

BIOGRAPHY OF GILBERT F. CASELLAS

As an accomplished attorney with wide experience in management, Gilbert Casellas has spent his life building bridges between diverse communities. His background as an effective leader with a passionate commitment to justice makes him highly qualified to continue the Clinton Administration's dedication to promoting equality in the work force as chairman of the Equal Employment Opportunity Commission.

From community organizations to private legal practice to the military, Casellas has successfully managed many different organizations. Currently General Counsel to the Air Force, Casellas manages a staff of 45 attorneys and serves as final legal authority to 2,000 military, civilian, and reserve attorneys. He previously served as Personnel Partner and a member of the Management Committee at Montgomery, McCracken, Walker & Rhoads law firm in Philadelphia. Casellas has also managed complex litigation and was appointed by Judge Norma Shapiro to act as the Receiver to represent plaintiffs in negotiation and settlement of attorneys' fees disputes in three Title VII suits.

A strong leader, Casellas quickly rose to the top of several organizations in which he was involved. In 1984, at the age of 32, Casellas became the National President of the Hispanic National Bar Association and in 1989 became the youngest and first minority President of the University Of Pennsylvania's Law Alumni Society. He also served as Chair of the Young Lawyers' Section of the Philadelphia Bar Association (PBA), Vice Chair of the PBA, and Chair of the PBA Board of Governors. He served on the Board of Trustees of the Philadelphia Bar Foundation and a member of the Board of Directors of the Public Interest Law Center of Philadelphia.

In virtually all his activities, Casellas has worked tirelessly for the cause of equal opportunity and diversity. He has been very active in the American Bar Association (ABA), particularly in programs to increase opportunities for minorities in the legal profession and to assure equitable access to legal services. Among his many cases, Casellas successfully represented a Puerto Rican female public defender in her gender and national origin discrimination suit against her employer.

Active in community issues from an early age, Casellas was co-founder and first executive director of Casa Boricua, a Puerto Rican student cultural center at Yale whose members tutored local Latino high school students and organized cultural activities for the community. Casellas continued his community service later as Treasurer of Borinquen Federal Credit Union in Philadelphia's Latino community. In 1986, the City of Philadelphia awarded him a Citation for Contributions to the City and the Puerto

Rican/Latino Community, and in 1988 he was named Citizen of the Year during Philadelphia's Puerto Rican Week Festival.

The son of a letter carrier and factory seamstress, Casellas was born and raised in Tampa, Florida and attended a segregated Catholic school established to educate African American and Latino children. Based on his academic achievement, a high school teacher encouraged Casellas to apply to Yale. He was admitted, attended on financial aid scholarships, and received a B.A. in Latin American Studies in 1974.

At Yale, Casellas was a co-founder of a Puerto Rican student organization called Despierta Boricua. He also taught courses at a local high school on the government of Puerto Rico and co-taught a Yale College seminar on the history and politics of Puerto Rico. He used an Urban Affairs internship from Chase Manhattan Bank to work for the then newly-founded Puerto Rican Legal Defense and Education Fund (PRLDEF) in New York.

Casellas entered the University of Pennsylvania Law School in 1974 and became co-chair of the Latino Law Students Association. During the summer after his first year, he served as Student Director of the Government Policy Research Unit at the law school, which provided legislative policy research for state and local government officials. Casellas worked in the Philadelphia District Attorney's office during the summer after his second year in law school.

One of Casellas's law professors, Judge A. Leon Higginbotham, Jr., sought out Casellas for a clerkship on the U.S. Court of Appeals for the Third Circuit. Casellas served for two years before returning to Montgomery, McCracken to practice in the area of federal and state litigation and appellate work.

As General Counsel of the Air Force, Casellas serves as the Air Force representative to a military task force on sexual harassment. The task force is responsible for reviewing the military services complaint system and recommending improvements, including the adoption of department-wide standards.

Casellas is 41 years old, married to Ada Garcia Casellas and has one daughter, Marisa.



BIOGRAPHY

UNITED STATES AIR FORCE

Secretary of the Air Force
Office of Public Affairs
Washington, D.C. 20330-1690

GILBERT F. CASELLAS

Gilbert F. Casellas is the general counsel of the Air Force.

Mr. Casellas was a partner in the Philadelphia law firm of Montgomery, McCracken, Walker and Rhoads, where he specialized in litigation and served as personnel partner and a member of the management committee. He was an instructor at the University of Pennsylvania Law School and taught courses on trial and appellate advocacy. He has spoken throughout the country on trial advocacy, professional responsibility and the involvement of minorities in the legal profession.

Born and raised in Tampa, Fla., Mr. Casellas received his law degree from the University of Pennsylvania Law School and his bachelor's degree from Yale University. He is a member of the bars of the Supreme Court, the U.S. Court of Appeals for the Third Circuit and the Pennsylvania Supreme Court.

Mr. Casellas has held numerous national, state and local bar leadership posts, including service as president of the Hispanic National Bar Association, chairman of the board of governors of the Philadelphia Bar Association, member of the House of Delegates of the American and Pennsylvania Bar Associations, and president of the University of Pennsylvania Law Alumni Society, among others.

Mr. Casellas and his wife, Ada, a college administrator, have a daughter, Marisa.



EDUCATION:

- 1974 Bachelor of arts degree, Latin American studies, Yale University
1977 Juris doctor degree, University of Pennsylvania School of Law

CAREER CHRONOLOGY:

1. 1977 - 1978, law firm of Montgomery, McCracken, Walker and Rhoads, Philadelphia
2. 1978 - 1980, law clerk, the Honorable A. Leon Higginbotham Jr., U.S. Court of Appeals for the Third Circuit, Pa.
3. 1980 - 1983, law firm of Montgomery, McCracken, Walker and Rhoads, Philadelphia
4. 1985 - 1988; 1992 - 1993, lecturer-in-law, University of Pennsylvania Law School
5. 1993 - present, general counsel of the Air Force

AWARDS AND HONORS:

Arthur Littleton Legal Writing Teaching fellow, University of Pennsylvania Law School
Who's Who in America
Who's Who Among Hispanic Americans

(Current as of February 1994)

Admitted to practice before the Supreme Courts of Pennsylvania, United States District Courts for the Eastern and Middle Districts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States Supreme Court.

BAR ASSOCIATION ACTIVITIES:

**Hispanic National Bar Association, National President
(1984-85) General Counsel (1986-1987) ABA Delegate (1988-91)**

American Bar Association

House of Delegates (1988-1991)

**Commission on Opportunities for Minorities in the
Profession (1991-1993)**

**Conference Of Minority Partners In Majority/Corporate Law Firms,
Advisory Board and Steering Council (1991-1993)**

**Resource Development Council, Fund for Justice
and Education (1989-1994)**

Special Committee on Delivery of Legal Services (1985-1989)

Special Committee on Prepaid Legal Services (1990-1991)

Section of Litigation

Section on Torts and Insurance Practice

Section of Antitrust Law

Philadelphia Bar Association

**Chair, Board of Governors (1990); Vice Chair (1989);
Member (1987-1990)**

Chair, Bar-Wide Survey Special Committee (1989-90)

Chair, Election Procedures Committee (1986-1987)

Judge of Elections (1986)

Chair, Young Lawyers Section (1987)

**Co-Chair, Committee on Minorities in the Profession (1991);
Member (1985-1992)**

**Member, Special Committee on the Celebration of the
1987 Bicentennial of the Constitution (1985-1987)**

Executive Committee, Young Lawyers Section (1982-1987)

Pennsylvania Bar Association

House of Delegates - Zone 1 (1987-1993)

Civil Litigation Section

Minority Bar Committee (1988-1992)

Association of Trial Lawyers of America

Defense Research Institute

Philadelphia Trial Lawyers Association

Philadelphia Association of Defense Counsel

Lawyer's Club of Philadelphia

CIVIC AND COMMUNITY ACTIVITIES:

**President, Law Alumni Society,
University of Pennsylvania Law School
(1989-1991)**

**Board of Trustees, Philadelphia Bar Foundation
(1991-1993)**

**Secretary, Executive Committee, Board of Trustees, The Free Library of Philadelphia
(1991-93)**

Trustee, Free Library of Philadelphia Foundation (1992-93)

Board of Directors, Overbrook Farms Club (1991-1993)

**Board of Trustees (1986-1989), Community Council (1989-1992),
United Way of Southeastern Pennsylvania**

**Board of Directors (1990-1991), American Prepaid Legal
Services Institute, Chicago, Illinois**

Board of Deacons, Overbrook Presbyterian Church

**Delegate, Judicial Conference, United States Court of Appeals
for the Third Circuit (1985, 1987, 1990)**

Board of Trustees, Campaign for Qualified Judges (1985-1991)

**Steering Committee, Philadelphians for Good Government
(1991-1992)**

**Advisory Committee, Founders Club of Jenkins Memorial
Law Library (1990-1992)**

Member, Commission on Judicial Selection and Retention (1987)

**Board of Directors, Public Interest Law Center of
Philadelphia (1985-1987)**

**Board of Trustees, Community Legal Services, Inc.,
Philadelphia (1982-1985)**

**Philadelphia Lawyer Volunteer Action Program,
Vice President (1982) and Board of Directors (1982-1984)**

**Mayor's Commission on Puerto Rican and Latino Affairs
(1987-1992)**

PUBLIC SERVICE:

Judge Pro Tem, Court of Common Pleas, Philadelphia County, (1992)

**Special Counsel, Philadelphia Commission on Human Relations,
(1990-1991)**

**Court-appointed receiver, *Alvarez v. City of
Philadelphia* (No. 77-4424), *Ulloa v. City of Philadelphia*
(No. 79-375) and *Lopez v. City of Philadelphia* (No. 79-1192)
(Hon. Norma L. Shapiro) (1985)**

ACADEMIC AND PROFESSIONAL PRESENTATIONS:

Academic

**Lecturer-in-Law, University of Pennsylvania Law School,
"Appellate Advocacy," 1985-86 through 1988-89**

"Trial Advocacy," 1992-1993

Professional Legal Education

**Instructor, Complex Civil Litigation, Hispanic National Bar
Association, October 1983, Washington, D.C.**

**Witness, Hearings before Task Force on Minorities in the
Legal Profession, American Bar Association, Detroit, Michigan,
February 1985**

**Panelist, Minority Involvement in Bar Associations,
American Bar Association, Young Lawyers Division,
Baltimore, Maryland, February 1986**

**Moderator, "Young Lawyers Guide to Jury Selection",
Philadelphia Bar Association Annual Conference and
Exposition, September, 1986, Atlantic City, N.J.**

**Panelist, Program of National Minority Bar Leaders,
American Bar Association, Commission on Minorities in
the Profession, San Francisco, California, August 1987**

**Moderator, Career Panel, National Minority Pre-Law Conference,
American Bar Association, Young Lawyers Division,
Philadelphia, Pennsylvania, February 1988**

**Panelist, "Anatomy of a Personal Injury Case", Philadelphia Trial
Lawyers Association, Philadelphia, Pennsylvania, April 1988**

**Panelist, National Conference to Promote Minority Involvement
in the Legal Profession, American Bar Association,
Dallas, Texas, May 1988**

Moderator, "Trial Practice" Seminar, Hispanic National Bar Association National Convention, Albuquerque, New Mexico, September 1988

Panelist, "Creating Opportunities: A Conference on Minority Hiring Issues", American and Chicago Bar Associations, Chicago, Illinois, March 1989

Panelist, "Mechanisms for Impacting the Hiring, Retention and Promotion of Minority Associates", American Bar Association, Washington, D.C., May 1989

Panelist, "Breaking the Cycle: Promoting Minority Interests from Within the Majority Bar", American Bar Association, Honolulu, Hawaii, August, 1989

Panelist, "Recruiting Minority Attorneys: Improving the Results", Philadelphia Bar Association, September, 1989

Speaker, "Minority Hiring Issues," Large Law Firm Lawyer Recruitment - The Third Annual Conference, sponsored by Kanter Effective Lawyer Management, New York, NY, March, 1990

Panelist, "Leadership Roles," Minority Attorney Conference, Pennsylvania Bar Association, Philadelphia, PA, April, 1990

Panelist, "Who's In Charge: The Lawyer as Counselor: Process and Ethical Dimensions", Center on Professionalism, University of Pennsylvania Law School and Philadelphia Bar Association, Philadelphia, PA, July, 1990

Panelist, "Computer Performance Litigation - The Expert Witness", American Bar Association, Section of Litigation, Philadelphia, PA, October, 1990

Panelist, "Conflicts and Confidentiality: Trouble at Upper Black Eddy", Center on Professionalism, University of Pennsylvania Law School and Philadelphia Bar Association, Philadelphia, PA, December, 1990

Panelist, "Controlling Legal Expense," Society of Chartered Property and Casualty Underwriters, Philadelphia, PA, March, 1991

Panelist, "Minority Lawyers in Corporations and in Law Firms - The Essential Partnership", American Bar Association/National Conference of Minority Partners in Majority/Corporate Law Firms, Atlanta, GA, August, 1991

Panelist, "The Practical Aspects of Interviewing and Recruiting Minority Attorneys", Philadelphia Bar Association, Philadelphia, September, 1991

Panelist, "Civil Litigation in the 1990s: Fresh Faces, Fresh Ideas," Philadelphia Bar Association, Philadelphia, November, 1991

Panelist "Maximizing Your Leadership Experience", National Bar Leadership Conference, American Bar Association, Young Lawyer Division, Dallas, Texas, January, 1992.

Panelist "The Glass Ceiling: Conversations with Practitioners," Law and Society Association, Philadelphia, Pennsylvania, May, 1992.

Panelist, "The Relationship Between Inside and Outside Counsel," Hispanic National Bar Association, Atlantic City, New Jersey, September, 1992

Panelist, "Community Relations - Let the Young Lawyers Take the Lead," Eastern Seaboard Conferences of Metropolitan Bar Leaders, Philadelphia, April, 1993

AWARDS AND HONORS:

Arthur Littleton Legal Writing Teaching Fellow,
University of Pennsylvania Law School, 1976-77

Outstanding Young Man of America, 1986

City of Philadelphia Citation for Contributions to the City and the Puerto Rican/Latino community, April, 1986

Citizen of the Year, Puerto Rican Week Festival, Philadelphia, September, 1988

Who's Who Among Hispanic Americans

Who's Who in the Delaware Valley

PAUL M. IGASAKI - BIOGRAPHY

Paul Igasaki is the Executive Director of the Asian Law Caucus, a San Francisco-based civil rights and legal services organization. Prior to joining the ALC, Mr. Igasaki worked on the California U.S. Senate campaign of Congressman Robert Matsui (D-CA), focusing on fundraising within the national Asian Pacific American community until the Congressman's withdrawal due to family considerations. As Washington, D.C. Representative for the Japanese American Citizens League, he served as advocate for a national civil rights organization, working on issues such as the Civil Rights Act of 1989-91, immigration reform, access to higher education, media stereotypes and funding for the Japanese American redress program. He was also the three-term president of the Chicago Chapter of the JACL and vice president of the Florin, California Chapter, both volunteer positions.

In Chicago, Mr. Igasaki was a Community Liaison at the Chicago Commission on Human Relations, the city's civil rights agency. In this capacity, he provided legal and management counsel to the department and worked with all city departments to make government more responsive to Asian and immigrant Chicagoans. He was the Mayor's liaison to Asian American communities, providing support to the Mayor's Advisory Committee on Asian American Affairs and serving on the Mayor's Affirmative Action Council that dramatically increased the hiring of Asian city employees. He was the first Director of the Chicago Commission on Asian American Affairs.

Mr. Igasaki also worked for the American Bar Association as director of the Private Bar Involvement Project. He managed a staff of eight that sought to increase the resources available to legal service offices through the provision of grants, on-site technical assistance, conferences and information on delivery systems. As the ABA's Pro Bono Coordinator, Mr. Igasaki traveled widely to administer grants and provide technical assistance to local pro bono programs that brought together staffed legal services programs and state or local bar associations.

After becoming an attorney, Mr. Igasaki was a Reginald Heber Smith Fellow in Community Law, working as a staff attorney with Legal Services of Northern California in Sacramento and representing low income clients in a variety of civil matters. He also served as a legal assistant to the Chairman of the California Agricultural Labor Relations Board and as a volunteer, staff and Board member for Asian Legal Services Outreach. In college, he was a Congressional Intern to then-Representative Abner J. Mikva (D-IL). He has been active in political campaigns, including those of Mayor Harold Washington, Congressman Mikva, former Senator Adlai Stevenson, Senator Paul Simon and numerous others.

Licensed as an attorney in California and Illinois, Mr. Igasaki received his J.D. from the University of California, Davis and his B.A. from Northwestern University. He was born and raised in the Chicago area. Mr. Igasaki serves as Co-Chair of the Civil Rights Committee of the American Bar Association's Section on Individual Rights and on the ABA Coordinating Committee on Immigration Law. In addition, he sits on the Executive Committee of the State Bar of California Legal Services Section and the Board of Directors of the National Legal Aid & Defenders Association. A founder of the Chicago Asian Bar, he is Co-Chair of the Legislative Committee for the National Asian Pacific American Bar Association.

PAUL M. IGARAKI

P6(b)(6)

Telephone: Work, (415) 391-1655; Home,

P6(b)(6)

Admitted to the State Bar of California, December, 1980. Admitted to practice, State of Illinois, May, 1984.

EDUCATION

University of California, Davis, J.D. received December, 1979.

Northwestern University, Evanston, IL. B.A. received June, 1976.

EMPLOYMENT

Executive Director, Asian Law Caucus, Inc., San Francisco, CA. December, 1991 to Present.

Asian Funding Director, Bob Matsui for U.S. Senate Committee, Sacramento, CA. January, 1991 to August, 1991.

Washington, D.C., Representative, Japanese American Citizens League, Washington, D.C. July, 1989 to January, 1991.

Executive Director, Commission on Asian American Affairs, City of Chicago, Chicago, IL. January to July, 1989.

Asian American Community Liaison, Mayor's Advisory Committee on Asian American Affairs, Chicago Commission on Human Relations, Chicago, IL. February, 1985 to December, 1988.

Staff Director, American Bar Association, Private Bar Involvement Project, Chicago, IL. December, 1982 to February, 1985.

Pro Bono Coordinator, American Bar Association, Chicago, IL. December, 1981 to December, 1982.

Staff Attorney, Reginald Heber Smith Fellow in Community Law, Legal Services of Northern California, Sacramento, CA. August, 1980 to December, 1981.

Graduate Legal Assistant, Office of the Chairman, Agricultural Labor Relations Board, State of California, Sacramento, CA. June, 1979 to June, 1980.

Law Student Intern, Office of the Executive Secretary, Agricultural Labor Relations Board, Sacramento, CA. January to June, 1979.

Law Clerk/Outreach Worker, Asian Legal Services Outreach, Sacramento, CA. June to October, 1977 & June to December, 1978.

-MORE-

Congressional Intern, Office of U.S. Representative Abner J. Mikva, Skokie, IL. May to September, 1975.

COMMUNITY/PROFESSIONAL ACTIVITIES

Co-Chair, Civil Rights & Equal Opportunity Committee, American Bar Association Section on Individual Rights & Responsibilities, 1992 to Present. Vice Chair, ABA IR & R Section Committee on Minority Rights, 1987 to 1992.

Executive Committee, Legal Services Section, State Bar of California, 1992 to Present.

Co-Chair, Legislative Committee, National Asian Pacific American Bar Association, 1991 to Present.

Executive Committee, Leadership Conference on Civil Rights, Washington, D.C. 1990 to 1991.

Vice President and delegate, Florin Japanese American Citizens League, Sacramento, CA. 1991 to 1992.

President, Chicago, Japanese American Citizens League, Chicago, IL. 1984 to 1988. Board of Directors, 1982 to 1989.

Vice President and founder, Asian American Bar Association of the Greater Chicago Area, Chicago, IL. 1986 to 1989.

Fellow, Leadership Greater Chicago program, 1987 to 1988.

Advisory Boards for Police Executives Research Forum, Asian Human Services, Korean American Educational Services, Angel Island and MinaSama-No Asian American Theatre Companies, Chicago, UC-Davis Asian American Studies.

References available upon request.

BIOGRAPHY OF PAUL STEVEN MILLER

Paul Steven Miller is the Deputy Director of the United States Office of Consumer Affairs and White House liaison to the disability community. In his role at the White House, Mr. Miller represents the interests of both people with disabilities and consumers. Recently, President Clinton announced his intent to nominate Mr. Miller to be Commissioner of the Equal Employment Opportunity Commission.

Prior to joining the Clinton White House in January, 1993, Mr. Miller was the Director of Litigation for the Western Law Center for Disability Rights, a non-profit, legal services center specializing in disability rights issues. At the Western Law Center for Disability Rights, Mr. Miller litigated all types of disability discrimination cases, including in the areas of employment, access, education, and transportation. He was also a professor at Loyola Law School and UCLA Law School.

Mr. Miller is a graduate of the Harvard Law School and a *cum laude* graduate of the University of Pennsylvania. At Harvard, Mr. Miller was a member of the Harvard Civil Rights-Civil Liberties Law Review. He has written many articles in the area of disability civil rights and has received several international honors including being named Parsons Visiting Scholar at the University of Sydney and a member of a United States delegation to Japan on disability rights.

Mr. Miller is a frequent speaker in the area of disability law and discrimination to disability and civil rights groups, business organizations, and bar associations.

DAVID STEVEN MILLER

P6/(b)(6)

(office): (202) 456-7026

(home):

P6/(b)(6)

Employment

- Jan. 1993 - present **White House Office of Presidential Personnel, Washington, D.C.**
Director, Disability Outreach/Search Manager.
- Dec. 1992 - Clinton/Gore Presidential Transition Office, Washington, D.C.
Jan. 1993 Director, Disability Outreach/Search Manager.
- Nov. 1992 **The Economic Conference of the President-elect and Vice-President-elect**
Little Rock, Arkansas
Speaker on the topic of "Economic Reform and People with Disabilities".
- Aug. 1992 - Clinton/Gore Presidential Campaign, Los Angeles, CA
Nov. 1992 California State Political Coordinator for Disability Issues.
- 1990-1992 **Western Law Center for Disability Rights at Loyola Law School,**
Los Angeles, CA
Director of Litigation; Adjunct Professor of Law
Responsible for all aspects of litigation for a public interest law center and law school clinical teaching program specializing in disability rights issues. Trial and appellate level experience. Disability policy experience. Teaching responsibilities at Loyola Law School include the areas of disability and elderly rights, federal employment discrimination, health care, civil procedure, clinical litigation skills and legal writing.
- 1991 **University of California Los Angeles, School of Law, Los Angeles, CA**
Visiting Lecturer in Law, teaching a course in disability civil rights.
- 1987-1990 **Manatt, Phelps, Phillips and Kantor, Los Angeles, CA**
Associate - civil litigation.
- 1986-1987 **Kadison, Pfaelzer, Woodard, Quinn and Rossi, Los Angeles, CA**
Associate - civil litigation.
- 1985 **Loeb and Loeb, Los Angeles, CA**
Summer Associate.
- 1984 **Sullivan & Worcester, Boston, MA**
Summer Associate.

Paul Steven Miller

Page 2

1980-1982 **United States Attorneys' Office, Southern District of New-York,**
(Summers) **New York, NY**
 Legal Intern.

Education

Harvard Law School, Cambridge, MA
J.D., June, 1986

(1) Harvard Civil Rights Civil Liberties Law Review; (2) District Attorneys' Office Clinical Internship; (3) Legal Services Center Clinical Internship; (4) Clinical Mediation Internship.

University of Pennsylvania, Philadelphia, PA

B.A. in History and in English, *cum laude*, May 1983

(1) Dean's List; (2) Foreign Study: Independent research in the Soviet Union, Winter 1981-82.

Publications

Author, Coming Up Short: Employment Discrimination Against Little People, 22 Harv.C.R.-C.L. L. Rev. 231 (1987).

Author, The Impact of Assisted Suicide on Persons with Disabilities, Issues of Law and Medicine (accepted for publication).

Published Cases

Del Monte v. Wilson, 1 Cal.App.4th 1213 (1991); *aff'd*, 1 Cal.4th 1009 (1992)(upholding disabled veterans' equal protection rights).

International Honors

Parsons Visiting Scholar, University of Sydney, Faculty of Law, Sydney, Australia (March, 1991).

**Keynote Presenter, Australian National Conference on Disability and Justice, Griffith University
Brisbane, Australia (December, 1992) (paper accepted for publication).**

Community Service

**Little People of America, Inc.
Member and Past National Young Adult Director.**

Billy Barty Foundation

Member of the Board of Directors and Past President (1989-present).

National Alliance of Genetic Support Groups

Member of the Board of Directors (1992-present).

Westside Center for Independent Living

Member of the Board of Directors (1989-present).

Los Angeles City Advisory Council on Disability

Council Member (1989-1990).

University of Pennsylvania

Member of the Board of Trustees (1983-1986)

Member of the Council of Recent Graduates (1989-present).

**Selected
Presentations**

American Bar Association, Member of Faculty, "Prosecuting and Defending an Americans with Disabilities Act Lawsuit" (Fall, 1992).

Continuing Education of the Bar, Member of Faculty, "The Impact of the Americans with Disabilities Act on California Business" (Fall, 1992).

Featured Keynote Speaker and Presenter on Disability Issues

Speaker on variety of disability issues, including civil rights, disability law, health care, independent living and media issues, to community, legal and business groups such as the National Multiple Sclerosis Society, California Association of Persons with Handicaps, California Governor's Committee on Employment of Disabled Persons, The National Association of Persons with Severe Handicaps, Carl Karcher Enterprises, California Bankers Association, Merchants and Manufacturers Association, MALDEF (partial list).

RELIGIOUS HARASSMENT

- Fall 1992 EEOC Legal Counsel staff complete draft proposal on workplace harassment on all bases covered by laws enforced by the Commission.
- 7/14/93 Commission approved Notice of Proposed Rulemaking (NPRM) on consolidated guidelines by a vote of 4 to 0.
- 9/23/93 NPRM is signed by Chairman Gallegos after circulation and approval by OMB.
- 10/1/93 Proposed guidelines are published in the Federal Register for 60-day comment period ending November 30, 1993.
- 11/30/93 Public comment period closes. Eighty-six comments are received; more than 30 raise issue of religious freedom guaranteed by First Amendment.
- 2/15/94 Congressman Howard (Buck) McKeon and 43 other Members of Congress write EEOC expressing concern about the inclusion of religion in the consolidated Guidelines.
- 2/24/94 EEOC staff met with interest groups opposed to inclusion of religion in guidelines, including the Traditional Values Coalition, the Family Research Council, the National Association of Evangelicals, the Center for Law and Religious Freedom, the Christian Legal Society and the Civil Liberties Union.
- 3/18/94 Commission staff met with representatives of People for the American Way, the Baptist Joint Committee, the American Jewish Congress, and other religious groups who stress importance of keeping religion in guidelines.
- 3/24/94 Congressman Frank Wolf expresses concerns about the proposed guidelines at House Appropriations Subcommittee hearing on EEOC's fiscal year 1995 budget.
- 5/6/94 Commission votes to extend official comment period on consolidated guidelines an additional 30 days.
- 5/13/94 Notice of extension is published in the Federal Register.

- 5/26/94 Congressman Howard (Buck) McKeon introduces H. Res. 446, "Resolution Concerning Religious Harassment in Employment" expressing the sense of Congress urging that EEOC delete religion from its proposed consolidated guidelines.
- 5/27/94 Commission votes to accept all public comments received on guidelines from December 1, 1994 through May 12, 1994 as official comments.
- 6/7/94 Senator Hank Brown introduces S. Res. 219, "Resolution Concerning Administrative Guidelines Applicable to Religious Harassment", urging EEOC to delete religion from its guidelines.
- 6/9/94 Senator Howell Heflin, Chair of Senate Judiciary Subcommittee on Courts and Administrative Practices, holds hearing on EEOC's proposed guidelines.
- 6/15/94 Congressman Charles Taylor (R-NC) offers an amendment to eliminate funds for EEOC related to the issuance of guidelines related to religious harassment at House Committee on Appropriations mark-up of EEOC's FY 1995 budget. Amendment was defeated.
- 6/16/94 Senators Brown and Heflin circulate "Dear Colleague" letter to solicit support for sense of Congress resolution expressing that EEOC: 1) delete and treat religion separately from other categories of harassment; 2) make clear in any new guidelines that expressions of religious beliefs are not restricted; 3) hold public hearings on new proposed guidelines; and 4) receive additional public comment before issuing new guidelines.
- 6/16/94 Language contained in proposed Brown/Heflin resolution is offered as amendment to S. 1491, "Federal Aviation Administration Authorization Act of 1993", during Senate floor debate.
- Following modification to strike language deleting and treating religion as separate category of harassment, the amendment is approved 94 to 0.
- 6/27/94 Congressmen Charles Taylor and Frank Wolf offer an amendment to FY 1995 Commerce, Justice, State and Judiciary Appropriations bill (H.R. 4603) during consideration by the full House to restrict EEOC from issuing guidelines in form published on October 1, 1993. Amendment is approved 366 to 37.

7/12/94

Congressman Earl Hilliard (D-Ala) introduces H. Con. Res. 265, a concurrent resolution expressing sense of Congress urging EEOC to delete religion from guidelines and to hold public hearing on any new proposed guidelines.

7/14/94

Senate Committee on Appropriations marks-up and approves H.R. 4603, adopting language restricting EEOC's issuance of guidelines on harassment.

CONFIRMATION PREPARATION SCHEDULE

as of 7/15/94 - 8:30 p.m.

Sunday, July 17

Time: TBA

Confirmation Preparation: Question and Answers

The briefing group will decide the meeting time on Saturday.

**The meeting will be held at EEOC Headquarters, 1801 L Street NW
Ph. (202) 663-4915**

Tuesday, July 19

3:30 p.m.

**All three nominees - Courtesy Meeting with Senator Howard Metzenbaum
140 Russell Senate Office Bldg
Contact: Sherri Sweitzer 224-8912**

5:00 - 5:20 p.m.

**All three nominees - Courtesy Meeting with Senator Paul Wellstone
717 Hart Senate Office Bldg.
Contact: Dorothy McPeak 224-2159**

5:30 p.m.

**All three nominees - Courtesy Meeting with Senator Paul Simon
462 Dirksen Senate Office Bldg.
Contact: Deidre Christenson 224-7024**

Wednesday, July 20

11:30 a.m.

**All three nominees - Courtesy Meeting with Senator Dan Coats
404 Russell Senate Office Bldg.
Contact: Karen Park 224-8724**

Thursday, July 21

9:50 a.m. Gil Casellas - Drop by Senator Arlen Specter's office
at 530 Hart Senate Office Bldg. for walk to confirmation hearing.
Contact: Sylvia Nolde 224-4254

10:00 a.m. Confirmation Hearing for Gil Casellas
430 Dirksen Senate Office Bldg.

Senators Specter and Wofford to introduce Gil
(Wofford contact: Carol Chastain 224-7756)

11:00 a.m. Confirmation Hearing for Paul Igasaki and Paul Steven Miller
430 Dirksen Senate Office Bldg.

Senators Boxer, Feinstein, and Harkin to introduce

Boxer contact: Stephanie 224-3553
Feinstein contact: Margo 224-9636
Harkin contact: Brendan 224-9260

schedl.gil
cg:7/15/94-8:45pm

hancement of \$1,733,000 and 30 full-time equivalent employees [FTE]. It also includes a limitation of \$50,000 on payments to consultants and a limitation on billable days for Commissioners and the Chairman. This language was included in the House bill.

The Committee has struck House language, which was not requested, which limits the compensation for special assistants to the Commissioners to 150 billable days. Language included in the fiscal year 1994 appropriations act allowed each commissioner to employ a full-time special assistant. Of the eight commissioners, six currently have full-time assistants.

On July 1, 1994, the chairperson and the other commissioners sent a letter to the Committee opposing the House limitation. The letter states, in part, "We believe that utilizing special assistants is essential to our effectiveness." Based on the request of the Civil Rights Commission, the Committee is recommending that the House language be deleted.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

Appropriations, 1994	\$230,000,000
Budget estimate, 1995	244,804,000
House allowance	238,000,000
Committee recommendation	240,000,000

The Committee recommends \$240,000,000 for fiscal year 1995 for the Equal Employment Opportunity Commission, \$10,000,000 above the 1994 appropriations to date, \$2,000,000 above the House level, but \$4,804,000 below the budget estimate.

The Committee includes House bill language to provide \$26,500,000 for payments to State and local enforcement agencies in fiscal year 1995. This is the same as the budget request.

The Committee has provided \$236,237,000 to fund required adjustments to base funding. The EEOC has reflected its entire budget increase as a base adjustment, but the Committee believes that only a portion of the requested increase is necessary to provide the fiscal year 1994 operating level in fiscal year 1995.

The remaining increase of \$3,763,000 provides a portion of the requested program enhancements for enforcement of the Americans With Disabilities Act, title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, and section 501 of the Rehabilitation Act.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

Appropriations, 1994	\$99,900,000
Budget estimate, 1995	- 568,000
House allowance	50,432,000
Committee recommendation	81,832,000

The Committee recommends discretionary appropriations of \$81,832,000. The amount recommended is \$82,400,000 more than the budget request and \$31,400,000 above the House allowance.

In conjunction with offsetting collections totaling \$116,400,000 in existing section 9 fees established under the 1993 Budget Reconciliation Act, the Committee recommendation provides the FCC with

a total program level of \$198,232,000. The House allowance noted that by charging related administrative costs as part of existing section 9 fees, the Commission will collect \$116,400,000 during fiscal year 1995, instead of the \$95,000,000 originally estimated by the Commission. The House allowance provides \$50,432,000 in discretionary appropriations, \$31,400,000 below the Committee recommendation, and assumes offsetting collections totaling \$116,400,000. The House allowance would provide the Commission with a total program level of \$166,832,000, or \$31,400,000 below the Committee recommendation.

The administration's budget request for the FCC is predicated on financing the agency entirely through fees. The administration proposes a combination of existing fee collections and creation of entirely new user fees that would require authorizing legislation. A budget amendment which proposed such financing and which vitiated the original budget request for \$72,400,000 in discretionary appropriations was transmitted to Congress on April 22, 1994; the reduction was proposed by the administration as an offset to finance payments to States for the cost of incarcerating illegal aliens. Since neither the House nor the Senate authorizing committees have indicated any intention to put forward such legislation, the net effect of the administration's budget proposal would be to shut down the Commission at the start of fiscal year 1995.

The recommendation provides for the original budget request of \$72,400,000, an increase of \$10,000,000 in discretionary appropriations, and \$116,400,000 in section 9 fee collections. In total, the recommendation provides the FCC with program resources totaling \$198,232,000. The Committee believes that the Federal Communications Commission is one of the most important agencies in this Commerce, Justice, and State, the Judiciary, and Related Agencies bill. However, it is an agency for which funding and staffing has not been commensurate with its important mission. Since 1980, the FCC's staff has been reduced by over 500 full-time equivalent [FTE] positions while the Commission's legislated responsibilities have grown. In the policy and rulemaking area, filings requesting or commenting on Commission actions have increased from 80,435 to 125,768—a 56-percent increase in only 5 years. In the enforcement area, telephone company tariffs submitted for review and approval have increased from 1,900 in 1980 to 4,430 in 1993. In 1993 alone, the FCC received over 32,000 complaints from the public and common carriers on various aspects of telephone services. In the licensing area, workloads have increased throughout the agency. For example, TV assignment and transfer requests have grown from 186 in 1980 to 731 in 1993. The Commission has a lead role in helping foster and promote new technologies and economic growth. The telecommunications industry is continually fielding new technologies—from cellular telephone to direct broadcast satellites—which place new demands on the agency.

The Committee recommendation acknowledges this increased workload. The increase of \$31,400,000 (of which \$10,000,000 is discretionary appropriations) is intended to provide additional staff to be used in all areas of the Commission's operations. These staff should be allocated to creating the policy and rules needed to facilitate the growth of new telecommunications technologies.

TITLE VI—GENERAL PROVISIONS

The Committee recommends the following general provisions for the departments and agencies funded in the accompanying bill. Sections 601 through 607 have been included in previous Commerce, Justice, and State, the Judiciary, and Related Agencies appropriations acts.

Section 601. *Publicity/propaganda.*—Prohibits any appropriation act from being used for publicity or propaganda purposes not authorized by law.

Section 602. *Availability of appropriations.*—Prohibits any appropriation contained in the act from remaining available for obligation beyond the current year unless expressly so provided.

Section 603. *Consulting services.*—Provides that the expenditure for any appropriation contained in the act for any consulting services through procurement contracts shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection except where otherwise provided under existing law or under existing Executive order issued pursuant to existing law.

Section 604. *Invalidation.*—Provides that if any provision of the act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the act and the application of such provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 605. *Reprogrammings.*—Stipulates Committee policy concerning the reprogramming of funds. Section 605(a) prohibits the reprogramming of funds which: (1) create new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates offices or employees; (5) reorganizes offices, programs, or activities; (6) contracts out or privatizes any function or activity presently performed by Federal employees—unless the Appropriations Committees of the House and Senate are notified 15 days in advance.

Section 605(b) prohibits a reprogramming of funds in excess of \$500,000, or 10 percent, whichever is less, that (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings due to a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress unless the Appropriations Committees of the House and Senate are notified 15 days in advance.

Section 606. *NOAA ships and aircraft.*—Provides that none of the funds made available in this act can be used to construct, repair (other than emergency repair), overhaul, convert, or modernize NOAA vessels in shipyards located outside the United States, and

restricts similar activities related to NOAA aircraft to facilities in the United States and Canada.

Section 607. *Buy in America.*—Expresses the sense of Congress that to the greatest extent possible, all equipment and products purchased with funds in this act should be made in the United States.

Section 608. *EEOC guidelines.*—Provides that none of the funds in this act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion. This section would prevent the EEOC, during fiscal year 1995, from implementing guidelines covering religious harassment that were published by the EEOC last October. The Committee believes this delay will enable the various groups concerned about the far reaching effect of these proposed guidelines to come together and develop a compromise solution. The Committee understands that, in the meantime, religious harassment would continue to be protected under regulations that currently exist under title VII of the Civil Rights Act and the Religious Freedom Restoration Act.

The Committee notes that this identical language was included in section 801 of the House-passed bill. The Committee deleted section 801 because a separate title and section is not necessary for the inclusion of this provision which relates to the EEOC.

Section 609. *Foreign launch vehicles.*—Provides that none of the funds in this act may be used to approve export license applications on launch vehicles of the People's Republic of China or Russia unless: (1) there exists an agreement between the United States and the People's Republic of China or Russia dealing with commercial launch services, and (2) the United States Trade Representative certified, in this case, that the People's Republic of China or Russia is in full compliance with the terms of that agreement with regard to the respective satellite, components or technology related thereto for which the export license is pending.

The United States has entered into trade agreements with the PRC (1989) and Russia (in 1993) to assure that these countries not dump launch services. This provision is intended to ensure that the U.S. Government has those countries comply with these agreements.

THE WHITE HOUSE

WASHINGTON

March 1, 1993

Dear Member of Congress:

I write to express my strong support for the "Justice for Wards Cove Workers Act," which Representative Jim McDermott is reintroducing today. This important piece of legislation will overturn the unfair exemption of the original plaintiffs in the Wards Cove Packing Co. v. Antonio case from coverage under the Civil Rights Act of 1991.

The Civil Rights Act of 1991 was passed to overturn a series of controversial Supreme Court decisions that made it more difficult for victims of discrimination to challenge employers' discriminatory practices. Congress found that the ~~cases~~ ^{decision} weakened the scope and effectiveness of Federal civil rights protections. Chief among these decisions was Wards Cove Packing Co. v. Antonio, yet the Act exempts the very 2,000 Americans who sought relief in the original case.

America is a nation of great diversity, founded on the principle of equality before the law. It is contrary to all of our ideals to exclude any American from the protection of our civil rights laws.

I am committed to removing this exemption. I urge you to join with Representative McDermott and undertake all action necessary to ensure the passage of the "Justice for Wards Cove Workers Act."

Sincerely,

President William J. Clinton

Approved by
Wally McClinton
March 1, 1993

THE WHITE HOUSE

WASHINGTON

March 1, 1993

Congressman McDermott:
Dear Member of Congress:

I write to express my strong support for the "Justice for Wards Cove Workers Act," ^{which you are introducing today} ~~which Representative Jim McDermott is reintroducing today.~~ This important piece of legislation will overturn the unfair exemption of the original plaintiffs in the Wards Cove Packing Co. v. Antonio case from coverage under the Civil Rights Act of 1991.

The Civil Rights Act of 1991 was passed to overturn a series of controversial Supreme Court decisions that made it more difficult for victims of discrimination to challenge employers' ~~discriminatory practices.~~ ^{decisions} Congress found that the ~~cases~~ weakened the scope and effectiveness of Federal civil rights protections. Chief among these decisions was Wards Cove Packing Co. v. Antonio, yet the Act exempts the very 2,000 Americans who sought relief in the original case.

America is a nation of great diversity, founded on the principle of equality before the law. It is contrary to all of our ideals to exclude any American from the protection of our civil rights laws.

I am committed to removing this exemption. ^{I appreciate your} ~~I urge you to join with Representative McDermott and undertake all action necessary to ensure the passage of the "Justice for Wards Cove Workers Act."~~

hard work on this issue.

Sincerely,

President William J. Clinton

*Approved by
Walter Deltor
March 1, 1993*

U.S. Equal Employment Opportunity Commission
Office of Communications and Legislative Affairs
1801 L Street, NW, Room 9024
Washington, DC 20507
FAX # (202) 663-4912

FAX TRANSMITTAL FORM

DATE : 7/13/94 TIME: 2:30

TO : Steve Wannath

FAX TELEPHONE NUMBER: 456-7028

SENDER: Clara Gonzalez

CHECK ONE:

OCLA
(202) 663-4900

SURVEYS
(202) 663 - _____

OFO
(202) 663- _____

OH
(202) 663- _____

OGC
(202) 663 - _____

OLC
(202) 663- _____

OZEO
(202) 663- _____

DOCUMENT: Legislative Issues

NUMBER OF PAGES TRANSMITTED (INCLUDING COVERSHEET): 5

SPECIAL INSTRUCTIONS: As requested

Please telephone the appropriate office above if you do not receive all documents.

MEMORANDUM

TO: Eric Senunas
Paul Carey
Steve Warnath

FROM: Claire Gonzales *CEG*

DATE: July 13, 1994

RE: List of Pending Legislative Issues of Interest to the EEOC

As requested, attached is a list of the pending legislation or legislative issues that we have identified that may come up during the confirmation proceedings. I have included just about all the pertinent ones (I used my discretion and left out Senator Helms' bill to amend Title VII). The "hot bills" are probably the only ones that you need to consider, but I will leave it to your discretion.

As always, thank y'all for all the fine help.

Melissa Cook
- OMB -
Janet Forsgren
Branch

LEGISLATIVE ISSUES
(7/13/94)

HOT BILLS (Recent or Expected Action):

The Federal Employee Fairness Act of 1993 (FEFA) -

S. 404 (Glenn)/ H.R. 2721 (Ed&Labor/Post Office)

Bill to substantially reorganize administrative procedure for federal eeo complaints

◆ **Administration Position** - See May 11, 1994, letter to Chairman William Clay, House Committee on Post Office and Civil Service, from Leon Panetta, then Director of OMB, setting forth the Administration's position on H.R. 2721.

Age Discrimination Amendments of 1993 - H.R. 2722 (Owens)

Bill to permanently extend the temporary exemption provided in 1987 for police and firefighters from the ADEA, which permits the use of mandatory retirement age.

Metzenbaum is the most vocal opposition. Owens attached the bill to the Crime Bill, which is stuck in conference. Metzenbaum has promised to filibuster the Crime Bill if the amendment stays on.

◆ **Administration Position** - (articulated in letter from DOJ on the Crime Bill)
Calls for further study on the use of testing in place of age and includes a compromise 4-year temporary extension of the law allowing mandatory retirement age.

There are several other related bills that seek to end authorization of the use of mandatory retirement, the principal one is S. 1984, **Government Organization and Employees (Metzenbaum)** - repeals provisions of Title USC permitting mandatory retirement age for federal law enforcement officers and firefighters, Capitol police, and air traffic controllers. I doubt there is any movement on this one.

Equal Remedies Act of 1993 - S. 17 (Kennedy)/H.R. 224 (Kennelly)

Bill to remove the provisions in the Civil Rights Act of 1991 limiting the dollar amount of damages awarded in cases of intentional discrimination.

Justice for Wards Cove Workers Act - S. 1037 (Murray)/H.R. 1172 (McDermott)

Bill to amend the Civil Rights Act of 1991 to eliminate the exclusion of coverage of the Act to disparate impact cases filed before March 1, 1975 and decided after October 30, 1983 (only one case -- *Wards Cove v. Atonio*)

◆ **Administration Position** - President Clinton signed a letter endorsing the bill last year.

CLINTON LIBRARY PHOTOCOPY

Employment Non-Discrimination Act of 1994 (ENDA) - S. 2238/ H.R. 4636

Bill introduced June 23, 1994, by principal sponsors Senator Edward Kennedy and Representatives Gerry Studds and Barney Frank, prohibits discrimination in employment on basis of sexual orientation.

Protection from Coercive Employment Agreements Act of 1994 - S. 2012 (Feingold)

Amends Title VII, ADEA, and ADA to prohibit employers from requiring employees to submit claims relating to employment discrimination to mandatory arbitration. In the House, Chairmen Ford and Owens have requested GAO to do a study on this issue.

Fair Pay Act of 1994 - Scheduled to be introduced by Del. Eleanor Holmes Norton on Thursday, July 14, 1994; bill to ensure equal pay for comparable work regardless of race, gender or national origin; amends the Fair Labor Standards Act.

PENDING, BUT NOT MOVING:***Civil Rights Standards Restoration Act - S.1776 (Metzenbaum)/H.R.3680 (Owens)***

Bill to reverse the *St. Mary's Honor Center v. Hicks* 1993 Supreme Court decision, which made it more difficult for a plaintiff to prove a disparate treatment case under Title VII.

Other bills introduced for same purpose:

Employment Discrimination Evidentiary Amendment of 1993 - H.R. 2787 (Mann)

Disparate Treatment Employment Discrimination Amendment of 1993 - H.R. 2867 (Hastings)

Sexual Harassment Prevention Act of 1993 - S. 1979 (Murray)/H.R. 2829 (G. Miller)

Bill to require private, federal, and congressional employers to post notices concerning sexual harassment; gives EEOC responsibility for preparing informational material on sexual harassment for use in the workplace

Harassment-Free Workplace Act - S. 1864 (Feinstein)

Bill amends Title VII to prohibit sexual harassment by employers of fewer than 15 employees.

Economic Equity Act of 1993 - Schroeder (don't have number)

Comprehensive bill to ensure economic equity for American women and their families by, among other things, promoting fairness in the workplace; creating new economic opportunities for women workers and business owners; improving child support enforcement.

Pay Equity Employment Act of 1994 - H.R. 3738 (Andrews)

promotes equitable pay practices within the federal civil service and the legislative branch; authorizes special appropriation to the EEOC to strengthen enforcement of wage discrimination laws and to increase public awareness

Employment Dispute Resolution Act of 1993 - H.R. 2016 (Gunderson)

Bill to amend Title VII and ADA to provide pre-suit mediation of eeo disputes

PENDING ADMINISTRATIVE IMPLEMENTATION ISSUES FOR RECENT LEGISLATION***Coordination of the ADA and the Family and Medical Leave Act (FMLA) -***

Labor is currently in the final stages of rulemaking for the FMLA. The ADA and FMLA both impose leave-related obligations on covered employers. The EEOC has been working with DOL during its FMLA rulemaking to coordinate implementation of both laws. A potentially hot political issue in the DOL FMLA rulemaking is whether an employee entitled to leave under both ADA and FMLA must take FMLA and ADA leave sequentially or is entitled to simultaneously enjoy the best of both laws.

6/17/94

PENDING LEGISLATIVE ISSUES

LEGISLATION TO REFORM THE FEDERAL EEO COMPLAINT PROCESS:

The Federal Employee Fairness Act of 1993, H.R. 2721/S.404

Introduced in the Senate on February 18, 1993 by Senator John Glenn and in the House on July 23, 1993 by Congressman Matthew G. Martinez, the proposed legislation revises the administrative procedures by which federal employees bring employment discrimination claims. Under both the House and Senate proposals, responsibility for administrative review of claims of employment discrimination in the federal sector is transferred from the charged agency to EEOC.

The intent of the proposed legislation is to: 1) eliminate the real and perceived conflict of interest in the current process whereby the agency reviews its own discriminatory conduct; 2) expedite the process by streamlining procedures and providing mandatory time limits for processing; and 3) deter future discriminatory conduct by providing sanctions against federal employees who have discriminated.

The Senate bill, S. 404, was marked-up and approved by the Committee on Governmental Affairs on June 24, 1993; the Committee report was filed on October 27, 1993 (S. Rept. 103-167). The measure is now awaiting consideration by the full Senate.

In the House, H.R. 2721 was jointly referred to the House Committee on Education and Labor and the Committee on Post Office and Civil Service. The bill was marked-up on January 26, 1994 by the Subcommittee on Select Education and Civil Rights and cleared by the full Committee on April 13, 1994. The Civil Service Subcommittee marked-up the bill on April 20, 1994 and it was cleared by the full Post Office and Civil Service Committee on May 11, 1994.

Prior to the mark-up of the bill by the full Committee on Education and Labor, EEOC began working closely with the Office of Management and Budget and other agencies to develop principles to be included in any version of the legislation hoping to gain the Administration's support. Negotiations between the Administration and the staffs of both House Committees of jurisdiction continued through the May 11 mark-up by the Committee on Post Office and Civil Service. See April 13 and May 11 letters from OMB Director Panetta to House Committees on Education and Labor and Post Office and Civil Service.

Preliminary EEOC cost estimates for enforcing provisions such as those contained in S.404 and H.R. 2721 range from \$70 million and more than 775 additional staff to \$98 million and nearly 1100 additional staff.

AGE DISCRIMINATION IN EMPLOYMENT:

Age Discrimination in Employment Amendments of 1993, H.R. 2722

On March 24, 1993, the House Subcommittee on Select Education and Civil Rights conducted an oversight hearing on two sunseting provisions of the 1986 Amendments to the Age Discrimination in Employment Act -- scheduled to expire on December 31, 1993 -- which provided exemptions permitting age to be considered in hiring and retiring public safety officials and tenured university faculty.

The 1986 Amendments to the ADEA also charged EEOC and the Department of Labor to conduct a study to determine whether tests were available to replace age as a predictor of job performance. The Congressionally mandated study, Alternatives to Chronological Age in Determining Standards of Suitability for Public Safety Jobs, conducted by Penn State University Center for Applied Behavioral Science, was transmitted to Congress in October 1992. The study concluded that valid and job-related tests are viable alternatives to basing hiring and retirement decision on age alone.

Members of the Penn State research team testified at the public hearing on the findings of the study and recommended that the temporary exemptions under the ADEA be allowed to expire.

Witnesses representing police and fire organizations, however, were severely critical not only of the methodology used in the Penn State Study, but also cited the lack of specific tests and guidelines by the EEOC. These organizations supported allowing the public safety exemptions to continue.

Following the public hearing, Congressman Major Owens introduced H.R. 2722 on July 23, 1993.

The proposed legislation would amend the ADEA by permitting all state and local governments to use age permanently as a basis for hiring and retiring law enforcement officers and firefighters. In addition, H.R. 2722 requires that EEOC conduct a study regarding tests that can be used by public safety departments in lieu of age and authorizes \$5 million for the study.

H.R. 2722 was marked-up by the Subcommittee on Select Education and Civil Rights on August 5, 1993 and approved by the full Committee on Education and Labor on October 19, 1993. See H-Rept. 103-314. The measure was approved by the full House on November 8, 1993 and received in the Senate and referred to the Committee on Labor and Human Resources on November 9, 1993.

On April 14, 1994, provisions of H.R. 2722 were incorporated into the House crime bill, the Violent Crime Control and Law

Enforcement Act of 1994 (H.R. 4092/H.R. 3355) in the form of an amendment by Rep. Brooks. The crime bill passed the House on April 21 and is currently pending conference between the House and Senate.

On April 19, 1994, the Senate Subcommittee on Labor held a public hearing on H.R. 2722. Subcommittee Chairman Metzenbaum publicly stated his opposition to the measure and vowed that if the bill was attached to the House-passed crime bill in the Senate, he would filibuster for its defeat.

EEOC declined the Subcommittee's request to testify at this hearing, not willing to officially oppose the bill while the Administration maintains no official position on the legislation. In an April 19 letter to the Subcommittee, however, Chairman Gallegos rebutted criticisms levied against the Penn State Study.

In a June 14, 1994 letter to the crime bill conferees outlining the Administration's position on the crime bill, Attorney General Janet Reno cited the Administration's preference for a four-year, temporary extension of the 1986 ADEA exemptions for public safety officers, rather than the permanent exemption currently contained in the crime bill. Although OMB claims that Senator Metzenbaum was advised of the Administration's position in April, Metzenbaum is angry about the inclusion of this statement in this public letter. The Administration has advised Metzenbaum that it will not publicize or "work" this issue in the crime bill.

If signed into law, H.R. 2722 would undercut years of EEOC litigation (pre-1987) where the agency routinely challenged the use of arbitrary age limitations by police and fire departments. Further, the study required under this bill is impractical and redundant of the recently completed Penn State Study. See EEOC report on H.R. 2722 to House Education and Labor Committee Chairman William Ford dated September 22, 1993.

Related Legislation:

H.R. 167, Government Organization and Employees, Title 5 USC, Amendment.

Introduced in the House on January 5, 1993 by Congressman John Duncan, Jr., the bill repeals provisions of Title 5 USC which permit federal agencies to establish entry level age restrictions for federal law enforcement officers and firefighters.

The bill was referred to the House Committee on Post Office and Civil Service. No further Committee action has been scheduled on this bill.

H.R. 4227, Government Organization and Employees, Title 5 USC, Amendment.

Introduced in the House on April 14, 1994 by Congressman Thomas Manton, the bill amends Title 5 USC to provide that mandatory retirement age for members of the Capitol Police be made the same as that for law enforcement officers.

The bill was jointly referred to the House Committee on Post Office and Civil Service and Committee on House Administration. No further Committee action has been scheduled on this bill.

S. 1984, Government Organization and Employees, Title 5 USC, Amendment.

Introduced in the Senate on March 25, 1994 by Senator Howard Metzenbaum, the bill repeals provisions of Title 5 USC permitting mandatory retirement age for federal law enforcement officers and firefighters, Capitol Police, and air traffic controllers.

The bill was referred to the Senate Committee on Governmental Affairs. No further Committee action has been scheduled on this bill.

RELIGIOUS HARASSMENT:

In the summer of 1993, EEOC decided to propose consolidated guidelines on workplace harassment. The Commission believed it would be helpful to employers and employees to consolidate in one set of guidelines the existing legal prohibitions against workplace harassment on all of the bases covered by laws enforced by the Commission.

The Commission also believed that because of recent public attention on sexual harassment in the workplace, it was particularly important at this time to reemphasize that harassment on all other bases protected by EEOC-enforced laws is equally discriminatory and prohibited.

Therefore, on October 1, 1993, the Commission published its proposed Guidelines on Harassment Based on Race, Color, Religion, Gender, National Origin, Age and Disability in the Federal Register for public comment. When the comment period closed on November 30, 1993, EEOC had received a total 86 comments, of which more than 30 expressed concerns about the effect of the proposed Guidelines on religious freedom guaranteed by the First Amendment.

In December 1993, EEOC began to receive Congressional inquiries on behalf of individuals seeking to remove religion from the proposed Guidelines. In addition, by letter dated February 15,

**Summary of H.R. 2721:
The Federal Employee Fairness Act of 1994**

The proposed bill amends Section 717 of Title VII, Section 15 of the ADEA, Section 505 of the Rehabilitation Act of 1973, and Sections 7121 and 7702 of the Civil Service Reform Act. Under the proposed process, respondent agencies would no longer have the authority to investigate complaints of employment discrimination brought against them. The proposal also eliminates the current mixed-case processing scheme, and requires that an election be made initially under Section 717 of Title VII to have an administrative determination of a complaint made by either the EEOC, the MSPB, or under a negotiated grievance process.

Title VII

Agency Process: Aggrieved individuals must file a complaint within 180 days. Complaints may be filed with the EEOC, the respondent agency, or any other federal agency. A complaint against an agency in the intelligence community must, however, be filed with the respondent agency. If the complaint is filed with an agency other than the EEOC, the agency must send a copy of the complaint to the EEOC within 10 days of receipt. If the complaint was not initially filed with the respondent agency, the EEOC must transmit a copy of the complaint to the respondent agency within 10 days of receipt. The respondent agency is required to collect and preserve documents and information relevant to the complaint throughout the administrative and judicial process. The EEOC must issue rules concerning an agency's duty to collect and preserve documents and information within 1 year of enactment.

The respondent agency must inform the complainant of the applicable procedures and deadlines, must make reasonable efforts to conciliate each complaint, and must have a voluntary alternative dispute resolution (ADR) process available to the complainant. Where the respondent agency has an ADR process approved by the EEOC, there is a mandatory 20-day conciliation period, during which the complainant or representative must request and offer to meet once with an agency representative. The EEOC must issue rules and guidelines concerning ADR and conciliation processes within 1 year of enactment.

The agency with which the complaint is filed must notify the complainant in writing that he or she may, within 90 days of receipt of such notice, request a determination by the EEOC, by the MSPB, through the negotiated grievance process, or file a civil action. Where an EEOC-approved ADR process is in place, such a request may not be made until after the expiration of the 20-day conciliation period.

A stay of a personnel action (either already taken or about to be taken) may be requested by an employee at the conciliation stage. A stay request would be filed with the EEOC, which must appoint an AJ to review the request. The respondent agency is allowed to comment to the EEOC on the stay request.

Complaints must be dismissed if a grievance has already been filed on the same matter under 5 U.S.C. § 7121(d).

EEOC AJ Process: When a complainant requests that the EEOC make a determination, the EEOC sends a copy of the complaint to the respondent and must appoint an AJ within 10 days. The respondent must send copies of the documents and information it has collected to the AJ within 5 days of notification that a request for a determination by an AJ has been made. The AJ reviews the information collected by the respondent agency. If the AJ finds that the agency has failed to produce the relevant documents and information, the AJ may impose sanctions, including an adverse inference, and require the respondent to obtain additional documents or information. After examining the information submitted by the respondent, the AJ shall dismiss frivolous complaints, complaints which have not complied with the mandatory conciliation provision (where applicable), and complaints which fail to state a claim for which relief can be granted. Such dismissals are appealable to the Commission within 90 days, or may be the basis of a civil action by the complainant.

The AJ may issue subpoenas to compel the production of documents, information, or the attendance of witnesses, and may issue sanctions, including adverse inferences, against either party for failure to produce documents or information. The AJ may also request that a member of the Commission stay a discriminatory personnel action for 45 days (extendable). The respondent agency is allowed to comment to the EEOC on the stay request.

The AJ must make a determination on all claims not dismissed, after an opportunity for a hearing, within 210 days of the date the complaint was filed (760 days for class complaints). Discovery may be conducted by a party to the extent deemed appropriate by the AJ. During the hearing, the AJ must ensure that the record is developed for a full and fair determination of the complaint. A transcript of the hearing, paid for by the respondent agency, shall be provided upon request of either party or the AJ.

EEOC Appeal Process: Either party may appeal the AJ decision to the EEOC within 90 days of receipt. When the EEOC receives an appeal, it will transmit a copy of the request to the parties and the AJ. The AJ must send the record of the proceeding to the EEOC within 7 days of receiving such notification. After providing the

parties an opportunity to file briefs on the appeal, the EEOC must issue an order either affirming, reversing or modifying the AJ decision within 150 days. On appeal, the EEOC must accord substantial deference to the AJ's findings of fact, and shall affirm the AJ's determination if it is supported by a preponderance of the evidence and in accordance with the law.

Civil Actions: The complainant may file a civil action in district court for de novo review of a complaint within 90 days of receiving: notice of right to request an administrative determination; the AJ's determination; or the EEOC decision on appeal. The complainant may also file suit 20 days after the expiration of the time for an AJ or EEOC determination if no decision has been rendered. The filing of a civil action terminates the administrative process.

A complainant may file a civil action in district court to enforce a settlement agreement, an AJ order (which is not the subject of an administrative appeal or a de novo law suit), and an EEOC order (which is not the subject of a de novo law suit).

Remedies and Other Provisions: The respondent agency must pay amounts awarded from its own funds, with interest. Payment of awards, however, should not be made out of funds appropriated for salaries and expenses. An agency must provide paid administrative leave to complainants, and those participating for the benefit of complainants, for both administrative and civil actions. Where discrimination is found, but the respondent demonstrates under the evidentiary standard in 5 U.S.C. § 1221(e) that it would have taken the same action absent the discrimination, the court may grant declaratory and injunctive relief, attorney's fees and costs, but shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion or payment. The EEOC may determine that a federal employee who fails to comply with an AJ or EEOC order may not be paid a salary during the period of non-compliance. Where discrimination is found, a copy of the order shall be sent to the Office of Special Counsel for a determination as to whether disciplinary action is appropriate.

ADEA and CSRA

ADEA: The bill amends Section 15 of the ADEA to provide that a federal employee or applicant alleging discrimination may file a complaint in accordance with Section 717 of title VII. The amendment preserves the current option for the ADEA complainant to bypass the administrative process and file suit in district court so long as 30 days notice is given to the EEOC of intent to file suit. Such civil action must be filed within 2 years of the alleged discriminatory event.

CSRA: Under Section 7121 of Title V, an employee may file a grievance, but, as noted, filing such a grievance requires the dismissal of a subsequently filed complaint under Title VII. Section 7702 of Title V is amended to eliminate mixed-case procedures, and provides that a complainant must elect either the MSPB process, the grievance process, or the Title VII process, by filing a complaint under Section 717 of Title VII. There is no provision for EEOC review of MSPB decisions, or vice versa. The agency making a determination pursuant to this election must apply the substantive law of the agency that administers the law under which the complaint is brought. If the EEOC process is selected and the EEOC dismisses the complaint as frivolous, for failure to comply with mandatory conciliation requirements, or for failure to state a claim, the complainant may raise matters which do not involve discrimination under the grievance or MSPB process within 20 days.

Miscellaneous Provisions

Regulations: The bill provides that the EEOC must issue regulations within 1 year of enactment to assist agencies with the provision that they collect and preserve documents and information throughout the administrative and judicial process, and to establish a uniform notice for actions filed under Section 717 of Title VII. The EEOC must issue guidelines and standards on ADR within 180 days of the date of enactment. The EEOC must publish in the Federal Register, within 21 months of the date of enactment, the names of entities of the Federal government which provide ADR processes approved by the EEOC. The EEOC must also issue rules to ensure the protection of classified information and national security information in administrative proceedings under Title VII. OPM, in consultation with EEOC, must publish guidelines for maintaining personnel records. The EEOC must issue rules establishing a program and procedures to foster voluntary settlement of claims (no time period given for publication).

Report to Congress: EEOC must include information concerning employee participation in ADR programs and the effectiveness of such programs in its annual report to Congress. Agencies are required to provide information to the EEOC so that it can make such reports.

Effective Date: The bill provides for an effective date of January 1, 1997. The amendments will apply only to complaints filed on or after the effective date.

Budget

The bill indicates that it is the sense of Congress that there should be an increase in funding to the EEOC because of the additional administrative responsibility imposed upon the EEOC.

A total workload of 45,730 complaints and 16,117 appeals is projected in the first year of enforcement. AJs are estimated to process an average of 65 complaint resolutions per year under the new procedures, and appeals attorneys are estimated to process 130 decisions per year. Total cost impact is estimated at \$98,194,450 above current EEOC federal sector expenditures with a one-year implementation period, or \$69,927,878 above current expenditures with a three-year implementation period. These figures are based upon projected clerical and support staff, computer and equipment needs, overhead and staff training costs. They do not include other budget considerations, such as added infrastructure costs and other operational costs, such as mailing and travel expenses, which are difficult to estimate at this time. The Office of Communications and Legislative Affairs has additional information and charts which provide more specific information concerning the impact of this legislation upon the EEOC.

**Nutshell Summary of S. 404 :
Federal Employee Fairness Act of 1993**

The proposed bill amends Title VII, ADEA and the Civil Service Reform Act (CSRA) to change the federal sector complaint process. Individuals alleging discrimination must file a complaint within 180 days of the discriminatory event. Agencies must conciliate claims and offer counseling throughout the administrative process, although an employee's participation in both functions is voluntary. After attempted conciliation, an employee may elect to proceed administratively using EEOC, MSPB or negotiated grievance procedures. An administrative judge shall issue a determination on the complaint after a hearing using discovery within the judge's discretion and order necessary relief within 210 or 270 days from the filing of the complaint, the longer period applying to class complaints. Either party may appeal the administrative judge's determination to EEOC, and EEOC shall issue its decision within 150 days. The ADEA is amended to allow for administrative complaints using Title VII procedures, but there is no exhaustion requirement. The CSRA is amended to place the election requirement in section 717 of Title VII.

**Executive Summary of S. 404 :
Federal Employee Fairness Act of 1993**

The proposed bill overhauls the federal sector complaint process by making significant changes to Title VII, ADEA and the Civil Service Reform Act (CSRA).

The proposed bill requires agencies to make counseling available to employees throughout the administrative process, but counseling is not mandatory. It requires agencies to use alternative dispute resolution (ADR) procedures to conciliate claims during a 30 or 60 day period, although participation in ADR programs is voluntary. If conciliation proves unsuccessful, the employee has 90 days to elect to pursue administrative remedies available through EEOC, MSPB or negotiated grievance procedures. The employee may also elect at this point to file a civil action in an appropriate U.S. district court.

S. 404 substantially revises the complaint processing methods currently used by the EEOC and its administrative judges. At the pre-hearing stage, the respondent Federal entity's role is limited to providing relevant information, documents and testimony necessary for the hearing. An administrative judge is appointed by the EEOC to issue a determination on the complaint and order necessary relief within 210 or 270 days from the filing of a complaint, the longer period applying to class complaints. While a respondent would no longer be authorized to unilaterally modify or vacate a determination by an administrative judge, any party may appeal an initial determination to EEOC. The EEOC shall affirm, modify or reverse the findings of the administrative judge within 150 days of receiving the request.

A complainant may file a de novo lawsuit in U.S. district court within 90 days of receiving notice of the right to request an administrative determination. Otherwise, an employee may file suit where the applicable time limit for an administrative judge's determination or EEOC's decision on appeal has expired until 90 days after receiving a decision by the administrative judge or EEOC. A prevailing non-Federal party may collect reasonable attorney's and expert fees, costs and interest. Any amount awarded must be paid from the respondent Federal entity's appropriated funds. A complainant or EEOC may bring suit to enforce a settlement agreement, an administrative judge's order, or an order of the Commission.

The bill amends the ADEA to allow employees to file complaints with EEOC using Title VII procedures. It continues to allow employees to bypass the administrative process provided they give EEOC at least 30 days notice of their intent to sue and the suit is brought within 2 years after the alleged violation.

The CSRA is amended to place the election requirement in section 717 of Title VII. The current mixed case scheme and special panel procedures have been deleted.

**Summary of S. 404 :
Federal Employee Fairness Act of 1993**

The Federal Employee Fairness Act of 1993 proposes to amend sections 701 and 717 of Title VII of the Civil Rights Act of 1964, section 15 of the Age Discrimination in Employment Act of 1967, and sections 7121 and 7702 of the Civil Service Reform Act of 1978. The proposed effect on each of these statutes is summarized below.

Proposed Amendments to Title VII

Alternative Dispute Resolution (ADR)

Although S. 404 requires agencies to use alternative dispute resolution processes to conciliate each claim alleged in a complaint, a complainant's participation in ADR is voluntary and does not affect his rights. ADR procedures take place during a 30-day period beginning on the date respondent receives the complaint, and may be extended an additional 30 days with the complainant's consent to enable the parties to enter into a settlement agreement or otherwise resolve the complaint. If the ADR procedures require a conciliator, the conciliator shall be appointed by the EEOC.

If the parties fail to settle the complaint during the applicable ADR period, the respondent Federal entity must notify the complainant in writing, before the ADR period expires, that the employee has 90 days from receipt of such notice to make a written request with the EEOC for (1) a hearing on the claim before an EEOC administrative judge, (2) a determination by the MSPB if the claim is within the MSPB's jurisdiction, or (3) a determination under grievance procedures for claims not appealable to MSPB. A complainant may not pursue further administrative or judicial remedies until the applicable ADR period has expired.

Administrative Complaint Process

The proposed bill requires agencies to make counseling available throughout the administrative process to an employee who believes a Federal entity has discriminated against him, but such counseling is not mandatory. An agency must also assist an employee in naming the proper respondent in his complaint, and inform the employee of all applicable procedures and deadlines.

Under the proposed bill, an employee is obligated to file his complaint of discrimination with the Federal entity where the discrimination allegedly occurred or any other entity of the Federal Government, including the EEOC, within 180 days of the discriminatory event. Within 3 days after receiving the complaint, the respondent must notify the Commission of the complaint and the identity of the aggrieved employee. Within 10

days after receiving the complaint, the respondent must transmit the complaint to the Commission.

EEOC Administrative Judge Process

If, at the conclusion of the ADR process described above, the complainant files a request with EEOC for a hearing before an administrative judge, EEOC must transmit a copy of the request to the respondent and appoint an administrative judge to make a determination on the claim. Should the complainant elect to have his claim determined by MSPB or through grievance procedures, EEOC must transmit complainant's request to the appropriate agency. After receiving a copy of complainant's request for an administrative determination by the EEOC or the MSPB, the respondent must transmit a copy of all documents and information relevant to the claim to the appropriate agency.

A respondent must collect and preserve all documents and information relevant to a claim of discrimination, in accordance with rules issued by the Commission, from the time a complaint is received until all available administrative and judicial proceedings are concluded. A person who is alleged to have participated in the discrimination or who, as the complainant's supervisor, is alleged to have been aware of the discrimination but failed to take reasonable action to stop the discrimination may not fulfill the recordkeeping requirements or conduct any investigation relating to the complaint.

Upon determining that the respondent has failed to produce all relevant information in response to the complaint without good cause shown, the administrative judge shall require the respondent to provide any additional necessary information and documents and to correct any inaccuracies in the information and documents received.

An administrative judge may dismiss any frivolous claim contained in the complaint, or a complaint failing to state a claim for which relief can be granted. If a claim or complaint is dismissed by the administrative judge, the employee has 90 days from the date such notice is received either to request that the EEOC review the dismissal or to commence a civil action in U.S. district court. For those claims not dismissed, the administrative judge shall conduct a hearing and make a determination on the merits of each nonfrivolous claim including those appealable to the MSPB which arise from the factual circumstances of the complaint. Following a determination that an employee was subject to discrimination, the administrative judge shall notify the person who engaged in discrimination of the allegations raised in the complaint. The written determination of the administrative judge must generally be issued within 210 days from the filing of an individual complaint, or 270 days after the filing of a class complaint, and

may not be reviewed, modified or vacated by the respondent Federal entity.¹ Unless a civil action is brought within the 90 day period, any party may bring an appeal, requesting that EEOC review the determination of the administrative judge, and affirm, reverse or modify such determination generally within 150 days of receiving the request.²

Discovery is available to the same extent as in a civil action within the discretion of the administrative judge. Any party failing to respond completely and timely to a discovery request made or approved by the administrative judge, when the request for information or a witness is within the control of the party failing to respond, may be subject to sanctions deemed appropriate by the administrative judge. For example, the administrative judge may draw adverse inferences concerning information or testimony withheld and consider those matters to be established in favor of the opposing party, exclude evidence offered by a party failing to respond, grant relief to the employee, or take any other action considered appropriate.

Subpoenas shall be issued by the administrative judge to compel the production of information or the attendance of witnesses from the alleged discriminating Federal entity. Subpoenas shall be issued by the Commission to compel the production of information or the attendance of witnesses from other Federal and non-Federal entities. Jurisdiction is vested in the U.S. district court system to enforce non-compliance with subpoenas issued in EEOC administrative proceedings.

Remedies - Administrative Process

The administrative judge is authorized to award any and all relief contained in section 706 (g) and (k) of Title VII including equitable relief for intentional discrimination, reasonable attorney's fees for a prevailing non-Federal party, and costs.

¹ The time limit for an administrative judge to issue an order will not begin to run until 30 days after the administrative judge is assigned to the case if he or she certifies in writing that the 30 day period is necessary to complete the administrative record. The bill also contains provisions for an additional 30 day extension of the time limit and for further extension by the Commission if manifest injustice would occur without the extension.

² The bill provides an additional 30 days for the EEOC to issue its determination where it certifies in writing that an extension is necessary because of unusual circumstances that prevented the Commission from complying with the initial 150 day time limit.

The administrative judge shall decide whether the claim may be maintained as a class proceeding, and, if so, establish the relevant members of the class to the proceeding.

An EEOC administrative judge may request that a member of the Commission stay a personnel action by the respondent against the employee, such stay to exist for a maximum of 45 days, or for any period deemed appropriate by the full Commission.

Referral to Special Counsel

An order by the administrative judge or Commission finding intentional unlawful discrimination shall be referred to the Special Counsel within 30 days of the issuance of the order. The Special Counsel shall thereafter conduct an investigation and may initiate disciplinary proceedings against any person identified as engaging in intentional unlawful discrimination.

Recordkeeping and Rulemaking

Each respondent Federal entity shall submit a report to the EEOC by October 1 of each year describing the resolution of complaints during the preceding year, and the measures taken by respondent to lower the average number of days necessary to resolve such complaints. By December 1 of each year, EEOC shall submit to Congress a report summarizing the information reported by all respondents.

Within 1 year after the date of enactment of the Act, EEOC shall issue rules to assist Federal entities in complying with section 717(d) of Title VII, as amended by the Act. The rules shall establish a uniform written official notice to facilitate compliance with section 717, and requirements relating to a respondent Federal entity's collecting and preserving documents and information.

The EEOC, in coordination with Federal intelligence agencies, shall issue regulations to ensure the protection of classified and national security information used in administrative proceedings. The regulations must ensure that complaints bearing upon classified information must only be handled by personnel with appropriate security clearances.

Suit Rights

An employee may file a lawsuit in U.S. district court for de novo review of a complaint within 90 days of receiving notice from the respondent Federal entity that the employee may request an administrative determination by the EEOC, MSPB or under a negotiated grievance procedures. Moreover, an employee may commence a civil action in U.S. district court where the

applicable time period for the administrative judge's determination or EEOC's decision on appeal has expired until 90 days after receiving the administrative judge's determination or EEOC's decision. When a lawsuit is timely filed, the administrative judge's or Commission's jurisdiction over the case ceases.

Remedies - Civil Actions

The proposed bill allows a prevailing party in a civil action, except for a Federal entity, to collect reasonable attorney's and expert fees, costs, and interest. Any amount awarded must be paid from funds made available to the Federal entity by appropriation or otherwise.

A prevailing party or the Commission may bring a civil action in an appropriate U.S. district court to enforce (1) a settlement agreement, (2) the order of an administrative judge if not subject to further administrative or judicial review, or (3) an order by the Commission if not subject to further judicial review.

Effective Date

Although the proposed effective date of the Act is January 1, 1994, the amendments to section 717 of Title VII apply only to complaints filed on or after the effective date of the Act.

Proposed Amendments to the ADEA

The proposed bill amends section 15 of the Age Discrimination in Employment Act by allowing federal employees to file a complaint with EEOC using the same procedures as those under Title VII. Under the ADEA, the EEOC and its administrative judges are vested with broad authority to award legal or equitable relief to an individual as will effectuate the purposes of the ADEA. An individual alleging age discrimination may also bypass the administrative process entirely, and commence a civil action in an appropriate U.S. district court provided that EEOC is given at least 30 days notice of the intent to file suit and the suit is brought within 2 years after the alleged violation.

Proposed Amendments to Grievance Procedures

The bill proposes to amend section 7121 of the Civil Service Reform Act to delete the current provision requiring election between a statutory procedure and the negotiated grievance procedure. The bill places the election requirement currently found in section 7121(d) into section 717 of Title VII. Thus, actions appealable to MSPB or covered under laws administered by the EEOC may be raised under negotiated grievance procedures

provided that the employee makes such an election under section 717 of Title VII.

An employee or applicant who is affected by an action appealable to MSPB and who alleges that a basis for the action was discrimination prohibited by a statute or regulation enforced by EEOC shall file a complaint with EEOC and elect to pursue the negotiated grievance, MSPB or EEOC procedures. The bill proposes to eliminate the current mixed case scheme in which complainants may request EEOC review of MSPB decisions and vice versa. It also eliminates the special panel procedures currently found in section 7702. If an employee elects to follow EEOC procedures and his complaint is dismissed by the EEOC, the employee shall have 90 days to pursue the action through negotiated grievance or MSPB procedures.

An employee may commence within 120 days of a final decision on his or her grievance a civil action in an appropriate U.S. district court. If a final decision has not been made on an employee's grievance after 120 days following the election, an employee may file a civil action in an appropriate U.S. district court within an additional 120 days.

DETERMINED TO BE AN ADMINISTRATIVE
 MARKING Per E.O. 12958 as amended, Sec. 1.7
 Initials: DMS Date: 8/23/05

~~CONFIDENTIAL~~

DRAFT 7/14 STATEMENT OF DEVAL L. PATRICK, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES, UNITED STATES SENATE, CONCERNING S. 2238, THE EMPLOYMENT NON-DISCRIMINATION ACT OF 1994, JULY 19, 1994.

Mr. Chairman and Members of the Committee, I am pleased to provide this testimony today on the issues addressed in S. 2238, the Employment Non-Discrimination Act of 1994.

Americans should be able to find jobs, keep jobs and earn promotions based on their qualifications and the quality of their work, not on irrelevant characteristics. This has been a core value in this country for many years. The President and this Administration vigorously support the principle of non-discrimination in employment. As you know, forty years ago, the Supreme Court began the modern civil rights era by deciding Brown v. Board of Education, and thirty years ago Congress enacted the Civil Rights Act of 1964, including Title VII prohibiting discrimination in employment based on race, color, religion, sex and national origin. In 1967, the Age Discrimination in Employment Act was enacted to protect older Americans. Most recently, in 1990, Congress enacted the Americans with Disabilities Act to extend full civil rights protections to persons with disabilities.

As the President said in Riga, Latvia, recently, "Freedom without tolerance is freedom unfulfilled." In that spirit, and consistent with our historic national commitment to tolerance,

this Administration believes the principle of non-discrimination in employment should be extended to include sexual orientation.

As past debates in Congress have shown, characteristics such as race, religion, sex, age and disability have no relevance to the ability of an individual to perform required functions of a job. Quite often, and unfortunately, prejudice and stereotypes held by some employers limit a person's ability to obtain and keep a job.

Our Nation prides itself on embracing the principle that persons should be judged based on merit and ability, not on class, culture or other extraneous factors. Our civil rights laws reflect this principle. By allowing employment discrimination on the basis of sexual orientation, our society cheats itself out of the contributions of very able and talented individuals throughout the Nation. As the international market place becomes increasingly competitive, America does not have the luxury of wasting talent.

In the past, Congressional advocates of providing civil rights protections for gay men and lesbians have introduced omnibus bills that amended all existing civil rights laws to include sexual orientation. These bills attempted to provide civil rights protection in public accommodations, public facilities, federally assisted programs, employment and housing.

We believe it is important to take a narrower and more focused approach, that, like S. 2238, begins with the core Title VII principle: ban discrimination in employment.

The notion of providing antidiscrimination protection is not so novel as to be untested in the public and private sectors. Longstanding Federal employment policy prohibits discrimination based on non-job-related conduct, including discrimination based on sexual orientation. We know of nothing in that experience to suggest a loss or reduction in productive capacity or workplace goodwill. Eight states and over 50 local governments provide some form of protection. In the private sector, companies such as General Motors, Miller Brewing Company, Citicorp, IBM, and AT&T have policies of non-discrimination based on sexual orientation. A number of these employers also provide the same degree of employee benefits to a person's partner, without regard to sexual orientation.

Until this year, Congress had not heard testimony on the issue of employment discrimination based on sexual orientation in nearly 15 years. I trust that over the course of these hearings you will hear from many witnesses who will document the problems faced by lesbians and gay men in employment and their testimony will build a useful and solid record on the problems of employment discrimination based on sexual orientation.

Mr. Chairman, I appreciate the opportunity to appear before you this morning. We expect to have some technical comments on the bill, which we would like to supply for the hearing record. Beyond that, the Department of Justice stands ready to work with you and the Committee to develop a fair and effective bill to eliminate employment discrimination based on sexual orientation.

NCLR
NATIONAL COUNCIL OF LA RAZA

The
EMPTY PROMISE

The EEOC and Hispanics



Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a publication.

Publications have not been scanned in their entirety for the purpose of digitization. To see the full publication please search online or visit the Clinton Presidential Library's Research Room.

**Press Conference
Tuesday, May 24, 1994**

Participants:

**Deval L. Patrick,
Assistant Attorney General
for the Civil Rights Division
United States Department of Justice**

**Mari Mayeda,
Saperstein, Mayeda & Goldstein**

**John Relman,
Washington Lawyers' Committee
for Civil Rights and Urban Affairs**

RIDGEMAN V. DENNY'S
INDIVIDUAL INCIDENTS OF DISCRIMINATORY TREATMENT

A. The San Jose Plaintiffs

On December 30, 1991, after attending a college forum sponsored by the San Jose NAACP and alumni from Tuskegee University, 18 teen-agers¹ went to a Denny's Restaurant in San Jose. The Denny's manager refused to seat the group unless they agreed to pay a \$2.00 cover charge and pay for their meals in advance. The manager stated that it was Denny's policy that customers pay a cover charge and pre-pay for meals.

One of the members of the group, Kristina Ridgeway, recognized several white classmates seated in the restaurant. She asked if they had paid a cover charge or pre-paid for their food. They responded that they had not. After the manager continued to refuse to seat the group until they paid a cover charge and pre-paid for their meals, the group left the restaurant.

Subsequently, news of the incident was reported in the local newspaper and by television stations in the San Francisco Bay area and triggered the investigation that led to the filing of the Ridgeway and United States cases.

B. The Maxwells

On November 16, 1991, Michael Maxwell, a San Francisco police officer, and his wife, Demetroce, and 13 other family members went to a Denny's Restaurant in San Diego, after watching Mrs. Maxwell's brother play in his last college football game for

¹ Plaintiffs, BRYAN AVERY, AYANA BELL, RODNEY BRADDOCK, KENNETH CLAUSELL, SHARRA CLAUSELL, ALLISON CLAY, JENNIFER CLAY, CHAD COLEMAN, DOROTHY JONES, LAMONT JONES, ANDRE MITCHELL, KRISTINA RIDGEWAY, MURIEL SHAW, MIKE TAYLOR, YENDIS THOMAS, ALEX WALDRON, LISA WASHINGTON, CAROL WILLIAMS.

San Diego State University. Mr. and Mrs. Maxwell and eight of their party were seated together and told they had to pre-pay for their food. The other members of the Maxwell's group including Mrs. Maxwell's father had not been required to pre-pay. When Mrs. Maxwell asked the manager why some of the group had to prepay while others did not, the manager replied that the waitress had made a mistake by not requiring them all to pre-pay. Members of the Maxwell party observed at least six white customers walk to the register and pay after they had consumed their meals. Mrs. Maxwell asked three white males eating in a booth behind her if they had to pre-pay. They told her they had not.

C. The Thompson Family

Sue Thompson is Samoan. Her husband Danny, is African-American. On December 11, 1991, they and their three children, Rachel, Jason and Danny, Jr., went out to dinner to celebrate Rachel's a thirteenth birthday. Because it was Rachel's birthday, she got to pick the restaurant. She chose a Denny's Restaurant in Vallejo. At the time, Denny's offered a free meal to a customer on his or her birthday.

When the waitress took Rachel's order, Mrs. Thompson informed the waitress that it was Rachel's birthday and gave her Rachel's baptismal certificate which contained her birthdate. The waitress did not look at the certificate, but immediately said she would have to get her manager to approve it. When the manager arrived at the Thompsons' table, Mrs. Thompson gave her

the baptismal certificate which had Rachel's date of birth on it. The manager, however, refused to take it and instead asked for a school identification card. When Rachel gave the manager her school card, the manager said it was insufficient. Rather than continue to be humiliated, the Thompsons left the restaurant without ordering.

D. The Roddys

On the morning of July 25, 1993, the Roddy family, four adults 3 teens and newborn child, were traveling from their home near Fresno on a family vacation. They stopped at a Denny's Restaurant in Mojave for breakfast. Although there were many vacant booths and tables throughout the Restaurant, the Roddy's were told they would have to wait to be seated.

While waiting nearly an hour, the Roddys witnessed 5 groups of white customers totalling 15 persons enter the Denny's Restaurant. These customers were all seated and served while the Roddy's continued to wait. Realizing they were not going to be seated, the Roddys exited the Restaurant. One of the later arriving white customers, Michael Daugherty, left his seat and followed the Roddys outside Denny's. Michael Daugherty, his wife Pam and their teenage son were also on vacation travelling to Yosemite National Park. Michael Daugherty told the Roddys he witnessed their mistreatment and was appalled. Mr. Roddy re-entered Denny's at the insistence of Mr. Daugherty and requested the name of the manager. Pamela Daugherty has since provided a declaration attesting to the discrimination she witnessed.

Biography of Sharon Lybeck Hartmann

Civil Rights Monitor

Since 1991, Sharon Lybeck Hartmann has served as civil rights monitor of the consent decree entered in Mould v. Palmdale 112, a California case, in which housing discrimination was alleged against African Americans and Latinos. The decree affects 32 apartment complexes and over 4,000 units of housing in Southern California. Ms. Hartmann investigates complaints, runs tests to assure that the 40 pages of decree requirements are being implemented properly, checks advertisements, writes an annual report and participates in employee training.

A Los Angeles attorney in solo practice, Hartmann has been a member of the faculties of the Boalt Hall School of Law at the University of California, Berkeley; the UCLA Law School; and Loyola Law School, Los Angeles. She has also been an attorney at Irell & Manella and at Hufstedler, Kaus & Ettinger. She serves on the Boards of Directors of the Inner City Law Center, the Western Law Center for Disability Rights, Centro Latino Educación Popular and the Rose Foundation for Communities and the Environment. She has done pro bono civil rights work for the ACLU, the Westside Fair Housing Counsel and the NAACP. In 1988, the Legal Aid Foundation of Los Angeles honored her with an award for the pro bono work which she did with them on behalf of the homeless. From 1980 to 1983, she served as law clerk to two federal judges, the Hon. James Fitzgerald, U.S. District Judge for the District of Alaska, and the Hon. Warren J. Ferguson of the U.S. Court of Appeals for the 9th Circuit. She graduated from Boalt Hall in 1979. While at Boalt, she was Editor-in-Chief of the Industrial Relations Law Journal.

Law is Hartmann's career. From 1966 to 1976, she taught English at Agoura High School in Southern California and also served as department chair. In 1973, she was named one of the outstanding secondary teachers in the United States. She received her undergraduate degree with honors from UCLA in 1960 and her teaching credential in 1961. She was then selected for Teachers for East Africa, a Peace Corps predecessor group, and from 1961 to 1963, she taught at Mzumbe Government Secondary School for Boys in Morogoro, Tanzania. Hartmann was the second woman ever posted to a male boarding school in East Africa.

Hartmann was born in Los Angeles in 1939, and lives in the racially diverse, South Central area of the city.

Saperstein, Mayeda & Goldstein

A Professional Corporation

1300 Clay Street, 11th Floor

Oakland, California 94612

510/763-9800

510/836-1417 FAX

EMBARGOED

DO NOT RELEASE UNTIL MAY 24, 1994 AT 11:30 A.M. EST

CONTACT: NANCY THOMPSON (202) 371-1999

SAUNDRA GREEN (510) 763-9800

**RECORD \$45.725 MILLION SETTLEMENT OF RACE DISCRIMINATION
CASES AGAINST DENNY'S RESTAURANTS**

In the largest settlement in a public accommodations case in history, the California law firm of Saperstein, Mayeda & Goldstein and the Public Interest Law Firm today announced that they have reached a \$28 million settlement in a class action lawsuit charging Denny's restaurants in California with race discrimination. The case, Ridgeway v. Denny's, was consolidated with a similar case brought by the United States Justice Department which also announced a joint settlement today for injunctive relief. Denny's also has settled a separate class action case, Dyson v. Denny's, et al., filed in Maryland, for approximately \$17.725 million which covers the rest of the country.

The Ridgeway case was filed by Saperstein, Mayeda & Goldstein of Oakland, California and the Public Interest Law Firm of San Jose, California in federal court in San Jose in March, 1993, resulting from an incident in December, 1991 where a group of 18 high school and college students, members of an NAACP Youth Group, attended a college forum sponsored by alumni of Tuskegee University. After the event, they attempted to eat at a San Jose Denny's. They were told they would have to pay a cover charge prior to being seated and pay for their food in advance. They spotted Caucasian friends who were eating in the restaurant and asked if they had been required to pay in advance or pay a cover charge. The Caucasian friends said that they had not been required to do either.

Under the settlement presented to the court in California, Denny's is required to pay \$28 million in monetary relief. The California settlement provides for nationwide testing of

Denny's restaurants by independent civil rights organizations, provides for increased representation of African Americans and other minorities in Denny's advertisements, and provides for training of employees and franchisees. Under the settlement, customer complaints of race discrimination will be investigated and reviewed by an Independent Civil Rights Monitor.

"This settlement will make Denny's the industry leader in equal treatment of customers," stated Mari Mayeda of Saperstein, Mayeda & Goldstein, lead counsel for the private plaintiffs. She noted that Denny's had taken the allegations of discrimination seriously and had taken the lead in working toward a prompt resolution of the cases.

"The settlement demonstrates Denny's commitment to treating all customers equally," noted Patricia G. Price, Directing Attorney for the Public Interest Law Firm.

The Ridgeway settlement must be approved by the Court. Notice will be sent to class members, and a final fairness hearing is scheduled for July, 1994. "The case demonstrates that when the government and private bar work together, vigorous enforcement of the civil rights laws is obtained," stated Ms. Mayeda, referencing the nearly three years during which the private law firms in California worked extensively with the Civil Rights Division of the Justice Department.

Saperstein, Mayeda & Goldstein also recently settled a \$107 million employment discrimination case against Lucky Stores. The firm also obtained the largest recovery ever in a sex discrimination employment case, Kraszewski v. State Farm General Ins. Co. (\$245 million), and the largest race discrimination employment case, Haynes v. Shoney's Inc. (\$132.5 million).

A press briefing with the California plaintiffs will also be held on May 25, 1994 at the Park Hyatt Hotel, 333 Battery Street, San Francisco. Person who believe they are members of the class may obtain information by calling 1-800-836-0055.

###



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, MAY 24, 1994

CR
(202) 616-2765

DEPARTMENT OF JUSTICE SETTLES LANDMARK DISCRIMINATION CASE AGAINST DENNY'S RESTAURANTS

WASHINGTON, D.C. -- Denny's Restaurants, which was accused of discriminating against black patrons, has agreed to pay a record \$46 million in damages and launch a nationwide program to avert future discrimination, the Justice Department announced today. The settlement contains the most sweeping preventive measures and the largest monetary damages ever in a public accommodations case.

The agreement, in the form of two consent decrees filed in U.S. District Courts in San Jose and Baltimore, resolves two suits that accused Denny's of failing to serve blacks, requiring blacks to pre-pay, and forcing them to pay a cover charge. In one instance, black Secret Service officers who accompanied President Clinton were denied service at a Denny's in Annapolis, Maryland. Forty blacks alleged discrimination in the California case.

In announcing the settlement, Assistant Attorney General for Civil Rights Deval L. Patrick said, "Unfair standards employed by restaurants must no longer be standard fare."

In March 1993, after receiving several complaints about racially-motivated incidents in California, the Justice Department

(MORE)

and a group of African-Americans sued Denny's for engaging in a pattern of discrimination in violation of Title II of the Civil Rights Act of 1964, also known as the Public Accommodations Act. On April 1, 1993, Denny's entered into a consent decree which required it to implement programs that would prohibit future discrimination in California.

However, on that same day employees at a Denny's in Annapolis, Maryland, refused to serve six black Secret Service officers. The officers as well as a group of African-Americans from across the country then sued. One of today's consent decrees settles the action stemming from the Maryland incident. The other consent decree substantially amends the April 1993 decree so that it applies to all of its 1,500 restaurants and franchises.

Under the California decree, Denny's will pay \$28 million in damages and \$6.8 million in attorneys fees. Each of the 40 plaintiffs will receive \$25,000 and the remainder will be divided to any victims of the discriminatory conduct that can be identified. In the Maryland decree, Denny's will pay \$17,725 million in damages and \$1.9 million in attorney's fees. The six Secret Service officers each will receive \$35,000 and the 12 other named plaintiffs will receive \$15,000 each. The remainder will be divided to any victims that are identified later.

The otherwise identical decrees also require Denny's to:

- retain an independent Civil Rights Monitor, with broad responsibilities, to monitor and enforce compliance with the decrees;

(MORE)

- educate and train current and new employees in racial sensitivity and of their obligations under the Public Accommodations Act;
- implement a testing program to monitor the practices of its company and franchised-owned restaurants, including conducting 625 nationwide tests in the first year of the decree;
- feature African-American and members of other racial minority groups as customers and employees in advertising to convey to the public that all potential customers, regardless of their race or color, are welcome at Denny's.
- include a nondiscrimination statement in all advertisements on television, radio and print media.

The decrees, which are subject to court approval, will remain in effect for at least five years.

"Today's action demonstrates the heights we can reach when private civil rights attorneys and the federal government work cooperatively to enforce the civil rights laws of this country," added Patrick.

#

94-278

U.S. Equal Employment Opportunity Commission
Office of Communications and Legislative Affairs
1801 L Street, NW, Room 9024
Washington, DC 20507
FAX # (202) 663-4912

FAX TRANSMITTAL FORM

DATE : 7/22/94 TIME: _____

TO : Steve Warrath

FAX TELEPHONE NUMBER: 456-7028

SENDER: Claire Gonzalez

CHECK ONE:

OCLA
(202) 663-4900

SURVEYS
(202) 663 - _____

OFO
(202) 663- _____

OM
(202) 663- _____

OGC
(202) 663 - _____

OLC
(202) 663- _____

OEEO
(202) 663- _____

DOCUMENT: Articles on Hig - Just in case you haven't seen them

NUMBER OF PAGES TRANSMITTED (INCLUDING COVERSHEET): 4

SPECIAL INSTRUCTIONS: _____

Please telephone the appropriate office above if you do not receive all documents.

Washington Times 7/22/94

EEOC nominees vow to revitalize agency

By Ruth Larson
THE WASHINGTON TIMES

President Clinton's long-awaited nominees for chairman and two commissioners of the backlogged Equal Employment Opportunity Commission testified before the Senate yesterday and vowed to bring the agency back up to speed.

"These nominations have been a long time in coming, and I regret it's taken so long," Sen. Paul Simon, Illinois Democrat and chairman of the Labor and Human Resources Committee, told Gilbert F. Casellas, Mr. Clinton's nominee to head the EEOC, and Commissioners-designate Paul M. Igasaki and Paul S. Miller.

Mr. Simon characterized the EEOC as "an agency in trouble," faced with steadily mounting case backlogs and a diminishing role in enforcing laws against discrimination. He noted that the EEOC held 60 meetings in 1980 but just three in 1990.

Mr. Casellas, 41, who has been the Air Force general counsel since November, pledged that he would work to "reclaim our rightful role... as the lead agency for equal employment law enforcement." He said his first objective would be to tackle those backlogs

by reorganizing and streamlining the EEOC.

"I will welcome public scrutiny and debate, and I will eagerly engage in and invite discussion of controversial issues," Mr. Casellas said. "The EEOC can only maintain its credibility if its leadership is willing to have open doors and open minds and listen to the many communities that have a stake in what we do."

If confirmed, the nominees would face daunting challenges. The Federal Employees Fairness Act now being considered in Congress, for example, would give the EEOC — not agencies — primary responsibility for investigating charges of government workplace discrimination.

Mr. Casellas was wary of the proposal, saying, "If Congress decides to turn this over to EEOC, it will overwhelm an already overwhelmed system."

He added that the EEOC might need to acquire workers from other agencies.

The issue of religious harassment in the workplace is among the most controversial facing the commission. Critics say proposed EEOC guidelines that rule out any type of religious harassment would, in effect, prohibit workers from expressing their beliefs.

All three nominees agreed that the commission needs to strike a balance: protecting the freedom to express religious beliefs while eliminating discrimination or harassment based on religion. They said they plan to read thousands of statements received during the public comment period before deciding how to proceed.

If confirmed, the three nominees would bring the five-member commission up to full strength. The administration had been under increasing pressure to fill the vacancies at the EEOC, which enforces federal laws prohibiting employment discrimination on the basis of race, color, religion, sex, age, national origin or disability.

Tony E. Gallegos had served as acting chairman since April 1993. The two commissioners' posts have been vacant since Evan J. Kemp Jr. resigned in April 1993 and George Cherian left in July of that year.

Critics say the absence of a permanent chairman and other commission vacancies contributed to an agency unable to focus on mounting caseloads.

About 100,000 complaints are filed annually, and it takes about 18 months to process a claim, compared with three to six months a decade ago.

The nominees spoke movingly of their own brushes with racism and other forms of discrimination.

Mr. Miller, 33, deputy director of the U.S. Office of Consumer Affairs and White House liaison to the disabled community, is less than 5 feet tall. He told of law firms losing interest in employing him when they saw him. One even said they feared clients would think they were running "a circus freak show." Such comments would now be illegal under the Americans With Disabilities Act.

Mr. Igasaki, 38, is executive director of the Asian Law Caucus Inc. in San Francisco. He told how his parents met in an internment camp during World War II, and of his grandparents' journey to make their home in America.

"In 1942," he said, "wartime hysteria and racial hatred led to their losing those homes, losing much of what represented the American dream, to be sent to what amounted to concentration camps in the desert, due only to the color of their skin and the ancestry of their forebears."

"As a Japanese-American," Mr. Igasaki said, "no other experience has had a greater influence on me and my view of the law and of civil rights."

7-22-94

(No. 139) AA-1

BNA's Daily Reporter System

DAILY LABOR REPORT

LEADING THE NEWS

THREE EEOC NOMINEES APPEAR HEADED FOR CONFIRMATION AFTER LOW-KEY HEARING

Three attorneys named by President Clinton to serve on the Equal Employment Opportunity Commission appear headed for prompt confirmation by the Senate, after a low-key hearing before the Labor and Human Resources Committee July 21, where the nominees promised to look at new approaches to address the crisis situation of the beleaguered agency.

"We're going to look at the commission with a clean sheet approach," said Chairman-designate Gilbert Casellas, a Philadelphia attorney who has been serving as general counsel of the Air Force for the past eight months. "We have to come up with something creative, something different, or the system is going to crash."

Casellas, formerly a litigation partner with Montgomery, McCracken, Walker & Rhoads, was named to the chairman's job in June, capping an 18-month search by the administration (113 DLR A-13, 6/15/94).

Of Puerto Rican descent, Casellas, 41, has been active in Hispanic bar and community activities and was praised by both Senators from Pennsylvania for a "commitment to equality, opportunity, and justice."

Two nominees for commissioner's posts—Paul M. Igasaki and Paul Steven Miller—also appeared before the committee. Igasaki, who will be designated vice-chairman of the commission, is executive director of the Asian Law Caucus in San Francisco and was previously a representative of the Japanese-American Citizens' League and the Asian-American Community Liaison on the Chicago Commission on Human Resources.

After his activity in the Clinton-Gore campaign, Miller most recently was deputy director of the U.S. Office of Consumer Affairs and White House liaison to the disability community. He was previously director of litigation for the Western Law Center for Disability Rights, a Los Angeles-based non-profit, legal services center.

Simon: 'Aggression' At EEOC

Sen. Paul Simon (D-Ill), who chaired the hearing, expressed dismay over the administration's delay in filling the key civil rights job, but said he was pleased with the final selections and called for the nominees to be "aggressive in a sensible way" in dealing with the commission's backlog of complaints and delays in charge processing.

With similar support voiced by Sen. Nancy Kassebaum (R-Kan), ranking minority member of the committee, and no opposition from civil rights organizations, the nominees should face an easy confirmation. Following the hearing, Simon told BNA that the committee is likely to vote on the nominations at its next meeting and that the full Senate should act before Congress adjourns for its August recess.

The three nominees will join two seated Republican commissioners, bringing the commission up to its five-member full strength. Ricky Silberman, who currently serves as vice-chairman, has a term expiring in July 1995 and Commissioner Joyce Tucker's term runs until August 1996.

The general counsel's job, which also requires Senate confirmation, remains vacant and has been held by career employee James R. Neely Jr. in his role as deputy general counsel since June 1993.

AA - 2 (No. 139)

LEADING THE NEWS

(DLR) 7-22-94

Casellas: Fixing What's Broken

In brief opening remarks, Casellas promised to examine new approaches and to "fix what's broken" at the commission.

"We must examine how we do our work and, if necessary, fix our operations to assure timely and quality work," he said, promising to "engage myself personally in any search for a new model of organizing our work."

Although he did not outline specific approaches, Casellas also assured the committee that the process would be "a collaborative one and will include our many constituent communities and Congress. In short, if I am confirmed, to those who have felt excluded, we are open for business; to those who criticize how we operate, we will operate as a business; and to those who doubt our commitment to vigorous enforcement, we mean business."

Responding to questions from Simon and Kassebaum, however, he said that expansion of EEOC's pilot alternate dispute resolution program would be one likely goal of the new commission. "A key to success is early intervention and to do it selectively," Casellas said, adding that disability discrimination cases involving reasonable accommodation might be one area where ADR could be applied and "handled in a less adversary" manner.

Casellas promised to take a close look in reviewing the controversial proposed guidelines on religious harassment, asserting a need to "strike an appropriate balance" on a "very complex, very sensitive issue."

He also assured the committee that the commission would hold more public hearings, engage in dialogues, and "discuss issues openly."

"It's a matter of credibility," he told the committee. "The public has to be able to see what you do, if there is to be any credibility."

Recalling Discrimination

All three nominees recalled their own early experiences with discrimination.

Casellas, the son of a letter carrier and seamstress, who grew up in Tampa, Fla., attended a segregated school established to educate black and Hispanic students for his first six years, before eventually going on to Yale and the University of Pennsylvania Law School.

He recalled the 30th anniversary of the Civil Rights Act of 1964 as the year when he first attended "school with white children" and could join a neighborhood boys club and go to downtown movie theatres that had been off limits. "I have a personal affiliation with the types of issues that I will confront as chairman," Casellas said.

Igasaki, the son of Japanese-American parents who met at an interment camp during World War II, said the experiences of "wartime hysteria and racial hatred" faced by his ancestors prompted him to pursue a career in civil rights law. "As a Japanese American, no other experience has had a greater influence on me and my view of the law and of civil rights," he said.

Miller, who is a little person, found that after graduation from Harvard Law School in 1986 "the very law firms that had pursued me would immediately lose all interest in employing me as soon as they saw me or learned of my size." He recalled one incident where he was told that the firm would have no problems, "but feared that their clients would think they were running 'a circus freak show' if they were to see me as a lawyer in their firm."

End of Section