An Empirical Analysis of the Filing of Discrimination Claims

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This paper is an attempt to examine why union members, particularly females, file complaints or suits with external government agencies against their unions and employers. The process of filing a suit has been described by some as a process involving a "risk." Whether or not one files a complaint may depend on what the perceived benefits are as measured against the perceived risks. Thus, this paper examines the factors in general which lead individuals to take these "risks" and file complaints, as well as the relative importance of gender and sex-associated characteristics in this process.[1]

In order to do this, this paper first considers the historical and legal status of women in the workplace to provide a context within which the problem can be better appreciated. This is significant because in recent years there have been changes in our industrial relations laws that have given the unionized as well as nonunionized employee independent statutory rights by which he or she may seek external redress of work-related grievances. The focus of this study is on the unionized employee who seeks external redress to his or her grievances rather than solving grievances solely through the available arbitration procedures. There are four important factors which may bear on whether women file: (1) the evolution of "employee-employer" relations law, (2) the changing status of working women in the workforce, (3) the status of women in unions, and (4) the "new breed of worker or the litigious" worker. The external suits or complaints referred to in this study can take the form of a suit under Sections 301 or 8(b)(1)(a) of the National Labor Relations Act (NLRA) or a complaint under Title

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[1] Gleason argues that there may be considerable risks to female filing. See Sandra Gleason, "The Probability of Redress: Seeking External Support," in *Outsiders on the Inside: Women and Organizations*, eds. Barbara L. Forisha and Barbara Goldman (Englewood Cliffs, N.J.: Prentice-Hall, 1981).

VII of the Civil Rights Act of 1964 against the union and/or employer.

Historically, the legal status of women reflected the attitude of society as a whole toward women. In the past, public laws permitted employers and unions to treat female employees differently from their male counterparts. As a consequence, this lawful form of sex-based discrimination became an integral part of the "law of the shop" and industry custom. A chief example of this was the existence of state protective legislation, which contributed greatly to what soon became termed "male" jobs and "female" jobs.[2] Notwithstanding the adoption of the Fourteenth Amendment, the judiciary has generally accorded great deference to sex-based discriminatory laws. Although new constitutional standards have since evolved (primarily under the equal protection and due process clauses of the Fourteenth Amendment) to test the validity of the *Muller* principle,[3] sex is not a suspect class under the Fourteenth Amendment even now.[4] Furthermore, the early arbitration cases involving sex discrimination generally followed the less rigid evidentiary criterion which parallels the court's "any rational basis test." Recently, this may be changing due to the post-Title VII litigation which held that the state protective laws violate Title VII. The issue of why females may file complaints may be seen in the broader context of a shift in the substance and emphasis of industrial relations law. Since World War II, this shift has become obvious—reaching its peak in the passage of the Equal Pay Act of 1963 and Title VII. Feller has termed this shift in the law as the evolution of "employee-employer relations" law.[5] These laws have not only given the individual worker a statutory cause of action independent of his or her labor organization, but they have also placed an unprecedented emphasis on the individual worker's rights in the workplace. In the wake of this era, there has developed a new breed of worker—"the litigious worker."

In addition, more and more women are entering the workforce. Women account for nearly three-fifths of the increase in our workforce.[6] Second, most women are working because they must. Of all the women in the workforce in 1979, two-thirds were single, divorced, widowed, or separated or had husbands who earned less than $10,000.

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[2] See Judith Baer, *The Chains of Protection: The Judicial Response to Women's Labor Legislation* (Westport, Conn.: Greenwood Press, 1978).

[3] *Muller* v. *State of Oregon*, 208 U.S. 412 (1908), affirming *State* v. *Muller*, 85 Pac. 855 (1906). Also see *Bradwell* v. *The State*, 16 Wall 130 (U.S. 1872).

[4] Margaret A. Berger, *Litigation on Behalf of Women* (New York: Ford Foundation, 1980).

[5] David E. Feller, "Arbitration: The Days of Its Glory Are Numbered," *Industrial Relations Law Journal* 2 (Spring 1977), pp. 97–130.

[6] See, e.g., U.S. Department of Labor, Women's Bureau, *Twenty Facts of Women Workers*, 1980, p. 1.

In other words their economic stake in employment is greatly increased. The number of women with a dual role—worker and mother—has also increased. Given the status of women in society, they often have characteristics such as membership in several protected groups or other attributes which make them "doubly" vulnerable to discrimination. For instance, the group of black women or the group of single parents may experience discrimination that is not simple sex discrimination.[7] It would appear that unions have the potential of playing a critical role in representing women in the workplace. However, currently it appears that the status of women in unions is not such that they can currently expect unions to be their primary advocacy group.[8] Although the response to women's demands varies across different unions, there have recently been developments of an encouraging nature—with certain individual unions aggressively pursuing sex discrimination cases and with the establishment of the Coalition of Labor Union Women.

Hypotheses

There are seven hypotheses concerning what factors may be predictors of who would be more likely to file. It is expected that filing will be greatest for employees if they are: (1) female employees; (2) individuals who are nonwhite, young, and file many grievances; (3) individuals dissatisfied with the grievance process or bargaining process; (4) individuals who feel efficacious; (5) individuals who perceive the decision-making in the local to be indirect (made by leaders) rather than direct (made by members); (6) individuals with a liberal attitude on women's equality; and (7) individuals who perceive their economic "stakes" in the job to be high, as indicated by a high salary or greater amount of seniority.

Methods

This analysis was based on a random sample of 2,000 union members from a large statewide union in Illinois. The response rate was 44.4 percent. The survey contained demographic characteristics and filing activity. In this study, all forms of filing were considered to represent the same concept, notwithstanding the basis upon which the suit

[7] See, e.g., Elaine Shoben, "Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination," *New York University Law Review* (Fall 1980).

[8] Ronnie Steinberg Ratner and Alice Cook, *Women, Unions and Equal Employment Opportunity*, Working Paper No. 3, Center for Women in Government, Albany, N.Y., January 1981; Alice Cook, "Women and American Unions," *Annals of the American Academy of Political and Social Sciences* (January 1968), pp. 124–32. See also Karen Koziara and David Pierson, "Women Leaders: Why So Few?" draft paper, Temple University Department of Industrial Relations and Organizational Behavior.

or charge is brought or against whom. This concept of filing is essentially the process of the employee exercising "voice" by filing externally.

Findings

Although there were many predictors which were important on the simple level, the significance of these factors could be due to a large sample size alone. In order to test which variables remain important when other factors are controlled, a log linear analysis was used. The criteria for selecting the three variables were the variable's stability and significance over a large combination of variables, as well as its theoretical meaning. Based on this, the three variables which are consistent and meaningful predictors of filing are: (1) race, (2) union activity, and (3) status as a single parent. As indicated in Tables 1 and 2, if the person is nonwhite the odds of filing are 2.06 times greater than if he or she is white. If the person is a union activist, the probability of his or her filing is approximately 3.5 times greater than that of a nonactivist. If the person is a single parent, his or her chance of filing is 2.9 times greater than a person who is not a single parent. Single parents are disproportionately female.

Once the three best predictors were selected, the best fitting model had to be chosen—one that best describes the structure among these variables and filing. The model which best describes the data in this

TABLE 1

Odds of Filing by Race, Union Activity and Status as a Single Parent

Race	Union Activity	Single Parent Status	Filing Suit?[a] No	Yes	Odds[b]
White	Low	No	420	13	.034
White	Low	Yes	12	1	.100
White	High	No	102	13	.118
White	High	Yes	1	1	.342
Nonwhite	Low	No	152	13	.070
Nonwhite	Low	Yes	29	5	.206
Nonwhite	High	No	34	6	.244
Nonwhite	High	Yes	3	3	.716

Results: Calculation of Improvement in Odds[c]
Single Parent Status = 2.94 (.100/.034)
Union Activity = 3.47 (.118/.034)
Race = 2.06 (.070/.034)

[a] These are the observed frequencies. The odds are calculated on the expected frequencies of the model that fits best.

[b] The odds are calculated on the expected frequencies of the model that fits best.

[c] The numbers represent the improvements in odds when it is known with certainty that a person falls in one category rather than another of that variable. For example, a 2.06 means that if the person is nonwhite rather than white, the odds are 2.06 times as high that the person will file a complaint.

TABLE 2

Possible Models and Preferred Models:

	Degrees of Freedom	Chi-Square
1. Independence model (No effect of independent on dependent)	7	32.49
2. Main effect of single parent status on filing	6	23.70
3. Main effect of union activity on filing	6	18.01
4. Main effect of race on filing	6	23.37
5. Joint effect of single parent status and union activity	5	7.76
6. Joint effect of single parent status and race	5	18.42
7. Joint effect of union activity and race	5	8.03
8. Joint effect of union activity, race, and single parent status (Preferred Model; Improvement over others at .05 levels)	4	2.07
9. Interactions: Not reported because no added improvement		

$X^2 = 2.07$, overall probability = .72, df = 1
Main effect of single parent status = 8.79 (32.49 − 23.70)
Main effect of union activity = 14.48 (32.49 − 18.01)
Main effect of race = 9.12 (32.49 − 23.37)

case is a model in which there are joint effects of the three variables. There are no interactions among the variables.

Sex and Sex-Related Factors

One explanation of why sex does not appear to be a predictor may be that of all the discrimination suits filed, those based on sex represent only a small fraction. This is not the case. Of a total of 63 individuals who filed suits or charges, 27 (or 40 percent) of them filed suits on the basis of sex discrimination. It may be worth examining closely who is filing the sex discrimination suits—men or women. In this sample, the filing rate for males appears to be roughly equivalent to that of females. The low filing rate among female workers may be due to nonwhite women filing on the basis of race alone. It is also possible that the reason the males and females file at equivalent rates is that union officials (who are predominately male) are filing on behalf of female workers. There is some support for this in that union activists do file significantly more than regular members. This explanation remains highly speculative since the nature of these data only permits us to know that these charges were filed on the basis of sex; they do not permit us to know whether they alleged discrimination against females or against males. Although sex is not significant, one sex-related characteristic, single parenthood, does predict very well. This may be because single parents feel they have a greater "stake" in their job and therefore that it is worth the considered "risk" of filing. The respondent's

attitude to women's equality, when controlled for other factors, does not predict filing, however.

Conclusions

There has been substantial discussion in the industrial relations literature about a "new breed of worker." Because of his or her characteristics, this "new breed" is less likely to accept the answers provided by the traditional institutions.[9] Inasmuch as the nonwhites and the single parents are workers who can be characterized as the new breed of worker, there is some support for the rising concern over the litigious behavior of these employees. This may pose challenges to the authority of the traditional relationship between labor and management. Thus, the proliferation of external law which provides a private cause of action upon which an employee may base a statutorily-related complaint has given the individual a potentially new role and legal status in the workplace. Given what had been considered by some critics to be the inadequate protection and inferior legal status in the workplace of women and minorities, it would be expected that women and minorities would file frequently. This is true with nonwhites, but not with women.[10] There is no definite explanation for this. However, one possibility is that at least some sex discrimination claims are being filed by males on the basis of reverse discrimination.

A sex-related characteristic, the person's status as a single parent, was one of the strongest predictors of filing. The group of single parents is heavily female in this sample. Given divorce rates and the increasing number of young unmarried women bearing children, it is expected that this group will continue to increase as a percentage of the total workforce. Therefore it is logical that policies which are of particular benefit to single parents will gain more attention. The most obvious policy is the provision of day care—either as a part of national policy, as a benefit negotiated by a union and employer, or as a benefit established by an employer. Of course day-care programs are an issue for all parents, not just single parents. Women's organizations have pointed to the need for adequate day care based on day care being a woman's issue. However, it is suggested that day care is a problem for society, rather than solely for women. Therefore, it may be a sound strategy for both labor and management to take a leading role in responding to this issue.

Another implication of the finding that union activists and non-

[9] Albert Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge, Mass.: Harvard University Press, 1970).

[10] Females have a 3.8 percent filing rate for sex discrimination as compared to a 3 percent filing rate among males.

whites are filing at a greater rate than other members is that labor and management should consider instituting procedures that lead to the final resolution of statutorily-related grievances, including discrimination claims. This is especially true in the light of *Gardner-Denver* and now the Supreme Court's recent decision in *Arkansas-Best Freight Inc.*[11]

[11] *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 7 FEP Cases 81 (1974), and *Barrentine* v. *Arkansas Best Freight, Inc.*, — U.S. — (1981).

DISCUSSION

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The Newman and Hoyman and Stallworth papers both explore important current issues. Newman discusses comparable worth, or pay equity, perhaps the equal employment issue which most concerns employers, unions, and employees alike. Much of the reason for this intense interest is that no consensus exists as to its definition, extent, or remedy.

Given Winn Newman's involvement with comparable-worth cases pursued by both the International Union of Electrical, Radio, and Machine Workers (IUE) and the American Federation of State, County, and Municipal Workers (AFSCME), it is most fitting that he should be the author of a paper on this subject. Few people have more experience in dealing with the issue from the context of organized labor. Perhaps the paper's most important contribution are Newman's observations about how the issue will be pursued by unions. His suggestion that joint union/management committees be formed to consider solutions to problems of unequal pay for jobs of comparable worth is interesting and certainly would encourage removing the issue from litigation.

Newman's most controversial observation is that the *Westinghouse* and *Gunther* decisions extended Title VII to include equal pay for jobs of comparable worth. The language used by the Court in *Gunther* indicated that the finding was not to be construed to mean that comparable worth was the issue on which the Court decided. The exact limits of this important decision will not be determined by academic arguments or further research, but by the courts in future cases. However, Mr. Newman's opinion is important as an influence on unions and their members to litigate comparable-worth cases and employers as they determine the policies for answering wage structure modification demands.

Several other observations made by Mr. Newman are important to consider. First, the paper suggests the change in administration will have little or no impact on comparable worth litigation because the EEOC had not pursued any such cases. However, it should be remembered that the issue became popularized toward the end of the

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Carter Administration. It is pure speculation, but had the administration not changed and the EEOC been allowed to continue on its previous course, it is reasonable to say that the agency would undoubtedly have pursued comparable-worth cases. Thus, the change in administration probably had a continuing impact on the issue. Mr. Newman is in fact saying that the issue is being pursued regardless of the inattention given it by the EEOC. This cannot be denied.

Mr. Newman further observes that the issue will be pursued primarily within the public sector. Clerical workers are more organized within the public than the private sector, meaning that unions are most likely to pursue the issue within the public sector. However, there is nothing inherently different about wage structures in the two sectors which would make the public sector more vulnerable to comparable-worth charges. Given the tight fiscal environment facing public employers, they are probably no more likely to acquiesce to pressures to equalize male and female wage structures than are private employers. Additionally, as the issue becomes more known, and assuming Mr. Newman's observations that the courts will accept equal pay for jobs of comparable worth as consistent with Title VII, unions will be able to use the issue as a lever in organizing private-sector clerical workers. Private-sector employers employing large numbers of clerical workers are clearly concerned about this aspect of the comparable-worth issue.

Two further comparable-worth issues, one mentioned by Newman and the other not, deserve comment. The measurement of job worth is still a major issue which needs confronting. It has not been overcome to everyone's satisfaction, as Newman implies. The circumstances surrounding both the *Westinghouse* and the *Gunther* cases involve rather blatant differential treatment of jobs held by men and women. More frequently, employers do not overtly treat male and female jobs differently, but nonetheless have wage structures with female jobs concentrated at the lower end of the wage structure. The primary question then is whether the wage structure does or does not reward comparable jobs equally. Merely saying that people are more important than trees does not necessarily imply that tree-trimmer jobs should be less valued than jobs dealing with people. A systematic and fair manner of assessing the value of jobs by using a common measurement technique reflecting the organization's values is necessary. As Schwab and Milkovich[1] have argued, job evaluation plans as currently used are often insufficient, particularly when there are separate systems for factory and

[1] George T. Milkovich, "The Emerging Debate," and Donald P. Schwab, "Job Evaluation and Pay Setting: Concepts and Practices," both in *Comparable Worth: Issues and Alternatives*, ed. E. Robert Livernash (Washington: Equal Employment Advisory Council, 1980).

clerical jobs or where wage information comes from surveys of separate and segregated labor markets.

Another method of measuring job worth which utilizes job content and incorporates organizational norms was used in a public-sector study.[2] This study used a self-administered quantitative job analysis to measure job content and assigned job worth by applying the wage/content relationship observed for the male jobs to the female jobs. We found about a 10 percent differential between wages currently paid for traditionally female jobs and what wages would be if job content were valued in the same way as in men's jobs. This represents only one way in which value can be assessed and compared across different jobs, but the measurement of job worth is at the heart of the comparable-worth issue and needs considerable attention by practitioners and researchers.

Another issue for consideration, particularly within unions, is the potential for internal conflict resulting from comparable-worth concerns. Employers may be willing to grant wage adjustments as long as male job incumbents are content to accept smaller wage increases than they might otherwise receive. Obviously this places the issue squarely within the union's court and negotiators must decide how to deal with it in this context. Union members may see the issue as a competitive one, which can result in problems for union leaders concerned with maintaining a unified membership.

Hoyman and Stallworth pursue an issue on which relatively little empirical research has been done. Further information on the characteristics of people who file discrimination suits would be beneficial to a number of audiences. Certainly union leaders should be interested in this information because filers feel they have been wronged by their employer and unions usually perceive their role as providing protection and support for members. Union leaders could use this information to help identify people most likely to need assistance. Employers concerned with providing a relatively nondiscriminatory working environment could also use this information to help identify people and groups most likely to file suits. They could thus try to eliminate discriminatory practices before employees resort to suits.

This research is part of a developing stream in which behavioral techniques are employed to study union-related problems. Too often little cooperation exists between unions and behavioral scientists for a variety of reasons. Evidence of cooperation such as demonstrated in the Hoyman and Stallworth paper helps develop a badly needed rapport.

[2] David A. Pierson, Karen S. Koziara, and Russell E. Johannesson, "Equal Pay for Jobs of Comparable Worth: A Quantified Job Content Approach," working paper, Temple University.

This paper's introduction reviews the situation of working women over a number of years and documents specific problems women have confronted. The paper also develops tentative hypotheses specific to this research on who will most likely file discrimination suits. The hypotheses and their development are more relevant to the paper than are the earlier more general comments. A more fully developed set of hypotheses would allow the results of the research to be placed better into a larger research context and the results more easily generalized. The specific problems women confront at work are important as general knowledge to the reader, but do little to lay the groundwork for this empirical investigation.

Methodologically, the research and its description could be more straightforward. Multiple discriminant function analysis would have specifically shown which independent variables are the best correlates differentiating union members who file suits from those who do not. A model specifically including interaction terms would have allowed the "sex-plus" terms, such as women who are single parents or women who are nonwhite, to be easily investigated. Finally, the "preferred model" could be easily determined by step-wise techniques.

With respect to the validity of the results, the finding that women are not more likely to file discrimination suits is counterintuitive. Finding union activity, race, and single-parent status related to filing discrimination suits is easily explained, as the authors have done. But if fully 40 percent of the suits in this sample are filed on the basis of sex, it is curious that sex of the filer is not a significant predictor. Assuming this sample is representative of a larger population, further explanations of the results are needed.

Perhaps attitudes toward filing suits are more homogeneous among nonwhites than among women as a group. Certainly women are not unanimous in their demand for equal treatment at work and do not all view specific employer actions in the same manner. Some may file suit on an employer action which others overlook. Further research on this finding is necessary. The current study allows for interesting speculation, but not definitive conclusions.

DISCUSSION

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Mr. North's work provides a brief explanation of the different classifications of foreign-born persons that we have in the U.S. today. However, I believe he must, as he has stated, use this material only as an introductory paper. If the paper is rewritten, it would be worth his time to provide the numbers of persons in each of the six classes. Furthermore, he should explain in greater detail the present complicated system of deportation. Finally, he should provide comments on the new proposals on aliens and give his readers some insights into alternatives which are now being considered.

The papers presented earlier raised a number of questions about resolving discrimination issues. They implied that there are problems with filing a complaint with EEOC at this time. One of the ways to judge the success of the Commission is to compare statistics on charges and cases in Fiscal Years 1980 and 1981. However, when making these comparisons, one must recall that during Fiscal 1981 EEOC lacked a quorum for a number of months. This problem was resolved on December 21 when Catherine A. Shattuck, a labor lawyer, was nominated by President Reagan and subsequently sworn in as a member of the Commission by Acting Chairman Smith.

Let us begin by considering EEOC's compliance area, which includes the handling of charges and cases under (1) Title VII of the Civil Rights Act of 1964, as amended; (2) the Age Discrimination in Employment Act; and (3) the Equal Pay Act, as amended.

We see in the top panel of Table 1 that in all areas except Equal Pay, the number of charges filed was greater in Fiscal 1981 than in 1980. This increase probably can be attributed to an understanding of the value of bringing a charge with the agency whose function it is to protect individuals' rights and resolve complaints under these titles.

The number of closures on file also increases under all three statutes in Fiscal 1981 (second panel of Table 1), and with the number of closures at a higher rate, the number of people benefiting from compliance activity also increased (where this could be measured under

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TABLE 1

EEOC Compliance—Charges Received, Settlements, and Monetary Benefits

	FY 1980	FY 1981	Percent Change
Charges filed			
Title VII	$45,343	$47,447	+ 5%
Age	8,779	9,550	+ 9
Equal Pay	2,303	1,757	− 24
Total	56,425	58,754	+ 4
Closures			
Total	57,327	71,690	+ 25
Monetary benefits (000s dollars)			
Title VII	$43,082	$60,589	+ 41
Age	12,312	28,031	+128
Equal Pay	1,926	3,091	+ 60
Total	57,320	91,711	+ 60
Average dollar benefits			
Title VII	$ 2,811	$ 3,787	+ 35
Age	n.a.	11,631	
Equal Pay	n.a.	1,861	

Source: Adapted from *Compliance, Production Report,* FY 1980–81 (Washington: EEOC, 1981), pp. 2, 4, 8, 9. Charges filed concurrently are included under both statutes.
n.a. not available.

Title VII). This is a sign of the agency's increased administrative productivity during FY 1981.

The closure rate and the number of beneficiaries has been coupled with higher monetary benefits for persons under all of the Acts (third panel of Table 1). Thus, these increases in monetary benefits show that EEOC secured more benefits (in dollar amounts) in Fiscal 1981 than in FY 1980 while achieving a substantial increase in charge closures.

Statistics for average dollar benefits for all three statutes are not available for comparative purposes for FY 1980 and 1981, but the available average benefits for Title VII gives an indication of the difference (fourth panel of Table 1).

The other area by which EEOC can be judged is litigation—cases and settlements achieved (see Table 2). The record here can be compared to the compliance area for the same fiscal years. The three subareas of major concern here are the number of cases filed (panel 1), the number of settlements of cases filed (panel 2), and the monetary benefits (panel 3).

According to EEOC data, monetary benefits obtained for the victims of employment discrimination, principally back-pay awards, declined by 23 percent from almost $21 million in FY 1980 to slightly more than $16 million in FY 1981. Remedies other than back pay secured by the

TABLE 2

EEOC Litigation—Cases, Settlements Achieved, and Monetary Benefits

	FY 1980	FY 1981	Percent Change
Cases filed			
Title VII	200	229	+ 15
Age	47	89	+ 89
Equal Pay	79	50	− 37
Total	326	368	+ 13
Settlements (of cases filed)			
Title VII	141	172	+ 22
Age	42	22	− 48
Equal Pay	9	43	+378
Total	192	237	+ 23
Monetary benefits			
Title VII	$18,674,901[a]	$13,145,403	− 30
ADEA/EPA	2,261,126	3,071,357	+ 36
Total	20,936,027	16,216,760	− 23

Source: Adapted from *Enforcement, Litigation Activity/Monetary Benefits, 12-Month Comparison Report,* FY 1980–81 (Washington: EEOC, 1981), pp. 3, 4, 5.

[a] Includes one $12.5 million settlement which should be considered when FY '81 figures are compared to similar FY '80 figures.

Commission included training programs, apprenticeship funds, and affirmative action programs.

All of these statistics indicate that EEOC activities and settlement rates in most areas in Fiscal 1981 exceeded those in Fiscal 1980, and there is no foreseeable reason why this pattern of progress should change in future years.

EEOC has been and still remains an effective government agency determined to carry out its mandates under all three Acts. A successful program conducted by EEOC will benefit not only the persons covered by a particular charge or case, but others employed in a similar industry or area, through the visibility of the agency's record.