

Chicago Tribune 6/29/1994



Mike Royko

EEOC is lacking in wisdom teeth

A Chicago corporation recently received an ominous letter from the Equal Employment Opportunity Commission. The letter said: "You are hereby notified that a charge of employment discrimination has been filed against your organization under The Americans With Disabilities Act."

It told the corporation to submit "a statement of your position with respect to the allegation contained in this charge, with copies of any supporting documentation. This material will be made a part of the file and will be considered at the time that we investigate this charge. Your prompt response to this request will make it easier to conduct and conclude our investigation of this charge."

Then came the specific allegation, which was made by a woman:

"On or about April 28, 1994, I applied for the position of Benefits Representative at the above referenced Respondent. On or about April 28, 1994, I was interviewed by the Respondent for the position.

"During the interview, I advised the Respondent that I have a microchip embedded in one of my molars and it speaks to me and others.

"I believe I have been discriminated against because of my disability in violation of the Americans with Disabilities Act of 1990, in that I am qualified for the position.

"After explaining to the Respondent that I have a microchip embedded in my molar, I was not hired."

Now, imagine for a moment that you are a federal bureaucrat at the Chicago office of the EEOC, and someone comes in and says something like this:

"I just applied for a job and I was turned down because of discrimination."

You would probably ask what form the discrimination took.

"I have a microchip embedded in one of my molars."

Ah, a microchip in your molar.

"Yes, the microchip speaks to me and to others."

Ah, the microchip in your molar speaks to you.

"Yes, and that is why they didn't hire me."

I see. They didn't hire you because a microchip in your molar speaks to you. Well, well. An interesting problem.

Assuming you are a reasonable person, how would you respond to such a complaint?

a statement from a physician or dentist verifying that she has a microchip in her molar that talks to her.

Or you might suggest that she ask her dentist to remove the microchip from her molar.

You might even ask her how and why the microchip found its way into her molar and what it talks to her about?

Actually, I've had considerable experience in such matters. Anyone who works on a newspaper long enough—especially the night shift—will eventually talk to people who receive personal messages through fillings in their teeth, bed springs, light bulbs, their TV sets, or voices that ride the winds.

So do desk sergeants in police stations and those who answer 911 calls.

Sometimes the strange messages come from outer space, fiendish neighbors, a nasty relative, Elvis or the president.

But when a caller says she is getting messages through fillings or microchips in her teeth, the cops don't send out a detective to peer into her mouth. Newspapers don't assign a reporter to press an ear against the molar to listen in on the messages.

Yet, here we have a federal agency that takes a talking molar seriously.

Some EEOC investigator actually took down the information and guided the woman through the complaint procedure.

Then the appropriate forms were filled out, a higher-up signed the complaint, and the file and investigation were officially opened.

Now an official at the accused corporation is required to formally respond to the federal complaint, supplying "any supporting documentation" as to why the corporation wouldn't hire a woman who said she had a microchip embedded in her molar that talked to her.

I don't know what the corporation's response will be. How do you answer a charge of this sort?

Maybe you could say: "Our company policy forbids employees receiving personal calls through microchips embedded in their molars on company time."

Or maybe: "At this time, we did not have a need for someone with a talking microchip embedded in her molar. However, should such a position open ..."

The most appropriate response would be to dash off a note saying: "Hey, do you bureaucrats have microchips embedded in your heads? Is this what we're paying taxes for? Bug off!"

But that wouldn't be smart. If offended, the EEOC might very well order the company to make amends by hiring a dozen people who receive messages through their teeth. Nothing the EEOC does would surprise me. Or any of the businesses they torment.

We asked a spokesperson for the EEOC whether the laws require the agency to investigate any and all discrimination complaints—even those from people who claim to have microchips in their molars.

No, the law doesn't require it, the spokesperson said. It is an office policy.

"You have to remember," she said, "what's crazy to you might not be crazy to someone else. ... Besides, you're always calling us heartless bureaucrats. Do you really want us heartless bureaucrats making the decision about what cases to take?"

I'll have to think about that question. Or maybe I'll get the answer through one of my

6/24/94



Mike Royko

Restaurateur's case served in Congress

Whatever happens to Hans Morsbach, the Hyde Park restaurant owner being hounded by federal bureaucrats, he's now had his case brought to the attention of Congress.

Rep. John Porter, normally one of our quieter legislators, stood up Thursday and raised some hell about the way Morsbach is being treated by the Equal Employment Opportunity Commission.

Porter compared the methods used by the EEOC to those of the Spanish Inquisition.

He said: "Chicagoans have been following the EEOC's work ... and frankly they're mad, and they have a right to be mad.

"Recently in Chicago, a restaurant owner, Hans Morsbach, was notified by the EEOC in writing that he was guilty of hiring discrimination. The letter explained that because he placed an ad with a hiring agency for someone who was 'young' and 'bub,' he is guilty of age discrimination.

"... Morsbach was informed by the EEOC that he must hire four people over the age of 40, give them back pay and seniority and post a notice in his restaurant stating that he will no longer discriminate because of age.

"The EEOC has decided he is guilty and determined his sentence, and if he doesn't comply he will be hauled into court and must hire an attorney to defend himself. What really galls, however, is that he's prevented from knowing anything about the genesis of the charge against him because the EEOC refuses to give him any information on this, citing confidentiality.

"Well, Morsbach didn't place any such ad with a hiring agency and his hiring record is an excellent one. He has employed a very diverse group of individuals in his restaurant. Morsbach doesn't know what hiring agency is involved, when the incident occurred, or what the word 'bub' means. Regardless, Morsbach must invest time and resources when he goes to court to prove his innocence.

"This is crazy. It's crazy that out of the blue comes a charge that the accused knows nothing about. It's crazy that the agency deems him guilty but at the same time refuses to tell him anything about the charges against him. And crazy that his only recourse is an expensive court proceeding.

"This is an important agency charged with the role of protecting the civil rights of employees and protecting them against discrimination. These are important

"But in this case apparently, and apparently in many others, it proceeds like the Spanish Inquisition. This is not right. This matter should be looked into and corrected."

Porter deserves praise for taking up Morsbach's cause. But was anybody listening?

Probably not. His speech came while his fellow congressmen were in the midst of figuring out ways to spend hundreds of billions of tax dollars. So it's hard to get congressmen interested in one restaurant owner's problems when they are whooping it up with tons of our money.

When Porter finished his speech, I actually believed that the next voice would be that of Rep. Mel Reynolds.

Why Reynolds? Because Morsbach's restaurants are in Reynolds' South Side congressional district. If anyone was going to bat for Morsbach, it definitely should have been his very own congressional representative.

But, no, if Reynolds was in the chamber, he didn't say anything. And so far, he has apparently shown no interest in Morsbach's problems.

So Morsbach, who lives and works in one of Chicago's most liberal Democratic neighborhoods, wound up being defended only by Porter, a Republican from the North Shore suburbs. Go figure. Or maybe Reynolds should go figure.

Will the arrogant bureaucrats at the EEOC be influenced by what Porter said? You might imagine that being publicly lambasted by a member of Congress would get their attention.

Probably not. There were times in our history when one congressman could make bureaucrats tremble. But no longer. We now have a federal bureaucracy that is so firmly entrenched, so secure, so safe from outside scrutiny and discipline, that it doesn't appear to care what anyone says.

Consider the Chicago Post Office scandal. A bureaucrat spends a fortune building herself a luxury office suite in a building that will soon be torn down. Is she fired? No, she is transferred because the bureaucratic rules make firing her almost an impossibility.

At the same time, the firing-proof, criticism-proof bureaucrats at the EEOC can find someone like Morsbach guilty of discrimination without being required to show him the evidence, give him a genuine hearing, or let him confront his accuser.

So here we have a congressman saying that the way a government agency operates is "crazy."

What will the EEOC say? Based on my experience with the EEOC, it will say nothing. It doesn't have to say anything. The bureaucrats are secure in their paychecks, their medical benefits, their vacations, their pensions and a civil service system that makes it almost impossible to fire anyone.

And we're paying for it, which is the height of craziness.

Chicago Tribune, Friday, June 24, 1994

Chicago Tribune, June 17, 1994



Mike Royko

U.S. trying to pluck a chicken company

The jobs at Koch Poultry Co. are not exactly high-tech.

The workers stand in a cold, damp room at a table waiting for raw chicken breasts to come down a conveyor belt.

They carve out the bones and flip the breasts back on the belt, which takes them to workers who weigh, pack and freeze the product.

The jobs pay from \$4.50 an hour to start to \$6.75 an hour tops. Not a lot, but for people with little education and few skills, it beats welfare, panhandling or stealing.

And Mark Kaminsky, the chief financial officer of Koch Poultry, believes he is a fair employer.

"The job is perfect for a lot of our workers. Some don't speak English, but that doesn't matter. It's good, steady work—the first hook on the American ladder.

"It's like what my grandparents did when they came here from Poland. They took jobs cleaning floors and worked their way up. My father did a little better than his parents, and hopefully I'll do a little better than my father."

More than 90 percent of the 300 workers are Hispanic. That's the way the work force evolved. When the company was small and there was a job opening, somebody would bring in a friend or a relative.

And over the years, that's basically the way Koch has done its hiring—word of mouth among the employees. Somebody from the neighborhood or the family.

There are those who might say that this is a good way to run a business. First, it simplifies hiring because there is no advertising cost. Since most new people come with the recommendation of a present employee, a big personnel department isn't needed. And it provides jobs for members of a minority group.

Ah, but if you think that way, it just proves that you are not a federal bureaucrat in the Chicago office of the Equal Employment Opportunity Commission.

To them, Koch Poultry is a villain because it has too many Hispanics.

So the EEOC, over the last few years, has come down on the company with both feet. It accused Koch of not hiring enough non-Hispanics. In other words, not enough majority members.

The company was told that hiring through word-of-mouth was "inherently discriminatory."

OK, for the sake of argument, let us say that makes sense, as crazy as it sounds.

If you were a reasonable person, how would you go about seeking a remedy?

Me, I would go in and tell the people at Koch: "Look, you have to hire more non-Hispanics. I don't care what: Swedes, African-Americans, Asians, Bulgarians, Native Americans, whatever. Start filling your vacancies that way. I'll check back in six months to see how you are doing."

Even that sounds whacky, but it is not complicated and would probably achieve a dubious goal.

No, that isn't how the EEOC does it.

What it does is work out some sort of bizarre mathematical formula. How many workers do you have? How much are they paid? Multiply this by that by how many non-Hispanics you didn't hire. Then pay this money to people who didn't go to work for you but might have if they knew the jobs were available.

"They told us," Kaminsky said, "that we were supposed to take out newspaper ads that asked for people who might have applied for a job, or if they were thinking about applying with us, so they might be entitled to a financial settlement."

"They said they wanted \$5.2 million. They never put that in writing, but the EEOC investigator spelled it out for us.

"Of course, the entire company isn't worth that much, so we told them no way, we can't afford it.

"Then they told us that they didn't know what we could afford unless they saw our financial records. So we gave them our records. And they said: 'OK, you can afford this.' And they made it \$1.5 million. And then they dropped it to \$800,000."

Keep in mind, this money—whether it was \$5.2 million or \$800,000—is to go to people who probably never heard of Koch Poultry or even wanted to work there. Any non-Hispanic could show up and say: "Sure, yeah, I really wanted to chop up chicken breasts. Give me my settlement."

After some angry exchanges between the bureaucrats and Koch's lawyers, the company decided not to give in to the shakedown effort.

Demanding a scalp, the EEOC has filed a suit in federal court asking for all sorts of dingbat concessions.

Koch will fight it. "We're better off going to court and spending \$100,000 in lawyers' fees," Kaminsky said.

So here we have a company that provides regular paychecks for genuinely needy members of a genuine minority group. And it is being hounded by the government because it doesn't hire enough non-minorities.

Is that nuts or is that nuts?

Incidentally, we called the EEOC office in Washington and asked for a breakdown of EEOC employees by race, gender, ethnicity and age.

They told us to put our questions in writing. Try telling the EEOC to put their questions in writing, and you'll be talking to a judge.

This elegant yet practical plan appears to be part of a trend—happily so.

The evidence includes some simple elements, such as the flower planters that now grace the Michigan Avenue median. Others have lasting significance, such as City Hall's drive to secure restoration of the

Chicago Tribune June 17, 1994

Sentence first, trial later at EEOC

Hans Morsbach stands accused of... what? He doesn't know, exactly. The Hyde Park restaurant owner knows that his accuser is the U.S. Equal Employment Opportunity Commission, and he knows he's in big trouble.

But for what?

Without ever speaking to Morsbach, the EEOC notified him in April that he was guilty of hiring discrimination at his restaurants. Tribune columnist Mike Royko has been writing about this case, and if his columns haven't set off alarms in the Clinton administration, then the denizens of the White House must be taking a collective nap.

The EEOC told Morsbach he was guilty of age discrimination and devised his sentence: Hire four people over the age of 40, give them back pay and seniority, and post a notice in his restaurant that he would no longer discriminate because of age. If he didn't accept the judgment, the government would haul him into court.

But what had he done? According to the EEOC, Morsbach placed a notice with a hiring agency seeking "wts" who were "young, bub." And after that, he hired four people who were under age 40.

Wts? Young? Bub?

Morsbach was left to guess what that meant, because he hadn't placed an ad with the hiring agency.

But Daniel Burnham, whose Chicago design work launched the City Beautiful Movement, argued that such conditions only strengthen the case for creating urban charm. Rich people, he pointed out, can travel elsewhere to find pleasure; poor and working folks need to find it close to home—especially in a city.

And his hiring record appears to be excellent. Old, young, white, black—all work for him.

The EEOC refused to explain its actions or provide Morsbach with its file on him. It told him he had been found guilty and sentenced. He could accept it or fight it in court.

"I can't even comment on the existence of the case because of confidentiality rules and practices," EEOC spokesman Claire Gonzales said in response to an inquiry. "We are confident in the operations of our Chicago district office. We are not going to be bullied by the press into breaking our confidentiality."

Bullied? It's Hans Morsbach who's getting bullied.

Morsbach plans to go to court. He'll have to spend considerable time and money just to find out how and why he is being railroaded by his government.

The government has an indispensable role in protecting civil rights and the EEOC is charged with enforcing the laws against job discrimination based on race, color, religion, sex, national origin, age or disability.

But for all the good it has done, the EEOC also has compiled an unsettling record of Kafkaesque cases like Hans Morsbach's over the years.

What the agency is doing here looks to be a civil wrong of the most outrageous kind. And somebody at the top had better sit up and take notice.

Washington's Rwanda problems

It makes good sense for the United States to refrain from sending troops to curtail the horrors of genocide and civil war in Rwanda.

As awful as the situation is in that Central African nation, a Washington policy of go-it-alone good Samaritanism would be folly, especially in light of what happened in Somalia.

By the same token, it should go without saying that the U.S. ought to support the United Nations' attempt to stop Rwandans from massacring one another.

Unfortunately, the effect of an ill-timed surge of fiscal perrnickety at the Pentagon has been to hinder, not help, the UN as it prepares to send more than 5,000 peacekeepers to Rwanda.

Arrangements for providing the peacekeeping force with 50 armored personnel carriers from the U.S. inventory got bogged down at the Defense Department. UN officials objected when bean counters there raised the price the UN would have to pay for use of the vehicles and added a costly requirement for their return to American installations in Germany.

Pressure from the White House, already under fire from some critics for a too-passive response to the Rwandan crisis, was required to make the Pentagon

see that saving lives is more important than the haggling of accountants. Officials now say the personnel carriers will reach Africa in a matter of days.

The Clinton administration also has had a curious semantics problem involving Rwanda—a reluctance to use the term "genocide."

Even though UN and other experts agree that the slaying of several hundred thousand Rwandans—most of them members of the Tutsi tribe—since early April amounts to genocide (a systematic attempt to wipe out a national or ethnic group), U.S. government spokesmen were told to refer to atrocities as possible acts of genocide.

"As a responsible government," said the U.S. ambassador to Rwanda, "you don't just go around hollering 'genocide.'"

And why not, unless, as critics charged, the administration was intent on downplaying the slaughter in Rwanda?

At any rate, the administration's terminology guideline attracted the flak it deserved and has been rescinded. That won't do Rwandans much good, but at least their suffering won't be devalued by the use of weasel words.

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Mike Royko

Restaurant case as weak as it seems

As a service to American taxpayers, I'm going to give some free advice to the bureaucrats at the Equal Employment Opportunity Commission.

My advice is this: Don't waste taxpayers' money by further harassment of Hans Morsbach, a Hyde Park restaurant owner.

"If you go into court with your anemic charges that he discriminates in hiring, any rational judge will probably whack you on the head with his gavel.

"Even though you paper shufflers have refused to discuss your evidence, other sources have provided information about your Morsbach file. Based on what they say, as investigators you people should try doing standup comedy.

What you're running appears to be is a scam. You apparently believe that if you send out scary official letters to businessmen such as Morsbach, you can stampede them into what amounts to a guilty plea.

It probably works often, too, since many small-business people go into shock at having to deal with the government. And when they cave in and plead for mercy, you have scalps that help justify your existence and your paychecks.

Since you won't talk about how you built your age-discrimination case against Morsbach—not even with Morsbach—let me make a stab at it.

First, let's say you had an investigator go to an outfit called the Job Exchange because you had a complaint about them or one of the hundreds of restaurants they work with. This is an outfit that finds jobs for people in the food industry. In effect, an employment agency.

While your investigator was going through records to check out the complaint—which was unrelated to Morsbach—he came across a small file card. On it was written the name of one of Morsbach's four restaurants.

The card also contained the words "wts" "young" and "bub."

Being a clever fellow, your investigator decided that the word "wts" meant waitress. "Young" meant whatever you decide it means. To me, President Clinton is young. So is his wife. On the other hand, a baseball player is ancient at 38. Age is in the eye of the bureaucrat.

Then we have the word "bub." This you took to mean "bubbly." Those in the restaurant business tell me that bubbly is sometimes used to mean enthusiastic.

10/10/02 P. 02
So your investigator zipped back to the office, proudly displayed his find, and you decided that you had a case: Morsbach was obviously guilty of trying to hire a young, enthusiastic waitress. That means he was discriminating against people who are old and lacking in enthusiasm.

Then you had an investigator go to Morsbach's restaurant to look at his files. And you determined that your suspicions were correct. He had not recently hired anyone who was old and lacking in enthusiasm.

The next step was to send a letter telling Morsbach what he must do to atone for his sins. He had to hire four people in their 40s, which you believe to be a non-young age bracket. (Does this mean a group like the Rolling Stones qualifies for Social Security?)

He must give them back pay, benefits and credit them with seniority. In addition, he has to post a sign effectively admitting his guilt and promising to never sin again.

Of course, your investigation didn't extend to checking out Morsbach's hiring policies. If it had, you would have found that he hires people who are young and not so young. Or that as many as half of his managers are black. That he has fired someone for making bigoted remarks.

And if you knew anything about Chicago, you would know that nobody can be a successful businessman in Hyde Park—the city's most liberal community—if he is even suspected of being a bigot. In Hyde Park, you can't even be bigoted against serial killers.

So it appears that one of Morsbach's managers may have talked to the Job Exchange. Maybe they called the manager, which the agency often does, or maybe he called them. You don't know, and Morsbach doesn't know.

And there may have been a conversation about the hiring of a waitress—maybe someone enthusiastic and young—which someone at the employment agency jotted on a card.

But no such ad was ever placed in a newspaper. The Job Exchange advertises only in The Reader, which has strict anti-discrimination rules. We checked and found nothing during that time frame about a waitress who is "young" or "bub."

Your entire case, in fact, is based on one little file card containing a few words. And Morsbach, your bureaucratic victim, knows nothing about the card, about who wrote it, or about how it came into existence.

But based on that card, you have threatened to take him to court unless he grovels before your bureaucratic might and agrees to accept the punishment you toss at him.

Actually, you have done something useful. The Morsbach case has caught the attention of Luis Guterrez, a Chicago congressman, and he is going to look into your methods, which appear to be un-American. Or do you believe that the accused should not be able to see the evidence against him?

Also, several other small-business owners who have been bullied by the EEOC have called me with fright stories. My, you desk jockies do like playing the bogymen.

So I've changed my mind. Keep chasing Morsbach. Make fools of yourselves.

And if anyone out there has had similar dealings with these bureaucratic storm troopers, you can write me at 435 N. Michigan Ave., Chicago, 60611. Or phone 312-222-3111. Meanwhile, be careful about hiring someone

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6/10/94



Mike Royko

Bureaucratic justice is hard to swallow

The other day, a Senate committee was talking about universal health care and the need to assure that no one is discriminated against for reasons of age, sex, or any other reason. It is a fine concept, but it made my blood run cold.

That's because these decisions seem to wind up being made by federal bureaucrats. And they have a strange way of dispensing what they consider to be justice.

An example is a case I wrote about last week, that of a restaurant operator named Hans Morsbach, who runs several restaurants in the Hyde Park area.

Morsbach has been found guilty, in effect, of hiring practices that discriminate against older people.

He's been told what his punishment will be and what he must do to make amends. It includes a public confession of his guilt and a promise that he will never do it again.

All of this has happened without (1) Morsbach having the faintest idea what the government is talking about and (2) without confronting his accuser or (3) getting to look at the evidence against him.

It is the kind of lopsided justice one might expect to find in China or the old Soviet Union, but not in this country.

And what makes this case even more weird is that it could probably be cleared up by reasonable people in a few minutes if only the Equal Employment Opportunity Commission would bring out the evidence.

Mr. Morsbach has asked to see the evidence against him. You would think he's entitled to that courtesy. But the EEOC turned him down.

I've asked to see the evidence against him. Same results. The EEOC haughtily says such matters are confidential.

And now the office of U.S. Rep. Luis Gutierrez has asked to see the evidence.

You would think that a request from a member of the Congress of the United States would carry some weight with a federal agency.

But as an aide to Gutierrez says: "We've had dealings with the EEOC before, and let's just say that they're not helpful."

For those who missed the earlier column, here is what Morsbach is accused of.

The EEOC says that an ad on his behalf was placed with an agency called the Job Exchange, seeking a "wtrs" who is "young, bub."

This means Morsbach discriminated against potential applicants who might not be young.

But it is not clear what "bub" means. Morsbach says he doesn't know, and the EEOC won't tell him.

Morsbach says he doesn't know about "young, bub" because he never placed any such ad. Nor, he says, did any of his managers.

We talked to the Job Exchange, which seeks workers for many restaurants and food service agencies. A manager said he has no idea what the heck the EEOC is talking about.

"For one thing," he said, "the EEOC has not been in touch with us."

"For another, we don't run ads for specific businesses."

"And we wouldn't run an ad like that. We advertise only in the Chicago Reader, which has strict codes for appropriate wording. We can't even use waiter or waitress. We must say waitstaff. There's no way we ever used that wording."

"And 'bub'? I've heard of bub meaning 'bubbly.' A 'bub' in a dictionary is a young boy. So I don't know what this 'bub' is all about. We'd never place an ad for a 'bub,' whatever it is."

It makes you wonder what kind of investigators the EEOC has, when it apparently failed to talk to the Job Exchange, which they say ran the ad, and when it refuses to say where the ad appeared.

But in an arrogant, patronizing letter to Morsbach, the EEOC told him that he must comply with their demands or he will be taken to court.

Their demands include his hiring four older people, giving them back pay, retroactive benefits, seniority, etc.

And he must post a sign in a prominent place in his restaurant, effectively admitting his guilt and promising not to discriminate ever again.

Which has steam squirting out of Morsbach's ears, since he has always had a policy of hiring people regardless of their race, age, sex or any other consideration besides ability.

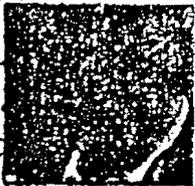
So he is going to tell the EEOC to shove it and take him to court.

That means government lawyers will have something to do. A judge will be required to preside over the case. The court clerks and bailiffs will be put to work. Who knows how many thousands of dollars in tax money will be spent to reolve the strange case of the "young, bub."

And it could probably be cleared up in minutes if the EEOC would open the file and say: "Here's what we have. What do you say?"

But as a spokesman for the EEOC says: "We have confidentiality rules."

Confidentiality. Yes. And back in the old days the hangman wore a mask for purposes of confidentiality. Some things don't change.



Mike Royko

Chicago Tribune

6/3/94

Restaurant owner getting a 'bub' rap

Hans Morsbach is a liberal. A Hyde Park and University of Chicago liberal, in fact, which is just about the most liberal kind of liberal that you can find in Chicago.

So he is confused and angry at finding himself accused by federal bureaucrats of being the kind of guy who discriminates.

Morsbach, 61, is well-known in the Hyde Park area, where he has owned restaurants since 1963.

Currently he operates the Medici on Harper, another Medici on 57th Street and Ida's Cafe and the Pub, both on the U. of C. campus.

Without false modesty, he says: "I think I'm a damn near model employer. I hire black people, white people, young people, older people. I have older people who have worked for me for 20 years.

"I have a history of promoting based on merit, and at this time nearly half my managers are black."

So what's the problem?

The problem sounds so weird that if I didn't know Morsbach, and hadn't seen the bureaucratic documents, I would think he made the story up as a hoax.

Here, believe it or not, is what has happened to him.

A few months ago, a man came into his Medici restaurant and asked the manager about the restaurant's hiring practices.

He was an investigator from the Chicago office of the Equal Employment Opportunity Commission.

"I paid no attention to it," Morsbach says. "I knew I had a good conscience, so I ignored it, and my manager gave the investigator some personnel records.

"Then in April I get a call and they say they have found a violation and I had to do certain things to get back into their good graces.

"They proposed a conciliation agreement, or whatever it's called, but they refused to tell me what it was I did. They just told me I must do this conciliation.

"Then I got this letter from them. And it told me what I did wrong, but I still don't understand it."

I have seen the bureaucrat's letter, and I can understand Morsbach's confusion. The letter sounds nuts.

My own copy reads this way:

Although I cannot release your file to you at this time, I can advise you that the finding is based in large part on a notice placed with

...and that is why Morsbach is in trouble, because he is accused of advertising for a "wts," which we assume means a waitress, and that he wanted that waitress to be "young" and a "bub."

But Morsbach says: "I never advertised for a waitress. And I don't even know what 'young, bub' means. Bub? Why would I advertise for a bub if I don't know what a bub is?"

So Morsbach made what appears to be a reasonable suggestion: He asked the EEOC bureaucrats if they would show him the ad, tell him in what publication it appeared, who placed the ad, and he might be able to figure out what the heck is going on.

No, say the bureaucrats. He has two options: He can mediate a settlement, which means hiring four people who are over 40 years old, giving them back pay, full benefits, seniority, etc., etc.

And he must post a notice in his restaurant promising to never again discriminate against anyone because of their age.

If he doesn't do these things, then they will take him to court.

That's the way it now stands, with Morsbach not having the faintest idea how an ad about a "young, bub" was placed somewhere without his knowing it.

As he wrote to the EEOC, "I am utterly unconvinced that any of my employees discriminated against anybody. It is conceivable that an employment agency may have placed an ad in our behalf over which we had no control. The Medici never uses lingo such as 'wts' or 'young, bub.' I don't even know what 'bub' means; it is not listed in my dictionary.

"I should state that you have not shown me a copy of the ad nor established that anyone in my organization conceived it or approved it.

"Your suggestion that I should post notices promising to stop discriminating is an insult. The Medici has always enjoyed excellent rapport with its employees. Many have worked for me for decades; we have minority individuals in managerial positions, not because they are ethnically different, but because they deserve the position. I have fired a manager for making an anti-Semitic remark. Being a decent employer is as important to me as making money."

We called the EEOC and asked about the ad for someone who is "young, bub." A bureaucrat said they would get back to us. They didn't.

So Morsbach is now deprived of his most basic legal rights: facing his accuser and being shown the evidence against him.

I think some Chicago congressman should pick up a phone, call the EEOC and say:

"Why are you paper-shufflers picking on this taxpaying businessman? And what the heck is a 'young, bub'?"

And if they can't explain, maybe they should start advertising for bub jobs themselves.

EEOC

CONTINUED FROM PAGE 1

ment supposed to protect religion?"

Under the 1964 Civil Rights Act and laws, the EEOC enforces statutes prohibiting job discrimination based on race, color, religion, sex, national origin, age or disability. The controversial guidelines were drawn up last year to inform employers and employees—in both public and private sectors—that all forms of harassment are illegal.

What seems to agitate people most about the guidelines is the language setting forth the standard of proof for harassment. Colby Mays of The American Center for Law and Justice, a self-described public-interest group, explains that the proposal would allow the standard to be based on what a group of non-believers thought was offensive rather than a reasonable cross-section of people representing believers and non-believers.

"The EEOC says it never intended that result," Mays says, "but in failing to provide well thought-out guidelines, employers are left with no choice but to establish a ... workforce with no religious expression allowed there."

Others dispute this interpretation. Helen Norton, deputy director of the Women's Legal Defense Fund, said the EEOC has made it "very clear the standard for harassment requires proof that someone's employment conditions worsened because of hostility or aversion to the employee's religion or lack of religion."

The EEOC has issued a fact sheet addressing concerns such as those expressed by Mays and Velasco. It states, for example, that the disputed conduct must be "sufficiently severe and pervasive to be found hostile and abusive."

The agency emphasized that it has repeatedly ruled that employers must permit employees to wear yarmulkes and other religious garb at work unless it poses a safety hazard. The agency also said that a Christian employee would have recourse under the law if an employer engaged in a pattern of ridiculing the employee's religious beliefs.

Responding to the outcry over the treatment of religion in the proposals, Democratic Sen. Howell Heflin, a former chief justice of the Alabama Supreme Court, will hold hearings Thursday on the impact of the harassment guidelines on religious practices. He is chairman of the judiciary subcommittee on courts and administrative practice.

"Instead of protecting individual rights," Heflin said Wednesday, "the confusion caused by these proposed guidelines may have employers imposing outright bans on religious expression to avoid any possible legal problems."

Testimony will be heard from experts in business and constitutional law and representatives of the American Civil Liberties Union, the Southern Baptist Convention and the Traditional Values Coalition.

Among the witnesses will be Marc Stern of the American Jewish Congress, who said Wednesday that there was a need for the EEOC to spell out what is and is not permissible. He pointed out that Title VII of the 1964 Civil Rights Act requires employers to accommodate a worker's religious practices as long as they are not too burdensome.

"We think there is a need for guidelines on religious harassment," Stern said, "but there is also a need for the EEOC to make sure employers don't over-react and impose essentially religion-free zones in the workplace."

Asked for an example of the kind of religious harassment the guidelines were meant to outlaw, Stern cited a 1973 case in which a deputy U.S. marshal was subjected to persistent jokes by his supervisor and co-workers about his Jewish background. On one occasion, the supervisor remarked that the huge cost of Germany's reconstruction after World War II was caused by the nation's high gas bill during the war.

On the other hand, Stern said, in his view placing a crucifix in a private workplace near a non-Christian employee would not necessarily be harassment—although "if you hung crucifixes everywhere you looked, that might conceivably constitute harassment."

CHICAGO TRIBUNE 6/4/94



Mike Royko

Bureaucratic justice is hard to swallow

The other day, a Senate committee was talking about universal health care and the need to assure that no one is discriminated against for reasons of age, sex, or any other reason. It is a fine concept, but it made my blood run cold.

That's because these decisions seem to wind up being made by federal bureaucrats. And they have a strange way of dispensing what they consider to be justice.

An example is a case I wrote about last week, that of a restaurant operator named Hans Morsbach, who runs several restaurants in the Hyde Park area.

Morsbach has been found guilty, in effect, of hiring practices that discriminate against older people.

He's been told what his punishment will be and what he must do to make amends. It includes a public confession of his guilt and a promise that he will never do it again.

All of this has happened without (1) Morsbach having the faintest idea what the government is talking about and (2) without confronting his accuser or (3) getting to look at the evidence against him.

It is the kind of lopsided justice one might expect to find in China or the old Soviet Union, but not in this country.

And what makes this case even more weird is that it could probably be cleared up by reasonable people in a few minutes if only the Equal Employment Opportunity Commission would bring out the evidence.

Mr. Morsbach has asked to see the evidence against him. You would think he's entitled to that courtesy. But the EEOC turned him down.

I've asked to see the evidence against him. Same results. The EEOC haughtily says such matters are confidential.

And now the office of U.S. Rep. Luis Guterrez has asked to see the evidence.

You would think that a request from a member of the Congress of the United States would carry some weight with a federal agency.

But as an aide to Guterrez says: "We've had dealings with the EEOC before, and let's just say that they're not helpful."

For those who missed the earlier column, here is what Morsbach is accused of.

The EEOC says that an ad on his behalf was placed with an agency called the Job Exchange, seeking a "wtra" who is "young, bub."

This means Morsbach discriminated against potential applicants who might not be young.

But it is not clear what "bub" means. Morsbach says he doesn't know, and the EEOC won't tell him.

Morsbach says he doesn't know about "young, bub" because he never placed any such ad. Nor, he says, did any of his managers.

We talked to the Job Exchange, which seeks workers for many restaurants and food service agencies. A manager said he has no idea what the heck the EEOC is talking about.

"For one thing," he said, "the EEOC has not been in touch with us."

"For another, we don't run ads for specific businesses."

"And we wouldn't run an ad like that. We advertise only in the Chicago Reader, which has strict codes for appropriate wording. We can't even use waiter or waitress. We must say waitstaff. There's no way we ever used that wording."

"And 'bub?' I've heard of bub meaning 'bub-bly.' A 'bub' in a dictionary is a young boy. So I don't know what this 'bub' is all about. We'd never place an ad for a 'bub,' whatever it is."

It makes you wonder what kind of investigators the EEOC has, when it apparently failed to talk to the Job Exchange, which they say ran the ad, and when it refuses to say where the ad appeared.

But in an arrogant, patronizing letter to Morsbach, the EEOC told him that he must comply with their demands or he will be taken to court.

Their demands include his hiring four older people, giving them back pay, retroactive benefits, seniority, etc.

And he must post a sign in a prominent place in his restaurant, effectively admitting his guilt and promising not to discriminate ever again.

Which has steam squirting out of Morsbach's ears, since he has always had a policy of hiring people regardless of their race, age, sex or any other consideration besides ability.

So he is going to tell the EEOC to shove it and take him to court.

That means government lawyers will have something to do. A judge will be required to preside over the case. The court clerks and bailiffs will be put to work. Who knows how many thousands of dollars in tax money will be spent to resolve the strange case of the "young, bub."

And it could probably be cleared up in minutes if the EEOC would open the file and say: "Here's what we have. What do you say?"

But as a spokesman for the EEOC says: "We have confidentiality rules."

Confidentiality. Yes. And back in the old days the hangman wore a mask for purposes of confidentiality. Some things don't change.

CHICAGO
TRIBUNE

6/9/94

Page 1

Are EEOC rules an attack against religious freedom?

By Glen Elsasser
TRIBUNE STAFF WRITER

WASHINGTON—Pam Velasco was taken aback by a flier she picked up recently at her church. It claimed the federal government might be on the way to snuffing out all expressions of religion in the American workplace.

"I'm a Christian," she explains. "Religious expression is one of the first rights in the Constitution. Now the government wants to go so far as prohibiting the wearing of a cross around your neck on the job."

Velasco, a part-time X-ray technician from Wilmette, who attends the Winnetka Bible Church, was moved to write to the Equal Employment Opportunity

Commission about her concerns over its proposed guidelines on workplace harassment. Those little-publicized guidelines inform employers and workers what constitutes illegal harassment, including that of a religious variety.

The guidelines—which could be interpreted to bar wearing a yarmulke or cross, displaying a picture of Jesus or humming a religious song—have apparently inspired scores of letters like Velasco's which have forced the agency to extend the period for public comment. A congressional hearing will be held Thursday to consider the impact of the guidelines on religious freedom.

"It may be politically correct," says Velasco, "but isn't govern-
Siz EEOC, PAGE 23



Tribune photo by Michael Fryer

Pamela Velasco: "Religious expression is one of the first rights in the Constitution."

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. letter	Kent D. Harder to Hans Morsbach (1 page)	4/27/1994	P6/b(6)

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[Equal Employment Opportunity Commission Confirmation Briefing Materials] [3]

ds74

RESTRICTION CODES**Presidential Records Act - [44 U.S.C. 2204(a)]**

- P1** National Security Classified Information [(a)(1) of the PRA]
- P2** Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3** Release would violate a Federal statute [(a)(3) of the PRA]
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- P5** Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6** Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1)** National security classified information [(b)(1) of the FOIA]
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. letter	Hans Morsbach to Eileen Anstadt (1 page)	5/4/1994	P6/b(6)

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. letter	Eileen Anstadt to Hans Morsbach (2 pages)	4/19/1994	P6/b(6)

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. letter	Hans Morsbach to Rich Proulx (2 pages)	4/13/1994	P6/b(6)

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004. letter	Rich Proulx to Hans Morsboch (2 pages)	4/13/1994	P6/b(6)

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003. memo	Jean Kamp to John Rowe & Cynthia Pierre - re: ADEA (3 pages)	6/6/1994	P5

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	John C. Hendricksen to James R. Neely, Jr. & Reginald Welch re: articles (1 page)	6/9/1994	P5

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Reginald Welch to Claire Gonzales re: Background (8 pages)	6/15/1994	P5

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Stephen Warnath (Civil Rights)
OA/Box Number: 9592

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

July 6, 1994

MEMORANDUM

FROM : Claire E. Gonzales, Director *CEG*
Office of Communications and Legislative Affairs

SUBJECT : Recent Mike Royko Columns

Recently there have been a series of articles by Mike Royko of the Chicago Tribune alleging overbearing and unreasonable enforcement practices by EEOC. Most of Royko's columns focus on an age case brought by the EEOC Chicago District Office against the Medici restaurant, which is owned by a friend of Mr. Royko's, Mr. Hans Morsbach.

Royko is following a pattern much like the one he used three years ago in the Daniel Lamp case, which received an enormous amount of attention during the debate on the Civil Rights Act of 1991. (Background material on the Daniel Lamp case is being prepared for your review.)

I am currently working with the Chair's office, Office of Legal Counsel, Office of Program Operations, and Office of General Counsel to address the Medici case in an appropriate and timely manner and hopefully in a way that will minimize continued negative press. Since the story is from Chicago, however, and because it has already been cited in a floor debate in the House, I am certain it will come up during the confirmation proceedings.

I am, therefore, providing you with all of the pertinent information that I now have on the matter and on Royko's crusade. I realize that this is a lot of paper, so I suggest that you focus on the articles and the memo from Reggie Welch to me. As soon as we have a final response to Congressman Gutierrez, I will forward it to you.

The following material is attached:

1. Royko's columns in the Chicago Tribune dated June 3 through June 29, 1994
2. Internal Memorandum from Reginald Welch, EEOC's Director of Communications, to Claire Gonzales, dated June 15, 1994, with attachments; this memo provides the best summary of the case.
3. Internal Memorandum from EEOC Chicago District Office to James Neely, Jr. and Reginald Welch, Headquarters, dated June 9, 1994, with attachments
4. Letter from Congressman Luis Gutierrez to Claire Gonzales dated June 7, 1994, on behalf of Mr. Hans Morsbach
5. Excerpt from the Congressional Record dated June 23, 1994, with remarks from Congressman John Porter (R-IL) made during debate of EEOC's FY '95 appropriations bill.

Enclosures

LUIS V. GUTIERREZ
4TH DISTRICT, ILLINOIS
COMMITTEE ON BANKING,
FINANCE AND URBAN AFFAIRS

SUBCOMMITTEES:
HOUSING AND COMMUNITY DEVELOPMENT
CONSUMER CREDIT AND INSURANCE

COMMITTEE ON
VETERANS' AFFAIRS

SUBCOMMITTEES:
HOSPITALS AND HEALTH CARE
OVERSIGHT AND INVESTIGATIONS

COMMITTEE ON
FOREIGN AFFAIRS

SUBCOMMITTEE:
ASIA AND THE PACIFIC

*LC/CG
Hans Morsbach
Charge handling (etc)*

Congress of the United States

House of Representatives

Washington, DC 20515-1304

1208 LONGWORTH BUILDING
WASHINGTON, DC 20515
(202) 225-8203

3181 NORTH ELSTON AVE.
CHICAGO, IL 60618
(312) 509-0999

1751 WEST 47TH STREET, 2ND FLOOR
CHICAGO, ILLINOIS 60609
(312) 247-9020

June 7, 1994

RECEIVED

JUN 14 1994

EEOC

Office of Communications
Washington, DC

Ms. Claire Gonzales
Director of Communications
and Legislative Affairs
U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Dear Ms. Gonzales:

I am writing on behalf of Mr. Hans Morsbach, an owner of several restaurants in Chicago, who has been under investigation by the Commission's Chicago District Office (EEOC no. 210940149). Mr. Morsbach has been accused of violating the Age Discrimination in Employment Act, and has been ordered to comply with voluntary steps mandated by your office.

Mr. Morsbach firmly contends that neither he nor any of his employees committed the discrimination that has been alleged. He informs my staff that he has expressed this assertion to the EEOC's Chicago District Office.

Mr. Morsbach has told my staff that he believes that his hiring practices have been consistently fair and above reproach, and that he has provided jobs to men and women of a wide range of ages and backgrounds.

Furthermore, I am told that Mr. Morsbach has not been given the benefit of merely seeing the items to which the Commission points as evidence of the alleged discrimination. Such items include, primarily, a help-wanted advertisement that your office contends was placed by Mr. Morsbach.

I find it very troubling that Mr. Morsbach has, as of yet, been denied the opportunity to view the material on file with the EEOC that applies to his situation.

I request that your office immediately undertake steps to make your records available to any individual, like Mr. Morsbach, who stands accused of an infraction and who wishes to view information relevant to his/her situation. I believe that this is not only necessary, in order to afford such persons the right

to defend themselves, but is equally useful if the EEOC hopes that individuals will "voluntarily" comply with its rulings.

I must stress-- in the strongest possible terms-- that I am firmly committed to the fundamental goals of the EEOC and other government entities that strive to ensure that all Americans have the opportunity to pursue the employment of their choice and to work in atmosphere that allows them the dignity and respect that all employees deserve. No worker, nor any prospective worker, should face discrimination of any kind.

I believe that when one American loses the chance to work, we all lose, because we are denied the chance to benefit from the unique ingenuity and skills that he/she offers to the community.

For that reason, I hope that the EEOC is careful to act in a manner that does not detract from its important and vital mission. Accordingly, I request that the EEOC take all steps to answer the important concerns raised by Mr. Morsbach regarding his case. I believe that all parties would benefit from such action.

I would appreciate you providing my Washington office with information regarding this request.

Thank you for your attention to this matter.

Sincerely,



Luis V. Gutierrez
Member of Congress

cc: Mr. John P. Rowe
Director
Chicago District Office
U.S. Equal Employment Opportunity Commission

HANS W. MORSBACH

P6/(b)(6)

June 6, 1994

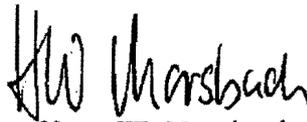
Mr. Doug Scofield
Congressman Luis Guitierrez's Office
Room 1208
Longworth House Office Building
Washington DC 20515

Dear Mr. Scofield:

Please accept this as your authorization to contact the EEOC in my behalf and/or in the behalf of the Medici Gallery and Coffee House, Inc of which I am president.

Thank you for your interest.

Sincerely,


Hans W. Morsbach

Search of the Congressional Record
Showing the Complete Statement by the Member

On 06/23/94

AND Contained in the House Section
AND Attributed to Selected Members of Congress

Congressional Record dated Thursday, June 23, 1994
House Section

Measure Debated by GOSS (R-FL) and 2 others -- H.Res. 461 and H.R. 4603
Procedural Resolution - H.R. 4603 [CR page H-4922, 81 lines]

Attributed to PORTER (R-IL)

Mr. PORTER. Mr. Speaker, Chicagoans have been following some of EEOC's work through the Chicago Tribune and Mike Royko's columns and they are mad. And they have a right to be mad. A Government agency which is charged with the important role of enforcing the laws against job discrimination is proceeding, at least in one case, in a way that is just incredible.

Recently in Chicago, a restaurant owner, Hans Morsbach was notified by the EEOC in writing that he was guilty of hiring discrimination. The letter charged that he placed an ad with a hiring agency for someone who was "young" and "bub," and thus is guilty of age discrimination.

According to the Tribune, Morsbach was informed by EEOC that he must now hire four people over the age of 40, give them back pay and seniority, and post a notice in his restaurant stating that he will no longer discriminate because of age. The EEOC has decided he is guilty and determined his sentence and if he does not comply, he will be hauled into court and must hire an attorney to defend himself. What really galls, however, is that he is prevented from knowing anything about the genesis of the charge against him.

EEOC refuses to give any information on this, citing confidentiality.

Well, Morsbach didn't place any such ad with a hiring agency and his hiring record is excellent--he has employed a diverse group of individuals in his restaurant. Morsbach doesn't know what hiring agency is involved, when the incident occurred, or what the word "bub" means. Regardless, Morsbach must invest time and resources into his defense when he goes to court to prove his innocence.

Mr. Speaker, this is crazy, crazy that out of the blue comes a charge the accused knows nothing about, crazy that the agency deems him guilty but at the same time refuses to tell him anything about the charge, and crazy that his only recourse is an expensive court proceeding.

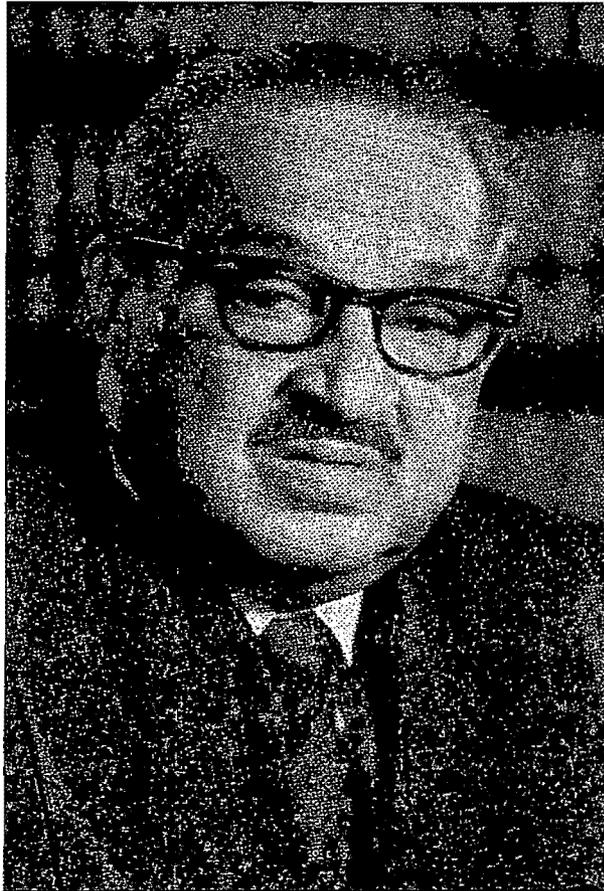
This is an important agency charged with the role of protecting the civil rights of employees and protecting them against discrimination. But in this case, and apparently many others, it proceeds like the Spanish Inquisition.

(Time) 1630

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



**CONTINUING ITS QUEST OF ENSURING
DIVERSITY IN THE WORKPLACE**



IN MEMORY OF THURGOOD MARSHALL

**FY 1995 BUDGET REQUEST
SUBMITTED TO THE CONGRESS OF THE UNITED STATES
FEBRUARY 1994**

**PHOTOCOPY
PRESERVATION**

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GENERAL STATEMENT: EEOC'S MISSION AND RESPONSIBILITIES

GENERAL STATEMENT

GENERAL DATA

The Commission was established by *Title VII of the Civil Rights Act of 1964* (78 Stat. 253, 42 U.S.C. 2000e et seq.) as amended, and became operational on July 2, 1965. *Title VII* requires a five member Commission, not more than three of whom shall be of the same political party. The members are appointed by the President, by and with the consent of the Senate, for rotating 5-year terms. The President designates one member to serve as Chairman and one member to serve as Vice Chairman. The General Counsel is also appointed by the President, by and with the advice and consent of the Senate, for a term of four years.

The Commission administers *Title VII* which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by public and private employers of 15 or more employees, public and private employment agencies, labor organizations with 15 or more members, agencies which refer persons for employment or which represent employees or employers covered by the Act, and joint labor-management apprenticeship programs for covered employers and labor organizations. The Commission carries out its mission through investigations, conciliation, litigation, coordination, and regulation in the Federal sector and through education, policy research, and provision of technical assistance.

As a result of the *Equal Employment Opportunity Act of 1972* (Public Law 92-261), which amended *Title VII*, if it is unable to achieve a remedy through conciliation, the Commission is empowered to file suit in the Federal District Court in order to achieve compliance with *Title VII*. If the case involves a State or Local government, the Commission will refer it to the Attorney General, who may file suit in Federal Court.

The *Civil Rights Act of 1991*, which amends *Title VII*, the *Americans with Disabilities Act*, and the *Age Discrimination in Employment Act of 1967*, are all enforced by the EEOC. The *Civil Rights Act of 1991* addresses subjects as disparate impact, business necessity, bias after hiring, challenges to consent decrees, timeliness of challenges to seniority systems, mixed motives, expert witness fees, extraterritoriality, compensatory and punitive damages, jury trials, interest and filing time in actions against the federal government, and "race norming" of test scores. The Act also requires the EEOC to carry out educational and outreach activities and to establish a Technical Assistance Training Institute.

Equal Employment Opportunity Commission

The Commission, through its field and Headquarter's offices, is responsible for receiving and investigating charges of employment discrimination. Individual Commissioners may initiate charges if they receive information suggesting that the law has been violated. If the Commission decides after investigation that reasonable cause exists to believe that a violation of *Title VII* has occurred, a full remedy is sought through the process of conciliation.

As part of its mandate under Section 709(c) of *Title VII*, the Equal Employment Opportunity Commission requires the filing of four types of periodic reports by public and private employers, unions and labor organizations indicating therein the makeup of their workforces or membership by sex and race/ethnic categories. The data are also used by other Federal, State and Local agencies charged with enforcement of equal employment opportunity laws as well as by nongovernment organizations and researchers concerned with equal employment opportunity.

Under *Executive Order 12067*, the Commission provides leadership and coordination to the Federal departments and agencies in their efforts to enforce Federal statutes, executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age, or disability and to eliminate conflict, competition, duplication, and inconsistency among the operations, functions, and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, executive orders, regulations, and policies. All Federal departments and agencies are required to cooperate with and assist the Commission in the performance of these functions under this executive order and are required to furnish the Commission with such reports and information as it may require.

In 1979, EEOC received additional jurisdictional responsibilities as part of Reorganization Plan No. 1 of 1978: enforcement of the Age Discrimination in Employment Act (ADEA) of 1967, as amended, the Equal Pay Act (EPA) of 1963, Section 501 of the Rehabilitation Act of 1973, as amended, and Section 717 of Title VII. ADEA protects workers age 40 and older from discrimination in hiring, discharge, pay, promotions, fringe benefits, and other aspects of employment by employers having 20 or more employees. EPA prohibits sex discrimination in the payment of wages to men and women performing substantially equal work in the same establishment. The Commission receives and investigates charges of discrimination in these areas and makes findings of "violation" or "no violation."

Under Section 501 of the *Rehabilitation Act of 1973*, which bars discrimination by Federal agencies on the basis of disability, and under Section 717 of *Title VII*, the Commission has overall responsibility for the procedures used by Federal departments

Equal Employment Opportunity Commission

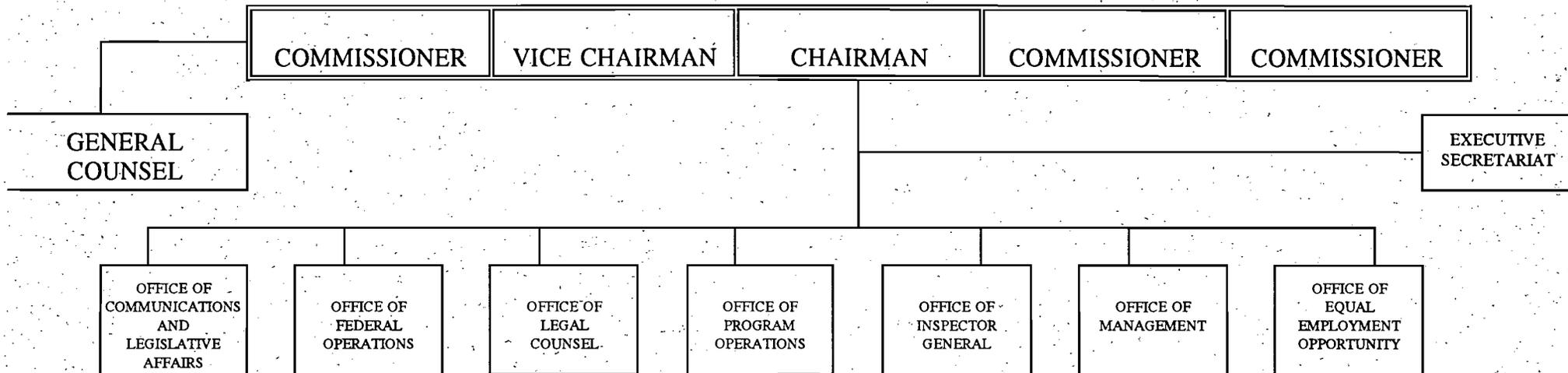
and agencies in processing internal complaints of discrimination. In addition, the Commission has appellate jurisdiction to review final decisions of departments or agencies on discrimination complaints upon the request of the complainant. It is also responsible for ensuring that Federal departments and agencies maintain affirmative programs of equal employment opportunity.

On July 26, 1990, the *Americans With Disabilities Act (ADA)* became law. This legislation, covering some 43,000,000 Americans having one or more physical or mental disabilities, provides a clear and comprehensive mandate for the elimination of discrimination in employment opportunities for individuals with disabilities. EEOC is charged with defined responsibilities for ensuring compliance with this statute including: development of substantive regulations; development and implementation of a plan (Technical Assistance), in coordination with the Attorney General, to assist all entities covered under this Act (approximately 666,000 employers) and other Federal agencies in understanding their responsibilities under the Act; issuance of appropriate technical manuals to individuals or entities with rights or duties under the Act; investigation of charges of discrimination filed under the ADA; and subsequent actions (e.g., conciliation, litigation) to ensure full remedy if violation of law has occurred. ADA requirements became effective on July 26, 1992, for employers with 25 or more employees and will be effective on July 26, 1994, for employers with 15-24 employees.

In general, the Commission seeks to fulfill its mission of eradicating discrimination in the workplace by ensuring compliance with the statutes the Agency enforces through implementation of a vigorous law enforcement program. The Commission's enforcement policy stresses consistent enforcement and full corrective, remedial, and preventive relief in all cases where it is determined that unlawful employment discrimination has occurred.

- ORGANIZATIONAL CHART

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



OFFICES: DISTRICT (DO), AREA (AO), LOCAL (LO)		
ATLANTA (DO) Savannah (LO)	BALTIMORE (DO) Norfolk (AO) Richmond (AO)	BIRMINGHAM (DO) Jackson (AO)
CHARLOTTE (DO) Raleigh (AO) Greensboro (LO) Greenville (LO)	CLEVELAND (DO) Cincinnati (AO)	MEMPHIS (DO) Little Rock (AO) Nashville (AO)
MIAMI (DO) Tampa (AO)	NEW ORLEANS (DO)	NEW YORK (DO) Boston (AO) Buffalo (LO)
PHILADELPHIA (DO) Newark (AO) Pittsburgh (AO)	ST. LOUIS Kansas City (AO)	WASHINGTON FIELD OFFICE

OFFICES: DISTRICT (DO), AREA (AO), LOCAL (LO)		
ALBUQUERQUE (DO)*	CHICAGO (DO)	DALLAS (DO) Oklahoma City (AO)
DENVER (DO)	DETROIT (DO)	HOUSTON (DO)
INDIANAPOLIS (DO) Louisville (AO)	LOS ANGELES (DO) San Diego (AO)	MILWAUKEE (DO) Minneapolis (AO)*
PHOENIX (DO)	SAN ANTONIO (DO) El Paso (AO)	SAN FRANCISCO (DO) Fresno (LO) Honolulu (LO) Oakland (LO) San Jose (LO)
SEATTLE (DO)		

* In 1994, the Commission approved the upgrade of the Albuquerque Area Office to district office level and the Minneapolis Local Office to area office level. Plans are underway to effectuate these upgrades.

- INTRODUCTION

INTRODUCTION

The FY 1995 Budget Request for the U.S. Equal Employment Opportunity Commission reflects resource levels aimed at furthering the Commission's ability to handle the continued escalation of charge receipts. A total of \$245,720,000 and an additional staff level of 170 FTE is requested for FY 1995.

The Commission's mission is to ensure equality of opportunity by vigorously enforcing federal laws prohibiting discrimination in employment through investigation, conciliation, litigation, coordination, regulation in the federal sector, and through education, policy development and research, and provision of technical assistance.

The Commission has historically turned to the President and the Congress to request adequate resources to address the rapidly growing number of charges entering EEOC's system and the implementation of new statutes, programs and initiatives to combat discrimination. However, resources throughout the federal government have been tight and the competition among agencies has been fierce. While EEOC has realized some growth in resource levels in recent years, it has not been of the magnitude to offset the impact of a steady decline in funding and staff levels and the receipt of significant new statutory and regulatory responsibilities in recent years. The result has been the continuing increase in workload, the call for more initiatives and new programs, and an increased need for additional resources.

Like other Federal government agencies, the EEOC is seeking to identify new approaches that will empower it, and its employees, to effectively champion an American workplace free of discrimination.

Reexamination of the Commission's mission and a search for new approaches to address employment discrimination has already begun within the Commission. In concert with the principles embodied in the President's "National Performance Review" and the new statutory obligations outlined in the "Government Performance and Results Act of 1993," the Commission will focus on utilizing these new approaches to meet its responsibilities under the statutes it administers and fulfill its mission within the constraints of continued limited funding and staffing. Recognizing the need to improve program effectiveness and public accountability, the Commission will continue to focus on program performance and results, with an eye towards service quality and customer satisfaction.

The Commission is committed to using its limited resources in the most effective manner possible. Management officials have begun the difficult introspective review

Equal Employment Opportunity Commission

needed to assess EEOC's approaches honestly and fairly and marshal the creative talents of all of the Commission's employees in this process of change.

This Budget Request considers these various issues, and balances the need for modest additional resources to perform statutory requirements, while the Commission moves forward in its quest to design a work environment that enhances the ability of every employee to contribute towards the mission of the Agency. The Commission pledges to continue seeking ways to carry out its responsibilities in the most effective and efficient manner possible.

- SUMMARY PROFILE OF WORKLOAD/PRODUCTIVITY

SUMMARY PROFILE OF WORKLOAD/PRODUCTIVITY

Although workload activity continues to escalate at an alarming rate, productivity is at an all time high, even with the decline in staff levels the Commission experienced in past years. The requested increase in staff for FY 1995 is a further effort on the Agency's part to address the workload problem EEOC is currently experiencing.

The Commission has been both applauded and criticized by outside organizations (e.g., Congress, General Accounting Office (GAO)) in its investigator productivity increase over the past years despite the increasing complexities and new statutory requirements imposed on the Agency. Similarly, the quality of the investigations undertaken by the Agency has been the subject of various studies (e.g., GAO), Congressional hearings, and internal reviews.

As stated in the Introduction, EEOC is continuing in its efforts to review and evaluate program performance and to use limited resources in the most effective and efficient manner possible.

To date, the Commission has undertaken several different measures to address the workload problem EEOC currently faces. One measure redistributed approximately 1,750 cases among offices to address overall workload imbalances and to promote more timely and efficient resolutions of the charges. Of the total cases redistributed, the Commission coordinated the transfer of 400 cases from one field office to be investigated by headquarters staff in order to alleviate the extreme workload in the office.

Throughout FY 1993, EEOC established special projects to timely resolve hearings cases within the time frames required by 29 CFR Part 1614 regulations. A total of 840 cases were redistributed among several field offices to balance workloads, and staff were temporarily detailed to hearings cases.

In keeping with the concept of doing more with less, EEOC has explored using student volunteers, on a limited basis, in some of our field offices to help the offices manage their workloads by supplementing their limited resources.

Even with the above efforts and despite the Commission's success in maintaining a high rate of productivity, the Agency's charge processing indicators signal growing caseload problems. Further complicating this matter is the Agency's responsibility to provide technical assistance and expanded outreach. As personnel are diverted from their assigned duties to provide outreach services other mission areas suffer.

PRIVATE SECTOR PROGRAM

In the Private Sector Program, EEOC received 87,942 charges through the fourth quarter of FY 1993, more than it has received through any other fourth quarter period in the Agency's history. The number of receipts during FY 1993 is 21.6 percent higher than FY 1992, continuing a five year trend. ADA charges accounted for 17.4 percent of total receipts. During FY 1993, EEOC received 15,274 charges filed under the ADA, contributing to a 21.6 percent increase in total Agency receipts over FY 1992. The ADA charges accounted for most of the FY 1993 21.6 percent charge receipt growth. In addition, 4,194 charges were transferred into EEOC's workload by State and Local Fair Employment Practice Agencies (FEPAs).

While individual investigators produced a higher number of resolutions (71,716 in FY 1993), current staffing levels in the Private Sector Program cannot keep pace with the increase in charge receipts. Despite the increased productivity, the accompanying 21.6 percent rise in receipts resulted in an overall ratio of resolutions to receipts of less than one-to-one (.95 in FY 92, .82 in FY 93, but 1.01 in FY 91). When net transfers from State and Local agencies are added to EEOC's receipts, the ratio of resolutions to incoming work drops further below the one-to-one mark, for the third year in a row (.94 in FY 91, .89 in FY 92, .78 in FY 93). This has led to an increasingly higher inventory of pending charges.

Even in the face of higher productivity, the 73,124 charges pending at the end of FY 1993 are 20,268 more than reported at the end of FY 1992 and the highest recorded in more than 10 years for the Private Sector Program. Months of pending inventory increased to 12.2 months. The average EEOC office workload equated to 92.8 charges per investigator, up 25.2 cases from the 67.6 average caseload in FY 1992. The greater the caseload, the more time it takes for investigators to resolve each individual case. This has resulted in an increase in the percentage of inventory over 270 days old from 18.4 percent at the end of FY 1992 to 21.6 percent at the end of FY 1993. Without additional staff these trends are expected to continue.

FEDERAL SECTOR PROGRAM

On October 1, 1992, 29 C.F.R. Part 1614 regulations were implemented. These regulations limit the time that agencies have for investigating complaints. However, there are two different limits -- for complaints filed under 1614, the investigations must be completed within 180 days. But, for those complaints which were pending when 1614 became effective, agencies were to have completed processing by September 30, 1993. As a result, in the period from April 1, 1993 to September 30, 1993, the number of requests for hearings increased by 28 percent over the same

period in the previous fiscal year. These increases have resulted in a severe negative impact on available resources.

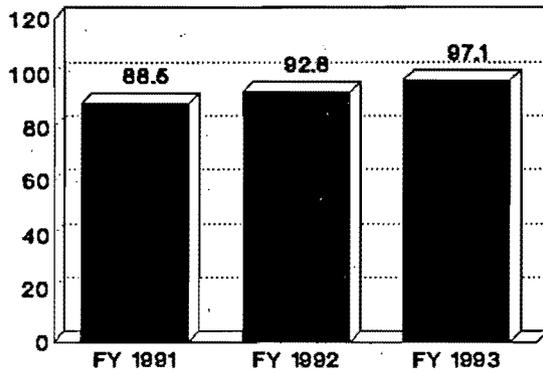
LITIGATION PROGRAM

The Commission's Office of General Counsel (OGC) anticipates that the overall increase in charge receipts will result in an increase in the number of cases that field offices will submit for litigation consideration. This will result in an increase in the number of Presentation Memoranda from the field legal units for the OGC's review. The office has already experienced a 24.6 percent increase in the number (829) of Presentation Memoranda received from the field as of the end of FY 1993 when compared to the number (665) received as of the end FY 1992, according to preliminary data.

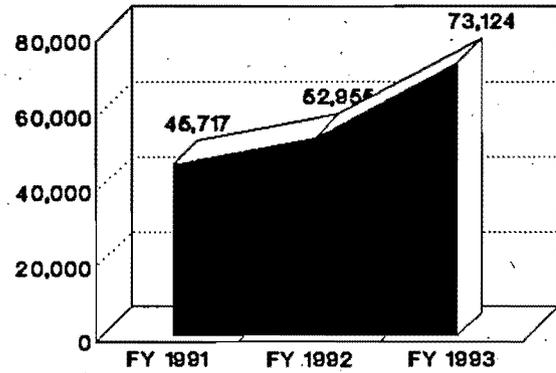
EEOC's OGC also anticipates that, with the increase in the number of cases under consideration for litigation by the Commission as well as the novelty and complexity of issues arising under the ADA and CRA of 1991, the number of Commissioner requests for opinions from the OGC will also increase. The overall increase in cases will also result in the Commission approving a greater number of cases for litigation, increasing the workload of the attorneys in the field and at Headquarters, which is responsible for overseeing the quality of field litigation. An increase is also expected in the number of appeals and the number of cases in which the Commission wishes to participate as amicus curiae.

COMPLIANCE INDICATORS

RESOLUTIONS PER INVESTIGATOR

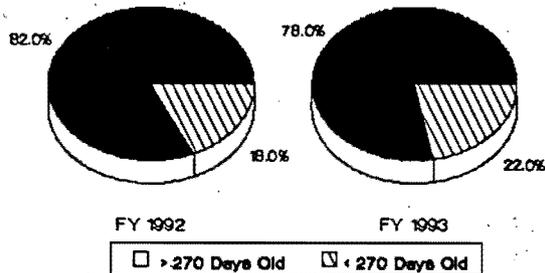


PENDING INVENTORY

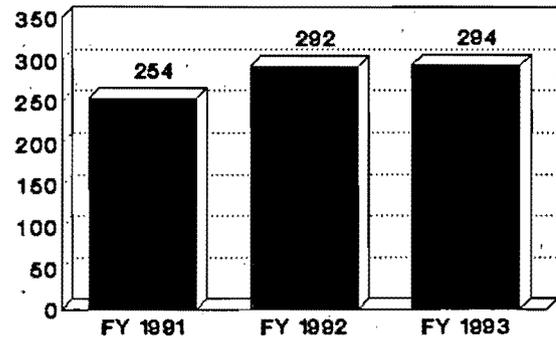


FY 1991 - FY 1993 (PRIVATE SECTOR)

270 DAY OLD CASES
AS A PERCENT OF INVENTORY



AVERAGE CHARGE
PROCESSING TIME



Equal Employment Opportunity Commission

PRIVATE SECTOR EEOC ENFORCEMENT COMPLIANCE ACTIVITY*			
WORKLOAD/WORKFLOW	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Total Pending Charge/Complaints	52,955	73,124	101,766
Total Receipts to Process	87,942	90,580	93,298
Net Transfers and Deferrals	4,194	4,194	4,194
Net Transfers out of Enforcement	(251)	(251)	(251)
Total Workload	144,840	167,647	199,007
Charges/Complaints Resolved	71,716	65,881	74,147
Charges/Complaints Forwarded	73,124	101,766	124,860
Charges/Complaints Inventory (Months)	12.2	18.6	20.3

* Productivity is based on 97.1 in FY 1993 and 88.0 per Investigator in FY 1994-1995. During this same time period receipts show successive 3 percent increases.

Equal Employment Opportunity Commission

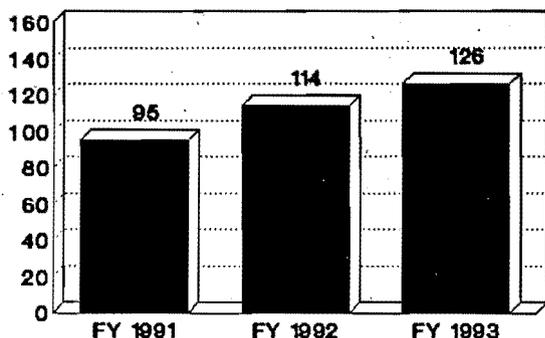
PRIVATE SECTOR ENFORCEMENT LITIGATION ACTIVITY			
WORKLOAD	FY 1993* Actual	FY 1994 Estimate	FY 1995 Estimate
Active Cases Entering FY	467	555	745
Cases Filed	482	635	655
Total Workload	949	1,190	1,400
Resolutions	394	445	496
Total Cases Forwarded	555	745	904

* Fiscal Year 1993 statistics may change subject to outcome of final reconciliation.

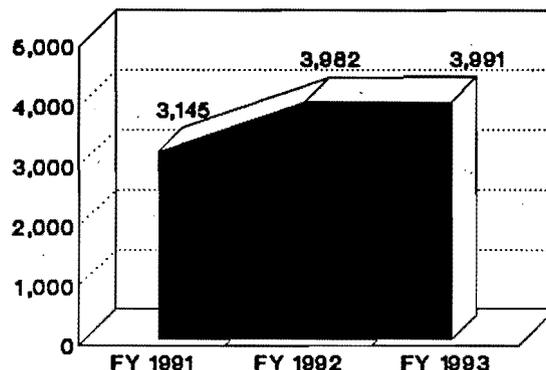
INDICATORS

HEARINGS

RESOLUTIONS PER ADMINISTRATIVE JUDGE



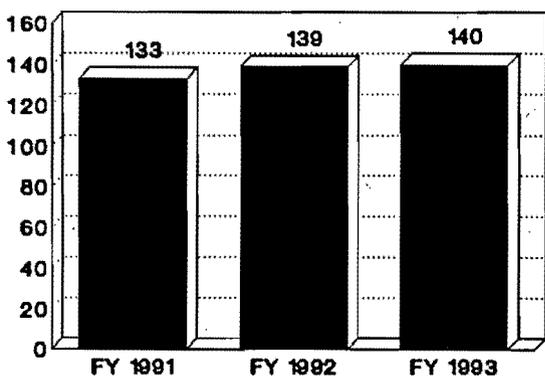
PENDING INVENTORY



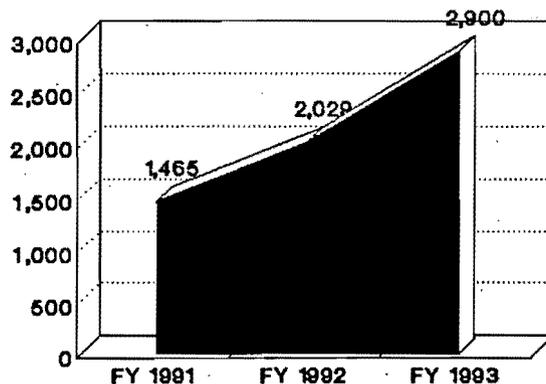
FY 1991 - FY 1993 (FEDERAL SECTOR)

APPEALS AND REVIEW

RESOLUTIONS PER ATTORNEY



PENDING INVENTORY



Equal Employment Opportunity Commission

FEDERAL SECTOR ENFORCEMENT HEARINGS*			
WORKLOAD	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Complaints Pending	3,982	3,991	5,064
Complaints Received	8,882	10,440	12,006
Total Workload	12,864	14,431	17,070
Complaints Resolved	8,906	9,367	11,561
Complaints Forwarded	**3,991	5,064	5,509
Months of Inventory	5.4	6.5	5.7

FEDERAL SECTOR ENFORCEMENT APPEALS***			
WORKLOAD	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Complaints Pending	2,029	2,900	5,225
Complaints Received	6,361	7,590	8,729
Total Workload	8,390	10,490	13,954
Complaints Resolved	5,490	5,265	5,265
Complaints Forwarded	2,900	5,225	8,689
Months of Inventory	6.3	11.9	19.8

* Productivity based on 131 resolutions per Administrative Judge in Fiscal Years 94 and 95.

** Reflects adjustments to pending inventory including updates to the database after year-end.

*** Productivity based on 135 resolutions/year per attorney in Fiscal Years 94 and 95.

Equal Employment Opportunity Commission

FEDERAL SECTOR ENFORCEMENT COMPLIANCE*			
WORKLOAD	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Complaints Pending	1,008	951	1,356
Complaints Received	1,483	1,783	2,050
Total Workload	2,491	2,734	3,406
Complaints Resolved	1,540	1,378	1,378
Complaints Forwarded	951	1,356	2,028
Months of Inventory	7.4	11.8	17.7

* This table assumes no additional staff in FY 1994 or FY 1995.

- SPECIAL EXHIBITS: SUMMARY DATA AND COMPARISONS

SPECIAL EXHIBITS

EEOC Appropriations Profile: FY 1989-FY 1995

EEOC Funding: FY 1989-FY 1995

Equal Employment Opportunity Commission

EEOC - APPROPRIATIONS PROFILE FY 1989 - FY 1995
(Funds in Thousands of Dollars)

	Budget Request	House Allowance	Senate Allowance	Enacted	FTE Requested	FTE Actual
1989						
State and Local	194,624	179,812	181,758	180,712		
	(20,000)	(20,000)	(20,000)	(20,000)		
Total	194,624	179,812	181,758	180,712	3,198	2,970
1990						
State and Local	188,700	184,926	184,926	184,926		
	(20,000)	(20,000)	(20,000)	(20,000)		
Total	188,700	184,926	184,926	184,926	3,050	2,853
1991						
State and Local	195,867	194,500	200,700	198,300		
	(20,000)	(20,000)	(25,000)	(25,000)		
Supplemental	0	1,000	2,000	3,630		
Total	195,867	195,500	202,700	201,930	3,050	2,796
1992						
State and Local	210,271	209,875	210,271	210,271		
	(25,000)	(25,000)	(25,000)	(25,000)		
Supplemental	1,000	--	--	1,000		
Total	211,271	209,875	210,271	211,271	2,871	2,791
1993						
Request	245,341	218,682	212,982	222,000		
State and Local	(25,000)	(25,000)	(25,000)	(25,000)		
Supplemental	8,829	--	--	--		
Total	254,170	218,682	212,982	222,000	2,918*	2,831
1994						
Request	234,845	230,000	227,305	230,000		
State and Local	(25,000)	(26,000)	(28,500)	(26,500)		
Total	234,845	230,000	227,305	230,000	3,000	3,000
1995						
Request	245,720					
State and Local	(26,500)					
Total	245,720				3,020	3,020

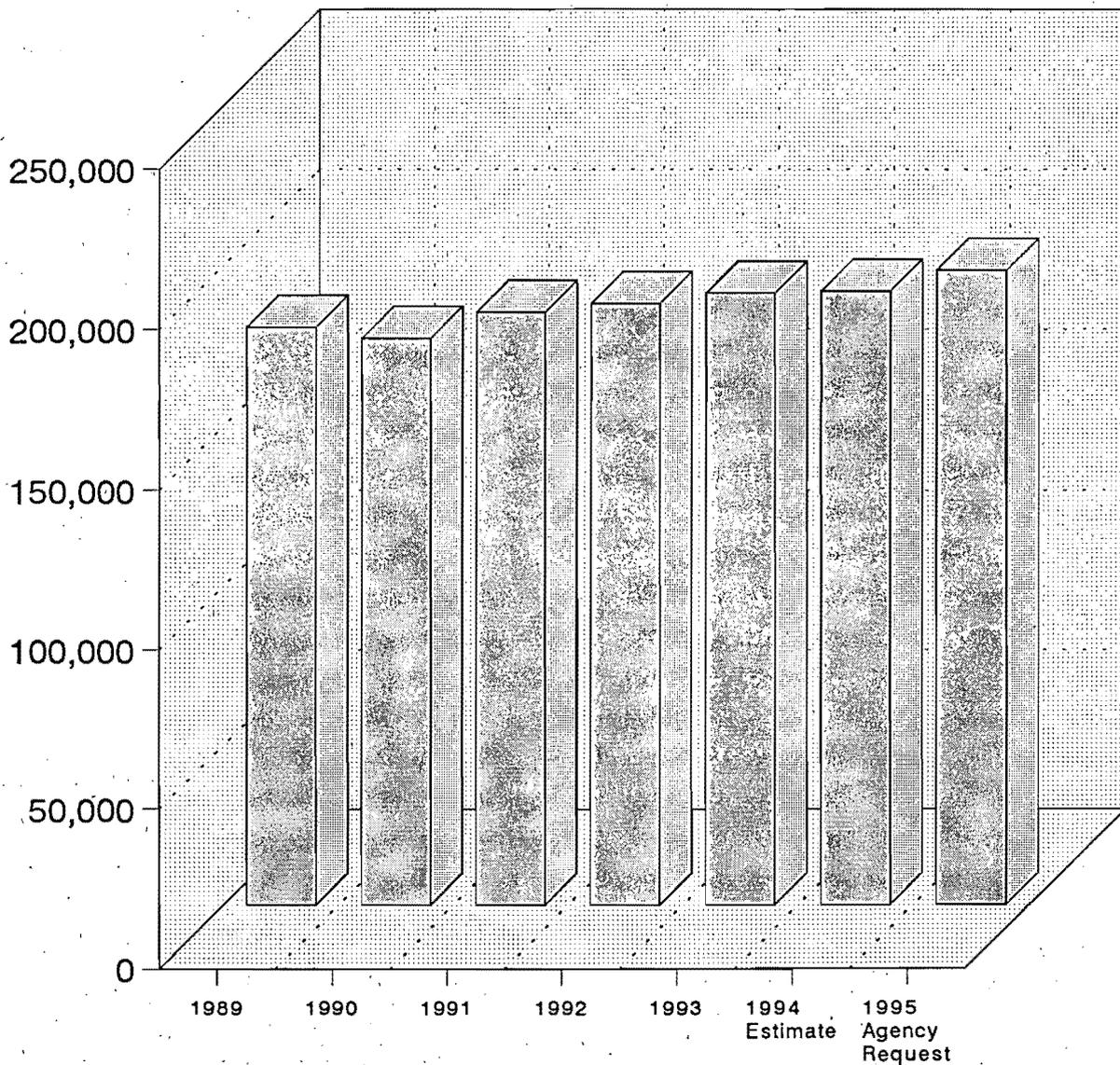
* The 2,918 FTE is derived by using the enacted authorized FTE level of 2,821 as the base, a reduction of 28 FTE pursuant to Executive Order 12839 and an increase of 125 FTE contained in the Economic Stimulus Package for FY 1993.

EEOC FUNDING

FY 1989 - FY 1995

SALARIES AND EXPENSES

1989 CONSTANT DOLLARS (THOUSANDS)



Constant \$	180,712	177,252	185,372	188,116	191,342	192,027	198,591
FTE	2,970	2,853	2,796	2,791	2,831	2,850	3,020
Actual \$	180,712	184,926	201,930	211,271	222,000	230,000	245,720

SALARIES AND EXPENSES APPROPRIATION

- APPROPRIATION LANGUAGE

APPROPRIATION LANGUAGE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Funds

General and Special Funds:

Salaries and Expenses

For necessary expenses of the Equal Employment Opportunity Commission as authorized by Title VII of the Civil Rights Act of 1964, as amended (29 U.S.C. 206(d) and 621-634), the Americans with Disabilities Act, and the Civil Rights Act of 1991, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); non-monetary awards to private citizens; not to exceed \$26,500,000 for payments to State and Local enforcement agencies for services to the Commission pursuant to Title VII of the Civil Rights Act, as amended, sections 6 and 14 of the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Civil Rights Act of 1991, [~~\$230,000,000~~] **\$245,720,000**. Provided further, the Commission is authorized to make available for official reception and representation expenses not to exceed \$2,500 from available funds. (The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995.)

- ANALYSIS OF CHANGE

Equal Employment Opportunity Commission

FY 1995 Congressional Request ANALYSES OF CHANGE (Funds in Thousands of Dollars)		
Summary of Adjustments to Base and Built-In Changes	FTE	AMOUNT
FY 1994 Appropriation	2,850	\$230,000
SALARIES AND EXPENSES		
Increase to Base:		
Compensation and Benefits		
1. FY 1994 Annualization costs:		
- FY 1994 Promotions		798
- FY 1994 Within Grades		552
- FY 1994 Locality Payraise		1,385
2. FY 1995 Compensation and Benefit Increases:		
- FY 1995 Payraise		1,888
- FY 1995 Within Grade Increases/Promotions		1,058
3. FY 1995 Increase Position Utilization	212	8,084
4. FY 1995 Position Utilization Reduction	-42	-2,263
5. Inc for DOL Workers Compensation Fund		149
Non-Salary		
1. Administrative Reduction (Executive Order 12837)		-1,364
2. Additional amount required by GSA for Standard Level User Charges (SLUC)		1,129
3. Adjustment to Other Operation Cost		2,554
4. Adjustment to Systemic Case Support Cost		500
5. Information Resource Management		1,250
TOTAL INCREASE TO BASE	170	15,720
TOTAL FY 1995 AGENCY REQUEST	3,020	245,720

Equal Employment Opportunity Commission

SUMMARY OF BUDGET ACTIVITIES						
BUDGET ACTIVITIES	FY 1994 ESTIMATE		FY 1995 REQUEST		INC(+) OR DEC (-)	
	FTE	AMOUNT (\$000)	FTE	AMOUNT (\$000)	FTE	AMOUNT (\$000)
EXECUTIVE DIRECTION AND PROGRAM SUPPORT	220	19,950	223	21,484	+3	+1,534
ENFORCEMENT	2,630	183,550	2,797	197,736	+167	+14,186
SUB TOTAL	2,850	203,500	3,020	219,220	+170	+15,720
STATE AND LOCAL	---	26,500	---	26,500	---	0
TOTAL APPROPRIATION	2,850	230,000	3,020	245,720	+170	+15,720

NOTE: Although there appears to be an increase of 3 FTE in Executive Direction and Program Support and 167 FTE in Enforcement, the increase is really 170 FTE in Enforcement and 0 in Executive Direction and Program Support. The FTE increases reflected in the table are actually the net result of shifting 3 FTE among offices in both activities to compensate for the growth in the OIG's office. In addition, all 170 FTE requested for FY 1995 will be provided to EEOC District Offices.

EXPLANATION/JUSTIFICATION OF REQUIREMENTS

**BUDGET ACTIVITY I - EXECUTIVE DIRECTION AND PROGRAM SUPPORT
SUMMARY**
(Funds in thousands)

SUMMARY OF PROGRAM REQUEST

FY 1994 Estimate		FY 1995 Request		Inc (+) or Dec (-)	
FTE	Amount	FTE	Amount	FTE	Amount
220	\$19,950	223	\$21,484	+3*	+\$1,534

* The increase reflected is the net result of the shifting of 3 FTE among Headquarters Offices. The offsetting reductions are shown in the Enforcement Section.

PROGRAM DESCRIPTION

This budget activity provides the framework within which the Commission formulates the policy and program plans required to effectively carry out the mission of the Agency. It provides overall direction, policy and planning for all Commission enforcement and support activities, as well as leadership and coordination of federal equal employment efforts. The following offices are included in this budget activity:

Office of the Chairman: Responsible for the implementation of Commission policy and for the administration of the Commission, including the appointment of such officers, agents, attorneys, hearing examiners, and employees of the Commission as he/she deems necessary to assist the Commission in the achievement of its mission and to perform its functions.

Executive Secretariat (ES): Serves as the Agency's focal point for coordinating, processing, storing, retrieving, documenting and tracking policy, decision, and related documents flowing to and from the Chairman, Commissioners and program offices; receives, obtains approval for and distributes Commission agenda items, arranges for all Commission meetings; and carries out Commission responsibilities regarding implementation/execution of the Sunshine and Freedom of Information Acts.

Offices of the Commissioners: Recommend policies and programs to the Commission; develop and direct the policies of the Commission; consider and decide on all matters that come before the Commission in the exercise of their powers; dispose of all

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matters presented for its collective consideration by a majority vote (a quorum being present); issue Commissioners' charges of discrimination (when appropriate); authorize and approve filing of suits and perform such other functions as may be authorized by the Commission, requested by the Chairman, or prescribed by law, regulation, or order.

Office of Management (OM): Provides support services to the Commission's headquarters office and 50 field offices nationwide and maintains proper internal control systems, throughout the Agency. OM conducts management and organizational analyses and provides guidance for employee performance systems; personnel and labor relations services; budget, finance, and debt collection; contract and procurement services and administrative support services.

Office of Inspector General (OIG): Established pursuant to Public Law 100-504, the Inspector General Amendments of 1988, the OIG is an independent and objective unit responsible for assisting management in its efforts to ensure that EEOC operations serve the public interest. Conducts and supervises audits, investigations, and evaluations which focus on: (1) identification, elimination and prevention of waste, fraud and misuse of government resources; (2) violation of laws, rules and regulations; and (3) misconduct, mismanagement and inefficiencies in all EEOC programs and operations.

Office of Communications and Legislative Affairs (OCLA): Represents the Commission to the print and electronic media, the Congress, and the general public. Under the direction of the Chairman, OCLA serves as the Commission's primary external communications link with the news media, the Congress and constituency organizations and conducts internal communications between the Commission and field and headquarters offices.

Office of Equal Employment Opportunity (OEEEO): Provides guidance to the Agency on all aspects of the federal government's equal employment opportunity program. Provides EEO counseling services to potential complainants; investigates complaints of discrimination; issues Agency decisions regarding complaints; and develops, implements and monitors the Commission's affirmative employment program plans and programs for minorities, women, and individuals with disabilities, including veterans. OEEEO maintains liaison with the Office of Personnel Management regarding its current policies and programs concerning employment of individuals with disabilities, including disabled veterans.

PROGRAM ACCOMPLISHMENTS

Undertook initiative to establish a more proactive, collaborative and integrated approach to human resources management which recognizes that employees want a high degree of involvement and ownership in their work. Developed a companion video and briefing booklet, *Thinking About Tomorrow*, which introduced Human Resources Management Services staff and crystallized the agency's strategic human resources planning issues. (OM)

Began an institutionalized training program at headquarters which focused on computer training, career enhancement open forums, attorney training, team building and courses for administrative support staff. (OM)

Began several initiatives to address issues surrounding the Agency's staffing, health and safety and productivity, including a process for an internal organizational review of headquarter's operations, system for the management and control of FTE's, Agency-wide early retirement authority, revitalized health and safety program and a new local area network. (OM)

During FY 1993, the Commission implemented the EEOC Education, Technical Assistance, and Training Revolving Fund, which was authorized by the EEOC Education, Technical Assistance and Training Revolving Fund Act of 1992. EEOC made significant modifications to the Commission's Accounting System (CAS) to accommodate management of the Revolving Fund. The Commission also developed streamlined procurement procedures, as well as a detailed Statement of Work to ensure maximum contractual performance. Overall programmatic and administrative support was provided to assist offices in successfully undertaking activities financed by the Revolving Fund. (OM)

In FY 1993, EEOC began strategic planning to replace the Commission Accounting System (CAS), developed in 1978, with a financial management system that can be integrated fully with the Agency's IRM requirements. In the interim, a number of activities were instituted to improve or strengthen financial management operations. These activities included analysis of funds control problems experienced by certain offices at the end of the previous fiscal year to identify specific problems and to provide corrective actions; revision/improvement of the process for field office allowance review and approval; providing specific budget and financial management training to recently hired Headquarters and field office support staff; administering the CAS and CAS On-Line Entry Contingency effort; and upgrade of the computer-assisted financial document retrieval system. (OM)

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A Procurement LAN was established at headquarters to provide for efficiency by automating many of the repetitive procurement activities and to control processing within the procurement activity. (OM)

Similarly, an automated, scanner-based inventory tracking system was piloted in FY 1992. It was subsequently expanded to all 50 field locations in FY 1993. Besides being used as an inventory tool, the system has proven to be invaluable in tracking and controlling excess property during the relocation of field offices. (OM)

During FY 1993, the Commission's Legislative Affairs staff received and processed more than 3,200 written congressional and White House inquiries. Congressional and White House correspondence receipts increased nearly 10 percent after the first full year of ADA enforcement. In addition, approximately 1,150 public information and media calls per week were processed during FY 1993. (OCLA)

Technological and/or procedural improvements are currently being processed to receive and direct incoming calls from the public, Congress and media more efficiently and with emphasis on improved customer service. (OCLA)

The Commission has continued its outreach efforts during FY 1993 to include development and distribution of outreach and public information materials on EEOC's law enforcement responsibilities to all groups protected by civil rights statutes, and employers covered by those statutes, including, for example, development of an ADA video for potential charging parties. (OCLA)

The Publications Distribution Center (PDC) realized its projected impact on improving EEOC's response time to public information requests and to achieve economies of scale. In FY 1993, the first year of operations, calls to the PDC's 800 number for publications totalled 165,757 and the PDC received 21,771 written requests for information publications. A total of 1,596,622 publications were distributed. Improvements include the establishment of procedures to respond more promptly to requests for publications in alternative formats, creation and maintenance of an inventory of publications in alternative format and system for increasing the inventory of public information and technical assistance materials. (OCLA)

In accordance with federal sector complaint regulations, the continuing goal of EEOC's internal EEO program since FY 1992 has been to conduct pre-complaint counseling in an average of 15 days and to complete the investigative stage of the formal complaint process in 180 days or less for at least 90% of our complaints. (OEEO)

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Within the past 18 months, the OIG issued 25 audit and inspection reports to the Chairman, and appropriate management officials, covering a myriad of administrative, programmatic, and financial matters. Six of the 25 reports involved preaward contract analyses where over \$560,000 in questioned costs, \$51,000 in funds to be put to better use, and \$16,000 in unsupported costs were identified. The other 19 audits and inspections identified findings related to inadequate internal controls, noncompliance with appropriate regulations, and deficiencies in agency programs. For example, OIG identified deficiencies in the Agency's internal control program and FMFIA reporting, and weaknesses in the management of GSA motor vehicles maintained by field offices. Through these and other reports, OIG made scores of specific recommendations to correct deficiencies and weaknesses. Virtually without exception, Agency managers have adopted OIG's findings and recommendations, and taken steps to implement corrective action. (OIG)

During the same time period, OIG received over 140 investigation requests covering allegations of criminal and serious administrative misconduct involving EEOC programs, personnel and operations. Although a number of requests remain pending, OIG's Investigations Division successfully completed cases involving conflicts of interest; improper outside employment; illegal intercept of mail; abuse of the agency's telecommunications system; and theft of personal and government property. (OIG)

**FY 1995 RESOURCE REQUIREMENTS FOR EXECUTIVE DIRECTION AND
PROGRAM SUPPORT**

The FY 1995 request of an additional \$1,534,000 primarily provides for required annualization of salary increases and inflation in FY 1995. No additional staff or program requirements are requested.

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DECISION UNIT

Executive Direction and Program Support*

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	10,944	11,518	12,277
11.3 Other than FTP	343	358	384
11.5 Other personnel compensation	213	238	251
Total Personnel Compensation	11,500	12,114	12,912
12.1 Civilian personnel benefits [Total FERS]	2,158 (918)	2,469 (1,051)	2,739 (1,199)
13.1 Benefits to former personnel	6	13	13
Total Compensation and Benefits	13,664	14,596	15,664
21.1 Travel of persons	117	163	178
22.0 Transportation of things	0	0	0
23.1 Other rent/Communications	859	883	957
23.2 Rental payments to GSA	1,348	1,438	1,561
24.0 Printing and reproduction	18	18	26
25.0 Other services	1,561	2,429	2,633
26.0 Supplies and materials	208	217	242
31.0 Equipment	1,609	206	223
TOTAL	19,384	19,950	21,484
FTE BY OFFICE:**			
Chairman and Executive Secretariat	14	24	24
Commissioners	17	24	24
Communications/Legislative Affairs	16	14	14
Equal Employment Opportunity	10	9	9
Office of Inspector General	11	13	17
Office of Management (Excluding IRMS)	155	136	135
TOTAL FTE	223	220	223

* Executive Direction and Program Support includes the activities of the Office of Inspector General.

** Reductions by Office (except the Chairman, Commissioners and the Office of Inspector General) are based upon across the board proportionate cuts in Headquarters only (Executive Order 12839). Estimates also reflect a shift of positions from Headquarters to the Field Offices, consistent with the Chairman's goal.

**BUDGET ACTIVITY II - ENFORCEMENT
SUMMARY**
(Funds in thousands)

SUMMARY OF PROGRAM REQUEST

FY 1994 Estimate		FY 1995 Request		Inc (+) or Dec (-)	
FTE	Amount	FTE	Amount	FTE	Amount
2,630	\$183,550	2,797	\$197,736	167*	\$14,186

* The increase reflected is the net result of the shifting of 3 FTE within Headquarters Offices and an additional 167 FTE for the District Offices.

PROGRAM DESCRIPTION

This budget activity is responsible for the enforcement of the statutes under the Agency's jurisdiction: Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment (ADEA) of 1967, as amended, the Equal Pay Act (EPA) of 1963, as amended, the Americans with Disabilities Act (ADA) of 1990, the Civil Rights Act (CRA) of 1991 and with regard to the Federal sector, Section 501 of the Rehabilitation Act. Enforcement activities and the programmatic oversight and technical guidance for these activities are carried out by the offices listed below:

Field Offices: A total of 50 field offices (24 District offices**, 1 field office and 25 Area** and Local offices) represent the core of the Agency's enforcement program. These offices report to the Agency's Office of Program Operations, through the Field Management Program Directors (East and West). The field offices, under the direction of the 23 District Directors, enforce the statutory, regulatory, policy and program responsibilities of the Commission through full investigation of the merits of each charge, sound determination, appropriate conciliation and litigation, as necessary. The field is responsible for fulfilling a wide range of productivity objectives that focus on high quality, timely and appropriate resolution of individual, class and systemic charges, and for securing make-whole relief for victims of discrimination in accordance with Commission policies.

** In 1994, the Commission approved the upgrade of the Albuquerque Area Office to District Office level and the Minneapolis Local Office to Area Office level. Plans are underway to effectuate these upgrades.

While all field offices are responsible for the receipt and investigation of charges, the District Offices provide oversight of Area and Local Offices and are charged with additional responsibilities in the areas of administration, systemic investigations, federal hearings, affirmative action programs, and legal review and litigation. District Offices also inform individuals of their rights under the laws enforced by EEOC, conduct outreach and Technical Assistance Programs and provide access to individuals who are geographically distant from EEOC area and local offices or whose primary language is other than English.

Office of Program Operations (OPO): Responsible for resolving charges and complaints of employment discrimination filed under Title VII, ADEA, EPA, CRA of 1991, and ADA. OPO manages, monitors and directs the administrative enforcement activities of EEOC's 50 field offices. Specifically, OPO directs investigations of individual, class, and Commissioner-initiated pattern and practice claims of employment discrimination.

Information Resources Management Services (IRMS): This Service Area within the Office of Management is responsible for planning and developing EEOC's automated data processing (ADP) programs, policies, and procedures. IRMS provides computer support and programming to EEOC offices and administers comprehensive, automated management information systems (computer hardware and software). In addition, IRMS manages the Agency's planning, evaluation and procurement of hardware and software for microcomputers. This includes the management and operation of the Information Technology Center for technical assistance and training. IRMS also manages non-Charge Data System (CDS) application software projects including the Personnel Information Resource System, several aspects of EEO Surveys processing and various stand-alone database systems. In addition, IRMS manages the information technology aspects (related to computer hardware and software) of the Agency's Information Resource Management (IRM) program, including the ADP security program, OMB Circular No. A-130 compliance and IRM planning.

IRMS manages and operates the Agency's CDS which is the management information system used to track the Commission's charge processing activities through field office and FEPA databases and the National Data Base (NDB).

Office of Legal Counsel (OLC): Responsible for providing legal advice and counsel to the Chairman, Commission and Commission offices. As the chief legal advisor to the Chairman and the Commission, the Legal Counsel insures that the Commission properly executes its responsibilities under Executive Order 12067, facilitates the development of policies and procedures to implement the various statutes the EEOC enforces, and represents the Commission in litigation in which it is a defendant.

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Office of Federal Operations (OFO): Provides leadership and guidance to Federal Agencies on all aspects of the Federal government's equal employment opportunity program, in accordance with Section 717 of the Civil Rights Act of 1964, as amended; Section 501 of the Rehabilitation Act of 1967, as amended; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967, as amended; and Executive Order 11478, as amended by Executive Order 12106.

OFO develops and implements Commission approved affirmative employment policies, designed to enhance the occupational status of minorities, women, and persons with disabilities in the Federal government. In addition, OFO assures Federal agency and department compliance with Commission regulations which establish systems for the fair adjudication of discrimination complaints within the Federal service. OFO administers the review and appeals process for the Federal sector. Finally, OFO provides program guidance and leadership to all other Commission activities developed and implemented to effect government-wide equal employment opportunity processes and programs.

Office of General Counsel (OGC): OGC was established by the Equal Employment Act of 1972, which amended Title VII of the Civil Rights Act of 1964, to provide a General Counsel, appointed by and with the advice of the Senate to have responsibility for the conduct of litigation. Following transfer of functions from the U.S. Department of Labor to the Commission, OGC was vested with the responsibility for conducting litigation under the ADEA of 1967 and the EPA.

PROGRAM ACCOMPLISHMENTS

Data on FY 1993 charge activity clearly demonstrates that despite the fact that inventory, at current staffing levels, has reached historically high levels, field staff continue to achieve a productivity level higher than at any other time in the Agency's history. Fiscal year 1993 data shows that productivity per staff available is the highest in the Agency's history. Productivity for FY 1993 was 97.1 resolutions per investigator available. (OPO)

Monetary benefits recovered through enforcement/systemic efforts during FY 1993 exceeded 126 million dollars, up 7.7 percent from FY 1992 benefits. Average monetary benefits were \$14,823 per person. Average dollar benefits were highest for ADEA resolutions at \$22,409. (OPO)

Designated technical assistance coordinators and/or liaisons are being established in all field offices as resources are available. This will enhance voluntary compliance

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with the statutes that EEOC enforces through the provision of technical assistance to employers, interest groups, potential charging parties, and other members of the public. (OPO)

Also during fiscal year 1993, the Commission conducted quality reviews in 22 of 24 district offices, completed two research studies: "Sexual Harassment in Charge Receipts and Resolutions" and "Equal Employment Opportunity Profile of Private and Public Employers," and published the annual publication of Job Patterns for Minorities and Women in Private Industry, 1992, and the Indicators of Equal Employment Data Dissemination. Field office representatives made 1,694 outreach presentations to 94,107 individuals in fiscal year 1993. The topics most frequently addressed were those providing general information about EEOC (48.2 percent). Sexual harassment presentations accounted for 18.6 percent of the presentations and Americans with Disabilities Act presentations, 31.6 percent. (OPO)

During fiscal year 1993, the Commission began processing the State and Local Government Information (EEO-4) Survey in-house rather than by contract. The survey is now designed for processing by EEOC staff instead of by private contractor. The cost avoidance to the agency amounts to \$240,000 the first year and \$300,000 in subsequent years. As an efficiency and further cost avoidance measure, the Agency has also modified the EEO-4 Survey reporting cycle from annual to biennial. (OPO)

EEOC has responded to an extremely large volume of requests for information and/or guidance during FY 1993. The Commission's Office of Program Operations (OPO) responded to over 1,300 data requests for survey/employer data and provided over 15,000 reports. EEOC's Office of Federal Operations (OFO) received approximately 28,000 telephone inquires, many of which were requests for technical assistance in the federal sector EEO program areas. In addition, OFO has realized a steady increase in both controlled (Congressional/White House and Chairman referred) and uncontrolled correspondence. In 1991, 681 pieces of controlled correspondence were answered; in 1992 the number increased to 1,001. In 1993 the volume increased to 1,179, nearly doubling in volume in just two years. This is in addition to the 27,000 pieces of mail and 4,000 original responses which are handled each year by OFO. (OPO, OFO)

During FY 1993, OFO participated in 141 presentations on topics ranging from the implementation of Part 1614 regulations to sexual harassment. OFO developed and, in conjunction with staff of the Office of Legal Counsel, presented a series of eleven seminars on 1614 regulations, as part of the agency's Revolving Fund effort. These seminars were offered in Atlanta, Chicago, Dallas, San Francisco and Washington, D.C. (OFO, OLC)

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To ensure that new attorneys were fully functional in a short period of time, newly hired attorneys received an intensive in-house briefing during their first two working weeks. This initiative was undertaken to fully immerse them in the civil rights laws, procedural regulations, characteristics of Federal employment, appropriate writing style for appellate decisions, and Commission policies and precedents. Attorneys became proficient in a shorter period of time, expediting their ability to produce draft decisions more quickly. (OFO)

To achieve a more current appeals inventory, program managers prioritized the pending FY 1992 appeals for early resolution. The overall effort resulted in early matching of incomplete agency files, resolution of almost all procedural and merit cases, and obtaining Commission approval on pending difficult issues. Only 54 FY 1992 appeals remained in inventory at the end of FY 1993. (OFO)

EEOC distributed 1990 Census Availability Data (CAD) to Federal agencies during FY 1993. The CAD replaced 1980 Census data that had been used by agencies to prepare annual affirmative employment reports and other work force analyses under MD 714 for minorities and women. The provision of current CAD has allowed Federal agencies to conduct more accurate and meaningful analyses of their respective work forces at the national, regional, and state and local levels, thereby, identifying work force underrepresentation for targeted affirmative employment intervention and activities. (OFO)

EEOC's Affirmative Employment Division coordinated and took part in eight on-site reviews conducted by District Office Federal Affirmative Action Units of agency field installations in FY 1993. In order to use resources more effectively, "focused reviews" were implemented whereby specific elements of installations' affirmative employment programs were scrutinized to determine if they were in compliance with the Commission's regulations, directives and instructions. This approach reflects the greater emphasis being placed on enforcement in ensuring that agencies properly implement their affirmative employment plans and monitor their program results. (OFO)

Congress directed the Commission and the Department of Labor to sponsor a study on the use of fitness tests as an alternative to mandatory age retirement requirements, to determine ability to perform in certain public safety jobs. The Alternatives to Chronological Age in Determining Standards of Suitability for Public Safety Jobs Study was completed and transmitted to Congress early in FY 1993. The police and firefighters study concluded that tests currently are available that are better predictors of ability to perform. (OLC)

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The Commission approved and disseminated to EEOC field offices and the public, Interim Enforcement Guidance on "Disability-Based Distinctions in Health Insurance Plans" under the ADA. This guidance provides the Commission's interpretation of the provisions of the Americans with Disabilities Act, and addresses the questions raised by those health insurance plans that exclude coverage, or have reduced coverage, for AIDS and other medical or disability-based conditions. (OLC)

The three divisions that comprise Legal Services defend administrative and court actions filed against the Commission. The Commission's Internal Litigation Divisions began Fiscal Year 1994 with 88 open cases. The Advice and External Litigation Division (AELD) had 40 open cases. In fiscal year 1993, the Internal Litigation Divisions achieved favorable decisions and other resolutions from courts and administrative tribunals in 85 cases and the Advice and External Litigation Division in 48 cases. (OLC)

The Commission and the Department of Justice approved a proposed final joint regulation to coordinate the enforcement of Section 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act. The regulation was circulated for interagency coordination, pursuant to Executive Order 12067, and agency comments were under review at the end of FY 1993. (OLC)

The Commission published in the Federal Register for public comment Proposed Consolidated Harassment Guidelines. The proposed guidelines recite the current state of the law on harassment in the workplace because of an individual's race, religion, sex, national origin, age or disability. (OLC)

The Commission published in the Federal Register for public comment, a Notice of Proposed Rulemaking (NPRM) revising Section 1605.2 of the Commission's Religious Discrimination Guidelines (pertaining to reasonable accommodation in light of the Supreme Court's decision in *Ansonia Board of Education v. Philbrook*). (OLC)

During FY 1993, the Agency made operational enhancements to the Charge Data System (CDS). EEOC completed CDS hardware upgrades for all 77 State and Local Fair Employment Practices Agencies (FEPAs) using the CDS system. These upgrades replace the old NCR Minitower computer provided to the FEPAs with an NCR-600 computer with twice the speed and storage capacity of the original system. In addition, analysis, design and programming of the CDS Filemerge system was completed which will allow greater use of CDS compliance data with Word Perfect documents. The Agency also performed the analysis, design and programming of the

field component of the new CDS Litigation Tracking System and completed the programming of the Filepro 4.1 upgrade and CDS application upgrade for FEPAs which use CDS. (IRMS)

Also, during FY 1993, EEOC's Information Resource Management Services performed the analysis, design and programming of the CDS HUD component for FEP Agency computers to allow transmission of HUD complaint data from FEPAs to HUD via the EEOC CDS National Database. (IRMS)

In the area of office automation, IRMS intensified delivery of computer training to EEOC staff. It developed new data base applications in support of financial operations. IRMS also developed and distributed to investigators and attorneys electronic versions of the Compliance Manual and ADA guidance allowing for easier and more thorough research. (IRMS)

As part of the Commission's long-range IRM integration effort, IRMS completed the following activities: Joint Application Development sessions with internal offices; the development of the Enterprise Mission and Business Architecture, which reflects how EEOC's work flow and procedures access and manipulate information (this model will be used as a baseline for all future application design and development); Rapid Application Development sessions with internal staffs which resulted in the development of a prototype desktop application for the Charge Intake application; and a final detailed design report for use in implementing the Headquarters portion of the integrated Enforcement/Litigation system. (IRMS)

During FY 1993, IRMS also completed the final analysis of proposals in response to the agency's solicitation for a multi-platform, Open Systems Standards-compliant data base management system (DBMS); developed an estimate of funding needed to acquire the DBMS licenses, training, and related items; completed negotiations, received Best and Final Offer, and awarded a contract to the successful offeror. (IRMS)

In FY 1993, OGC's Research and Analytic Services (RAS) provided experts in 14 Title VII cases and 12 ADEA cases. In addition, RAS provided substantial research support for EEOC-wide initiatives, such as the Congressionally mandated Alternatives to Chronological Age in Determining Standards of Suitability for Public Safety Jobs Study and the Federal Executive Committee on Metropolitan Areas. (OGC)

The Commission filed 408 substantive lawsuits as of the end of FY 1993. Of these lawsuits, 263 were brought under Title VII, four under the Americans with Disabilities Act, 111 under the Age Discrimination in Employment Act (ADEA), three under the

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Equal Pay Act (EPA), eight under both the ADEA and Title VII, and 14 under both the EPA and Title VII. Another 79 suits filed were subpoena enforcement actions initiated to obtain information necessary to investigate charges filed with the Commission. (OGC)

EEOC also resolved 332 lawsuits as of FY 1993, and recovered more than \$34 million in back pay for discrimination victims. The resolved lawsuits included 223 filed under Title VII, two under ADA, 83 under ADEA, one under EPA, eight under both ADEA and Title VII, and 15 under both the EPA and Title VII. Another 62 resolutions involved subpoena enforcement and other actions. (OGC)

A sampling of Office of General Counsel Case Activity during FY 1993 includes the following:

1. Cases Before the United States Supreme Court

St. Mary's Honor Center v. Hicks, No. 92-602 (June 25, 1993). The Commission filed a brief as *amicus curiae* along with the Solicitor General's Office, arguing that the plaintiff was entitled to judgment as a matter of law once he had established a prima facie case and had shown that all the defendant's non-discriminatory reasons for the adverse action in issue were unworthy of credence. The Supreme Court held, however, that a plaintiff in a disparate treatment case is not entitled to judgment as a matter of law in such cases. According to the Court, a finding of pretext may support a conclusion of discrimination but such a conclusion is not mandatory. The Court reversed and remanded the case to the Eighth Circuit to determine whether the district court's finding that the plaintiff was not discriminated against was clearly erroneous.

Hazen Paper Co. v. Biggins, No. 91-1600 (April 20, 1993). The Supreme Court vacated and remanded the case to the First Circuit Court of Appeals for reconsideration of whether the evidence showed that the employer discriminated against Walter Biggins on the basis of his age. The Court found that the court of appeals had relied improperly on evidence that Hazen Paper Co. discharged Biggins because his pension was about to vest as evidence of age discrimination. The Court did not adopt a blanket rule against reliance on so-called "age proxies" as evidence of age discrimination, but it did say that reliance on an age-linked characteristic does not itself constitute a violation of the ADEA. It did not reach the question of whether a disparate impact claim could be raised under the ADEA, and if so whether use of an "age proxy"

would be a neutral rule with a disparate impact on the basis of age. The Court also reaffirmed the standard for willfulness it adopted in Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985), and applied the "knowing or reckless disregard" standard to cases of individual disparate treatment. The United States and the EEOC participated in the case as amicus curiae.

2. Title VII Race Discrimination Actions/Decisions

EEOC v. T.P.I. Restaurant/Shoneys, No. 89-2665-HB (W.D. Tenn.). The consent decree in this case was approved on November 16, 1992. The decree resolves a Title VII claim of race discrimination in segregating Blacks from front end positions in approximately 20 Shoneys' restaurants in the Memphis area between 1980 and 1989. The decree provides for \$850,000 in back pay relief plus interest, and includes the expenditure of \$1.3 million in various forms of affirmative action, outreach, and community involvement.

3. Title VII Sex Discrimination Actions/Decisions

EEOC v. General Telephone & Electric of the Northwest, C.A. No. C77-247-C (W.D. Wash.). A consent decree was entered in this case on October 20, 1992, resolving allegations that the defendant discriminated against women on the basis of sex with respect to hiring, assignment, and promotion. The consent decree provides for \$400,000 in back pay to claimants immediately and \$800,000 in training over a four-year period.

4. Title VII National Origin Discrimination Actions

EEOC v. Luby's Cafeterias, Inc., No. CA3-88-1141-H (N.D. Tex.). A consent decree entered on December 22, 1992, resolved this case involving a Title VII claim that the employer failed to hire Hispanics and women as cafeteria managers. The decree provides for \$500,000 in back pay relief for class members, who will be identified post-decree. In addition, the decree requires the employer to grant preferential placement into management positions to 40-qualified victims of discrimination, modify its hiring procedures, post EEO notices, provide EEO training to its managers and hiring personnel, and provide the Commission with hiring information for three years.

5. Title VII Religious Discrimination Actions/Decisions

EEOC v. Shaw Industries, No. CIV-1-92-240 (E.D. Tenn., April 20, 1993). The consent decree in this case resolved the claim that the defendant failed to accommodate the charging party's religious beliefs, which led to his discharge when he was unable to maintain the defendant's work schedule. The decree provides the charging party with \$32,000 in monetary relief. In addition, the decree enjoins the defendant from engaging in employment practices which violate Title VII's prohibitions against discrimination on the basis of religion, and further enjoins retaliation prohibited by Title VII. The defendant further agreed to post a notice, and to expunge negative references concerning the issues raised by the litigation from charging party's personnel file.

6. Title VII Retaliation Actions/Decisions

EEOC v. Recognition Equipment, Inc., No. CA3-90-1534R (N.D. Tex.). A settlement agreement, filed on October 1, 1992, resolves retaliation claims under Title VII and the ADEA, and provides full back pay relief as well as damages for pendent state claims alleged in a private action that had been consolidated with the Commission's suit. The agreement provides for \$52,500 in monetary relief, expunction of adverse materials from the charging party's personnel file, a neutral job reference, and EEO training of managers and supervisors.

7. Actions Under the Age Discrimination in Employment Act

EEOC v. Watergate at Landmark Condominium, No. 92-1224-A (E.D. Va., April 29, 1993). The Commission alleged that because of the charging party's age, 63, the defendant, a condominium organization, discharged her from the position of Director/Tennis Pro of the defendant's tennis club and failed to hire her as Manager of the club. Following a one-day trial, the jury returned a verdict for the Commission. The Commission's evidence showed that charging party, who had worked for the defendant as Director/Tennis Pro for 13 years, was the most qualified applicant for the newly created Manager position, and that residents of the condominium, who played a significant role in the tennis club, had stated that the charging party was too old to run the tennis club. The jury found that the defendant's violation of the ADEA was willful and awarded the charging party \$63,820 in back pay and an equal amount as liquidated

damages. The court awarded the charging party an additional \$93,011 in front pay and \$6,104 in attorney's fees. The defendant has appealed this case.

8. Actions/Decisions Under the Equal Pay Act

EEOC v. Tree of Life Christian Schools, No C2-85-1771 (S.D. Ohio, October 28, 1992). The court entered a consent order in this case, affirming an earlier ruling that the defendant's practice of paying a family allowance to its male employees while denying this allowance to similarly-situated women employees violated the Equal Pay Act, and ordering the defendant to pay make-whole relief to 19 class members in the amount of \$96,905. The order further requires the defendant to apply the same criteria to female employees that it applies to male employees when awarding its "head-of-household" allowance.

9. Actions/Decisions Under the Americans With Disabilities Act

EEOC v. AIC Security Investigations, Ltd., et al., No. 92 C 7330 (N.D.Ill.). In this first case brought by the Commission to enforce the Americans with Disabilities Act, the Commission argued that the defendants had discharged the charging party because he had brain cancer, even though he had continued to perform the essential functions of his position as Executive Director. The jury returned a verdict in favor of the Commission in March and the magistrate entered judgment in June, ordering \$222,000 in back pay, including punitive and compensatory damages.

Bonnie Cook v. State of Rhode Island, First Circuit, No. 93-1093 Brief as Amicus Curiae Filed July 15, 1993. Cook sued the State of Rhode Island's Department of Mental Health, Retardation, and Hospitals ("MHRH") under § 504 of the Rehabilitation Act of 1973, alleging that she was refused employment as an institution attendant on the basis of a perceived disability -- her morbid obesity. Cook prevailed at trial, obtaining a jury verdict of \$100,000 in compensatory damages as well as an equitable order of reinstatement to the position. The district court denied MHRH's subsequent motion for judgment as a matter of law, concluding that the evidence at trial supported a jury verdict that MHRH regarded Cook as disabled. MHRH appealed from this denial.

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The question raised was whether obesity is a disability under § 504 of the Rehabilitation Act of 1973 or Title I of the Americans with Disabilities Act must be determined on a case by case basis depending upon the duration and extent of the condition.

Sufficient evidence was presented at trial to support the jury verdict that MHRH regarded Cook as disabled because of her morbid obesity.

Mason Tenders District Council Welfare Fund v. Donaghey, Southern District of New York, No. 93 Civ. 1154 (JES) Brief as Amicus Curiae Filed September 16, 1993. Mason Tenders District Council Welfare Fund (the Fund), a multi-employer labor-management trust fund providing health benefits to eligible employees of contributing employers, amended its comprehensive health plan in July 1991 to exclude coverage for all medical expenses related to HIV infection, AIDS, or AIDS Related Complex. Terence Donaghey, a plan participant, filed an EEOC charge, and the Commission determined that the plan's AIDS exclusion appears to violate the Americans with Disabilities Act (ADA). In March 1993, the Fund sued the EEOC, Donaghey, and several other plan participants, seeking a declaration that the AIDS exclusion represents a lawful exercise of the fiduciary powers of the fund's trustees. The Commission in June 1993 filed a separate ADA enforcement action against the Fund, and has since been dropped from the Fund's suit. Both lawsuits are pending before the Honorable John E. Sprizzo of the Southern District of New York. The Fund moved for summary judgment in its lawsuit, and the Commission filed an opposing brief as amicus curiae to present its views to the Court.

The Commission argued the following: 1) ADA prohibits disability-based discrimination in the provision of benefits under an ERISA-regulated self-insured employee benefit plan; 2) the district court lacks subject matter jurisdiction over the Fund's declaratory judgment action; 3) the Fund is a covered entity under the ADA; and 4) the Fund's exclusion from coverage of all AIDS-related medical expenses unlawfully discriminates on the basis of disability in the provision of employee health benefits in violation of the ADA.

FY 1995 RESOURCE REQUIREMENTS FOR ENFORCEMENT

An additional 170 positions and \$14,186,000 is requested in FY 1995 for the Commission's Enforcement Activity.

The additional positions include a total of 145 field investigative staff comprised of 112 investigators, 14 supervisors, and 19 clericals for compliance efforts in the Private Sector. In the Federal Sector, a total of 25 field hearings staff is requested. This staff is comprised of 19 Administrative Judges, 3 supervisors, and 3 clericals.

In addition to the position increase requested consistent with the President's investment package, an additional \$500,000 is requested for the Agency's Systemic Program in FY 1995 and an additional \$1,250,000 is requested to continue the critically needed Information Resource Improvement activities begun in FY 1991.

JUSTIFICATION

Requested Position Increase

With mounting pending inventory in both the Private and Federal Sector Programs resulting from record level charge/complaint filings additional staff is the most viable means at this point of reducing the enormous level of workload currently facing the Commission. Additional personnel will serve as one aid in ensuring timely and quality results in the Commission's compliance and hearings activities.

In FY 1995, the Commission will continue to explore operational initiatives which will focus not only on bringing the existing workload under control, but maintaining manageable workload levels in the outyears. EEOC will continue to reassess the way the Agency currently administers its mission, with the objective of developing and incorporating operational changes which will result in improved performance, high productivity, and quality service to the public.

Requested Position Increase - Private Sector

In FY 1993, the Government Accounting Office (GAO), in testimony before the Subcommittee on Select Education and Civil Rights, was joined by civil rights organizations in expressing concern over EEOC's operations. Many of their concerns are similar to those expressed over the years by the Commission in its attempts to acquire adequate resources to properly carryout its mission. EEOC realizes that providing additional resources to what appears to be a never ending problem is not always the answer. However, the Commission's past attempts to acquire even minimally sufficient staff and funds have not always been successful, while at the same time, staffing levels have decreased. Also during this same period, the Commission received increased statutory mandates under the Americans with Disabilities Act and the Civil Rights Act of 1991, with virtually no additional resources to handle the additional work which has been generated since implementation of the new laws and regulations. To illustrate, 17.4 percent of the charges filed with the EEOC as of the end of FY 1993 were filed under the Americans with Disabilities Act. In addition, 14.5 percent of all charges, or approximately 6,560 charges, filed with state and local FEPAs during this same period, state a violation of the Americans with Disabilities Act, and are also filed with the EEOC.

Activity data for FY 1993 indicate that field offices' achievements marked yet another record year in terms of productivity. However, the negative impact of current resource levels on the Commission's ability to accomplish its goals cannot be stressed enough. FY 1993 charge activity data clearly demonstrate that despite the fact that field staff continue to achieve a productivity level higher than at any time in the Agency's history, the inventory at current staffing levels has reached unmanageably high levels. The additional staff is requested to alleviate this situation.

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PRIVATE SECTOR EEOC ENFORCEMENT COMPLIANCE ACTIVITY			
WORKLOAD/WORKFLOW	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Total Pending Charge/Complaints	52,955	73,124	101,766
Total Receipts to Process	87,942	90,580	93,298
Net Transfers and Deferrals	4,194	4,194	4,194
Net Transfers out of Enforcement	(251)	(251)	(251)
Total Workload	144,840	167,647	199,007
Charges/Complaints Resolved	71,716	65,881	74,147
Charges/Complaints Forwarded	73,124	101,766	124,860
Charges/Complaints Inventory (Months)	12.2	18.6	20.3

In FY 1993, despite a 4.6 percent increase in productivity over FY 1992, from 92.8 to 97.1 average resolutions per investigator, an accompanying 21.6 percent rise in receipts resulted in an overall ratio of resolutions to receipts significantly less than one-to-one for the second year in a row. The increase in productivity from FY 1991 to 1993 is 9.7 percent or more than eight resolutions per investigator. When net transfers from state and local agencies are added to EEOC's enforcement workload, the ratio of resolutions to incoming work drops even further below the one-to-one mark. This has led to increases in pending inventory of 38.3 percent over the 52,856 charges pending at the end of FY 1992, and a 59.9 percent increase over the pending inventory two years ago. It is clear from this data that despite continuing efforts to streamline the charge process more staff, as that requested is needed if the Commission is to reverse the now accelerating trend toward unmanageably large inventories of increasingly aged cases.

EEOC's charge processing indicators signal growing caseload problems and despite the Commission's success in maintaining a high rate of productivity, by any charge

resolution method imaginable, this problem cannot be fully addressed without the additional resources.

Requested Position Increase - Federal Sector

In the Federal Sector Program, EEOC is enduring similar workload problems as those being encountered in the Private Sector compliance area, as a result of the CRA of 1991 and the time limits that the administrative judges must comply with under 29 C.F.R. Part 1614. From April 1993 to September 1993, the number of requests for hearings increased by 28 percent over the same period in FY 1992. In FY 1992, hearings receipts increased 19.6 percent over FY 1991. Even with a commensurate increase in the number of resolutions, the workload is still growing at a faster pace than can be matched with available resources.

FEDERAL SECTOR ENFORCEMENT HEARINGS*			
WORKLOAD	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Complaints Pending	3,982	3,991	5,064
Complaints Received	8,882	10,440	12,006
Total Workload	12,864	14,431	17,070
Complaints Resolved	8,906	9,367	11,561
Complaints Forwarded	3,991	5,064	5,509
Months of Inventory	5.4	6.5	5.7

The availability of compensatory damages under the CRA of 1991 will account for an increase in formal complaints filed, while the limitation on the length of complaint processing under the new 1614 regulations entitles complainants to request a hearing 180 days after filing. With additional staff resources in FY 1995, the Commission will be able to keep better pace with the projected increase in the rate of filing complaints and the complications foreseen by the addition of discovery to the hearings stage which will require a significant increase in staff time.

* Reflects adjustments to pending inventory including updates to the database after year-end.

SYSTEMIC PROGRAM EFFORT (\$500,000)

Additional resources are also required in the Private Sector Program for enhancements to its Systemic Program. The current funding base for the Systemic Program is approximately \$23,000.

The Commission has carefully reviewed its systemic program activities, including its national docket, investigative activities, and resource requirements. The Commission is aware of a steadily increasing demand for expanded systemic activities, while fully appreciating the positive impact that success in this area has always had on overall enforcement activities. With this in mind, the Commission believes it must enhance systemic enforcement activities both in headquarters and in its district office programs.

Enhanced funds for this program will foster the development of larger and more complex charges which will involve numerically larger affected groups covered by Title VII, ADA and ADEA. Such larger cases will require, for successful and efficient development, greater resource expenditures for travel, more sophisticated analytical tools and equipment, and most importantly, outside expert services. As a result of enhanced systemic activity, strong emphasis must be placed on training investigative personnel in techniques that are increasingly more complex and sophisticated. The importance of acquiring better tools and careful attention to training of existing staff is underscored by the likelihood that the staffing level will not increase appreciably in the foreseeable future. Thus, it is imperative that this program operate at optimum efficiency.

An enhancement of resources will also help the systemic operation continue to provide critical oversight into an area totally new insofar as the development of systemic charges--the ADA statute.

INFORMATION RESOURCES INTEGRATION EFFORT (\$1,250,000)

EEOC relies on seven primary mission systems and numerous single-purpose tracking systems to manage case and litigation processing. This multitude of different systems has resulted in redundant data entry and storage, duplicated processes and procedures, data integrity and accuracy problems, and inaccessible and untimely data.

The Charge Data System (CDS) is the largest and most mission-critical of these systems. Current demand for report generation and other operational procedures has increased so much that overall system performance has been significantly degraded.

The supporting hardware is operating at maximum capacity and is not adequate to meet the processing requirements arising from the anticipated growth in charges.

Fifty-three percent of EEOC's personal computers (PCs) are 8086-based technology and will be at least 7 years old in FY 1994. Forty-nine percent of the agency's printer inventory is obsolete and needs to be replaced. Maintenance costs on these antiquated printers and personal computers have risen dramatically, requiring management imposed limits on repair expenses. This situation reduces the number of working PCs and printers available to staff.

Less than five percent of EEOC's workforce has access to a local area network. This connectivity provides electronic mail, file transfers, calendaring, resource scheduling, word processing, spreadsheet and some limited shared data management capability. EEOC has established an internal EEOC Bulletin Board as an interim mechanism to facilitate some communication and resource sharing between field and headquarters offices.

EEOC's current systems have been developed in two incompatible database management systems (DBMS). Both the Unix-based DBMS, used as the foundation of the Charge Data System, and the DOS-based DBMS, used for stand-alone tracking systems, do not support relational operations, are not SQL compliant, and do not allow integration of word processing and other office automation functions.

In FY 1992, EEOC began a long-term effort to integrate EEOC's information resources and move toward an open system architecture. The initial step, which was begun in FY 1992 and completed in FY 1993, was to identify critical data requirements in the context of the agency's business processes. The resultant Enterprise Model details how the Commission's work patterns and procedures collect, access and manipulate information and how that information supports case management decision-making. This model will serve as the design reference for all future software application development.

The second step, also initiated in FY 1992 and awarded in FY 1993, was the competitive acquisition of a relational, multi-platform database management system certified as FIPS 127-1 SQL compliant. The DBMS will be the software engine driving application development.

The third step established a networking team to support the two existing agency networks, to develop an agency-wide networking plan, and to install and support new networks. In addition, a wide-area data communications traffic and cost factor analysis was completed in FY 1993.

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In FY 1994, EEOC will utilize the Enterprise Model, the DBMS, and the networking plan to begin development of a headquarters mission system. It will integrate the currently disparate systems into one logical database that more accurately reflects the statutory foundation of the agency's enforcement and litigation activities. The new architecture is structured at the allegation level, allowing integration between charge investigation and case litigation. Applications development will include the integration of mission data with word processing and spreadsheet functions, and the automation of EEOC guidance and reference documents.

Additionally in FY 1994, as an interim measure, EEOC will deploy six replacement CDS field hardware platforms consisting of higher capacity and more reliable POSIX-compliant computer systems. Four local area networks will be installed in field and headquarters offices. This activity will ensure continued CDS system functionality, provide increased office automation capabilities, and help prepare offices for future systems deployments.

EEOC is currently updating its IRM Policy and Automated Information Security Directives to remain in compliance with applicable government-wide standards. In FY 1994, EEOC will implement these new policies and ensure that security issues are addressed in the overall modernization effort. A computer security plan will be developed as required by the Computer Security Act and OMB Bulletin 90-08.

In FY 1995, EEOC will continue its information resources integration effort. Specifically, EEOC is requesting funding in FY 1995 for each of the initiatives described below:

- **Continue to develop an integrated mission system.**
Through the use of contractor support and EEOC staff, complete the development of the headquarters mission system and conversion of existing data into the new system. Continue development of the field mission system and data transmission requirements.
- **Acquire headquarters mission system hardware.**
In FY 1995, headquarters mission system development will be converted from the development platform onto the new headquarters database server. This server will replace the obsolete CDS National Database hardware located at headquarters.

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- **Continue to acquire DBMS software for development purposes and prepare for deployment of EEOC's integrated mission system.**
EEOC will continue to acquire DBMS software, training, related/integrated products, and hotline support from its existing contract. DBMS software procured in FY 1995 will be used on the new headquarters database server.
- **Replace obsolete CDS field hardware.**
This initiative will replace CDS field hardware for 18 district offices.

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DECISION UNIT

Private Sector Enforcement: Compliance Activity

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	80,028	86,198	93,166
11.3 Other than FTP	605	657	703
11.5 Other personnel compensation	985	1,035	1,110
Total Personnel Compensation	81,618	87,890	94,979
12.1 Civilian personnel benefits [Total FERS]	15,943 (5,478)	16,005 (5,749)	16,937 (6,130)
13.1 Benefits to former personnel	46	88	88
Total Compensation and Benefits	97,607	103,983	112,004
21.1 Travel of persons	1,435	1,327	1,666
22.0 Transportation of things	108	105	103
23.1 Other rent/Communications	3,453	3,279	3,924
23.2 Rental payments to GSA	13,894	15,291	15,903
24.0 Printing and reproduction	331	339	368
25.0 Other services	4,402	4,596	4,448
26.0 Supplies and materials	1,613	1,775	1,802
31.0 Equipment	4,305	408	1,553
TOTAL	127,148	131,103	141,771
FTE BY OFFICE:*			
Field Office --Compliance	1,701	1,771	1,916
Office of Program Operations	152	131	130
Information Resources Management Services (OM)	40	35	35
Office of Legal Counsel	66	57	57
TOTAL FTE	1,959	1,994	2,138

* Reductions by Office (except the Chairman, Commissioners and the Office of Inspector General) are based upon across the board proportionate cuts in Headquarters only (Executive Order 12839). Estimates also reflect a shift of positions from Headquarters to the Field Offices, consistent with the Chairman's goal.

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DECISION UNIT

Private Sector Enforcement: Litigation

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	19,137	19,532	20,099
11.3 Other than FTP	172	180	192
11.5 Other personnel compensation	253	276	295
Total Personnel Compensation	19,562	19,988	20,586
12.1 Civilian personnel benefits [Total FERS]	3,636 (2,127)	4,305 (2,519)	4,532 (2,652)
13.1 Benefits to former personnel	19	37	37
Total Compensation and Benefits	23,217	24,330	25,155
21.1 Travel of persons	461	473	222
22.0 Transportation of things	12	12	13
23.1 Other rent/Communications	1,045	663	1,098
23.2 Rental payments to GSA	3,167	3,379	3,621
24.0 Printing and reproduction	51	52	100
25.0 Other services	3,259	3,343	3,353
26.0 Supplies and materials	321	330	368
31.0 Equipment	287	105	108
TOTAL	31,820	32,687	34,038
 FTE BY OFFICE:*			
Field Office - Legal Units	312	312	312
Office of General Counsel	82	73	72
TOTAL FTE	394	385	384

* Reductions by Office (except the Chairman, Commissioners and the Office of Inspector General) are based upon across the board proportionate cuts in Headquarters only (Executive Order 12839). Estimates also reflect a shift of positions from Headquarters to the Field Offices, consistent with the Chairman's goal.

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DECISION UNIT

Federal Sector Enforcement: Oversight and Hearings

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	8,008	8,526	9,722
11.3 Other than FTP	124	130	139
11.5 Other personnel compensation	79	80	86
Total Personnel Compensation	8,211	8,736	9,947
12.1 Civilian personnel benefits [Total FERS]	1,522 (712)	1,697 (810)	2,018 (818)
13.1 Benefits to former personnel	5	9	9
Total Compensation and Benefits	9,738	10,442	11,974
21.1 Travel of persons	182	187	219
22.0 Transportation of things	4	4	5
23.1 Other rent/Communications	383	393	402
23.2 Rental payments to GSA	1,051	1,121	1,223
24.0 Printing and reproduction	22	23	23
25.0 Other services	197	202	285
26.0 Supplies and materials	231	237	265
31.0 Equipment	80	30	30
TOTAL	11,888	12,639	14,426
FTE BY OFFICE:*			
Field Office - FAA Units	25	28	28
Field Office - Hearings Units	111	118	143
Federal Sector Programs (OFO)	21	21	21
TOTAL FTE	157	167	192

* Reductions by Office (except the Chairman, Commissioners and the Office of Inspector General) are based upon across the board proportionate cuts in Headquarters only (Executive Order 12839). Estimates also reflect a shift of positions from Headquarters to the Field Offices, consistent with the Chairman's goal.

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DECISION UNIT

Federal Sector Enforcement: Appeals

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	4,706	4,226	4,363
11.3 Other than FTP	185	193	206
11.5 Other personnel compensation	51	50	55
Total Personnel Compensation	4,942	4,469	4,624
12.1 Civilian personnel benefits [Total FERS]	894 (571)	1,032 (659)	1,082 (691)
13.1 Benefits to former personnel	2	3	3
Total Compensation and Benefits	5,838	5,504	5,709
21.1 Travel of persons	10	9	15
22.0 Transportation of things	0	0	0
23.1 Other rent/Communications	398	409	419
23.2 Rental payments to GSA	630	673	723
24.0 Printing and reproduction	8	8	8
25.0 Other services	369	379	481
26.0 Supplies and materials	42	43	48
31.0 Equipment	263	96	98
TOTAL	7,558	7,121	7,501
FTE BY OFFICE:*			
Office of Federal Operations	98	84	83
TOTAL FTE	98	84	83

* Reductions by Office (except the Chairman, Commissioners and the Office of Inspector General) are based upon across the board proportionate cuts in Headquarters only (Executive Order 12839). Estimates also reflect a shift of positions from Headquarters to the Field Offices, consistent with the Chairman's goal.

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DECISION UNIT

Enforcement Summary

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	111,879	118,462	127,350
11.3 Other than FTP	1,086	1,160	1,240
11.5 Other personnel compensation	1,368	1,441	1,546
Total Personnel Compensation	114,333	121,083	130,136
12.1 Civilian personnel benefits [Total FERS]	21,995 (8,888)	23,039 (9,747)	24,569 (10,291)
13.1 Benefits to former personnel	72	137	137
Total Compensation and Benefits	136,400	144,259	154,842
21.1 Travel of persons	2,088	1,996	2,122
22.1 Transportation of things	124	121	121
23.1 Other rent/Communications	5,279	4,744	5,843
23.2 Rental payments to GSA	18,742	20,464	21,470
24.0 Printing and reproduction	412	422	499
25.0 Other services	8,227	8,520	8,567
26.0 Supplies and materials	2,207	2,385	2,483
31.0 Equipment	4,935	639	1,789
TOTAL	178,414	183,550	197,736
TOTAL FTE	2,608	2,630	2,797

**BUDGET ACTIVITY III: STATE AND LOCAL PROGRAM
SUMMARY**
(Funds in thousands)

SUMMARY OF PROGRAM REQUEST

FY 1994 Estimate		FY 1995 Request		Inc (+) or Dec (-)	
FTE	Amount	FTE	Amount	FTE	Amount
0	\$26,500	0	\$26,500	0	0

PROGRAM DESCRIPTION

Section 706 of Title VII provides for a partnership between EEOC and State and Local Fair Employment Practices Agencies (FEPAs): By regulation, FEPAs which meet certain criteria are designated as "706 Agencies." A FEPA to which EEOC defers charges for processing under a charge resolution contract must enter into a work-sharing agreement which provides the conditions under which the joint workload will be divided. The District Offices have the primary responsibility for the deferral relationship, negotiating charge resolution contracts, monitoring work sharing agreements, conducting substantial weight and certified acceptance reviews of charge resolutions pursuant to the contracts, and authorizing contract payments under the overall guidance of the Office of Program Operations (OPO).

Since 1976, funds have been provided to units within tribal governmental structures known as Tribal Employment Rights Offices (TEROs) to encourage and facilitate Indian employment in businesses and industry located on or near reservations. The District Offices provide technical assistance to TEROs, investigate charges of employment discrimination referred by TEROs and monitor TERO accomplishments pursuant to the contracts.

PROGRAM ACCOMPLISHMENTS:

During FY 1993, each FEPA that processes more than 100 charges a year was provided enhanced computer systems to assist them in managing their inventories and productivity. This system also enables EEOC to monitor case flow, conduct inventory analyses and provide overall guidance with respect to the dually filed workload in the FEPAs and District Offices. FEPAs were also provided EEOC's Automated Intake System which will be tailored for individual FEPA use. The system generates computerized charges, affidavits and investigative questionnaires that are tailored to the specific circumstances surrounding the allegations. Along with the computer assisted case management, EEOC instituted a requirement for Charge Resolution Plans from FEPAs with aging inventories. The Charge Resolution Plans focus case processing on the management and movement of older charges while ensuring appropriate balance of new charge resolutions.

During FY 1994, additional improvements to the automated workload management systems are planned. For example, FEPAs which must maintain separate data systems will receive interface or bridge components, where necessary to avoid maintaining dual computer systems. These interfaces will significantly reduce the amount of staff time needed to enter and transfer data, and will allow the FEPAs to use the capabilities of both systems to manage their inventories and productivity.

In FY 1993, the Commission established a CDS data integrity project to improve the quality of data from field offices and FEPAs. Periodically, the data is sampled and both local and national databases are cross-checked to ensure the accuracy and integrity of the data in EEOC's systems. Even stronger emphasis will be placed on ensuring the data's integrity in FY 1994. Initiatives will require expenditure of resources from EEOC's Headquarters and Field offices, as well as the FEPAs. Reconciliation of data on charges filed since 1989 is already in progress and preparations are being made for hard inventories of FEPAs files where reconciliation is not possible.

As funds allow, each TERO that indicates a need will receive a desk top computer system. The system will contain software and files that will enable the TERO to generate EEOC required reports, as well as maintain computerized records relative to TERO contracts with EEOC, such as employer and employee awareness activities, complaints and Indian-preference agreements.

FY 1995 RESOURCE REQUIREMENTS FOR STATE AND LOCAL PROGRAM

No additional resources are requested for this Program Activity for FY 1995.

Equal Employment Opportunity Commission

DECISION UNIT

State and Local Program

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	0	0	0
11.3 Other than FTP	0	0	0
11.5 Other personnel compensation	0	0	0
Total Personnel Compensation	0	0	0
12.1 Civilian personnel benefits (Total FERS)	0	0	0
13.1 Benefits to former personnel	0	0	0
Total Compensation and Benefits	0	0	0
21.1 Travel of persons	42	0	0
22.0 Transportation of things	0	0	0
23.1 Other rent/Communications	0	0	0
23.2 Rental payments to GSA	0	0	0
24.0 Printing and reproduction	0	0	0
25.0 Other services	29	0	0
26.0 Supplies and materials	3	0	0
31.0 Equipment	31	0	0
41.0 Grants	24,885	26,500	26,500
TOTAL	24,990	26,500	26,500

Equal Employment Opportunity Commission

WORKLOAD DATA STATE AND LOCAL PROGRAM			
WORKLOAD	FY 1993 Actual	FY 1994 Estimate	FY 1995 Estimate
Charges/Complaints Pending	66,590	75,289	83,988
Charges/Complaints Received	61,289	61,289	61,289
Charges/Complaints Resolved	52,590	52,590	52,590
Charges/Complaints Forwarded	75,289	83,988	92,687
Months of Inventory	17.2	19.2	21.1

FEPAs will resolve 48,599 charges under contract in FY 1994; however, the 52,590 actual resolutions during FY 1993 include additional resolutions not eligible for payment under contract and are used to estimate resolutions in FY 1994 and FY 1995.

Equal Employment Opportunity Commission

DECISION UNIT

Agency Summary

<u>OBLIGATIONS BY OBJECT CLASS (\$000)</u>	<u>FY 1993 Actual</u>	<u>FY 1994 Estimate</u>	<u>FY 1995 Agency Request</u>
Personnel Compensation			
11.1 Full-time permanent (FTP)	122,823	130,000	139,627
11.3 Other than FTP	1,429	1,518	1,624
11.5 Other personnel compensation	1,581	1,679	1,797
Total Personnel Compensation	125,833	133,197	143,048
12.1 Civilian personnel benefits [Total FERS]	24,153 (9,806)	25,508 (10,675)	27,308 (11,390)
13.1 Benefits to former personnel	78	150	150
Total Compensation and Benefits	150,064	158,855	170,506
21.1 Travel of persons	2,205	2,159	2,300
22.1 Transportation of things	124	121	121
23.1 Other rent/Communications	6,138	5,627	6,800
23.2 Rental payments to GSA	20,090	21,902	23,031
24.0 Printing and reproduction	430	440	525
25.0 Other services	9,788	10,949	11,200
26.0 Supplies and materials	2,415	2,602	2,725
31.0 Equipment	6,544	845	2,012
41.0 Grants	24,990	26,500	26,500
TOTAL	222,788	230,000	245,720
TOTAL FTE	2,831	2,850	3,020

- OUTYEAR PROJECTIONS

Equal Employment Opportunity Commission

FY 1995 BUDGET ESTIMATES
Activity I: Executive Direction and Program Support
(Funds in Thousands of Dollars)

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u> <u>Request</u>	
Budget Authority	19,292	19,950	21,484	
Outlays	18,897	19,771	21,241	
FTE	229	220	223	
	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>
Budget Authority	21,468	21,468	21,468	21,468
Outlays	21,395	21,289	21,303	21,303

FY 1995 BUDGET ESTIMATES
Activity II: Enforcement

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u> <u>Request</u>	
Budget Authority	177,708	183,550	197,736	
Outlays	174,067	182,119	195,666	
FTE	2,602	2,630	2,797	
	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>
Budget Authority	197,752	197,752	197,752	197,752
Outlays	198,891	197,764	197,917	197,917

Equal Employment Opportunity Commission

FY 1995 BUDGET ESTIMATES
Activity III: State and Local
(Funds in Thousands of Dollars)

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u> <u>Request</u>	
Budget Authority	25,000	26,500	26,500	
Outlays	25,000	26,500	26,500	
	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>
Budget Authority	26,500	26,500	26,500	26,500
Outlays	26,500	26,500	26,500	26,500

FY 1995 BUDGET ESTIMATES
Summary

	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u> <u>Request</u>	
Budget Authority	222,000	230,000	245,720	
Outlays	217,964	228,390	243,407	
FTE	2,831	2,850	3,020	
	<u>FY 1996</u>	<u>FY 1997</u>	<u>FY 1998</u>	<u>FY 1999</u>
Budget Authority	245,720	245,720	245,720	245,720
Outlays	246,786	245,553	245,720	245,720

**EEOC EDUCATION, TECHNICAL ASSISTANCE, TRAINING AND OUTREACH
REVOLVING FUND**

APPROPRIATION LANGUAGE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Federal Funds

Public Enterprise Funds:

**EEOC Education, Technical Assistance, Training and Outreach
Revolving Fund.**

There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, Training and Outreach Revolving Fund" (hereinafter in this subsection referred to as the "Fund") to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to the laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purpose.

**EEOC EDUCATIONAL, TECHNICAL ASSISTANCE, AND TRAINING
REVOLVING FUND**

The Commission is committed to providing a range of public education, technical assistance and training activities regarding the laws and regulations it enforces. In order to meet an increasing demand for in-depth assistance, the Fund has been designated as the vehicle through which the Commission will develop and disseminate advanced and specialized external education, technical assistance, training and outreach relating to the laws it enforces. Early in FY 1993, the Commission identified the types of activities that would be financed under the auspices of the Fund and secured Congressional approval (P.L. 102-411, the EEOC Education, Technical Assistance and Training Revolving Fund Act of 1992) to establish a revolving fund to finance the cost of providing education, technical assistance and training. The Fund's corpus was authorized through the transfer of \$1,000,000 from the Commission's Salaries and Expenses appropriation. Activities sponsored through the Fund are meant to supplement basic informational materials and services which are offered free of charge by the agency.

Designed to educate members of the public on their rights and obligations under the laws EEOC enforces, the Revolving Fund training activity provides technical assistance to the parties to an employment relationship. As a result, such parties will gain a much sharper understanding of what constitutes unlawful employment discrimination, of the evidence required to substantiate charges, how such charges are resolved, and remedies available. Ultimately, the effect of this training activity would enhance the quality of charges that are filed, because of improved employer compliance. With the increased incidence of higher quality charges and improved employer compliance, the EEOC will be able to devote more resources to the charges which are filed.

During FY 1993, the Revolving Fund sponsored several major projects responsive to the need of both the private and public sectors to know about the rights and responsibilities established by the laws enforced by EEOC. For example, the Revolving Fund supported over forty Technical Assistance Program Seminars (TAPS) covering such key topics as Title VII of the Civil Rights Act of 1964, Sexual Harassment, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Civil Rights Act of 1991. These seminars reached almost 4,000 private sector employers.

In addition, eleven (11) Federal EEO Complaints Procedures Seminars, covering the new 1614 procedures for resolving federal employee complaints of employment discrimination financed through the Revolving Fund, were delivered to four hundred

Equal Employment Opportunity Commission

(400) federal managers, supervisors and EEO specialists at five different sites across the country.) Lastly, through the Revolving Fund, sexual harassment training was provided to approximately eight hundred and eighty-five (885) managers, supervisors and EEO specialists of the Resolution Trust Corporation and 10 investigators of the Capitol Hill Police Department.

During FY 1994, EEOC will develop additional training seminars, audio-visual materials, and other products while on-going activities will continue to recoup the Revolving Fund FY 1993 investments. Enhancement of the core offerings and generation of new products will provide a strong financial base to introduce a greater array of programs during FY 1995.

Although commercially competitive products such as Sexual Harassment Training for Managers are directed toward the employer community, there will be a continued emphasis in FY 1995 to build on FY 1994's initiative to educate the public and grass-roots advocacy groups on the employment rights protected by the EEOC. Under the aegis of the Revolving Fund, the EEOC will continue to add to the repertoire of very low-cost programs which describe the laws EEOC enforces, its investigative procedures and the legal standards of proof which must be met in employment discrimination cases. In order that charging parties be fully aware of their options, presentations in these seminars will be augmented by discussions of the mediation process and other problem resolution techniques.

Fees charged for Revolving Fund products are not to exceed the cost of producing the materials or services provided, are to bear a direct relationship to the cost of providing such outreach, and are to be imposed on a uniform basis.

Fees are assessed for all seminars in a similar manner. Full costs for the seminars are determined by discussing the needs, support, and administrative overhead for the offering. When the seminar is marketed to individual subscribers, an estimate of attendance is determined. Then, the full costs for the seminar are distributed among total projected participants. When presenting specialized courses for a single organization (such as the Resolution Trust Corporation or Capitol Hill police), full costs are determined as above, including projected attendance. The total costs are assessed to the agency (or company) on a one-time basis, and not based on the actual attendance.

- SUMMARY OF FINANCING

Equal Employment Opportunity Commission

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION EEOC Education, Technical Assistance, and Training Revolving Fund SUMMARY OF FINANCING (Dollar amounts in thousands)			
	FY 1993 ACTUAL	FY 1994 ESTIMATE	FY 1995 ESTIMATE
Total Obligations	417	490	835
Financing:			
Offsetting collections from:			
Federal funds	(164)	(150)	(175)
Non-Federal sources	(511)	(650)	(925)
Recoveries	0	0	0
Unobligated balance, start of year	0	(1,258)	(1,568)
Unobligated balance transferred	(1,000)	0	0
Unobligated balance, end of year	1,258	1,568	1,833
Budget Authority	0	0	0

- REQUIREMENTS BY OBJECT CLASS

Equal Employment Opportunity Commission

**EEOC Education, Technical Assistance, and Training Revolving Fund
FY 1995 REQUIREMENTS BY OBJECT CLASS
(Dollar amounts in thousands)**

OBJECT CLASS	1993 ACTUAL	1994 ESTIMATE	1995 ESTIMATE
11.1 Personnel Compensation	0	0	0
12.1 Civilian Personnel Benefits	0	0	0
21.0 Travel and Transportation of Persons	45	45	62
22.0 Transportation of Things	0	14	25
23.1 Rental Payment to GSA	185	195	205
24.0 Printing and Reproduction	107	105	125
25.0 Other Services	54	95	360
26.0 Supplies and Materials	26	31	45
31.0 Equipment	0	5	13
TOTAL OBLIGATIONS	417	490	835

**SPECIAL SECTION: SELECTED PRODUCTIVITY
IMPROVEMENT INITIATIVES/ACTIVITIES**

SELECTED

PRODUCTIVITY IMPROVEMENT INITIATIVES/ACTIVITIES

Shifting Charges - The total number of enforcement charges in field offices have been reviewed and approximately 1,750 cases were redistributed among offices to address overall workload imbalances and to promote more timely and efficient resolutions of the charges. Additionally, 400 cases from one field office were transferred to and investigated by headquarters staff to alleviate the extreme workload in the office. This process has been found to be far more cost effective than moving staff, or worse, allowing charges to age. (OPO)

Student Volunteers - In keeping with the concept of doing more with less, EEOC has explored using student volunteers, on a limited basis, in some of the EEOC's field offices to help the offices manage their workloads by supplementing their resources in this manner. Approximately 90 such student volunteers and interns have been employed by the Commission. (OPO)

Records Management - OFO's five year historical data base has been established for appellate review decisions in the federal sector as a result of system architecture enhancements. This has resulted in faster processing time for management information reports and quicker access to information needed to make timely responses to telephonic inquiries relative to case status. The Program's data system has been expanded to include new tracking for both controlled and uncontrolled correspondence which has greatly facilitated the ability to meet the rapidly growing volume of correspondence. (OFO)

New Attorney Orientation - OFO's in-house new attorney orientation program was fully institutionalized during FY 1993. The program orients new appellate attorneys to the tools needed to become productive in the shortest time possible. Individual productivity is at an all time high within Appellate Review Programs during FY 1993, which in part can be attributed to the impact of the orientation program. (OFO)

Alternative Dispute Resolution Networking - This activity involves interacting with entities and individuals with expertise in the area of alternative dispute resolution (ADR) to obtain necessary expertise to assist federal agencies in efforts to implement an ADR program pursuant to 29 C.F.R. Part 1614. Early resolution of federal sector EEO complaints will result in cost savings for the government in general. With regard

Equal Employment Opportunity Commission

to EEOC specifically, early resolution of federal EEO complaints could alleviate the impact of workload increases in hearings and appeals which are occurring as a result of 29 C.F.R. Part 1614. (OFO)

Field Office CMAP and Ethics Training - If needed funds are available, EEOC will expand the Compliance Manual Assessment Project (CMAP) and ethics training to provide updated training to investigators, attorneys and staff in our field offices, and develop other training programs to address specifically identified needs. The CMAP training familiarizes investigators with the contents and use of EEOC Interpretive Compliance Manual and more recent Commission enforcement guidance. Ethics training for all Commission staff is required to implement new government-wide regulations. (OLC)

Revision and Computerization of EEOC Compliance Manual - EEOC will continue its ongoing process of revising sections of Volume II of the EEOC Compliance Manual, which provides substantive guidance on legal issues under all the statutes enforced by the Commission, to make it user-friendly. Revisions will include updating the various sections by including discussion of more recent case law developments and Commission policy, and reformatting the Manual to make it a quicker and easier (and thereby more effective) reference tool for investigators and other EEOC personnel as well as the public. Efforts will be made to have the Compliance Manual available in computer format accessible through the electronic bulletin board system and with an automatic search function. (OLC)

Community Participation and Commission Guidance - EEOC will develop forums for increasing Commission involvement with community groups in developing Commission policy. The guidance developed through this process will provide needed assistance on legal requirements to employers and others covered by equal employment opportunity laws, and thus promote voluntary compliance. This should help reduce the Commission's caseload and reduce litigation costs for the government and for employers. (OLC)

Expand Use of On-site Investigations within Internal EEO Program - The Commission plans to continue to conduct on-site investigations but will increase the number of visits to include 20 - 25 complaints that are complex, highly sensitive or that involve high profile issues. Priority will be given to those complaints arising in district offices having the highest filing rates. Although most formal EEO complaints can be properly handled without on-site investigations, certain complex cases may require the personal attention associated with such investigations. Personal interviews and on-site document gathering would be more efficient and effective in some cases. This is expected to save time and aid the speedy processing of those complaints. The time

needed to obtain documentary evidence and witness testimony would be greatly reduced. Further, on-site investigations allow for immediate follow-up clues and other evidentiary leads. Face to face negotiations would lead to an increase of case settlements. (OEEO)

Cultural Diversity Training - The Commission believes that increased communication and understanding of our cultural differences will enhance morale and may effectively address employee concerns before they rise to the level of an EEO complaint or grievance. The Training Division will coordinate with OEEO to develop training courses and workshops for both headquarters and field offices in an effort to increase the appreciation of their differences with an eye towards decreasing the rate of EEO complaint filings. OEEO will target those district offices which have a very diverse workforce and an abnormally high filing rate of EEO complaints. (OM)

Connectivity Enhancement (Local Area Network (LAN)/Wide Area Network (WAN)) - In FY 1995, the Commission plans to perform necessary technical modifications and user training to facilitate all types of outside data communications via FTS-2000, including: Field to Headquarters; Headquarters to Field; EEOC users to other than EEOC; improved access to the EEOC Bulletin Board System via both dial-ups and LANs.

Four to eight LANs will be installed in District and Headquarters offices. These networks will provide connectivity for employees to have access to E-Mail and shared data files and information. With the installation of the network, the PC to staff ratio will become 1 to 1 thus enabling each employee to have immediate access to a desktop computer with various tools such as word processing and spreadsheets. Currently, the Commission shares computers, resulting in slowed production as staff wait for access. Increased computer resources along with the ability to electronically share data will increase the effectiveness of the staff. Additionally, the installation of the LANs will provide the mechanism to allow access to charge data from each workstation. This initiative represents a start at implementation of a Client-Server connectivity model at EEOC based on LANs with DOS file servers and UNIX file servers for the Charge Data System (CDS). (IRMS)

Development of Next Phase of Agency-wide (Enterprise) Mission/Business Architecture - Complete development and implementation of a new Headquarters platform of the new consolidated Headquarters (OPO/OGC) National Data Base application. Continue rapid prototyping and software development of the new Field application. This initiative allows EEOC to tract discrimination allegations from intake

through investigation, litigation, and compliance review without duplicative data entry. It additionally integrates EEOC's Enforcement and Litigation data with word processing and spreadsheet functions. (IRMS)

Improved Communications - EEOC plans to establish programs to further the timely and effective internal communications between Headquarters and field offices to include: Installation of a computer link (or expansion of existing Bulletin Board feature) with designated field personnel and OCLA to enhance timeliness in sharing information and facilitate OCLA assistance with outreach, public information and media activities. (OCLA)

ORAL STATEMENT
OF
DOUGLAS GALLEGOS, EXECUTIVE DIRECTOR
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
JUNE 9, 1994

Oral Statement

Good Afternoon, I am Douglas Gallegos, Executive Director of the Equal Employment Opportunity Commission. I would like to introduce Elizabeth Thornton, EEOC's Acting Legal Counsel, and Dianna Johnston, Assistant Legal Counsel for Title VII policy.

We are here today to testify before the Subcommittee regarding the Equal Employment Opportunity Commission's Proposed Consolidated Guidelines on Harassment, particularly focusing our comments on the religious harassment provisions. These guidelines would protect from unlawful harassment those wishing to express their faith at work, just as the guidelines would protect workers from being forced to comply with someone else's religious beliefs.

Let us be clear that the guidelines are intended to explain existing law, consolidating existing judicial and Commission precedent, not to create any new legal theories or in any way abridge the free exercise of religion in the workplace. The guidelines provide that conduct towards an employee constitutes unlawful harassment only when it is unwelcome and when it severely or pervasively denigrates or shows hostility on the basis of religion.

Contrary to some erroneous commentary, the guidelines do not prohibit religious expression in the workplace. Such a prohibition would itself violate Title VII of the Civil Rights Act of 1964. Thus, while the proposed guidelines would prohibit

using repeated and offensive religious epithets in the workplace, the guidelines would not forbid wearing a cross or a yarmulke at work, having a Bible on one's desk, or inviting a colleague to church. As you know, the Commission has vigorously defended the right of employees in the workplace to exercise their religious faiths.

The public comment period for the proposed guidelines will continue until June 13, 1994. Any final guidelines would make clear not only that an employer is not required to prohibit non-intrusive religious expression, but that employers could not lawfully ban such expression.

In reiterating existing law, the proposed guidelines are fully consistent with the principles embodied in the Religious Freedom Restoration Act, signed by the President this past fall.

We would be glad to answer any questions you may have. However, because we are still in the comment period and because any action on these proposed guidelines requires approval by the full Commission, it would be inappropriate to commit at this time to any conclusions concerning or suggested changes to the guidelines.

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE
Thursday, June 9, 1994

CONTACT: Claire Gonzales
Reginald Welch
(202) 663-4900
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**EEOC DEFENDS INCLUSION OF RELIGION IN PROPOSED CONSOLIDATED
GUIDELINES ON WORKPLACE HARASSMENT**

WASHINGTON -- The staff of the U.S. Equal Employment Opportunity Commission (EEOC) testified before a Senate subcommittee today about the Commission's Proposed Consolidated Guidelines on Harassment, particularly focusing those comments on the religious harassment provisions. These guidelines would protect from unlawful harassment those wishing to express their faith at work, just as the guidelines would protect workers from being forced to comply with someone else's religious beliefs.

The Commission staff made clear that the guidelines are intended to explain existing law, consolidating existing judicial and Commission precedent, not to create any new legal theories or in any way abridge the free exercise of religion in the workplace. The guidelines provide that conduct towards an employee constitutes unlawful harassment only when it is unwelcome and when it severely or pervasively denigrates or shows hostility on the basis of religion.

The Commission staff also made clear that, contrary to some erroneous commentary, the guidelines do not prohibit religious expression in the workplace. Such a prohibition would itself violate Title VII of the Civil Rights Act. Thus, while the proposed guidelines would prohibit using repeated and offensive religious epithets in the workplace, the guidelines would not forbid wearing a cross or yarmulke at work, having a Bible on one's desk, or inviting a colleague to church. The staff noted that the Commission has vigorously defended the right of employees in the workplace to exercise their religious faiths.

The public comment period for the proposed guidelines will continue until June 13, 1994. Any final guidelines would make

Religious Harassment (cont'd.) - Page 2

clear not only that an employer is not required to prohibit non-intrusive religious expression, but that employers could not lawfully ban such expression.

In reiterating existing law, the proposed guidelines are fully consistent with the principles embodied in the Religious Freedom Restoration Act, signed by the President this past fall.

* * *

Labor short

Pastor puts blame
on lack of attention
by consul's office

By MARK WAITE

Star News Staff

PORT ISABEL — The 1994 shrimping season is off to a roaring start, only there aren't enough people to cut the heads off the shrimp.

The Rev. Joseph O'Brien, pastor of Our Lady Star of the Sea Catholic Church, said the new U.S. Immigration and Naturalization Service regulations on hiring temporary workers from Mexico could also affect the hiring of temporary farm workers during their harvests this fall and winter.

O'Brien put the blame squarely on former U.S. Consul in Matamoros Janice Jacobs at a press conference Monday. Consulates elsewhere in Mexico are supplying the temporary visas, he said.

U.S. Attorney General Janet Reno's office agreed to process requests for temporary American visas through Nebraska, O'Brien said. Shrimp headers will be bused to Mexico City to obtain their visas there, he said.

The new regulations require temporary Mexican workers to show proof they have ties to Mexico, such as a job, owning property or a credit card. O'Brien said that's like imposing standards for tourists.

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PUBLIC AFFAIRS

+++ WARMATH

002/007

VALLEY MORNING STAR

Age dampens start of shrimping season

wouldn't be coming here if I had a good job or property in Mexico," O'Brien said.
Those who are denied the visa must have their passport stamped can-

celed and must wait six months to reapply, he said. After some headers were refused visas, the rest held off applying.
The action comes at the busi-

est time of the shrimping season off the Texas Coast. O'Brien said 85 percent of the harvest is caught the first two weeks after the season reopens. The season

was opened again last Thursday. Jimmy Sagnes, Texas Shrimp Association legislative liaison, said shrimpers are harvesting 15 to 20 100-pound boxes per night. "That's about three or four times what we had in the last two years," he said.

O'Brien said a good shrimp header could earn \$230 per night this time of year.

"We can't just put a warm body on a boat. We need skilled labor," said Brownsville shrimper Harris Lasseigne. "People don't want to do this job. It's a hard job."

"For this time of year we're slow compared to what we normally are. I don't know if we could relate that back to headers on the boats or not," said Robert Dalzell, general manager of Texas Pack, a Port Isabel shrimp packing company. "I don't believe they're able to head as much as they're catching."

Israel Linarte said about 250 shrimp headers are normally hired from Mexico each year in the Brownsville-Port Isabel area.

O'Brien said if this occurred during the agricultural harvest, area congressmen would take notice. He thanked State Sen. Eddie Lucio, D-Brownsville and State Sen. Carlos Truan, D-Corpus Christi, for their cooperation.

When asked if the same law could be used against temporary Mexican farm workers, John Bartlett with the TEC labor certification program in Austin said, "we're not sure about that but that's very possible."

Tucson Citizen/Saturday, July 9, 1994

SPLIT DOWN THE MIDDLE

• Residents of the two Nacos disagree over the merits of putting up a steel wall along the border and further dividing their communities.

By PAMELA HARTMAN
Citizen Staff Writer

NACO - For decades, this border town's only claim to fame was that Mexican troops accidentally bombed it during a skirmish in 1929.

But last month, Naco added a new attraction: a steel wall stretching two miles across the dry, open desert that separates Naco, Ariz., from Naco, Son.

Ugly and imposing, the 11-foot wall made of military landing mats has created a barrier between two towns that share the same culture and even the same name.

Talk of the wall - the third built along the 2,000-mile border with Mexico - arouses complex feelings on both sides of the border. After protests by the Mexican government and local residents, the Border Patrol put a hold on plans to build walls in Douglas and Nogales. In Naco, about 100 miles southeast of Tucson, the wall

NACO, continued/4A

OPTIONAL FORM 09 (7-90)

FAX TRANSMITTAL

of pages **2**

To ANA COBEAN	From STEVE McDONALD
Dept/Agency DOT	Phone # 602-670-6871
Fax #	Fax # 602-670-6870

TUCSON SECTOR HQS USBP

(MO) 07.11. '94 06:40 NO. 1460155954 PAGE 2

Naco split in half by steel wall

Continued from 1A

originally received widespread support, but has less now.

For those who endured a rash of home robberies by "border bandits," it is seen as necessary protection. But many others believe the wall's ugliness goes beyond its physical appearance. It has become a divisive symbol of a split between two neighbors.

A shared heritage

In Naco, the border is really an artificial designation.

Nearly everyone in both Nacos is of Mexican heritage, and Spanish is the dominant language in both towns. During the 1929 battle between Mexican forces, the border was so inconsequential that a bomb meant for a Naco, Son., railroad yard landed in the other Naco. The commander of the Mexican troops kept his car parked at a service station in Naco, Ariz., for safe-keeping.

With its population of 7,000, the Sonoran Naco has supplied many of today's 900 residents in Naco, Ariz.

"Everyone has family here," said Manuel Bravo, mayor of Naco, Son. "If there's a dance, or a quinceañera, they come here, because there's nothing over there."

People such as Manuel Rodriguez cross the border for Sunday Mass in Sonora, and go back to sleep in Arizona. They see the wall as a waste of time and money.

"I think that this is very bad," Rodriguez said. "It's not solving anything. If they're going to rob, they're going to rob ... It's only hurting the people that came to shop."

But for those who live only a few yards from the border, the wall has had tangible results. Before it was built, the border was protected by a thin chain-link fence and stone barriers. Residents near the border were repeatedly robbed by "border bandits," who dashed into Mexico with their stolen loot.

'We've all got fences'

"It's a security issue," said one wall supporter. "Nothing else. We've all got fences between ourselves and our neighbors, and that's how we maintain our good relationship."

Retired Bisbee police Officer Gerald Eberwein had his house burglarized nine times before the wall was built. His back door has bullet holes in it, souvenirs of cross-border shootings. Eberwein remembers frequent high-speed police chases that passed close to his home. All that has stopped, for now.

"There was a regular conduit for stolen motor vehicles, and it has stopped," Eberwein said. "(The wall) is not trying to keep anybody out. What it's trying to do is keep people and property from leaving."

Carlos Ramirez, who lives along

the Mexican side of the border, also likes the wall. At night, he said, drug smugglers and car thieves used to congregate outside his home, waiting for a chance to cross.

"My wife had to kick out the people who'd park in their cars over here," Ramirez said. "I was thinking of selling my house because of the problems with the boys."

The drug business

Ultimately, any conversation about the wall circles back to the undercurrent that pulls both Nacos along: drug smuggling. Just last week Border Patrol agents found 8,000 pounds of marijuana in an abandoned U-Haul truck near Naco.

"Naco has been one of the major crossing points for narcotics over the past few years," said Ed Pyeatt, assistant chief of the Border Patrol in Tucson. Pyeatt said Naco is used more as an entry for drug smuggling than for illegal immigration.

"It's very dangerous over here to live in Naco," said one resident who declined to give his name. "You see someone with marijuana, you close your eyes. You talk about the wall, you're talking about the smugglers, illegal trafficking. It's the same thing. Border towns are the same everywhere."

In both Nacos, the reluctance to talk about the wall is striking. Those residents who do comment

quickly ask that their names not be used, for fear of reprisal.

"It's really a weird situation here," said one anonymous resident. "People's lives depend on (drugs). It's a commerce. That's what really keeps the town going."

Authorities who patrol the wall and people who support it have been put on the defensive.

Rocks and bullets still fly

On June 18, people on the Mexican side of the border stoned and fired upon a deputy's car that was driving near the Arizona port of entry.

Since the wall went up, some supporters' homes have been rained on with rocks lobbed over the steel wall into their backyards. Recently, one supporter put his house up for sale and built chicken wire around his back patio to prevent the rocks from hitting his family.

Even supporters admit the wall won't deter criminals from stealing

cars or smuggling drugs. Blow torches have already been used to drill holes in the wall, with one incision big enough for a car to pass through.

"If the Border Patrol doesn't maintain a vigilance, it's not going to do any good," said a Naco resident. "The bottom line is there are certain people that need to cross through holes in the fence."

Already, though, the wall is being received with a resigned acceptance, with a fatalism characteristic of life on both sides of the border.

"This is a forgotten town," one Naco merchant said with a shrug. "With the wall or without the wall."

JERRY ROBERTS

A One-on-One Chat With Wilson

PETE WILSON was on the line from the governor's office, and he was in a cranky mood.

The governor was calling Wednesday afternoon to lay out his case on the controversial issue of federal immigration aid for California's budget. Hinting darkly that "political cynicism" was behind Washington's reluctance to send the state \$2.3 billion in money claimed for services to illegal immigrants, Wilson defended his long delay in releasing a spending plan that did not include the funds.

"Goddam it, we've got to keep the pressure on," he said from Sacramento. "It would be a terrible mistake to let up on the Congress or the president."

In the past few months, Wilson has been roundly criticized, on this page and elsewhere, for balancing the state's budget on a wish and a prayer of receiving the disputed \$2.3 billion, which is his administration's estimate of how much California has to shell out annually for education, health and prison services for illegals under federal mandates. In a revised budget released this week, Wilson lowered the amount the state might expect from such federal aid to \$652 million.

But the governor insisted in the interview that it was his hard-line position in demanding the \$2.3 billion, coupled with biparti-

san support from California's congressional delegation and other border state governors, that is largely responsible for recent important federal policy changes.

Besides stepped-up border patrols, the Clinton administration also recently added to its pending budget request \$350 million to reimburse states for incarcerating illegals, while a congressional budget resolution now includes language calling for increased health and education payments to states with high levels of illegal immigration.

"The federal government no longer disputes the equity of our position, they only dispute the magnitude," Wilson said. "However belatedly, they've put forward more money, although not nearly enough."

The governor added that he believes that "political cynicism" is at work in the immigration dispute with the federal government. Without directly accusing the administration of bad faith on the issue, Republican Wilson noted that, given the importance of California's 54 electoral votes to the Democrats, Clinton might feel more motivated to deliver more federal money in 1995, as the president readies his own re-election, instead of in 1994, amid a tight campaign for governor.

"They're preparing to ride to the rescue next year," he said. "They recognize they cannot go for three years never solving this

problem."

A close adviser to the governor was somewhat less circumspect: "They're willing to let California burn this year and hope they get a Democratic governor."

Asked about Wilson's comments, Doris Meissner, chief of the federal Immigration and Naturalization Service, shrugged off the suggestion that there is any political element to the administration's policy.

During a meeting with the Chronicle editorial board yesterday, Meissner said that the government is in the middle of a study of costs claimed by California and other high-immigration states and will report its findings next month.

"The cost impacts are legitimate issues, but we're not accepting the assertions the states are making at face value," she said. "The federal government should not be writing a check equal to a state's budget deficit."

Although he has lowered his sights on federal immigration aid for 1994, Wilson said, in the long run Washington is going to have to face up to a much larger obligation — or watch California and other states drown in red ink.

"They've got a trillion-and-a-half-dollar budget and they say, 'how do you expect us to find the money?'" the governor said, before ringing off. "I tell them, 'where in the hell do you think we're going to find the money?'"

6-18-94

San Francisco Chronicle

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TUESDAY, JUNE 21, 1994

NAT

U.S. Education Secretary Says Schools Must Accept Illegals

By Louis Freedberg
Chronicle Staff Writer

Washington

The nation's highest education official said yesterday that schools have a responsibility to educate all children, including those who are in the United States illegally.

"Under the law of this country, all children are entitled to a free public education," Secretary of Education Richard Riley said in interview.

His comments touched on what could evolve into one of the most controversial issues in California's fall election campaign: whether children who are in the United States illegally should be allowed to enroll in the nation's public schools.

State officials are counting signatures for the "Save Our State" initiative, which would require schools to verify the immigration status of all students they enroll. Those here illegally could be deported immediately. American-born children of illegal immigrants would be allowed to stay, but their parents would be subject to immediate deportation.

Near Certainty

It is almost certain that the initiative will qualify for the November ballot, the California secretary of state's office reported yesterday.

Riley, a former South Carolina governor who earned a reputation as a leading education reformer, said he normally does not take a stand on state initiatives.

"But as a person charged with responsibility for education, all children in this country should be educated at the highest level possible, including children of inmates in prison, children who are disabled, children who are gifted — whatever children happen to be here," he said.

Riley, sounding a decidedly more conciliatory tone to illegal immigration than most other Clinton administration officials, said that in the long run it is "to the absolute advantage" of the United



BY ASSOCIATED PRESS

RICHARD RILEY
Conciliatory tone

who are here illegally.

He also rejected the notion of involving teachers in tracking down illegal immigrants. "Schools are places for education," said Riley. "It is not the place to enforce immigration laws."

Governor Wilson argues that it costs California \$1.7 billion to educate almost 400,000 children who are here illegally or whose parents are here illegally. Sean Walsh, a spokesman for the governor, said the federal government, not the state, should pick up the tab.

"I would tell Mr. Riley that it is the federal government's responsibility to enforce immigration laws of this country," Walsh said. "They abysmally fail, and California is left holding the bag and the price tag."

Burden Acknowledged

Riley acknowledged the burden that immigrant children present to California and other states. But he said the Clinton administration has come up with more money to help schools educate the additional students.

He pointed to the almost \$700 million California receives in Chapter I funds for low-income

another \$101 million for immigrant education. Under the administration's proposals, California would receive another \$150 million for "impact aid," which would be concentrated in schools with the greatest levels of poverty.

But even though California seems certain to receive significantly more funds than it has in the past, Riley could not promise anywhere near the amount Wilson says is needed to cover the state's additional educational costs.

That is why undocumented children should be barred from easy access to California's financially burdened schools, say organizers of the Save Our State initiative, which would bar illegal immigrants from almost all public services.

"We have to stop putting that carrot out there to people who feel they can come over and get free services," said Robert Kiley, a political consultant in Orange County.

Riley, however, questioned the logic of that kind of reasoning. "It is more likely people would be coming for employment, for survival, than for something as carefully thought out as a benefit 15 years off when their child finishes high school," he said.

No Reunion Planned At White House

Washington

High school classmates of Hillary Rodham Clinton shouldn't get their hopes up. She has no plans to host their 30th reunion, her spokesman said.

The topic came up on NBC's "Today" show when a woman who went to Main South High School in Park Ridge, Ill., with Mrs. Clinton asked the president to make the White House available for the class of 1965. But a spokesman, Neel Lattimore, said: "If she's able to go, she might rather go back to her old high school."

Chicago Tribune

July 12, 1994

Voice of the people**EEOC stands up for older workers**

CHICAGO—The Tribune's one-sided coverage and editorial comment (June 17) about Hans Morsbach's experience with the U.S. Equal Employment Opportunity Commission deserve a response. The EEOC is barred by law from commenting on its own actions, so as private counsel with long-term experience with the EEOC, I will try to present some balance to your coverage (including Mike Royko's columns on the subject.)

In my experience, the EEOC does not pursue frivolous investigations. It receives thousands of individual complaints a year. By law, it is required to inform employers that these complaints have been filed and give them a chance to respond.

Most of these cases are closed without any action. With its limited resources, the EEOC staff can only afford to investigate a limited number of cases that have merit.

I do not know the specifics of the Morsbach case, but I strongly doubt that it would have reached this stage solely on the basis of a single, unplaced classified ad, as your coverage implies. Mr. Morsbach's employment records may have revealed that his Hyde Park restaurant avoided accepting applications from and just did not hire older persons who applied to wait tables, while hiring younger ones.

The "young, bub." ad is suspicious. It is illegal to publish "help wanted" ads looking for "young" workers, just as it would be to run "white only" notices. Such ads are a clear sign that older applicants are not welcome.

Without questioning Mr. Morsbach's sincere liberal beliefs against discrimination, such

evidence would suggest that—even unthinkingly—his restaurants turned away older job applicants. If so, Mr. Morsbach—the self-proclaimed "model employer"—should be the first to admit that his staff made a mistake and redouble his efforts as a business owner to make sure that his hiring managers are doing their job within the law. (As a business owner, he is legally responsible for the actions of his managers.)

The Tribune has so far published only one side of this controversy—Mr. Morsbach's story—fully aware that the EEOC cannot respond. Your editorial portrays these confidentiality rules as a sinister trap for poor, hapless employers. Far from hurting employers, the rules avoid publicity of unsubstantiated charges. Now put the shoe on the other foot: How eager would your reporters be to open up their notebooks to expose their off-the-record sources?

Finally, a word of praise is due for the law that Mr. Morsbach has been accused of violating. Congress enacted the Age Discrimination in Employment Act of 1967 to fight the impoverishment of older workers, who were often shoved out of the job market at the height of their talents solely due to age.

This kind of discrimination is, if anything, more common than ever in the current shrinking job market. Older Americans and their families should appreciate that the EEOC is vigilantly enforcing this important law to protect their jobs.

Thomas R. Meites

[The Wall Street Journal]
[Wednesday, July 13, 1994]

San Francisco's Separate and Unequal Public Schools ✓

On the 40th anniversary of *Brown v. Board of Education* a few weeks ago, a group of concerned citizens met to discuss the inequity of denying schoolchildren access to public schools because of race. But their purpose was not to commemorate a legal battle—it was to commence one.

The citizens were Chinese-American parents of children enrolled in the public schools of San Francisco. Their suit, filed on Monday, contests a 10-year-old court order mandating the racial and ethnic makeup of the San Francisco schools.

In 1978, the National Association for the Advancement of Colored People sued the school district charging racial segregation.

Rule of Law

By Lawrence J. Siskind

In 1983, with the parties' agreement, the judge issued a consent decree dividing students into nine racial and ethnic groups: "Spanish-surnamed, Other White, Black, Chinese, Japanese, Korean, Filipino, American Indian, and Other Non-White." The judge ordered that no one group could constitute more than 45% of the enrollment at any neighborhood school nor more than 40% at any magnet or alternative school.

Demographics and academic performance have gradually rendered this system unworkable. Chinese-American students, 19.5% of the school population in 1983, have grown to about 25%. Even that figure understates their true presence. Because of their low dropout rate, more than one-third of all high school graduates are of Chinese ancestry. Nearly half of all high schools are now "capped out" for them.

The system's defects have emerged in sharpest relief at Lowell High School. (An historical footnote: Lowell High is named after the poet James Russell Lowell, a rel-

ative of former Harvard president A. Lawrence Lowell, who was infamous for favoring quotas on the number of Jews admitted to the college.) Lowell has long enjoyed a reputation for academic excellence. Graduates include former Gov. Pat Brown, wildlife expert Dian Fossey and Supreme Court nominee Stephen Breyer.

Chinese-American students trying to get into Lowell face a triple disadvantage. First, their population growth produced a demographic problem with the court's quota system. Second, students' relatively low dropout rate meant that Lowell had to admit even fewer than the 40% cap to account for attrition in the ranks of other groups. In 1993, the school district allowed Chinese students to constitute only 32% of freshmen, hoping that this smaller portion would remain below 40% through graduation. Finally, the high academic performance of the Chinese applicants wreaked havoc with the caps.

Each Lowell applicant's grade-point average and standardized test results are combined to produce a single score on a 69-point scale. To comply with the court's quotas, the school set separate cut-off levels for various racial and ethnic groups. The results embarrassed even the strongest proponents of the decree.

In 1993, Chinese-American applicants were required to score 66 out of a perfect 69 to gain admittance. "Other Whites" and several other groups could qualify with a 59. Blacks and Spanish-surnamed would qualify with a 56.

When the Chinese community protested this discrimination, the district tried to placate them by admitting an additional 153 Chinese students, some with scores as "low" as 61. That move aroused the ire of the NAACP, which demanded that the district admit additional black and other non-Chinese students to comply with the court's quotas. Those demands were also met. As Lowell's population bal-

looned, the district moved four new trailers to the school's parking lot to serve as temporary classrooms, joining the 12 "temporary" classrooms already there.

This year the district adopted a new tack: It tinkered with the standardized tests. By emphasizing language skills in both the math and verbal portions of the entrance tests, the district succeeded in making the tests harder for some Chinese applicants. That allowed the district to lower the entrance level for Chinese to 62, compared to 57 for "Other Whites." For

*Students are divided
into nine groups:
"Spanish-surnamed,
Other White, Black,
Chinese, Japanese,
Korean, Filipino,
American Indian, and
Other Non-White."*

other groups the level was lower still.

The Chinese-American parents' decision to pursue a legal challenge has not been an easy one. Even as Chinese became the largest single ethnic group in the school system, and as blacks dropped to third place, local Chinese leaders were reluctant to challenge the NAACP as the sole representative of all schoolchildren.

Within the Chinese-American community, a schism developed. Chinese leaders in the local civil rights establishment opposed breaking ranks with the NAACP. But many younger Chinese activists saw no value in an alliance that fostered such clearcut discrimination. They spearheaded a drive to raise money, hire lawyers and file a lawsuit.

The younger activists have found common ground with disgruntled black and

Latino parents. The fact is, after 10 years and more than \$200 million in funding for implementation, no one is really happy with the consent decree. In 1992, a court-appointed committee issued a report that declared that while the consent decree had succeeded in desegregating the schools, it had accomplished nothing in the way of improving academic performance. The report found that "African American and Hispanic students still face devastating levels of education failure."

For many black and Latino families, the consent decree has meant that their children are bused across town to schools that are often poorer in quality than their neighborhood schools. Black children are "capped out" of the Carver and Drew schools, in predominantly black neighborhoods, both of which have greatly improved in recent years. Latino children are capped out of Mission District neighborhood schools.

The legal challenge mounted by the Chinese-Americans seeks to eliminate rigid racial and ethnic caps, and to focus remedial efforts at improving educational quality. Whatever the outcome of the litigation, its very commencement marks a pivot in the history of the civil rights movement. Forty years after *Brown v. Board of Education*, American children are still being locked out of public schools on account of race. The fact that this is happening as a result of court action taken ostensibly to protect minorities is little solace to the children and parents involved. San Francisco is learning that kids are not fungible members of racial groups, whose goals and dreams can be met vicariously by the admission of a suitable number of other kids of the same race. Ultimately, discrimination impacts individuals, not groups.

Other school districts across the country may soon be taught the same lesson.

Mr. Siskind is a San Francisco attorney.

From Boston Globe Page 3

Breyer drilled on answers in anticipation questions

By Ana Puga
GLOBE STAFF

WASHINGTON — The way Stephen Breyer's advisers describe it, preparing for a Supreme Court nomination sounds a lot like studying for an exam by trying to guess what the teacher is going to ask.

In this case, the teachers are members of the Senate Judiciary Committee. And instead of cramming alone in the library, the Supreme Court nominee has a prep team that includes legal staff from the White House and the Justice Department.

"You know what they are going to ask. Sen. Leahy always asks questions about freedom of religion. . . . Sen. Biden asks questions about enumerated rights," said Joel Klein, deputy White House counsel, referring to Democratic Sens. Patrick Leahy of Vermont and Joseph Biden of Delaware, both committee members.

Klein and Clifford Sloan, an associate White House counsel, are coordinating efforts to prepare Breyer for his confirmation hearing, which starts today and is expected to last most of the week. More than a dozen witnesses are scheduled to testify for and against Breyer, including activist Ralph Nader, who has criticized the Boston judge as a cheerleader for big business.

Klein and Sloan got help from Carolyn Osolinik, a partner with the Washington firm of Mayer, Brown and Platt, and Susan Liss and Peter Eriksen of the Justice Department's Office of Policy Development. They scoured transcripts of previous confirmation hearings, including those of Justice Ruth Bader Ginsburg, whom President Clinton nominated to the court last year. Besides anticipating the obvious subjects, such as abortion and the death penalty, they have considered how Breyer might respond to personal questions — his controversial investments, pro-business antitrust views, pushing to get funding for a federal courthouse in Boston.

Moreover, the prep team has read tens of thousands of pages of Breyer's judicial opinions and writings. Breyer's record includes about 2,000 opinions, more than 40 articles, dozens of speeches and five books.

The prep team spent last week cooped up in an

office in the Old Executive Office building with Breyer, staging mock hearings known as "murder boards" to give the judge a taste of the grilling he will face. Breyer, dressed in a suit and tie, sat at a desk as if he were in the hearing room. Staff sat lined up at a table across from him, as if they were members of the committee, and asked questions.

Watching Breyer's body language, the prep team offered suggestions: keep your hands down when you talk, so people can hear you; don't raise your eyebrows; it makes you seem skeptical of the questioners.

Because of Breyer's expertise in law and government, team members said, they could not improve upon the content of the judge's responses. But on some questions, Breyer was told it might be safer to say less. On others, they hinted he might want to add a bit more.

Klein wouldn't say which advisers play-acted, which senators' roles, but he said that some staff were flexible and could mimic several senators, while others limited their repertoire to a single lawmaker.

Whoever played Sen. Howard M. Metzenbaum, Democrat of Ohio, probably asked the toughest questions. Metzenbaum plans to ask whether Breyer's interpretation of antitrust law favors big business, his spokeswoman said.

Metzenbaum also plans to quiz Breyer on his investments. Breyer's stock holdings are concentrated in areas that could potentially benefit from a less stringent approach to toxic waste cleanup. At the same time, in his writings and rulings, Breyer has argued that a more relaxed approach to cleanup efforts would save taxpayers dollars now spent in what he maintains is unnecessarily strict regulation.

Sen. William Cohen, Republican of Maine, may bring up another potentially embarrassing topic: Breyer's push to build a \$218 million federal courthouse on Fan Pier in Boston. The plan has been attacked as overly ambitious.

Despite the possible pitfalls, Breyer, who is no stranger to Washington, has apparently approached the preparation with relish.

"His weakest point is that when we want to end at five, he wants to keep going until six," Klein said.

PHOTOCOPY
PRESERVATION

Breyer faces confirmation hearings for Supreme Court seat By Anthony Flint Boston Globe

A year ago this week, Stephen G. Breyer, chief judge of the 1st Circuit Court of Appeals in Boston, stretched out in a bed at Mount Auburn Hospital in a brightly patterned, black-and-white silk bathrobe.

Recovering from an accident suffered on the one-speed bicycle he often rides to work, he was holding court with White House aides, talking and gesturing, a large law text open on his lap. But the bedside interview was a false crescendo. Not long after, President Clinton chose Ruth Bader Ginsburg to be his first nominee to the Supreme Court.

Today Breyer, 55, is on the eve of his own confirmation hearings as successor to retiring Justice Harry A. Blackmun. And although no one expects the sessions to be rough going, the injured intellectual in the outlandish silk bathrobe is still in many ways not the kind of judge the president once said he wanted to appoint to the nation's highest court.

An intelligent jurist with an unsentimental and pragmatic approach to law, Breyer, who will face the Senate judiciary committee starting Tuesday, has the reputation of a technician, who puts precedent and common sense before overarching theories and a guiding judicial philosophy.

Widely regarded as one of the best and most insightful legal minds in the country, he promises to become a worthy opponent for conservative Justice Antonin Scalia. Breyer's capacity for consensus-building causes some court analysts to believe he could lead a new moderate-liberal coalition.

But Breyer's cool and cerebral approach, and past successes in political horse-trading and compromise, is also precisely what disappoints some observers who longed for a passionate nominee with more discernible ideological moorings.

Clinton himself had spoken of appointing a politician first Senate Majority Leader George Mitchell, then Interior Secretary Bruce Babbitt, who would bring an activist's verve and uncluttered life experiences to the pressing constitutional issues of the day.

The great justices of the 20th century came to the court with a zeal for social justice, and they included people who rubbed up against the raw edges of life more," said Herman Schwartz, law professor at American University in Washington, who worked with Breyer on the Senate Judiciary Committee in the late 1970s.

Such misgivings about Breyer, another nominee plucked from the nexus of academia and the lower federal court, are not the sort that could sink the nomination, by any stretch of the imagination. No one is suggesting the judge is not eminently qualified for the court.

In some ways, such complaints are more a reflection of the nominating process. Ever since the Senate rejected the nomination of conservative Robert Bork, presidents seeking to avoid confirmation fights have worked to tap unobjectionable figures. Breyer's nomination merely underscores, to some court watchers, how fully convictions and controversial views have been pushed out of the picture.

Putting too many legal technicians on the court is going to diminish the institution," said Mark Silverstein, professor of political science at Boston University and author of a new book, "Judicious Choices: The New Politics of Supreme Court Nominations," who labeled Breyer a "techno-judge" in a recent essay in the National Law Journal.

The Supreme Court is a unique institution. On the Supreme Court you want people with something more," he

said.

The suggestion that Breyer lacks vision also stems, to be sure, from the deep disappointment on the political left that Clinton did not seize the opportunity to appoint a zealous liberal to replace the liberal Blackmun.

But those who have worked with Breyer, at Harvard University or at the 1st Circuit Court, say his lack of an ideological agenda is exactly what makes him perfectly suited to function effectively in the political realities of the modern court.

"He is a powerful intellect and a deep person who is eminently moved by reasonableness and decency, and he has no inclination to ram things down people's throats," said Harvard law professor Charles Fried. "He won't give us the bumper-sticker side of an issue."

Nor do defenders have much patience with the suggestion that Breyer, a multimillionaire trained at Stanford University, Oxford University and Harvard Law School, is somehow too detached from the lives of average people.

"We should only be lucky to have people as remote from the populace as Oliver Wendell Holmes and Louis Brandeis," said Martin F. Peretz, editor of The New Republic, who befriended Breyer in Cambridge intellectual circles. "I don't know whether strictly populist judges would be an improvement."

Supreme Court observers also point out that there is no sure-fire way of predicting what kind of justice Breyer will be. David H. Souter was roundly criticized as a "stealth" nominee when President Bush appointed him in 1990, so lacking was he in distinctive opinions. But on the court, to the surprise of many, he has become an energetic foil to Scalia.

A number of experts, in fact, predict that Breyer will have an even more galvanizing effect on the court's persuadable center, which includes Justices Sandra Day O'Connor and Anthony M. Kennedy.

"We're seeing an end of the left on the court, with the retirement of Blackmun, and a marginalization of the right, with Scalia and Clarence Thomas being pushed into mostly irrelevant dissents," said Harvard law professor Alan Dershowitz.

"There's going to be a struggle for the heart and soul of the center." Breyer will help push it to left, along with Ginsburg and Souter, on free speech, women's rights, church and state issues and capital punishment," Dershowitz said.

Breyer's acumen for building consensus is often cited as one of his most appealing attributes. His record on the appeals court is marked by few dissents. And as an architect of airline deregulation and as counsel on the Senate Judiciary Committee from 1978 to 1980, he was known for bonding disparate factions.

He had a reputation for evenhandedness. The Republicans knew that they would get a fair hearing, that he wouldn't have a knee-jerk reaction against them," said Antonia Hernandez, a colleague on the judiciary committee staff and now president of the Mexican-American Legal Defense and Education Fund in Los Angeles.

Harvard law professor Philip B. Heymann, former No. 2 man at the Justice Department, recalled how Breyer broke a stalemate between Justice and the judiciary panel over the release of sensitive low-level public corruption investigations late in the Carter administration.

"Steve just stepped in and said, 'Well, what is it that you want?'" Heymann said. "He didn't see it as a matter of great principle. He saw it as getting away from contentious positions on both sides."

Breyer is noted for his leadership on a special commission set up in the mid-1980s to establish sentencing guidelines for federal crimes. He helped produce a formula based on sentences that federal judges had meted out over the years.