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Donald Elisburg

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PROCEDURAL REGULATIONS: AN EVALUATION BY THE
PRACTICING BAR

DONALD ELISBURG*

Much commentary, typified by the Articles in this Symposium, has assessed the impact of various substantive provisions of Title VII of the Civil Rights Act of 1964¹ as they have affected the character of employment practices during the past decade. The role of the Equal Employment Opportunity Commission (EEOC)² as a primary enforcement mechanism of the Act's substantive provisions has not elicited the same wealth of discussion. An area of particular interest to labor relations practitioners that has escaped extensive analysis concerns the Commission's procedural regulations³ which provide the foundation for that agency's operation. To fill this void, a study was commissioned by the Equal Employment Opportunity Committee of the Section on Labor Law of the American Bar Association (ABA) in 1973 in an attempt to gauge the opinions of those practitioners most widely affected by, and most intimately knowledgeable of, the operation of the Commission. Various questions⁴ regarding the Commission's effectiveness under its existing procedural guidelines focused upon five principal areas of concern: charges, agency deferral to arbitration or other forums, investigation, decisionmaking, and conciliation. Constructive recommendations also were solicited concerning the general subject of EEOC procedure.

Although the study's results are not intended to provide comprehensive analysis of the significant substantive questions related to the procedural issues surveyed, they do permit accomplishment of the ABA committee's objective of acquainting the EEOC with the views of the fair employment practices bar. No realistic effort can be made from the results to determine the motivation for the re-

*B.S., Illinois Institute of Technology; J.D., University of Chicago. General Counsel, Committee on Labor and Public Welfare, United States Senate.

1. 42 U.S.C. §§ 2000e- to 2000e-15 (1970), *as amended*, 42 U.S.C. §§ 2000e to 2000e-17 (Supp. II, 1972).

2. The EEOC was established by Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-4 (1970).

3. The procedural regulations of the EEOC are set out at 29 C.F.R. §§ 1601.1-.33 (1973).

4. See Appendix I.

sponses received, although the professional bias of each of the three groups of attorneys questioned, representing labor unions, management, and individual charging parties, clearly is reflected in many instances. Because of the limited sampling, moreover, statistical validity cannot be claimed,⁵ and the short time between enactment of the 1972 amendments to Title VII⁶ and the date of the survey precludes any significant evaluation of the effect of those amendments on the survey topics. Nevertheless, a brief examination of the responses will reveal significant disparate and congruent viewpoints that may prompt reevaluation by the EEOC of its current procedural guidelines.

Charges

The questions dealing with charges⁷ concerned the 10-day statutory period for service on the respondent following the filing of a charge by an aggrieved person,⁸ the appropriate service period for charges filed on behalf of an aggrieved person,⁹ and the sufficiency

5. Slightly fewer than 200 attorneys were questioned in the survey, some of whom were members of the ABA committee. Approximately 60 attorneys responded (roughly 30 percent of the sampling); they identified themselves as 27 representing management; 15, labor unions; and 17, representing individual plaintiffs. Any statistical validity was impaired further by the fact that not all the participants in the survey answered every question.

6. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103.

The primary effects of the 1972 amendments concern the EEOC's jurisdiction and power. They eliminated the exemptions for employees of state and local governments and educational institutions, and provided new guarantees for federal workers; the coverage of Title VII was expanded to cover smaller employers as well. *Id.* §§ 2, 11, amending 42 U.S.C. §§ 2000e to 2000e-15 (1970). The 1972 amendments also granted the EEOC, for the first time, the power to bring suit in federal courts to enforce Title VII; previously, its power was limited to granting individual aggrieved parties notices of right to sue. *Id.* § 4(a), amending 42 U.S.C. § 2000e-5(f)(1970). See generally Sape & Hart, *Title VII Reconsidered: The Equal Employment Opportunity Act of 1972*, 40 GEO. WASH. L. REV. 824 (1972).

7. Appendix I, questions 4-11.

8. The regulations provide for the EEOC to send notice of the filing of an unlawful employment practice charge to the respondent within 10 days after its filing. 29 C.F.R. § 1601.13 (1973). The notice is to include the date, place, and circumstances of the alleged unlawful practice, but unless otherwise determined by the EEOC it does not name the aggrieved person filing the charge or the person on whose behalf the charge was made. 29 C.F.R. § 1600.735-408 (1973). (Question 10, Appendix I, involves the situation where the EEOC does specify the name of the aggrieved person). The notice requirement, however, is not a jurisdictional prerequisite to the filing of the action in federal court. Sape & Hart, *supra* note 6, at 866. For a description of the progress of an unlawful employment practices charge from filing to adjudication, see *id.* at 862-64.

9. The 10-day notice period presently is the same for charges brought on behalf of an aggrieved individual as for those brought by the aggrieved party directly. 29 C.F.R. § 1601.13

of assistance by EEOC district offices to charging parties.¹⁰ General agreement among the three groups of attorneys questioned indicated approval of the existing time period for serving charges,¹¹ basic agreement that a charge filed on behalf of an aggrieved party need not be served in any manner different from service of a charge filed by the individual himself,¹² and general acceptance of the procedure permitting district directors to make determinations of reasonable cause.¹³ The only substantial divergence of opinion appeared in the

(1973). Authority to file a charge on behalf of an aggrieved individual is provided in section 1601.6 of the procedural regulations and may be exercised by "any person, agency, or organization." *Id.* Before the 1972 amendments, standing to sue on behalf of an aggrieved party was restricted to unions or other legal representatives of employees, thereby precluding civil rights organizations, among others, from bringing suit. *See* International Chem. Workers v. Planters Mfg. Co., 259 F. Supp. 365 (N.D. Miss. 1966); Sape & Hart, *supra* note 6, at 865.

10. The charge need not identify the aggrieved party, but the name and address of the person on whose behalf the charge is made must be given to the EEOC, which will verify that authorization in fact was given. The identity of the claimant is to be kept confidential and will not be disclosed to state and local agencies when the unlawful employment practices charge is deferred to such agencies except on condition of its continued confidentiality. 29 C.F.R. §§ 1601.6, -.20 (1973). *See* notes 18, 25 *infra*.

11. The great majority of the responding attorneys, 48, favored the 10-day limit; only 8 were opposed.

12. Only 12 of the attorneys favored preferential treatment for charges filed on behalf of an aggrieved party; 46 opposed such treatment.

13. The EEOC dismisses a charge if it "fails to state a valid claim for relief under Title VII," or if there is no "reasonable cause" to believe the charge is true. 29 C.F.R. § 1601.19b(a) (1973). When the Commission, acting through its district directors or other designated officials, determines that there is reasonable cause to substantiate the charge of an unlawful employment practice, the regulations authorize the commission to "endeavor to eliminate such practice by informal methods of conference, conciliation, and persuasion." *Id.* A determination that reasonable cause exists is a prerequisite to conciliation efforts by the EEOC, but not to the institution of a private action under Title VII. 42 U.S.C. § 2000e-5(f) (Supp. II, 1972). *See* Sape & Hart, *supra* note 6, at 872-73.

When the charge has been deferred to a state or local agency, *see* 29 C.F.R. § 1601.12 (1973), a determination that reasonable cause exists to support the charge shall include consideration of that agency's final findings and orders regarding the charge. *Id.* § 1601.19b(e). Such findings are to be given "substantial weight" in the determination of reasonable cause. "Substantial weight" is defined as the "full and careful consideration" that is appropriate in light of the supporting facts. *Id.* § 1601.19b(e)(2). These findings will be considered, however, only if they are the result of public hearings on the merit of a charge, the state or local proceedings were "fair and regular", and the remedies and relief granted by the state agency are comparable to those required under Title VII. *Id.* No such deference, however, need be afforded to the agency's conclusions of law when federal law is applied to those conclusions. *Id.*

There is a further requirement that the state or local agency's final findings and orders "serve the interest of the effective enforcement of Title VII" in order to be accorded substantial weight in determining reasonable cause. *Id.* § 1601.19b(e)(2)(iii). This standard must be construed with the mandate of section 1601.31 that the procedural regulations "shall be

responses regarding the likelihood of retaliation because of the disclosure of the charging party's name on the Commission's charge form; although virtually all management and union lawyers rejected the possibility of reprisals, approximately one-third of the lawyers who represent individual claimants feared the inherent potential for abuse in such disclosure.

Deferral to Arbitration

Responses were more varied to the question of whether the Commission ever should defer to arbitration.¹⁴ Management lawyers decidedly favored such deferral, labor union attorneys were divided evenly, and claimants' attorneys were somewhat opposed to such deferral. Assuming the use of deferral, an apparent consensus would require the presence of counsel for the charging party and would want the arbitration proceeding to address fairly and completely the Title VII charge in the context of a labor contract violation.

The Supreme Court decision in *Alexander v. Gardner-Denver Co.*,¹⁵ rendered subsequent to the survey, clearly minimizes the significance of this aspect of the study. Possibly consistent with *Alexander*, however, is the concern by claimants' attorneys that their clients' informed consent be a condition to any deferral.¹⁶ Var-

liberally construed to effectuate the purpose and provisions of "Title VII," and with the intent manifested in section 1601.12(a) that the "forfeiture of important Federal rights" be avoided. It would appear, therefore, that under the regulations determinations of reasonable cause shall be made liberally to facilitate investigation and eventual correction of unlawful employment practices. It has been suggested that the substantial-weight standard for orders of state and local agencies eligible for deferral will heighten their impact on Title VII complaints. See Sape & Hart, *supra* note 6, at 868-69 & n.289. The reasonable cause procedures were approved by the attorneys questioned with 44 in favor and 12 against.

14. Appendix I, questions 12-14.

15. 415 U.S. 36 (1974). The Supreme Court held in *Alexander* that the federal courts were not required to defer to arbitral decisions on discrimination claims, but that an aggrieved party should be free to pursue his remedy through the EEOC and federal courts under Title VII as well as through arbitration under a collective-bargaining agreement. The federal courts were to consider de novo the claims of an employee who had submitted his grievance to arbitration and to accord such weight to the arbitrator's decision "as the court deems appropriate." *Id.* at 59. The Court refused to define further the standard for consideration of the arbitrator's decision, but enumerated factors contributing to its effect, including "the existence of provisions in the collective-bargaining agreement that conform substantially with Title VII, the degree of procedural fairness in the arbitral forum, adequacy of the record with respect to the issue of discrimination, and the special competence of particular arbitrators." *Id.* at 59 n.21. See generally Isaacson & Zifchak, *Fair Employment Forums After Alexander v. Gardner-Denver Co.: Separate and Unequal*, 16 WM. & MARY L. REV. 439 (1975).

16. In *Alexander* the Court indicated that an employee could waive his cause of action

ious procedural safeguards advanced by management lawyers arguably may affect post-Alexander development of arbitration as an effective, and judicially sanctioned, Title VII remedial channel.¹⁷

Investigation

The procedures used in EEOC investigations perhaps constitute the greatest area of concern.¹⁸ The claimants' attorneys unani-

under Title VII as part of a voluntary settlement. Mere submission of his claim "to enforce contractual rights" to arbitration would not constitute a waiver, however. 415 U.S. at 52. The employee's waiver by voluntary settlement with his employer necessarily would be predicated upon his "voluntary and knowing" consent to the settlement as determined by a court. *Id.* at 52 n.15. "In no event can the submission to arbitration of a claim under the nondiscrimination clause of a collective-bargaining agreement constitute a binding waiver with respect to an employee's rights under Title VII." *Id.*

17. The procedural safeguards suggested by management attorneys for deferral to arbitration were similar to those outlined by the Court of Appeals for the Fifth Circuit in *Rios v. Reynolds Metals Co.*, 467 F.2d 54, 58 (5th Cir. 1972):

First, there may be no deference to the decision of the arbitrator unless the contractual right coincides with rights under Title VII. Second, it must be plain that the arbitrator's decision is in no way violative of the private rights guaranteed by Title VII, nor of the public policy which inheres in Title VII. In addition, before deferring, the district court must be satisfied that (1) the factual issues before it are identical to those decided by the arbitrator; (2) the arbitrator had power under the collective agreement to decide the ultimate issue of discrimination; (3) the evidence presented at the arbitral hearing dealt adequately with all factual issues; (4) the arbitrator actually decided the factual issues presented to the court; (5) the arbitration proceeding was fair and regular and free of procedural infirmities. The burden of proof in establishing these conditions of limitation will be upon the respondent as distinguished from the claimant.

In rejecting deferral to arbitration, the Supreme Court in *Alexander* found even these rigid standards for the safeguarding employees' Title VII rights to be unsatisfactory as regards both arbitration and Title VII. 415 U.S. at 58-59. Their application would make arbitration "a procedurally complex, expensive, and time-consuming process," *id.* at 59, thereby sacrificing the virtues of informality and efficiency that characterize arbitration. Judicial enforcement of the standard also would require a substantially de novo determination of employee claims, negating any savings in the time of consideration of the claim at a significantly greater risk to Title VII rights. *Id.* Moreover, employees fearing inadequate protection of their rights in an arbitral forum would bypass arbitration and go to court, reducing voluntary settlement of Title VII claims. *Id.* Cooperation and voluntary compliance were the "preferred means" of achieving equal employment opportunity. *Id.* at 44. See also *Isaacson & Zifchak, supra* note 15; Note, *Judicial Deference to Arbitrators' Decisions in Title VII Cases*, 26 STAN. L. REV. 421 (1974).

18. Appendix I, questions 15-20.

Investigations of charges of unlawful employment practices are made pursuant to regulation, 29 C.F.R. § 1601.14 (1973), which provides that during an investigation the EEOC may avail itself of the services of state and local agencies and, "to the extent relevant," of the information those agencies have gathered. *Id.* The aggrieved party, the person making the charge on his behalf, and the respondent are allowed to submit statements and evidence. *Id.*

mously favored broad investigatory powers unconstrained by the limits of the charge,¹⁹ while, predictably, the other practitioners would restrict the investigation to the scope of the charge as drafted.²⁰ Labor and management advocates were divided evenly on the question whether the EEOC provides the respondent with sufficient opportunity or information to defend the charges filed against

Issuance of subpoenas for evidence, including books, records, correspondence, and documents, is authorized by section 1601.15(a). Section 1601.15(b) provides that EEOC investigations are to be governed by section 11 of the National Labor Relations Act (NLRA), 29 U.S.C. § 161 (1970), pursuant to section 7 of the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e-9 (Supp. II, 1972). Section 11 of the NLRA has been interpreted to authorize the National Labor Relations Board (NLRB) to subpoena evidence before issuing a formal complaint. See Sape & Hart, *supra* note 6, at 871. The scope of EEOC investigatory powers would appear broad, given the liberal construction of Title VII mandated by section 1601.31 of the procedural regulations. See note 13 *supra*. It has been suggested that the investigation need "not be limited to the facts surrounding individual charges"; the Commission could "compel the production of any evidence relevant to the determination of the existence of unlawful discrimination." Sape & Hart, *supra* note 6, at 871. Administrative investigatory powers have been compared to those of a grand jury, which do not depend on the existence of a specific case, but can be exercised on the suspicion of a violation. *Id.* at 871-72.

Section 1601.15(c) provides that enforcement of subpoenas is to be in accordance with section 11(2) of the NLRA, 29 U.S.C. § 161(2) (1970). Thus, upon a refusal to comply with a subpoena, the EEOC would seek an enforcement order from the federal district court for the district in which the person from whom the information is sought resides, does business, or is found, or in which the inquiry takes place. Section 11(5) of the NLRA provides for nationwide service of process in enforcement proceedings. Appeal for revocation or modification of a subpoena is available, 29 C.F.R. § 1601.15(b) (1973), but judicial review of agency subpoenas rarely results in their being overturned. See Sape & Hart, *supra* note 6, at 872.

Subpoenas of witnesses are governed by section 1601.16, which provides for enforcement of compliance with the subpoena pursuant to section 710(b) of Title VII, 42 U.S.C. § 2000e-9 (1970).

The unlawful employment practices charge, any information obtained during its investigation, and any records required to be kept by section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c) (Supp. II, 1972) shall be kept confidential before proceedings are instituted, with two exceptions: (1) disclosures to the charging party, to the respondent, to witnesses, and to interested federal, state and local agencies, and (2) disclosures of data derived from investigations in a form which avoids revealing the identities of the parties to the charge or the person supplying the information. 29 C.F.R. § 1601.20 (1973).

19. Answers by claimants' attorneys to question 18, see Appendix I, provided the following suggestions: the complaining party should be encouraged to retain counsel when the charge is filed; Commission investigators should not ignore the existence of such counsel; investigators should verify allegations made by the respondent with the aggrieved party.

20. *But see* 29 C.F.R. § 1601.11(b) (1973) (contents of a charge): "[A] charge is deemed filed when the Commission receives from the person making a charge a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of." See also *id.* § 1601.31. Throughout the procedural regulations is manifested an intent to construe requirements liberally in order to further the purposes of Title VII. It would appear that restricted investigations are contrary to that intent.

it,²¹ while union and claimant lawyers both were split similarly regarding the adequacy of opportunity and information provided with which to prepare the charging party's case.²² Reflecting the apparent bias suggested earlier, claimants' attorneys generally believed that the defense was not impeded, and management attorneys largely felt that prosecution was not impaired. Finally, those representing unions and management desired the Commission, upon request, to disclose fully its investigative findings; they were concerned that their clients, as respondents, be informed of subsequent alleged violations not encompassed in the original charge.²³

Unlike the polarized responses regarding the adequacy of information and opportunity to prepare which undoubtedly reflect professional bias more than a general inadequacy of the Commission, there was wide agreement that EEOC investigators were ineffective, with virtually all responding attorneys expressing dissatisfaction with the Commission's level of training in investigative technique. Union lawyers suggested that investigators be trained in the collective bargaining process and in labor law generally. Claimants' attorneys, going further, would require general legal training coupled with an apprenticeship period, while management attorneys stressed a need for formal business training and familiarity with the particular respondent's business operations.²⁴

Conciliation

Uniformity also characterized the responses to some questions

21. Answers to question 16 were as follows:

	YES	NO
Management	14	13
Labor	8	9
Individual	9	1

22. Answers to question 17 were as follows:

	YES	NO
Management	10	1
Labor	6	7
Individual	7	7

23. Attorneys representing unions and management who offered these suggestions in response to question 18 concerning improvements in EEOC investigatory procedures also complained that investigators show a reluctance to discuss their tentative conclusions after completing the investigations.

24. These suggestions were offered in response to question 19, *see* Appendix I. In addition, management attorneys complained of EEOC bias in favor of the aggrieved party and hostility towards the respondent.

concerning conciliation;²⁵ the responding lawyers generally favored expediting the conciliation process, regardless of which type of party they typically represented.²⁶ Specific recommendations for improvement, however, varied widely among the three groups.²⁷ The breakdown by practitioner class regarding the proper scope for conciliation paralleled that for the question of scope of investigation.²⁸

25. Appendix I, questions 24-26.

Conciliation and other informal means of settlement are the preferred methods of achieving the goal of equal employment opportunity under Title VII, *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974), in accord with section 1601.22 of the procedural regulations, which provides for conciliation in mandatory terms: "In conciliating a case in which a determination of reasonable cause has been made, the Commission shall attempt to achieve a just resolution and to obtain assurances that the respondent will eliminate the unlawful employment practice and take appropriate affirmative action. . . . Proof of compliance with Title VII will be obtained by the Commission before the case is closed." 29 C.F.R. § 1601.22 (1973). The Commission can terminate the conciliation process if the respondent fails to confer or to make a "good faith" effort to resolve the dispute; the respondent is to be notified in writing that conciliation will not be resumed except upon his written request. *Id.* § 1601.23.

A requirement of confidentiality similar to that present in investigation is imposed on conciliation under section 1601.24. Nothing said or done may be disclosed to the public or used as evidence in a subsequent proceeding without the written consent of the parties. An exception is made for disclosures to federal, state, and local agencies "as may be appropriate or necessary to the carrying out of the Commission's functions," with the proviso that no disclosure be made to agencies which did not maintain confidentiality and that no disclosure be made which "will not serve the purposes of effective enforcement of title VII." *Id.* § 1601.24.

26. See Appendix I, question 24.

27. Claimants' attorneys submitted several suggestions in response to questions 24 and 26. They recommended that conciliation encompass all charges pending against the respondent and all parties to the charge, rather than the existing procedure of separate meetings with the aggrieved party and the employer. Complainants' attorneys, not unexpectedly, urged more settlements with provisions for payment of back pay. They also suggested that the "boilerplate" standardized provisions of conciliation proposals be replaced by innovative solutions. One labor union attorney proposed that the EEOC be required to conciliate with parties who wish to conciliate rather than following the present practice of refusing conciliation if the primary party to the charge (usually the employer) does not want it. The principal concern of attorneys representing management with the conciliation process was its effect in forcing an admission of guilt. They urged more flexibility and compromise during conciliation, and expressed a desire for reduction in affirmative action commitments under section 1601.22.

28. See Appendix I, question 25. Complainants' attorneys did not want the scope of conciliation limited if other violations existed with regard to the same respondent; they would prefer the scope of conciliation and investigation to be determined by them and their clients. Management and a majority of union attorneys, on the other hand, urged strict limitations on the scope of conciliation. *Cf.* note 20 *supra* & accompanying text. Some labor union attorneys suggested limiting the scope of conciliation to charges of the same class or type.

Recommendations

Constructive criticism regarding the EEOC's general operations chiefly reflected a desire to expedite case handling to reduce the current case backlog.²⁹ Virtually all lawyers, regardless of affiliation, concurred in citing a need for more adequately trained investigators; likewise, a need for additional investigators, coupled with more efficient use of those available, was suggested frequently, along with strict enforcement of investigation deadlines.³⁰ General remarks often mirrored the attorney's professional bias: for example, claimants' attorneys would grant the Commission cease-and-desist power,³¹ while union and management lawyers favored informal case resolution³² and dismissal of charges found to have no merit.³³ Simi-

29. Appendix I, questions 27-30. The burden on the EEOC is such that the Commission is unable to investigate all or even a majority of the complaints filed even to reach the question of reasonable cause. A private right of action under Title VII, for which a reasonable cause determination is not required, was necessary to safeguard Title VII rights. See Sape & Hart, *supra* note 6, at 872-73.

30. The EEOC is to make its determination of reasonable cause as soon as possible and within 120 days if practicable. 42 U.S.C. § 2000e-5(b) (Supp. II, 1972). If it is unable to secure an acceptable conciliation agreement, it may bring a civil action against the respondent in federal district court; if the respondent is a state or local government, only the Attorney General is authorized to bring the action. *Id.* § 2000e-5(f). The Commission shall notify the aggrieved party within 180 days from the filing of a charge if it has not filed a civil action or entered into a conciliation agreement to which the aggrieved person is a party; the aggrieved party then has 90 days to bring a civil action against the respondent. *Id.*

31. A grant of cease-and-desist powers was considered in the congressional debates on the Equal Employment Opportunity Act of 1972 and was part of the bill reported by the Committee on Education and Labor to the House. It was rejected, however, in favor of enforcement through civil actions in federal courts in the House bill reported to the Senate. Cease-and-desist enforcement power was also part of the bill reported to the floor of the Senate by the Committee on Labor and Public Welfare; it was the principal point of debate in the Senate before being rejected there also in favor of court enforcement. See Sape & Hart, *supra* note 6, at 836-45.

32. Informal case resolutions without the enforcement power given to the Commission in 1972 proved a most ineffective means of achieving the goal of equal employment opportunity under Title VII. The EEOC could not compel changes in employment practices without enforcement power, and the Justice Department could sue only when an obvious "pattern or practice" of discrimination was demonstrated. Civil Rights Act of 1964, Pub. L. No. 88-352, §§ 706-07, 78 Stat. 241. Less flagrant violations went unresolved or were resolved only on an individual basis. The fate of most private complaints of employment discrimination has been described as follows: "While the Act raised the promise of a national commitment to ensuring equal employment opportunity, the reality for most aggrieved individuals was a long round of negotiations with employers who, more often than not, were undeterred by the threat of an individual suit and simply refused to comply." Sape & Hart, *supra* note 6, at 825.

33. The Commission can dismiss a charge which fails to state a valid claim for relief under Title VII or for which there is no reasonable cause to believe it to be true. 29 C.F.R. §

larly, management and union reactions again evidence a preference for arbitration and narrow investigative and conciliatory powers.

Conclusion

Despite the study's inherent subjectivity, reflected in the professional bias of many responses, some areas of agreement are evident that may aid evaluation of the Commission's procedures. Although some disagreement appeared concerning the sensitive question of disclosure of the charging party's name, the current procedures for filing of charges and determinations of reasonable cause generally were acceptable to all. Agreement of another sort was present in the wide condemnation of the EEOC investigators' lack of professionalism. Consolidation of cases and strict adherence to investigative deadlines, along with improved investigative technique generally, would seem to be agreed-upon solutions to the problem of excessive case backlog. The basic agreement among the different interests on these subjects indicates that improvements can be structured without compromising the various conflicting interests that are present in Title VII disputes and that had surfaced in other parts of the ABA study. Most significantly, the results illustrate a general understanding of the Commission's responsibilities and an absence of hostility toward EEOC goals. Perhaps the subjectivity of response to many of the questions, although not providing the consensus that otherwise might facilitate unopposed reform to widely perceived problems, also evidences the overall effectiveness of the Commission as an important Title VII forum. The expression of parochial viewpoints indeed reflects widespread concern for perfecting EEOC procedure to enable it to serve better the multifarious interests affected by equal employment opportunity disputes.

1601.19b(a) (1973). This power must, however, be construed within the intent of liberal interpretation to fulfill the goals of Title VII under section 1601.31. See note 13 *supra*.

APPENDIX I:
ABA QUESTIONNAIRE

BACKGROUND

1. Nature of your practice.
 - a. Private practice
 - b. Employed by civil rights organization
 - c. Employed by management
 - d. Employed by labor organization
 - e. Other _____
2. Frequency of contact with the EEOC.
 - a. Very frequent
 - b. Frequent
 - c. Occasional
 - d. Seldom
 - e. None
3. Who do you represent? (Mark in both columns.)

Charging parties only	Management
Respondents only	Labor organizations
Primarily charging parties	Individuals
Primarily respondents	Civil rights organizations
Both Equally	

CHARGE

4. Should the actual charge filed by an aggrieved person be served on the respondent within the ten day statutory period?
 - a. Yes
 - b. No
5. Specify any advantages to serving the charge within the ten day period.
6. Specify any disadvantages to serving the charge within the ten day period.
7. Should a charge filed *on behalf* of an aggrieved person be treated differently for the purposes of service than a charge filed by the aggrieved person?
 - a. Yes
 - b. No
8. State the reasons for your answer to question 7.
9. If your answer to question 7 is "yes," what form of notice should be given to the respondent as to the nature of the charge?
10. What effect, if any, has the disclosure of the name of the charging party on the revised EEOC Form 131 had on the likelihood of retaliation against the charging party?
11. Have charging parties had sufficient assistance from the district offices of the EEOC in completing charge forms and if not, what further assistance should be provided?

DEFERRAL

12. State any suggestions which you may have with respect to deferrals to state agencies.
13. Should the EEOC ever defer to arbitration?
 - a. Yes
 - b. No

14. If the answer to question 13 is in the affirmative, describe the circumstances for such deferral and any safeguards which should be met.

INVESTIGATION

15. To what extent, if any, should the scope of the investigation be limited to the scope of the charge?
 - a. Yes
 - b. No
16. Is the respondent given sufficient opportunity or information by the EEOC so as to allow the respondent to present its defense on all matters under consideration?
 - a. Yes
 - b. No
17. Is the charging party given sufficient opportunity or information by the EEOC so as to allow the charging party to present its case on all matters under consideration?
 - a. Yes
 - b. No
18. If the answer to either question 16 or 17 is in the negative, what should be done?
19. State any suggestions for the training of investigators.
20. State any other suggestions for improving the investigative process.

DECISION

21. Do you object to the present procedure of allowing district directors to make determinations of whether reasonable cause exists?
 - a. Yes
 - b. No
22. If the answer to question 21 is in the affirmative, state the reasons for your answer.
23. Specify any improvements which can be made in the writing or form of decisions.

CONCILIATION

24. What improvements can be made in the conciliation process?
25. To what extent should the scope of the conciliation proceeding be limited in resolving the charging party's individual charge?
26. Should the "boiler plate" and other standardized provisions of the typical Commission's conciliation proposal be modified and, if so, how? Should such terms be negotiable in each case and, if so, to what extent?

GENERAL

27. What procedural steps should be taken to expedite case handling and decrease the present backlog of cases?
28. Is sufficient information available with respect to EEOC practice and procedures and if not, in what areas is such information lacking?
29. State any other suggestions for improving EEOC procedures.
30. What effect, if any, has the new EEOC enforcement authority under the 1972 amendments had on actions by individual plaintiffs and on the practice of the plaintiffs' bar?