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### [Welcome address]

J. Clay Smith Jr.

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WELCOME ADDRESS  
by  
J. CLAY SMITH, JR., ACTING CHAIRMAN,  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
before the  
EEOC/TERO CHARGE PROCESSING  
TRAINING  
Denver, Colorado  
April 20-24, 1981

As Acting Chairman of the United States Equal Employment Opportunity Commission, it is with great pleasure that I welcome you to the second annual EEOC and TERO training course. Much work, time and effort has gone into the implementation of this program in order to apprise you of the most current procedures and developments within our Agency. It is the goal of the Commission to strengthen the ties of your unique protected class under Title VII of the 1964 Civil Rights Act and aid in the development of your own TERO compliance program on and nearby the reservation.

The decade of the 1980's presents a serious challenge to EEOC in protecting the employment rights of all Americans. I envision a binding and lasting cooperation between TERO and EEOC in furthering the elimination of employment discrimination directed against Native Americans.

With the large scale migration of American Indians from the reservation, employment problems off the reservation cannot be altogether solved through tribal authority. However, on an individual basis, the American Indian can avail him or herself of Section

703(i) of Title VII, which provides:

"Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation."

This section of Title VII should be of great interest to you. For the employers located near Indian reservations who fear giving special treatment to Indians will make them vulnerable to so-called "reverse discrimination" claims, the law is very clear that they can legitimately give Indians preferential treatment.

This section of Title VII applies to businesses not only "on" reservations but also to a business or enterprise "near" reservations. Although the law and its interpretation are not clear as to how far away from a reservation a business can be and still be "near" a reservation, one could reasonably argue that where the nearest large town is one hundred miles away that that town is near an Indian reservation, especially in cases where there are small towns adjacent to the reservation with limited opportunity for meaningful or gainful employment. Given special circumstances the definition of the word "near" might even exceed 100 miles.

In terms of using their sovereign powers to shape employment practices of employers located on the reservation, it is my

personal belief that the Tribal Employment Rights Office (TERO) concept is an effective avenue through which to exercise that authority.

The sovereign governmental powers of tribes can be used to require employers to do on the reservation what the framers of Section 701(i) anticipated that they would voluntarily do off the reservation: give employment preference to native Americans. This legislative power can be used to reach native American and Anglo employers, Federal or state contractors, the mining and construction industry, and all other employers located within the boundaries of the reservation.

TERO's are an example of Indians using the unique authority to collectively solve their common problems. With the effective use of TERO's the resultant increased employment of Indians on the reservation can serve as an impetus to attract back to the reservation tribal members who left because they could not obtain employment opportunities on or off the reservation..

TERO's are also effectively using their powers to promulgate employment rights ordinances. I must say that I am happy to see that all the tribal employment rights ordinances incorporate, by reference, the entire set of Title VII guidelines. Therefore, TERO ordinances have prohibited all of the practices that are prohibited by Title VII and require employers, unions, and employment agencies located on the reservation to eliminate all of the practices

prohibited by those guidelines.

TERO's have also put the 703(i) preference to work. TERO ordinances require employers on reservations to give preference to native Americans. Pursuant to their ordinances, the TERO's set quotas for the minimum number of native Americans each employer must hire.

In closing, the continuously evolving developments within EEOC are positive signs that should translate into more jobs for American Indians in the years to come. If you add these developments along with the special and unique powers that American Indians have over the affairs on the reservation, the plight of the American Indian to participate in the bountiful offerings of this nation should be better in the years ahead.