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# EQUAL EMPLOYMENT OPPORTUNITY LEGISLATION: A STUDY OF A RESPONSE TO A SOCIAL NEED

## INTRODUCTION

AS the spontaneity of the 1960's fades, the 1970's will most likely evidence an institutionalization of social programs aimed at racial equality in all areas of American society. More particularly, as the excitement surrounding the "Philadelphia Plan"<sup>1</sup> dims, equal employment opportunity will become an accepted reality enforced by governmental sanction. Yet at the moment, the methods by which equal employment opportunity is brought about are still very much in flux; hence, it is the purpose of this article to set forth the current state of the law with respect to job discrimination in Colorado and to describe and evaluate the responses of a sample group of employers and employees who are affected by the implementation of such laws.

The article is based on a study which incorporated two levels of investigation: first, a comparison of the performance and operational techniques of two related governmental commissions—the Colorado Commission on Civil Right (C.C.R.C. — a state body) and the Equal Employment Opportunity Commission (E.E.O.C. — a federal organization); and second, an evaluation of public confidence in these commissions and their accomplishments. In order to compare the work of the state and federal bodies, information was gathered from staff members of the C.C.R.C. and the E.E.O.C. (which has a regional office in Albuquerque, New Mexico<sup>2</sup>) in a series of meetings. Of particular importance were the methods employed by each of these commissions in executing their respective legislative mandates; emphasis was placed on how the commissions attempted to control behavior patterns in the business community.

In order to evaluate public confidence in the work of the commissions, questionnaires were sent to the two groups affected by the legislation: employers and minority employees. More specifically, one questionnaire was mailed to 100 employers against whom complaints

<sup>1</sup> Exec. Order No. 11246, 3 C.F.R. 167 (Supp. 1965); *See also* Memorandum on Order Amending Philadelphia Plan Relating to Minority Group Employment Goals, June 27, 1969.

<sup>2</sup> The Albuquerque office of the E.E.O.C. administers a five state area encompassing Colorado, Arizona, New Mexico, Utah and Wyoming.

<sup>3</sup> The names and addresses were obtained through the cooperation of James F. Reynolds, Director of the Colorado Civil Rights Commission. At no time, however, were the authors allowed to examine the contents of any completed case file nor were they allowed to see any other confidential data.

had been filed under the equal employment provisions of the statutes. A second questionnaire was mailed to 100 persons who had filed complaints of discrimination with the C.C.R.C. While the response to the questionnaires was inadequate to develop definite conclusions,<sup>4</sup> the study did help to clarify the manner in which equal opportunity legislation has been implemented and the procedures which have resulted therefrom.

## I. FUNCTIONAL ANALYSIS

In analysing the function of the two commissions, the most obvious place to begin is with the authorizing legislation. While this legislation is somewhat similar, important differences between the two can be noted, especially since the Colorado statute is regarded as stronger than its federal counterpart. It is also important to examine the manner in which the legislation has been implemented; hence, this section concludes with a comparison of the procedural aspects of the C.C.R.C. and the E.E.O.C.

### A. *State and Federal Legislation*

#### 1. The Colorado Commission

The creation of the Colorado Civil Rights Commission dates to the passage of the Colorado Antidiscrimination Act of 1957.<sup>5</sup> The Act provides for the establishment of a commission<sup>6</sup> which consists of seven members who are appointed by the Governor with the advice and consent of the Senate.<sup>7</sup> The Act also provides for a Civil Rights division which has, as its head, a coordinator of fair employment practices.<sup>8</sup>

The powers granted to the Colorado Civil Rights Commission are fairly broad and, in outlining these powers, the purpose of the legislation is made clear. The legislature has given the commission the power "[T]o receive, investigate, and pass upon complaints alleging discrimination in employment . . . or the existence of a discriminatory or unfair employment practice by a person, an employer, an employment agency, a labor organization, or the employees or members thereof . . . ."<sup>9</sup> Discriminatory and unfair employment practices with respect to employers are defined as "[refusing] to hire, to discharge, to promote or demote, or [discriminating] in matters of compensation

<sup>4</sup> Only 38 percent of the employers in the sample responded; only 20 percent of minority employees returned the questionnaire.

<sup>5</sup> COLO. REV. STAT. ANN. §§ 80-21-1 to- 8 (1963).

<sup>6</sup> *Id.* § 80-21-2 (8).

<sup>7</sup> COLO. REV. STAT. ANN. § 80-21-4 (Supp. 1969).

<sup>8</sup> *Id.* § 80-21-3.

<sup>9</sup> *Id.* § 80-21-5 (4).

against any person otherwise qualified, because of race, creed, color, sex, national origin or ancestry."<sup>10</sup>

The sanctions to be exercised by the commission are also broad in scope. For example, if, upon the investigation of a complaint of discrimination, the coordinator, a commissioner, or an investigating staff member determines that there is probable cause to believe that a discrimination charge is true, the legislation authorizes the commission to take steps to eliminate the probable discrimination by three means: conference, conciliation, or persuasion.<sup>11</sup> If these basically informal procedures do not prove adequate, then the commission is authorized to conduct a formal hearing on the complaint at which time evidence is reviewed and further testimony can be taken.<sup>12</sup> If, following the hearing, the commission finds that the respondent—the accused employer, union or employment agency—has engaged in or is engaged in discriminatory practices, then the commission can issue an order to the respondent to cease and desist from this action and to take the affirmative action as the commission deems necessary.<sup>13</sup>

## 2. The Federal Commission

The Equal Employment Opportunity Commission<sup>14</sup> is a creation of the Civil Rights Act of 1964<sup>15</sup> and is charged with the enforcement of the provisions of Title VII,<sup>16</sup> the express purposes of which prevent unlawful employment practices by employers, labor unions, and employment agencies.<sup>17</sup> The Commission itself is composed of five commissioners appointed by the President and headed by a Chairman who is also appointed by the President.<sup>18</sup> While the Commission is located in the District of Columbia, it is expressly permitted to set up state or regional offices to assist it in the implementation of the law.<sup>19</sup>

Similar to the C.C.R.C., the E.E.O.C. is empowered to investigate complaints of employment discrimination by acting in response to written complaints.<sup>20</sup> The complaints are investigated, and a finding is made as to whether there is probable cause to believe that a violation of Title VII has occurred.<sup>21</sup> If there is such probable cause, then "the Commission shall endeavor to eliminate any such alleged unlawful

<sup>10</sup> COLO. REV. STAT. ANN. § 80-21-6(2) (Supp. 1969).

<sup>11</sup> *Id.* § 80-21-7 (3).

<sup>12</sup> *Id.* § 80-21-7 (5).

<sup>13</sup> *Id.* § 80-21-7 (12).

<sup>14</sup> 42 U.S.C. § 2000 e-4 (1964).

<sup>15</sup> *Id.* § 2000 e.

<sup>16</sup> *Id.* § 2000 e-5.

<sup>17</sup> *Id.* § 2000 e-2(a)-(c).

<sup>18</sup> *Id.* § 2000 e-4(a).

<sup>19</sup> *Id.* § 2000 e-4(f).

<sup>20</sup> *Id.* § 2000 e-5(a).

<sup>21</sup> *Id.*

employment practice by informal methods of conference, conciliation and persuasion."<sup>22</sup> If these methods fail, Title VII provides that a civil action may be brought by the charging party<sup>23</sup> or by the E.E.O.C. itself (if charges were filed by a Commissioner) in a federal district court.<sup>24</sup> If the court then finds that the respondent has intentionally engaged in an unlawful employment practice, the court may enjoin the respondent from engaging in such practice and may order such affirmative action as may be appropriate.<sup>25</sup>

### B. *Major Differences in the State and Federal Legislation*

It is immediately apparent that the Colorado legislation is stronger than its federal counterpart. Instead of having to resort to court procedures, the Colorado Civil Rights Commission can, after a hearing has been held, issue a cease-and-desist order to the respondent who has been found guilty of discriminatory or unfair employment practices.<sup>26</sup> The commission can also order the errant employer to take affirmative action, including the hiring or rehiring of the charging party and the upgrading of employees with or without back pay to the date of the violation of the law.<sup>27</sup>

At first glance, it seems that the E.E.O.C. has similar powers, albeit through the vehicle of the federal courts. It was found, however, that it is only when one of the Commissioners charges a respondent with a violation of Title VII that the case can be brought before a federal court. In the vast majority of cases when the Commission's limited powers of conciliation or persuasion fail, the charging party himself must seek counsel and bring suit as an individual. Since many of the charging parties are probably not indigent, they are ineligible for legal aid. And, since most of the suits involve small sums of money, the issue usually dies if the respondent becomes uncooperative.

A seemingly easy solution would be to have one of the E.E.O.C. Commissioners file a charge alleging the veracity of the complaint. Since the evidence brought out in the first investigation presumably is true, the Commission could bring the case to court and win easily. However, this solution ignores three factors. First, Title VII provides that the charge must be filed 90 days after the alleged violation.<sup>28</sup> In most cases, by the time the initial complaint is filed, investigated, and decided, the 90 day limit has been exceeded. Second, the Com-

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* § 2000 e-5(e).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* § 2000 e-5(g).

<sup>26</sup> COLO. REV. STAT. ANN. § 80-21-7(12) (1963).

<sup>27</sup> *Id.*

<sup>28</sup> 42 U.S.C. § 2000 e-5(d) (1964).

mission itself has limited legal resources; and with a case load exceeding 11,000 complaints annually,<sup>29</sup> the Commission simply lacks the legal staff to bring cases to court, even if it were possible. Third, it is impossible to bring the cases to court since Title VII makes no provision for government lawyers to plead such cases unless the case is of general public importance and the Attorney General decides to intervene.<sup>30</sup>

There are other differences between these two legislative enactments. For example, there are mechanical differences, such as the limitations on filing complaints — six months for Colorado<sup>31</sup> and 90 days under Title VII<sup>32</sup> — as well as major substantive differences. Further, under Title VII the Commissioners themselves must decide on the merits of a complaint,<sup>33</sup> whereas under the Colorado statute the coordinator can conduct a hearing and decide upon the complaint's validity.<sup>34</sup> Commissioners serve the State of Colorado without compensation and do not work on a full-time basis.<sup>35</sup> Under Title VII, the five Commissioners are salaried and work full-time in the pursuance of their duties.<sup>36</sup>

The scope of the Colorado statute is also somewhat broader than is that of Title VII. In Colorado, *all* employers are covered by the statute save religious organizations;<sup>37</sup> Title VII is limited to employers who employ more than 25 persons for more than 20 calendar weeks and who are engaged in industries affecting interstate commerce.<sup>38</sup> Title VII specifically excludes smaller employers, state and federal employers, corporations wholly owned by the United States Government, religious corporations, and several other residual groups.<sup>39</sup> There are many other dissimilarities between these two pieces of legislation; some of these become apparent when the implementation of the statutes is considered.

### C. *Implementation: the E.E.O.C.*

The E.E.O.C.'s regional office in Albuquerque, New Mexico, is charged with the implementation of Title VII in the State of Colorado.

<sup>29</sup> Based on information received from the E.E.O.C.'s Regional Office in Albuquerque, New Mexico.

<sup>30</sup> 42 U.S.C. § 2000 e-5(e).

<sup>31</sup> COLO. REV. STAT. ANN. § 80-21-7 (15) (1963).

<sup>32</sup> 42 U.S.C. § 2000 e-5(d) (1964).

<sup>33</sup> *Id.* § 2000 e-5(a).

<sup>34</sup> COLO. REV. STAT. ANN. § 80-21-7(5) (1963).

<sup>35</sup> *Id.* § 80-21-4.

<sup>36</sup> 42 U.S.C. § 2000 e-4(a) (1964).

<sup>37</sup> COLO. REV. STAT. ANN. § 80-21-2(15) (1963).

<sup>38</sup> 42 U.S.C. § 2000 e(b) (1964).

<sup>39</sup> *Id.*

The procedures which have been developed for handling complaints are described as follows.

First, Title VII provides that the complaint shall be deferred to the state for 60 days if the state has adequate machinery for handling discriminatory charges. This is not a hard and fast rule, however, and many exceptions are allowed.<sup>40</sup> The E.E.O.C. itself determines whether the rule is to be followed. In the Albuquerque office, for example, the deferral rule is followed with respect to Colorado, but complaints emanating from Arizona are not deferred. The reasons for this practice are not publicized but are grounded in both common sense and the spirit of the law. If the Commission feels that the state legislation is strong enough to be effective and that the state organization is performing its legislative mandate, then the E.E.O.C. is willing to defer. But if, as in some states, these requisites are thought to be lacking, then the Commission will refuse to defer investigation and will commence its own examination of the matter.

Assuming that the complaint is not deferred to the state, it will be assigned to one of the E.E.O.C.'s investigators. A letter will be sent to the respondent named in the complaint, informing him only that a charge has been filed against him and that a particular staff member of the Commission will contact him in the near future. The name of the person filing the charge and the specifications of the complaint are not revealed to protect the charging party against the alteration of records and against any rehearsal on the part of the respondent or his employees which might tend to destroy the objectivity of the proceedings.

The Albuquerque investigator then telephones both the respondent and the charging party to arrange for appointments. The charging party is almost invariably contacted first and meets with the investigator. The investigators talk freely and without great formality so that the problem will be thoroughly understood. After the investigator is fully advised of the situation, he prepares an affidavit for the charging party to sign, places the charging party under oath, and witnesses his signature. At this time the investigator asks for the names and addresses of any persons who can support the charging party's allegations (usually co-workers) and attempts to apprise himself of the attitudes he might expect to find at the respondent's place of business. On the average, this initial contact lasts two or three hours.

In order to gain the necessary information, the E.E.O.C. investigator has full and immediate powers of subpoena.<sup>41</sup> Although the employer is not required to allow the investigator to interview employees during normal working hours, most are cooperative in this respect and

<sup>40</sup> *Id.* § 2000 e-8(b).

<sup>41</sup> 42 U.S.C. § 2000 e-9(a) (1964).

will allow, at the investigator's request, the employee to be interviewed in a separate room. Affidavits are taken from employees who have something to offer which will help the investigation but the employer is not permitted to see these affidavits. After contacting those witnesses who might support the charging party's allegations and taking affidavits from them, the investigator proceeds to the respondent's office to officially serve the formal charge and to conduct the investigation.

While interviews are important, the E.E.O.C. seems to rely heavily on the respondent's records. Records most commonly examined and copied are the personnel file of the charging party, pay records, employment applications, job descriptions and personnel rosters which indicate racial distribution within plants or departments.

The investigator is usually looking for evidence of discriminatory treatment. As one investigator remarked, "The fact that a charging party has been treated badly by his employer is not enough. What must be determined is whether the employer has treated only one group badly, as opposed to his treatment of the majority. If he treats everyone badly it is regrettable but not a violation of Title VII." Hence records are very revealing. If a Negro has filed a charge against an employer because he was not hired, all the investigator need do is obtain the employer's reason for failure to hire. If the reason is that the Negro does not have a high school diploma and if a random examination of the personnel files reveals that many people are employed who do not have high school diplomas, then the employer's reason lacks validity. Or if the Negro was turned away because there were "no openings" and if the employer's records reveal that three whites were hired on the same day and after the Negro had applied, the conclusion is apparent. (The E.E.O.C. also requires that applications are to be kept on file for six months after submission and that job vacancies are to be filled with consideration given to all applications on file.) Further, if the records show, for example, that Chicanos are dismissed for fighting on the employer's premises while Anglos are only given reprimands, then, again, the conclusion of "probable cause" is easily reached.

Once the investigator has obtained the necessary information, he assembles all the data in a bureaucratically pre-determined order and writes a narrative explaining the data and relevancy of documents, including a short recommendation as to whether there should be a finding of probable cause.<sup>42</sup>

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<sup>42</sup> As of February 2, 1970, this is no longer strictly true. Under a new system, the investigator writes a "statement of facts" which is mailed to the charging party and the respondent, each of whom has ten days in which to contest the facts. If no reply is forthcoming, the statement of facts is given to the decision-writing branch without a recommendation as to a finding of cause or no cause. The decision is then written in Albuquerque and forwarded to the Commissioners in Washington.



Prior to February 2, 1970,<sup>43</sup> these reports were all checked by the Albuquerque office Director, who would concur or not concur in the recommendation. They would then be sent to Washington where the decision was reviewed by one or more Commissioners. A *final* decision having been reached, letters would be posted from Washington to the charging party, the employer, and the Albuquerque regional office, informing all parties of the decision. This process was cumbersome, however, with a lag of some 18 months between transmittal of the file from Albuquerque and the decision in Washington. At one point, approximately 4,000 cases were piled in the hallways and offices of the E.E.O.C., awaiting decision.<sup>44</sup>

In Autumn, 1969, the decision-writing process was transferred to the field, and the Albuquerque office was divided into three branches: investigations, decision-writing, and conciliations. As a result of this restructuring, two alternatives are now possible. If the decision writer finds that there is no probable cause to believe a violation of Title VII has occurred, the charging party and employer are so notified immediately, and the case is closed. If, on the contrary, probable cause is found, then a meeting is arranged between a conciliator (rarely the same person who conducted the investigation) and the charging party to determine what the latter wants in the way of restitution. Acting as the charging party's agent, the conciliator prepares an agreement. Notably, one of the standard provisions in the agreement specifically states that the respondent denies having violated Title VII. Apparently this clause is inserted merely to assuage the feelings of the respondent, since all other clauses are predicated on the assumption that there is a wrong to be righted. Nevertheless, the proposed agreement is presented to the respondent at a place of the E.E.O.C.'s choosing. The respondent is shown the proposed agreement which often suggests affirmative action to be taken by the respondent which will affect the status of minorities as a group and which will usually contain specific redress for the particular charging party. The matter is then discussed with the E.E.O.C. representative, and specific terms in the agreement are negotiated on an individual and particularized basis.

If the two parties to the conciliation negotiations reach an agreement, the document is signed by both the respondent and the conciliator and is then presented to the charging party for his approval and signature. If the charging party is not satisfied with the resulting

<sup>43</sup> See note 42 *supra*.

<sup>44</sup> In an effort to speed up this process, on February 2, 1970, the E.E.O.C. initiated a "pre-decision settlement" technique which offers the respondent an opportunity to settle the matter *without* a formal finding of "probable cause." This technique will be used when it is felt the "Statement of Facts" is so conclusive it lends itself to only one possible decision, i.e., against the respondent. If the respondent settles in this manner, he is spared the inconvenience of a formal conciliation process, as well as an official adverse decision.

agreement, he may refuse to sign. Until he does sign, there is no agreement, and further negotiations must then be undertaken in an attempt to bring the parties to accord.

In the alternative, the respondent once having met with the representative of the E.E.O.C. is under no obligation to accept any agreement whatsoever. He may simply refuse to negotiate any settlement without the attachment of any administrative liability, although as mentioned above,<sup>45</sup> the charging party himself may bring civil action.

To ascertain the success of these measures, one can look at the E.E.O.C statistics for fiscal year 1968 to see that of a total of 3,510 completed investigations,<sup>46</sup> 640 were brought to the conciliation stage. This figure presumably means that 2,770, or 82 percent, of the completed investigations resulted in a no probable cause decision. Of the 640 completed conciliations in 1968, 253 cases were regarded as fully successful, 53 were partially successful, and 334 were unsuccessful. Thus only 39 percent of the conciliations were optimally settled. Hence, of the total number of complaints investigated, only 0.9 percent resulted in a successful conciliation.<sup>47</sup>

#### D. *Implementation: C.C.R.C.*

Since the functions and procedures of the E.E.O.C. have been outlined at some length, the same is not necessary for the state commission. Their procedures are essentially the same although the similarity has only recently been achieved. The story behind the C.C.R.C.'s adoption of the E.E.O.C.'s methods helps to indicate another informal method by which these laws function.

Until August, 1969, the C.C.R.C. methods of investigation were rather loose. The investigator would be assigned to a complaint, and then he would be left to his own devices as to the form of investigation. The result was that the Colorado investigator would "drop in" on the respondent, ask a number of questions, talk to possible witnesses, perhaps look at some documents, and then return to the office to write his report. This report would be rather unstructured and generally based on hearsay evidence. Very few records were copied. Indeed, frequently no mention of records was made at all.

After the report was compiled, recommendation was made to the C.C.R.C. coordinator as to whether a finding of probable cause should be reached; and after the coordinator and the investigator had talked

<sup>45</sup> See text accompanying note 23 *supra*.

<sup>46</sup> Of charges falling within the jurisdiction of the Albuquerque office of the E.E.O.C. in fiscal year 1968, 329 were from Colorado. Other states contributed the following amounts: Arizona, 62; New Mexico, 114; Utah, 10; Wyoming, 3. Based on information received from the E.E.O.C.'s regional office in Albuquerque.

<sup>47</sup> No statistics were available from the E.E.O.C. specifically relating to Colorado with regard to conciliations.

things over, a decision was made. The conciliation, conference, hearing or dismissal process was then set in motion.

If all of this sounds somewhat slipshod, it was. Often after a dismissal by the C.C.R.C., the E.E.O.C. would assume jurisdiction of the case and would find clear evidence of discrimination. Further, in cases where there was no discrimination, the E.E.O.C. was unable to determine this from a review of the Colorado file and thus had to duplicate the investigation to reach the same result.

An ideal solution to this problem was proposed and adopted in the spring of 1969. A University of New Mexico law school graduate who had been working for the Albuquerque office of the E.E.O.C. on a part-time basis was selected to coordinate a cooperative effort between the state and federal governments. A budget was set up with E.E.O.C. funds, and the Colorado staff was instructed in the format and techniques that the E.E.O.C. had found useful in the past. Members of the Washington staff were flown into Denver to teach some of these methods, while members of the Albuquerque staff were assigned to accompany the Colorado investigators on actual investigations. Subsequent to these investigations, an informal meeting was held during which E.E.O.C. personnel would make suggestions as to technique and possible areas of improvement.

The end product of this effort has been beneficial to both commissions. Since Colorado now keeps files, complete with documentation, duplicate efforts by the E.E.O.C. are kept to a minimum. On the other hand, through the agreement mentioned above, Colorado now often redefers complaints to the E.E.O.C. for purposes of investigation. Thus, without any cost to the state, the C.C.R.C. has, in effect, more than doubled its staff and freed its own personnel to operate in other areas. The impression received was that the system was working quite well from all points of view, although this procedure was hardly envisioned in either authorizing statute.

### E. *Some Conclusions*

It is difficult to reach a conclusion without a hypothesis. Nonetheless, an understanding of the implementation of the laws seeking to achieve equal employment opportunity in the state of Colorado has been achieved from this study. The legislation itself provides a mere skeleton, the bones of which must be covered and given shape by a great number of people. And while the skeleton remains unchanged, the flesh has often been altered and the body has received many transfusions along the way.

What has been attempted is a documentation of the response of two systems of government to a pressing social need. As has been shown, the need has been met thus far by means of a negative response, *i.e.*,

a response to complaints of discrimination after the fact. Nevertheless, it is a start.

Having come to an understanding of the situational context of the legislation and its implementation, the next section of this article studies the reaction to the legislation and its implementation by the two groups affected by it: employers and minority employees. While the results of the questionnaires are certainly not a basis for final conclusions, nonetheless the responses do indicate the difference in perspectives between those who enforce the legislation and those affected by it.<sup>48</sup>

## II. RESPONSES TO THE QUESTIONNAIRES

The information contained herein analyzes the results of two questionnaires<sup>49</sup> which were mailed to 100 employers and 100 charging parties in Colorado. The necessary names and addresses were obtained through the courtesy of Mr. James Reynolds, Director of the Colorado Civil Rights Commission. The respondents were selected on a random basis from among those names in the C.C.R.C. files for the fiscal year 1969 since many of those persons filing or filed against in the state of Colorado were also involved with the E.E.O.C. in the same action. Further, due to the fact that the E.E.O.C. has traditionally been slow to render decisions,<sup>50</sup> it was felt that an older sample would lend itself to a more useful comparison than a recent sample.

The questionnaires were designed to provide a maximum opportunity for both charging parties and employers to indicate their satisfaction or displeasure with the present legislation and methods of implementation. It was suspected that the responses would be conditioned by the amount of success the respondents had had with their experience.

### A. *The Response of Employers*<sup>51</sup>

The results of the questionnaire survey sent to respondent employers elucidated many trends and indications as to the perceived effects of equal employment laws. First, it appeared from the results of the survey that the larger the firm or company, the greater the probability of knowledge concerning equal employment laws. Second, the results indicated that the use by the E.E.O.C. and the C.C.R.C. of a method of surprise inspections to review records and observe company operations was greatly disfavored by employers. The responses indicated that this type of visit was instrumental in creating alienation among the employers toward the governmental commissions. No one wanted nor

<sup>48</sup> See note 4 *supra*.

<sup>49</sup> The two questionnaires are set out in the APPENDIX *infra*.

<sup>50</sup> See text accompanying note 44 *supra*.

<sup>51</sup> The data for this section is based on 38 responses. The percentages are based on the total number of responses per question.

liked the idea of a surprise visit; all the companies responding to the survey preferred to be contacted by letter or at least by phone.

A third and most important trend noted was the overwhelming feeling among employers that the investigators and investigations were biased against them.<sup>52</sup> Some respondents felt that they had been placed in a situation where one is guilty until proven innocent;<sup>53</sup> and the survey responses showed that winning or losing a claim with the commissions had no effect on the respondents' feelings with respect to a biased investigation.

A partial explanation of the feeling by employers that the investigations were biased stems from the fact that many of the investigators allegedly went beyond the scope of investigation for a particular complaint, *i.e.*, they "fished around." The employers felt that these activities went outside of the boundaries established by the equal employment laws. The following statement from one employer-respondent summarizes the impressions of most employers: "It was assumed by the investigators that if a complaint was filed, a violation must have occurred even though the company's ethnic balance from laborer through the supervisory level made this a remote possibility."

In addition to feeling that investigations were biased, a number of employers responding to the survey indicated that they were generally not happy with the present legislation and its implementation by the commissioners.<sup>54</sup> Some employers felt that they were doing an adequate job in the area of equal employment, but that other employers were not. A typical reaction from an employer who took this perspective was as follows:

In our operation we employ all colors including green and purple. The labor supply available to us is guilty of using discrimination as a crutch to not do a satisfactory job, come to work regularly or complete an assigned work load. Our oldest employees are 50% Negroes and we feel that if these people can remain good employees, new employees cannot use discrimination as an excuse for not doing satisfactory work. There are many Denver firms who have no minority type employees at this date and we feel that any campaign should be directed at these persons.

<sup>52</sup> One employer stated:

The laws appear to be presumptive in labeling employers' en masse as discriminatory and apathetic. The implementation of bits and pieces of legislation engenders little but negative reaction on the part of employers. The mechanics are vague and emotional, and the structure populated by the inept and biased, generally with no training or professional background, resulting in a gross miscarriage of the intent of the laws.

<sup>53</sup> One employer responded: "I felt the investigators were prejudiced as they were of the same race [as that of the charging party] and because of their questions and general attitudes."

<sup>54</sup> An employer answering the questionnaire replied that:

There is little or no recognition of good practices or accomplishments with individuals. The present program accentuates the negative, *i.e.*, complaints. There is a great need for good educational programs within this area. Dealing almost wholly with individual problems does not result in examining the whole matter of remedies in depth.

Another point of view expressed by the employers was that while the legislation was acceptable, its implementation was insufficient. Indeed, a majority of employer-respondents felt that the investigations were a waste of time and questioned the usefulness of the whole investigative process. As one respondent indicated: "The basic laws are good but the time factor involved for completing cases and arriving at decisions is too lengthy and very time consuming." As an alternative to the investigation, the employers generally felt that they could accomplish the same results as the commissions by themselves without governmental interference or intrusion. One employer stated that "we feel we are not only working within the meaning and intent of the law but also doing additional things not required by law."

With respect to change or reform of the laws, when the responses of those in favor of abolishing the laws and those in favor of weakening the laws are combined,<sup>55</sup> the trend suggests that a large number of respondents (60 percent) want the present laws changed. Here again, one might speculate that respondent employers either do not understand the problem, do not recognize the problem, or possibly recognize and understand the problem of discrimination but still discriminate. In any event, based upon the survey responses, many employers find the laws acceptable but would *prefer* to have them weakened or abolished.

Further, the laws and concomitant implementation have generally had little effect on hiring policies of employers and attitudes toward minority groups. Even after C.C.R.C. or E.E.O.C. investigations, a majority of respondents (68 percent) indicated that they made no change in hiring policies. Perhaps the most significant response was that 26 percent of the replying employers said that they would *not* hire *any* minority group members, although it should be noted that 47 percent said that they would be willing to hire additional minority workers.

#### B. *The Response of Minorities*<sup>56</sup>

As previously indicated, no conclusive results with so few minority employee responses can be stated. Nevertheless, it is worthy to note several high percentages in response to some of the questions, indicating, perhaps, that a larger sample would verify the inferences suggested.

<sup>55</sup> Twenty-five percent of the respondents suggested abolishing the laws. Another 35 percent advocated weakening of the laws. Only 25 percent suggested that the laws be strengthened.

<sup>56</sup> The data for this section is based on 38 responses. The percentages are based on the total number of responses per question.

For example, 88 percent of those who filed complaints knew of the existence of agencies that dealt with job discrimination *before* their problem developed. Most of the complainants became aware of the governmental commissions through their friends, although it should be noted that the media also seemed to play an important part in informing the minorities of their rights.<sup>57</sup> Since a knowledge of the commissions' existence seemed to be directly related to the filing of complaints by minority workers, the inference suggested is that more publicity with respect to the work of the commissions would encourage wider recognition of job discrimination by minority employees and a greater awareness of grievance mechanisms.

Another objective of the questionnaire was to test the differences, if any, in the way minority employees who filed charges were treated by their employers or co-workers after filing complaints. Two-thirds of the sample said that their filing *did* make a difference; but only in one-third of the cases was the difference in treatment unfavorable. Conversely, two-thirds of those who were treated differently seemed to have received generally better treatment from employers and co-workers.

The questionnaire also attempted to measure the attitude of minority employees toward the commissions. The results of this survey indicate that while a majority of those filing complaints with the E.E.O.C. or the C.C.R.C. felt that their problems were understood by those taking the complaints, a significant number of respondents felt that the amount of time necessary for the investigation of complaints was excessive. When asked how long the investigation-decision process *should* take, the majority indicated that it should take about one month. A lesser number opted for one or two weeks. Significantly, none of those answering felt that the process should take longer than one month. Since not infrequently these proceedings take significantly longer,<sup>58</sup> perhaps the investigator should make clear to the charging party the amount of time which might elapse before a decision is made.

Even though some dissatisfaction existed among respondents due to the lengthy investigative process, there were indications that the work of the commissions received support from minority employees. Specifically, *none* of the persons replying to the questionnaire felt that the present laws did not work at all; all respondents thought that the laws worked well or that the laws worked "sometimes." Further, 70 percent of the minority employees responding indicated that they would not hesitate to file another complaint if they were discriminated against in the future.

<sup>57</sup> The media given as choices to the respondents included television, newspapers and the *G.I. Forum*. Friends and relatives made up roughly 50 percent of the group making complainants aware of the commissions' existence.

<sup>58</sup> See text accompanying note 44 *supra*.

### III. CONCLUSION

While the results of this study are inconclusive, there are certain inferences suggested by the frequency of responses to particular questions which may be valid. For example, a large number of employers have little or no confidence in the objectivity of the investigative process undertaken by the C.C.R.C. and the E.E.O.C. Many feel that the investigators are biased against employers, a factor which perhaps causes employers to label as invalid the work of the commissions. Further, the results indicate that the majority of the respondent employers want to either weaken or abolish the current laws.

In contrast, most of the minority employees want stronger laws. Yet this attitude does not cause minority workers to negate the work of the commissions; for employees generally have a more supportive attitude toward the present work of the E.E.O.C. and the C.C.R.C. than do the employers, although it should be noted that both employers and employees feel that the present investigation-decision process is too lengthy.

Hence, both employers and employees agree that improvements must be made in the present law although the definition of "improvement" depends upon the point of view, employers viewing "improvement" as a weakening of the laws and employees seeing it as a strengthening of the laws. Therefore, a great deal of the "self-interest" demonstrated by both groups must be overcome if the commissions are to be effective in their efforts to project an objective perspective. Perhaps as the commissions continue their efforts — trying new approaches, techniques, and procedures — a balance can be achieved which will gain at least a modicum of approval from both employers and employees and which will, at the same time, insure that equal employment becomes an accepted reality.

### APPENDIX

#### EMPLOYERS' QUESTIONNAIRE

1. What is the size of your workforce? Over 50\_\_\_\_\_ Under 50\_\_\_\_\_
2. How many complaints, whether justified or not, were filed against you in 1968-1969?\_\_\_\_\_
3. In answering the complaint(s) or in the investigation thereof, did you use the services of an attorney?  
Yes\_\_\_\_\_ No\_\_\_\_\_
- If yes: House counsel\_\_\_\_\_ Firm\_\_\_\_\_ Other\_\_\_\_\_
4. Before your first contact with the Federal or State of Colorado agencies did you have a working knowledge of the equal employment opportunity laws? Yes\_\_\_\_\_ No\_\_\_\_\_



5. How were you initially contacted by the Colorado Civil Rights Commission about the complaint(s)?  
 Phone call\_\_\_\_\_ Appointment\_\_\_\_\_  
 Letter\_\_\_\_\_ Surprise visit\_\_\_\_\_
6. How were you initially contacted by the E.E.O.C.?
7. How would you wish to be contacted?
8. Do you feel that the investigator from the State Commission was biased in favor of the person who filed the complaint?  
 Yes\_\_\_\_\_ No\_\_\_\_\_
9. Do you feel that the investigator from the E.E.O.C. was biased in favor of the person filing the complaint? Yes\_\_\_\_\_ No\_\_\_\_\_
10. Do you feel that the investigator from either the State or Federal government confined himself to the subject matter of the complaint? State: Yes\_\_\_\_\_ No\_\_\_\_\_ E.E.O.C.: Yes\_\_\_\_\_ No\_\_\_\_\_
11. Do you feel that the investigations were objective?  
 State: Yes\_\_\_\_\_ No\_\_\_\_\_ E.E.O.C.: Yes\_\_\_\_\_ No\_\_\_\_\_
12. Did the investigators confine themselves to asking questions or did they look at company records as well?  
 State: E.E.O.C.:  
 Only asked questions\_\_\_\_\_ Only asked questions\_\_\_\_\_  
 Looked at records\_\_\_\_\_ Looked at records\_\_\_\_\_  
 Both\_\_\_\_\_ Both\_\_\_\_\_
13. If an employee feels that he has been discriminated against, do you maintain a place, office or person where he can file an in-house, non-union, complaint? Yes\_\_\_\_\_ No\_\_\_\_\_
14. Could you estimate how much money these investigations cost you or your company in terms of lost man/hours, attorney's fees, or other services?  
 Negligible\_\_\_\_\_ More than \$100\_\_\_\_\_  
 More than \$50\_\_\_\_\_ More than \$500\_\_\_\_\_  
 Unable to estimate\_\_\_\_\_ Other\_\_\_\_\_
15. Do you believe that the decisions resulting from these investigations were fair?  
 E.E.O.C.: Yes\_\_\_\_\_ No\_\_\_\_\_ State: Yes \_\_\_\_\_No\_\_\_\_\_  
 No decision\_\_\_\_\_
16. Did the person filing a complaint approach any of his supervisors with his problem before filing a complaint with the governmental agencies? Yes\_\_\_\_\_ No\_\_\_\_\_ Don't know\_\_\_\_\_
17. If this person had approached a supervisor, do you think that the matter could have been resolved without government action?  
 Yes\_\_\_\_\_ No\_\_\_\_\_ Don't know\_\_\_\_\_

18. Do you think that a worthwhile purpose has been served in the investigation of the complaint?  
 A worthwhile purpose was served\_\_\_\_  
 Not sure\_\_\_\_  
 The process was a waste of time\_\_\_\_
19. Do you think that the present Civil Rights legislation is accomplishing its purpose in this area (to ensure equal employment opportunities regardless of race, color, etc.)?  
 Definitely\_\_\_\_ Sometimes\_\_\_\_  
 Not at all\_\_\_\_ Don't know\_\_\_\_
20. Do you feel that there is a need for this type of legislation in Colorado in the 1970's? Yes\_\_\_\_ No\_\_\_\_ Don't know\_\_\_\_
21. Are the present laws fair to both the employers and to the minority-group employees? Yes\_\_\_\_ No\_\_\_\_ If no, would you care to explain?
22. If you had the power, would you  
 Abolish the present laws\_\_\_\_  
 Strengthen the laws\_\_\_\_  
 Weaken the laws\_\_\_\_  
 Leave the laws as they are\_\_\_\_  
 Would you care to explain?
23. As a result of the investigation(s) have you made any changes in your personnel or hiring policies?  
 Made some changes\_\_\_\_  
 Made no changes\_\_\_\_  
 Made substantial changes\_\_\_\_  
 Would you care to elaborate?
24. Has your experience with the Colorado Civil Rights Commission or the E.E.O.C. changed your attitudes towards the problems of your minority-group employees?
25. Has your experience with the present equal employment opportunity laws changed your attitudes towards the hiring of minority-group employees?  
 Wish we could hire more\_\_\_\_  
 Indifferent\_\_\_\_  
 Rather not hire any\_\_\_\_
26. Thank you for your cooperation. If there is anything you wish to add concerning the existing federal or state legislation or the implementation thereof, please feel free to do so. Your comments will be appreciated.

## MINORITY EMPLOYEES' QUESTIONNAIRE

1. Sex: Male\_\_\_\_ Female\_\_\_\_
2. Age: Under 25\_\_\_\_ 25-35\_\_\_\_ 36-50\_\_\_\_ Over 50\_\_\_\_
3. How did you learn about the Colorado Civil Rights Commission?  
     Friends\_\_\_\_                      T.V.\_\_\_\_  
     Relatives\_\_\_\_                      Radio\_\_\_\_  
     Co-workers\_\_\_\_                      Newspapers\_\_\_\_  
     Church\_\_\_\_                      Other (Specify)\_\_\_\_
4. Were you encouraged by someone to file a complaint? If so, by whom?
5. How did you learn about the Equal Employment Opportunity Commission?
6. Did you know about these government agencies before you were discriminated against? Yes\_\_\_\_ No\_\_\_\_
7. How long was it before your problem developed and the time you filed a complaint?
8. About how long was it between the time you filed your complaint and the time you were informed about the decision?
9. Since filing your complaint, have you been treated differently by your co-workers? Yes\_\_\_\_ No\_\_\_\_  
     your employer? Yes\_\_\_\_ No\_\_\_\_
10. If you answered yes to question 9, in what way have you been treated differently?  
     Better treatment\_\_\_\_      Hostile treatment\_\_\_\_  
     Cold shoulder\_\_\_\_      Other\_\_\_\_
11. During the investigation of your complaint, did your employer or supervisor contact you about your complaint? Yes\_\_\_\_ No\_\_\_\_
12. Did your employer or supervisor contact you about your complaint *after* the investigation? Yes\_\_\_\_ No\_\_\_\_ If you answered yes, what did they contact you about?
13. Do you feel that the person who talked to you at the Colorado Civil Rights Commission understood your problem?  
     Understood my problem\_\_\_\_      Didn't understand\_\_\_\_  
     Partially understood\_\_\_\_
14. Do you feel that the investigator from the Colorado Civil Rights Commission understood the problem? Understood my problem\_\_\_\_  
     Partially understood\_\_\_\_      Didn't understand\_\_\_\_  
     Not contacted\_\_\_\_

15. Do you think that the investigator from the Equal Employment Opportunities Commission understood your problem?  
 Understood my problem\_\_\_\_ Didn't understand\_\_\_\_  
 Partially understood\_\_\_\_ Not contacted\_\_\_\_
16. Do you think that the investigation of your complaint took too long? Yes\_\_\_\_ No\_\_\_\_
17. How long do you think it should take to investigate a complaint of discrimination and make a decision on it?  
 One week\_\_\_\_ One month\_\_\_\_  
 Two weeks\_\_\_\_ Longer\_\_\_\_
18. Do you think that the filing of a complaint helped you in any way? Yes\_\_\_\_ No\_\_\_\_ If yes, then how?
19. Do you think that the filing of a complaint has made any difference in the way other minority-group employees are treated where you work?  
 Made things better\_\_\_\_ Made no difference\_\_\_\_  
 Made things worse\_\_\_\_ Better and worse\_\_\_\_  
 Could you be specific?
20. Do you think the present anti-discrimination laws work?  
 Work well\_\_\_\_ Don't work at all\_\_\_\_ Work sometimes\_\_\_\_
21. If your employer discriminates against you in the future will you file a complaint with the Colorado Civil Rights Commission?  
 Yes\_\_\_\_ No\_\_\_\_ If no, why not?
22. If you had the power to do anything about the present anti-discrimination laws would you  
 Strengthen the present laws\_\_\_\_  
 Weaken the present laws\_\_\_\_  
 Leave them alone\_\_\_\_  
 Other (Specific)
23. If there is anything you want to add to this sheet please feel free to do so. When you are through, please return this questionnaire in the envelope provided. Thank you.

*Donald Lojek  
 John Martin  
 Jake Martinez  
 Gloria Monroe*