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before the
33rd ANNUAL CONFERENCE
INTERNATIONAL ASSOCIATION OF OFFICIAL HUMAN RIGHTS AGENCIES
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WILL THE EMPHASIS IN CIVIL RIGHTS IN THE 1980'S SHIFT
FROM THE OPPORTUNITY SIDE TO THE EMPLOYMENT SIDE?

Before I delve into my topic for today, "Will the Emphasis in Civil Rights in the 1980's Shift from the Opportunity Side to the Employment Side?", I will first like to reflect back on the era in which present civil rights legislation was passed in order to review why historically civil rights emphasis was on the opportunity and not the employment side.

Most of the present civil rights legislation was passed during the 1960's. That was a decade in which the nation enjoyed a healthy economy, which was evident by low unemployment, low inflation, low interest rates, low prices for energy, affordable cars, homes, vacations, the ability to send one's children to college as well as a general sense of optimism about the future.

The environment of the 1960's to a great extent dictated that opportunity for minorities and women to be treated like others would be the overriding theme of civil rights enforcement. Moreover, that period was one in which the nation was becoming sensitized to the racial hatred that still prevailed in many quarters of the nation. Reflecting back on that period, the foremost thought of the nation was on events such as:

1. 1961

What were you doing in January of that year when President Kennedy declared, "Ask not what your country can do for you, but rather what you may do for your country?"

I remember what the very bravest people in the civil rights movement were doing in 1961, for that was the year of the Freedom Riders. A group of blacks and whites attempted to ride interstate buses between Virginia and Mississippi to protest segregation in bus terminals. While riding on buses between Atlanta, Georgia and Montgomery, Alabama, the buses were stopped by a mob. The mob dragged the Freedom Riders off the bus and stomped, beat, and savagely assaulted these citizens.

2. 1962

1962 was a year of integration at the university level. In that year a federal court held that the University of Mississippi, commonly known as "Old Miss," had denied James Meredith admission solely because of his race and ordered him admitted. Rather than obey the court's order, the Governor of Mississippi blocked the doorway of the admissions office prohibiting James Meredith from entering and enrolling.

3. 1963

1963 was year associated with tragedy and sorrow. President John F. Kennedy, was

assassinated. Although he was with us just a few short years, he and others like senator Jacob Javits and Hugh Scott and Everett Dirksen were able to plant the seeds of idealism in many of our fellow citizens. On the other hand, in that same year the forces of hate planted a bomb at a church in Birmingham, Alabama. The explosion killed four little girls and injured scores of innocent children. Also, the president of the Mississippi NAACP, Medgar Evers, was gunned down in his home.

However, in the midst of hatred, there appeared a glimmer of hope. A young black minister named Martin Luther King, Jr., speaking before the largest crowd in civil rights history on the steps of the Lincoln Memorial gave his "I Have a Dream" speech. I can still hear his words today--

I say to you today, my friends, that in spite of the difficulties and frustrations of the moment I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident; that all men are created equal."

I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave-owners will be able to sit down together at the table of brotherhood.

4.

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plains, and the crooked places will be made straight, and the glory of the Lord shall be revealed, and all flesh shall see it together.

Out of this sense of consciousness coupled with a healthy economy, the early issues emphasized opportunity for all and equal opportunity for the wounded hearts of America. The economy was such that the existence of jobs was assumed. In the context of issues relating to equality, let me review a few technical points which paved the way to where equality in the workplace is today.

ISSUES OF INTENT

One of the early issues in civil rights was the question of whether intent must be proven in order to show discrimination. Stated in other words, the question was should one be denied the opportunity for a job, a promotion, or other job opportunity where an employer uses a facially neutral criteria which has a disproportionate impact on minorities or women. The Supreme Court ruled in the landmark case of Griggs v. Duke Power Co. that proof of intent is not essential to the proof of discrimination.

AFFIRMATIVE ACTION

Another opportunity issue which saw its genesis during the 1960's was the issue of affirmative action. This concept required employers to take the initiative to bring minorities and women into

the workforce. Undergirding this concept, which oftentimes was accompanied by a numerical measuring stick to determine progress, was a notion that absent discrimination a workforce would more or less reflect the diversity of the nation. Therefore, this concept placed very little emphasis on fault but rested instead on a principle that ability and not race, ability and not color, ability and not sex, ability and not religion, ability and not country of origin, ability and not age or handicap was the standard by which workers in this nation were to be judged. Consequently, it was result oriented.

PROTECTIVE LAWS

Another opportunity issue which we saw succeed during the early days of civil rights was the issue of state laws that restricted women from doing work that required lifting certain amounts of weights or working in certain dangerous occupations or fewer hours than men. The courts struck down these requirements as discriminatory, thereby continuing its elimination of barriers to opportunity.

PAPER AND PENCIL TESTS

The courts were faced very early with the question of whether tests or other personnel selection devices that minorities or women failed at a disproportionate rate were discriminatory. These devices were challenged because they denied the opportunity for jobs, promotions, etc. to minorities and women at a disproportionately larger extent than to others. These devices were struck down as discriminatory.

DECADE OF THE 80'S

Many of the experts are projecting that the decade of the 1980's will be a decade in which jobs will not be as plentiful as in the 1960's. The most recent statistics show that overall unemployment is 7.3 percent. However, when broken down, minority unemployment is twice that of whites. Moreover, youth unemployment is at an epidemic rate, with minority youth unemployment in excess of 36 percent.

Many experts believe that the economy of the 1980's will go through periods of growth followed by periods of slow downs and recessions.

Unlike the economy of the 1960's, the economic indicators of the 1980's will dictate different issues. The single most important issue of the 1980's in civil rights may be job creation and job retention. It is my belief that issues which are compatible with job creation will stand the greatest chance of survival. Thus, I expect a shift in emphasis from (but not away from) issues of opportunity to issues which are compatible with job creation. In the early stage of this decade, we already see signals of new issues.

LAYOFFS

One of the issues that has already surfaced is the question of lessening the disproportionate burden borne by minorities and women when there is a layoff. Because minorities and women are

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oftentimes the last hired because of the last hired first fired nature of seniority systems, minorities and women suffer a disproportionate burden when there is a layoff. Title VII protects bonafide seniority systems from attack. Therefore, the solution does not rest solely with Title VII of the Civil Rights Act of 1964.

One suggested solution to this problem is worksharing. Under worksharing instead of laying off a large number of employees, the work would be shared by all on an equitable basis. Under this approach, an employer and union would be encouraged to lessen the burden that women and minorities suffer during times of layoff by the worksharing approach.

One impediment to the widespread use of worksharing is the unavailability of unemployment compensation benefits for persons on reduced work weeks. For example, if an employer lays off ten percent of its workforce, those employees would be available for unemployment compensation benefits. However, if that same employer instead of laying off ten percent reduced the work week for part or all of its employees from five to four days, those employees would not be eligible for unemployment compensation.

Realizing this dilemma, the State of California has experimented with permitting partial unemployment compensation in a situation such as the one just described. I am sure that if the California experiment proves successful, other states will follow suit.

WAGE DISCRIMINATION

Another non-access issue which has also surfaced is the wage discrimination issue. This is not an access issue because it does not attempt to remove an artificial barrier to a job, but instead attempts to redefine the status quo. The proponents of this issue say that traditional female jobs pay less than traditional male jobs; therefore, there is an element of sex discrimination which explains the differences in pay.

The Supreme Court in the Gunther case recently dealt with peripheral aspects of the wage discrimination issue when it held that Title VII's sex discrimination provisions permit certain cases to be brought under Title VII which could not be brought under the Equal Pay Act. Although the Gunther case did not close the door to the concept of comparable worth, it did not give the green light to this concept either. The most that can be said about the effect of the Gunther case on comparable worth is that the court left the issue open for another day.

Because the 1980's will probably be a period where the emphasis will be on issues which are compatible with job creation, this factor may affect the acceptability of the comparable worth concept. If the cost is too prohibitive, thereby adversely affecting the ability to create jobs, the acceptability of the concept of comparable worth may be likewise affected.

AFFIRMATIVE ACTION

Unlike comparable worth, affirmative action does not run afoul of creating jobs, although admittedly an access issue. I think that the overriding question surrounding affirmative action, however, is a philosophical one. There appears to be an unstated rejection by many of the underlining assumption that absent discrimination a workforce would reflect the diversity of the nation. Therefore, the issue has political appeal to those who for whatever reason feel threatened by minority and female gains. However, a Harris poll taken after last November's election found that more than 65 percent of all Americans supported affirmative action. Moreover, according to the July, 1981 issue of Equal Opportunity Forum, those who voted for President Reagan supported affirmative action 65 percent to 27 percent. Therefore, this poll suggests that the concept of affirmative action is an acceptable principle in America.

EEOC'S RELATIONSHIP WITH IAHORA-PAST,
PRESENT AND FUTURE

When Title VII was being debated, there were those in the State and local human rights area who thought that State and local agencies would not survive once the Federal government entered the field. However, that fear was unfounded. We now have a peer relationship, and, I believe, a model relationship. I think that our division of labor as well as incentive financing in the employment discrimination field is evidence of what can be accomplished when governments work together.

10.

With some 69 agencies in 46 states, EEOC has a relationship that assures the protection of state, local and Federal rights of employees. We provide quicker relief than in the past. Moreover, our new relationship is effective and produces real benefits for those who come to us after having been subjected to employment discrimination.

The development and continued improvement of our relationship has been a matter of keen interest and continued oversight by each of EEOC's Commissioners. It continues to be. Each policy decision involving this program is considered, discussed and voted upon by the entire Commission. Each contract and each contract modification is subjected to this same scrutiny. Our relationship with the 706 agencies is a subject in which we each take pride and about which we individually are interested and collegially take great care.

Because we need you, ours is truly a joint workload. There is no way that EEOC could process with its own resources the 40,000 charges you now handle. The charging parties involved in our cases are citizens and taxpayers of your states and localities. Therefore, your efforts protect the rights of your own citizens under your laws as well as their Federal rights. Because you also protect Federal rights it is appropriate that you receive payment for protecting those rights.

11.

The structure of EEOC/706 Agency relationship is in place. The machinery works well, though by no means perfectly. Last year, all 69 agencies with which we contracted had an average processing time of less than 130 days. We accepted over 95% of agencies' final actions as meeting Federal standards; over 30% of your actions were settlements, which saved time and money and in which both charging parties and respondents were satisfied. Agencies' efforts to resolve their backlogs have been extremely satisfying to us, and, I am sure, to you. We project little, if any, backlog charges after the upcoming contract year. Moreover, we are programming our funds to concentrate on your staying current with new charges. We also contemplate expansion of our contractual relationship to cover charges of age discrimination in employment.

We are concluding our first negotiations with those of you whose laws cover age discrimination. We will determine how many of you qualify for funding under the principles discussed at our Houston meeting earlier this year. We expect contracts to process age cases to be awarded in August to more than 30 agencies. We expect our relationship with you in the age area to be as effective and beneficial as with Title VII charges. Moreover, we hope in the next contract year to expand the number of agencies with which we contract in the age area.

We expect certification regulations to be published in the Federal Register this week which will make certification a reality this fiscal year. Simply, this gives legal recognition to the concept that many state and local agency decisions and orders consistently meet Federal requirements. Consequently, there need not be a case-by-case review of the work product of such an agency. An agency with four years' history of contracting with EEOC and a 95% or better acceptance rate over the past 12 months will probably be certified. Its work product will be accepted subject only to periodic checks. Individual parties to a 706 agency decision may request and will receive a review of their case if they desire it.

We are satisfied that certification will free up staff resources at EEOC and at the certified agencies. Certification also should reduce paper work, the bane of any administrative system.

We are happy to say that there is no agency with which we contract which is not in reaching distance of certification. Some already have an acceptance rate of over 95% and need only the completion of four years contract history to qualify. Others have four years' experience with us and are within a few percentage points of 95% acceptance.

Our machinery is in place and working well. Therefore, we contemplate no major new initiatives in the coming year. However, we do expect improvement. Our focus, internally and with

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the 706 agencies will be upon improving the record we have. Some areas which need improvement include problem solving, training, information sharing, and better management of our systems and resources.

In this time of economic belt tightening, we do not expect major increases in our Federal budget, nor, if experience to date is any guide, of your own budgets. EEOC and 706 agencies however, have every right to expect adequate funding from our budgetary sources. It is our job to insure that the taxpayer is getting full value for the dollars we are entrusted to expend. We have come quite a distance toward being able to show that our systems and resources are working at optimum effectiveness. Our job over the next year or so is to assure that in each office of EEOC as well as each member of IAHORA are at or near its optimum effectiveness.

CONCLUSION

I would like to, in conclusion, reiterate that the civil rights community must remain positive in carrying out its programs. We must be brave and strong, like all of those who preceded us and who brought us this far.

We must keep our focus on our mission and not be detracted by those who carry the message of doom. For it is the carrying of the message of doom which oftentimes becomes the self-fulfilling prophecy. The struggle cannot and will not falter. The 'Dream of

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equality' for all lives on through your vigilance, perseverance
and action.

Thank you.

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