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**PUBLIC AND PRIVATE ENFORCEMENT  
OF TITLE VII OF THE  
CIVIL RIGHTS ACT OF 1964—  
A TEN-YEAR PERSPECTIVE**

**THOMAS R. EWALD\***

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Discrimination in employment subjects female and minority group workers to heavy losses in earnings, in training for advancement and job security, and in human dignity. Inequality of employment opportunity has been recognized as a fundamental source of public problems, especially in urban areas.<sup>1</sup> In Title VII of the Civil Rights Act of 1964,<sup>2</sup> Congress enacted comprehensive legislation prohibiting a full range of discriminatory employment practices based on race, color, religion, sex and national origin, and providing enforcement roles for both federal agencies and private parties. The Act is estimated to cover approximately 63,000,000 employees, of whom approximately 49,000,000 are employed by private employers and 14,000,000 are employed by state and local governments and by educational in-

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The author is grateful to the several officials within the Department of Justice and the Equal Employment Opportunity Commission whose interviews and documents supplied much of the information for this article.

1. *See, e.g.*, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 124 (1968).

2. 42 U.S.C. § 2000(e) (1970).

stitutions. Approximately 559,000 private employers and 71,000 labor organizations are covered.<sup>3</sup>

The purpose of this article is to describe the enforcement provisions of the Act and to outline the litigative activities by government agencies and private parties in the three types of cases that have characterized court action under Title VII during the ten-year period since the Act's adoption. The record of enforcement compels the conclusion that effective enforcement of the Act has barely commenced. A much larger volume of litigation probably will be filed before the country approaches widespread compliance with the law against discrimination in employment.

## I. TITLE VII ENFORCEMENT PROVISIONS

### A. *Preliminary: Individual vs. System Discrimination*

At the outset a distinction should be recognized between two types of cases—those involving discriminatory treatment of an individual employee or job applicant and those involving discrimination against many workers arising out of the regular operations of an employment system. The following case is an example of claimed discriminatory treatment of an individual black worker. A black mechanic was discharged from his job during a general reduction in the company's work force. The worker protested that his discharge and the employer's general hiring practices were racially motivated. He demonstrated his protest by illegally stalling his car so as to block the main access road to the plant during the rush hour. Thereafter, the company advertised that mechanic jobs were available, and the worker applied. The company rejected his application, basing its rejection on the worker's participation in the traffic stall-in. The worker filed suit claiming that defendant's refusal to rehire him was racially discriminatory, in violation of Section 703 (a) (1) of the Act, and was retaliatory, in violation of Section 704 (a).<sup>4</sup>

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3. Equal Employment Opportunity Commission (EEOC), *Estimated Coverage of Employers and Employees under Title VII, Civil Rights Act of 1964, and as Amended by Equal Employment Opportunity Act of 1972* (unpublished) (1973).

4. *McDonnell Douglas Corp. v. Green*, 93 S. Ct. 1817 (1973). The district court dismissed the Title VII claim because the EEOC had failed to make a determination of reasonable cause to believe that a violation of Title VII had been committed. 299 F. Supp. 1100 (E.D. Mo. 1969). On appeal after a trial of the remaining issues, the Supreme Court held that a private suit may be filed by an aggrieved party who has filed a timely charge with the EEOC and has received from the Commission a statutory notice of right to sue, even though the Com-

The following case is an example of discrimination against black workers resulting from the regular operations of an employment system. A tobacco company formerly maintained racially segregated departments in its tobacco processing plant by hiring and assigning only white employees to the departments where jobs paid higher wages and offered more training for advancement, and by hiring and assigning black employees to only those departments where jobs paid less and offered fewer promotional opportunities. Prior to the passage of the Civil Rights Act of 1964, the company and the union representing production employees agreed to abandon the segregated system and to allow incumbent black employees to transfer into traditionally white departments. On transferring, however, black employees were required to start at the entry level job, usually at less pay than they had been earning in their former, traditionally black department. Promotions within each department were awarded on the basis of departmental seniority, and black employees who transferred into traditionally white departments received no seniority credit for the time they had worked in traditionally black departments under the segregated system. After the passage of Title VII, the company proposed a change in the collective bargaining agreement to replace departmental seniority with plant-wide seniority, but the union refused. Black employees filed a class action suit against both the company and union on behalf of all incumbent black employees in the plant who were hired into traditionally black departments under the segregated system.<sup>5</sup>

As illustrated by *McDonnell Douglas Corp. v. Green*,<sup>6</sup> cases involving discriminatory treatment of an *individual* worker present complaints that are either unique to one individual or shared by only

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mission has not made a finding of reasonable cause. The Court articulated the "order and allocation of proof in a private, single-plaintiff action challenging employment discrimination" (93 S. Ct. at 1823) and remanded the case to the district court for retrial according to those standards.

5. *Robinson v. Lorillard Corp.*, 319 F. Supp. 834 (M.D.N.C. 1970). The district court held that the departmental seniority system perpetuated the discriminatory effects of the past segregation, in violation of Section 703(a),(c) of the Act, and that the system was not justified by business necessity. The court ordered defendants to institute a plant-wide seniority system and to adopt a rate retention procedure for employees transferring into new departments. The award included back pay to the members of the class and costs to the representative plaintiffs.

6. See note 4 *supra*.

a few workers. They arise out of unusual incidents or isolated cases, in which a particular foreman, manager, or official is said to have acted in a discriminatory manner, often because of discriminatory motives. At the trial, the credibility of witnesses probably will be decisive of the liability issue.

By contrast, cases involving discrimination arising out of the regular operations of an employment system, as illustrated by *Robinson v. Lorillard Corp.*,<sup>7</sup> challenge employment practices that are routinely followed throughout a plant, a company, a trade, or an industry. Where discrimination is present, such practices have an impact on the employment opportunities of all female workers or all minority workers whom the system affects and tend to put all of them at a disadvantage in a similar way. In cases of this sort, the administrators who set up and operate the employment system usually do not have conscious discriminatory motives. At the trial of a case that challenges the discriminatory aspects of a defendant's normal business practices, the pattern of discrimination often can be shown as readily through the company's own business records as through the testimony of witnesses, and the credibility of witnesses is less likely to be decisive.

The Supreme Court held in *Griggs v. Duke Power Co.*<sup>8</sup> that unlawful discrimination includes regular business practices that are "neutral on their face, and even neutral in terms of intent," which "operate to 'freeze' the status quo of prior discriminatory practices."<sup>9</sup> Experience since the passage of Title VII has shown that the latter type of discrimination, consisting of business practices engaged in by administrators who feel no ill will toward anyone, causes most workers to sustain the heaviest losses. Such practices have been found in firms' basic systems of employment, including recruiting and hiring;<sup>10</sup> job assignment, promotion, and transfer;<sup>11</sup> pay and benefits;<sup>12</sup>

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7. See note 5 *supra*.

8. 401 U.S. 424 (1971). See Blumrosen, *Strangers in Paradise: Griggs v. Duke Power Co. and the Concept of Employment Discrimination*, 71 MICH. L. REV. 59 (1972).

9. 401 U.S. at 430.

10. See, e.g., *United States v. Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973); *Lea v. Cone Mills Corp.*, 438 F.2d 86 (4th Cir. 1971).

11. See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Jones v. Lee Way Motor Freight, Inc.*, 431 F.2d 245 (10th Cir. 1970), *cert. denied*, 401 U.S. 954 (1971); *United States v. Hayes Int'l Corp.*, 415 F.2d 1038 (5th Cir. 1969); *Quarles v. Philip Morris, Inc.*, 271 F. Supp. 842 (E.D. Va. 1967).

12. See, e.g., *Rosen v. Public Serv. Elec. & Gas Co.*, 477 F.2d 90 (3d Cir. 1973).

layoff and recall;<sup>13</sup> and discharge, retirement, or other termination.<sup>14</sup> The discrimination often arises out of a seniority system or the use of aptitude tests. Routine practices having discriminatory effects despite a neutral appearance also have been found in trade unions' operations with regard to membership, training, and job assignment from referral halls, and in the operations of employment agencies.

### B. *Development of the Act's Enforcement Provisions*

The foregoing distinction between discrimination in the treatment of an individual and discrimination in the regular operations of an employment system played an important part in the history of the adoption of Title VII and its amendment in 1972. As originally passed in 1964, the Act reflected a popular thought of the day that discrimination in employment consisted mainly of instances of discriminatory treatment of individuals, and that once discrimination was prohibited by law, voluntary compliance by employers, labor organizations, and employment agencies would follow, helped where necessary by informal conciliation and persuasion on the part of the Equal Employment Opportunity Commission (EEOC). It was thought that a federal agency with compulsory enforcement powers would be needed in only a few, rare instances where recalcitrant and persistent violations were encountered.<sup>15</sup> Accordingly, the enforcement sections of Title VII omitted any authority for the EEOC to initiate enforcement,<sup>16</sup> gave the Department of Justice the power to file suits in "pattern or practice" cases,<sup>17</sup> and allowed private parties to file suits where they felt themselves aggrieved after the Act's administrative procedures had failed.<sup>18</sup>

Experience under the Act soon demonstrated that employment dis-

13. *See, e.g.*, *United States v. Hayes Int'l Corp.*, 456 F.2d 112, 118-19 (5th Cir. 1972); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969).

14. *See, e.g.*, *Peters v. Missouri-Pacific R.R.*, — F.2d —, 5 F.E.P. Cases 853 (5th Cir. 1973); *Johnson v. Pike Corp. of America*, 332 F. Supp. 490 (C.D. Cal. 1971).

15. STAFF OF SENATE COMM. ON LABOR AND PUBLIC WELFARE, 92D CONG., 2D SESS., LEGISLATIVE HISTORY OF THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, at 1586 (Comm. Print 1972).

16. The Act gave the Commission power to commence proceedings to enforce court orders, which it exercised sparingly. 42 U.S.C. § 2000e-5(i) (1970).

17. *Id.* § 2000e-6(a).

18. Originally, 42 U.S.C. § 2000e-5(e) (1970) (now 42 U.S.C. § 2000e-5(f) (Supp. II 1972)).

crimination was more widespread than most legislators had recognized and that the most serious discrimination occurred through the regular operations of employment systems, not through unfair treatment of individuals, as legislators had supposed. In its first five years of operation, the EEOC received more than 52,000 charges of discrimination. The Commission found reasonable cause to believe that the charges were true in more than 22,000 cases but was unable to conciliate even half of them.<sup>19</sup>

Voluntary compliance was not forthcoming because discrimination of the type that arises out of regular business operations is resistant to voluntary reform by the administrators of the system. There are several reasons for this resistance. First, workers subject to a routine business practice that has discriminatory aspects may not complain, either because they have become accustomed to the practice, because they do not recognize that it is discriminatory, because they do not realize that it infringes on their rights, or because they expect retaliation. Secondly, the employer, union official, or employment agency manager who administers the employment system in question also may have become accustomed to the practice, may not recognize that it is discriminatory against female or minority workers, or may not realize that it is unlawful. In the absence of complaints, it may not occur to this administrator that his regular business operations need to be examined to determine whether they comply with the law. Thirdly, even if complaints of discrimination are made, the administrator of the employment system may resist the changes necessary to eliminate the discrimination because the existing system is more familiar, more convenient, and more economical to operate than the remedial system would be. Fourthly, an employer or union official may resist changes in response to resistance he feels from the workers who are favored by the present system and, in the case of employers, from their union. Lastly, the administrator may resist changes to remove discrimination from an employment system because he does not expect the law to be enforced against him.

The failure of voluntary compliance and a widespread agreement that a more effective federal enforcement effort was necessary led to the passage of the Equal Employment Opportunity Act of 1972, amending Section 706 of Title VII to give the Equal Employment Opportunity Commission the power to file civil actions in cases where

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19. STAFF OF SENATE COMM., *supra* note 15, at 63-64.

the EEOC has been unable to secure an acceptable conciliation agreement.<sup>20</sup> The amendments also extended the coverage of Title VII to state and local governments and authorized the Department of Justice to file suits against them.<sup>21</sup> Section 707, as amended, provided that the Attorney General's "pattern or practice" authority will shift to the EEOC in March of 1974 unless the President and Congress direct otherwise.<sup>22</sup> The Senate-House Conference Committee rejected a provision in the House bill which would have prevented private parties from filing class action suits under the Act.<sup>23</sup>

## II. PUBLIC AND PRIVATE ENFORCEMENT EFFORTS ON THREE LEVELS OF LITIGATION

Title VII litigation can be regarded as proceeding on three levels, with the relationship between private and public enforcement activity varying from one level to the next. The three levels, divided according to the number of workers for whom relief is directly sought and the number of different employment systems that are involved, are as follows: (1) "individual" cases brought on behalf of one or a few individual workers, (2) "plant-wide" cases challenging discrimination in the employment practices of a single administrative system, and (3) "company" cases challenging discrimination in the employment practices of two or more administrative systems.

The names "individual," "plant-wide," and "company" are intended to be suggestive and not exactly descriptive of the three categories. "Individual" cases may be brought on behalf of one or a few workers to remedy either discrimination in individual treatment or discrimination arising out of the operations of a system of employment. The category of "plant-wide" cases includes suits against an employer to remedy discrimination at a single plant, suits against a local union that operates a single referral hall, and suits against an employment agency to seek relief from discriminatory practices at one office. "Company" cases include cases against an employer to remedy discrimination at all or most of its plants, cases against a labor organization to remedy discrimination by the national organization or by several of the union's locals, and cases against an employment agency to remedy discrimination at all or most of its offices.

20. 42 U.S.C. § 2000e-5(f) (1) (Supp. II 1972).

21. *Id.*

22. *Id.* § 2000e-6(c).

23. STAFF OF SENATE COMM., *supra* note 15, at 1847.



Practically all individual cases have been filed by private attorneys, partly because the EEOC began its history without enforcement authority and the authority of the Department of Justice was limited to "pattern or practice" cases, suggesting cases involving a large number of workers. Plant-wide cases have been filed by both private attorneys and government agencies in roughly equal numbers. Practically all company cases have been filed by government agencies because the financial and manpower requirements of litigation against several employment systems in the same lawsuit put those cases beyond the reach of most private counsel.

Most suits filed under Title VII have been individual cases. Plant-wide and company cases, however, have provided relief for more workers, and the number of such cases brought by the government has doubled in the year and a half since EEOC obtained the power to commence litigation.

#### A. *Level One: Individual Cases*

Most suits filed under Title VII have been brought by one individual or a few workers on their own behalf without claiming to represent anyone else. In such cases a favorable court order benefits only the named plaintiffs directly.

An individual case may challenge discrimination in individual treatment, as in the *Green* case.<sup>24</sup> Or an individual case may seek relief for one worker from discrimination arising out of the regular operation of an employment system, as in *Weeks v. Southern Bell Telephone & Telegraph Co.*<sup>25</sup> In *Weeks*, a female employee won the right to be considered for craft jobs, which the company had restricted to male employees only. Plaintiff obtained a decision that established the principle that the "bona fide occupational qualification" exception of Section 703 (e) of the Act is to be interpreted narrowly.<sup>26</sup> The decision of the *Weeks* case became a landmark in the law of sex discrimination. It also helped lay the foundation for a nationwide settlement between three federal agencies and American Telephone & Telegraph Company and its 22 operating subsidiary companies for the benefit of thousands of workers.<sup>27</sup>

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24. See note 4 *supra*.

25. 408 F.2d 228 (5th Cir. 1969).

26. *Id.* at 235.

27. See note 43 *infra*. In other Title VII cases brought by individuals, the Supreme Court held in a per curiam decision that § 703(a) of the Civil Rights

No individual cases have been filed by the EEOC or the Department of Justice because the authority of the Department of Justice is limited to "pattern or practice" cases and because both agencies have attempted to use their limited resources to obtain relief for the largest number of workers in each case. Instead, they have entered privately-filed, individual cases selectively, either by filing briefs as amicus curiae or by intervening to expand the cases' scope.

During the period from 1965 to 1972, when it had no enforcement authority, the EEOC appeared as amicus in more than 500 cases, including *Weeks*, *Robinson*, and *Love v. Pullman Co.*<sup>28</sup> The Department of Justice has appeared as amicus in 14 cases. Both agencies appeared as amicus in *Green* and *Phillips v. Martin Marietta Corp.*<sup>29</sup>

When a federal agency having litigation authority intervenes in an action commenced by an individual, as in *Dobbins v. IBEW Local 212*,<sup>30</sup> the intervention invariably escalates the lawsuit from an individual case to a plant-wide case and increases the number of workers directly affected. When the Government intervenes it usually takes the lead in preparation and trial of the case on behalf of the plaintiffs because it has the resources to do so.

#### B. *Level Two: Plant-Wide Cases*

An example of a plant-wide action challenging discrimination by two local labor organizations is *United States v. Sheet Metal Workers Local 36*.<sup>31</sup> The Attorney General claimed that a local of the Sheet

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Act of 1964 was violated when women with pre-school age children were not hired, while men with pre-school age children were hired, unless there was a legitimate business necessity for the distinction by the corporation. *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971). In *Love v. Pullman Co.*, 404 U.S. 522 (1972), in which plaintiff employee complained of racial discrimination, the Court unanimously reversed a narrow reading of the requirements for filing a complaint with the EEOC and state agencies.

28. See note 27 *supra*.

29. See note 27 *supra*.

30. 292 F. Supp. 413 (S.D. Ohio 1968). The Government often files a separate parallel lawsuit rather than intervening directly in a private case. See, e.g., *United States v. H. K. Porter Co.*, 296 F. Supp. 40 (N.D. Ala. 1968) (now pending in the Court of Appeals for the Fifth Circuit), where the United States filed a separate suit in order to avoid the preliminary administrative issues raised in a parallel private suit, *Muldrow v. H. K. Porter Co.*, 406 F.2d 399 (5th Cir. 1969).

31. 416 F.2d 123 (8th Cir. 1969). For a class action case see note 5 and accompanying text *supra*.

Metal Workers and a local of the Electrical Workers discriminated against black workers in union membership, apprenticeship training, and referral for jobs. The Eighth Circuit, reversing a district court judgment against the Government,<sup>32</sup> held that the Attorney General was not required to prove that defendants had refused membership or work referral to black workers after Title VII's effective date because defendants perpetuated the same discriminatory system that existed before the Act and had failed to publicize any changes that had been made to remove the discriminatory features of the system.<sup>33</sup>

Plant-wide cases against employers, and similar cases against labor organizations and employment agencies, are filed by the Equal Employment Opportunity Commission as suits for enforcement, by the Department of Justice as "pattern or practice" cases, and by private parties as class actions. The conditions precedent to suit vary.

The Attorney General may file suit under Title VII "[w]henever . . . [he] has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full employment of any of the rights secured by . . . [Title VII], and that the pattern or practice is of such a nature and is intended to deny the full exercise of [those] rights . . . ."<sup>34</sup> There is no requirement that the Attorney General must receive complaints of discrimination or exhaust any administrative procedures before filing suit, and the filing of the complaint constitutes conclusive evidence that he has "reasonable cause" as required by the statute.<sup>35</sup>

A private party may commence an action under Title VII if he has filed a written charge with the EEOC and has received from the Commission a statutory notice of right to sue.<sup>36</sup> He may maintain the suit as a class action if the case satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, which is determined by court order as soon as practicable after the commencement of the case.<sup>37</sup>

It has been held that the Equal Employment Opportunity Com-

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32. *United States v. Sheet Metal Workers Local 36*, 280 F. Supp. 719 (E.D. Mo. 1968).

33. 416 F.2d at 127, 140.

34. 42 U.S.C. § 2000e-6(a) (1970).

35. *United States v. Iron Workers Local 1*, 438 F.2d 679, 681 (7th Cir.), *cert. denied*, 404 U.S. 830 (1971).

36. *McDonnell Douglas Corp. v. Green*, 93 S. Ct. 1817, 1822 (1973); *see note 4 supra*.

37. FED. R. CIV. P. 23(c)(1).

mission is required to plead and prove as a condition of maintaining a suit that it has exhausted the administrative procedures provided in the Act by receiving a written charge, serving respondent with notice of the charge, investigating the charge, determining that there is reasonable cause to believe that the charge is true, and attempting to conciliate the case.<sup>38</sup>

A plant-wide case may seek relief for a class consisting of a definite number of readily identifiable workers (for example, all female employees at the plant), or the case may seek relief for a class whose members cannot be counted or identified (for example, all prospective applicants for jobs through the hiring hall).

The remedies available under the Act in plant-wide cases are the same whether the cases are filed by the Justice Department, the EEOC, or private plaintiffs, except that private plaintiffs who prevail also may recover reasonable attorneys' fees.<sup>39</sup>

Government litigation in plant-wide cases, in addition to filing lawsuits directly, has included interviewing and filing briefs as amicus curiae in private individual cases and class action lawsuits. The 1972 amendments to Title VII for the first time allow private parties to intervene in government litigation and also give the federal agencies a reciprocal right to intervene in suits filed by private plaintiffs.<sup>40</sup>

### C. *Level Three: Company Cases*

The few cases that have been filed challenging discrimination in a variety of employment practices at all or most of a large company's plant locations have been brought by government agencies. For example, in *United States v. Cannon Mills, Inc.*,<sup>41</sup> the Department of Justice filed suit against a textile manufacturer with 14 plants and 23,000 employees in North and South Carolina. Private parties who have filed cases covering all of a company's plants have confined them to narrow issues that do not require extensive proof, as in *Gilbert v.*

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38. See, e.g., *EEOC v. Container Corp. of America*, 352 F. Supp. 262, 265 (M.D. Fla. 1972).

39. 42 U.S.C. § 2000e-5(k) (1970).

40. 42 U.S.C. § 2000e-5(f) (1) (Supp. II 1972).

41. Civil No. C-65-S-69 (M.D.N.C., consent decree entered Feb. 24, 1971). See also *United States v. Ohio Bureau of Employment Servs.*, Civil No. 68-391 (S.D. Ohio, consent order entered Nov. 29, 1971) (statewide action against a state employment agency).

*General Electric Co.*,<sup>42</sup> where the only form of discrimination in issue was the company's refusal to pay female employees disability benefits for pregnancy and childbirth.

The largest and most widely reported Title VII case to date, *EEOC v. American Telephone & Telegraph Co. (AT&T)*,<sup>43</sup> involved all 22 operating subsidiaries of AT&T, each of which maintains its own separate employment system. Company-wide litigation between government agencies and AT&T commenced when EEOC intervened in a proceeding before the Federal Communications Commission in which the company was requesting a rate increase. After two years of investigation by a government task force and negotiations between government agencies and AT&T, the claims of discrimination were settled by a nationwide consent decree.

The parties to the consent decree predicted that under the terms of the agreement approximately 13,000 women and 2,000 male minority group employees would receive about \$15,000,000 in restitution and payments for equal-pay claims. Among other provisions, the AT&T companies agreed to pay approximately 36,000 workers \$23,000,000 per year in higher wages. The Chairman of the EEOC has called the AT&T settlement "the most significant legal settlement in civil rights employment history and one which certainly illustrates just how costly employment discrimination can be to an employer."<sup>44</sup>

Comments on the AT&T case by the United States Commission on Civil Rights, however, cast doubt on the adequacy of the settlement from the standpoint of the female and minority workers affected. In a statement published in the same month the AT&T settlement was reached, and apparently written the previous summer, the Civil Rights Commission said, "Based upon evidence adduced by EEOC, there is over \$3 billion in back pay involved. EEOC had thought in terms of seeking only a small percentage of this figure (\$50 to \$75 million), while FCC thought \$300 million should be sought in a national agreement."<sup>45</sup>

The prospective relief provided by the EEOC-AT&T consent decree was held insufficient less than two months after its entry in *Leisner v.*

42. 5 F.E.P. Cases 986, 989 (E.D. Va. 1973) (not yet decided on the merits).

43. F.E.P. 431:73; Civil No. 73-149 (E.D. Pa., complaint and consent decree filed Jan. 18, 1973).

44. Statement by William H. Brown III, Chairman, EEOC, to the Joint Economic Committee, July 11, 1973.

45. U.S. COMM'N ON CIVIL RIGHTS, THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT—A REASSESSMENT 89 n.18 (1973).

*New York Telephone Co.*<sup>46</sup> On a motion for preliminary injunction by plaintiffs, a class of female workers who also were covered by the nationwide consent decree, the federal district court held that the relief provided by the nationwide consent decree was inadequate in several respects to protect the members of the plaintiff class and granted plaintiffs' motion for preliminary injunction against certain specific discriminatory practices pending trial of the permanent injunction.<sup>47</sup>

The discrepancy between the figures in the Civil Rights Commission's statement and the provisions of the nationwide consent decree demonstrates that it is practically impossible to evaluate the adequacy of relief in a given case (or in an entire enforcement program) on the basis of the facts generally available to nonparties. The result in *Leisner* demonstrates that, though private plaintiffs may not be financially able to handle company cases successfully without government participation, nevertheless, private parties, litigating as individuals or as representatives of manageable classes, can help keep company case settlements between government agencies and defendants up to adequate levels.<sup>48</sup>

### III. THE ENFORCEMENT RECORD AND FUTURE PROSPECTS

This section summarizes the enforcement activities of the Department of Justice, the Equal Employment Opportunity Commission, and the NAACP Legal Defense and Educational Fund, Inc. (the leading private litigation firm in the Title VII field) since the adoption of the Act.

#### A. *Department of Justice*

The Department of Justice filed a total of 100 "pattern or practice" lawsuits between the effective date of the 1964 Civil Rights Act and August 15, 1973. Of these, 26 were filed after the 1972 amendments to the Act. The Department has resolved 57 of its cases, 37 by consent decrees and 20 by favorable orders after trial.

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46. 358 F. Supp. 359 (S.D.N.Y. 1973).

47. *Id.* at 370.

48. *See* Williamson v. Bethlehem Steel Corp., 468 F.2d 1201 (2d Cir. 1972), *cert. denied*, 411 U.S. 931 (1973), where plaintiff workers were held entitled to sue for remedies that had not been requested by the government in a plant-wide suit against their employer.

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Since the 1972 amendments, covering state and local governments and authorizing the Department of Justice to file suits to remedy discrimination in police departments, fire departments, and other state and local agencies, the Department has filed roughly half its new cases against public employers, including police and fire departments in Boston, Buffalo, Chicago, Dallas and Los Angeles.

The following chart shows the number of pattern or practice cases filed by the Attorney General against each category of defendants since the passage of Title VII:

<i>Principal Defendants</i>	<i>No. of Cases</i>
Private Industry	
Building construction trade unions	34
Trucking companies	13
Electric power companies	6
Railroads	4
Textile mills	3
Steel companies	3
Longshoremen's unions	2
Airlines	2
Miscellaneous	22
	<hr style="width: 100%;"/>
	89
State and local government	
Police and fire departments	7
State offices	1
	<hr style="width: 100%;"/>
	8
Employment agencies	3
	<hr style="width: 100%;"/>
Total	100

### *B. Equal Employment Opportunity Commission*

After March of 1972 when the EEOC obtained authority to file suits, its Office of General Counsel established a trial division in Washington, D.C., and regional litigation centers in Philadelphia, Atlanta, Chicago, Denver and San Francisco. By August 15, 1973, the Commission's staff had filed a total of 132 lawsuits. None of the cases had been tried on the merits.

During the summer of 1973 the Commission created a new unit called the National Programs Division for the purpose of consolidating all of the Commission's investigations and conciliations against

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certain national employers, labor organizations, and trade associations. On September 17, 1973, the Commission issued charges in proceedings initiated by the National Programs Division against General Motors Corporation, Ford Motor Company, General Electric Company, Sears, Roebuck & Company, and several unions.<sup>49</sup> The creation of the National Programs Division was an effort on the part of the Commission to obtain adequate levels of compliance on the part of several respondents through nationwide investigations and conciliations, reinforced by the threat of future litigation.

The following chart shows the number of cases against defendants in the industries represented most often in EEOC's litigation to date:

<i>Principal Defendants</i>	<i>No. of Cases</i>
Electrical equipment manufacturers	8
Trucking companies	7
Paper mills	7
Building construction trade unions	6
Railroads	4
Automobile manufacturers	3
Banks	3
Hospitals	3
Miscellaneous	91
Total	132

### C. *Private Plaintiffs*

Most lawsuits to remedy employment discrimination have been filed by private plaintiffs. Between the passage of Title VII and November 1972, the single most active organization representing private plaintiffs—the NAACP Legal Defense and Educational Fund, Inc.—filed 155 employment discrimination cases.

The following chart shows the number of cases which the Fund has filed against each type of defendant. There is no way to know whether the Fund's litigation is representative of private litigation as a whole because there is no procedure for counting or analyzing pending private employment discrimination suits.

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<sup>49</sup> Wall Street Journal, Sept. 18, 1973, at 7, col. 2.



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<i>Principal Defendants</i>	<i>No. of Cases</i>
Paper mills	16
Trucking companies	13
Railroads	13
Steel companies	11
Chemical companies	10
Building construction trade unions	9
Police departments	8
Textile mills	7
Electric power companies	6
Tobacco processing companies	4
Airlines	3
Employment agencies	3
Others	52
Total	155

CONCLUSION

The suits filed by the Department of Justice vary widely in their scope. The Attorney General has filed plant-wide cases against United States Steel Corporation,<sup>50</sup> Alabama's largest employer, and Southern Weaving Company,<sup>51</sup> one of the smallest employers covered by the Act. The suits filed by the EEOC also vary widely. At one end of the scale is the nationwide case against AT&T.<sup>52</sup> At the other end of the scale is a case against Stan's Sandwich Shop in Atlanta.<sup>53</sup>

The extent to which litigation by the Department of Justice, the EEOC, and private plaintiffs meets the needs of female and minority workers for enforcement of the law against discrimination cannot really be evaluated because too many essential facts are unknown, such as the number of workers who have secured relief from discrimination as a result of the litigation, or the value of the remedies workers have obtained in comparison to the amount of their losses. A comparison, however, between the total number of Title VII lawsuits filed by Justice, the EEOC, and the Legal Defense Fund in the past eight years—387—and the more than 70,000 charges of discrimi-

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50. *United States v. U.S. Steel Corp.*, 5 F.E.P. Cases 1253 (N.D. Ala. 1973).

51. *United States v. Southern Weaving Co.*, Civil No. 68-10 (E.D.S.C., filed Jan. 12, 1968).

52. See note 43 and accompanying text *supra*.

53. *EEOC v. Stan's Sandwich Shop, Inc.*, Civil No. 18205 (N.D. Ga., filed Apr. 23, 1973).

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ation now pending before the EEOC<sup>54</sup> or the 559,000 private employers covered by the law, suggests a wide gap between the need for enforcement action and the capacity of both government and private sources to provide it. The comparison also suggests that many more cases will be filed and litigated before the country achieves widespread compliance with the law.

In any event, the history of Title VII, and the enforcement capabilities and practices of the various organizations charged with its implementation, make evident the fact that the individual or relatively small employer will feel little compulsion to conform to the tenets of the Act. To overcome the inertia of the status quo, the Justice Department and the EEOC will have to step up their enforcement activities and campaigns, make greater efforts to inform employers of their potential liabilities if compliance is not met voluntarily, and encourage the individual employee to take a greater initiative, either privately or with others in his situation, in the protection of his rights guaranteed by Title VII.

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54. Statement by William H. Brown III, Chairman, EEOC, to the Joint Economic Committee, July 11, 1973.

