to OCR, I just want to take the phone and say, "Excuse me. Excuse me. Have you had one too many brain freezes down at the 7-Eleven?"

University officials admitted that they compiled an entire three-year response for DOE–OCR with no tournament cumulative score sheets, i.e., actual records. Now, what's been MSU's response? Oh, they're getting back to DOE–OCR sometime.

University officials claimed a phantom criteria that stated, If vehicle and financial constraints require a limited team size—not those were not the course requirements. A male with three tournaments total met the alleged criteria and attended the national qualifier. Well, 30 women with the same number of tournaments or more could not meet the criteria.

The university had no vehicle or financial constraints. They carry forward one-fifth of their entire budget. Rather than take females, who had beaten males by cumulative score sheets or who had no male competition whatsoever, the coach bought video equipment that he had access to right there on the campus.

I sent DOE–OCR the score sheets to show that we had beaten the males. DOE–OCR couldn't even read the tournament score sheets to show correctly how the slots were filled in our letter of findings. Yes, I even have lies in my letters of findings, lies that are passed on by DOE–OCR.

I'll be happy to detail the lies that the University provided DOE–OCR. How can I prove their assertions are lies? I got the university's actual records. If you lie to a Federal agency or department under 18 U.S. Code, section 1001, it is a crime. If you lie to the IRS after you make $5.8 million, you are a criminal. The University lied for $5.8 million and that makes them criminals and DOE–OCR drove the get away car.

Now how did the procedures affect our case? DOE–OCR, in sanctioning discrimination in my case, sanctions discrimination in every case. DOE–OCR allowed MSU to make up another lie for every lie that I countered with the truth. They gave MSU a Federal decision to use against me in a State case which under the same documents addressed all the incidents and issues.

DOE–OCR has, through their ruling, made it impossible for me to get an attorney. DOE–OCR has seen me leave a competitive sport I started in 20 years ago. I finally have an agreement that one of my harasser coaches won't physically touch me anymore. But not so fast; it came from another university. This can happen to any student under Title VI, Title IX, ADA or age discrimination law.

In the past two years, my family has been totally debilitated. My father who was once a regional model cities director, a man who believed in the government, a man who said, "You can make a difference," has been totally ruined. I therefore dedicate this day to him, to female number 17, and to my niece, Robin, who in the past two years was born, learned to walk, talk, dance and sing, all during the time that DOE–OCR has refused to enforce the law.

[The prepared statement of Margaret Jakobson follows:]

CONGRESSIONAL TESTIMONY

House Subcommittee on

SELECT EDUCATION

and

CIVIL RIGHTS

Ladies, gentlemen and honorable members of the Subcommittee on Select Education and Civil Rights. My name is Margaret Jakobson, Department of Education, Office for Civil Rights Complainant. I'm here to examine with you, OCR policies and procedures, how those procedures affected our case, and finally, how 18 U.S. Code §1001 can be used to enforce the law through the U.S. Department of Justice.

In March, 1992, I called DOE-OCR, Region V., as a female member of a Speech Team. [Forensics is the formal title of our sport.] Because we competed in an ACADEMIC competitive sport, I was not granted the same rights under TITLE IX as a basketball player. There is no PROPORTIONALITY testing for ACADEMIC competitive teams. Furthermore, DOE-OCR obtained no actual RECORDS! No tournament "cumulative score sheets," Trip Reports, Practice Sheets, Sign-Up Sheets, Financial Records, and no Affirmative Action Plan or university Compliance reports. A thirteen page (13 pg.) letter containing misrepresentations, out-and-out lies and a well-constructed scheme to justify denying females their rights put the university into compliance with DOE-OCR, and recepient of 5.8 million dollars.

DOE-OCR investigator, Tom Adams stated that DOE-OCR has no SUPOENA POWER and takes NO SWORN Testimony. Catherine Martin, Branch Chief, said it would not be necessary to interview female students treated differently. DOE-OCR has refused complainants a notetaker or the investigators taping complainants or witnesses to prevent material facts from being omitted from the case file. DOE-OCR stated, procedures DISALLOW complainants from taping two-party conversations, so there will be an accurate record of what has actually transpired.

During the past five years the university has maintained a sixty percent plus (60% +) FEMALE undergraduate enrollment .. fee payers assessed to support Athletic and Academic competitive teams.

From the time I began complaining about discrimination on the basis of sex, the team I competed on has gone from thirty-one (31) females to only seven (7); and the past two years I haven't even been at that university.

How did the OCR procedures affect our case? DOE-OCR sanctioned discrimination. DOE-OCR allowed MSU to make up another lie for every lie I countered with the truth. They gave MSU a federal decision to use against me in a State case, which under the same documents addressed all the issues and incidents. DOE-OCR has made it impossible for me to get an attorney. DOE-OCR has seen me leave a competitive sport I started in twenty years (20 yrs.) ago.

I finally have an agreement that one of my harassers won't physically touch me anymore. Uh,uh ... not so fast. It came from another university.

University officials admit they compiled a three year response stating who was qualified for DOE-OCR with NO tournament score sheets, i.e., ACTUAL RECORDS! What has been MSU's response? They are getting back to DOE-OCR.

University officials claimed a phantom criteria for selection that was not the course requirements. It stated: *"If vehicle and financial constraints REQUIRE a limited team size, ..."*

A male with three tournaments total met the "alleged" criteria and attended the National Qualifier; while thirty (30) women with the same number of tournaments or more could not meet the criteria.

I complained about discrimination, the hostile environment and refused to break the federal copyright law. The university sentenced me to seven weeks (7 wks.) of psychological counselling for not being supportive of all "fellow" team members and a "positive" representative of the university.

The male members of the team oogled "Playboy" in a university van traveling 45 to 65 miles per hour; while I was physically restrained by a seat-belt. President Dille's response to the Minnesota Department of Human Rights was: *"written articles from Playboy are considered a legitimate resource material in forensics."* Immediately following that incident, the coaches voiced criteria was, *"Are you fun in the van?"*

DOE-OCR's Tom Adams refused to discuss the males' behavior or the stripping coach. He told me they have to be "MYOPIC." Myopic is defined as: "lack of insight or discernment," "obtuse," "lacking in sharpness of intellect." Let me tell you, that is EXACTLY what I'm looking for in an investigator. Give me the myopic one any day! Sometimes ... when I'm talking to OCR ... I just want to say, "Excuse me, excuse me ... Have you had one too many brain-freezes at the "7-11"?

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I will be happy to detail the lies the university provided to DOE-OCR in their thirteen page (13 pg.) letter for any person here today. How can I prove their assertions are lies ... the university's own actual records!

If you lie to a federal agency or department under 18 U.S. Code §1001, it is a crime. If you make 5.8 million dollars and lie to I.R.S., you are a criminal. The university lied for 5.8 million dollars ... that makes them criminals ... and DOE-OCR drove the getaway car.

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Margaret A. Jakobson

March 24, 1994
Date of Testimony

Additional Inquiries Contact:
Margaret A. Jakobson
806 Main Avenue
Fargo, North Dakota 58103
Telephone: [701] 232-2772

* * *

DECLINING FEMALE PARTICIPATION

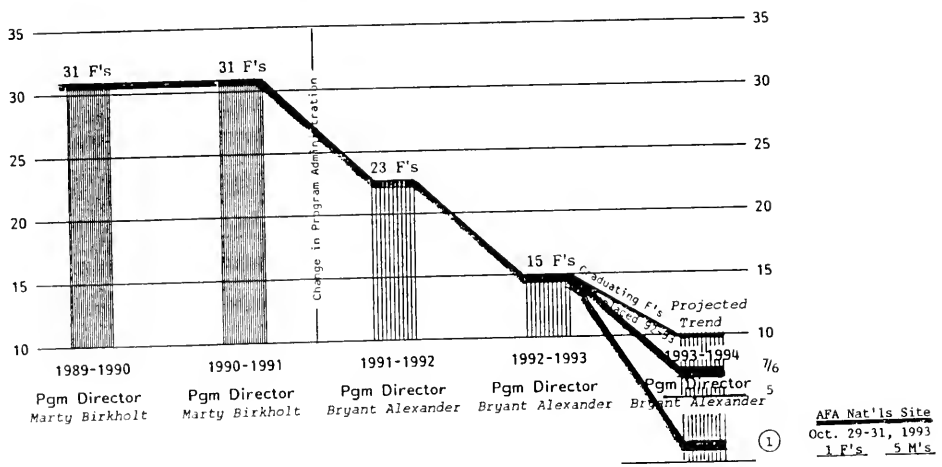
MOORHEAD STATE UNIVERSITY

1989 thru 1991

1991 thru 1993

M.S.U. FORENSICS

MSU Forensics Sweatshirt Logo drawn by: , Freshman

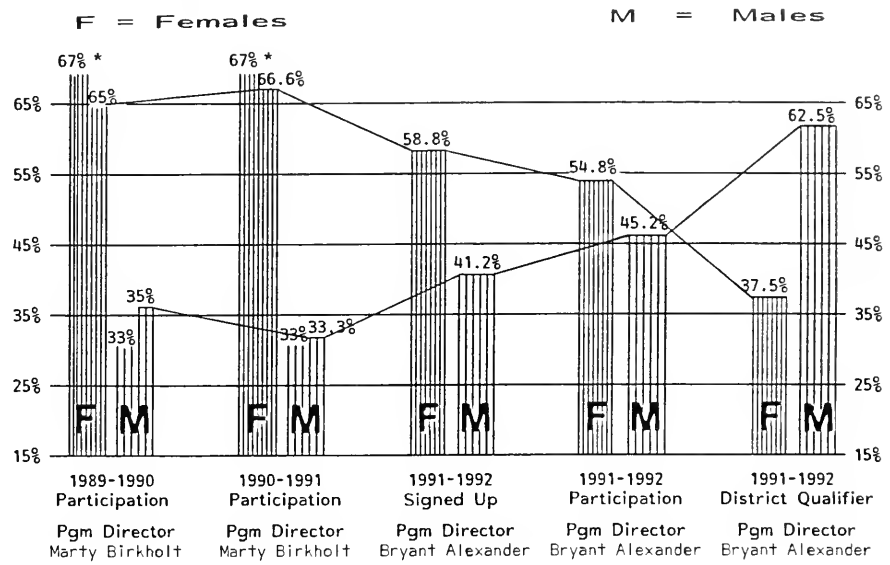


AFA Nat'ls Site
Oct. 29-31, 1993
1 F's 5 M's

TABLE II.

MOORHEAD STATE UNIVERSITY

1991-1992 GENDER/SEX REVERSAL of FORENSICS TEAM RATIOS



* Alleged MSU Participation [Trip Reports & Budget Requests Refused .. 1989-1990, 1990-1991.]

HOSTILE ENVIRONMENTS

.... CREATE ....

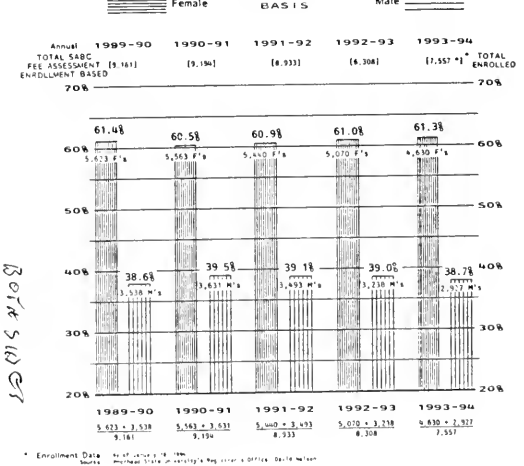
DISPROPORTIONALITY

TABLE I.

MOORHEAD STATE UNIVERSITY

Total Student Undergraduate Enrollment
1989-1990 through 1993-1994

SABC ENROLLMENT POOL BASE



* Enrollment Data as of October 15, 1994
Source: Moorhead State University's Registrar's Office, Dorothy Nelson

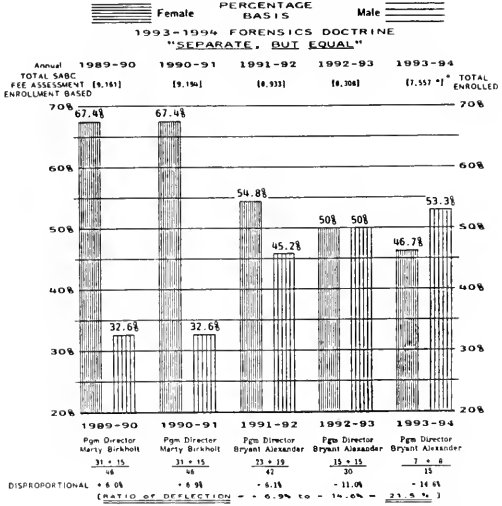
Form 3 (1)

TABLE Ic.

MOORHEAD STATE UNIVERSITY

Total Student Undergraduate Enrollment
1989-1990 through 1993-1994

MSU's FORENSICS PARTICIPATION



NOTE: The numbers hereon have not been verified by the complainant, but are reflective of representations made by Moorhead State University. Additional evidence indicates that the "SEPARATE, BUT EQUAL" policy instituted for the 1993-1994 forensics program has resulted in inequitable opportunities for Female #17, as well as other females, who have sought the "Special Permission" from the Director of the Forensics program to participate beyond the course requirements

[RATIO of DEFLECTION = + 6.9% to - 14.6% = 21.5%]

HOSTILE ENVIRONMENTS

.... CAUSE ....

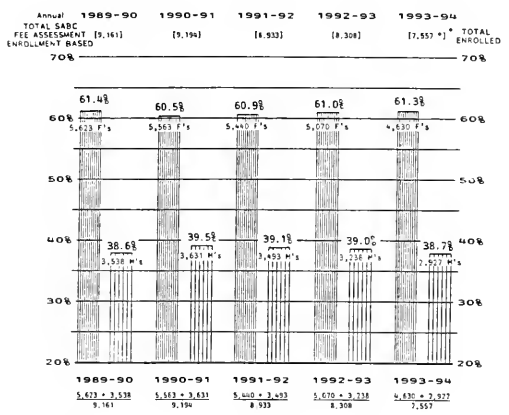
DISPROPORTIONALITY

TABLE I.

MOORHEAD STATE UNIVERSITY

Total Student Undergraduate Enrollment
1989-1990 through 1993-1994

SABC ENROLLMENT POOL BASE



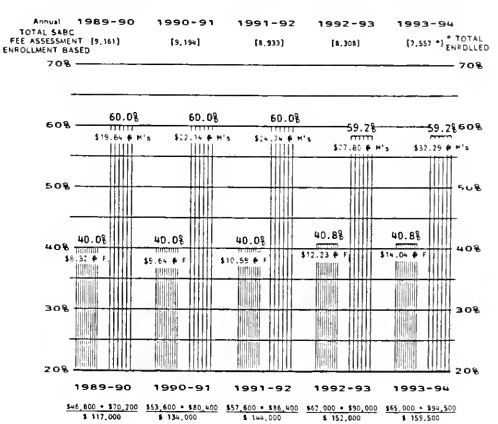
* Enrollment Data As of January 15, 1994
Source Moorhead State University's Registrar's Office, David Nelson

TABLE Ia.

MOORHEAD STATE UNIVERSITY

Total Student Undergraduate Enrollment
1989-1990 through 1993-1994

FEMALE & MALE ATHLETIC FUNDING



[Page Two of Three Pages received from MSU.]

MOORHEAD STATE UNIVERSITY — ENROLLMENT 4.93

ENROLLMENT DATA FOR SELECTED GROUPS
FALL 1989 THROUGH FALL 1993

SOURCE: John V. Tandberg, Registrar — DATE: December 1993

	Fall 1989	Fall 1990	Fall 1991	Fall 1992	Fall 1993
FOREIGN STUDENTS					
Male	103	133	137	108	89
Female	42	70	84	60	55
Totals	145	203	221	168	144
EXTERNAL STUDIES ENROLLED STUDENTS					
Male	79	68	60	44	35
Female	319	326	289	256	211
Totals	398	394	349	300	246
MINORITY STUDENTS (Foreign Students not included)					
Male	84	91	99	119	120
Female	98	131	140	129	161
Totals	182	222	239	248	281
NORTH DAKOTA RECIPROCITY STUDENTS					
Male	1036	1073	1022	927	810
Female	1930	1939	1825	1692	1477
Totals	2966	3012	2847	2619	2287
MALE/FEMALE STUDENTS					
Full-Time Male	2949	3102	3000	2757	2504
Part-Time Male	589	529	493	481	423
Total Male	3538	3631	3493	3238	2927
Full-Time Female	4340	4424	4358	3998	3649
Part-Time Female	1283	1139	1082	1072	981
Total Female	5623	5563	5440	5070	4630
Total Students	9161	9194	8933	8308	7557

[Page Three of Five Pages received from MSU SABC Business Office.]

	FY88	FY89	FY90	FY91	FY92	FY93
Discretionary:						
Activity/Extra-curricular						
Advocate	5,500	5,500	5,500	5,500	5,500	5,500
CAB (SUPB)	28,000	30,000	33,000	36,375	42,000	45,000
Homecoming	5,000	2,500	2,500	2,500	2,500	2,500
KMSC	5,500	5,913	6,751	7,600	6,945	6,700
Intramurals	14,000	14,000	14,000	14,000	18,000	25,000
Recreational Swim	6,000	6,730	6,730	6,587	7,532	7,675
Senate	5,100	6,000	6,500	6,500	7,361	8,200
T.F.Soccer-Women						1,000
T.F.Soccer-Men						1,000
Volunteer Connection				1,479	1,000	1,000
SUBTOTALS	69,100	70,643	74,981	80,541	90,838	103,575
Athletics						
Men's Athletics	63,000	70,200	80,400	86,400	90,000	94,500
Cheerleaders	1,000	500	690	2,000	2,000	2,000
Women's Athletics	42,000	46,800	53,600	57,600	62,000	65,000
W. BB Scout Team				2,000	2,000	2,000
Post Season	11,000	11,000	25,000	25,000	30,000	30,000
Training Room 0	0	0	3,410	6,900	9,257	10,438	12,000
SUBTOTALS	117,000	131,910	166,590	182,257	196,438	205,500

MOORHEAD
STATE UNIVERSITY

Moorhead, Minnesota 56563

November 18, 1993

argaret Jakobson
806 Main Avenue
Fargo ND 58103

Dear Ms. Jakobson:

President Dille has asked that I reply to your letter dated November 4, 1993. To be honest, I am surprised to learn that you are communicating directly with Moorhead State on these matters. I have previously indicated (cf. my letter dated May 3, 1993) to you that we will not be able to respond to issues covered under your previous complaint to the Department of Human Rights due to the fact that the investigation is ongoing.

As for your request for "cumulative" score sheets, Dr. Gaede informs me that these are not maintained beyond the current year of competition. I am able to provide you with two other items of information relating to your letter: Mr. Schnoor no longer works for Moorhead State and Mr. Bryant is unaware of any negative behavior on the part of the MSU Forensics team on October 8.

Perhaps these additional facts will be of interest to you as you await the outcome of your formal complaint to the Department of Human Rights.

Sincerely,

Robert S. Badal

obert S. Badal, Dean
Arts and Humanities

On October 8, 1993, Mr. Bryant Alexander was taking his "CRE" at Moorhead State University in Moorhead, Minnesota; while the MSU Forensics team was competing in a Forensics Tournament -- "SUCARLOAF CLASSIC" -- at the University of Minnesota - Winona, Winona, Minnesota, approximately 349 miles away from Moorhead, Minnesota.

MOORHEAD
STATE UNIVERSITY

Moorhead, Minnesota 56563

DEPARTMENT OF SPEECH COMMUNICATION AND THEATRE ARTS

February 15, 1994

Margaret Jakobson
806 Main Avenue
Fargo, ND 58103

Dear Ms. Jakobson:

This letter is the result of a phone conversation I had last Friday with Ms. Amy Truelove from the Chicago Office for Civil Rights, U. S. Department of Education. She requested that I attempt to verify the number of rounds of forensic competition in which you participated on behalf of Moorhead State University during the 1989-90, 1990-91, and 1991-92 academic years.

In my files I have the summary trip reports for the tournaments at which our team competed. You may remember that each report is in the form of a memo from either the Director or Assistant Director of Forensics to the Department Chair. I became chair of the department in September of 1990 so I only have copies of the trip reports from 1990-91 and 1991-92; no file of such reports held by my predecessor was turned over to me so I can only assume none currently exists. Each trip report lists the names of MSU students who competed at a particular tournament and the events in which they competed. At the bottom of the report is a list of those students who placed (won awards).

The attached list indicates tournaments at which you competed and estimates the number of rounds (assuming 3 rounds per event at most tournaments, 2 rounds per event at a VFL, and 1 final round for any tournament at which you won an award). The total for 1990-91 comes to 138; the total for 1991-92 comes to 203; the combined total is 341. I know you participated in several tournaments during the 1989-90 academic year and would therefore be willing to certify that you have competed in over 400 rounds for the MSU forensics team. I hope this estimate will provide you with the information you need.

Sincerely,

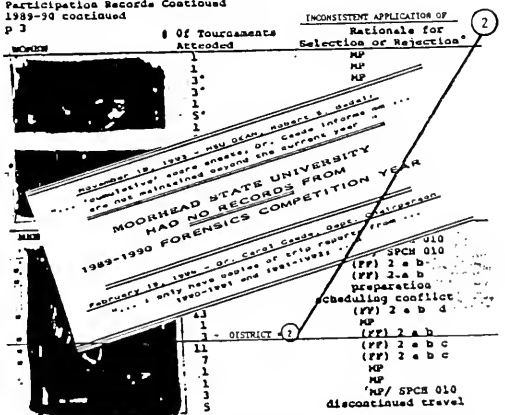
Carol Gaede

Carol Gaede, Ph.D.
Professor of Speech and Department Chair

attach.
cc: Bryant Alexander, Director of Forensics - MSU
Robert Badal, Dean of Arts & Humanities - MSU
Amy Truelove, Office for Civil Rights, U. S. Department of Education

MSU's DOCUMENT Preparation DATE: September 16, 1992

MSU Forensics Information
Participation Records Continued
1989-90 continued
p 3



On March 8-10, 1990 the MSU Forensic team travelled to St. Olaf College in Northfield, MN for the District Qualifier. [redacted] served as coaches and judges. The following students participated in the events indicated::

SLOTS		
2½	2903 - TRICIA BARTELL *	Prose, Duo, After Dinner Speaking [2 Prepped & 1 Paired]
2½	2901 - BRENDA BETZOLD *	Impromptu, Informative, Duo [1 Prepped, 1 Non-Prepped & 1 Paired]
3	2910 - AUDRA COLVERT *	Informative, Impromptu, Extemp [1 Prepped, 2 Non-Prepped]
3½	2911 - MINDY FENSKE *	Impromptu, Duo, Extemp, Poetry [2 Non-Prepped, 1 Prepped & 1 Paired]
1	2916 - MATT GRESETH *	Prose [1 Prepped Event]
1	2906 - SHELLY HUFF *	Program Oral Interp. [1 Prepped Event]
4	2918 - MARGI JAKOBSON *	Persuade, Program Oral Interp, After Dinner, Poetry [4 Prepped Events]
2	2909 - STEVEN JOHNSON *	Impromptu, Informative [1 Prepped & 1 Non-Prepped Events]
2	2919 - SARAH KALLIOKSKI *	- Program Oral Interp, Poetry [2 Prepped Events]
2½	2912 - SARA LARSON *	Duo, Dramatic Interp, Poetry [2 Prepped & 1 Paired Events]
1	2907 - JUSTIN LEGGETT *	After Dioner Speaking [1 Prepped Event]
2½	2904 - RANDY LONG *	Prose, Duo, Dramatic Interp. [2 Prepped & 1 Paired Events]
4	2914 - PENNI PIER *	Prose, Program Oral Interp, Poetry, Drama [4 Prepped Events]
1½	2902 - SCOTT SAFFERT *	Duo, Dramatic Interp [1 Prepped & 1 Paired Events]
1	2908 - SCOTT SORUM *	Dramatic Interp [1 Prepped Event]
1	2917 - BETH TOBIN *	Informative [1 Prepped Event]
2	2915 - WENDY WILKINSON *	Prose, Persuade [2 Prepped Events]

37 Slots Filled - 55 Slots Available = 18 OPEN SLOTS
* "CUM SHEETS" from DISTRICT IV INTERQUALIFICATION TOURNAMENT, St. Olaf College, Mar. 9-10, 1990.

TABLE III.

Page 2., ¶ 6. [continued from Page 2. of Page 2., ¶ 6.)

The respondents broke SIX out of SIX of their "COMMITMENTS" to 1991-1992 MSU Female Forensics students, as follows:

"1.) You will be given every possible opportunity to compete, within the constraints of the program."

DISTRICT TOURNAMENT EVENT	SLOTS LEFT OPEN	FEMALES not TAKEN
DRAMATIC INTERP (DI)	2 out of 5	#18

[Female #18 had beaten Male nos. 4 & 7, at VFL #2 (2/12/1 923 & SDSU Gunny Bag (2/22/921.) The SDSU Gunny Bag is the last Forensics Tournament prior to District IV Qualifier. [NOTE: Male nos 4 & 7 are listed as District IV competitors #1804 and #1805 respectively.]

COMMUNICATION ANALYSIS	3 out of 5	#8

[Female #8 had beaten Male nos. 1 & 3 at VFL #2 (2/12/1992), but was EXCEPTION -- Problem intervention!] [NOTE: Male nos. 1 & 3 are listed as District IV competitors #1809 and #1806 respectively]

DRAMATIC DUO	2 out of 5	#17

[Female #17 was removed from competition even though she had a qualifying AFA leg, in preference to Male nos. 4, 7 and 13, who in their pair groupings had no legs prior to Female #17's removal from the event. The only AFA Legs were earned by the pair grouping Female #17 and Male #4.]

NOTE: DRAMATIC INTERPRETATION DUO Pair Groupings at Districts were:
Male #13 & Male #4 = District #1803 & #1804 Female #15 & Male #4 = District #1804 & #1804
Female #22 & Male #7 = District #1807 & #1805

IMPROMPTU SPEAKING	2 out of 5	#8 and #17

[Female #8 had an AFA qualifying leg, while Male #1 and #3 did not. In fact, Male #1 had not previously competed in an Impromptu Speaking Final round, as had Females #8 and #17.] [NOTE: Male nos. 1 & 3 are listed as District IV competitors #1809 and #1806 respectively.]

EXTEMPORANEOUS	4 out of 5	[Not Certain]

[No Females had AFA qualifying legs that I am aware of without "Cum Sheets."]

AFTER DINNER SPEAKING	5 out of 5	[Not Certain]

[No Females or Males had AFA qualifying legs that I am aware of without "Cum Sheets."]

PROGRAM ORAL INTERP	5 out of 5	#17 and #26

[Female #26 had taken 1st at VFL #1, but there weren't enough schools to give her an AFA qualifying leg.]

PROSE INTERPRETATION	2 out of 5	#2 and #8

[Male nos. 4 & 7 had no AFA qualifying legs, as did Female nos. 2 & 4.] [NOTE: Male nos. 4 & 7 are listed as District IV competitors #1804 & #1805.]

POETRY	1 out of 5	#17 and #8

[Female #8 had an AFA qualifying leg and had beaten both Male nos. 4 and 7.] [NOTE: Male nos. 4 & 7 are listed as District IV competitors #1804 and #1805.]

INFORMATIVE SPEAK'G	4 out of 5	#12

[Female #12 had an AFA qualifying leg.]

PERSUASIVE SPEAKING	5 out of 5	#12

[Other female students had competed in Persuasive Speaking, but Female #12 had an AFA qualifying leg.]

TITLE 18: § 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Moorhead State University

MOORHEAD STATE UNIVERSITY

Moorhead, Minnesota 56563

September 23, 1992

Dr. Mary Frances O'Shea
Director
Postsecondary Education Division
United States Department of Education
Office for Civil Rights--Region V
401 South State Street--7th Floor
Chicago IL 60605-1202

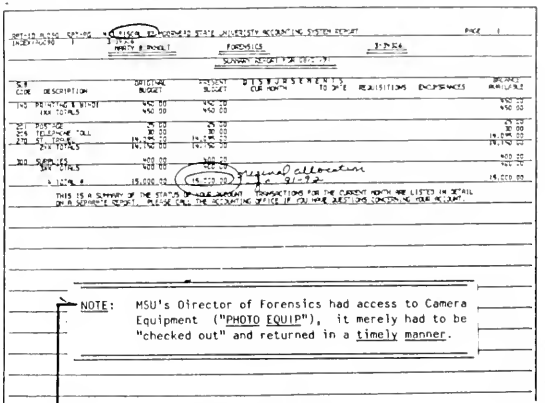
Re: 05-92-2099

Dear Dr. O'Shea:

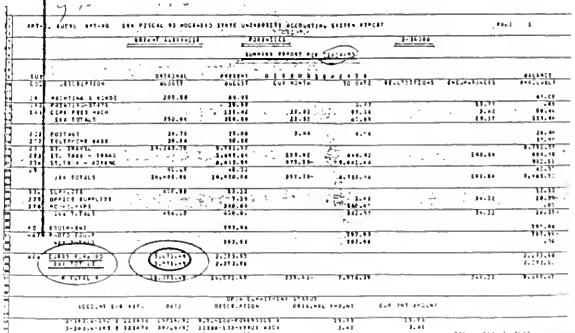
Your letter of September 3, 1992, makes four specific requests for information relating to a complaint of sex discrimination which has been filed against Moorhead State University. The complaint alleges that qualified female Forensics Team members were not selected to participate in a March 1992 district qualifier tournament. The purpose of this letter is to assist you in obtaining the information you seek and to expressly deny discrimination on the basis of sex as playing any part in the selection of students to represent the University at the District Forensics competition.

Intercollegiate forensics is a curricular and co-curricular program designed to introduce students to the field of speech. It is both a developmental and competitive activity, primarily--but not exclusively--focused on individual performers working together to enhance communication skills. Forensics is first and foremost a learning activity; the attached "Information Booklet" indicates that students "will be encouraged to learn above and beyond winning." It follows from this that a traveling team for any particular tournament is not necessarily composed of the top point scorers--we are trying to be competitive while still offering a full range of participation.

It is clear from the policies stated in the "Booklet" that fiscal restraints limit the number of students who may travel to tournaments, and that cuts from any single competition are made in accordance with Guideline 2, p. 6. Furthermore, participation in Forensics is based upon a mutual set of expectations for both the program and participant (see "Booklet," p.3); thus, individual behavior as it affects the team and reflects upon the University may also be considered when evaluating participation in the program.



NOTE: MSU's Director of Forensics had access to Camera Equipment ("PHOTO EQUIP"), it merely had to be "checked out" and returned in a timely manner.



DRAMATISTS PLAY SERVICE, INC.

Established by Members of the Dramatists Guild for the Handling of the Acting Rights of Members' Plays and the Encouragement of the American Theater

440 PARK AVENUE SOUTH, NEW YORK, N Y 10016 • (212) 683-8960
Telefacsimile (212) 213-1539 Cable address PLAYSERV, New York

March 3, 1992

Margaret Jakobson
806 Main Avenue
Fargo, ND 58103

Dear Ms. Jakobson,

This letter will serve to confirm that we spoke on February 11, 1992 concerning the use of the play GEMINI, to which Dramatists Play Service holds leasing rights, in Collegiate Forensics competition. You are quite correct in your belief that Federal Copyright Law applies to the use any play, whether in whole or in part.

Any copyrighted material is the lawful property of the owner of the copyright, and <u>any</u> use of the material is contingent upon their consent. Unauthorized uee of copyrighted material, therefore, is in violation of Federal Law, and can carry serious consequences for the person or persons infringing upon the copyright.

I hope that this letter will suffice for your needs, but if you need anything further do not hesitate to let me know.

Sincerely,

Craig Pospisil

Craig Pospisil
Non-Professional Rights

STUDENT ACTIVITY BUDGET REQUEST SUMMARY: FORM A

Activity FORENSICS — Total Amount of Budget 21107.16

Account Number 334-306 — Expected Income

Budget Preparer(s): — Net Amount Requested 21,1107.16

Name Bryant Alexander Ph 2656 — No. of Student Participants 50

Name Larry Schnoor Ph 4623 — No. of Student Spectators 365

1. **STUDENT INVOLVEMENT.** How were students involved in the preparation of this budget?

   Students suggested what they felt would be a responsible travel schedule in terms of maintaining a competitive program.

   The officers of the local Pi Kappa Delta (National Honorary Speech Fraternity) reviewed the budget before the submission.

2. **PROGRAM CHANGES.** Discuss any changes in program or organizational function this year and/or planned changes for next year.

   A. We have restricted the number of tournaments to adhere to financial limitations.

   B. We have restricted the number of students attending each tournament in order to meet financial limitations.

3. **COST CHANGES.** What are the reasons for cost differences between current and requested budgets? Please be specific.

   As a result of stabilizing our program, we have retained a large percentage of the students who began participating this season. It is anticipated that we will begin next year's season with a larger team than we had this year. In addition to the projected increase in student interest, the normal cost of living increases that affect meals and lodging have been considered.

4. **OTHER FINANCIAL SUPPORT.** Briefly list all sources of nonactivity fee financial support not cited on FORM B.

   Departmental support in the form of:
   A. Faculty release time
   B. Work study office assistance
   C. Use of departmental facilities

5. **NEW ACCOUNTS ONLY.** How does this organization/activity provide direct involvement and benefits to a substantial number of students?

COPYRIGHT OFFICE

LIBRARY OF CONGRESS

Washington D.C. 20559

IN ANSWER TO YOUR QUERY

FAIR USE

One of the rights accorded to the owner of copyright is the right to reproduce or to authorize others to reproduce the work in copies or phonorecords. This right is subject to certain limitations found in sections 107 through 118 of the copyright act (title 17, U.S. Code). One of the more important limitations is the doctrine of "fair use." Although fair use was not mentioned in the previous copyright law, the doctrine has developed through a substantial number of court decisions over the years. This doctrine has been codified in section 107 of the copyright law.

Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered "fair," such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:

(1) the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The distinction between "fair use" and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission.

The 1961 *Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law* cites examples of activities that courts have regarded as fair use: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Copyright protects the particular way an author has expressed himself; it does not extend to any ideas, systems, or factual information conveyed in the work.

The safest course is always to get permission from the copyright owner before using copyrighted material. The Copyright Office cannot give this permission.

When it is impracticable to obtain permission, use of copyrighted material should be avoided unless the doctrine of "fair use" would clearly apply to the situation. The Copyright Office can neither determine if a certain use may be considered "fair" nor advise on possible copyright violations. If there is any doubt, it is advisable to consult an attorney.

Sincerely yours,

Register of Copyrights

Enclosures

ERRATA SHEET

In Section 504. Remedies for infringement: Damages and profits, of title 17 U.S.C., subsection (c) should read as follows:

. . . . . .

(c) STATUTORY DAMAGES.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than $500 or more than $20,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $100,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than $200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonocords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

[Emphasis added.]

NOTE: Section 504 was amended in subsection (c) by the Act of October 31, 1988, Pub. L. 100-568, 102 Stat. 2853, 2860.

STATE OF MINNESOTA

CHARGE OF DISCRIMINATION

Department of Human Rights
Bremer Tower, Fifth Floor
7th Place & Minnesota St.
St. Paul, MN 55101
(612) 296-5663
Toll-Free in Minnesota
1-800-652-9747

DEPARTMENT OF HUMAN RIGHTS USE ONLY

Case Number: ED19920023

Any person claiming to have been discriminated against because of race, color, creed, religion, national origin, sex, marital status, disability, age, public assistance, status or familial status, as provided for in Chapter 363 of the Minnesota Statutes in the areas of employment, real property, public accommodations, public services, education, credit or business contracts may file a charge within one year after the alleged discriminatory act with the Minnesota Department of Human Rights at the above address.

Acknowledged by:

Karen Z Ferguson

Date Filed: 12/17/92

Date Docketed: DEC 22 1992

1. CHARGING PARTY

Margaret Anne Jakobson
806 Main Avenue
Fargo, North Dakota 58103

2. RESPONDENT

Moorhead State University
1104 - 7th Avenue North
Moorhead, Minnesota 56560

3. The discrimination was because of:

sex

4. The discrimination was in the area of:

education

5. Describe the discriminatory act, setting forth in statutory language the violation of Minnesota Statutes, Section 363.03:

I am a female who attended the above-mentioned educational institution from December 1989 until May 1992.

I have been sexually harassed, verbally demeaned, and denied participation in activities related to the Respondent's Forensics Team, Speech 010, and Pi Kappa Delta Fraternity, as have other women students at the University. I was subjected to a hostile educational/coaching environment and had restrictions placed on my ability to speak because I had spoken up against discrimination against women on the team, class and fraternity. On February 12, 1992, I was suspended from participation on Respondent's Forensics Team and threatened with the statement, "you will be the recipient of any negativity that is perceived." Examples of sexual harassment include, but are not limited to: On January 24, 1992, a male member of the Forensics Team brought and circulated pornographic magazines in the Respondent van. Explicit verbalization pertaining to this material became sexually demeaning, derogatory and degrading to the females also riding in the van. Appropriate action was not taken by the advisor; On December 6, 1991, Respondent's Assistant Director of Forensics, while dancing with me became increasingly and excessively suggestive, sexually familiar and erotic until I walked away from him, whereupon he proceeded to remove his clothing while continuing to dance erotically and in an exhibitionistic manner; On December 7, 1991, I was subjected to undesired physical contact from Respondent's Director of Forensics, when I was approached from behind, grabbed by the shoulders and physically held in place; On February 12, 1992, male students engaged in unprofessional conduct to distract other (female) competitors; From December 2, 1991, through February 2, 1992, in a Speech 311 course, female members of the class were not provided the same assistance in selecting and rehersing materials for presentations as males were; Respondent's Director and Assistant Director engaged in derogatory and demeaning statements to women creating a hostile

-over-

educational and coaching environment, such as, "Women are the dumbest species on the face of the earth..." I was treated differently than males that were lesser qualified. In March of 1992, female members of the Respondent Forensics Team were not selected to participate in the American Forensics Association District Qualifier, while lesser qualified males were selected.

I believe that I have been denied the full utilization of and benefit from Respondent's educational facility, and that my sex is a factor in the Respondent's actions. Furthermore, that the Respondent has retaliated against me because I opposed the discriminatory and hostile environment.

I therefore allege that the above-named respondent has discriminated against me in the area of education on the basis of sex and reprisal in violation of Minnesota Statutes Chapter 363.03 Subd. 5, (1)(2), and Subd. 7 (1).

1292/MVO

Subscribed and sworn to before me this 14th day of March 19 92

Pat [illegible]
Notary Public
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 8, 1998

I swear or affirm that I have read this charge and that it is true to the best of my knowledge, information, and belief. I understand that the data contained on this form may be made public.

[signature]
(Signature of Charging Party)

OUR COMMITMENT TO YOU

MSU Forensics is devoted to the educational and competitive values of intercollegiate forensics. To facilitate this

1. you will be given every possible opportunity to compete, within the constraints of the program.
2. you will not be discriminated against because of race, religion, color, creed, veteran's status, national origin, sex, sexual orientation/affection preferance, age, marital status, disability, status due to receipt of public assistance, or any other group or class against which discrimination is prohibited.
3. you will be given full support for your involvement regardless of the level of that involvement or how much you win
4. you will be given ample opportunities for coaching and practice
5. you will be encouraged to learn above and beyond winning
6. you are always welcome to bring questions, comments, or concerns to the Director's door or to any coach at any time.

OUR EXPECTATIONS OF YOU

The MSU Forensics program is open to any interested student. We do, however, have certain basic expectations of you as a member of this program.

1. You will have **each and every event** coached prior to each tournament.
2. You will be available to help out when we host toumaments.
3. You will always strive to do your best in each and every round of competition, as long as you do your best, we are happy, regardless if you win or not.
4. You will be very supportive of all fellow team members.
5. You will not use your own ethical and moral standards to publicly evaluate members of the team, nor will you use those standards to (attempt to) curtail the participation of any student at Moorhead State University in this forensics activity.
6. You will be a positive representative of Moorhead State University at all times
7. You will be responsible for signing up for tournaments, being on time when asked to be ready, and fulfilling all requests made of you by the Directors to help make things run smoothly

SPEECH 010: FORENSICS WORKSHOP
COORDINATOR: BRYANT ALEXANDER
OFFICE: CENTER FOR THE ARTS
Rm 29 PH 236-2656
OFFICE HOURS: BY APPOINTMENT

COURSE OBJECTIVES:

1. Developing communication Skills - This includes all aspects of communication including appropriate research, writing, organization and listening skills
2. Ability to organize and synthesize diverse bits of information into a meaningful whole.
3. Ability to avoid uncritical acceptance of ideas.
4. Self growth of the individual - This includes creativity, self-concept, social adjustment, poise, responsibility, and a healthy attitude toward competition.
5. Networking - This includes development of relationships which will benefit you as you seek references, admittance to graduate school and lifetime employment.
6. Commitment to ethical behavior.

REQUIREMENTS: Each student enrolled in SPCH 010 will:

1. compete in two (2) events at a local tournament (sponsored by the Valley Forensics League -- or compete at two (2) local tournaments in a single event.
2. attend announced evening rehearsals to present work(s)-in-progress and receive feedback.
3. maintain a regular schedule of rehearsals.
4. attend regularly scheduled meetings of the Forensics/Speech team.
5. assist the MSU Forensics Program in hosting either the annual high school tournament or the Concordia/Moorhead Collegiate Swing Tournament.

ATTENDANCE: The faculty of the Depanment of Speech Communication and Theatre Arts recognize that attendance and participation are essential for successful learning. However, students may be absent without penalty for as many class hours as there are credit hours in the course. If a student exceeds one absence without permission and/or prior notification in this course, his/her final grade may be lowered as much as one full letter grade

The grade of (I) Incomplete -- is not a consideretion in this course. All requirements must be fulfilled within the querter the course is attempted or the appropriate grade will be assigned.

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

OCT 12 1993

Honorable Byron L. Dorgan
United States Senator
Box 2250
Fargo, North Dakota 58107

Dear Senator Dorgan:

I am pleased to respond to your September 1, 1993, letter. With your letter, you enclose correspondence written to you by Ms. Margaret Jakobson, who is dissatisfied with our Chicago Regional Office for Civil Rights' (OCR) investigation of her discrimination complaint filed under provisions of Title IX of the Education Amendments of 1972 (Title IX) against Moorhead State University (MSU), OCR Case No. 05-92-2099. In her complaint, Ms. Jakobson alleged that MSU discriminated against women members of the MSU forensics team. You request that this office consider reopening this case.

In her letter to you, Ms. Jakobson cited a recent Federal court decision, Roberts v. Colorado State University (CSU), for the proposition that the participation rates of men and women on MSU's forensics team must be substantially proportionate to their respective enrollment rates at the school. CSU involved the request of former members of the women's varsity softball team for reinstatement of the team, which the school had eliminated, along with the men's varsity baseball team, as part of overall budget cuts. In that case, the Court of Appeals for the Tenth Circuit was applying the part of Title IX's implementing regulation that relates specifically to sex discrimination in intercollegiate athletics, 34 C.F.R. § 106.41, and discusses substantial proportionality between participation and enrollment rates as one way, among others, to determine compliance with this section of the regulation. This section specifically addresses athletics programs.

On the other hand, the type of statistical evidence Ms. Jakobson pointed to as indicative of discrimination against women on the forensics team might be persuasive in some cases; however, such evidence, by itself, is insufficient to establish a violation of Title IX. After completing the investigation of Ms. Jakobson's complaint against MSU, the regional office issued a Letter of Findings dated December 4, 1992 (copy enclosed), advising her that the evidence failed to substantiate that MSU discriminated against female forensic team members on the basis of sex by not selecting them for participation in the March 1992 district tournament.

OCT 18 [illegible]

400 MARYLAND AVE. SW. WASHINGTON DC 20202-1100

In letters dated January 3 and January 24, 1993, Ms. Jakobson requested a reconsideration of OCR's findings by the regional office and in an April 22, 1993, letter (copy also enclosed), the region advised her that there was no basis for altering the original findings that MSU was in compliance with Title IX regarding the issues investigated. Ms. Jakobson's case is closed. While I can appreciate your constituent's disappointment, there is no level of review in the Department of Education beyond that of a regional reconsideration of its findings.

Ms. Jakobson further expressed concern that the Chicago Regional Office did not investigate her allegations of sexual harassment. A member of my staff has contacted the regional office regarding its handling of Ms. Jakobson's complaint. I will respond to Ms. Jakobson's concern under separate cover after my staff has had an opportunity to review this matter.

I hope that this information will be helpful to you in responding to your constituent.

Sincerely,

Norma V. Cantú

Norma V. Cantú
Assistant Secretary
for Civil Rights

Enclosures

cc: Kenneth A. Mines, Regional Civil Rights Director, Region V

BYRON DORGAN
NORTH DAKOTA

United States Senate

WASHINGTON, DC 20510-3405

September 1, 1993

Assistant Secretary for Civil Rights Norma Cantu
U.S. Department of Education
500 Mary E. Switzer Building
330 C Street SW
Washington, DC 20202

Dear Assistant Secretary Cantu:

University student Margaret Jakobson has written me about the frustration she's experienced in trying to resolve a discrimination complaint.

She's supplied me the attached material regarding the unfair treatment she felt she experienced on her college's forensics team. Her complaint was handled by the Department of Education's Region V Civil Rights Office in Chicago. Ms. Jakobson feels strongly that the investigating officials did not aggressively pursue the case. The enclosed documentation points to a number of discrepancies and unanswered questions in the inquiry.

Recent information obtained by Ms. Jakobson indicates that the female-male ratio on the forensics club was 2-1 just a couple of years ago, but has completely reversed since then to a 1-2 ratio. That dramatic turnabout on a campus which is 60 percent female is indicative, says Ms. Jakobson, of the problem.

I'd appreciate it if the national office would consider reopening this matter to resolve the concerns of Ms. Jakobson. Correspondence should be addressed to me at Box 2250, Fargo, ND 58107. Thank you.

Sincerely,

Byron L. Dorgan
U.S. Senator

BLD:kc

Enclosures

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

OCT 12 1993

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United States Senator
Box 2250
Fargo, North Dakota 58107

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I hope that this information will be helpful to you in responding to your constituent.

Sincerely,

Norma V. Cantú
Assistant Secretary
for Civil Rights

Enclosures

cc: Kenneth A. Mines, Regional Civil Rights Director, Region V

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

DEC 7 1993

Honorable Byron L. Dorgan
United States Senator
Box 2250
Fargo, North Dakota 58107

Dear Senator Dorgan:

Thank you for your recent note and enclosures concerning a complaint filed by one of your constituents, Ms. Margaret Jakobson, with the Chicago Regional Office of the Office for Civil Rights (OCR). As promised in my October 12, 1993, reply to your letter on behalf of Ms. Jakobson, my staff has contacted the Chicago Regional Office regarding its decision not to investigate Ms. Jakobson's allegations of sexual harassment against Moorhead State University (MSU).

Based on information provided by the Regional Office, I understand that on April 16, 1992, Ms. Jakobson filed a complaint alleging violations of Title IX of the Education Amendment of 1972 (Title IX) by MSU. That complaint alleged, among other things, sexual harassment against female members of the MSU forensics team in the form of a hostile educational environment. In a letter to Ms. Jakobson dated May 11, 1992, the region stated that the sexual harassment allegations contained in her original complaint were complete and would be investigated. In subsequent telephone conversations, regional staff requested, and Ms. Jakobson provided, further information regarding all of her allegations, including the sexual harassment allegations.

In a letter dated July 29, 1993, the region informed Ms. Jakobson that, after further review of the information provided in support of her sexual harassment allegations, regional staff had determined that she had not asserted facts sufficient to raise a compliance issue under any of the statutes or regulations enforced by OCR.

After communicating with regional staff about the case, and reviewing various documents contained in the case file, we believe that Ms. Jakobson has raised some important concerns that need to be further addressed. Thus, regional staff will be contacting MSU to arrange the provision of technical assistance to the school regarding its obligations to students, faculty, and staff under Title IX, specifically with regard to the issue of sexual harassment.

I hope that this information may be helpful to you in responding to the concerns raised by your constituent. I appreciate your interest in sharing these concerns with us.

Sincerely,

Norma V. Cantu
Assistant Secretary
for Civil Rights

cc: Kenneth A. Mines, Regional Civil Rights Director, Region V

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

JAN 13 1994

Ms. Margaret A. Jakobson
808 Main Avenue
Fargo, North Dakota 58103

Dear Ms. Jakobson:

I am glad to have this opportunity to respond to issues you raised in your telephone call to the office of Secretary of Education, Richard W. Riley, on January 3, 1994. At his request, staff of the Office for Civil Rights (OCR) contacted you by telephone on January 5, 1994, to address concerns you raised in your telephone call to the Secretary's office.

One concern that you raised involved a complaint that you filed with the OCR Chicago Regional Office alleging, among other things, sexual harassment of women forensics team members at Moorhead State University (MSU). After reviewing various documents contained in the case file, we concluded that you raised some important concerns that need to be further addressed. As my staff informed you during our conversation, regional staff will be extending a formal written offer of technical assistance to MSU regarding its obligations to students, faculty, and staff with regard to the issue of sexual harassment.

The member of my staff with whom you spoke on January 5 further advised me that you have concerns that MSU may refuse the offer of technical assistance (or not take it seriously) and that the climate of the forensics department toward women will not change.

In addition, during the telephone conversation, you stated your desire that OCR reverse its December 3, 1993, findings in your case. Although there is no level of review in the Department of Education beyond that of a regional responsible for its findings, we will review documents that you submitted, as well as documents from the case file, and on the basis of that review decide if to offer technical assistance to MSU.

I do want to remind you, also, that you still have available to you the option of exercising your private right of action by filing a complaint in court under Title IX.

Pg. 2 - Ms. Margaret A. Jakobson

I understand that you may feel disappointed by the outcome of your original complaint, but I hope that you are encouraged by OCR's new attempt to provide technical assistance to MSU on how to responsibly and effectively address sexual harassment on the campus.

Sincerely,

Norma V. Cantu
Assistant Secretary
for Civil Rights

cc: Kenneth A. Mines, Regional Civil Rights Director, Region V

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS-REGION V
401 SOUTH STATE STREET-7TH FLOOR
CHICAGO, ILLINOIS 60605 1202

OFFICE OF THE
DIRECTOR

FEB 2 1994

Dr. Roland Dille
President
Moorhead State University
11th Street South
Moorhead, Minnesota 56560

Re: 05-92-2099

Dear Dr. Dille:

I am pleased to confirm the agreement reached during our recent telephone conversation, wherein the Office for Civil Rights (OCR), Chicago Regional Office, will provide technical assistance to Moorhead State University regarding its obligations to students, faculty, and staff under Title IX of the Education Amendments of 1972, specifically with regard to the issue of sexual harassment.

As I explained, our offer of technical assistance was made in response to continued concerns of alleged sexual harassment which were raised by the complainant in the above-referenced matter. I was asked by our Headquarters Office in Washington, D.C. to respond to the complainant's concerns and I decided to contact you directly.

While you stated that the allegations were without merit, you agreed to the provision of technical assistance in further support of the University's policy and commitment to non-discrimination and its past actions in addressing, through appropriate corrective actions, acts of sexual harassment.

I have directed Mr. Wayne G. Cunningham, Sr., Technical Assistance Coordinator, Postsecondary Education Division, to contact you shortly to discuss OCR's delivery of technical assistance to the University.

If you have questions about this letter, please feel free to contact me at (312) 886-3456 or Dr. Mary Frances O'Shea, Director, Postsecondary Education Division, at (312) 353-3865.

Sincerely,

Kenneth A. Mines

Kenneth A. Mines
Regional Director

Chairman OWENS. Thank you. Could you elaborate a little on the State of Minnesota's investigation. They proceeded to investigate these allegations when the Department of Education dismissed the majority of the allegations?

Ms. JAKOBSON. They named them in the complaint. In fact, we sent the same documents. The exact same ones. Minnesota accepted all the incidents, and they're still investigating, but the University has said that they will work toward a settlement if we were to submit something.

Chairman OWENS. The university said they would work toward a settlement with you.

Ms. JAKOBSON. Yes.

Chairman OWENS. As a result of the State's case?

Ms. JAKOBSON. I think Minnesota has made a big difference. I think that they are still fighting. Moorehead State University has received an offer of technical assistance which is basically a slap on the wrist from the Department of Education Office for Civil Rights.

In fact, DOE–OCR didn't even tell me that today they are at Moorehead State University basically telling them what the law is. That's what technical assistance means. Minnesota acted on all of our allegations.

Chairman OWENS. The University failed to provide the Department of Education with Title IX compliance assurances as required by the regulations, or is it your contention that they provided false assurances; that they provide something, but they were not correct assurances?

Ms. JAKOBSON. Are you talking about compliance reports that they specifically asked for?

Chairman OWENS. Yes.

Ms. JAKOBSON. Okay. Under Title VI(c) which is part of Title IX, they didn't provide compliance reports. I don't understand. I asked the investigator specifically if there were compliance reports in my file. What they did provide was a response to the allegation that female members were treated differently on the basis of sex when they were denied participation. As far as a University compliance report, there isn't a compliance report and there is no affirmative action plan.

Chairman OWENS. Let me just clearly fix the timing on your case.

Ms. JAKOBSON. Okay.

Chairman OWENS. You filed your complaint in March of 1982.

Ms. JAKOBSON. I filed in March of 1992. Then they were narrowing the complaint which has gone through hearings. The complaint was narrowed down finally to selecting only one allegation in July of 1992. So between March, April, May, June, and July they excluded all of the other allegations.

Then they continued to investigate. When you don't get any records, you don't know what they are investigating. There's a 13-page letter here and that's their response. The first page says, "It's clear from the policies stated in the booklet, that fiscal restraints limit the number of students who may travel to tournaments."

They are alleging a fiscal restraint and they've got one-fifth of their budget sitting there. Then they claim the number of tour-

naments for us, but there is no tournament cumulative score sheets. They can't even give me a competition record. How can they state the number of tournaments that there are? The school has written me back that they can't give me a complete competition record. How can they file a DOE–OCR response if they can't give me a competition record?

In fact, the number of rounds of tournaments on specific individuals is incorrect on this. Not only that, on the last page, they separated the money by males and females for DOE–OCR.

Now, we have the actual trip advance reports from the school. They don't separate male and female. Not only that, but they claim $15,000, $15,000, $15,000 for the three years. The first year, according the school's own records, they only had $12,000, not $15,000; the next year they had $13,200; and the next year they had $15,000.

Now if we were to believe the amount of money they spent on the females, and we divide it per hour because we're a per hour sport, they would have expended $5.13 on females and $7.17 on males. Now that's almost $2. When we asked DOE–OCR about that particular argument; how they could do that and why that wasn't some type of discrimination on the school's part, they said that we could take that to the U.S. Department of Labor.

Now, I don't really understand. Because of the detailing in the situations with the statements here, our case is over at the Department of Justice, but we feel that you have to try a school official about providing false statements. For example, they said there was a district tournament rule that excluded us. There's no district tournament rule. They claim that the highly competitive nature of the tournament was not something that the females could take.

I had 35 trophies; the male team had 60. If we were beating the males in the rounds, I think we were as highly competitive. The female members of the team won 121 trophies; the males had 60, so I think we were as highly competitive as they were.

Chairman OWENS. You mentioned that a number of females dropped off. Is that from 1992 to today?

Ms. JAKOBSON. When I started my last year under the one director when I started complaining, there were 31. The two beginning years are before the allegation year. Then they dropped to 23; then to 15—I wasn't at the school when it dropped to 15—and then they dropped to 7.

When he went to the national tournament site this year in Wichita, Kansas, he told female team members they couldn't go, but he took money out of the advanced budget account for eight students, five males and one female.

The next female out was a Federal witness in our previous case; the next one out was female, and the next one out was female, and the next one out was female and she was a Federal witness. Hey, in a 15-passenger van, there's room for the six of us.

Chairman OWENS. Did the other female students act as witnesses or file complaints?

Ms. JAKOBSON. Yes. They acted as witnesses, but the retaliation that they have seen! DOE–OCR has told us that even though we have documents to prove what has happened to them, DOE–OCR, instead of calling them by their numbers—they were given num-

bers to prevent retaliation—has full intent to release their names. I was about to fax the release form of one witness but when they told me they were going to give her name, we said no. I started competing when I was 11 or 12 years old, and she's given up enough. She's been denied opportunities this year.

Chairman OWENS. To understand the impact of this on your life, please tell us what you are doing now?

Ms. JAKOBSON. I've had to go to another school, North Dakota State University. Even though the State charges were against one of my coaches for sexual harassment, he came over and physically caressed my shoulders, and said, "You did pretty good this last weekend. Let's see how you do this weekend."

The idea of a person thinking they have so much power; that they can physically touch people and take pieces of them that you can never get back, I quit competing because I didn't know what he was going to do next.

Chairman OWENS. This is at the next school?

Ms. JAKOBSON. Yes. He was coaching at another school. Now that school did confront him about the incident. He admitted the incident and has said that he won't do it anymore and they are supposed to be writing me out.

He has said while he is working for them, that won't be continuing. I have ulcers and I have changed my major to sociology. I make $185 being a high school forensics coach, but I know that I can never be a college forensics coach because this man is not going to stop.

I mean if you file State charges and somebody still thinks they can just do anything. Physically, emotionally, financially our family—we are our own attorneys. We have three typewriters and a copier and we live in a building built by my great grandfather in 1906. It's unbelievable. I can sympathize with Mr. Richard when he talks about budget constraints; that appears to be a common thing. And the pain.

After we filed against the males about the magazine and with the State of Minnesota, the school put into their forensics information booklet, "You will not use your own moral or ethical standards to publicly evaluate members of the team." What that said was if you file complaints, we can kick you off.

Chairman OWENS. Thank you for appearing here. I know it's a great emotional strain, but we appreciate it.

Mr. Richard, do you believe that the OFCCP has failed to enforce Affirmative Action Compliance reporting at the Caltech Jet Propulsion Laboratory because of incompetent review or total lack of review?

Mr. RICHARD. I think a combination of both and possibly conspiracy with the contractor. Maybe somebody got paid off not to do the work.

Chairman OWENS. Somebody got paid off meaning what? Somebody on the OFCCP?

Mr. RICHARD. That's correct. Why would you give a contractor an EVE award when you've got the written criteria in front of you which says you must have had a compliance review within three years. These guys haven't had one in seven years, so this director has overriding factors. Then they take this EVE award and display

it in all of these trials saying, "Look, we're so good, we got an EVE award. The Department of Labor says we're doing an excellent job." Is it just coincidence or timing?

Chairman OWENS. Did you find these same Affirmative Action Compliance failures at Martin Marrieta, Whitney Aerospace or any of the other companies?

Mr. RICHARD. To be honest with you, I've lived in the South most of my life and I've been in the West Coast going on five years now. I've never dealt with the racism in the work force down in the south like I have out west. I mean, the agenda is hidden. Deep down, they really don't want to see young black professionals making it.

You have to look at the message they're sending the Department of Labor and OFCCP, as well as Federal contracting. You can have all of the degrees you want and you can be brilliant, but as long as you're not white, you're going to take what we give you. That's the way I interpreted what I saw.

Based on all of my achievements before I got to that contractor, I was placed with mostly older white males that had been there 15, 20 years. None of them had degrees. How did they become engineers? And why weren't there any black men working?

Those are the type of things that I asked the Department of Labor or OFCCP. They can't answer that. You look at that graph that GAO put out in 1988. I asked the Department of Labor, "Why is it that African Americans are the only race underutilized on a managerial and professional level?" They can't answer. If Affirmative Action is working, how come after 35 years, blacks are still the only ones affected? I don't understand.

The sad part is that these people are making money on Constitution Avenue; getting paid to do a job they're not doing. So, why have them? Either fire them and get some new people that care and are going to do the job, or just get rid of the whole thing. Affirmative Action is only on paper right now.

I don't know of any major contractors that have ever been debarred by the Department of Labor for violating Affirmative Action. It's a joke. All of those Federal contractors know that. They don't do anything.

I can't believe those people are that incompetent; at least I would hope they're not. It seems to me there's more to it than that. It's like something is happening and they're looking the other way, and for whatever reason. Is it monetary, racial? I don't know. Maybe the subcommittee can find out for me.

I spent all of my money digging in, bugging these guys over the past three years—making phone calls, faxes, traveling, doing investigations. I've done their job for them. I gave the job to them, and they still don't want to admit these guys broke the law. When I break the law, I go to jail. When they break the law, well, no big deal.

Meanwhile, I've lost everything I've had. I can't get a job anywhere in Southern California or the country right now because of the retaliation that's going on. I'm living out of boxes, changing friends to friends. It's ridiculous but what can I do?

In reference to the timeliness of the complaints, the EEOC has had my retaliation complaint going on 15 months now. I got a call

on Monday after they found out I was coming here. "Oh, we're going to be subpoenaing the work records now." What took you so long? Why all of a sudden do you want to do it?

The fact of the matter is, the Department of Labor and the EEOC do not talk to each other. I have told the EEOC that this contractor has violated laws in not reporting those employment statistics. Why would a contractor not want to report his employment statistics? If you look at the utilization numbers I gave you, you'll see why.

Out of 350-something contractors, you've got only one black male contractor working in a company that big. All of these guys are getting paid $50,000 or $60,000 a year. You go out to Caltech-JPL tomorrow. I'll tell you what you'll see. It's like a plantation: Latinos are doing the landscaping, the blacks are basically in the kitchen, in the mail room or delivering, and most of the whites have the high paying jobs. Some don't even have degrees.

Well, they've been there a long time. If these guys aren't going to do their job, then do away with it.

Chairman OWENS. Has there been any further movement or positive impact on your case with OFCCP as a result of the investigation of your complaint by EEOC?

Mr. RICHARD. Well, I don't think the EEOC and the Department of Labor have been talking to each other. It's basically me talking to them. Supposedly they are going to go back and do a quality assurance check of this past compliance review that they had.

Oh, incidently, they had a compliance review at the lab running concurrently with the six other lawsuits that were in court and they waited until all lawsuits were settled to announce the compliance review is finished and they did not find that African Americans were being underutilized in those high paying job positions.

So the answer to your question is it appears that they don't want to do their job; they are purposely against doing what they are supposed to do: enforce Executive Order 11246.

Chairman OWENS. You filed your case when?

Mr. RICHARD. Well, I filed my case with the EEOC on May 16, 1991, and I got my right to sue letter on May 15, 1992. I filed an additional retaliation complaint that's currently pending with the EEOC on December 28, 1992, and it's still active. Like I was told Monday, they're finally getting ready to issue a subpoena to produce work records, and complete their onsite investigation, but I've already done it for them.

They know these guys are hiding something. They've got the statistics. I should have never been laid off. They brought in people less qualified than me. The gerrymandered the job descriptions and titles for whomever they want to put in there. It's like they're bent on keeping who they want working in those high paying jobs. Whites make up 90 percent of their payroll because they always get the high paying jobs. Minorities pay X amount of money in taxes in this country and we should at least get X amount of the jobs, and that's not happening. They keep saying, "We're working on it." How much longer is it going to take?

Chairman OWENS. Well, thank you very much for your testimony. I know it also pains you to talk about this. Our government certainly has failed to carry out the intent of Congress in its imple-

mentation of these laws. You might have heard me say earlier that it's not by accident that OFCCP was among the agencies, under the Reagan and Bush Administrations, that were directed to do nothing to upset employers.

It was an understanding, a partisan approach to the enforcement of civil rights laws.

The present administration is supposed to be different, and we will go forward, as Members of Congress with oversight responsibility, to challenge the administration to show us they have a different philosophical set of instructions for these agencies.

Thank you again, both of you, for your testimony.

The hearing of the subcommittee is now adjourned.

[Whereupon, at 12:21 p.m., the meeting of the subcommittee was adjourned, subject to the call of the Chair.]

[Additional material submitted for the record follows.]

STATEMENT OF CASS BALLENGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

I would like to thank you for joining us this morning. Each of you brings a unique perspective to the subcommittee's examination of the EEOC—a perspective which I believe will help focus our efforts to restore public confidence in the agency. One of the most important roles of the Congress is oversight, and the need for that role is most urgent when citizens, such as you, voice complaints regarding an important agency like the EEOC. I share your concerns about the effectiveness and responsiveness of the Equal Employment Opportunity Commission, and I look forward to hearing your comments regarding your experiences with the agency.

We are all familiar with the crisis that presently overwhelms our Nation's leading civil rights enforcement agency. The absence of key administration appointees, inadequate staffing, poor management, slow-moving investigations, and an inefficient system of claims processing have all contributed to a crippling of the agency.

In view of the fact that the scope of the EEOC's responsibilities has been greatly expanded since its creation, with sex discrimination and discrimination against persons with disabilities, now is to time to act. Our swift action will not only benefit you, but it will also benefit the countless other Americans who seek the EEOC's assistance in the future. Moreover, change at the agency will also help the many businesses-both small and large—who EEOC charges every year.

Again, I thank each of you for coming today, and I look forward to hearing your comments. Thank you.

1605 Monroe Street #106
P.O. Box 14084
Madison, WI 53714-0084
February 16, 1994

The Honorable Major R. Owens
2305 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

FEB 28 1994

Dear Representative Owens:

My name is Winston Smart and I am a Black resident of Madison, Wisconsin. Allow me to say, at the outset, that I fully realize you are not the elected Congress person from my state who directly represents me. I have already written my appropriate Congress persons. However, since I have important information pertinent to equal employment opportunity to all Black Americans, I am writing to you as a member of the Congressional Black Caucus. I respectfully ask you not to disregard my communication merely because of my zip code.

You are no doubt aware of the vital role given to the United States Equal Opportunity Commission (EEOC) to protect the employment rights of Black Americans. Insofar as your public service seeks to protect and enhance the legal rights of Black people, especially their right to equality of opportunity, I can provide you with documented information germane to your work. I seek no personal benefits, favors or privileges from your office.

Very shortly, a colleague of mine will visit your office in Washington, D.C. with a documented affidavit outlining serious misconduct committed by the EEOC. He will leave this affidavit with your staff person in charge of civil rights issues. This affidavit provides you with a striking account of techniques being used by the EEOC, acting under the cover of confidentiality, to frustrate and impede the civil rights of qualified, educated Black people. Insofar as your constituents are having problems with the EEOC, my affidavit gives relevant evidence of actual EEOC conduct.

I will be happy to discuss these EEOC techniques with you and your staff, and to assist you in your critical work of protecting the hard-won employment rights of your Black constituents. Feel free to have your staff person contact me at (608) 257-7777.

Thank you for your attention.

Sincerely,

Winston I. Smart

9

AFFIDAVIT OF WINSTON I. SMART, CHARGING PARTY

STATE OF WISCONSIN)
) SS
COUNTY OF DANE)

WINSTON I. SMART, being first duly sworn on oath deposes and states as follows:

1. I am the Complainant/Charging party in four Title VII (of the Civil Rights Act of 1964) charges filed with the EEOC. These relevant charge sheets are on Pages A1, A2, A3 and A4 of the Appendix to this Affidavit.

2. The First Charge involves race discrimination by the employer, the University of Illinois, an arm of the Government of the State of Illinois. This charge was filed by letter and charge form in July-August, 1991. See page A1.

3. The other three charges involve retaliation by the University against me in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3.

4. The second charge (first retaliation charge) was filed in March, 1992. See Page A2. The basis of this charge was that the employer, a governmental entity of the State of Illinois, had sued me for defamation of the University. A governmental entity in the United States is not allowed to sue for defamation.

5. The third charge (second retaliation charge) was filed in August, 1992. See pages A3. The basis of this charge was that the employer instigated and financed an appeal in the name of one of its employees (Purnell) against me in the United States Court of Appeals for the Seventh Circuit.

6. The fourth charge (third retaliation charge) was filed in early August, 1992. See page A4. The basis of that charge was that the employer refused to consider me for a second position it created after I complained about racial discrimination against me in the selection of a less qualified candidate (with two F's in two required courses) for the first position. See newspaper article, "UI creating professor post after applicant complains," Champaign-Urbana News Gazette, July 14, 1991. Appendix, pages A66-A68.

7. On September 28, 1993, more than two years after I filed my first charge, the EEOC issued a determination on my first charge (discrimination). A copy of the EEOC's determination is attached. See Pages A5-A6. The EEOC did not grant me the right to sue the employer as the EEOC is required to do by Title VII when if decides against the charging party.

8. On the same day, September 28, 1993, eighteen (18) months after filing my second charge, the EEOC issued a determination on my second charge. The EEOC's investigation claims it found no evidence of retaliation. The EEOC granted me the right to sue on my second charge. A copy of the determination and right to sue on my second charge is found on Pages A7-A8. I have since brought suit in federal district court on my second EEOC charge.

9. On same day September 28, 1993, thirteen (13) months after filing my third charge, the EEOC issued a determination on my third charge. Again, the EEOC found no evidence of retaliation and the EEOC granted me the right to sue. A copy of the determination and right to sue on my third charge is found on pages A9-A10. I

have since brought suit in federal district court on my third charge.

10. As of today's date (January 18, 1994), the EEOC has not issued a determination on my fourth charge. A copy of that charge is found on page A4.

11. The EEOC has informed a federal legislator the my fourth charge was filed on "January 12, 1993." A copy of that EEOC letter is found on page A11. (Third Paragraph, First Sentence). The date stated on my signed and notarized charge form is August 7, 1992. The EEOC has verbally confirmed to me that the particular charge form, and correspondence dated 1992 related to that charge, is in its files. The EEOC has declined to provide a written response confirming the same.

12. In the course of dealing with my complaints against the employer, EEOC has committed several acts of deliberate and intentional misconduct which have benefitted the employer and which have injured me. I have summarized these below.

MISCONDUCT BY THE EEOC

ITEM I. The EEOC has deliberately and intentionally falsified the date on my fourth charge (third retaliation charge). That charge form was executed before a Wisconsin notary public and was sent in the mail on August 7, 1992. Also, there is correspondence in the file related to that charge dated August 31, 1992. See page A13.

The EEOC has changed the date of my fourth charge to "January 12, 1993." See Appendix, Letter to U.S. Senator Herb Kohl dated

June 7, 1993, page A11. It appears that one reason for falsifying the date of the third retaliation charge was to justify a further delay in issuing a determination on that charge.

ITEM II. The EEOC took over two years (July-August 1991 to September 28, 1993) to investigate my charge of race discrimination which turned on one simple issue, "who was more qualified for the job, the person hired (Purnell) or myself?" There were no other issues to be investigated because I had proved my prima facie case by showing that:

(1) There was a vacancy;

(2) I had applied for the position;

(3) I was qualified for the position;

(4) I was rejected for the position, and someone similarly qualified for the position (Purnell) was selected.

The EEOC had before it in 1991 the Position Vacancy Announcement (See Appendix, page A14) and full details of the qualifications of both applicants. Yet the EEOC took two years plus to "investigate" and make a decision as to who was more qualified.

ITEM III. For over two years, the EEOC promised to invite me to their Chicago office and let me see copy of the investigator's report on my charges prior to issuing a final determination. I was asked to be patient because the staff was burdened with many cases and undermanned. I had no choice but to accept the EEOC's promises. On September 27, the EEOC telephoned me and informed me

that they had made a determination on three of my charges. I reminded the official (a so called enforcement manager) of the EEOC's promise to let me see the investigation report. My request to see the investigation report was denied.

ITEM IV. For over two years, the EEOC had continually promised to invite me to its Chicago office and discuss with me the contents of the investigator's report on my charges prior to issuing a final determination on my charges. On September 27, 1993, the EEOC (an "enforcement manager") refused to discuss with me in the EEOC office (as promised) the contents of the investigator's report. On September 28, 1993, the EEOC issued a determination on three of my charges. The EEOC investigation reports, and their contents, are being hidden from me, the Charging Party.

ITEM V. The EEOC rejected my first charge (race discrimination). Yet the EEOC refused to issue a right to sue letter on that charge. Without a right to sue letter, a victim of discrimination cannot file a Title VII lawsuit. The EEOC has absolutely no authority to deny a right to sue letter to a Charging Party whose charge it has denied. If the EEOC is so certain that there was no discrimination, why is the EEOC preventing this charge, and the EEOC investigation of it, from being scrutinized by a federal court? The EEOC is fully aware that its denial of a right to sue letter is preventing a federal court from reviewing its actions and hearing my complaint of race discrimination.

ITEM VI. The EEOC is actively preventing me from bringing a Title VII case against the employer by denying me a right to sue letter. The EEOC's violation of Title VII serves to benefit the employer which has already benefitted from the EEOC taking two years-plus to investigate a simple issue (who was more qualified?) and to issue a determination.

ITEM VII. The EEOC is fully aware that delay benefits an employer and hurts a Charging Party who is unemployed. Yet the EEOC took more than two years to determine that the person hired was "more qualified" than I. For two years, the EEOC appealed to the Charging Party's "patience and understanding" with excuses of "staff shortages" and "heavy caseloads". The EEOC did not need two years to determine if one applicant was more qualified than another at the time of his selection (April-June, 1990). So the EEOC deliberately dragged its feet for the better part of two years, knowing fully well that such delay was hurting the Charging Party.

ITEM VIII. The EEOC falsified the qualifications for the job that was advertised. The EEOC did this by concentrating on qualifications that were (1) not mentioned in the position vacancy announcement (Appendix, page A14) and/or (2) totally unnecessary for the job and/or (3) not possessed by the complainant. It was by thus falsifying the qualifications for the job that the EEOC could find the selectee "more qualified."

ITEM IX. In determining that Purnell was more qualified, the EEOC ignored the nationally advertised qualifications (both "necessary" and "desirable" for the position when deciding who was more qualified for the job. For example, the position vacancy announcement (page A14) called for a list of publications. Since Purnell openly admitted in his letter of application (Page A24, second paragraph, third sentence) of Appendix) that he had "not yet published," the EEOC ignored this qualification, and the publication qualifications of the Charging Party.

ITEM X. The EEOC accepted the employer's trick of using non-advertised qualifications to make the person hired appear more qualified. Hence all the employer has to do to "defeat" my charge of discrimination with the EEOC was to change the qualifications for the job, after a victim of discrimination complains, to include qualifications the employer knows the complainant does not possess.

ITEM XI. The EEOC used qualifications earned by Purnell after he was hired to make him "more qualified" than I. The EEOC verbally claimed that the Purnell had "continuing education" teaching experience. The Charging Party produced documentary evidence to the EEOC (See pages A48-A58) showing that such "continuing education teaching experience" was earned after Purnell was hired for the job in August, 1990, and hence could not have influenced his selection. Purnell's letter of application, reproduced in the Appendix, (pages A23-A24) makes absolutely no

mention or claim of having taught continuing education classes. In spite of this clear evidence that it was being deceived by the employer, the EEOC accepted such qualifications earned after hiring to make Purnell appear "more qualified."

ITEM XII. Early in the investigation of my complaint, I requested of the EEOC, and it agreed, that it would get my response to statements made by the employer and others about the qualifications of the person hired and myself. The EEOC reneged on this promise and accepted uncritically statements about qualifications of candidates without giving me the opportunity to respond to them. For example, the EEOC accepted a statement by the employer that Purnell had taught continuing education classes and used that statement to make him "more qualified." However, these classes were held in Illinois after Purnell got the job at the University of Illinois.

ITEM XIII. The EEOC refused to enforce (or to even discuss with me) the anti-retaliation provisions of Title VII against the employer. Title VII outlaws retaliation by an employer against an individual who files a Title VII charge or engages in other protected activity, including an exposure or protest of the discriminatory practices of an employer. Verbal and written complaints and charges by the Charging Party were ignored and given absolutely no response or attention by the EEOC. As early as December 12, 1991, five weeks before the employer sued the Charging

Party for defamation of a governmental entity, the Charging Party informed the EEOC that he had been threatened by a criminal defense attorney hired by the University. See Appendix, pages A59-A62.

ITEM XIV. The EEOC allowed the University to retaliate against me with impunity while it refused to investigate my three charges of retaliation. The anti-retaliation provisions of Title VII meant nothing to the EEOC. As early as December 12, 1991, I informed the EEOC by letter of such intended retaliation. See Appendix, page A59-A62. Yet the EEOC did nothing to dissuade or discourage the employer from its course of retaliation. Instead, the EEOC's silence and delay encouraged the University to retaliate.

ITEM XV. The EEOC actively and closely coordinated its refusal to issue or discuss the investigation report with me with the University's campaign of retaliation against me. In April 1993, the attorney retained by the University, Beckett, convinced the judge to force me to attend in person a settlement conference. The University offered to pay me $20,000.00 and have its employees drop their claims against me if I would drop my EEOC claims (among others) against the University and its personnel. I refused. Around September 20, 1993, it became obvious to the employer and to the EEOC that I had successfully withstood twenty months (20) of continuous retaliation (by offensive defamation litigation) by the University, and that I was challenging the University's retaliatory conduct in the United States Court of Appeals for the Seventh

Circuit. It was only then the EEOC decided to suddenly issue its determination on two of my charges of retaliation by offensive defamation litigation. It continued to ignore my third retaliation charge (retaliation by refusing to consider for employment in a subsequent vacancy) which was filed a few days after my second retaliation charge. To this very day, it continues to ignore my third retaliation charge and it has falsified the date of that charge.

ITEM XVI. The EEOC assisted the employer to pauperize and weaken the Charging Party. The employer retaliated against the charging party by using public funds to sue him for $2.4 million in a foreign state three hundred and fifty miles from his home for, among other things, defamation of a governmental entity. By dragging its feet on its investigation of the Charging Party's charges of retaliation, the EEOC caused the complainant to suffer untold hardship and expense in state court, federal district court and the federal appeals court. The EEOC was fully aware that the employer was spending public funds and had relatively unlimited funds, while the complainant was using his personal resources to defend himself from this retaliation. The EEOC provided valuable assistance to the employer by looking the other way and refusing to even discuss with the charging party or the employer the anti-retaliation provisions of Title VII.

ITEM XVII. The EEOC actively withheld its determination on

my retaliation charges until the effect of the employer's retaliation could have the maximum possible effect on me. At no time did the EEOC make any effort to even caution or remind the employer of the existence of the anti-retaliation provisions of Title VII that the EEOC is supposed to enforce.

ITEM XVIII. The EEOC (on September 28, 1993) issued a sudden decision when it became obvious that I had successfully withstood the retaliation of the employer, that its inaction during those 18 months of retaliation had become blatant and that the University's major act of retaliation against me (making me stand trial for defamation) had been postponed (to at least January 31, 1994) because I had challenged the University's retaliation against me in the United States Court of Appeals for the Seventh Circuit. The EEOC would have had a harder time explaining a longer period of inaction in response to a retaliation charge. So the EEOC rushed to issue a sudden determination, but on only two of the three retaliation charges.

ITEM XIX. The EEOC refused to recognize clear United States federal law when it issued its determination on my second and third charges (first and second retaliation charges). Under federal law, the University of Illinois is an instrumentality of the Government of the State of Illinois. As such, it is required to abide by the United States Constitution. The First Amendment allows individuals to criticize, complain about and petition the government about the

University's conduct. The Fourteenth Amendment prohibits the University from engaging in racial discrimination. The First and the Fourteenth Amendments combined allow an individual to criticize, complain and petition the government about racial discrimination by a governmental entity such as the University. Further, the University is prohibited by the Civil Rights Act of 1870 (42 U.S.C. § 1983) from retaliating against a person who exercises a constitutional right.

Under federal law, a governmental entity such as the University of Illinois cannot sue for defamation. New York Times v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L.Ed. 2d 684 (1964); City of Philadelphia v. Washington Post Company, 487 F. Supp. 897 (E.D. Pa. 1979); Edgartown Police Patrolmen's Association v. Johnson, 522 F. Supp. 1149 (D. Mass. 1981). The Charging Party brought this rule of federal law to the attention of the EEOC. However, the EEOC, a federal agency, refused to recognize this federal rule of law when it supposedly investigated the retaliation by the University of Illinois which sued the Charging Party for defamation of the University and sought $600,000.00 in damages from the Charging Party.

And there are other instances where the EEOC just refused to recognize federal (United States) law. In every such instance, the application of federal law would have benefitted the Charging Party.

In December, 1992, nine months before the EEOC issued its Determinations, the Charging Party asked the EEOC for a commitment

that it would apply federal (United States) law in his case. See Appendix, pages A63-A64. The EEOC declined to give the Charging Party a commitment to the Charging Party that it would apply federal (United States) law in the investigation and determination of his case. It was only when the Charging Party asked his Congressman to obtain such a commitment that the EEOC promised in writing "to evaluate all the evidence obtained under the appropriate theory of employment discrimination and in accordance with applicable federal law." See Appendix, page A65. By refusing to recognize the United States Constitution (the First and the Fourteenth Amendments) and other federal law (including 42 U.S.C. § 1983), the EEOC reneged on its commitment to apply federal (United States) law.

ITEM XX. As if the foregoing was not bad enough, the EEOC refused to recognize state law which was exactly the same as United States federal law. In every single state of this country, a governmental entity cannot sue for defamation. Both federal and state courts in Illinois recognize the University of Illinois as an instrumentality of the Government of the State of Illinois. Indeed, the rule that a governmental entity cannot sue for defamation arose in the state of Illinois itself, seventy years ago. City of Chicago v. Tribune Co., 307 Ill. 595, 139 N.E. 86 (Supreme Court of Illinois 1923).

This case was so important that it has been cited by courts all across the country, including the United States Supreme Court itself. New York Times, above. The Charging Party brought this

Illinois legal rule to the attention of the EEOC, but the EEOC refused to recognize it in its determinations. It was clear that when the University sued the Charging Party for defamation and forced him to answer a lawsuit in a foreign state three hundred and fifty miles from his home, the University was acting in violation of Illinois state law. Anticipating a defeat and the imposition of court sanctions for filing as frivolous lawsuit, the University hastily withdrew its defamation lawsuit against the Charging Party (See Appendix, page A69) thereby admitting that its defamation lawsuit and its claim for $600,000.00 in damages against the Charging Party was bogus. Yet the EEOC failed to find that the filing of the lawsuit against the Charging Party was an act of retaliation prohibited by Title VII.

Winston I. Smart

SUBSCRIBED and SWORN to before me,
a Notary Public, this 18th day of
January, 1994

Margaret Urban
NOTARY PUBLIC

Comm. Exp. 9-25-95

ISBN 0-16-045954-0