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REPORT TO FIELD DIRECTORS
BY ACTING CHAIRMAN, DR. J. CLAY SMITH, JR.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C.

January 13, 1982

As all of you are aware, I report to you not because it is required by law or Commission procedure, but because I look upon this agency as one big family in which you not only work for me and the Commission, but I work for you, and the many beneficiaries of the various laws and statutes which we are charged with enforcing. Thus, if we are to achieve our assigned tasks in a meaningful manner we must continue to work together as a unit in effectuating the goals and true spirit and purpose of Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act the Rehabilitation Act, and Executive Order 12067. The only way I can see this being done is through periodically informing you as to the things I do and must do in order to provide the support you need to productively carry out your assignments and responsibilities. When I or anyone else holding this position cannot communicate with you in an open and above board fashion as I seek to do, you may have cause to worry. We may not always agree on the procedure and techniques utilized, but we should forever have a commonality of purpose. That commonality of purpose is not only to uphold the laws of the United States but it includes carrying out our official duties and the fair enforcement of the established laws. Employers, public and private, companies and unions mind you, expect no less. If we are to be understood, we must speak clearly and not with forked tongue or act with multi-conflicting goals or purposes.

REPORT TO FIELD DIRECTORS - 2

One thing I learned early in life is that you cannot serve two masters and expect to go to heaven. No matter what, you must be true to yourself and whatever cause you serve. Most of you through your unwavering dedication, proven loyalties and sustained productivity reflect the high level professionalism that do me great honor as I attempt in turn to represent yours and the President's best interest in carrying forth with the mission of this great agency.

There is much on a positive note to report since you were here last. I will briefly touch on some but not necessarily in the chronological order of their importance.

The first thing I want to say is that the Commission now has three members, thanks to the President -- Cathie A. Shattuck, was sworn in by me as a member of the Equal Employment Opportunity Commission on December 21, 1981 after being given a recess appointment by President Ronald Reagan. He had made known on December 7th his intention to nominate her for the term expiring July 1, 1985, that had been previously held by Ethel Bent Walsh.

Ms. Shattuck, who received a BA degree in 1967 and her J.D. in 1970 from the University of Nebraska at Lincoln, was in the private practice of law in Boulder where she represented both employees and employers in labor law and on other matters. She had several years ago served as a trial attorney for the EEOC in Denver.

Ms. Shattuck was also a special hearing officer for the Colorado State Personnel Board. She was a lecturer and instructor in employment and employee relations and taught Continuing Legal Education in Colorado. She was formerly a legislative aide to the speaker of the Nebraska Unicameral, and assistant law librarian at the Nebraska University College of Law and a law clerk in the Office of the Attorney General of the State of Nebraska. Ms. Shattuck is a native of Salt Lake City, Utah.

With the swearing in of Ms. Shattuck, the Commission now has three members on board which terminated the delegation of authority given to me on October 1, 1981. Thus, the Commission on yesterday held its first meeting in 107 days at which time we were able to get into policy issues, approved 30 cases for litigation, and on motion of Commissioner Rodriguez they adopted the attached resolution crediting me with certain achievements during the 81 days the EEOC was without a quorum. Whatever accomplishments were made during these critical days at EEOC, you are equally responsible for any of my accomplishments.

On November 2, 1981, the U.S. Senate unanimously confirmed the nomination of Michael J. Connolly, a former corporate labor counsel with General Motors Corporation in Detroit, to become general counsel of the U.S. Equal Employment Opportunity Commission (EEOC). Connolly was nominated for the four-year term position

by President Ronald Reagan on July 7, 1981.

At his confirmation hearing, Connolly promised committee members that, if confirmed, he would "continue the momentum that has been built by previous general counsels," and that "no stone will be left unturned in the battle to eradicate employment discrimination."

Connolly, is the seventh and, at 32, the youngest General Counsel ever to serve the Commission.

Now turning our heads to the programmatic side of the agency:

COMPLIANCE ACTIVITY

Charge processing figures for Fiscal Year 1981 show a continued climb in the area of production and benefits. In 1981, the Commission field offices resolved 71,690 cases. This represents a 25% increase over last years's figure of 57,327. The ratio of charges resolved to charges taken is 134%.

Just looking at Title VII alone, the Commission took in 42,372 charges and resolved almost 62,000 charges. Frontend inventory is now down to about 20,000 charges. More importantly, Commission processes continue to provide substantial relief. Despite the extraordinary number of resolutions, the Title VII rapid charge settlement rate is holding at 43%. The settlement rate for Age Discrimination charges has risen to 25%. These figures far exceed benefits obtained through the compliance process in any prior year.

While our Age and Pay programs are on the upswing, we still have a few problems in some offices. Specifically, these offices have been slow to integrate Age and Equal Pay into our management apparatus. This must be corrected immediately and the Director of Field Services will be working with you on this problem.

On October 31, 1981, in 46 FR 50366, the Commission published notice of final rulemaking of its revisions to procedural regulations by the addition of §§1601.75, 1601.77, 1601.78, 1601.79 and 1601.80 to 29 CFR Part 1601. These sections set forth procedures whereby the Commission and certain State and local fair employment practices agencies (706 agencies) are relieved of the present Commission individual, case-by-case review of cases processed by these agencies under contract with the Commission, as provided in Section 709(b) of Title VII of the Civil Rights Act of 1964, as amended. These sections set forth the procedures by which the Commission may certify certain 706 State and local agencies which meet prescribed criteria. These regulations became final last year and 48 agencies have now been certified.

With respect to ADEA charges jurisdictional under state law, on May 26, 1981, the Commission adopted standards for the processing and funding of charges by FEP agencies filed under the Age Discrimination in Employment Act and under comparable state laws. The procedures call for dual filing and worksharing, much like

our Title VII procedures. State agencies are funded on the basis of charges produced. Contracts were approved for fiscal 1981 committing the state agencies to 2,235 resolutions.

LITIGATION ACTIVITY

The following summary provides comparison statistics of our direct litigation activities excluding systemic and the monetary benefits obtained through its enforcement program for fiscal years (FY) 1980 and 1981.

For the purpose of this report, areas of comparison include: litigation recommendations, approvals by the Commission, number of cases filed, settlements and monetary benefits.

During FY 81, the Commission's district offices recommended 469 litigation actions to the Office of General Counsel. This represents a 19 percent increase in the number of recommended cases over the prior year's statistic of 393.

Of the total number of recommended actions, the Commission approved 364 cases. This was a 13 percent increase over the prior year of 322 cases. The most significant percent change occurred under the Age Discrimination in Employment Act, with an 89 percent increase in the number of recommended suits and a 68 percent increase in the number of approvals. More Age Act cases were filed in FY 81 than in any previous 12-month period of federally initiated litigation under the Act.

RECOMMENDATIONS TO THE GENERAL COUNSEL

	FY 80	FY 81	%Changed
Title VII	247	307	+24%
ADEA	53	100	+89%
EPA	93	62	-33%
TOTAL	393	469	+19%

APPROVAL OF SUITS BY THE COMMISSION

	FY 80	FY 81	%Changed
Title VII	195	218	+12%
ADEA	53	89	+68%
EPA	74	57	-23%
TOTAL	322	364	+13%

There was a 13 percent increase in the total number of lawsuits filed during FY 81 compared with the prior year. In the Title VII area, statistics show an increase from 200 to 229 lawsuits or an overall increase of 15 percent. The number of age suits significantly increased in FY 81 to 89, which is an 89 percent increase over the prior year's total of 47.

CASES FILED

	FY 80	FY 81	%Changed
TITLE VII	200	229	+15%
ADEA	47	89	+89%
EPA	79	50	-37%
TOTAL	326	368	+13%

The number of settlements also increased during this past fiscal year to 237 from 192, for an overall increase of 23 percent.

SETTLEMENTS

	FY 80	FY 81	%Changed
TITLE VII	141	172	+22%
ADEA	42	22	-48%
EPA	9	43	+378%
TOTAL	192	237	+23%

Monetary benefits obtained for the victims of employment discrimination, principally backpay awards, declined by 23 percent from almost \$21 million in FY 80 to slightly more than \$16 million in FY 81. This decline is only superficial since the \$5 million difference is because of substantial FY 80 recovery in the Motorola case. Other than backpay, additional remedies the Commission secured included training programs, apprenticeship funds and affirmative action programs.

MONETARY BENEFITS

	FY 80	FY 81	%Changed
TITLE VII	\$18,674,901	\$13,145,403	-30%
ADEA/EPA	2,261,126	3,071,357	+36%
TOTAL	20,936,027	16,216,760	-23%

FY-81

	ATLANTA	BALTIMORE	BIRMINGHAM	CHARLOTTE	CHICAGO	CLEVELAND	DALLAS	DENVER	DETROIT	HOUSTON	INDIANAPOLIS	LOS ANGELES	MEMPHIS	MIAMI	MILWAUKEE	NEW ORLEANS	NEW YORK	PHILADELPHIA	PHOENIX	SAN FRANCISCO	SEATTLE	ST. LOUIS	HO. /LSB	TOTAL	
Cases Recommended for Litigation	14	9	22	16	14	24	37	17	30	26	17	36	17	11	15	17	14	35	21	27	18	29	3	469	
Cases Authorized for Litigation	7	15	14	16	16	16	19	13	25	20	15	20	13	8	12	13	14	29	15	23	12	26	3	364	
Cases filed:																									
-Direct Suits	9	12	12	12	17	14	20	16	19	18	15	20	11	9	11	9	11	21	20	22	8	24		330	
-Interventions	0	0	0	0	4	1	0	1	5	0	0	0	1	0	1	1	1	1	0	0	0	0		14	
-S 706(f)(2)	1	1	0	1	0	2	1	1	2	1	2	4	0	0	0	1	0	2	0	0	0	0		24	
-S 707																									
-Other	3	2	1	11	10	1	4	1	3	4	0	1	3	1	3	6	0	10	3	4	0	5		76	
Trials:																									
-Won	1	1	0	0	1	0	2	0	4	1	1	1	6	1	2	1	2	0	0	0	0	0	0		24
-Lost	1	0	0	2	1	0	1	0	3	2	0	0	1	0	0	2	1	0	0	0	0	0	0		15
-Pending	2	0	0	0	2	3	3	2	1	0	0	1	2	2	0	1	0	2	1	0	0	0	0		23
Dismissals	1	2	3	1	2	3	3	2	1	1	0	0	0	1	0	3	3	0	1	3	0	2	0		32
Settlements	9	17	8	11	12	17	20	9	6	15	3	16	16	6	6	9	9	25	8	13	6	12	6		291
Settlements w/goals & Timetables	3	2	7	0	0	2	0	0	0	2	3	0	7	0	3	2	1	7	1	9	0	0	0		49
Monetary Benefits	\$198,168	\$1,055,014	\$125,049	\$66,192	\$1,541,700	\$430,139	\$569,092	\$97,700	\$528,600	\$465,662	\$29,208	\$231,914	\$413,710	\$38,900	\$108,750	\$124,406	\$489,400	\$819,081	\$624,900	\$2,237,537	\$123,511	\$363,127	\$5,535,000		\$16,216,760

OFFICE OF SYSTEMIC PROGRAMS

During the first quarter of FY 82, OSP continued its progress in processing Commissioner charges. Two more decisions were circulated to the Commissioners, a number of pre-decision settlements initiated and several cases moved into the conciliation process. To assist in this process, guidance on conciliation matters has been finally prepared for distribution.

Two major charge settlements were accomplished during the quarter. One settlement was achieved by the Headquarters unit on a backlogged multi-facility charge. The settlement provides goals, back pay and preferential job offers at three large manufacturing facilities. OSP's second field PDS resulted in affirmative relief plus approximately \$250,000 in back pay.

The technical Services Division continued its revision of the targetting selection model and prepared its position paper on Determination of Underutilization. Technical Services Division continued to provide assistance in a number of cases, and provided expert witness testimony both in Jurgens v. EEOC and in the Denver District Office's successful trial in EEOC v. Trailways. TSD staff were also extremely active in developing position papers in support of EEOC's position on Uniform Guidelines on Employee Selection Procedure.

In the area of litigation OSP concluded negotiation of settlements in two major cases. On December 22, 1981, the Commission and private plaintiffs obtained preliminary approval of a settlement with the United States Fidelity and Guaranty Company. The

settlement, which resolves two private lawsuits in which the EEOC intervened as well as a nation-wide Commissioner Charge, provides for payment of \$3.5 million in back pay and other relief valued at several million dollars; it will benefit in excess of 25,000 minority and female employees and rejected applicants nationwide.

Other aspects of the settlement include:

1. the establishment of goals for minorities and women in professional positions and for minorities in clerical positions;
2. development of a job posting system for professional and clerical positions;
3. development of a career counseling program;
4. development of a supervisory training program including EEO counseling;
5. development of a new performance appraisal system; and
6. implementation of a compliance monitoring system including annual review by the Special Master.

The second major resolution involved the Commission's charge and a private lawsuit against Dean, Witter, Reynolds, Inc.

On December 17, 1981, the EEOC reached agreement in principle on all substantive issues with Dean, Witter, Reynolds, Inc. The agreement was memorialized in a Memorandum of Understanding signed that date, a courtesy copy of which was submitted to the Court on December 22, 1981. The agreement provides for back pay of

\$1.8 million to be distributed to female, Black and Hispanic applicants and present and former employees in sales, professional or managerial positions between January 1, 1976 and December 31, 1981. As the fund was transferred to an interest bearing escrow account on December 18, 1981, the amount actually available for distribution will most likely be in excess of \$2 million.

The agreement also sets forth specific five year hiring goals for females, Blacks and Hispanics in the Account Executive position, which accounts for one-third of Dean Witter's approximately 10,000 person workforce. Additionally, the ultimate goal to be achieved before the expiration of the decree were set for most of the approximately 900 other positions at Dean Witter.

In addition to the funds transferred for back pay, Dean Witter has committed to expend at least \$2.88 million for the implementation of other affirmative action efforts, including:

1. Advertising and recruitment directed at females, blacks and Hispanics;
2. Establishment of a Vice President level EEO official;
3. EEO training for all managers and supervisors, as well as any other employee who is involved in the selection/promotion process;
4. Implementation of an employees' skills inventory, designed to identify females, blacks, and Hispanics with promotion potential;
5. Implementation of a method to evaluate supervisors' and managers' contribution to EEO efforts;

6. Implementation of a job evaluation and salary wage program to ensure uniform requirements and salary structure throughout the company's 250 branch offices;
7. Implementation of posting job vacancies throughout the company and establishment of mechanism for employees to apply for promotions;
8. Establishment and implementation of policy that persons discharging female, black or Hispanic Account Executives will have to set forth the reason for such discharge in writing.

OFFICE OF POLICY IMPLEMENTATION

Executive Order 12291 requires that each Federal executive agency publish in April and October of each year a semi-annual agenda of proposed regulations that the agency has issued or expects to issue, and current effective rules that are under agency review pursuant to the Executive Order.

Under Executive Order 12291, all notices of proposed and final rulemaking, interpretive guidelines, and general statements of policy must be cleared by the Office of Management and Budget prior to publication. OPI has been assigned the responsibility of obtaining OMB clearances under Executive Order 12291. During 1981, OPI submitted eight such documents for clearance to OMB, all of which were cleared by OMB for publication in the Federal Register.

As I mentioned before, in August of 1981 the Vice President's Task Force on Regulatory Relief announced a list of government regulations that would be subjected to review under Executive Order 12291. This list contained two of the Commission's guidelines, namely, the Guidelines on Sexual Harassment and the Uniform Guidelines on Employee Selection Procedures. As to the Uniform Guidelines on Employee Selection Procedures, the alleged burdensomeness and the utility of the recordkeeping requirements are the subject of review. The Task Force requested that we submit workplans for the review of these guidelines by September 15, 1981. After meeting with the Task Force representatives and under my direction, our proposed workplans were delivered to the Task Force on September 9, 1981.

As a part of the Uniform Guidelines on Employee Selection Procedures review process, OPI has prepared six different survey questionnaires which are planned to be sent to employers, unions, attorneys, psychologists and public interest groups. These questionnaires have recently been submitted to the Vice President's Task Force on Regulatory Relief, the Office of Management and Budget, the Government Accounting Office, the Census Bureau and the Federal agencies who co-signed the Uniform Guidelines. Final approval of the survey questionnaires is expected in early 1982. After final approval is obtained, OPI will send the survey questionnaires to approximately 4,000 survey respondents. Also, as a part of this review, the Office of Interagency Coordination is conducting a survey of all Federal EEO Regulations to determine

the feasibility of initiating uniform EEO recordkeeping requirement throughout the Federal government. If it were feasible, the adoption of such uniform requirements would further alleviate burdens on employers and others.

The task force of the Vice President identified the Sexual Harassment Guidelines because of public comments criticizing them for failing to provide adequate guidance to employers on such questions as to what constitutes unwelcomed sexual advances or prohibited verbal sexual conduct under the Guidelines, implementing Title VII. With respect to our review of the Sexual Harassment Guidelines, OPI has prepared a proposed Federal Register notice inviting comments on the Guidelines. In October 1981, informal interagency coordination under E.O. 12067 was completed on the proposed notice. Because of the lack of a Commission quorum in the latter part of 1981, the notice has not yet been approved by the Commission for publication in the Federal Register.

As noted in my earlier report to you, on September 1, 1981, in 46 FR 43848, the Commission published its proposed interpretations with respect to the enforcement of the Equal Pay Act. These interpretations would replace those issued by the Department of Labor at 29 CFR Part 800. Comments on the proposed regulations were to be received by November 2, 1981. The Office of Policy Implementation and the General Counsel's Office are reviewing the public comments for the purposes of finalizing these interpretations.

On July 1, 1979, pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) the Commission assumed enforcement of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621, 623, 625, 626-633 and 634 (ADEA). Prior to the assumption of jurisdiction, the Commission commenced an in-depth review of all existing interpretations of the ADEA which were promulgated by the Department of Labor. See 44 FR 37974 (June 29, 1979). On November 30, 1979, the Commission published in the Federal Register its proposed interpretations of the ADEA. See 44 FR 68858 (November 30, 1979). On September 29, 1980 in 45 FR 64212, the Commission rescinded its earlier proposed interpretation. In August of 1981 the Commission approved the interpretation originally proposed in November of 1979 which will rescind the interpretations issued by the Department of Labor. Final interpretations were published in the Federal Register on September 29, 1981, (46 FR 47724).

The transcript of the oral testimony and written testimony submitted at the Commission's hearings on job segregation and wage discrimination held in Washington, D.C., in April of 1980, and the interim report of the National Academy of Sciences entitled "Job Evaluation: An Analytic Review," have been placed on microfiche and microfilm. These materials are available in the Commission library for public reading and Commission use. Copies of the microfiche and microfilm have also been distributed to all Commission District and Area Offices.

In further review of this issue, the Commission prepared an interpretative memorandum, issued in the form of a ninety-day notice, specifically addressing the recent Supreme Court decision in County of Washington v. Gunther, 101 S. Ct. 2242 (1981). This notice, N915, dated September 30, 1981, which has been continued in effect, provides interim guidance in processing Title VII and Equal Pay Act claims of sex-based wage discrimination, including those raising the issue of comparable worth.

In October 1981, I testified before the House Subcommittee on Employment Opportunities, the Committee on Education and Labor. Under my direction, OPI prepared an extensive report on the subject of affirmative action which was submitted by me to the Subcommittee. The report deals with and clarifies certain misconceptions that surround this issue, and also offers some estimates of costs and benefits relating to affirmative action.

Since July 1965, the Commission has issued almost 10,000 Commission Decisions under Title VII (outside the decisions issued by the Office of Review and Appeals in the federal sector). Other than a few hundred of these Decisions that have been published in the commercial publications, most of these Decisions have been inaccessible to both the public and the Commission staff. OPI undertook the mammoth task of collecting, verifying and chronologically arranging all these Decisions. In early 1981, all Commission Decisions through fiscal year 1979 had been placed on microfiche. However, because these Decisions have not been indexed by subject matter as yet, OPI proposed that these Decisions be placed on

a computerized data base which would enable the Commission to have efficient access to this large volume of materials. I placed a very high priority on this project. Therefore, I approved the proposal to load approximately 10,000 Commission decisions into the JURIS computerized data base, to produce a decisional index, and sanitize these decisions. Over a quarter of these materials have been delivered to the contractor for this purpose. Copies of the JURIS-produced decisional index, when completed, will be distributed to each District and Area Office to enable it to have access to all Commission decisions. When the system is fully operational, the Commission will have direct access to the JURIS data base via a terminal located in OPI. This will enable the Commission and OPI to respond promptly to Freedom of Information Act and other such requests for Commission decisions. The existence of these materials in the JURIS data base will also enable the Commission staff to do sophisticated research in Commission decision precedents in evolving areas of the law.

The Office of Policy Implementation issued 29 decisions during FY 81. Some of these decisions reiterated prior EEOC policy; however, most of them set forth new policies in such areas as seniority, sexual harassment, affirmative action, religious accommodation, tenure, and speak English-only rules. Further, OPI returned to field offices 652 charges which originally had been called into headquarters for a review of non-CDP issues. OPI received 487 charges containing non-CDP issues in FY 81, more than one-half of which involved the issue of sexual harassment.

The Office of Policy Implementation began a project to computerize all of the charges it receives. This project should be completed in the second quarter of FY 82 and will allow OPI to give the field offices status reports on the charges they have pending in that office.

As you know, the Commission's success in investigating and resolving charges of discrimination depends in large part on the effectiveness of the EEOC Compliance Manual in providing up-to-date guidance on charge processing and on Commission policy. As presently published, Volume I (procedural) and Volume II (interpretative) of the Compliance Manual deal only with Title VII matters. However, both Volumes are being revised not only to update Title VII material but, also importantly, to include guidance on the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967, as amended (ADEA).

The Office of Policy Implementation is currently drafting, reviewing, and/or editing amendments to the existing Title VII part of Volume I on an as-needed basis. It is also reviewing, editing, and finalizing proposed EPA and ADEA sections for Volume I. Of these, the Commission has already approved revised §15 on Title VII, §§101 through 184 on EPA, and §§201 through 284 on ADEA.

In addition, OPI is preparing a completely revised Volume II which will cover all three statutes. Sections dealing with Title VII which have been approved by the Commission include: §601, Introduction; §603, Identifying and Processing Charges Which Raise Issues Not Covered by a Commission Decision Precedent;

§§604, Theories of Discrimination; §607, Affirmative Action; §615, Harassment; §619, Grooming Standards; and §622, Citizenship, Residency Requirements, Aliens, and Undocumented Workers.

OFFICE OF GOVERNMENT EMPLOYMENT

During my earlier report it was noted that in January 1981, EEOC issued advance instructions to all Federal agencies for the implementation of the Multi-Year Affirmative Action Plans through our Management Directive (M.D. 707). This plan covers the period from FY 82 to FY 86. Some problems arose with respect to the issuance of M.D. 707 but after several meetings with National Achieves Record Services and OPM personnel, the matter was temporarily resolved and clearance for our M.D. 707, as amended by the June 15 Memorandum was finally granted. On August 12, 1981, I once again wrote to all Federal agencies requesting them to complete their planning at the first possible moment to meet the operative date of October 1, 1981.

Another activity of our Office of Government Employment was the issuance of our Management Directive (M.D. 710) with Federal Affirmative Action (FAA) instructions to Federal agencies on their affirmative action accomplishment report for minorities and women for FY '81. These will be the last instructions concerning the two years' transition period which allowed agencies to "learn" the new planning process, as we moved away from the annual planning concept to the multi-year approach (M.D. 707). Handicapped Week, thus in this, the International Year of Disabled

Persons, we took the opportunity to reflect on problems of the handicapped in all spheres of the republic.

The Department of Labor reports that there are 7.2 million severely disabled persons of working age, or about 6% of the national work force.

OPM's Central Personnel Data File (CPDF) indicates that in 1978 only 0.76% of the total Federal non-postal work force were severely disabled persons. There is gross under-representation of severely disabled persons throughout the Federal government, in all occupations and at all levels.

The Office of Government Employment has also issued Management Directives (M.D. 708 and 709) dealing with the handicapped. The former transmitted instructions for reporting the accomplishments of FY 80 affirmative action programs and for the program plans for the last half of FY 81.

The latter, although not a multi-year plan, moves to a longer period of planning. It covers the accomplishment reports for FY 81, the affirmative action program plans for FY 82 and the accomplishment report covering the same period.

During the development of M.D. 709, an issue was raised concerning our authority to handle the Disabled Veterans Program (Section 403 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974) together with the Handicapped Individuals Program (Section 501 of the Rehabilitation Act of 1973). The President's Reorganization Plan No. 1 of 1978 transferred to EEOC the

responsibility for administering several affirmative action programs, but no mention was made of Section 403 of the Veterans Assistance Act. Later, when Congress amended this same Act, it did not substitute EEOC for the Civil Service Commission as the agency with authority to handle the program. However, there has been a generally implied understanding of all the parties concerned that EEOC was to also handle this program. The situation was complicated by the fact that the Act requires each agency to include in its affirmative action plan for the hiring, placement, and advancement of handicapped individuals (Section 501), a separate specification of plans for the disabled veterans. Once the issue was raised, the Office of Government Employment met with OPM staff to discuss the problem while the legal offices of both agencies developed opinions. OPM staff gave us to understand that they wanted EEOC to continue with the program; however, the Director of OPM announced that OPM was going to take charge of the program. Meanwhile, our proposed M.D. 709 contains instructions for the disabled veterans affirmative action program. We finally reached an agreement with OPM by which EEOC will continue with this program during FY '82 but advising agencies through our M.D. 709 that thereafter OPM will assume responsibility for the program.

The Office of ~~Government Employment~~ has been conducting other activities such as the development of a staff, a system for the review of agency plans, Headquarters-Field coordination, desk-officer responsibilities for our programs, and a consultation in

September in Dallas with our Federal Affirmative Action Field Managers, the District Directors of the ten Federal Regions and Headquarters personnel. In the fourth quarter, we initiated on-site program reviews for the 501 (handicapped) effort. This will be expanded in 1982 to cover the sex and minority program.

OFFICE OF INTERAGENCY COORDINATION

The Commission's coordination role, under Section 715 of the Civil Rights Act of 1964 and Executive Order 12067, has been extremely active during 1981.

In the crucial area of review of agency regulatory issuances, the Commission met and was able to issue a timely response both to OFCCP's Advance Notice and Notice of Proposed Rulemaking dealing with the affirmative action regulations for Federal contractors. I strongly endorsed the need for regulatory reform and paperwork reduction, and expressed a desire to negotiate a few of the substantive changes proposed by OFCCP. OFCCP expects to coordinate its preliminary proposals on the subject with the Commission in late January.

In July 1981, the Commission agreed with a significant stipulation to OFCCP's proposed withdrawal of its broad regulation dealing with payment by contractors of membership fees to private clubs which discriminate in their membership policies. The Commission recommended that OFCCP amend its withdrawal statement to include a commitment to investigate instances in which payment of club dues results in illegal discrimination. OFCCP

has yet to submit to the Commission a proposed final decision on this issue. While the Commission has successfully negotiated a joint equal employment opportunity poster with OFCCP and DOJ it has been unable to move forward with the implementation of the EEOC/OFCCP Memorandum of Understanding because of OFCCP's heavy program of regulatory reform. I recently wrote to the Secretary of Labor urging him to accelerate his agencies progress in designing procedures to fulfill the promise of the Memorandum of Understanding.

Regulatory proposals also were received from a large number of other agencies, including the Department of Education, the Office of Revenue Sharing, the General Services Administration, the Environmental Protection Agency, and the Office of Management and Budget. Several issuances were submitted by the Office of Personnel Management, the most consequential of which was a complete revision of its regulations governing the operation of state merit system programs. In addition, I have written to the Secretary of Health & Human Services concerning the failure of that agency to include appropriate equal employment provisions in the proposed regulations it published to govern its new block grant programs. In order to further cooperate among agencies in the design of equal employment regulatory policy, the Commission will issue a quarterly bulletin of agency issuances under development.

As a result of a dialogue I initiated with OMB, an agreement was reached in August which strengthens the effectiveness of Executive Order 12067 by requiring that EEOC complete its analysis of agency Notices of Proposed Rulemaking, final rules and information collection instruments under Executive Order 12067 prior to their submittal to OMB for review under Executive Order 12291 and the Paperwork Reduction Act. Shortly thereafter, I sent a memorandum outlining the new procedures to the heads of all federal agencies. The Commission is now prepared to publish final changes to its coordination regulations to conform them to the provisions of the agreement. The Commission worked closely with the Office of Management and Budget on two other matters. It has reviewed the relevant portions of agency budget estimates and supporting data to ensure that they are complete and appear factual, and is in the process of conducting a detailed assessment of the estimates and data provided by three major cabinet departments. In conjunction with OMB, the Commission has investigated charges of duplication of compliance activity by EEOC, the Office of Revenue Sharing and the Department of Housing and Urban Development. As a result of this analysis, HUD is revising its data collection instruments.

Important activities now underway include a study of methods for improving the relationship between state human right agencies and Federal equal employment activities. In addition, an options paper outlining various approaches to the need for training of Federal equal employment officials was circulated to the agencies

for comment. Commission staff also are reviewing the possibility of revising the equal employment provisions of the regulations dealing with treatment of the handicapped. This analysis is being conducted in conjunction with the Department of Justice's revision of the government wide regulations prohibiting discrimination against the handicapped in the provision of Federal and federally financed services.

BUDGET

When you were here before we were confronted with the gloomy prospect of having to operate with the agency on a substantially reduced budget of \$123,542,000 which would have caused major RIF's and furloughs, and devastating program overhaul. Now things are much better and I am indeed moderately optimistic. The changes in the federal budget with the resulting changes in the Commission's budget emphasize the need for planning, establishing options and alternatives within our priorities and a total awareness of cost vs charge resolution for Title VII, Age, Equal Pay, Federal Sector Complaints and the State and Local Grants Program.

During the 1st quarter of FY 82, I attended several meetings at OMB to present and defend the Commission's 1982 and 1983 budget requests. As a result of these meetings, I have reason to be optimistic and to a large extent pleased, although not completely satisfied with the end results.

I have discussed these concerns with you before and at this time I am awaiting the President's pronouncement in his budget to the U.S. Congress sometime this month or in February.

OFFICE OF REVIEW AND APPEALS

Fiscal 1981 was the second full year of operations for the Office of Review and Appeals. The principal activity during FY 81 was to process as many cases as possible within the severe professional and clerical constraints of the hiring freeze. The office continued to apply private sector precedent to federal sector decisions towards the end of FY 81 the Commission was planning to add ORA decisions to the JURIS system and to begin a compliance program. Our budgetary posture, however, may temporarily affect resources for those two areas.

Appeals pending on 9/30/80	1907
Appeals docketed during FY 81	3175
Decisions written during FY 81	2611
Appeals pending on 8/30/81	2471

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Our responsibility to uphold the principles of equal employment opportunity and to aggressively enforce the anti-discrimination jurisdictions with which we are charged must begin at home. We cannot expect the employer community to hold stock in the Commission's activities if our own employees are left wanting or their rights not fully protected.

In our agency that task is particularly exacting since most of our professional employees could be considered experts in the jurisdictions which we enforce. A difficult task indeed, yet one which, as the lead civil rights enforcement agency, we must meet and lead the way for all employers.

In Fiscal year 1981 the Office of EEO complaints of discrimination for processing increased. That fact, coupled with an ever shrinking EEO staff, has led that office to seek alternative methods in processing its caseload. In close consultation with various headquarters offices, the District Directors EEO Subcommittee and the union, the Office of EEO has developed a pilot program for processing complaints using rapid charge processing techniques. The cornerstone of the pilot program will be a more intensified effort to settle or resolve complaints at the earliest possible stage. Once underway, the pilot will be tested on a trial basis in a limited number of offices. If successful, this program could have a far reaching impact throughout the Federal community.

Recently, that office has issued an Agency Directive on the prevention and elimination of sexual harassment in the workplace. Although less than 3% of all complaints filed with the Office of EEO in FY 81 alleged sexual harassment, it is nonetheless a subject which we as managers must be fully prepared to deal with should the need arise.

It should be noted that in several more days we will mark the anniversary of the late Dr. Martin Luther King's birth, January 15, 1929, with appropriate observances. Also, next month the Federal community will commemorate National Black History Month. You will be receiving appropriate materials shortly to assist you in planning meaningful observances.

Finally, the Office of EEO has recently issued instructions to all field and headquarters offices for the development and implementation of the agency's multi-year affirmative action plan which will cover a period from FY 81 thru FY 86. I think we all realize that, given our present fiscal posture and staff limitations, new hiring will be extremely limited during this period. However, affirmative action planning during such times can present an ideal opportunity for utilizing existing staff through job enrichment programs, development of bridge positions, implementing the Commission's upward mobility program and taking full advantage of the part-time employment program.

OFFICE OF PUBLIC AFFAIRS

This office has been one of the busiest in the agency since September. We have issued 10 publications and several news releases. On January 28th and 29th, the Office of Public Affairs is coordinating a symposium for the elderly in Los Angeles at the Convention Center. We expect an attendance of 1500. In addition the 15th Annual Report is at the press, the 16th Annual Report is being prepared for the first draft. This is signi-

ficant when you take in the fact that since May 1981 four annual reports have been issued and with the production of the 16th Annual Report EEOC will be current in its annual reports to Congress. The Office of Public Affairs during this three month period has produced five training films in addition to EEOC Highlights which have been distributed to various offices. I am glad to report that we are current on our in-house publication MISSION, the staff is currently working on the next edition to be published on March 1st. The Office of Public Affairs is responding to mail inquiries within a five day time frame work while in May there was a 2,000 backlog in the response to mail inquiries.

LITTLE KNOWN OR RECOGNIZED FACTS

The Commission has one of the largest constituency groups of any agency in government. Specific data derived from the Bureau of Labor Statistics publication "Employment and Earnings, January, 1981", reflect the following:

<u>Civilian Labor Force (age 16 and above)</u>	
Total CLF	104,719,000
Total Female	44,574,000
Black --	10,597,000
Hispanic --	5,484,000
Other Non-white --	<u>1,950,000</u>
Total Minority	18,031,000

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Black Female --	5,098,000 (est.)
Hispanic Female --	2,123,000 (est.)
Other Non-White Female --	<u>931,000 (est.)</u>
Minority Female	8,152,000 (est.)
Non-Minority Female	36,422,000 (est.)
Minority Male	9,879,000 (est.)
Female, age 40-69 --	16,247,000
Male, age 40-69 --	<u>23,492,000</u>
Total, Age 40-69	39,739,000
Total CLF	104,719,000
Non-Minority males age 16-39 & 70 +	<u>30,406,000 (est.)</u>
Total Women, Minorities & Persons Age 40-69	74,313,000 (est.)

Based on the above, the total civilian labor force averaged almost 105 million during 1980. Women, minorities and persons age 40 to 69 represented more than 74 million of this total. In particular, there were approximately 45 million women, 18 million minorities, and 40 million workers age 40 to 69 in the nation's civilian labor force in 1980.

A conservative estimate suggests approximately 70% of the total CLF is employed at employers, both public and private, covered by Title VII. This factor could therefore be applied to the above figures to obtain estimates of employment at Title

Distribution of Title VII Charge Receipts By Bases
FY 76 - FY 80

<u>Year</u>	<u>Race</u>	<u>Religion</u>	<u>Sex</u>	<u>National Origin</u>	<u>Color</u>
1976	53.9%	2.4%	31.1%	10.5%	2.0%
1977	55.2%	2.3%	30.1%	10.9%	1.5%
1978	55.7%	2.1%	30.0%	11.2%	1.0%
1979	52.0%	6.2%	30.1%	10.6%	1.1%
1980	52.6%	2.2%	33.4%	10.2%	1.6%

VII-covered employers -- e.g., for women it would be 31.2 million and for minorities 12.6 million.

Unfortunately, recent generalized references to the Commission by political, civil rights and business community voices tend to suggest that critics only view us in a white male vs black male context. However, it is clear that statistics support our position that under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act the Rehabilitation Act, and Executive Order 12067 we touch on the lives of 100,000,000 voting Americans.

A MATTER OF PRIORITY

One of the top priorities of this Commission for FY 82 and FY 83 has to be improvement in our financial management. Early in my tenure as Acting Chairman, I began to suspect that the agency had serious problems in financial management and procurement activities. These suspicions were verified by both reviews and audits by our internal audit staff and by GAO staff which had been requested to review our financial and accounting operations. The Acting Executive Director, Ms. Issie Jenkins and I have spent an unusual amount of management time in the financial and budget area. There is no doubt that this agency has problems, and all of us have contributed to them by not following proper procedures and paying enough attention to the administration of this responsibility in each of our offices. These problems cannot and must not continue. We are being looked

at by oversight committees, by GAO, and others, and will continue to be looked at until we have corrected our deficiencies.

The Acting Executive Director has set in motion a number of corrective actions and controls to correct our problems. She has my full support. No longer can we tolerate failure to follow prescribed procurement procedures, failure to properly document expenditures of funds, failure to timely initiate payments for vendors, failure to promptly cuff expenditures, and failure to timely reconcile records. Nor will we tolerate failure by headquarters operations to provide timely feedback to office directors on errors and inadequate documentation. We will provide as much guidance as possible, and training to help you and your office meet these demands; we will also, however, take appropriate disciplinary action where procedures are not followed, or where they are circumvented. Office Directors are directly responsible for supervision of staff carrying out these responsibilities, and Office Directors will be held personally accountable. It can be no other way. As we attempt to make our financial management and accountability sound, I will count on your cooperation. You and your staff have shown what you can do in the compliance and litigation area. It is time to show our efficiency in the financial management area.

CONCLUSION

In conclusion, I wish to thank the District Directors and the Regional Attorneys for your continued support and the dedication you continue to give to EEOC. Political appointees such as

me come -- hopefully to do their job without selling out for fame or gain -- and then we leave the government to the professional managers, such as yourselves. You, the professionals of government remain. You are the government, regardless of your political persuasion. You are the best friends that the public have -- regardless of what people or politicians say about you. You keep the light of freedom burning so that the people can elect the leadership of a freedom loving society. On behalf of the Administration, I want to thank you for the job that you are doing.

I am but a person like you. But, I respect each one of you for your dedication to principle and your loyalty to the mission of EEOC. If you ever lose your commitment to EEOC, I trust that you will have the courage to leave the agency rather than to sell out at the expense of millions of restless hearts and wounded souls for whom the people, through the Congress enacted, Title VII, and allied statutes.

Finally, I want to thank Commissioner Armando Rodriguez for his counsel and support. He is a man of integrity and dependability. Commissioner Rodriguez must be given as much credit as anyone for his cooperation during the period that EEOC was quorumless. His daily inquiries and his wit have been exceedingly important to me.

J. Clay Smith, Jr.

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