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Aging and Employment Discrimination

J. Clay Smith Jr.

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J. CLAY SMITH, JR.
ACTING CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before the
DISTRICT OF COLUMBIA'S WHITE HOUSE CONFERENCE ON AGING
DEPARTMENTAL AUDITORIUM, COMMERCE BUILDING
Washington, D.C.
May 15, 1981

AGING AND EMPLOYMENT DISCRIMINATION

Good Afternoon:

I am happy to be here this afternoon to discuss a topic which is and must be of concern to all--the status of the aged. It is a topic that up until recently had not received the attention it warranted. For that reason, the D.C. Office of Aging and those of you in the audience are to be congratulated for raising how the aged fare in our society to a higher level of consciousness.

Future generations may very well want to know how did the richest country on earth treat its senior citizens? Were seniors treated with respect? Were they treated with the dignity they had so well earned? And did America in 1981 treat its senior citizens fairly and just?

If the answer to any of these questions is no, then this conference and this government needs you to come forward to specifically identify ills and how they can be remedied. The success of this conference really should only be measured in one fashion. Did it identify problem areas for the elderly and did the participants think through and creatively formulate remedies that meet these needs. If that has taken place, then all of us in this society owe to you one further debt. I know that my future and my children's future are inextricably tied to your present

status. You can tell us where we are going. Therefore, I am particularly grateful to those of you who have offered your wise counsel and shared the benefits of your experience, especially Juanita Thornton, who is one of the most profound women I know, and who is one of the most outspoken advocates for the sanctity of humankind.

As you may know, I happen to work in an area of special concern to the aged--employment discrimination. I also happen to live in D.C. and therefore the welfare of D.C.'s seniors are of particular importance to me. The most significant aspect of the Aged community in D.C. is that their numbers are growing. D.C. reflects the general pattern of our population in that the American people as a group are living longer. As a nation, the average citizen's longevity is increasing.

For those of you who are age 60 or older and therefore born around 1920 or before, this may be of particular interest. When you were born only 7.7% of the citizens living in this city were 60 or older. Over the decades, the percentage of those D.C. citizens over 60 has risen steadily to the point where in 1970 nearly 14% of the city was 60 or older. In my estimation, the most recent census will show this percentage to be even higher. However, the important fact is that in the course of your lifetime, the percentage of those citizens over the age of 60 living in this city doubled. This group has the potential to be an important and influential voice in how D.C. should be run.

The gloomier side of this statistic however, should not be overlooked. For although this city ranks fourth in the country in per capita income, 10% of the D.C. citizens over the age of 65 receive public assistance. Thus, high on this conference's agenda must be a recognition of the fact that despite a lifetime of useful and productive work, a substantial number of our senior citizens do not have the financial means to support themselves.

The work that I do to some extent touches upon this problem. I am the Acting Chairman of the Equal Employment Opportunity Commission commonly known as EEOC. The EEOC is a federal agency, established by Congress, with the mission to eliminate employment discrimination. EEOC was established in 1965 as a result of the 1964 Civil Rights Act. Many of you may recall the legislative battle over the 1964 Civil Rights Act. It came during the zenith of the Civil Rights movement. Just prior to the legislative battle in Congress, Martin Luther King had his famous march on the mall during which he gave his even more famous "I Have a Dream" speech. Reverend King's march in no small way contributed to the passage of the Civil Rights Act which, many including myself, consider to be the most important piece of legislation for minorities in the last 100 years.

A part of the Civil Rights Act of 1964 is commonly referred to as Title VII and it creates the EEOC. Title VII also makes

it unlawful for employers and labor unions to discriminate on the basis of a worker's race, sex, their national origin or their religion.

During EEOC's early years, say 1965 to 1970, most of EEOC's work was in the area of race discrimination. However, in recent years the number of charges alleging sex discrimination has dramatically increased which is to be expected in light of the growing awareness in our society that women, as well as minorities have often borne the brunt of discrimination. EEOC also now enforces a law prohibiting discrimination in employment on the basis of age.

How did a law prohibiting age discrimination in employment come into being without the same type of struggle which preceded Title VII of the Civil Rights Act of 1964? The answer is simple. Title VII, aside from prohibiting employment discrimination on the basis of race, sex, national origin and religion also directed that the Department of Labor make a complete study of age discrimination in employment. Title VII provided that this study on age discrimination should include recommendations for legislation to prevent arbitrary discrimination in employment because of age. In response to this directive, a report was drawn up entitled, The Older American Worker.

The Older American Worker report contained example after example of where employers prohibited employees from working after a certain age. For example, sometimes a large national

corporation had a policy of firing workers at one plant after they turned 60, while that same company at another facility in a different state terminated employees performing the exact same job after they turned 50. The only common thread to this was that employers set arbitrary age limitations that could not be rationally justified. Perhaps only a few years ago some of the participants of this conference were confronted with some of these arbitrary age limitations.

Employers attempted to justify age limitations because of a variety of factors such as the elderly's lack of physical capability, their limited work expectancy, training costs and alleged low productivity of older workers and lack of adaptability. These stereotyping myths surrounding older workers were explained in part by lack of knowledge and by insufficient contact with older people. There was however, another factor--blatant prejudice against the elderly.

Congress' response to the report, The Older American Worker, was commendable. Congress recognized that older Americans, who for years had competently performed their jobs were arbitrarily being fired solely because of their age and not their ability. Indeed, a valuable resource of this country was being wasted away and put on the shelf. Accordingly, Congress enacted the Age Discrimination in Employment Act (the ADEA), which became effective June 12, 1968.

The ADEA, patterned after Title VII, prohibits companies from discriminating against any individual between 40 and 70 years old except under very narrow circumstances. The purpose of the Age Act is to promote the employment of older persons based on their ability rather than their age. I believe that the ADEA is a beneficial piece of legislation for the country. I should also point out that for ten years this Act was enforced by the Department of Labor but in 1978 the President directed the EEOC to enforce it because that administration believed that one agency should enforce all the civil rights laws rather than have them scattered throughout the government.

Now, I just mentioned that the ADEA was a civil rights law. When we think of individuals who are discriminated against, older people may not be the first to come to mind. But ironically this civil rights law protects nearly 50 million workers or half of all working Americans. The Age Act benefits all workers, even those below 40 since at some later date they will reach 40 and therefore enjoy the Act's protection.

Since EEOC received jurisdiction over the Age Discrimination in Employment Act we have seen an enormous increase in the number of charges filed by persons claiming to have been discriminated against on account of their age. In 1979, the Commission received approximately 4,500 charges of Age discrimination. In 1980, the number had jumped to nearly 8,000. Those of us who have labored in the employment discrimination area recognize that age discrimination is the fastest growing area. There is a

growing awareness among older employees of their rights coupled with a greater willingness on the part of seniors to exercise those rights.

At this point, I should add that the EEOC has recently settled several age discrimination charges brought by employees against their company's. A few months ago a moving and transfer company laid off 10 truck drivers because of their age. The EEOC negotiated with the company and was able to secure \$150,000 in backpay and have five of the discharged workers reinstated. In Cleveland, a company refused promotions and reassignments to workers over 40 years old, EEOC secured \$7,000 in back wages for the victims of this policy. In Houston, an ADEA case involving a 65 year old janitor whose services had been terminated, resulted in the re-employment of this individual and future benefits of almost \$7,000; and, in a similar case, a 50 year old security guard at a retail store who had been discharged based on his age was re-employed and received benefits of over \$8,000.

As these cases illustrate, the EEOC is successfully settling both large and small claims of age discrimination. Sometimes the claim is filed by one worker and sometimes by a whole group of older workers. The point I wish to make is this however; discrimination directed against older workers is bad for this great nation of our's. It is bad for senior citizens because of obvious reasons. It is a robbery of their livelihood and their dignity. But age discrimination in employment is also a negative productive indicator for the rest of our society because it

deprives us of the enormous talents of the workers who built and defended this country in the most turbulent of times.

We at the EEOC are committed to eliminating age discrimination in employment. We are committed to a just and fair society for our senior citizens. Our mandate under the Age Discrimination in Employment Act is clear. We are committed to assisting the older worker.

Before closing. I wish to share a poem with you written by Anna W. Henson, an outstanding Afro-American poet, who resides in the District of Columbia. Ms. Henson, who is over 60 years of age recently shared this poem with me and I now share it with you:

On Being "60" Years
(And Over)

If you say please and thank you
You're from the old school
Tip your hat to a young lady
You're being an old fool-

When you say, may I help you?
You're out of place
Good Lord is being "60"
Such a disgrace?-

If you dress in fashion
You're trying to look too young,
If you dance and make merry
That's too much fun-

Say "yes Sir" to him
And "no Mam" to her,
May the Lord ever help you
That should never occur-

You have lived and waited
For the years to pass,
And now the day has come
You are "60" at last-

But allow me to tell you
There is no way you can shake it,
Being "60" is a blessing
Thank God you have made it-

Anna W. Henson

Ms. Henson has captured the essence of the values of our society which she holds dear and which should be placed on our agendas for review. In a poem, Ms. Henson, one of the District's seniors has made a significant contribution to literature for all--young and old alike--to digest. Ms. Henson is but one of the many seniors of the District who still has something to say.