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Report to the Directors

J. Clay Smith Jr.

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DR. J. CLAY SMITH, JR.
ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before
DISTRICT DIRECTORS, REGIONAL ATTORNEYS AND
SENIOR STAFF
OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C.

JULY 13, 1981

REPORT TO THE DIRECTORS

Welcome back to Washington and to what I hope will be a meaningful and productive executive training session relating primarily to Labor/ Management relationships. As you know during this session the union and management will formally execute the collective bargaining agreement. It is my hope that the agreement will be a vehicle for the maintenance of industrial peace.

There have been a few personnel changes since you were here last and while most of them are well known to you I think that you should get to know these people better in terms of their new assignments.

1. Issie Jenkins - Acting Executive Director
2. Constance Dupre - Acting General Counsel
3. Doug Bielan - Acting Director, Office of Inter-Agency Coordination
4. Preston David - Director, Government Employment
5. Ed Mansfield - Acting Director, Training Division
6. Debra Millenson - Acting Director, Systemic Programs
7. Ed Morgan - Director, Congressional Affairs
8. Al Sweeney - Director, Public Affairs

, As I continue to be charged with the authority and responsibility of directing and efficiently managing the programs of this agency

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I will reasonably exercise that authority in such a manner so as to make the most appropriate use of personnel as the circumstances warrant, after due consideration of all relevant facts. Consistent with the collective bargaining agreement requirements and sound personnel practices, I urge you to bite the bullet and make the best objective management decisions you can in the assignment, hiring, disciplining, promotion, awarding, and general utilization of staff.

The purpose of this paper is to provide you with an overview of much of the activity of this agency as well as to provide you with some data for you to evaluate as you will, as the senior managers of EEOC. It is important for you to be aware of some of the heavy responsibilities of the Office of the Chairman as well as the excellent work that goes on at the Commission in cooperation with Commissioners Armando Rodriguez and Daniel Leach.

I have no prior format as a precedent for presenting this paper to you so I will proceed thusly: I will discuss the administrative litigation in which EEOC is a party (apart from Title VII, etc.) and provide some insight on the need for better management knowledge and judgments. In Part II of this paper, I discuss the FY'82 budget and budget signals of the future. Part III of this paper discusses the GAO reports which have been received by the agency since March 3, 1981. In Part IV, I provide information on other loose ends that are important for you to be aware. Part V has a short discussion relevant to Regional Attorneys and Part VI, the conclusion of this presentation is addressed to the District Directors.

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I.

EEOC-DEFENSIVE ADMINISTRATIVE LITIGATION

A recent briefing on defensive litigation reflect the following:

There has been 58 lawsuits filed since October 1, 1981

Court and administrative
hearings handled
10-1-80 to 6-30-81 203

Court and administrative
hearings handled
10-79 to 6-80 126

Lawsuits currently pending

<u>EEOC (employee)</u>	<u>FOIA</u>	<u>Federal EEO</u>	<u>Title VII</u>
24	6	19	31 (CP or Respts EEOC)

Cases against EEOC decided as of June, 1980

<u>WON</u>	<u>LOST</u>	<u>SETTLED</u>
25	0	8

Two were voluntarily dismissed by the parties

Numbers decided October 1, 1980 - June 30, 1981

<u>WON</u>	<u>LOST</u>	<u>SETTLED</u>
18	2 1/2	5

At least 1 1/2 more tried and pending decision

Other - Miscellaneous - 4 (Federal Tort Claim & contract cases)

Many managers will think of these figures solely in terms of the win-loss ratio. I urge you to consider the increase in complaints and cases filed in court and administrative hearings handled this fiscal year compared to previous fiscal years. I receive far too many grievances and complaint files in my office. Most of them are accompanied by costly hearing examiners reports and recommendations. Some of the reports, while finding against the employee, often reflect a general lack of proper or adequate supervisory and management techniques. I therefore call upon each of you to exercise as good of judgement on employee complaints as you do in achieving your other management goals and objectives.

I notice that many of the office heads will be appearing before you prior to close of business on Wednesday. Thus, they will be dealing with your specific concerns as they relate to the topics discussed. I will therefore try to address my comments in summary form chronologically, to some of the important events and issues which have occurred or developed since on or about March 3, 1981 when President Reagan designated me Acting Chairman.

II.

BUDGET SIGNALS

Recapitulating just a few of the events over the last four months, I cannot help but recall that within less than 30 days of my taking office the news media and others in this agency were already spelling doom for the agency and suggesting huge increases in the backlog since the departure of my predecessor. Very early in the process I found myself dealing with top officials of the

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Office of Management and Budget concerning regulatory procedures, reforms and budgetary matters, and trying to secure the confidence of the White House to assure that EEOC would run smoothly and without disruption.

There was the immediate need to be briefed and prepare for the FY 82 House Budget Hearings which was held on March 11, 1981, followed by an appearance before the Senate Subcommittee on April 8, 1981. As you know we requested \$140,389,000 and urged preservation of 3468 positions from the Congress. To date, I have not as yet been informed of the final figure to be appropriated to EEOC, but I am confident from what I hear that EEOC will get all or perhaps within 1 million of the original budget request of this agency. I will continue to keep my fingers crossed.

However the real issue is not solely the FY'82 budget, but the need for EEOC to begin to plan and assess the extent to which it can carry out its mission with projected level funding over the next four to five years. Since you as senior managers will be called upon to do more with less in the next few years, I wish to share the contents of a recent memorandum EEOC received from OMB which must guide our thinking and future actions:

Multi-year Planning Estimates
(\$ in thousands)

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Budget Authority	\$135,867	\$133,187	\$130,547	\$127,947
Outlays	\$133,147	130,522	127,935	125,387

6.

<u>Employment Ceilings</u>	<u>Sept. 1981 (End-of-year positions)</u>	<u>1982 (Full-time equivalents (workyears))</u>
Total employment, excluding dis- advantaged youth and personnel participating in the Worker- Trainee Opportunity Program (WTOP).....	3,468 <u>1/</u>	3,376
Full-time permanent employment, excluding personnel participating in WTOP	3,416	3,326

Two issues are clear--EEOC--like other agencies must do more or at least remain current with a reduced workforce and less money--or so it appears today. This memorandum and other directives is the basis for the current reduction-in-force and any future workforce alterations which may occur to adhere to funding and budget principles. I merely cite this to say that a modest 5% projection in cost of living and doing business suggest that we should be getting a minimum average increase each year of approximately \$5-7,000,000 just to keep even. Since the contrary of this is true, we must

1/ The total employment ceiling for 1981 reflects requirements of USC 3394, concerning the fractional counting of part-time permanent positions.

These ceilings represent, for your agency:

- a. For September 30, 1981, upper limits on the number of employees; and
- b. For FY 1982, the maximum number of full-time equivalents (workyears) allowed.

"These ceilings cover all employment in your agency except for disadvantaged youth and personnel participating in the Worker-Trainee Opportunity Program."

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mobilize our management skills and available resources in such a manner as to allow for increased production and better delivery of services with less money. The task is ours and, I am sure that we will not fail if we unselfishly give 100% of our loyalties, industry and devotion to the causes and objectives to the Commission.

Very early in my administration I was confronted with the multitude of problems associated with the RIF for the reasons explained earlier. Most of the issues connected with this matter have now been resolved, and as a result of extending the effective date of the RIF through August 15, less than 85 of our headquarters (25) and field (60) employees stand to be affected. Many field offices as a result of attrition and other factors are no longer even subject to the RIF process. While I take little solace in this attrition as a general principle of productivity, I do feel a sense of relief that the RIF will effect fewer employees. The impact of the reduction in ceiling is spelled out in my budget testimony which was sent to each of you, and is now a matter of public record. Only time will tell whether delays in the processing of charges will be further extended. That will depend on (1) good management programs and early warning systems to avoid increased inventory, and (2) public confidence in EEOC--which is growing--perhaps out of necessity. It is the public confidence which EEOC must anticipate and concern itself with when we talk about that budgaboo word which haunts this agency--backlog.

GOVERNMENT ACCOUNTING OFFICE (GAO) REPORTS

On April 21, 1981, I appeared before the Senate Committee on Labor and Human Resources to testify on sexual harassment in the workplace. This, of course, was the first major hearing on a substantive topic since March 3, 1981. Each of you should have received a copy of my testimony and I'm sure that you read press accounts of these hearings.

On or about April 9th and April 21st EEOC received two GAO reports. The first report entitled "Further Improvements Needed in EEOC Enforcement Activities," made certain recommendations to EEOC, to Congress and to OMB:

RECOMMENDATIONS TO EEOC

- Discontinue negotiating settlements on charges lacking reasonable cause (charges that would be closed as no cause if they are not settled) and to close them with a no-cause decision or advise charging parties to withdraw them.
- Consider (1) revising the criteria for contracting with State and local fair employment practices agencies to include agencies presently excluded and (2) using alternatives to the present contracting procedures, such as contracting on a nonreimbursable basis.
- File suits more timely and adopt a standard that suits should be filed within a certain time, such as 90 days after a decision is made to litigate.
- Expedite revising the EEO-1 report to provide improved data including employee wage and salary data.
- Emphasize the importance of compliance monitoring and establish procedures to ensure that monitoring is performed promptly and that onsite visits are made to verify reports, as appropriate.

RECOMMENDATION TO THE CONGRESS

-Title VII of the Civil Rights Act of 1964 be amended to provide that EEOC may initiate litigation on a charge against a State or local government if the Department of Justice decides not to sue within a specified time.

RECOMMENDATION TO OMB

-Advise the President that the contract compliance function under Executive Order 11246 should be transferred from OFCCP to EEOC.

The second report entitled, "Equal Employment Opportunity Commission Needs to Improve Its Administrative Activities" dealt with our need to improve our administrative activities and suggested that we evaluate the legal staffing in some of the District Offices.

In a timely fashion, I have responded to both of the foregoing reports and in addition there is a task force headed by Chris Roggeron which will be preparing recommendations to me by mid-July as to the action and alternatives available to me in my efforts to improve the efficiency of the fields administrative services operation.

There are other task forces functioning in headquarters, for instances, I have just received recommendations from one recommending that we allocate funds for the development of a computerized index system for the Office of Policy Implementation and Review and Appeals decisions, as well as, appellate briefs. They are also recommending that we subscribe to the Juris computer, assisted legal research service which is primarily under the control and general supervision of the Department of Justice.

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Because of the proven utility of this system, I am hopeful that the Commission can reach a decision on this matter before the end of August.

IV

OTHER IMPORTANT MATTERS

Time will not permit a full treatment of all headquarters activities over the last four months, but I deem it important that you know that in spite of everything to the contrary, decisions are being made and the Commission will remain alive and well.

On May 6, 1981 we submitted a formal status report to Congress regarding the General Accounting Office recommendations concerning Federal Audit Programs.

On May 8, 1981 we transmitted to the Heads of all Federal Agencies, Directors of Equal Employment Opportunity and Directors of Personnel, copies of our fifth report to Congress on the employment of handicapped individuals including disabled veterans. On the same day we requested permission from the Senate Appropriations Committee to reprogram \$1,000,000 from our State & local appropriations.

I have been dealing with the Office of Personnel Management on a wide variety of subjects ranging from criticism of prior personnel conversions, selection and assignment of high level professionals to issues having to do with single sex certification for correctional officers in all male maximum security penitentiaries.

11.

Preston David will address this matter further, but on May 6, 1981, we were advised by National Archives Records Services (NARS), that our request for clearance of Management Directive 707 (MD -707) which contained instructions for development and implementation of multi-year affirmative action plans was denied. In NARS's view, the specific data to be gathered, per the instructions, "duplicated that already available in useable fashion in the Central Personnel Data Files" (CPDF) maintained by the Office of Personnel Management. In spite of this impediment we proceeded to send clarifying instructions to the heads of all federal agencies in June of this year.

In June we executed a settlement agreement with Sears which was a race matter that has been pending with the Commission for several years.

On July 1, 1981 we responded to OFCCP's request for pre-publication consultation pursuant to Executive Order 12067 on OFCCP's proposed withdrawal of its regulations dealing with payment by contractors of membership fees to private clubs which discriminate in their membership policies.

On previous occasions the Commission had stated its position that such payments constitute a violation of Title VII of the Civil Rights Act. We noted however, the Department of Labor's acknowledgment in the proposed preamble that it had authority to address instances of employment discrimination which may arise from contractor's use of private clubs in the absence of a specific rule such as Section 60-1.11.

12.

The Commission did not object to the withdrawal of the rule, provided that the following sentence was added to the preamble to the withdrawal:

Accordingly, the Department will act upon complaints alleging that the payment by contractors of fees to private clubs which discriminate in membership has resulted in employment discrimination against an employee or applicant for employment (individual complaints received by OFCCP normally are forwarded for handling to the EEOC pursuant to a Memorandum of Understanding between the two agencies), and the Department will include an analysis of contractors' private club policies and practices as part of compliance reviews where appropriate.

The purpose of our recommended addition was to affirm that OFCCP and EEOC will investigate these matters in response to complaints.

Overlooking a few frustrating discussions which I had with some top Labor Department officials, the Commission exercising its E.O. 12067 function, met and was able to timely respond to OFCCP's Notice of Proposed Rulemaking dealing with their affirmative action regulations for federal contractors. While we endorsed the need for regulatory reform we did express strong concern about some of the substantive changes proposed by Labor.

As a result of the regulatory task force headed by the Vice President, we received several comments which are noted below:

SUMMARY OF COMMENTS ON EEOC GUIDELINES/REGULATIONS
SENT TO THE PRESIDENTIAL TASK FORCE ON REGULATORY RELIEF

A. Uniform Guidelines on Employee Selection Procedures (10 comments)

- | | |
|--|---|
| 1. American Council on Education | Exempt university placement offices. |
| 2. Pfizer, Inc. | Simplify test validation requirements to reduce employer cost and facilitate compliance. |
| 3. Sun Life Assurance Company of Canada | Record keeping requirements are burdensome. |
| 4. Whirlpool Corporation | Maintaining files is burdensome. |
| 5. Shelby County Taskforce on Regulatory Reform | Inadequate uniformity in government recordkeeping requirements increases employer burden. |
| 6. University of North Carolina | Inappropriate to apply guidelines to professional persons. |
| 7. Board of Supervisors
County of Los Angeles | Requirements are too broad in application and too costly for compliance. |
| 8. Miller Brewing Company | Recordkeeping and reporting requirements are too burdensome. |
| 9. TRW Inc. | Guidelines punish employers for positive recruitment efforts. |
| 10. Motor and Equipment
Manufacturers Association | Guidelines punish employers for positive recruitment efforts. |

B. Records and Reports Requirements (3 comments)

- | | |
|-------------------------------|---|
| 1. Miller Brewing Company | Recordkeeping and reporting requirements are too burdensome. |
| 2. Idaho Personnel Commission | Annual filing requirements serve no purpose except to create statistics for EEOC. |
| 3. City of Fairfield, CA. | Recommend adoption of uniform federal recordkeeping and reporting requirements. |

C. Interpretive Bulletin on Benefits Under the Equal Pay Act (4 comments)

- | | |
|---|--|
| 1. Aetna Life and Casualty Company | Proposed position goes beyond judicial requirements stated in <u>City of Los Angeles v. Manhart</u> , 435 U.S.702 (1978). |
| 2. National Fidelity Life Insurance Company | Objects to EEOC involvement with Unisex Actuarial Tables. |
| 3. Johnson & Higgins of California | Objects to EEOC involvement with Unisex Actuarial Tables. |
| 4. National Association of College and University Attorneys | EEOC has gone beyond <u>Manhart</u> and has created chaos in this area. Objects to retroactive application of <u>Manhart</u> . |

D. Guidelines on Discrimination Because of Religion (2 comments)

- | | |
|---|--|
| 1. American Iron and Steel Institute | Definition of "religion" is too broad; also thinks "reasonable accomodation" goes too far. Pre-employment inquiry should permit asking religion of the applicant. Believes that EEOC's interpretation may be a violation of the 1st Amendment. |
| 2. First International Bancshares, Inc. | Definition of "religious practice" is too broad. Should spell out correlative duties of employees. Employers have a valid interest in pre-selection inquiry. |

E. Guidelines on Sex Discrimination under the Pregnancy Discrimination Act (3 comments)

- | | |
|------------------------------------|--|
| 1. FMC Corporation | Guidelines put EEOC in position of legislators, not regulators; objects to overwhelming cost. The Act does not apply to maternity coverage of dependents of employers. |
| 2. Whirlpool Corporation | Ignores congressional intent by imposing duties employers cannot fulfill; administrative overreach. |
| 3. Aetna Life and Casualty Company | Guidelines should permit provisions of extended benefits for pregnancy even when no such benefits are provided for other medical conditions. |

F. Guidelines on Sex Discrimination Relating to Sexual Harassment (4 comments)

- | | |
|---|---|
| 1. National Association of College and University Attorneys | Definition of sexual harassment is too vague. |
| 2. FACHA (Texas Hospital Association) | Object to potential vicarious liability for acts of sexual harassment by non-employee doctors and other professionals working on hospital premises. |
| 3. Whirlpool Corporation | Ignores congressional intent by imposing duties employees cannot fulfill; administrative overreach. |
| 4. First International Bancshares, Inc. | Definitions are impossibly vague; administrative overreach. |

G. Guidelines on Discrimination Because of National Origin (1 comment)

- | | |
|---|--|
| 1. First International Bancshares, Inc. | Suggest that guidelines be revised to be more specific to offer greater guidance to employers. Guidelines do not recognize the necessity of using English in many business situations. |
|---|--|

H. Interpretations of the Age Discrimination in Employment Act (1 comment)

- | | |
|---|--|
| 1. First International Bancshares, Inc. | Applying ADEA to apprenticeship programs would make them costlier. |
|---|--|

I. Procedural Regulations Under Title VII of Civil Rights Act of 1964
(7 comments)

- | | |
|---|--|
| 1. Whirlpool Corporation | Cases are not processed expeditiously. Need to give proper weight to arbitration decisions and state and local agency decisions. |
| 2. Washington Employers, Inc. | EEOC fails to defer to 706 agencies. |
| 3. Miller Brewing, Inc. | Companies are subject to duplicative investigations by local, state and federal agencies. |
| 4. Benton Foundry, Inc. | EEOC treats respondents as guilty until proven innocent. |
| 5. Cascade Utilities | EEOC investigative procedures are unnecessarily time consuming and inefficient. |
| 6. Sun Life Assurance Company of Canada | EEOC overemphasizes statistical data for proving discrimination. |
| 7. American Textile Manufacturers Institute | EEOC shifts burden of proof, especially to respondent. |

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3. Miscellaneous Comments (2 comments)

1. Whirlpool Corporation

Jury trials put defendant cooperations at a serious disadvantage. This comment does not relate to any regulations. Instead, it is a recommendation to amend the Age Discrimination in Employment Act.

2. Aetna Life and Casualty Company

Disapproves of EEOC's participation in litigation concerning insurance rating.

The foregoing comments contain little or no new information or arguments, not previously analyzed and assessed under comments received via the Administrative Procedure Act prior to Commission adoption of these policies. The Commission believes that the guidelines are within well established Title VII principles.

The comments the Commission received on the Uniform Guidelines on Employee Selection Procedures focused either on the recordkeeping requirements within the guidelines (a matter on which we are presently working with OMB) or on interpretations of Title VII's requirements which stem from United States Supreme Court cases such as Griggs v. Duke Power Co., 401 U.S. 424 (1971), and Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975). We therefore did not believe that either required current or additional review at this time.

The Commission, however, will aggressively continue to review and revise its regulations and guidelines with a consistent view towards reducing burdensome or inappropriate requirements

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while maintaining guidance which can be helpful to employers and employees alike as they seek to comply or be protected by the anti-discrimination statutes administered and enforced by the Commission.

To the Regional Attorneys I would like to extend a special greeting. While the Commissioners do not as a rule have a great deal of face-to-face contact with you, we do have occasion on a regular basis to see your work product, as part of our important process of approving litigation. All of us on the Commission have been favorably impressed with the quality of presentations as well as with the significant number and variety of cases being presented.

At the same time, we have gained a sense of the obvious difficulties and obstacles interposed in the development of large, unique, yet winnable, cases. We have heard, both from field attorneys informally, and in a more formal setting, from headquarters' Office of General Counsel, suggestions for improving the functioning of the legal units and for improving the quality of the cases you must litigate.

While no final decisions have been made on any of these suggestions, let me assure you that I and the other two (2) Commissioners are acutely aware of the fact that a sound litigation posture is essential to effective enforcement of Title VII, ADEA and EPA. Only when employers understand that discrimination will result in swift, effective litigation are those same employers likely to sail a course wide from

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discriminatory conduct, or, having engaged in such conduct, will these employers engage in serious conciliation efforts. In short, a sound litigation program is the lubricant which makes the rest of the Commission's enforcement efforts work smoothly.

Because we believe this to be the case -- that a reputation for bringing vigorous and successful litigation is the cornerstone of an effective EEOC -- I can say without fear of contradiction that the Commission will give every consideration-- within the various constraints, budgetary and otherwise -- to method, system and resource improvements calculated to improve the product of the legal units.

Last year the Commission filed approximately 300 lawsuits. To date you have recommended 229 lawsuits. Thus I would like to urge you to keep up your excellent efforts and not to let up during this interim period between General Counsels. You have in a true sense a moral imperative to utilize the Federal courts and your skills to end the odious remnants of job discrimination. This imperative is shared by both political parties.

VI CONCLUSION

Before concluding my comments I want to address a few brief remarks to all District Directors by underlining my appreciation for your work as a whole and my confidence that you sharing continuing concerns for utilization of the most efficient management techniques. Your work both in terms of production and relief, has been

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exemplary. In the first six months of this year, the district offices resolved over 33,000 cases, a 28% increase over last year. Front-end inventory is holding firm, and over 60% of the backlog is resolved. More important, you are bringing home the bacon. In the first six months, you obtained \$34 million in dollar benefits - a 50% increase over last year. All of this you have done on your own at a time when some newspapers and media people were suggesting that we were at a stand still, do nothing posture. I stand to be corrected if I am wrong, however, it appears that too many of us think of the Commission only in terms of what the Commission can do for us as individuals rather than what we can do for it, and the poor protected classes we were employed to serve. There appears to be too many personal (me) considerations involved in our deliberations, which tend to affect our effectiveness as managers. I assure you that I will take swift and appropriate action whenever I detect a situation where a manager is found to be trying to protect herself/himself...his/her turf, office or employee, preserve the status in preference to the agency and it's programs as a whole.

The work goes on. It goes on because the systems are in place, and the spirit is there. Keeping and improving the systems--and maintaining the special spirit that we have at the Commission--frankly depends more on you as front-line managers than on any one else at the Commission. I am impressed that you have done this during a time of transition; and that you have not let yourself be diverted. I look forward to working with you as we move forward.

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In order to remain productive however, you must continue to motivate your respective staffs and convey an attitude of optimism and positive thinking. Remember, that we actually work for each other and the Commission as a body. Accordingly, I feel confident in saying that each Commissioner has an "open door" policy and stand as myself, ready and willing to assist you whenever possible to complete this vital mission.

* * * *

cc: Commissioner Leach
Commissioner Rodriguez

All of you recognize the importance of a job. Jobs provide money so that we may feed, house, clothe, educate and care for ourselves and our loved ones. Jobs provide the monetary resources so that we can begin to solve our problems. Jobs also provide an individual with dignity that one is an essential and contributing member to our society.

To further underscore the importance of access to a job one need only look at the number of job related complaints filed at your Commission and my own agency. I am told that last year the Indiana Civil Rights Commission processed 2,000 complaints and 95% of these were employment related. The other 5% of the charges include the combined categories of housing, public accommodations, education and credit. In 1980 the United States Equal Employment Opportunity Commission processed approximately 80,000 complaints of employment discrimination across the country. These facts are persuasive reminders to all of us who labor in the vineyard of civil rights that the elimination of employment discrimination is of the highest priority.

Now, how can we utilize Dr. King's message and plan a Civil Rights Agenda for the 1980's? The first thing we should and must do is start with a personal recommitment to our common goal. The founders of our country knew that freedom and justice would be secure only if each succeeding generation recommitted itself to equality. We must make clear to our fellow citizens that we are prepared to continue our unending search for freedom and justice.

We must continue to articulate the theme that the major problems in this country are not the social programs but the societal evils which form the basis for such programs, such as poverty, hunger, and joblessness.

Some members of the civil rights community say that the issues of poverty, hunger and joblessness are currently not in vogue. I will also admit that many of our leaders are saying that times in the civil rights movement are tough and perceive that storm clouds are forming around us.

I submit to you that times in the civil rights movement have always been tough. A few minutes ago I asked you to recall what events were occurring in the early 1960's. I believe that the brave men and women who faced the Police Commissioner Bull Connor on the bridge outside Birmingham, the police dogs, the mobs, the cattle prods and forces which blow up churches on Sunday morning endured tougher times than we can ever imagine. The forces opposed to civil rights want us to despair, to give up, to throw in the towel. But, if anything we must be emboldened by our predecessor's courage; we must strive to emulate their strength and sense of dignity and dedication; and we must remember the words of Dr. Martin Luther King "that in spite of the difficulties and frustrations of the movement I still have a dream..."

The issue before us now is how do we develop effective strategies for combatting one of our most pressing concerns-- discrimination in employment. We know that while our idealism remains, it must be tempered by the realities of the present.

Foremost among those realities is that between the end of

World War II and the early 1970's, the country experienced rapid economic growth but that for the last several years growth has been marginal. The problem of minimal growth has been compounded by an unemployment level among minorities which is disturbingly high.

Our work is more difficult because of this situation. Both at EEOC and at the Indiana Civil Rights Commission we are faced with the difficult task of developing fair and equitable strategies to accommodate an economy that is in trouble and a growing joblessness. What equal employment opportunity policies should we pursue when economic indicators tilt towards a weak economy?

The EEOC has taken a first creative step in addressing this dilemma by suggesting the use of worksharing programs rather than traditional layoffs. If a company has to cut its labor costs, usually it simply lays off its most junior workers. Those with the least seniority lose their jobs. Typically, these are women and minorities. EEOC has suggested as an alternative to layoffs that employers and unions consider worksharing a procedure whereby the work week may be reduced from five to four days and all workers collect one day's unemployment insurance for the day laid off. What are the advantages of such a proposal?

In the first place, workers are not laid off from their jobs but rather the cut in the number of hours to be worked is shared by all the employees. Hence, one group of employees--those with less seniority--do not alone absorb the cutback in work. Employers also receive an advantage. They frequently have invested considerable time and money in training an employee because the worker ran sophisticated machinery. As a result of a layoff, there is the possibility an employer will lose its investment in a trained and experienced workforce. Worksharing would avoid this problem.

From a union's perspective, worksharing as an alternative to layoffs would keep more of their members on the job and thereby provide the union with the strength that an active dues paying membership provides. I am under no illusions that worksharing is the answer to all of our problems. However, it is an example of the novel and creative approaches we in the civil rights community will have to come up with so that we may press equal opportunity in hard economic times.

I submit that during this decade the civil rights community must be sensitive to economic considerations facing the country which may shift public concerns about equality in the workplace. The days of increasing budgets, plentiful grants, and a rapidly expanding economy are gone. Accordingly, when your state Commission considers litigation against certain companies an important consideration must be whether future growth is expected at the company.

It makes little sense to spend precious resources to secure a hiring goal if the company is not in fact going to hire. If a company will have no growth in its workforce and little turnover, a hiring injunction may be an empty victory. Civil rights attorneys must be more selective in choosing litigation vehicles and must take into account how many jobs will be opened up by any suit.

Staff at state commissions and at EEOC also need to be more sensitive to business cycles. Future consent decrees and agreements with employers should contain provisions protecting minorities and women from lay offs to the greatest extent possible. It makes little sense to expend resources to ensure that women and minorities are hired and then a few months later at the first sign of a declining economy have them all laid off. Under these facts the government raises the expectations of protected groups by having them hired, only to dash hopes by standing idly by while they are disproportionately, but lawfully laid off.

Time does not permit discussion of the specific strategies that civil rights agencies will have to develop. I leave that for another time and place. I can promise you, however, that formulation of these strategies will be difficult. The actual implementation of strategies may be even harder. But the important consideration to remember is that the civil rights movement has always

overcome adversity. In fact, it has been most creative and effective when things look bleakest.

The civil rights movement has made substantial progress. We are a society more equal and just than we were twenty years ago and that in turn has strengthened our nation. It is important for all of us to keep our eyes focused on the positive side of the accomplishments of our nation over the past twenty years, also. No nation or groups of people within a nation can dwell solely on the negative aspects of their nation. However, fortunately in America there exists the right to speak out against discrimination--and that we shall do because not to do so is more dangerous to the fabric of our nation's values than all the loud voices who protest against discrimination in whatever nonviolent form it may surface. In closing, I call upon you to be as brave and as strong, as all of those who preceded us and have brought you this far. The struggle cannot and will not falter. The 'Dream of Equality' for all lives on through your vigilance, perserverance and action.

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