

Resources Devoted to Local and Federal Civil Rights Enforcement in Minnesota

**Minnesota Advisory Committee to the
U.S. Commission on Civil Rights**

June 1996

A report of the Minnesota Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission and the Commission will make public its reaction. The findings and recommendations of this report should not be attributed to the Commission but only to the Minnesota Advisory Committee.

The United States Commission on Civil Rights

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, as amended by the Civil Rights Commission Amendments Act of 1994, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study and collection of information relating to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections; and preparation and issuance of public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the law. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 3(d) of the Civil Rights Commission Amendments Act of 1994. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference that the Commission may hold within the State.

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Letter of Transmittal

Minnesota Advisory Committee to the
U.S. Commission on Civil Rights

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Cruz Reynoso, *Vice Chairperson*

Carl A. Anderson

Arthur A. Fletcher

Robert P. George

Constance Horner

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Charles Pei Wang

Mary K. Mathews, *Staff Director*

The Minnesota Advisory Committee submits this report, *Resources Devoted to Local and Federal Civil Rights Enforcement in Minnesota*, as part of its responsibility to advise the Commission on civil rights issues within the State. The Advisory Committee is indebted to the staff of the Midwestern Regional Office, U. S. Commission on Civil Rights, for their assistance in organizing the factfinding and preparing this report. The Advisory Committee unanimously approved this report.

The Advisory Committee held a factfinding meeting on August 31 and September 1, 1994, to obtain information about the level of local, State, and Federal resources devoted to civil rights enforcement. Those invited to attend included elected and appointed government leaders, officials and employees from Federal, State, and local civil rights enforcement agencies, representatives from local community groups, researchers, and individuals from the community.

Although the report does not reflect an exhaustive analysis of the subject, the Advisory Committee hopes the Commission will find it of value in its monitoring of civil rights enforcement.

Respectfully,



Karon Jenese Rogers, *Chairperson*
Minnesota Advisory Committee

Minnesota Advisory Committee to the U.S. Commission on Civil Rights

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Chapter 1

Introduction

The U.S. Commission on Civil Rights was an early advocate for the enactment of many civil rights statutes that are currently law. The Commission supported these legislative acts as a means to end the vestiges of discrimination existent in this society on the basis of race, gender, age, religion, and disability. In recent years the Commission has examined the enforcement of these statutes and the resources devoted to such enforcement.

In releasing the 1993 U.S. Commission on Civil Rights monitoring report, *Enforcement of Equal Employment and Economic Opportunity Laws and Programs Relating to Federally Assisted Transportation Projects*, former Commission Chairperson Arthur A. Fletcher, stated:

If we as a Nation are going to address the pervasive causes of racial tension and urban unrest, and put an end to the cycle of rioting that has most recently shaken cities like Los Angeles, Atlanta, and Washington, D.C., a vigorous civil rights enforcement effort is critically needed.¹

The previous year in a Commission report on Federal fair housing and local agency certification by the U.S. Department of Housing and Urban Development, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*, former Commission Vice Chairperson Charles Pei Wang also referred to the critical role of civil rights enforcement.

The apparent inability of government agencies at all levels to address the ongoing insult of housing discrimination has contributed to the perception that civil rights law enforcement is not as important as the enforcement of other laws.²

In Minnesota several Federal agencies enforce and investigate different civil rights statutes. Three of these are: Office of Federal Contracts Compliance Programs (OFCCP), U.S. Department of Labor; Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD); and the Equal Employment Opportunity Commission (EEOC). In addition to a Federal presence, the State of Minnesota through the Minnesota Department of Human Rights (MDHR) annually investigates nearly 2,000 complaints alleging discrimination in employment and housing on the basis of race, sex, color, religion, ethnicity, and sexual orientation.

On a local level the cities of Minneapolis and St. Paul each have human rights agencies that do local investigations of discrimination complaints in the areas of education, housing, public accommodation, and employment. Forty-seven other communities in Minnesota have local human rights commissions, which do not have investigative authority but do serve to gather information on human rights in their areas and to provide grievance resolution for discrimination complaints.

The Minnesota Advisory Committee to the U.S. Commission on Civil Rights has supported the enactment of many local and State civil rights statutes that are currently law. With this in mind, the Advisory Committee undertook to examine recent trends in operations, resources, staffing, and workload of human rights agencies with investigative authority operating in the State, including: at the municipal level, the Minneapolis Civil Rights Department and the St. Paul Commission on Human Rights; at the State level, the

¹ U.S. Commission on Civil Rights, news release, Jan. 11, 1993.

² U.S. Commission on Civil Rights, news release, Sept. 11, 1993.

TABLE 1
Minnesota's Changing Population

	1900-40	1970	1990	Projected 2020
White	92.2%	98.2%	93.7%	85.0%
African American	NA	0.9	2.2	5.9
American Indian	NA	0.6	1.1	1.8
Asian	NA	0.3	1.8	4.3
Hispanic	NA	NA	1.2	3.0

Note: The percentage of whites in 1990 and 2020 include only non-Hispanic whites.

Source: U.S. Census and *A Changing Population-MN Planning*.

Minnesota Department of Human Rights; and at the Federal level, the OFCCP, HUD, and the EEOC.

The Advisory Committee conducted a 2-day factfinding meeting in Minneapolis on August 31 and September 1, 1994. Presenters before the Advisory Committee included representatives and agency heads of the Minneapolis district office of the OFCCP, the district director of the EEOC, the director of the Office of Fair Housing and Equal Opportunity of HUD, the director of the Minnesota Department of Human Rights, the director of the Minneapolis Civil Rights Department, and the director of the St. Paul Human Rights Commission. In addition, the Advisory Committee heard from representatives of the League of Minnesota Human Rights Commissions, researchers, elected officials, civic leaders, employees working locally in civil rights enforcement agencies, and individuals from the community.³

This report is a summary of what the Advisory Committee learned about civil rights enforcement by those agencies. It is conducted at a time when the State's racial and ethnic composition has shown a marked change. In 1990 Minnesota's population was 6.3 percent minority, up from 3.9 percent in 1980. The State trend toward increas-

ing racial and ethnic diversity is expected to continue. Currently 10 percent of public school children are African American, American Indian, Asian, or Hispanic. Children in the State are six times more racially diverse than the population over 65.⁴ By 2020, 15 percent of all Minnesotans are expected to be people of color.

The economic gap between whites and minorities has increased in Minnesota in recent years. The median income of African and Asian American households in the State dropped in the 1980s, while that of white households increased. In addition, poverty rates for Hispanics and other minorities rose, while that of whites fell. Poverty rates are five times higher than that of white children for African Americans and American Indians and three times higher for Asian and Hispanic Americans.

African Americans, American Indians, and Asian Americans are less likely than whites to be in the labor force, and all people of color are more likely than whites to be in service and semiskilled manufacturing jobs or unemployed. Minority workers tend to be underrepresented in higher paid, higher skilled jobs and overrepresented in lower paid, semiskilled occupations. They are also less likely to be employed full time and, in most

³ The agenda of the factfinding meeting is in app.A.

⁴ State of Minnesota, Strategic and Long-Run Planning Office, *State of Diversity* (November 1993) p. 6.

TABLE 2
Minnesota Median Household Income,
1979 and 1989

	1979	1989	Trend
White	\$29,550	\$31,320	↑
African Amer.	20,270	18,880	↓
Amer. Indian	17,900	15,430	↓
Asian	26,240	22,690	↓
Hispanic	24,760	25,300	↑

Note: Dollars are denoted in 1989 dollars.
 Source: Minnesota Planning from U.S. census.

cases, lag behind whites in educational achievement.⁵

From 1980 to 1990, the percentage of people age 16 and older participating in the labor force increased for Hispanics and whites, but stayed the same or fell for African Americans, Asians, and American Indians. The lower labor force participation rate of minorities masks the real level of minority unemployment, as the unemployment rate is determined by those in the labor force who are unemployed and seeking work. Still, the unemployment rates for all minorities were higher than for whites in 1990, with African American unemployment more than three times as high and American Indian unemployment more than four times as high.⁶

Home ownership continues to be less common for minorities in Minnesota than for non-minorities. From 1970 to 1990, white home ownership in the State increased slightly, from 72.6 percent to 73 percent, a rate higher than the national average of 68 percent. But for people of

color, home ownership rates in Minnesota fell during this period. The percentage of housing units occupied and owned by African Americans fell from 36.6 to 31 percent; for Asians the rate fell from 51 to 41 percent; and for Hispanics the rate fell from 49 to 47 percent. The home ownership rate for American Indians remained the same at 43 percent.⁷

This is a particularly troubling trend when a year after the end of World War II, African Americans in Minnesota had a home ownership rate comparable to that of whites, due in large part to cheap, long-term financing and booming construction. However, rising construction costs and interest rates throughout the late 1970s and early 1980s drove many middle- and low-income people, including many people of color, out of the home ownership market.⁸

Since no measure of actual discrimination incidents is available, discrimination complaints are the next best measure of how people of all racial and ethnic groups are valued in Minnesota. A reduction in complaints should indicate improvement in acceptance of diverse Minnesotans in such areas as housing and employment. In 1992 a total of 735 complaints was filed with the three largest agencies in the State, the EEOC, the Minnesota Department of Human Rights, and the Minneapolis Civil Rights Department. This is a 20 percent increase from the 607 discrimination complaints filed with the three agencies 6 years earlier.⁹

Moreover, the highest number of filed complaints was in 1990 and 1991, when 852 and 836 complaints were lodged. Comparing the years 1990, 1991, and 1992 with the years 1987, 1988, and 1989, 2,423 complaints were filed in the 1990s while 1,971 complaints were filed in the late 1980s.¹⁰ The filing of these complaints

5 Ibid., p. 7.

6 Ibid.

7 Ibid., p. 16.

8 Ibid., p. 15.

9 Ibid., p. 38.

10 Ibid.

TABLE 3
Minnesota Home Ownership Rates,
1980 and 1990

	1980	1990	Trend
White	72.6	73.0	↑
African Amer.	36.6	31.0	↓
Amer. Indian	43.0	43.0	—
Asian	51.0	41.0	↓
Hispanic	49.0	47.0	↓

Source: Minnesota Planning from U.S. census.

occurred at a time when the economy of the State was growing.

This report is a summary of the Advisory Committee's examination of the current resources devoted to civil rights enforcement in the State. The report has six chapters. Chapter one is the introduction. Chapter two presents information and testimony on the current racial and ethnic climate in the State and establishes the need for continued civil rights enforcement. A comparative economic status of minorities to non-minorities in Minnesota is offered as part of this information, as well as testimony from community groups and State advisory groups.

Chapter three is devoted to three Federal civil rights enforcement agencies with offices in Min-

nesota: the OFCCP, Office of Fair Housing and Equal Opportunity (HUD), and the EEOC. There is a separate section for each agency, with an analysis of the budget, the staffing, the workload, and the recent trend in budget, staffing, and workload.

Chapter four examines local civil rights agencies. Separate sections are devoted to the League of Minnesota Human Rights Agencies, the Minneapolis Civil Rights Commission, and the St. Paul Human Rights Commission. Chapter five is devoted to the Minnesota Department of Human Rights. It examines recent staffing patterns, complaint activity, and budget in recent years. There is also analysis on the workload of individual investigators and its effect on the effectiveness of individual complaint investigations.

The conclusions and recommendations of the Advisory Committee follow in chapter six. Specific sections in the chapter are devoted to: (1) Federal civil rights enforcement agencies, (2) local civil rights enforcement agencies, and (3) the State human rights agency. Specific recommendations are offered in all three sections.

The Advisory Committee is structured to be diverse and representative of a broad spectrum of political and philosophical views. It is independent of any national, State, or local administration or policy group. Its analysis, findings, and recommendations are made in a genuine spirit of cooperation and bipartisanship.

Chapter 2

Minnesota and the Condition of Civil Rights

Sharon Sayles Belton, mayor of the city of Minneapolis, addressed the Advisory Committee on civil rights enforcement issues. She stressed that overcoming racial, ethnic, gender, and other forms of bigotry must be a community effort, and not isolated and relegated to civil rights enforcement agencies. Still, the government must be willing to provide its citizens an avenue of recourse when they are denied equal opportunities.

The State of Minnesota and the City of Minneapolis in particular has been in the forefront of the civil rights movement in this country. I will tell you that the problems of racism and its impact are growing significantly in our community. So much to the point that we have tried to work and organize a cross section of citizens in Minneapolis from all sectors of the society to talk about the growing racism and to make some commitments to address it within the context of their own sector.

Our attempt is to try to pass the responsibility for the enforcement of civil rights beyond the obligation of government and really put it into the hands of individuals in our community and get sectors assuming some responsibility for its elimination. We are only partially successful in that, because people are overwhelmed by just the general topic of racism, and we are still struggling as a community to try and figure out how we can even talk about it in a way that keeps people treating each other with respect and dignity and not fall into some of the traps that occur when you have thoughtful discussions about race, past practices, and current actions.

I have heard the President and others talk about the importance of building a unit and connectedness among the citizens of our community if we are going to strengthen America and put her back on the front line. This starts with people deciding as a community that every citizen has worth. . . . It is important for the government to certainly assume some responsibility for protecting the rights of all of its citizens, and when they are denied them to provide some level of recourse for them.¹

In Minnesota there is a widening gap in economic equality between whites and nonwhites, in particular with respect to African Americans. This trend is at odds with what is observed nationally. In the United States a black-to white ratio of 55 cents to one dollar existed in per capita income in 1970. By 1990 that ratio had risen to 65 cents, indicating an improvement in the relative economic well-being of individual blacks in the United States.²

Discrimination Theories

Sam Myers, Roy Wilkins Chair, Hubert H. Humphrey Institute, University of Minnesota, stated that while things have improved for minorities in the United States, things have gotten worse for minorities in Minnesota:

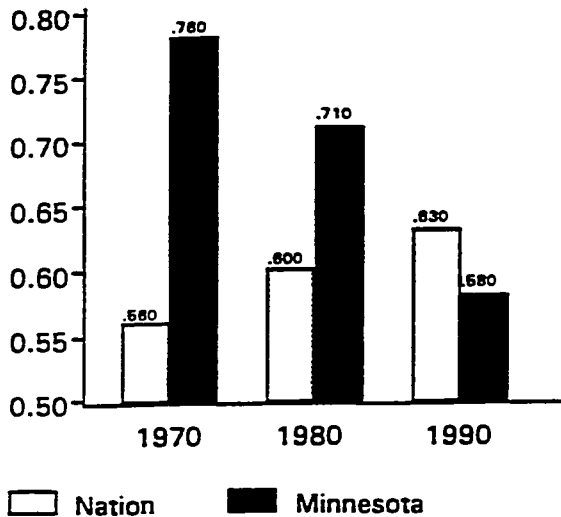
From 1970 to 1980 to 1990, the ratio of black to white per capita income fell in Minnesota. . . . By 1990 both in the whole State of Minnesota and in the twin cities area the ratio of black to white per capita income were lower than the ratio of black to white income in the whole United States.³

1 Testimony before the Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, Minneapolis, MN, Aug. 31/Sept. 1, 1994, pp. 206-07 (hereafter cited as Transcript).

2 Samuel L. Myers, testimony, Transcript, pp. 146-47.

3 Ibid., pp. 148-49.

TABLE 4
Black-White Ratio, Per Capita Income,
1970-1990: State of Minnesota and the
United States



Source: Sam Myers, Roy Wilkins Chair, University of Minnesota.

Myers offered 10 theories for the trend observed in Minnesota black-to-white income. He explained that the theories are taken from the academic literature, i.e., professional economists and social science researchers who are trying to give public policy makers advice about policies that might be pursued.⁴

1. Nonwhites are less qualified; they have fewer skills and lower education.

Myers explained that this should not hold in Minnesota:

The problem with Minnesota is the fact that the gap between black and white, nonwhite and white education is very, very small. In other words, it may be in Mississippi there is a huge gap in the educational attainment between blacks and whites, but not in Minnesota. . . . With respect to skills, nobody really knows how to measure skills.⁵

2. There has been a large migration in recent years of lower skilled minorities to Minnesota.

Myers said that this idea does not hold when controlling for the earnings of migrants:

We find using current population data, that migrants who are nonwhite have about 5 percent lower earnings than nonmigrants who are nonwhites [and] the effect of being a migrant has an insignificant effect on white earners. Therefore, migration has an effect on wage inequality, but it is not that great.⁶

3. Nonwhites are concentrated in low-wage jobs.

Myers noted that there is some validity to this argument, though it is not completely explanatory for the income disparity:

There is some truth to the contention that nonwhite men, with the exception of Asians, are highly concentrated in the "bad" jobs. . . . The second explanation is that in "good" jobs blacks have lower earnings than whites.⁷

4. Market concentration and substitute labor markets.

Myers gives credibility to this hypothesis in explaining some of the observed labor market differences between the races:

⁴ Ibid., p. 149.

⁵ Ibid., pp. 149-50.

⁶ Ibid., p. 151.

⁷ Ibid., pp. 153-54.

It pans out. The people who, whether they are white or nonwhite, who have their jobs in central service labor markets are penalized because of the lower wage.⁸

5. Declining industry jobs.

Myers stated that, while true in other parts of the Nation, in Minnesota this explanation is not true:

Nonwhites who are in manufacturing jobs in Minnesota actually have a premium. In other words, their average wages are higher than the nonwhites who are in industries other than manufacturing industries.⁹

6. The concentration of nonwhites in single-headed families, heavily dependent on welfare.

Myers maintained that there was little empirical data that supported this hypothesis, or support for the theory that the higher welfare benefits in Minnesota induce migration of the poor into the State thereby exacerbating income differences:

This is also sometimes called the welfare magnet hypothesis. People are coming here in order to avail themselves of welfare. . . . Minnesota happens to have the second highest rate of female-headed families in the United States; Wisconsin is number one. . . . There is very little empirical support for the welfare magnet hypothesis.¹⁰

7. Language barriers including immigration status as well as fluencies in English.

Myers found support for this theory. "We found that particularly for male nonwhite workers, there was a penalty for not being fluent in English."¹¹

8. Transportation barrier—the better jobs are in the suburban areas and minorities in the central city do not have access to transportation to get them to those jobs.

Myers conceded that he had never explicitly tested this hypothesis.

9. Racial discrimination.

Myers stated that he had tested this effect explicitly with a set of 112,000 observations. Using census information on education, migration, language skills, occupation, industry, and other related variables, "25 percent of the wage gap could be explained by the observable characteristics; the other 75 percent could not be explained."¹²

Myers offers a tenth explanation for the observed income disparities among the racial and ethnic groups, and that it is the lack of enforcement of civil rights. It is not the effort, but the procedure that may be ineffective.

10. Ineffective antidiscrimination efforts.

The tenth possible explanation that I would like to put before you is that we have been ineffective in our antidiscrimination efforts over the years. In other words, things have changes and we had things in place that are based on older views of the world. In some respect when the [antidiscrimination] law was written people viewed discrimination as being the result of some bigots, and so you stop the bigots and they stopped discriminating . . . and those processes could have worked in 1960 and 1970.

But the world that we in Minnesota are confronting in 1990 is a different kind of a world. . . . It is not that the people of human relations, human rights, civil rights agencies are uncommitted about these problems, but it may that the mix of processes and procedures might not

8 Ibid., p. 155.

9 Ibid., p. 156.

10 Ibid., pp. 156–57.

11 Ibid., p. 158.

12 Ibid., p. 160.

be as effective for the 1990s type of discrimination. I represent that we give this some more careful viewing.¹³

Myers offered three different interpretations that might encompass ineffective civil rights enforcement: (1) present discrimination is more sophisticated, (2) there is a perceptual gap between whites and minorities in what is perceived to be discrimination, and (3) remedies may be viewed as inappropriate, especially when they include what is perceived as preferential treatment for minorities. With respect to the last interpretation, Myers noted:

This State really and truly embraces the notion of fairness. I think that is very ironic; a place that embraces fairness is a place where it might be more difficult to bring a "southern" style type of anti-discrimination suit.¹⁴

Community Perceptions

The State of Minnesota has six minority councils, which are funded by the State and make recommendations to the Governor and members of the legislature on desires, concerns, and needed legislation, as well as the adverse effect of potential legislation. The councils also interact with private organizations to develop and implement programs to assist their communities.

Representatives from four councils made presentations to the Advisory Committee. The councils testifying included: Spanish Speaking Affairs Council, Council on Black Minnesotans, Indian Affairs Council, and the Minnesota State Council on Disability. In place of the Council on Asian-Pacific Minnesotans, a representative from the Southeast Refugee Community Home testified.¹⁵

Roy Garza, director of the Spanish Speaking Council, noted that there has been an increase in the number of complaints both to his office and

the Minnesota Department of Human Rights alleging discrimination towards Hispanics and Latinos. As a result his agency engaged in a statewide study to examine the extent and nature of racism against the Latino community in Minnesota. Public hearings were held throughout the State, particularly in cities and communities with large Latino populations. Garza related several findings pertinent to civil rights enforcement:

We found two issues that pertain to [the enforcement of civil rights]. The first is that we found and documented a pattern of discrimination in law enforcement, employment, housing, health, and human services directed at Latinos and Hispanics. For example, in southern Minnesota . . . we found the police department randomly stopping cars with Texas drivers licenses, not to ask for a drivers license, but to ask for proof of citizenship. . . .

Another example of the pattern of discrimination is in central Minnesota. . . . There we found employment counselors referring Mexican and Mexican American applicants to the lower paying service industry jobs around chicken and turkey processing companies instead of higher paying paraprofessional positions.

There was a form of discrimination in northern Minnesota. . . . We found school district personnel referring Mexican American children at the time of enrollment to English as a second language and remedial courses although their primary language was English. These are children whose only language was English. They do not need English as second language course. They do not even speak Spanish, but [the school] made these decisions at the time of enrollment based on what they looked like.¹⁶

Garza also stated that the Latino community had lost faith in effective investigation by the Minnesota Department of Human Rights of allegations of discrimination.

13 Ibid., pp. 162-63.

14 Ibid., p. 165.

15 The sixth council, The State Commission on Economic Status of Women, was unable to attend the factfinding.

16 Transcript, pp. 402-04.

The other finding that I think is pertinent to this meeting is that our community has lost faith in the [State] department of human rights in responding to their concerns. Over and over again we have heard many of our folk express concern that they have no faith in the department of human rights to investigate and address their complaints. When we spoke to [Commissioner David] Beaulieu [director of the Minnesota Department of Human Rights] about this issue, his response was that it is simply a staffing capacity problem. They do not have the resources to respond in a timely manner. . . .

The bottom line is that our [community] is not receiving justice and equality or opportunity when it comes to issues of discrimination and racism. Why? Because the resources are simply not there, be it at the State, the city, or the county level.¹⁷

Lester Collins, director of the Council of Black Minnesotans, stated that racial equality for African Americans in the State is receding, and that more resources are needed for the civil rights enforcement agencies.

We had an African American dialogue [recently] in conjunction with the Humphrey Institute. Many of the concerns shared there had to do with due process, equal access, and housing discrimination. While we do not handle any one [complaint] on a direct basis, we try to make the appropriate referral and we work closely with the [Minnesota] Human Rights Department and other departments to know . . . that in most cases we are talking about people's frustration with how long that process takes.

We are sympathetic to the whole concern . . . of the lack of resources, meaning individuals and cutbacks in those departments. We work very closely with David Beaulieu . . . and we are aware of the fact that those resources, particularly as it relates to investigations, are not there.

The most recent of concerns that we have dates back on a larger scale to last year as it relates to hiring and to investigations around equal access and fair employment. Each one of the councils has worked very hard trying to get more investigators, particularly as it relates to the department of transportation in terms of violations as it relates to the number of individuals on the job.¹⁸

Rey Harpe, representing the Minneapolis branch of the NAACP, discussed the chapter's litigation initiative against the U.S. Department of Housing and Urban Development and other government agencies. The suit alleges that public housing decisions made over the years have directly contributed to segregated housing patterns and to a destabilization of residential neighborhoods. Harpe explained:

You see decisions that lead to the north side projects in Minneapolis, the public housing development which was built and pretty much restricted to housing African American public housing recipients. . . . We are now in the process of attempting to correct those decisions. . . . We sued the City of Minneapolis Public Housing Authority and the City Council. Both local defendants in turn sued HUD; HUD and local defendants then also brought in as codefendants the metropolitan HRA MET council, which has multijurisdictional regional

17 Ibid., pp. 405-06. A report to the Commissioner of Human Rights confirms Garza's assertions. Findings of the report, "Chicano/Latino Task Force, Report on Discrimination," Minnesota Department of Human Rights (1994), include:

- Members of the Chicano/Latino community do not have faith in the [human rights] department.
- The perception is that the time period from the initial filing of a charge until settlement or dismissal is between two to three years—much too long to make filing worthwhile . . .
- Cases are being dismissed due to lack of evidence, failure to locate the charging party, and failure to provide information.

- Department data shows that the average time for closure on a case is approximately one year. If litigation is necessary, the average closure time is four and one-half years. Further, the intake process averages six weeks.

- The outreach and educational services to the Chicago/Latino community by the Department of Human Rights are insufficient. There is a lack of accessibility to Human Rights personnel.

18 Ibid., pp. 392-93.

responsibilities for the administration of housing programs in this area.¹⁹

Harpe further testified that the judicial remedy is sought because the enforcement of anti-discrimination in public housing has been lacking.

We respect the legislative aspect to cure itself, but what we need is to first confirm effective administration and interpretation application. If perhaps we had had correct application of fair housing laws [and] correct application of the various public housing statutes that prohibit discrimination in siting applications, we would not have had a problem today to the extent that we have to go back and reverse this misapplication of laws.²⁰

Anita Fineday represented the Minnesota Indian Affairs Council. The Indian Affairs Council is governed by the elected tribal chairs of the 11 reservations throughout the State, and two at large members elected by federally recognized tribal members from the other States. The council also has an urban Indian advisory committee. The urban Indian advisory committee consists of two representatives from Minneapolis, two representatives from St. Paul, and two representatives from Duluth. Fineday told the Advisory Committee that race relations between the American Indian community and the non-Indian community are deteriorating.

There is a lot of fear among the Native American community and it has appeared in several ways. One of those ways is on the reservation. As a sovereign nation we have our own license plates and our own registration system for vehicles of members. Many of our members are afraid to have those license plates on their vehicles. They are afraid to purchase them . . . because they fear reprisal. They are afraid of law enforcement reprisals and also reprisals from other members of the community. . . .

Another volatile issue in Minnesota for Indian people has been Indian gaming. Our Indian casinos on many of our reservations have been successful. . . . With that [success] has come a lot of animosity from the non-Indian community, a lot of resentment towards Indian people for what is seen as special rights. . . .

I was present [as an attorney] at a visit by the State public defender's office. . . . When the officers brought in prisoners who had been held over the weekend, some of the [public defender] staff made the comment that it reminded them of Mississippi in the 1950s and 1960s because it was an all-white judicial system from the bailiff, to the court reporter, to the court administrator, to the judge, to all of the attorneys . . . and all of the prisoners who had been bound over on that particular weekend were Indian.

I would say that from my experience in northern Minnesota with the Indian community in rural Minnesota, things have not changed very much.²¹

Clell Hemphill, executive director of the Minnesota State Council on Disability, talked in specifics about the lack of service being given individuals with disabilities by the Minnesota Department of Human Rights and the Equal Employment Opportunity Commission (EEOC).

My community is very, very concerned about utilizing the [Minnesota] Human Rights Department because of the long time period that it gets for resolution of a problem. That is not untypical. . . . Our understanding of what has happened [at the department] in the last 3½ years is that they have gone through three commissioners, nine assistant commissioners, and a reduction in the amount of investigators available. The reverse of that is a 40 percent [administrator] increase and a shift [of resources] to management development. . . .

All of our communities of color and myself are in dire straits for employment opportunities. None are any worse than my own. I run 65 to 75 percent unemployment in all cities at all times. In outer Minnesota it can run as high as 90 percent; in out-state Minnesota we

19 Ibid., pp. 171-72.

20 Ibid., pp. 193-94.

21 Ibid., pp. 397-99.

have at least 50 percent of our population and literally no transportation system.²²

Hemphill gave specific numbers on disability complaints and the time period for investigation by the State human rights department.

The total number of complaints filed [at the Minnesota Department of Human Rights] in 1992 was 1,275. The number of disability complaints was 235 [18.4 percent]. . . . The average turnover time is 305 days.

Fiscal year 1994, total number of human rights complaints filed was 1,395; total disability complaints, 295 [21.1 percent]. . . . An increase in the amount of human rights complaints based on disability from the previous year from 18 to 21 percent.

The good side of that is now our data begins to tell me that we are seeing more resolution and more mediation take place. . . .

Minnesota currently ranks 12th in the Nation in the number of ADA [Americans with Disabilities Act] complaints filed with the EEOC. Total 1994 ADA complaints to date is 1,106; total of 199 ADA complaints filed [in Minnesota]. In 1992 ADA complaints filed [nationwide] totaled 609 [55 percent of the 1994 total]. Typical and actual resolution of time was about 258 days.

We now see a backlog of 4,000 cases in the EEOC total nationally. . . . It is probably going to take us 3 years to resolve them. This does not give us a lot of confidence that with our new civil rights legislation that we are seeing a learning from the problems of the past.²³

Hoang Tran, president of the Southeast Asian Refugee Community Home, spoke on behalf of the

Minnesota Council on Asian-Pacific Minnesotans. Tran talked about the discrimination against Southeast Asian refugees by nonrefugee Asians, and reported that when a complaint was filed in this matter with the EEOC and the Minneapolis Department of Civil Rights, the agencies were not sympathetic in their investigation.²⁴

At the conclusion of their testimony, Advisory Committee Chairperson Karon Rogers specifically asked each presenting council member about the current climate of race, ethnic, and group relations in Minnesota.

Rogers: Each of you have talked about some kind of indication that you are receiving from the groups you represent that discrimination is high. Can you compare 1994 to 1990, just a 4-year span? Are we better off, or are we worse off?

Collins: There is absolutely no doubt in my mind that there is an increase in discrimination in housing, employment, and other areas in that time frame and it continues to grow.

Fineday: Tensions are higher now. The level of tension and fear and animosity between the Indian community and the non-Indian community are much higher now than they were in 1990.

Garza: I would say that we are worse off. . . . There are very little consequences for those who act in a racist and discriminatory manner. . . . and as the [Latino] population grows, so does the problem of [discrimination].

Tran: Yes, I believe it is worse.²⁵

22 Ibid., pp. 180-83.

23 Ibid., p. 189

24 Ibid., pp 406-12

25 Ibid., pp. 425-28.

Chapter 3

Resources and Staffing at Federal Civil Rights Enforcement Agencies in Minnesota

The six major Federal civil rights enforcement agencies are: (1) the Civil Rights Division, U.S. Department of Justice; (2) the Equal Employment Opportunity Commission (EEOC); (3) the Office for Civil Rights (OCR), U.S. Department of Education; (4) the Office of Fair Housing and Equal Opportunity (FHEO), U.S. Department of Housing and Urban Development; (5) the Office for Civil Rights, U.S. Department of Health and Human Services; and (6) the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor.

Three of these agencies maintain offices in Minneapolis, Minnesota. The EEOC has an area office that operates under the direction of the Milwaukee district office. HUD has a district office in Minneapolis office with a FHEO unit, under the jurisdiction of the headquarters office in Washington, D.C. The OFCCP has a district office, which reports to a regional office in Chicago. These three agencies presented information to the Advisory Committee about their workloads, staffing, and resources.

The Equal Employment Opportunity Commission

The EEOC was created by Title VII of the Civil Rights Act of 1964.¹ Its original purpose was to investigate and conciliate complaints of employment discrimination based on the protected status of race, color, religion, sex, and national

origin.² Title VII expressly prohibits differential treatment on the basis of a protected status in hiring, termination, compensation, and terms, conditions or privileges of employment such as promotion, transfer, layoff, seniority, and fringe benefits. Such prohibitions also extend to recruitment and advertising for positions. Its authority extends to employers,³ labor unions, and employment agencies.

The EEOC has five commissioners appointed to 5-year staggered terms by the President with the advice and consent of the Senate. Not more than three commissioners can be from the same political party. The President also appoints with the advice and consent of the Senate the EEOC's general counsel, who serves for a term of 4 years.

The original authority of the EEOC was expanded in 1972 and 1974. With the enactment of the Equal Employment Opportunity Act of 1972, the EEOC could file suit in Federal court if it was unable to secure a conciliation agreement it found acceptable. Previous to the Equal Employment Opportunity Act of 1972, once conciliation efforts failed the EEOC's involvement in the issue ended and the charging party had to file a private suit to obtain relief. The 1972 Act also granted the EEOC authority to "investigate and act on a charge of a pattern or practice of discrimination affecting a group of persons."⁴

In subsequent years the EEOC has received authority for enforcing three additional statutes.

1 Pub. L. No. 88-352, § 705(a), 78 Stat. 258.

2 Under the original authority of the Civil Rights Act of 1964, the EEOC could not do any enforcement beyond "informal methods of conference, conciliation, and persuasion." (*Id.* § 706(a), 78 Stat. 259 (Codified as amended at 42 USC § 2000e 5(b)) (1988).

3 The initial authority of the EEOC under the Civil Rights Act of 1964 extended to employers with 25 or more employees. In 1972 that authority was changed to include employers with 15 or more employees (Equal Employment Opportunity Act of 1972. Pub. L. No. 92-261, § 2(2), 86 Stat. 103, 103 (Codified at 42 USC § 2000e(b))).

TABLE 5
EEOC Funding and Staffing, 1987—1995

	Funding (millions)	Funding (1987 \$)	Staffing	Complaints received
1987	\$169.5	\$169.5	2,941	65,844
1988	179.8	173.1	3,168	63,778
1989	180.7	166.5	2,970	59,411
1990	184.9	163.2	2,853	62,135
1991	201.9	171.7	2,796	63,898
1992	211.3	174.8	2,791	70,302
1993	222.0	180.5	2,831	87,492
1994	230.0	182.4	2,832	91,189
1995	233.0			

Note: Funding in real dollars is the EEOC appropriation controlled for inflation.
Source: USCCR, *Funding Federal Civil Rights Enforcement* (June 1995).

In 1978 President Carter transferred authority for enforcing the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967 from the Department of Labor to the EEOC.⁵ The Equal Pay Act prohibits employers paying different wages to employees on the basis of their sex where such employees are performing substantially equal work under equal conditions. The Age Discrimination in Employment Act extends protected status to workers over the age of 40.

In 1990 the EEOC was given authority for enforcement of the Americans with Disabilities Act (the ADA), which extended Federal employment protection to workers with disabilities.⁶ Title I of the ADA prohibits employment discrimination against a "qualified individual with a disability because of the disability."⁷ In addition, employers are required to make reasonable accommodation to allow disabled individuals to perform the duties of a job, unless they can show that

the accommodation would impose an "undue hardship on the operation of the business."⁸

At the national level, the number of complaints filed with the EEOC has increased nearly 40 percent in the last 8 years. In 1987 a total of 65,844 charges were filed with the agency. In 1994, the EEOC received 91,189 complaints. During the same period, staffing has declined. In 1987, the EEOC had a full-time staff of 2,941, but by 1994 the full-time staff was 2,831.

In the last 8 years funding to the EEOC has increased in nominal terms by \$60 million. However, in real dollars the increase for the EEOC from 1987 to 1994 has been a more modest 7 percent, from \$169.5 million to \$182.4. (See table 5.)

Over the same 8-year period, there has been a significant increase in the number of cases per investigator per fiscal year. In 1987 a full-time investigator had an annual average of 75.3 cases. In 1994 that caseload had risen to 122.⁹ This 62

4 Pub. L. No 92-261, § 5, 86 Stat. 103, 104-07 (codified at 42 U.S.C. § 2000e-5(f) (1988)).

5 Reorganization Plan No. 1 of 1978, § 1-2, Exec. Order 12144, 44 Fed. Reg. 37193 (1979), codified at 42 U.S.C. § 2000e-4 note (1988).

6 42 U.S.C. §§ 12111(1), 12116, 12117(a) (Supp. IV 1992).

7 42 U.S.C. § 12112(a) (Supp. IV 1992).

8 Ibid.

9 *Chicago Tribune*, Feb. 12, 1995, p. 19.

TABLE 6
EEOC Staffing and Caseload:
Minneapolis Area Office

	Invest. staff	Average caseload	Months of inventory
1993	6	84	12.9
1994	8	127	19.5

Source: EEOC, Milwaukee District Office.

percent increase in investigator caseload is attributable to a caseload that is increasing faster than resource and staff levels. For the years 1987 to 1993: complaints are up 30 percent, real dollar funding is up 7 percent, and staffing is down 3 percent.

The EEOC does most of its work through local offices. Outside of the Washington, D.C., area,¹⁰ the EEOC has 23 district, 17 area, and 9 local offices. The offices accept charges of discrimination, investigate complaints, conciliate such matters, and district offices conduct litigation if needed. Minneapolis is an area office and comes under the oversight of the Milwaukee district office, which has responsibility for the States of Iowa, Minnesota, and Wisconsin.

The situation at the local EEOC office in Minnesota is worse in terms of the charge-to-staffing ratio than at the national level. From fiscal year 1992 to fiscal year 1993, the number of charges filed with the Minneapolis EEOC office rose 150 percent, from 610 in FY 1992 to 1,512 charges in FY 1993.¹¹ Chester Bailey, district director for the Milwaukee district office with oversight responsibility for the Minneapolis office, discussed workload and staffing at the Minneapolis office.

The staffing in the [Minneapolis office] in FY 1993 was six investigators. [In 1994] there are eight investigators and we are adding an additional investigator to the staff . . . in the next 30 days. Pending inventory was 504 in June [1993]. It is 1,018 as of June [1994]. The average charge per investigator in 1993 was 84. To date [in 1994] it is 127. The average months of inventory, which is . . . productivity versus the number of investigators . . . was 12.9 in 1993. It is 19.5 as of June [1994].¹²

What we have done in the past to balance workload is that we have transferred cases from the Minneapolis area office to the Milwaukee district office. [In 1993] we transferred 417. . . . To date [in 1994] we have moved 118 and are anticipating moving even more, probably another 200 or so to balance the workload.

We ended up at the end of fiscal year 1993 averaging about 98 case closures per investigator. The national average was about 92. As of June [1994] we have closed 419 and are averaging about 85.8. We anticipate that projecting that out that that will be approximately 114 cases per investigator. . . .

Our cause ratio in the Minneapolis area office is around 5 percent. In other words, 5 percent of all the cases we investigate end up with a cause of finding. Our merit factor resolution is much higher than the national rate; it is 24 percent. Merit factor resolution includes settlements, failed conciliation, successful conciliation, [and] withdrawal with benefits.¹³

Michael Bloyer, director of the EEOC Minneapolis area office, reiterated the local EEOC increase in caseload.

Five years ago we . . . received in the State of Minnesota in our EEOC office . . . around 500 charges. This year [1994] we are going to receive around 1,200 charges. . . . Far more charges being filed, there are far more people that come to our office that feel that they have been discriminated against. . . . Five years ago, we obtained around \$600,000 in benefits for people who

¹⁰ There is a field office in Washington, D.C., reporting directly to EEOC headquarters.

¹¹ *Star Tribune*, Jan. 9, 1994, p. 4A.

¹² Monthly inventory is based upon the standard that on average, an EEOC investigator closes 6.5 cases a month.

¹³ Transcript of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, Minneapolis, MN, Aug. 31, 1994, pp. 13-15 (hereafter cited as Transcript).

had been discriminated against. This year [1994], our dollar benefits obtained for people discriminated against already exceeds \$2 million.¹⁴

Bailey said the increased workload resulted from additional EEOC responsibilities without corresponding increases in resources.

We have been given additional responsibilities, additional laws, without concurrent resources. We got the ADA in 1991; we did not get any additional resources. The [1991] Civil Rights Act caused the increase in charges because of the compensatory and punitive damages; no additional resources.¹⁵

The EEOC is obligated to avoid delay in the resolution of complaints, but has no specific time constraints in processing complaints.¹⁶ The *Star Tribune* reported on the delay encountered by one individual filing a claim with the local EEOC office. Alice Bryant filed a charge against a local firm with the EEOC's Minneapolis Area Office charging age discrimination. According to the *Tribune*, the case is still under investigation 18 months after the initial charge was made to the EEOC.¹⁷

Margaret Fourte, representing Workplace Justice, expressed other concerns about the EEOC to the Advisory Committee. She argued that the EEOC guidelines need to be changed in order to promote a more equitable opportunity for the charging party to prevail. Fourte alleged two problems: (1) the differential standards of evidence for respondent employers and charging

parties, and (2) the nondisclosure of respondent party information to the charging party.¹⁸

The charging party and the charging party's witnesses are held to a higher level of accountability. . . . This creates an unequal playing field and allows a determination to be influenced by advantageously presented positions which have no demonstrable support of fact. . . . Second, the unsworn position statements and any supporting data presented by the respondent company are neither provided nor made available to the charging party during the investigational process.¹⁹

EEOC procedures, however, do allow for respondent information to be provided complainants. Such information is provided at the conclusion of an investigation, when there is a finding of no reasonable cause and the complainant's right to sue in Federal district court within 90 days of receipt of the EEOC finding has been attached.²⁰

Office of Fair Housing and Equal Opportunity U.S. Department of Housing and Urban Development

The original authority for the Federal Government to enforce equal opportunity in housing is from Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act).²¹ Title VIII prohibits discrimination in the sale or rental of a dwelling, including the refusal to negotiate for sale or rental of a dwelling, discrimination in the terms, conditions,

14 Ibid., pp. 44-45.

15 Ibid., pp. 24-25.

16 The EEOC has a time constraint of 180 days when a complaint is filed by a Federal employee (29 CFR § 1613.220(a)).

17 Wayne Washington, "Bias case unresolved after nearly 1½ years," *Star Tribune*, Jan. 9, 1994, p. 6A.

18 Workplace Justice is a local social action group that works to promote community awareness of the serious problems of employer retaliation. Fourte addressed the Advisory Committee during the public session of the factfinding meeting.

19 Transcript, pp. 315-16. The concerns of Workplace Justice were entered as an exhibit at the factfinding meeting that is in appendix B.

20 *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 596-97 & n. 9 (1981) (Construing 29 C.F.R. § 1601.22 EEOC Compliance Manual § 83.3 (a)).

21 42 U.S.C. §§ 3601-3631 (1988 & Supp. V (1994)). Section 4 of the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619, formally named Title VIII, the "Fair Housing Act," to reflect the name it was commonly called.

TABLE 7
Fair Housing Act Complaints Filed in
Minnesota, 1988-1992

Year	Number
1988	70
1989	94
1990	124
1991	172
1992	143

Source: U.S. Department of Housing and Urban Development, 1992 annual report.

or privileges in the sale or rental of a dwelling and in the provision of services or facilities, brokering, or appraising on the basis of race, color, religion, national origin, and by amendment in 1974, gender, and in 1988, familial status.²² It also prohibits discrimination in advertising that shows any preference or limitation or makes the premises unavailable for showing, blockbusting and coercion or other interference, and/or financing.

Under the authority of the Fair Housing Act, the Department could receive and investigate a complaint of discriminatory housing activity, but it could not initiate enforcement. This limitation prompted Congress to pass the Fair Housing Amendments Act of 1988 (FHAA).²³ These amendments expanded coverage to persons with disabilities and to families with children and completely revamped the fair housing enforcement system establishing stronger rights and remedies, a progressive system of judicial review, and tough new procedural standards.

It empowered the Secretary of HUD to authorize the Attorney General to file a civil action seeking appropriate Preliminary or temporary relief, pending final disposition of a complaint. Where the Secretary determines that there is reasonable cause to believe

that discrimination has occurred or is about to occur, he or she must immediately issue a charge on behalf of the complainant commencing a formal administrative proceeding before an administrative law judge. . . . The FHAA also permits civil penalties to be awarded by administrative law judges and Federal district court judges. . . .²⁴

In addition to Title VIII and the FHAA, HUD has responsibility for ensuring fair housing under other statutes and Executive orders including:

- Executive Order 11063, which provides that no person in the United States because of race, color, religion, sex, or national origin shall be denied equal opportunity in housing and related facilities owned or operated by the Federal Government or provided with Federal assistance;
- Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance;
- Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped person in the United States shall, solely by reason of disability be excluded from participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal assistance; and
- the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

In addition to receiving and investigating complaints of housing discrimination, the FHEO also (1) conducts administrative hearings; (2) ensures

22. 42 U.S.C. § 3604(a)(b)(1988).

23. Pub. L. No. 100-430, 102 Stat. 1619 (codified at 42 U.S.C. §§ 3601-3631 (1988)).

24. U.S. Commission on Civil Rights, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System* (September 1992), pp. 4-5.

that recipients of Federal financial assistance do not discriminate based on the protected status of race, color, national origin, sex, disability, or age; (3) funds various public and private fair housing activities; and (4) coordinates equal opportunity enforcement activities in Federally assisted programs relating to housing and urban development.

In 1994 HUD began a restructuring of the agency. As part of the reorganization, regional offices have been eliminated. Many activities formerly done in those offices are now done at the local level in field offices. Jaime Pedraza, director of the FHEO unit in Minnesota, described these changes, noting that fair housing investigation had not been decentralized under the restructuring, and summarized the office's current responsibilities in Minnesota.

In the area of fair housing the regional offices used to be where the fair housing investigators were. . . . What they have done in place of that regional structure is create 10 enforcement offices. So where the regional offices used to be, there are now what are called 10 enforcement centers. Those investigators have offices in those enforcement centers. So they did not bring the investigations down to the field office level during this [reorganization] process.

We are still responsible for civil rights issues in the State [of Minnesota] with all of our HUD programs. The only group of people that we do not touch even with the reorganization are Native American individuals and families living on reservation lands. . . . Our mission is still providing safe, decent, sanitary housing to our residents. Building and rebuilding local communities through redevelopment efforts [and] assuring that illegal housing discrimination is eliminated in . . . Minnesota.²⁵

The 1988 passage of the FHAA has substantially increased the number of fair housing com-

plaints filed and the workload of the agency. In 1988 there were 70 complaints of housing discrimination in Minnesota. That number increased to 94 in 1989; for the years 1991, 1992, and 1993, the number of complaints for each of those years was more than double the number of complaints filed in 1988.

The agency was able to get assistance in some of this additional caseload from the Minnesota Department of Human Rights, the Minneapolis Commission on Civil Rights, and the St. Paul Department of Human Rights. Those three local agencies had grants from HUD to investigate alleged violations of fair housing laws. HUD is allowed to refer complaints alleging a discriminatory housing practice to State or local public agencies for which HUD has certified the substantive rights protected by the agency, its procedures and remedies and the availability of judicial review are "substantially equivalent to those created by (the Federal statute)."²⁶

To meet the substantial equivalency requirement, agencies must first satisfy criteria set forth in the FHAA and in HUD's regulations implementing FHAA and then formally apply for certification by HUD. The Assistant Secretary for Fair Housing and Equal Opportunity is responsible for implementing FHAA with respect to the certification of local agencies.²⁷

When Congress enacted the FHAA, it "concluded that 4 years would be sufficient time for State and local jurisdictions to conform their laws to the FHAA."²⁸ The three agencies in Minnesota lost their "substantially equivalent" status in 1992, which meant that people who wanted to file complaints under Federal statutes had to file them directly with HUD. As the U.S. Commission on Civil Rights noted, "without the partnership between HUD and these agencies, effective enforcement of the Fair Housing Amendments Act of

25 Transcript, pp. 85-86 and 89.

26 42 U.S.C. § 3610(f)(3)(A) (1988).

27 U.S. Commission on Civil Rights, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System* (September 1992), p. 8.

28 *Ibid.*, p. 31.

1988 and equal opportunity housing will not be fulfilled.²⁹

The FHEO in Minnesota has three staff. There is a division director, one equal opportunity specialist, and a secretary. This is a decrease in the professional staff from the 1970s and 1980s, when several equal opportunity specialists were in the unit. Pedraza explained the effect of this loss of staff and the loss of local "substantially equivalent" enforcement agencies:

We are currently a three-person office. I am the division director. I have one secretary and one equal opportunity specialist. In the late 1970s and at the end of the 1980s there were always at least two or three equal opportunity specialists. . . . As staff transferred out of fair housing to another division or HUD office or out of the Federal Government, those positions . . . were taken back by the regional office and staffed there.

In Minnesota we do not have what are called substantially equivalent agencies. Those are the agencies we used to have, the Minneapolis Department of Civil Rights, St. Paul Commission on Human Rights, and the State of Minnesota Human Rights Department, . . . to investigate fair housing complaints if it came to them on behalf of HUD. They could do the investigation, resolve it, and simply notify HUD of the resolution. In early 1991 in the Chicago region, substantially equivalent agencies were doing 42 percent of the housing discrimination complaints.

Minnesota is one of many locations that does not have this resource available anymore. What it means is when somebody calls our office and says, "I have got a discrimination complaint, can you handle it?" We always ask, "Where do you live?" If they live in Minneapolis, . . . or St. Paul or the State, there could be two investigations going on regarding the same housing discrimination complaint, and I do not know of one instance where the outcome was different. . . . The three [local] agencies that we have are excellent in what they do. . . . They just cannot be used as the resource that we once used them for.³⁰

Two additional factors compound the increased enforcement workload of the FHEO unit. First, the office is charged with responsibilities other than complaint investigation. Pedraza explained that her staff and office examine and review documents from every application for every HUD program that comes through the local office to ensure that the fair housing certifications are in order and monitors all 147 of the State's public housing authorities. The *Star Tribune* reported on allegations that the office's failure to conduct thorough monitoring of public housing authorities has perpetuated historical segregation patterns. The *Tribune* reported:

In July [1993] a group of public-housing renters, fed up with complaining, included the Minneapolis [HUD] office in a class-action suit. The suit, filed by the Minneapolis Legal Aid Society, charged that the city and Federal housing agencies that administer Minneapolis' public housing are perpetuating historical patterns of racial segregation.³¹

In addition the FHEO unit offers education and technical assistance to property owners and local municipalities that receive Community Development Block Grant funding. Pedraza felt the education and outreach efforts were critical in preventing housing discrimination from occurring in the first instance.

Specifically on the housing discrimination issue, we believe that education, outreach, technical assistance are key in fighting discrimination. From our perspective, if you can prevent an incident from happening, you have gone much farther than if you simply reimbursed or conciliated an issue. We do a significant amount of training, both seminars and workshops. . . . Since October of 1993 [our staff of three] has conducted . . . 55 presentations to over 1,000 people . . .

If you can do the education, if you can talk with property managers, we [end up] helping hundreds of people. If all we do is remind them to think twice before they make a decision, before they decide to evict, before they

29 Ibid., pp. 31-32.

30 Transcript, pp. 93-94 and 97-102.

31 Willard Wood, "Staffers say HUD can't meet goal of enforcing U.S. fair housing laws," *Star Tribune*, Jan. 9, 1994, p. 6A.

decide not to house, before they decide to enforce that rule, we feel that we are preventing more complaints from coming up. . . . The downside of course is that we do not get credit for prevention.³²

The Office of Federal Contract Compliance Programs U.S. Department of Labor

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, enforces the affirmative action obligation of contractors providing supplies and services to the Federal Government. The primary authority for the OFCCP is Executive Order 11246, signed by President Johnson in 1965. Executive Order 11246 expands the scope of affirmative action set out in Executive Order 10925 and orders the inclusion of an equal opportunity clause in every contract with the Federal Government.³³

In that clause, providers of goods and services, including construction, to the Federal Government agree to a policy of nondiscrimination in their personnel policies and an obligation of affirmative action in their personnel policies as part of their contractual obligations to the government. This Executive order, amended in 1967 to include gender as a protected status, is considered the defining authority of affirmative action for Federal contractors. The authority of the executive order applies only to Federal contractors; firms not engaging in business with the Federal Government are exempt from these executive order provisions.

Under Executive Order 11246, all government contracting agencies must include in every government contract the following equal employment provision: "During the performance of this contract, the contractor agrees as follows: (1) The

contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin."³⁴

Firms subject to affirmative action under Executive Order 11246 are required to make a directed effort to bring minorities and females into areas where they have been traditionally excluded. A written affirmative action plan (AAP) is required of Federal contractors with a work force of 50 or more employees and a contract exceeding \$50,000. The three major components of an AAP include: a utilization analysis, the establishment of goals and timetables, and an annual review. Federal regulations specify that under the utilization analysis a contractor first conducts an analysis of its work force in terms of lines of progression, similar job skills, and wages. Then the contractor forms job groups of similar jobs.³⁵

Following the formation of job groups, the contractor conducts an availability analysis for each job group to determine a composite percentage of minority and female workers available to do the work in the job group. Once the utilization analysis is complete, the contractor is required to examine its minority and female representation in each job group and compare this figure with the availability of minorities and females determined in its utilization analysis. If the representation of minorities and/or females in a job group is less than the established availability for that job group, the contractor sets goals equal to the established availability to correct underutilization.³⁶

³² Transcript, pp. 103-07.

³³ Executive Order 10925 was promulgated by President Kennedy in 1963 and ordered government contractors to "take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, creed, color, or national origin." Exec. Order No. 10925, § 301, 3 CFR 448, 449-50 (1959-1963).

³⁴ Executive Order 11246, as amended, § 202, 3 CFR 339, 340 (1964-1965).

³⁵ 41 C.F.R. § 60-1.40, 2.10-2.15, 2.11(a)(b), and 2.12 (1994).

³⁶ *Ibid.*, § 60-2.11(b) and 2.12.

The OFCCP conducts audits of selected contractors reviewing their compliance with the affirmative action requirements. If the review finds the contractor in deliberate noncompliance with either the affirmative action rules and regulations or with the terms of the contract, i.e., the EEO clause, the contractor can be debarred from present and future contract work with the government.³⁷

The usual review is a dual investigation of the employer's personnel practices. One part is an examination of whether the contractor has practiced equal employment opportunity under Title VII of the Civil Rights Act. Findings of race or gender discrimination in this part of the review subject the contractor to remedial affirmative action, including backpay awards to the affected individuals. The other component of the review is an inspection of the contractor's affirmative action recruitment efforts and the firm's use of good faith efforts to achieve its minority employment and utilization goals. Noncompliance encountered in this part of the review results in the contractor committing to an additional set of specific actions specifically designed to increase minority recruitment. These actions are formalized in either a letter of commitment or a conciliation agreement signed by both the contractor and the government. Violation of the terms of the agreement subjects the contractor to immediate sanctions.

In addition to monitoring the activities of Federal contractors under Executive Order 11246, the OFCCP also monitors Federal contractor affirmative action obligations under section 503 of the 1973 Rehabilitation Act and section 504 of the Vietnam Era Veterans Readjustment Act of 1974. Both of these acts require separate affirmative action plans that are audited by the agency during a compliance review; however, these plans do

not involve a utilization analysis or the setting of goals and timetables.

The enforcement activities of the agency peaked in 1989 when it completed 6,232 compliance reviews, filed 110 affiliated class cases, approved 2,568 conciliation agreements, and collected \$21.6 million in backpay. Since 1989 the staff has been reduced by 12 percent over the last 5 years. A district office of the OFCCP in Minneapolis has responsibility for Minnesota and parts of northwest Wisconsin. Compliance officers in the district and field offices conduct the compliance audits. Robert Running, district director of the Minneapolis OFCCP field office (now retired), testified that the office currently had "a staff of five compliance officers"³⁸ and that the number of compliance officers had been constant for several years.

Despite the stable number of professional staff, the number of reviews completed by the office increased over the last 2 years. In 1992 the office completed 39 reviews, 27 supply and service firms and 12 construction companies. In 1993 the office did 44 reviews, 33 supply and service firms and 11 construction companies. In 1994 the office did 50 compliance reviews, 34 service and supply and 16 construction companies. Running stated that priority compliance review initiatives are not set locally, but by the national office.

Out in the field we are implementers of policy. Policy is official [direction] . . . and I am the field person that supervises compliance officers for following a policy that comes down from the top. . . . A company [the OFCCP] has never been to before will be the highest priority. . . . Another way would be if a company is bidding on a large Federal contract. . . . Glass ceiling reviews are special reviews³⁹. . . . The [OFCCP] will be investigating contractors in industries significantly downsizing. . . . And the [OFCCP] has a new activity in apprenticeship and training programs.⁴⁰

37 Ibid., § 60-1.26(d)(authorizing sanctions contained in Exec. Order No. 11246).

38 Transcript, p. 59.

39 Glass ceiling reviews are conducted to eliminate discrimination barriers which prevent qualified minorities and women from attaining positions in the upper levels of their organizations.

40 Transcript, pp. 49 and 51-54.

TABLE 8
Staffing, Complaints, and Compliance Reviews,
Minneapolis OFCCP District Office: 1992-1994

	Compliance officers	Supply & service reviews	Construction reviews	Complaints
1992	5	27	12	5
1993	5	33	11	4
1994	5	34	16	6

Source: U.S. Department of Labor, OFCCP, Midwest Regional Office.

The local OFCCP did very limited complaint investigations in the last 3 years. In 1992 the office did five complaint investigations, in 1993 four complaint investigations, and in 1994 six complaint investigations. Running stated:

Our complaint activity probably is pretty stable all the time. I have only three or four complaints a month and at any given time an inventory up to nine or ten, and those are veterans and handicap complaints.⁴¹

⁴¹ Ibid., p. 58. Complaints alleging discrimination on the basis of race, color, sex, religion, or national origin are sent to the EEOC for investigation under a memorandum of understanding between the two agencies. The OFCCP investigates such complaints if a class of individuals is involved.

Chapter 4

Resources and Staffing at Local Civil Rights Enforcement Agencies

Two classes of civil rights enforcement agencies exist at the local level in Minnesota. One class of agencies has authority from the local government to investigate charges of discrimination, and, where a determination of discrimination is found, to order remedies for the victim, including back compensation and attorney's fees. Both sides of a complaint have the right to appeal the decision to the Minnesota Court of Appeals. There are two municipalities in the State with this authority, Minneapolis and St. Paul.

The second class of civil rights enforcement agency is a local human rights commission with the authority to accept discrimination complaints from individuals and provide no-fault grievance mediation services. Such commissions act informally to eliminate discriminatory practices that are contrary to the public policies of the State. The Minnesota 1967 Human Rights Act secures freedom from discrimination without regard to race, color, creed, age, religion, national origin, sex, sexual orientation, marital status, disability, and status in regard to public assistance.¹

League of Minnesota Human Rights Commissions

The League of Minnesota Human Rights Commissions (the League), founded in 1972 and reorganized in 1987, is a coalition of local human rights commissions which have been established by charter or ordinance in communities throughout Minnesota. These commissions can be established at the city or county level. While its member commissions are public agencies, the

League is a private, non-governmental organization. The League is the only private, statewide agency concerned with fighting all forms of illegal discrimination and with enhancing the rights of all groups of people defined under the Minnesota Human Rights Law.

As of July 1994 there were 47 member commissions, and others were in formation. Two of the member commissions are at the county level; the other 45 are local city agencies. Member commissions are listed in table 9.² The League represents most local human rights commissions in the State.

The business of the League is managed by a board of directors who are elected at the annual meeting. There are 13 districts of the League. District directors serve 2-year terms and directors at large serve 1-year terms. The principal officers of the League are a president, vice president, secretary, and treasurer, all of whom are elected by the board of directors for a term of one year. The primary purpose of the League is to assist county and municipal human rights/relations commissions in Minnesota to carry out the purposes of the ordinances or resolution pursuant to which they were established, and interact with all divisions of the State, and other agencies, involved in the area of human rights/relations. Yvonne Price, president of the League, spoke to this purpose:

Among the League's purposes are to encourage and assist development of new human rights commission in cities and counties throughout the State . . . , to help increase expertise and involvement of human rights

1 Minnesota Human Rights Act, Minn. Stat. §§ 363.01-.15 (1994).

2 Minneapolis and St. Paul, which have authority to investigate and remedy discrimination, are members of the League of Minnesota Human Rights Commissions.

TABLE 9

Member Commissions: League of Minnesota Human Rights Commissions¹

Albert Lea	Hibbing	Plymouth
Arden Hills	Hopkins	Red Wing
Austin	Isanti County	Richfield
Bloomington	Lake Elmo	Robbinsdale
Brooklyn Center	Maplewood	Rochester
Brooklyn Park	Mankato	Roseville
Columbia Heights	Marshall	St. Cloud
Coon Rapids	Minneapolis	St. Louis Park
Cottage Grove	Moorhead	St. Peter
Crystal	Nobles County	Shoreview
Eden Prairie	New Brighton	St. Paul
Edina	New Ulm	Virginia
Falcon Heights	Northfield	White Bear
Fergus Falls	North St. Paul	Lake
Fridley	Oakdale	Willmar
Golden Valley	Orono	Winona

¹ Membership as of July 1994.

Source: League of Minnesota Human Rights Commissions.

commissioners in their community, to monitor and improve and promote the use of the no-fault grievance resolution process for resolving human rights disputes on the local level, to gather information and publications involving human rights in Minnesota, especially touching on local opportunity and activity. . . . , and to cooperate with the Minnesota Department of Human Rights in an effort to enhance human rights in Minnesota.³

The League also gathers and publishes information on human rights issues. In 1991 the

League initiated a statewide campaign against hate and bigotry, establishing a response network to counter and prevent hate crimes. As part of this campaign, the League began collecting information on bias offenses and hate crime.⁴ It recorded 425 such incidents in 1991, 433 incidents in 1992, and 376 incidents in 1993. In 1994 the League held nine regional workshops designed to educate the citizenry about their role in preventing hate crime, with presentations at each conference from public safety officials, local League members, and community groups.⁵

Price criticized the Minnesota Department of Human Rights for failing to provide no-fault grievance training to League members. The no-fault grievance training has two components: (1) mediation skills and (2) technical training in applicable State human rights law. The former is regulated by State law and can be procured independently of the Minnesota Department of Human Rights, and the League has contracted with firms to provide this service to member commissions. The second training component can only be acquired from the human rights department. It provides technical compliance information on State statutes, policies, and procedures.⁶

For the past 3 years the [Minnesota] Department of Human Rights has not been doing no fault grievance training, which is a process by which people can file a charge with a local government level. It comes before a commission and we mediate it. The purpose in doing that is to prevent lawsuits. A lot of people just want a forum in which to talk . . . and they are glad to go away and just go on with their lives. And in the long run I think it would save cities a lot of money if they kept this process. But now there is no one doing the training.⁷

3 Testimony before the Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, Aug. 31, 1994, Minneapolis, MN, pp. 218-19 (hereafter cited as Transcript).

4 Bias-motivated crimes are crimes that the offender was motivated to commit because of a victim's race, religion, national origin, sex, age, disability, or sexual orientation. State Advisory Committees to the U.S. Commission on Civil Rights have undertaken similar projects in recent years. See the Michigan Advisory Committee, *The Increase of Hate Crime in Michigan* (1992) (unpublished, on file at the U.S. Commission on Civil Rights); Indiana Advisory Committee, *The Increase of Hate Crime in Indiana* (1992); Indiana Advisory Committee, *Hate Crime in Indiana: A Monitoring of the Level, Victims, Locations, and Motivations* (1994); Ohio Advisory Committee, *Hate Crime in Ohio* (1995).

5 The nine sites were: Maplewood (March 16), Golden Valley (April 14), New Ulm (April 9), Winona (April 12), Marshall (April 19), Bemidjii (April 27), Moorhead (May 10), St. Cloud (May 17), and Duluth (May 24).

6 Mort Ryweck, interview, May 15, 1995.

Three members of the League discussed their communities and the role of their commissions in eliminating discrimination. They were: Wallace Acorn, chair of the Austin Human Rights Commission; Pat Williamson, chair of the Maplewood Community Relations Commission; and Linda Mack Ross, human rights commissioner in St. Louis Park. Morton Ryweck, State project coordinator for the League, also appeared with the group and spoke about the League and its activities.

Alcorn described Austin as a food industry city of 23,000 in rural Minnesota. In the past 8 years the community has changed from a "culturally, racially, and economically homogeneous society of old family to one of market diversity."⁸ The local commission was "uninvolved and unnoticed until 3 or 4 years ago."⁹ In recent years it has been attacked by some in the community who thought it did too little, and by some who thought it interfered too much. Alcorn offered a different perception:

It is not that we do not care, but we do not always understand. Human rights activism has become associated with social engineering and abandonment of community value. While the wish to progress is not absent, the conservation of traditionally validated values seems the first order. Our commission regularly is confronted with suspicions of being liberal do-gooders out to get the goods on the politically incorrect.

We are [charged] to protect the rights of all humans, even the majority. We have asserted our ability to engage in no-fault grievance procedure. . . .

Most of the inquiries we receive are not cases that really are illegal discrimination, and we feel we provide a worthwhile service in teaching inquirers the meaning of law and suggesting procedures by which [they can] resolve their conflicts. A smaller number of inquiries evidence the need for professional attention at the

State [level], and we . . . assist [individuals] in making [these complaints].

We must be honest to indicate that the Minnesota Department of Human Rights has often been a disappointment to us. Our perception is they perceived us more as an auxiliary, if well-intentioned, but not especially competent novices than as a legally constituted, valid local action agency. When interest is shown, it seems more to restrict us than to facilitate us. When we take the initiative, they seem slow and indifferent in response. Their response to our referee has been erratic and unpredictable. They seem more interested in prosecution than prevention. We respect their office, . . . but we need their help and active support. . . .¹⁰

Alcorn said that no-fault grievance mediation has been and continues to be done locally by his commission, but that it is being done more as a by-product of the commitment by the Minnesota Department of Human Rights in years past to local commissions than as a commitment of the current department administration.

Our city ordinance requires that we contract with the State to do [no-fault mediation], and this city ordinance seems to be driven by State law. . . . Only two of us on the commission have received any training because of turnover. As it is, we are certified. But the certification has run out. . . . [Still] we give this help. In sitting down with the two parties, the grievant and the respondent, we don't investigate, we don't ask whose fault it is. . . . Largely we interpret one to the other. They come to an agreement as to what the consequence will be of the actual or alleged incident. . . . And then when it is all over we do not report on it. We make no findings. It is entirely between the two, just simply mediation. If the participants in the grievance process do not like the result of what comes out of it, they can always go to the [Minnesota] Department of Human Rights and file a formal complaint.¹¹

7 Transcript, pp. 245-46.

8 Transcript, p. 220.

9 Ibid., p. 221.

10 Ibid., pp. 221-22 and 224-25.

11 Ibid., pp. 247-48.

Williamson is a past president of the League and has been active with the local Maplewood commission for over 10 years. Maplewood is a city of approximately 30,000 individuals, located in the Minneapolis-St. Paul metropolitan area. She expressed a concern that more civil rights enforcement and education is needed.

In our area we have experienced more than a few racial problems in the last 5 years within the schools and in the streets. I am concerned that unless there are more joint efforts within and among the communities and in cooperation with the State, things could end up much worse than they are. It is really important to have the leadership from the [Minnesota] Department of Human Rights working with their local commissions and the League as a mechanism to reach the communities and to coordinate activities and the interpretation of individual effort. . . .¹²

In Maplewood we have developed a close working relationship with both the police chief and the city manager. We now have a system in place whereby if there are any racial tensions or difficulties, the commission will be notified so that we can contact the individual and see if they want any assistance or someone to talk to from the commission. . . . That does not mean we do not have problems, but we are actually working on them.¹³

Mack Ross shared her experience as a local human rights commissioner and spoke about no-fault mediation.

There has never been a no-fault grievance [procedure in St. Louis Park]. When the State had [a complaint], they sent it to mediation, the West Hampton Mediation Services. . . . I personally believe that the city does not know what is going on in the community. . . . The city council has gotten letters from people of color saying they have been pulled over by the police. We have asked

as a commission to have some kind of advisory panel, and no one responded to us. I have tried to work with the police chief, . . . but he is pretty defensive. So that is real frustrating to me. . . .¹⁴

Up until 3 years ago the [Minnesota] Department of Human Rights offered [no-fault grievance] training. I took it. At that time it was supposed to renew after so many years, and I went two or three times. But for the people that have come in the interim, there has been no training available. And now the department is saying that if they do not have the funds to train, there must be alternatives if we are going to continue the no-fault process.¹⁵

How are we [the commission] seen in the community? Are we effective? We don't feel effective, and we are being seen that way. So I think if we are going to do anything, it has to be money allocated to buttress this task. We have a long history of not being effective and if we are going to design an effective process, we need to have money to educate people and to show them that we can be effective.¹⁶

One of the concerns when commissions are established for cities is a budget. A lot of them are established without budgets. For years in Maplewood we had no budget. However, there are other ways to get the message out using other groups and various other resources.¹⁷

Ryweck was critical of the State in not providing no-fault grievance training, and in actually discouraging the use of the process.

Many of the local commissions are no longer getting referrals from the [Minnesota] Department of Human Rights because the State is playing down the [no-fault grievance] process. They are discouraging it rather than encouraging it, and a lot of the local commissions want to do more than they are doing today and want to be prepared to do it, particularly the new commissions.

12 Ibid., pp. 226-27.

13 Ibid., p. 232.

14 Ibid., p. 229.

15 Ibid., pp. 249-50.

16 Ibid., pp. 231-32.

17 Ibid., p. 242.

Many of them when they form the new commissions, they see this as part of their role, and then we have to tell them we do not have a training program to train you more effectively to do this. . . .¹⁸

We hope to do more training with the commissions on no-fault grievance procedures. Some of the commissions want more of this training, and we need the help of the [Minnesota Department of Human Rights] to do this training in conjunction with them and in cooperation with them. Some commissions feel that the State has not been as responsive as they could be or should be to local commissions who want this training. The State does not have the funds for it, but if we can go out and raise some foundation funds, as we are trying to do, maybe they can work with us more closely in overall grievance training as well as other elements of the League's programs.

We expect to have at least a dozen new commissions formed throughout the State. Some of them are in the county basis. That is a new development. . . . So [the League] is reaching out beyond the big city in those areas . . . where [there is] no civil rights presence. That is one of the unique contributions the League can make in reaching a lot of these smaller communities in the rural areas as well as dealing more effectively in the metropolitan area.¹⁹

There are one or two primary reasons [for the absence of a local commission]. We go before these cities and we fail very often. . . . The main reason they give for not establishing a commission . . . is [they] don't have a problem. A lot of these communities are relatively homogeneous, particularly the smaller communities. They see themselves as not having a problem because they say, "We do not have many people of color." . . . We tell them that is all the more reason you need a commission, because of the changing world we live in and to help prepare your students and your citizens to live in the larger society. The other reason some of them give

is that they do not have the fund to staff a commission properly.²⁰

Minneapolis Commission on Civil Rights

Minneapolis established a Commission on Civil Rights to carry forward the policies of the City in the field of human relations, to promote civil rights, and to enforce the provisions of the Minneapolis civil rights ordinance.²¹ The civil rights ordinance protects against discriminatory treatment based on the categories: race, color, creed, religion, ancestry, national origin, sex (including sexual harassment), affectional preference, disability, age, marital status, and status with regard to public assistance. In addition, protection is provided in the area of housing to families with children.

The Minneapolis Civil Rights Department assists the commission in the administration of its duties; in this regard, as part of its responsibilities, it may:

- receive verified complaints alleging discrimination from persons who believe discrimination has occurred;
- make such investigation as appropriate to determine whether there is reason to believe that the allegations of discrimination are well founded;
- engage in conciliation and persuasion to try to eliminate the acts or practices complained of; and
- issue a final determination of the alleged violation.²²

Mayor Belton spoke to the Advisory Committee about the conflict between enforcement and

18 Ibid., pp. 246-47

19 Ibid., pp. 237-38.

20 Ibid., p. 243.

21 As set out in Minneapolis Civil Rights Ordinance, §§ 139.10-90, 141.10-100, 142.10-60 (1993). The commission consists of 21 members, known to favor the principles of nondiscrimination, equal opportunity, and the objectives of the civil rights ordinance. Members are appointed by the mayor and approved by the city council for 3-year terms. The commission meets monthly and on an annual basis designates from its own membership a chairperson and a vice chairperson.

22 Minneapolis Civil Rights Ordinance, § 141.80.

TABLE 10
Minneapolis Civil Rights Department: Case Intake and Closures 1986-1994

	Case intake	Employment	Housing	Closures
1986	308	233	34	312
1987	253	198	39	283
1988	269	220	16	241
1989	202	155	34	229
1990	368	295	46	302
1991	303	211	58	312
1992	336	270	46	270
1993	341	264	41	315
1994	348	251	67	257

Note: Employment and housing are only two of the agency's complaint categories.

Source: Midwestern Regional Office, USCCR, from Minneapolis Civil Rights Department.

dwindling municipal resources, noting that just the provision of essential services strains current municipal budgets.

The City of Minneapolis, in my opinion, has one of the strongest civil rights departments in comparison to other cities in the State of Minnesota. . . . We are one of the departments with the broadest area of citizens who can receive enforcement protection under it. . . . However, the problems that are growing in the City of Minneapolis and as well I expect in other cities across the country.

The issue of the protection of civil rights is in question as our resources continue to dwindle as it relates to law enforcement and housing and some of the basic survival areas. . . . I think there is a time when we are going to have to weigh the amount of dollars that we can put into civil rights enforcement in comparison to just dealing with some of the basic survival issues that the citizens of our community face.

I can tell you that a lack of timely response [by the department to a complaint] allows for a circumstance

in the community that exists to continue to exist, and for more persons to be victimized. This is a concern of ours. But in the context of the larger financial constraints that we as a municipality are experiencing, our civil rights department will continue to be under pressure. . . . So I have a strong commitment to civil rights, but in the context of trying to balance it within the larger objectives and responsibilities of the office, that duty is becoming increasingly difficult.²³

As of August 1994, the Minneapolis Civil Rights Department employed 24 staff members. This included 16 professionals engaged in first-line civil rights enforcement: 10 discrimination investigators and six contract compliance specialists.²⁴ The other eight employees are administrative and support staff, including the director and assistant director.²⁵ According to Kenneth White, executive director of the Minneapolis Civil Rights Department, staffing has remained constant over the past decade, while the department's budget and workload has fluctuated.

²³ Transcript, pp. 201-03.

²⁴ The contract compliance department certifies the compliance of firms contracting with the city with all prevailing equal employment opportunity and affirmative action statutes.

²⁵ Transcript, pp. 326-27, testimony of Kenneth White, executive director, Minneapolis Civil Rights Department.

Currently, the [Minneapolis] Civil Rights Department employs 24 staff members. This number has fluctuated between 22 and 24 over the last 10 years. Currently, there are 10 staff members assigned to investigation, and 6 staff members assigned to do compliance work, and the rest are administrative and support staff.

The average caseload for investigators is 40. Between 1991 and 1993 the average caseload was 50.5. Between 1982 and 1983 the average caseload was approximately 64. In 1989 the average caseload was 33.

In the past 10 years 3,000 complaints were filed with the Minneapolis Civil Rights Department. That averages about 300 complaints [every year]. In 1990, 368 complaints were filed in the department. In 1989 only 202 complaints were filed with the department. In May 1994 the department took in 51 complaints in 1 month, the most ever for the department.

The department funding in 1987 was \$1.1 million. In 1991 it was \$1.5 million. However, we have been asked to reduce the budget by 3 percent for fiscal year 1995, which may result in the loss of a position. As for support from the city council, it is there. . . .

Probable cause findings over the last 5 years average about 14.3 percent. In 1992, 16.3 percent of the cases closed were probable cause. . . . We are in the process now of working on an agreement with the EEOC through the State department of human rights. We will be compensated for age discrimination [cases]. Currently, we have a contract with EEOC where we get paid \$450 per case we investigate. This correlates to \$52,000 per year. However, the average cost of investigating a complaint is approximately \$3,000.

Currently, we are not receiving any dollars from HUD. We are in the process of pursuing substantially equivalency certification. However, that leads to the modification of our ordinance, and this may or may not happen. If we were to receive certification from HUD, we would probably get an additional \$65,000 per year.²⁶

White expressed the need for the department to do a more efficient job in enforcing local civil rights statutes. He said he intended to accomplish this in three areas: (1) by doing more outreach, (2) streamlining the internal complaint investigation process, and (3) revamping the city's contract compliance program.

I think the [department] needs to take a proactive approach to preventing discrimination. . . . We are going to work out some way to dispatch a staff person to some community centers on a periodic basis during the coming months. . . . [We] need to confront the situations, and have open dialogues. The public needs to be educated; we have to continue to dialogue about the issues. And when there are issues of discrimination, they need to be confronted.²⁷

One of the things [to change] is how we investigate complaints. We have a three-tier system, which I am dismantling because I do not think it is an effective and efficient way to investigate complaints. . . . Hopefully we will have a better process in place.²⁸

For contractors that are out of compliance, there is a specific procedure that must be followed to get any action taken against a contractor out of compliance. What I propose is that some of that authority be given the director [of the civil rights department] to determine that a contractor is out of compliance and then we can take immediate action. The way it is outlined in the ordinance now, it takes months to determine that a contractor is out of compliance, and by that time the person or the contractor could be finished with the project.²⁹

St. Paul Human Rights Commission

St. Paul has a Human Rights Commission with a department of human rights. Civil rights legislation of St. Paul protects against discriminatory treatment on the basis of: race, color, creed, religion, ancestry, national origin, sex (including sexual harassment), sexual or affectional orienta-

26 Ibid., pp. 328-29.

27 Ibid., pp. 332 and 335.

28 Ibid., p. 346

29 Ibid., pp. 337-38.

tion, familial status, disability, age, marital status, and status with regard to public assistance. The human rights department is the administrative arm of the commission, receiving and investigating complaints.

The commission hears and determines complaints as provided by the department.³⁰ The commission consists of 11 members appointed by the mayor with the consent of the city council. Members serve 3-year terms, with no commissioner being appointed for more than 9 years cumulatively or otherwise. The chairperson of the commission is designated by the mayor with the approval of the council. The director is appointed by the mayor with the consent of the city council, to serve at their pleasure, from a list of three (3) nominees presented by the commission. Once appointed, the director may be removed without cause by the mayor with the concurrence of two-thirds of the then members of the commission.³¹

The commission does not exercise day to day management authority over the activities of the human rights department. Within the human rights department, the enforcement division of the commission:

- receives complaints alleging discrimination from persons who believe discrimination has occurred;
- makes such investigation as appropriate to determine whether there is reason to believe that the allegations of discrimination are well founded;
- engages in conciliation and persuasion to try to eliminate the acts or practices complained of; and
- initiates enforcement proceedings.³²

Josephier Brown, executive director of the department, testified that currently the department caseload averages 30 to 40 cases per investigator. Most of the commission's case work is employment discrimination. According to Brown, 70 percent of the cases allege discrimination in employment; over 50 percent of those complaints allege race as the discriminating factor.³³ Dulce de Leon, enforcement division supervisor with the St. Paul Human Rights Commission, explained that investigators do the initial intake at the agency and determine whether the complaint merits formal investigation.³⁴

In the period 1985 to 1991, both complaint filings and investigations showed a generally increasing trend, peaking in 1992 at 152. In the last 2 years there has been a decline in the number of complaints accepted and investigated by the office. The lowest number of complaints in the past decade occurred in 1993 and 1994, 84 and 81 cases, respectfully. During that time, the investigation staff in the office was two, the lowest level in the past 10 years (see table 11.) The professional staff of the commission has decreased by 35 percent in the last 5 years. The Advisory Committee found a high and positive relationship between professional investigative staff and complaint filings with the department, the correlation coefficient, r , being 0.71.³⁵

The enforcement unit is one of two major units in the commission with investigators. Brown discussed staffing, the city's contract compliance program, and the agency's working relationships with Federal agencies.

In 1989 the St. Paul Human Rights Department consisted of 17 professional and support staff. Of that number eight were investigators: four in the enforcement unit, three in the contract compliance unit, and

30 St. Paul legislative Code, chapter 183.

31 Ibid.

32 Ibid.

33 Transcript, pp. 371-72.

34 Dulce de Leon, telephone interview, Apr. 12, 1995.

35 The correlation shown accounts for time span in activity by measuring complaints filed and staff lagged one period.

TABLE 11
St. Paul Department of Human Rights:
Resources, Staffing, and Workload,
1985-1994

	Enforcement investigators	Division complaints
1985	5	95
1986	5	102
1987	5	130
1988	5	127
1989	5	140
1990	5	136
1991	3	152
1992	3	130
1993	2	84
1994	2	81

Note: Complaints are closed complaints based on formal investigation and do not include charges that are taken by investigators and closed informally.

Source: St. Paul Human Rights Department.

one affirmative action investigator. Since 1988 the investigative staff has been reduced by 37 percent. There are now five investigators, two of whom are supervisors. . . . The obvious initial impact of the staff reduction was an increase in the caseload of the remaining investigators.³⁶

As reduction of staff continued, we had to revise our intake procedures. We eliminated face to face interviews with the complainant and began mailing intake forms to complainants with instructions. Individuals . . . were told to fill out the series of forms, have them notarized, and mail them back to us. . . . As you might imagine we had a very poor return rate. . . . Our

followup found that out of 182 complainants that were mailed intake forms, the return rate was 34 percent. The department has discontinued this practice; however, the staffing pattern [that prompted this] remains the same. . . . So we're tightening up our intake procedures and increasing the number of investigative days allowed for cases. . . .

Our probable cause findings of 1989 were between 15 to 20 percent. Currently our probable cause determinations are around 10 percent. I offer that data without any evidence of a direct correlation between our reduced probable cause rate and the reduction in resources, but I suspect there is some connection.

In contract compliance there [has been] a reduction in the number of scheduled compliance reviews . . . the number of onsite scheduled visits to construction sites. There is a direct correlation between the visibility of staff on job site compliance reviews and the employment of women and people of color on these jobs. . . . The flipside of enforcement is the elimination of discrimination through prevention. When resources are scarce prevention suffers. . . .

In 1990 the Federal Government passed the Fair Housing Amendments Act. The State and local agencies who have a contractual relationship in receiving funds from HUD, but only if the housing provisions of their respective laws were substantially equivalent to the Federal fair housing laws. . . . The City of St. Paul in responding to HUD's analysis of our procedures has twice amended our legislative code. We are still not substantially equivalent and can not receive Federal assistance.³⁷

We do not have a work-sharing agreement with the EEOC. We have pursued that effort and we have been in contact with the regional EEOC office, and they have informed me that the application has been forwarded to Washington, D.C., with the recommendation that we enter a work-sharing agreement with the EEOC.³⁸

³⁶ Ibid., p. 354.

³⁷ Ibid., pp. 354-59.

³⁸ Ibid., p. 370.

Chapter 5

Minnesota Department of Human Rights

The Minnesota Department of Human Rights was established in 1967 to implement, enforce, and administer the Minnesota Human Rights Act.¹ The two primary missions of the agency are to investigate and resolve charges of discriminatory practices in the areas of employment, housing, credit, public accommodation, public service, and education, and to require affirmative action plans of all vendors, both instate and outstate, who wish to do business with the State and have 20 or more employees and \$50,000 or more in potential State contracts.²

The activities of the department are directed by a commissioner, appointed by the Governor. The department's current commissioner, David L. Beaulieu, succeeded A.F. Gallegos in July 1991. Assisting the commissioner is one deputy commissioner and division directors. The deputy commissioner, in the Commissioner's absence, assumes the duties and responsibilities of the Commissioner. The deputy commissioner may also be assigned more specific duties by the commissioner.³

Department complaint processing involves the intake, investigation, and resolution of individual complaints of discrimination, while contract com-

pliance work enforces the State's affirmative action requirement on vendors.⁴ Under a work-sharing agreement with the Equal Employment Opportunity Commission (EEOC), the department investigates jointly filed cases, with the EEOC reimbursing the State for the costs of these investigations.

The department also provides public education aimed at eliminating and preventing discrimination. Education and outreach activities are required of the agency by statute and are done in both the operations area as well as by management.⁵

Recent Organizational and Financial History

In 1988 the department had a commissioner's office, a deputy commissioner's office, and two divisions: the enforcement division and the management services division. A total of 69.5 permanent positions existed in the agency. Three positions were in the commissioner's office, and two positions in the deputy commissioner's office.⁶

The enforcement division was headed by a director and handled both contract compliance and complaint processing. Seven units were in the

1 Minn. Stat. § 363.04 (1994).

2 David Beaulieu, Commissioner of the Minnesota Department of Human Rights, to Constance M. Davis, Midwestern Regional Director, USCCR, Aug. 3, 1995, Midwestern Regional Office files, p. 1 (hereafter cited as Beaulieu letter). Pursuant to Commission administrative procedure, a draft of this report was provided to the Minnesota Department of Human Rights for review and comment. A first response was received in the Midwestern Regional Office, USCCR, from David Beaulieu, Commissioner, Minnesota Department of Human Rights, on June 23, 1995, in which he stated that there was other "available documentation to provide accurate, direct information regarding the facts contained in the (initial draft) report. . . ." The Minnesota Department of Human Rights was provided additional time to submit such documentation, which was provided in an Aug. 3, 1995, letter from David Beaulieu to Constance Davis.

3 Ibid., enclosure, "Minnesota Department of Human Rights 92-94 Overview" (1995), p. 16.

4 Ibid., p. 2.

5 Ibid., p. 2.

6 Ibid., attachment D, department of human rights organization chart, 7-1-88.

division, including: (1) intake unit, 10 positions; (2) disability unit, 5.5 positions; (3) housing, public services, public accommodation unit, 7 positions; (4) education, equal pay, sexual harassment unit, 7 positions; (5) age, employment agencies, credit unit, 6 positions; (6) mobile case processing unit, 5 positions; and (7) contract compliance unit, 7.5 positions.⁷

The intake unit is responsible for providing information about the provisions of the Minnesota Human Rights Act and the services of the department to individuals who contact the department for assistance. It is also responsible for screening potential charges of discrimination and accepting those charges which are appropriate for investigation.⁸ The four case processing units investigate charges of discrimination and make recommendations on charge findings and case disposition. Each unit is headed by a human rights enforcement officer supervisor and several human rights enforcement officers. The contract compliance unit monitors affirmative action efforts of State government contractors through desk audits and onsite reviews, as well as providing technical assistance in developing affirmative action plans. The unit is headed by a supervisor and staffed with several human rights enforcement officers.⁹

The management services division had three units: (1) business and accounting unit, 2 positions; (2) management information unit, 4.5 positions; and (3) support unit, 6 positions. In addition to the director of the management services division, two other administrative positions existed in the director's office.¹⁰ Four years later in 1992,

a total of 66 employees were with the agency.¹¹ Organizationally, the mobile case processing unit and contract compliance unit had been taken from the enforcement division and placed in a new compliance/community services division, with its own director. The deputy commissioner supervised the agency's three division directors: enforcement, compliance/community service, and management services. Additionally, the management services division had reorganized into five units: administrative services, management information, management analyst, support services, and word processing.¹²

Currently the department has again changed its organization with four primary managers: commissioner, deputy commissioner, policy and legal affairs director, and director of operations. Contract compliance and community service have merged into one unit returned to the operations division with the complaint processing units, intake unit, and trainee unit. The mobile case processing unit has been discontinued.¹³

Total employment at the department has declined recently. In fiscal year 1988 the department employed 68 individuals. Two years later in fiscal year 1990, the agency had 65 employees. In fiscal year 1992 there were 66 employees with the department. In June 1994, staffing had declined to 60 full-time employees.¹⁴ The decline in department employment appears to have occurred in concert with declining appropriations. Total resources available to the department increased from \$3.2 million in the fiscal years 1991 and 1992 to \$3.4 million in fiscal year 1993.¹⁵

7 Ibid.

8 Ibid., enclosure, "Minnesota Department of Human Rights 92-94 Overview" (1995), p. 17.

9 Ibid.

10 Ibid., attachment D, department of human rights organization chart, 7-1-88.

11 Ibid., attachment D, Minnesota Department of Human Rights, spending and staffing information.

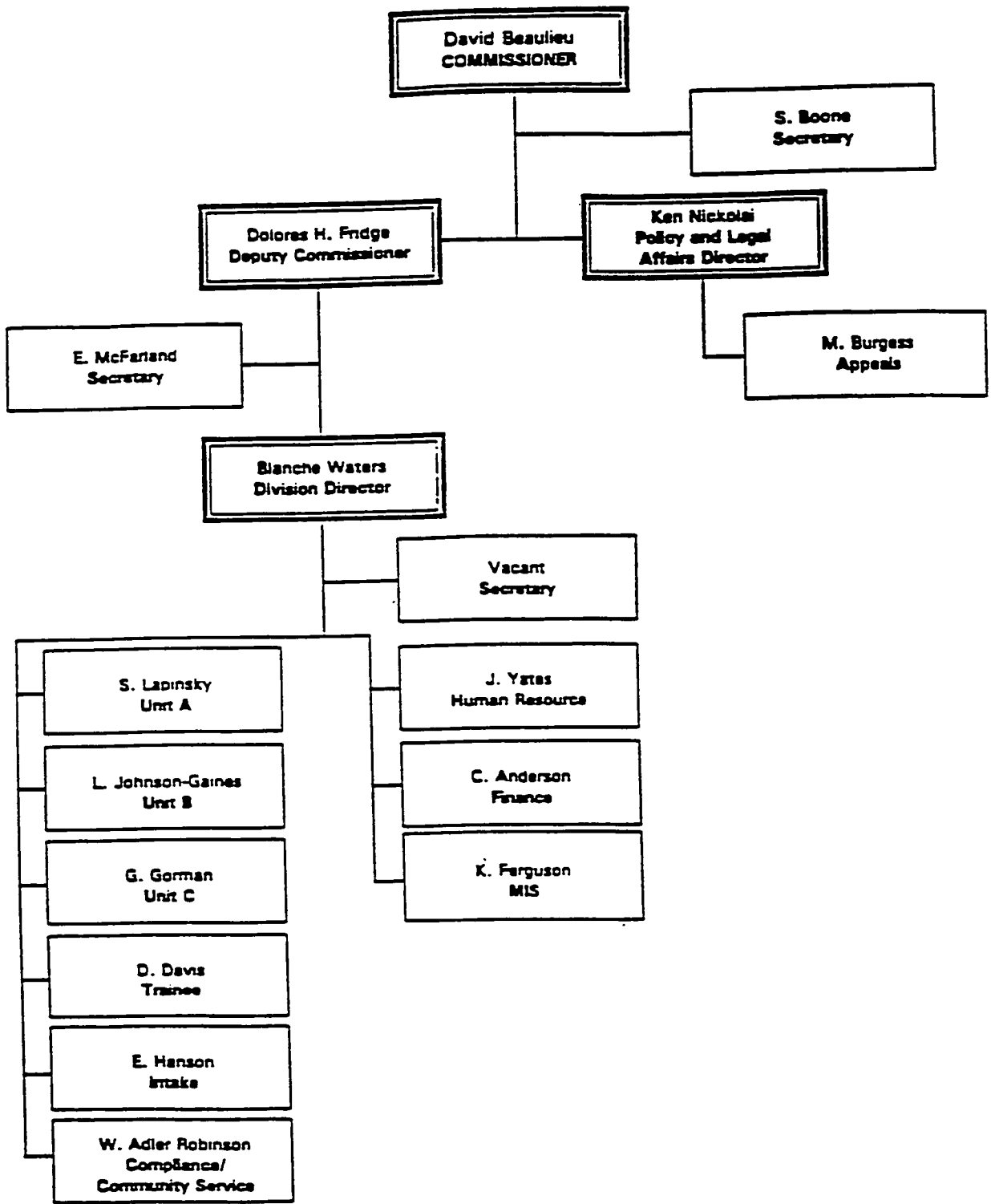
12 Ibid., attachment D, Minnesota Department of Human Rights, organization chart, Aug. 27, 1991.

13 Ibid., attachment D, Minnesota Department of Human Rights, organization Chart, 3/95.

14 Ibid., attachment D, Minnesota Department of Human Rights, spending and staffing information.

15 State of Minnesota, Office of the Legislative Auditor, Department of Human Rights Financial Audit, July 1994.

FIGURE 1
Minnesota Department of Human Rights Organization



Source: Minnesota Department of Human Rights.

TABLE 12**Employment at the Minnesota Department of Human Rights, 1988, 1990, 1992, and 1994**

Year ¹	Employees
1988	68
1990	65
1992	66
1994	60

¹ Actual employment as of June 30 of that year.
Source: Minnesota Department of Human Rights.

Beaulieu testified, however, that the department's revenues were cut 10 percent during fiscal year 1994. Although this cost the department several positions, he believes that funding for the department over the past several years has been good.

We have a [current] budget of about \$3.2 million, a 10 percent cut [of] about \$300,000. We lost at that time about five positions. . . I think we have had good support within the context of the overall budget situation in the State of Minnesota, better than other agencies. . . The legislature, upon Governor Carlson's recommendation, gave us \$279,000 in FY 1995 to begin a three stage process to develop a computer system which will greatly improve our effectiveness.¹⁶

The special appropriation for upgrading the computing capability of the department began in FY 1994, when the department received an appropriation of \$40,000 to conduct planning for an information resource management environment as a basis for improving compliance tracking, af-

firmative action plan monitoring, and evaluation of the equal employment opportunity program. In FY 1995 the department received an appropriation of \$279,000 to improve the department's technology environment, complete information resource models, and begin developing subject oriented data bases. A third appropriation of \$423,000 in FY 1996 was recommended by the information policy office of the State's department of administration, based on a finding that the department has obtained an overall evaluation rating of satisfactory in its internal agency business procedures.¹⁷

Department Programs

1. Education and Outreach

Education and outreach activity of the department is to include formal and informal education programs designed to eliminate discrimination and intergroup conflict.¹⁸ This includes the development of programs that will aid in determining the compliance throughout the State with the provisions of the human rights Act and to conduct and study discriminatory practices and develop accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life.¹⁹

The education and outreach activity is shared across the agency.²⁰ As part of this initiative, the department has released three reports in recent years. The PRIDE (Provide a Respectful, Inclusive, and Diverse Environment) in Minnesota Schools was created in the fall of 1992 and charged with learning and sharing ideas about current conditions in the public schools across the State and make recommendations to improve intergroup relations. A report was released in

16 Testimony before the Minnesota Advisory Committee to the U.S. Commission on Civil Rights, Factfinding Meeting, Minneapolis, MN, Aug. 30 and Sept. 1, 1994, pp. 136-37 and 143-44 (hereafter cited as Transcript).

17 Beaulieu letter, attachment B, State of Minnesota, Department of Administration Information Policy Office, "Information Resource Funding Request Recommendations, Department of Human Rights" (1995), p. 49.

18 Minn. Stat. § 363.05, subd. 1(11) (1994).

19 Minnesota Department of Human Rights, 1994 Annual Performance Report, p. 15, unpublished (hereafter cited as 1994 Annual Report).

20 Beaulieu letter, p. 2.

TABLE 13**Financial Activity: Minnesota Department of Human Rights**

<i>Resources</i> ¹	FY 1991	FY 1992	FY 1993
Nondedicated resources:			
Federal grants	\$ 450,190	\$ 365,445	\$ 173,805
Resources available:			
General fund	2,842,000	3,194,000	3,307,000
Carry forward	242,077		
Revenues			
Other agency deposits	101,071	15,894	16,000
Other revenues	46,506	13,906	72,933
<i>Total resources available</i>	<i>\$3,227,283</i>	<i>\$3,223,800</i>	<i>\$3,395,933</i>
Expenditures ²	FY 1991	FY 1992	FY 1993
Personnel services	\$2,449,606	\$2,655,872	\$2,731,199
Expenses/contractual svcs	363,782	370,307	387,554
Misc. operating expenses	117,030	101,895	117,642
Supplies/materials/parts	27,365	70,225	74,400
Capital equip. (\$500 & up)	78,769	9,500	0
Real property	0	2,500	0
Nonexpense disbursements	101,120	100,110	100,000

¹ Source: State of Minnesota, Office of the Legislative Auditor, Department of Human Rights Financial Audit, July 1994.

² Source: State of Minnesota, Statewide Accounting System, Minnesota Department of Human Rights, Managers Financial Report, August 1991, August 1992, and July 1993.

1993 containing 11 findings and 18 recommendations.²¹ In 1993 the commissioner assembled a task force composed of representatives of Minnesota corporations and companies that have strategies for addressing discrimination in the workplace. In 1994 the task force released a 48-page guide for employers containing models and tools to use in creating a diverse and discrimination-free workplace.²² In 1994 the department released a report on Chicano/Latino discrimination in Minnesota. The report was the product of a task force created by the commissioner in 1993 to address the number and variety of complaints

and reports of discrimination to the department affecting the State's Chicano/Latino community.²³

2. Contract Compliance

The duties of the contract compliance unit are to ensure that firms doing business with the State comply with equal opportunity and affirmative action guidelines to increase the employment of groups of people who have historically faced discrimination in employment. State law prohibits agencies from accepting any bid or proposal for a contract exceeding \$50,000 with any business having more than 20 full-time employees unless

21 Minnesota Department of Human Rights, "P.R.I.D.E. in Minnesota Schools" (1993).

22 Minnesota Department of Human Rights, "Creating Discrimination-Free Work Environments" (1994).

23 Minnesota Department of Human Rights, "Chicano/Latino Task Force—Report on Discrimination" (1994).

the business has an affirmative action plan that: (1) promotes employment opportunities for minorities, women, and persons with disabilities, and (2) has been approved by and received a certificate of compliance from the commissioner of the department of human rights.

No department or agency of the state shall accept any bid or proposal for a contract or agreement or execute any contract or agreement for goods or services in excess of \$50,000 with any business having more than 20 full-time employees on a single working day during the previous 12 months, unless the firm or business has an affirmative action plan for the employment of minority persons, women, and the disabled that has been approved by the commissioner of human rights. Receipt of a certificate of compliance issued by the commissioner shall signify that a firm or business has an affirmative action plan that has been approved by the commissioner. . . .²⁴

The department reviews affirmative action plans that are submitted by businesses that want to contract with the State and, if the plans meet statutory rule requirements, the department issues a certificate of compliance. In reviewing affirmative action plans that are submitted, the department identifies any deficiencies in the plan and recommends corrections to the business that would bring the plan into compliance. The department is also required to monitor whether businesses with certified affirmative action plans are making good faith efforts to implement the recruitment and hiring goals set forth in those plans. The department has the authority to impose sanctions against contractors who do not make a good faith effort or who refuse to take corrective action for cited deficiencies in their affirmative action plan.²⁵

The contract compliance unit has a staff of 10 (16 percent of the department's total staff) and a budget of \$354,000 (11 percent of the department's total budget). In both fiscal year 1993 and fiscal year 1994, the department reviewed approximately 1,000 affirmative action plans.²⁶

In January 1994 the department implemented a strategic information plan designed to increase the agency's efficiency. The plan called for faster issuance of certificates of compliance to allow for faster turnaround of available contractors approved for State construction projects. The department also sought to more efficiently analyze employment data on certified contractors to determine continued compliance.²⁷ According to department officials, this better internal management of operations and resource allocations would allow the agency "to move staff from contract compliance to [complaint] investigation."²⁸

3. Complaint Processing

The largest activity in the department is complaint processing, with a budget of \$2,297,000 (69 percent of the total department budget).²⁹ Four units work directly in this activity, the intake unit and three complaint processing units. The department is required to receive and investigate charges alleging unfair discriminatory practices, determine whether or not probable cause exists for litigation, and to eliminate unfair discriminatory practices as being contrary to the public policy of the State.³⁰

The first point of contact for citizens seeking to file a discrimination complaint is the intake activity. The intake activity screens contacts from individuals, sometimes referring people to other State agencies, community support groups, or other sources. For contacts where the individual

24 Minn. Stat. § 363.073 (1994).

25 1994 Annual Report, p. 3.

26 Ibid.

27 Beaulieu letter, enclosure, "MDHR Strategic Information Plan" (1994).

28 Dolores H. Fridge, deputy commissioner, enclosed statement in "MDHR Strategic Information Plan" (1994).

29 1994 Annual Report, p. 8.

30 Minn. Stat. 363.05, subd. 1(10).

TABLE 14

Minnesota Department of Human Rights, Intake Activity FY90-FY94

	Inq.	RFS	LOJ	Scrn.	Q snt.	Q rcd.	Drfts.	Cl.	Dkts.
FY90	10,125	6,582	1,966	577	4,009	1,988	1,723	432	1,675
FY91	15,588	9,820	4,011	1,287	4,522	2,210	1,967	591	1,915
FY92	21,605	11,711	5,670	1,793	4,258	2,295	1,609	795	1,428
FY93	20,605	12,335	5,534	1,944	5,037	2,034	1,468	828	1,271
FY94	23,736	13,369	4,188	3,407	6,044	2,200	1,641	964	1,395

Inq.—All inquires received by intake staff

RFS—(requests for service) initial contact results in sending

Q; conclusion that DHR has no jurisdiction

(RFS = Qsent + LOJ + Scrn)

LOJ—conclusion that claim does not come within 363

authority

Scrn—conclusion that there is no merit to claim

Q snt—questionnaires sent to claimant

Q rcd—questionnaires (or equivalent correspondence) received

Drfts—charges drafted

Cl.—review of questionnaire shows no merit to claim

Dkts—charge drafts accepted for processing

Source: Minnesota Department of Human Rights.

has presented facts that create a potential violation of the Minnesota Human Rights Act warranting agency investigation, the intake activity drafts and files discrimination charges, which are then referred to the case processing activity.³¹ There are eight intake officers at the department.³²

Case processing activity investigates discrimination charges and seeks positive resolution of identified discrimination through conciliation, settlement, or litigation. In case processing the department initially attempts to resolve discrimination charges through persuasion prior to a complete investigation. The Minnesota Human Rights Act requires the department to complete investigation of discrimination charges within 1 year of filing.³³

Initial inquiries to the department have increased 134 percent in the last 5 years. In fiscal year 1994 (July 1, 1993, to June 30, 1994), there were 23,737 contacts with the intake activity and

1,641 discrimination charges drafted. Both of these figures are increases from the previous fiscal year. In fiscal year 1993 (July 1, 1992, to June 30, 1993), there were 20,605 initial contacts with intake activity, and 1,468 discrimination complaints were filed.³⁴

The increased intake has increased the department's complaint processing workload has increased. This has affected individual investigator caseloads, case closures, and investigation time. Between 1993 and 1994:

- the number of discrimination charges has increased,
- the caseload per investigator has almost doubled, from 48.5 in FY 1993 to 71.3 in FY 1994, case closures have decreased, from 1,264 in FY 1993 to 1,022 in FY 1994, and
- average investigation time has decreased, from 305 hours in FY 1993 to 246 hours in FY 1994.³⁵

31 1994 Annual Report, p. 10.

32 Beaulieu letter, attachment D, Biennial Budget Proposal.

33 1994 Annual Report, p. 10; Minn. Stat. § 363.06, subd. 4 (1) (1994).

34 Beaulieu letter, attachment I, Minnesota Department of Human Rights Intake Activity.

35 1994 Annual Report, p. 9.

TABLE 15

Minnesota Department of Human Rights, Dockets, Closures, and Caseloads for FY89-FY94

	FY89	FY90	FY91	FY92	FY93	FY94
Dockets, closures, and caseloads:						
Charge docket	1,523	1,692	1,927	1,441	1,241	1,395
Closures	1,919	1,527	1,724	1,633	1,264	1,022
Average inventory time	ND	ND	ND	371	305	246
Inventory	1,242	1,423	1,695	1,510	1,019	1,141
Caseload/EO	ND	50	65	63	49	50
Closure types and outcomes:						
Administrative dismissals	773	998	1,220	1,173	835	657
Probable cause determination	214	126	181	140	90	87
No probable cause determination	440	219	147	103	97	66
Split determination	26	28	19	15	16	14
Positive outcomes ¹	ND	24%	25%	24%	23%	25%

¹ Positive outcomes included probable cause determinations, conciliations, 2-party settlements, litigation settlements, and orders.

² ND: No data available.

³ In addition to administrative dismissals, probable cause

determination, and no probable cause determination, case closures also include complaint withdrawals, predetermination settlements, informal agreements, and private right of action. Source: Minnesota Department of Human Rights, Oct. 21, 1994, Commissioner memorandum.

Screening complaints, i.e., finding no merit to the complaint at intake, has increased markedly in the last 5 years. In fiscal year 1990, 5.7 percent of all initial inquiries were screened by the department. In fiscal year 1994, 14.4 percent of all initial inquiries were screened. Analyzing trends in the cases closed by department action, the percentage of probable cause findings has decreased and the percentage of administrative dismissals has increased. In the 3-year period, FY 1989 to FY 1991, closures totaled 5,170; in the 3-year period FY 1992 to FY 1994, closures totaled 3,919, a decrease of 32 percent.

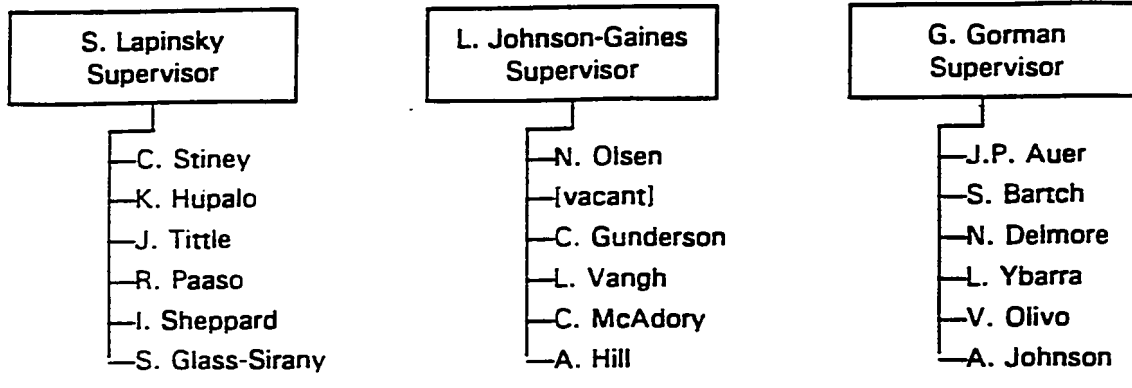
In the 3-year period FY89-FY91, administrative dismissals accounted for 57.8 percent of all closures. In the 3-year period FY92-FY94, administrative dismissals are 68.0 percent of all case closures. Reflecting an opposite trend, between FY 1989 and FY 1991, probable cause was found in 11.5 percent of all case closures. In the period

FY 1992 to FY 1994, probable cause was found in 9.2 percent of the cases closed.

The department noted three factors that are creating an ever increasing complaint workload.³⁶ First, an increasing number of discrimination charges are being filed. Historically, the department has experienced a 5 to 10 percent increase each year in the number of discrimination charges filed for agency investigation. Second, the State is experiencing a changing population. Recent census data reveal that Minnesota is becoming more heterogeneous; more and diverse racial and ethnic groups are moving into the State. Third, the department has limited control over the types of discrimination charges filed. The department is required by law to accept any charge that meets minimal jurisdictional elements, regardless of the department's assessment of whether the charge warrants use of limited resources. As a result, approximately 70 percent of

³⁶ Ibid.

FIGURE 2
Minnesota Department of Human Rights: Complaint Case Processing Personnel, August 1994



Source: Minnesota Department of Human Rights.

all discrimination charges filed are ultimately dismissed after substantial investigation time has been expended.³⁷

The complaint processing unit of the enforcement division has three investigative units and one intake unit. The complaint processing unit has 17 full-time investigators (28.3 percent of the total staff). The intake unit had 7 staff, excluding supervision; the investigative units had 17 investigation officers, excluding supervision.³⁸ The three investigation units and employees are shown in figure 2. Of the 17 investigation officers:

- 2 work a half caseload,³⁹

- 4 are "temporary" employees,⁴⁰ and only
- 10 have more than 4 years experience in case investigation.

With 2 investigation officers working a half caseload, the full-time equivalent complaint investigation staff is 16. In the past 5 years, "the number of complaint investigators has decreased from 26.5 in fiscal year 1991⁴¹ to the current 17. This is a decrease of almost 50 percent in complaint investigation staff, during a period when inquiries filed with the department have increased 134 percent.

³⁷ Ibid.

³⁸ Beaulieu letter, attachment D, Biennial Budget Proposal. In the operations division there is a trainee unit, where new employees are trained and work in all operations of the department, including complaint processing.

³⁹ The two half-time employees are Lo Vangh and Vicki Olivo. They are liaisons to the Southeast Asian and Hispanic communities. The department position, stated in the Beaulieu letter, is that the two were hired to spend 50 percent of their time in the field and 50 percent of their time in the office.

⁴⁰ According to the department, "the four temporary employees were mobility assignments on transfer from other State agencies and must work as investigators for one year before becoming part of the union. None are temporary—status refers only to union or non-union employee. They carry a full case load and must meet standards after one year to receive union status." Beaulieu letter, p. 2.

⁴¹ Beaulieu letter, p. 4.

TABLE 16**Minnesota Department of Human Rights, Management and Unit Staff****Management Staff 1993-1995****1993-1995**

- Commissioner
- Deputy Commissioner
- Management Analyst
- Enforcement Director
- Clerical Support

1995-

- Commissioner
- Deputy Commissioner
- Policy/Legal Affairs Director
- Director of Operations
- Clerical Support

1994 Unit Employment

Total department employment:	60	
Complaint investigators:	17*	(28.3 percent)
Complaint investigation supervisors:	3	
Complaint intake:	7	(11.7 percent)
Intake supervisor(s):	1	
Contract compliance unit:	9	(15 percent)
Contract compliance supervisors:	1	
Department trainees:	5	(8.3 percent)
Trainee supervisor:	1	
Other management and administrative positions:	16*	(26.7 percent)

* Includes 2 half-time positions.

Source: Midwestern Regional Office, USCCR, from Minnesota Department of Human Rights data.

Department officials claim that union negotiations have caused the decline in complaint investigators. "The union negotiations for hiring the trainees started in July 1994, and an agreement was not reached until February 1995. . . . Five positions were being held open subsequent to union approval of the trainee plan."⁴² Department officials also claimed that "the decrease in the number of investigators began with a budget reduction for 1991-1992."⁴³ The decrease in com-

plaint investigation officers has occurred during a time when the total staffing of the department has declined by five positions.

Department officials reject allegations that the department has decreased the number of investigation officer positions and replaced those positions with management positions. Moreover, department officials assert that "since Commissioner Beaulieu started, he has reduced the management staff at the agency."⁴⁴

⁴² Ibid.

⁴³ Ibid., p. 3. In support of this position, the department submitted statewide accounting system financial reports, which are displayed in table 13. The budget authorization for personnel shows increases for the three fiscal years 1991, 1992, and 1993, i.e., FY 1991: \$2.45 million, FY 1992: \$2.65 million, FY 1993: \$2.73 million.

⁴⁴ Ibid.

Some of the confusion about the size of management staff at the agency may rest in defining management. Some examining the department assert that all administrative positions are management positions, while others, i.e., department officials, include only primary managers to be management staff. As seen in table 15, management positions may have remained constant in recent years, while total administrative positions increased.

As an efficiency measure, production standards have been placed on complaint processing investigators. The department average for all full-time, nonprobationary, nonmobility officers is 6.64 cases per month; the minimum standard for an investigator is 6.25 cases per month.⁴⁵ Beaulieu spoke about decreasing budgets, cutbacks in staff, increasing workload, and department initiatives to be more efficient and reach out to the various communities in the State.

When I was appointed Commissioner by Governor [Arne] Carlson 3½ years ago, my primary responsibility was to deal with issues regarding . . . processing charges of discrimination. We had an agency suffering from significant issues of staff morale, issues of organization and management, of caseloads that appeared to be growing all the time, and resources that were diminishing.

The principal challenge over the last three and a half years has been trying to do more with less. In attempting to try to do that . . . our agency has come to understand some of the real significant issues of enforcement in terms of resources and in terms of how we go about our business. . . . Today [there may] be issues that we may focus on during a period of time and there is some resolution, and all of a sudden we find that there are other areas emerging.

In this State we find emerging issues of discrimination in areas outside of the metropolitan area. The particular Chicano/Latino discrimination in communities . . . is new, and issues of discrimination in terms of inter-cultural relations and in terms of getting along in terms

of developing an ethic of dealing with differences and resolving issues is new and is really untested. . . .

One of the overall agenda items we had when I was first appointed was to deal with management issues and resource issues in the department to improve the overall function of the agency. . . . Certainly as we are dealing in a world where resources are short and where our primary mission is enforcement, we need to begin to look at ways of mitigating discrimination at its root. . . .

In that regard we focused on a number of initiatives in the agency to look at getting ahead of the issues. One is an initiative called zero tolerance [whereby] we pull together a number of representatives and corporations and companies in the State to tell us what works . . . in terms of diversity, in terms of strategies that lessen the issues of discrimination. . . . Another initiative that we worked on to try to get out ahead of the issues is to identify specific populations that we think need to be studied. In this case the example is the Chicano/Latino discrimination task force. We wanted to find out discrimination issues which were unique to this community and to their experience in Minnesota. . . .

A third part of our agenda was to increase our presence; increase the presence of human rights agencies statewide in terms of making sure that citizens who felt they wanted to utilize our services had access to that. Our agency is physically located in downtown St. Paul . . . [so] we have developed a number of strategies in terms of enabling people to have access [to us]. . . .⁴⁶

Beaulieu explained some of the inefficiencies within the department and his efforts to improve the delivery of services. He acknowledged, as part of this new efficiency drive, that the standard for evaluating investigator performance is now tied more directly to the number of case closures.

One of the statistics that we work within is that of all the charges filed with the agency, 75 percent of those charges ultimately result or have resulted in [not being] positive for the charging party. So about 25 percent of the charges filed with us actually result in a probable cause or some settlement agreement. That

45 Ibid., enclosure, "Minnesota Department of Human Rights, 92-94 Overview" (1995), p. 1.

46 David Beaulieu testimony, Transcript, pp. 113-22.

means the large amount of our work and our investigative time on cases which, for various reasons, do not result in the determination of discrimination. . . . That is a lot of work which does not result in probable cause of discrimination. . . . [But] even though they may not result in a determination of probable cause of discrimination, it is a very valuable social function to have a place where people can come and can bring those types of issues forward.⁴⁷

Our statute allows us a 1 year period of time in which to investigate a case. We had been a little bit above that in 1991, about 395 days. We have reduced that down to 305 days on an average. . . . We see about a 10 percent [increase] in new charges every single year. . . . Our investigators handle about 16 cases at one time. . . . If you are faced with that many different cases at one time, the quality of investigations begins to suffer. . . .⁴⁸

We have put in place performance standards for investigators [and] we have developed performance standards for how many cases an investigator should investigate in a year's period of time. We rank that from average to above average to below average. We have in place a performance management system [whereby] we try to assess and help investigators that are performing too low to get them to improve their production. . . . We would like to put in a reward system, an achieving reward system for investigations that are doing well. The number we have established is about 50 cases on an average per year per investigator.⁴⁹

The Advisory Committee questioned Beaulieu on the effect his performance standards had on the quality of the investigations.

Lopez [Advisory Committee member]: Does [the standard] become a quantity versus quality?

Beaulieu: Absolutely not. We have to, because of the nature of our work, [have] a quantity standard. You simply cannot not have that. . . . The [standard] is based

upon reasonable history among investigators over the past that are not unreasonable standards.⁵⁰

Beaulieu briefly addressed the department's working relationship with local human rights commissions, such as those represented by the League of Minnesota Human Rights Commissions.

Our overall approach is to first look at trying to do more with less in terms of some significant improvements in management, trying to be proactive. Trying to increase our presence in that latter area is the whole issue of the relationship of the department to local human rights commissions in terms of what their role may be. . . . We have [done] some [work] trying to develop those relationships.⁵¹

Yvonne Price, president of the League of Minnesota Human Rights Commissions, had a different opinion of the department's local outreach and support of local human rights commissions. She stated the State human rights department gives little support to local municipalities in their efforts to enforce civil rights.

We are struggling with [issues of racism] as communities. We are committed to try and expand the umbrella of those people who are responsible for the enforcement . . . of civil rights. Currently we do not get any support from the State of Minnesota for the enforcement of civil rights. I am not under the impression that that is ever going to happen. . . .⁵²

A recent newspaper story was critical of the department. The *Star Tribune* reported that agency employees are overworked and delays in complaint investigation are routine. In the article complaint investigation officers who had recently

47 Ibid., pp. 124-25 and 127.

48 Ibid., pp. 126 and 130-31.

49 Ibid., p. 131.

50 Ibid., pp. 141-42.

51 Ibid., p. 123.

52 Testimony of Yvonne Price, Transcript, pp. 205-06.

resigned from the department expressed their discouragement and frustration.

The department, which has boasted on increased efficiency, is in turmoil, its employees overworked and unable to keep up with a growing caseload. . . . In September [1994] the department gave the legislative auditor data showing it reduced investigation time on cases from 305 to 246 days in the last year. But a *Star Tribune* analysis of department statistics suggest a much bleaker picture. On average, cases can take at least twice that long; the 246-day figure does not include the additional time it takes for supervisors to review and approve the investigator's findings.

Although State law requires that cases be decided in one year, the newspaper found that as of Oct. 3, [1994] the average age of 392 cases completed by investigators and waiting to be reviewed by supervisors was 562 days. The *Star Tribune* analysis found that 26 percent of cases awaiting review are more than two years old; 9 percent are three years or older.⁵³

Officers say department policy rewards those who close the most cases. They say that can mean setting aside more time-consuming "probable cause" cases and focusing on ones that are likely to be dismissed. Says Ted Johnson, an officer who quit in May, "Quite often we don't adequately investigate, we don't look for evidence, we wait for the respondent [the accused] to send in their position statement and then parrot their statement in the findings. I would not advise [people who have been discriminated against] to file a case. We are not enforcing the law."

"The incentive was to close the easiest cases and the easiest cases were those generally that did not have much merit," says Kathy Hagen, a 13-year enforcement officer who left this year. Officer Kathy Mostrom says the department atmosphere is demoralizing: "Management does not support its employees."⁵⁴

Several former and current employees of the department testified at the public session of the factfinding meeting. Their position was that the current administration of the Minnesota Department of Human Rights is indifferent to civil rights enforcement and lacks the resolve to allow full investigations of discrimination complaints.

John Gilbertson, a current employee of the department in the contract compliance unit, gave specific information on decreases in the investigative staff.

In December of 1990 [1 year before] the new administration came on, we had 27 investigators working specifically on case investigation, not including supervisors or intake persons. As my records indicate, right now we have 16. . . . Essentially investigators who have left the department have not been replaced. Other people [that] we have right now are part-time, inexperienced people. . . .⁵⁵

The focus [at the department] is case production, it is how many cases [one does]. A person could go years without ever finding a probable cause on a case and it would not be a problem, [and] people do that. The focus is on how many cases can we get out the door. If you look at the staffing, I do not know how [officials] can decrease by at least 40 percent the main people doing the main work for the department and not know what they are doing [to the operation of the agency]. . . . I think it is part of the philosophy of the current State government. . . . They don't like case investigation. They are not giving it the resources it needs. . . .⁵⁶

Gilbertson also alleged that decreases in investigative staff were made while there were increases in management staff.

Management has increased . . . by 40 percent. The commissioners' office used to be three people and two secretaries. Now it is six people and two secretaries. The business office went from three to five people. We

53 Randy Furst. "Overworked rights agency in turmoil," *Star Tribune*, Oct. 27, 1994, p. 1A. In the story Beaulieu blames criticism of the department on antimangement employees who oppose the new production standards.

54 *Ibid.*, p. 16A

55 Testimony of John Gilbertson, Transcript, pp. 277-78. Gilbertson addressed the Advisory Committee during the public session of the factfinding meeting.

56 *Ibid.*, p. 298.

have got an additional human resources person. So we have more people to manage less people doing the work.⁵⁷

Ted Johnson worked at the department as an investigation officer for 7 years, voluntarily resigning in 1994. He asserted that he was still in contact with many employees in the department, and that complaints are not thoroughly investigated by the agency.

I believe that if you were to talk to the individuals . . . who are most involved with the actual day to day case work and performing the actual duties at the department—you would find an overwhelming level of opinion that the department is not a well-oiled machine. . . .

One relevant statistic would be the percentage of cases where the department's investigation produces a finding of what is referred to as probable cause where there is evidence to support that violation of the State or Federal civil rights statute has occurred. During my tenure at the department . . . the percentage of [probable cause findings] dropped. . . . Now that is not a reflection of a . . . decrease in the level of discriminatory actions occurring in Minnesota. In fact, I would argue that if anything, statistics show that the incidents of discrimination are increasing. . . .

Another telling statistic is the number of cases the department has sent to litigation recently. . . . I know there were two consecutive fiscal years, 1991–92 and 1992–93 where the department, each fiscal year, sent a total of one case to litigation. Comparing that to previous years, where 20 to 30 to 40 cases to litigation was the norm, you can see a tremendous decrease in the impact that the department is having on enforcing the Human Rights Act. . . .⁵⁸

Individuals with active [complaint investigation] involvement will overwhelmingly testify to the fact that the focus and their impact and their effectiveness have been severely curtailed of late in large part because of a lack of resources [and] a misuse of resources being appropriated to the department.⁵⁹

I investigated a case of sexual harassment that involved a local establishment. . . . Thirteen of 15 employees voluntarily gave up their employment, their livelihood because of their objection [to the harassment]. Six filed charges with the department of human rights in the summer of 1989. Those cases were assigned to me. I completed my investigation in January 1991. Those cases sat in review at the department . . . for 18 months with nothing being done and no determination of this issue. . . . Those cases now are at the Attorney General's office waiting to go to litigation. We are now in the summer of 1994; those individuals have waited 5 years.⁶⁰

I left the department voluntarily due to [the] frustration, due to my growing belief and final conviction that the department was not effectively enforcing the Human Rights Act.⁶¹

Johnson stated that the Minnesota legislature has appropriated money specifically for additional investigators in recent years, but that the department used those appropriations to hire noninvestigative, managerial, and administrative staff instead.

On two separate occasions the administration of the department went to the Minnesota legislature and asked for an increase in funding specifically to increase the number of enforcement officers and made specific requests [for] more people [to] investigate cases. They were given that money and on both occasions that money was not used to increase the enforcement staff;

57 Ibid., p. 302. In its review of the report, department officials characterized the assertion that management increased by 40 percent "a blatant lie . . ." (Beaulieu letter, p. 4.)

58 Testimony of Ted Johnson, Transcript, pp. 280–83. Johnson addressed the Advisory Committee during the public session of the factfinding meeting. Department officials asserted (in Beaulieu letter, p. 5.) that the agency sends "approximately 50–70 cases to [litigation] a year."

59 Ibid., p. 284.

60 Ibid., pp. 289–92. The case cited by Johnson was the subject of a Minneapolis *Star Tribune* editorial (see p. 67 of this report).

61 Ibid., p. 285.

it was used to increase the administrative staff [and] the management staff.⁶²

Gerald Fahey worked at the State human rights department from 1984 until 1990. He asserted that the department penalizes employees who fully investigate cases and find probable cause.

In the first year I was investigating cases, I had a 50 percent probable cause rate, but I was only closing 6 cases a month, and I was having to work 10, 12 hours a day just to get that done. My probable cause rate was two and one-half times greater than the department's, and I got an inferior rating on my performance review. I felt that I could not perform the way I wanted to and still be able to hold on to my job. So I moved into contract compliance and eventually into intake. . . .

The two people who got outstanding awards that I am aware of [got them] because they closed a lot of cases. When I reviewed their case history after they had been with the department for 2 or 3 years, one had a 3 percent probable cause rate and the other had a 5 percent probable cause rate. But they are rewarded with financial rewards because they closed a lot of cases.⁶³

When I started [with the department] there used to be an annual report at least every 2 years that listed all the details of all incoming cases and the findings were and all the other data that went along with it. That just has not been available for several years now, so it is hard for anyone to see what is really going on there [at the agency].⁶⁴

Department Update—1995

1. Complaint Processing Officers

In January 1990 the complaint case processing unit of the enforcement division had 27 investiga-

tors and the equivalent of 26 full-time investigation officers. By September 1994 the number of investigators in the complaint processing unit had dwindled to 17 and the equivalent of 16 full-time investigation officers. Department officials acknowledge the decrease in investigative staff, but assert that budget cuts beginning in 1991–92 have decreased staffing in all areas of the department.

There have been reductions across the board since the budget cut in 1991–92 and, although base funding has been fairly consistent, [the department] is required to pay increases to all union employees, per the three contracts; increases in costs of benefits; worker's compensation for two severely injured employees. Therefore, decreases in staff management and line staff have been necessary.⁶⁵

In March 1995 the department issued a report, *Minnesota Department of Human Rights 92–94 Overview*, summarizing its activities for the years 1992, 1993, and 1994. In the executive summary the stated goal of the department was “to provide quality service for all citizens with investigations that are consistent, timely, impartial, accurate, and thorough.”⁶⁶ The report claimed that the department had made significant progress toward that goal “by downsizing and restructuring the department.”⁶⁷ It listed as major department accomplishments:

- reduction in length of time to investigate cases,
- improved screening of cases,
- production standards,
- more consistency due to creation and consistent application of policy and procedure handbook,

62 Ibid., pp. 302–03.

63 Testimony of Gerald Fahey. Transcript, pp. 299–301. Fahey addressed the Advisory Committee during the public session of the factfinding meeting.

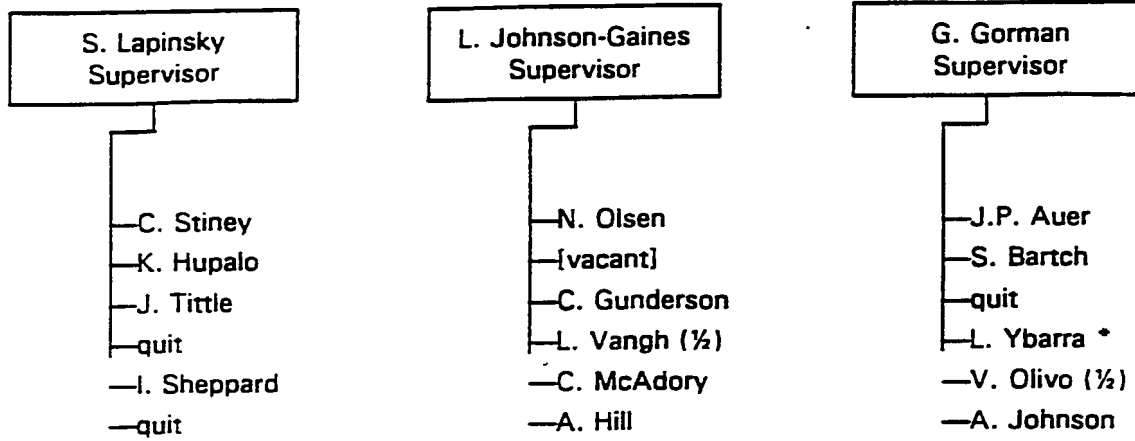
64 Ibid., pp. 304–05.

65 Beauheu letter, p. 5.

66 Ibid., enclosure, “Minnesota Department of Human Rights 92–94 Overview” (1995), p. 1.

67 Ibid.

FIGURE 3
Minnesota Department of Human Rights: Complaint Case Processing Personnel, March 1995



* 0.7 caseload.

Source: Minnesota Department of Human Rights.

- lowering the rate of appeals and improving appeals process,
- creation of training unit,
- closer supervision of employees and more equitable workload distribution,
- reducing the amount of personnel expenditure for management.⁶⁸

Department records indicate a continuing loss of complaint investigation officers. In March 1995, 6 months following the Advisory Committee's factfinding meeting, the complaint case processing unit in the department lost additional personnel. Three of the 17 investigation officers resigned. In addition to the two officers who had half caseloads, a third investigator now also has a partial caseload. The department is working to

get replacements as "five trainees started March 22, 1995, to replace the vacant positions. [They] were slated for training from March 22 to June, before receiving partial case loads."⁶⁹

2. Liaison with the League of Local Human Rights Commissions and Other Local Human Rights Commissions

Officials of the department state that the agency is beginning to develop relationships with the Minnesota League of Local Human Rights Commissions and other local human rights commissions.⁷⁰ The agency is in the process of networking with the League and other local human rights commissions "to determine methods of addressing and meeting the human rights needs of local communities in Minnesota."⁷¹

⁶⁸ Ibid., pp. 1-2.

⁶⁹ Ibid., p. 5.

⁷⁰ The Minnesota League of Local Human Rights Commissions does not include all local human rights commissions in Minnesota.

⁷¹ Ibid., p. 13.

Morton Ryweck, league project coordinator, was asked about the department's work with the league. Ryweck stated that the department has had contact with the League, and indicated that he understood the agency planned to continue to have contact with the League in the future. Ryweck understood that the human rights department could not commit to providing training to the league, because the monetary resources to provide such services were not available.⁷²

Ryweck also said that the department has provided him with information about the number and type of complaints in specific localities, when this information was requested by him on behalf of the League and/or member agencies. However, according to Ryweck, the department does "not uniformly call local commissions" when it receives a complaint from an individual living in that community.⁷³

Department officials concurred with Ryweck's assessment. In his followup letter to the Advisory Committee, Beaulieu wrote:

We have always had a liaison to the League and still do. Each year we participate in the League's Annual Conference and in 1993-94 we reviewed and approved their new mediation training manual. We have never been budgeted to support the League and have always provided information on request, speakers, conference participants, and presenters to individual Human rights Commissions. We work with the individuals Human Rights Commissions as they request and have developed a video on the Department which airs monthly on Bloomington, Minnesota, Cable TV. We have never had a practice of "uniformly calling local commissions," whenever a case is received from their communities. We have not been and are [not] staffed to call whenever a case is received from their communities. However, we have attended League Conference, individual Human Rights Commission meetings, and run articles in the

League's newsletters to remind all commissions that any data requested will be sent.⁷⁴

Although the department is not offering alternative dispute resolution (ADR) training to local human rights organizations, agency officials announced as of June 1995 that individuals filing complaints with the Minnesota Department of Human Rights will be offered the option of using mediation or non-binding arbitration, to resolve their complaint. In mediation, a non-involved third party helps the two parties to find an amicable settlement of the issue. In non-binding arbitration, each party explains their side of the issue and the arbiter decides the case.⁷⁵

An intended feature of the program is the availability of advisors who will provide advice and assistance to individuals before they enter into a mediation. According to Commissioner Beaulieu, "Having a knowledgeable individual available for consultation before going into a mediation session will level the playing field for individuals claiming they have been discriminated against by employers. The advisor will make sure that both parties know their rights and understand the process before they begin a mediation or non-binding arbitration."⁷⁶

The program offered by the department is an 18 month demonstration project supplementing existing agency resources with attorneys volunteering to serve as mediators or arbitrators as part of their service to the community. Currently 325 cases have been identified as likely candidates for resolution through ADR and parties in these cases will be the initial group offered these options.⁷⁷ The department's alternative dispute resolution demonstration project is in appendix 2.

72 Morton Ryweck, telephone interview, May 15, 1995.

73 Ibid.

74 Beaulieu letter, p. 6.

75 Minnesota Department of Human Rights, press release DHR95-27, Jun. 28, 1995.

76 Ibid.

77 Ibid.

3. Newspaper Reports

A second major article has appeared in the State's largest daily newspaper criticizing the department. An editorial in the Minneapolis *Star Tribune* castigated the department for its delay in processing complaints. The editorial referred to a complaint filed with the agency alleging sexual harassment, dismissed by the State court of appeals not on merit, but because of the delay by the department in bringing charges. The editorial read in part:

It's the same old story, with a nasty legal twist, at the Minnesota Human Rights Department. Since its inception three decades ago, the state agency charged with investigating civil rights violations has had a backlog problem that never stayed fixed for long. Delays of three, four or even more years in examining and acting on complaints of discrimination have been far too commonplace.

The nasty twist came from the state Court of Appeals this week. A major sex discrimination suit against a Minneapolis bar was dismissed by the court, not on its merits, but in large part because the Human Rights Department was too slow in bringing charges. The department took three years to find probable cause of discrimination; getting action from a state administrative law judge took another two years. . . .

Long delays, overloaded caseworkers and a big backlog have been a recurring problem throughout the department's history—but they haven't been constant. Former Commissioner Stephen Cooper demonstrated in the late 1980s that the department could both efficiently dispose of marginal or unfounded complaints, and aggressively prosecute genuine ones.

Carlson's commissioner, David Beaulieu, has boasted that he too has brought renewed efficiency to the department recently. A Carlson spokeswoman defends the commissioner for doing "as well as he can with limited funding." But the Appeals Court ruling tells a different tale. . . .⁷⁸

Commissioner Beaulieu responded to the editorial with a letter to the editor.

Unfortunately the editorial badly mischaracterizes the Department's work. The truth is that the Carlson Administration has dramatically improved the effectiveness and the efficiency of the Department. . . .

When I became commissioner in 1991, the Department was languishing. Job descriptions were out of date. Formal agency policies had not been updated in a decade. No standards existed for judging job performance or evaluating employees. No plan for a new case tracking system had been made even though the University had informed the agency over a year before it would no longer provide a case tracking system for the department. . . .

Four years later, the record is dramatically different. First, the Department has tackled its internal management problems. The Department now has standards for judging the work of its investigators, an extensive training program, and funding to revamp its database. Further, the time required to investigate alleged discrimination has been reduced to nine months. . . .

The bottom line is this: Since I became Commissioner, the Department takes less time to complete an investigation and discharges cases with better quality. In fact, the Department has investigated nearly 8,000 cases in that time, many of which were Perpich-era holdovers. Further, while improvements can always be made, the Department is once again on solid ground. In fact, I look forward to an audit of the Department now being conducted by the Legislative Auditor. I have great confidence that this report will confirm both the breadth and the strength of the Department's record in the Carlson Administration.⁷⁹

3. Legislative Audit of the Department

On March 16 and 17, 1995, the commissioner and deputy commissioner of the department testified before the Minnesota Senate Government Finance Division on the department's budget proposal and the department's performance. The activities and accomplishments of the department, as summarized in the department report, *Minnesota Department of Human Rights 92-94 Overview*, were presented to the legislature. At the same hearing, former department employees and

⁷⁸ Editorial, "Slow justice," *Star Tribune*, June 16, 1995, p. 16A.

⁷⁹ David Beaulieu to Susan Albright, *Star Tribune*, June 21, 1995, Midwestern Regional Office, USCCR, files.

representatives of the local chapter of the National Employment Lawyers Association (NELA) testified about the department. These individuals challenged the accuracy of the statistics presented by the department to the division, and criticized the performance of the current department management and their decisions in allocating department resources.⁸⁰

Subsequent to hearing the conflicting testimony about the performance and reporting of the department, the division asked the Legislative Audit Commission (LAC) to evaluate the Minnesota Department of Human Rights. Responding to that request, the auditor conducted interviews and did initial background research on the department's operations. The auditor's conclusions read:

Based on our brief review, we can reasonably conclude that the data presented to the division on March 16 and 17 [1995], while not fraudulent, are, nevertheless, inadequate. This specifically includes statistics presented by the department on the average time it takes to close a case, the cost of closing a case, and other information based on cases closed in 1994 or other years. While this information has legitimate uses, the division really needs to know, what happened to cases filed in a given year—in other words, for a group of cases defined by the timing of the charge, how many cases were closed, how long did it take, how many probable cause determinations were made, how many other positive outcomes occurred, and so forth. Data for cases closed during a period rather than for cases filed during a period are insufficient for providing a complete picture of department performance.

In 1981 and 1983 the Legislative Auditor's Program Evaluation Division evaluated the Department of Human Rights and assembled performance data based on cases filed over a period of time. The fact that the department has not continued to compile such data is hard to understand. We would be most disappointed should it now be impossible to assemble such data, after a decade of rapid improvements in information system technology and expertise.

Although we think that the issue of the department's performance report is important, the report itself contains too little valid data to serve as a good focal point for a study. First, the report contains few statistics of any kind, and second, the department itself concedes that the data rely on records that have been inconsistently maintained. Third, important issues have been raised that go beyond performance statistics and the validity and reliability of data.

Based on our assessment of legislative interest expressed in the Finance State Government Division hearings, and our preliminary interviews with the department and others, we conclude that it would be impossible to resolve within a few weeks the conflicts in testimony presented to the division. We suggest that the following issues be considered for further study.

Efficiency and Effectiveness of Case Processing: What is the record of performance by the department in recent years in terms of cases closed, case outcomes, and probable cause determinations? What is the backlog of cases assigned for investigation, unassigned, or ready for supervisory review? How long does it take to close cases? What is the quality of case adjudication? Are meritless cases dismissed promptly and high potential cases given priority treatment?

Customer Service: Are people who file charges with the department treated appropriately throughout the case adjudication process? Are people informed of their rights of appeal or other means of recourse?

Allocation and Organization of Resources: Is the allocation of resources to case processing and other enforcement activities appropriate? How does the current allocation of resources to case processing relative to management compare with previous years? Are the resources allocated to contract compliance appropriate in light of other department priorities? Should the contract compliance program be canceled, modified, or transferred to another agency?

Performance Data: What are the essential statistics on department performance that should be compiled and reported to the Legislature? Will the management information system currently being developed have the appropriate capability to provide needed data and reports?

⁸⁰ State of Minnesota, Office of the Legislative Auditor, memorandum to Sen. Richard Cohen, chair, and members of the State Government Finance Division, Mar. 30, 1995.

Employee Relations: Are allegations of low employee morale and supervisory mismanagement made by some former and current employees generally accurate? What is the source of these complaints? Is department management responding appropriately? Does the

department have a reasonable plan to deal with its operational problems and labor-management issues?⁸¹

81 Ibid.

Chapter 6

Findings and Recommendations

Civil rights enforcement agencies were initially legislated in the 1960s. Their establishment reflected an expectation that, with effective enforcement of civil rights, equal opportunity might be obtained for all individuals regardless of race, color, gender, religion, disability, or national origin. Thirty years later these agencies still pursue the enforcement of equal opportunity. The Advisory Committee examined the responsibilities, resources, and workloads of Federal, State, and local civil rights enforcement agencies in Minnesota. The Committee makes findings and offers recommendations in three areas: (1) civil rights enforcement by Federal agencies, (2) civil rights enforcement by local municipal government agencies, and (3) civil rights enforcement by the Minnesota Department of Human Rights.

1. Federal Civil Rights Enforcement Agencies

Finding 1(a). The Equal Employment Opportunity Commission (EEOC)

In establishing the EEOC, Congress gave the agency authority and responsibility to enforce Title VII of the 1964 Civil Rights Act, which prohibits discrimination in employment. The EEOC does this through the investigation of individual complaints and the initiation of class action investigations.

Nationally, real dollar resources for the EEOC have been relatively constant over the last 8 years. During the same period, there has been an increase in the number of cases per investigator, rising from an average of 75.3 cases per investigator in 1987 to an average of 122 in 1992.

In the Minneapolis area EEOC office the number of complaints filed has increased 150 percent.

Most of this increase has been driven by complaints filed under new legislation, especially the Americans With Disabilities Act of 1990. In fiscal year 1992, 610 charges were filed, and 1,512 charges were filed in fiscal year 1993. The additional complaint filings have substantially increased the case inventory at the Minneapolis area EEOC office, from 504 in 1993 to 1,018 in 1994. In 1993 the average annual caseload for an investigator in the Minneapolis area office was 84; in 1994 the average annual caseload was 127. In 1993 complaint inventory time was 12.9 months; in 1994 it was 19.5 months. The Minneapolis EEOC office hired three additional investigators in 1994, increasing the investigation staff from six to nine.

Despite higher caseloads, the Minneapolis area office appears to be functioning with some degree of effectiveness. Probable cause is found in 5 percent of all cases, and merit resolution is 24 percent a rate higher than the national average.¹

Recommendation 1(a) The Advisory Committee concludes that increases in investigator caseload diminish the amount of investigation time available for any one individual complaint. With the EEOC's additional responsibilities, the expansion of the EEOC Minneapolis area office investigative staff appears necessary for the EEOC to do expeditious enforcement of civil rights.

Finding 1(b). The Office of Fair Housing and Equal Opportunity (FHEO), U.S. Department of Housing and Urban Development (HUD)

FHEO has authority and responsibility to enforce nondiscrimination in the sale or rental of housing under the Fair Housing Act, Fair Housing Amendments Act of 1988, Executive order

1 Chapter 2, section 1.

11063, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. FHEO does this through (1) the investigation of complaints, (2) ensuring that recipients of Federal financial assistance do not discriminate, (3) funding public and private fair housing activities, and (4) coordinating equal opportunity enforcement programs with local agencies.

In 1994 HUD began a reorganization, with activities of the agency being decentralized to the local level to increase operational efficiency. The one office in HUD that was not decentralized was FHEO. Officials at HUD did not bring the FHEO investigation units down to the local level, hence Federal investigations of housing complaints filed in Minnesota at the FHEO office in Minneapolis are done by investigators offsite in the Chicago regional office.

This lack of a Federal investigatory presence at the local level occurs at a time of increasing numbers of housing complaints in the State. In 1988 the Minneapolis FHEO office processed a total of 70 housing discrimination complaints. In 1991 and 1992, the office processed 172 and 143 complaints respectively. In both years the volume of complaint activity is double the number from a few years earlier.

In the 1980s, the FHEO unit in Minnesota had four professional staff. In 1995 there is one professional staff person. This one person retains responsibility for ensuring that Minnesota recipients of Federal financial assistance do not discriminate, for ensuring the nondiscriminatory behavior of public and private fair housing activities in Minnesota, and doing community outreach and coordinating equal opportunity enforcement.

The Advisory Committee finds that the diminishing resources for the FHEO unit in Minneapolis, which impact on adequate and effective enforcement of nondiscrimination in housing in Minnesota, is in part agency driven. HUD has declined to decentralize investigators into local FHEO offices, such as Minneapolis.

Adding to the agency's workload is the inability of local human rights agencies to qualify as substantially equivalent. This precludes locally established and funded human rights commissions from assisting HUD in investigating complaints of housing discrimination. Currently no local human rights commissions or agencies in Minnesota investigate housing complaints under HUD grants. As recently as 1991, under grant money from HUD, the cities of Minneapolis and St. Paul and the Minnesota Department of Human Rights investigated and resolved complaints of housing discrimination. None of those agencies are currently considered substantially equivalent.²

Recommendation 1(b). The Advisory Committee concludes that HUD's administration of "substantially equivalent agency" requirements of the Fair Housing Amendments Act of 1988 has resulted in the elimination of all local civil rights agencies investigating housing discrimination in Minnesota. The U.S. Commission on Civil Rights reported extensively on this issue in its 1992 report, *Prospects and Impact of Losing State and Local Agencies from the Federal Fair Housing System*.

Congress and the administration should work to ensure that resources are provided to local agencies to assist HUD in meeting its expanded enforcement responsibilities under the Fair Housing Amendments Act of 1988. The Advisory Committee also recommends that Congress conduct hearings on the process within HUD that is preventing local municipalities from becoming "substantially equivalent" and the impact that not certifying has on local efforts to enforce the Fair Housing Act effectively.

Finding 1(c). The Office of Federal Contracts Compliance Program (OFCCP), U.S. Department of Labor

Under Executive Order 11246, as amended, the OFCCP enforces affirmative action and equal opportunity among firms with Federal Government contracts. It does this primarily through compliance audits, during which agency personnel examine personnel practices for

nondiscriminatory behavior and inspect the affirmative action program for technical compliance and good faith effort.

In addition to monitoring the compliance of Federal contractors under the Executive order, the OFCCP also monitors Federal contractor affirmative action obligations under section 503 of the 1973 Rehabilitation Act and section 504 of the Vietnam Era Veterans Readjustment Act of 1974.

Under the affirmative action obligation, firms must analyze their work force to determine if they are underutilizing minorities and/or females in specific job areas. Underutilization refers to differences in a company's work force between qualified minorities and females available to perform in the job areas and the number actually employed. Where underutilization exists, the firm establishes employment goals and develops action-oriented programs to achieve these goals.

The Advisory Committee finds that although staffing has remained constant in the local OFCCP office, compliance review activity has increased. For the years 1992, 1993, and 1994 there have been five professional staff at the Minneapolis OFCCP district office. Audits of Federal contractors during this period have increased, from 39 in 1992 to 50 in 1994.³

2. Local Civil Rights Enforcement Agencies

Finding 2(a). Local Human Rights Commissions

Nearly 50 local commissions exist by charter or ordinance in Minnesota, accepting charges of discrimination and providing no-fault grievance mediation services. No-fault grievance mediation is a process whereby local commissions resolve complaints of discrimination through discussion of the issues by the two parties without resorting to formal investigation and litigation. Further, individual complainants engaging in no-fault grievance mediation do not forfeit their rights to file a discrimination complaint with Federal agencies or the State if mediation fails.

No-fault grievance mediation continues at local commissions, but at a diminished level from that in years past. In 1995 it is done more as a reflection of the commitment by the Minnesota Department of Human Rights in past years to this process and local commissions, than as a result of current support from the State human rights department.

The Minnesota Department of Human Rights has not provided the technical aspect of no-fault grievance training to local commissions for several years. The department is not planning on providing technical training to local commissions in the future, given its current level and allocation of resources. The department also does not routinely refer complaints to local commissions for no-fault mediation.

The Minnesota Human Rights Department is the principal entity able to accurately train local no-fault grievance mediators in the technicalities of the State human rights law and the complaint policies and procedures of the department. Such training is necessary so that local commissions operate within the confines of State law and in conjunction with established State policy. Local commissions can and are willing to obtain the mediation skill portion of the training independently from other sources.⁴

Recommendation 2(a). The Advisory Committee concludes that local human rights commissions can play a vital role in civil rights enforcement. The Advisory Committee further concludes that the use of no-fault grievance mediation by local human rights agencies can be an effective and efficient civil rights enforcement tool, and that this resource is currently underutilized in the State.

The Advisory Committee recommends that local municipal governments establish a local human rights agency and be willing to provide no-fault grievance mediation. Further, the Advisory Committee recommends that local human rights agencies continue to press the Minnesota Human Rights Department to provide training in no-fault

³ Chapter 2, section 3.

⁴ Chapter 3, section 1.

grievance mediation to local human rights commissions.

Finding 2(b). The Minneapolis Commission on Civil Rights

The city of Minneapolis has a history of supporting and championing civil rights for all its citizens. This commitment to civil rights and support for its enforcement remains strong with the current mayor, Sharon Sayles Belton, and with the current city council.

From 1987 through 1991, the budget for the Minneapolis Department of Civil Rights, the administrative arm of the commission, increased from \$1.1 million to \$1.5 million, where it remained stable for 3 years. In 1994 there was a slight decrease in the agency's budget, but virtually all City agencies were similarly affected.

The workload at the department has continued to increase in the last 10 years. In 1986 there were 308 allegations of discrimination filed with the agency. In 1994, there were 348, an increase of 13 percent in 9 years. In the same time period staffing has remained constant.

The increased workload per staff member has not changed the percentage of probable cause findings. In the last 5 years, probable cause findings have averaged 14.3 percent. The year with the highest percentage of complaints having probable cause, 16.3 percent, was 1992.

From 1988 to 1991, the Minneapolis Department of Civil Rights, under contract with HUD, investigated and resolved housing discrimination complaints. Currently, the department does not receive grant money from HUD to investigate housing discrimination complaints. The department has and continues to pursue such certification from HUD; however, city ordinances do not meet the "substantially equivalent" provisions of the Fair Housing Amendments Act.⁵

Recommendation 2(b). The Advisory Committee concludes that in the context of the total financial obligations of the city, both the financial resources available to the Minneapolis Department of Civil Rights, although strained in recent years, and the work product of the department show the

continuing commitment of the City to civil rights enforcement. The Advisory Committee recommends continued funding for the agency.

The Advisory Committee also recommends that HUD examine the obstacles facing local municipalities such as the Minneapolis Department of Civil Rights in becoming "substantially equivalent" and the impact that not certifying has on local efforts to enforce the Fair Housing Act effectively.

Finding 2(c). The St. Paul Commission on Civil Rights

The city of St. Paul has a commission on civil rights that receives, hears, and resolves complaints in the field of human relations. The administrative arm of the commission is the St. Paul Human Rights Department.

In the last 5 years the professional staff of the department has decreased by 35 percent. The investigative staff of the department do the initial intake and determine whether a complaint merits formal investigation. Highly correlated with the decrease in the investigative staff has been a 67 percent reduction in complaints docketed for investigation by the human rights department. In 1990 there were 136 complaints filed with the department; in 1994 there were 81 complaints.

In conjunction with the decreasing number of complaints, the percent of probable cause findings has decreased in recent years. In 1990, probable cause findings by the department approached 20 percent; in 1994 probable cause findings by the department were around 10 percent.

The Advisory Committee can not positively conclude that the declines in complaint investigation activity and probable cause findings by the department are related to the decrease in the agency's investigative staff. If these relationship exists, then the decrease in enforcement investigation staff at the department is limiting the number of citizens able to avail themselves of local civil rights enforcement.

The Advisory Committee notes that in the neighboring community of Minneapolis, where staffing levels at the local civil rights department

5 Chapter 3, section 2.

have remained constant, the number of complaint investigations and the percent of probable cause findings have remained constant.

From 1988 to 1991, the St. Paul Human Rights Department, under contract with HUD, investigated and resolved housing discrimination complaints. Currently, the department does not receive any monies from HUD, due to city ordinances not meeting the "substantially equivalent" provisions of the Fair Housing Amendments Act.

The city of St. Paul, responding to HUD's analysis of city procedures, has twice amended its legislative code to obtain "substantially equivalent" certification. Despite these efforts, the department is still not substantially equivalent and does not receive Federal assistance in the investigation of housing discrimination.⁶

Recommendation 2(c). The Advisory Committee recommends that the St. Paul Human Rights Department examine its intake process to ensure that current procedures are not limiting access to local civil rights enforcement.

The Advisory Committee also recommends that HUD examine the obstacles facing local municipalities such as the St. Paul Human Rights Department in becoming "substantially equivalent" and the impact that not certifying has on local efforts to enforce the Fair Housing Act effectively.

3. The Minnesota Department of Human Rights

The Minnesota Department of Human Rights was established in 1967 and enforces the State's Human Rights Act. It has three primary missions: (1) ensuring equal employment compliance of State vendors and contractors, (2) discrimination complaint resolution, and (3) education. The major activity in the department is the processing and resolving of discrimination complaints, encompassing nearly 70 percent of the agency's resources. Equally essential to monetary resources and staff in effectively enforcing the State's human rights law is the department's relations with the other human rights agencies, the communities it serves, and its employees.

Finding 3(a). The State has supported the department, appropriating stable monetary resources to the department over the last three years. In fiscal year 1993 the department received its largest appropriation of \$3.2 million. For fiscal year 1994, during a period of general austerity for State government, the department's budget was \$300,000 less. In addition, special appropriations have been made for upgrading the computing capability of the department.

Finding 3(b). In the midst of stable dollar resources from the State in recent years, the number of staff doing complaint investigations has decreased while the number of complaints received has more than doubled. In September 1994 the department had the equivalent of 16 full-time officers investigating complaints. In fiscal year 1994 the department received 23,736 complaints, up from 10,125 received 5 years earlier.

Finding 3(c). Coincident with fewer investigators and more complaints is increased screening finding no merit to the complaint at the intake process. In 1990, 5 percent of complaints were screened; in 1994, 14 percent of complaints were screened.

Finding 3(d). The department's relationship with local human rights commissions has been limited in recent years. Representatives from local human rights commissions attest to minimal support from the department for their work in civil rights enforcement. Further, the department acknowledges that it is only now beginning liaisons with local human rights commissions.

Finding 3(e). Some segments of the minority community in Minnesota are losing faith in the department's ability to resolve complaints of discrimination.

Finding 3(f). Morale among a number of employees working for the department is low. Many have left the department because of discouragement and frustration.

Finding 3(g). An important component of any public agency is the release of clear and reliable information about its activities. For years, the department released performance reports giving specific quantified data on personnel, spending,

6 Chapter 3, section 3.

workloads, and accomplishments. The department did not publicly release its 1994 Performance Report, which contained specific information on complaints, complaint processing, education and training programs, personnel, and resource utilization. Instead the department issued a "92-94 Overview" of its activities for the last 3 years, a descriptive, nonquantitative, inchoate document.

The lack of reliable information about department activities concerns the State legislature. The Legislative Audit Commission of the State of Minnesota, not satisfied with information provided by the Minnesota Department of Human Rights, directed the Legislative Auditor to evaluate the department's data.

- The auditor concluded that the data presented by the agency, while not fraudulent, is nevertheless inadequate.
- The auditor found the department's performance report contained too little valid data to serve as a good focal point of study, and recommended that a thorough examination of the department be made. These recommendations mirror the same concerns of the Advisory Committee:
 - the efficiency and effectiveness of case processing,
 - customer service,
 - allocation and organization of resources,
 - department performance data, and
 - employee relations.⁷

Recommendation 3(a). The Minnesota Department of Human Rights has had reductions in its complaint investigative staff. Because of conflicting evidence, it is unclear whether this reduction has been driven by administrative decisions or budget constraints. The Advisory Committee makes two recommendations in this regard.

First, the Advisory Committee urges the department to do an internal examination and ensure that the reduction in investigative personnel is an effective use of staffing in performing its

primary mission: investigating and resolving allegations of illegal discrimination.

Secondly, with the reduction of investigative staff, the Advisory Committee strongly recommends that the Minnesota Department of Human Rights increase its partnership with local human rights commissions. In this regard, the department should allocate funding to train local human rights commissions in no-fault grievance mediation. The Advisory Committee believes that such an allocation of funds will be cost effective for the entire State in resolving discrimination complaints. Specifically:

- The Minnesota Department of Human Rights should immediately provide training to local human rights commission personnel in the technical portion of State human rights law and department policies and procedures in no-fault grievance mediation.
- The Minnesota Department of Human rights should establish internal procedures to ensure that no-fault grievance training is on-going and available to new personnel at local commissions as well as personnel at newly formed commissions.
- The Minnesota Department of Human Rights should study the feasibility of referring complaints to local commissions for no-fault grievance mediation prior to the initiation of an investigation by the department.
- The Minnesota Department of Human Rights should establish a permanent liaison with the League of Local Human Rights Commissions in order to better coordinate and enforce civil rights in the State.

Recommendation 3(b). The Minnesota Department of Human Rights needs to regain the confidence and support of the minority community in Minnesota. The Advisory Committee recommends that the department undertake a set of specific actions to hear and react to minority community concerns.

Recommendation 3(c). The concerns of the Legislative Audit Commission with the Minnesota Department of Human Rights coincide with many

⁷ Chapter 4.

of the Advisory Committee concerns. The Advisory Committee concurs with the auditor's recommendation that a thorough examination of the department be made, and this examination be in the areas of:

- the efficiency and effectiveness of case processing,
- customer service,
- allocation and organization of resources,
- department performance data, and
- employee relations.

That examination should be done expeditiously, its findings made public, and its recommendations acted upon. The effective and efficient operation of the Minnesota Department of Human Rights is essential to the enforcement of civil rights in the State.

The Advisory Committee urges the legislature, as part of this process, to insist that the department again begin to prepare and release an an-

nual performance report that at a minimum specifies:

- staffing by position and duty,
- spending expenditures by department activity,
- contract compliance review activity,
- complaint processing activity, including the number of complaints received, number screened at intake, days for investigation, findings, and resolution, and
- liaisons with community groups and local human rights organizations.

Conclusion

The Minnesota Advisory Committee recognizes that for there to be an effective enforcement of civil rights, there needs to be an extant political will. To put this political will into action at times of diminishing resources, elected and appointed officials at all levels may need to undertake more creative and imaginative steps to keep the promise of civil rights enforcement.

Appendix A Presenters at the Factfinding Meetings

August 31, 1994:

Sharon Sayles Belton, Mayor, City of Minneapolis
Chester Bailey, EEOC
Robert Running, OFCCP
Jaime D. Pedraza, HUD
David Beaulieu, Minnesota Department of Human Rights
Sam Myers, Hubert H. Humphrey Institute
Rey Harp, Minneapolis NAACP
Clell Hemphill, MN State Council on Disability
Yvonne Price, MN League of Human Rights Commissions
Wallace Alcorn, Austin Human Rights Commission
Pat Williamson, Maplewood Human Rights Commission
Linda MacCross, St. Louis Park Human Rights Commission
Morton Ryweck, MN League of Human Rights Commissions

Public:

Regina Lai
John Gilbertson
Gerald Fahey
Ted Johnson
Jean Knox
Margaret Fourte

September 1, 1994:

Kenneth White, Minneapolis Department of Civil Rights
Josephier Brown, St. Paul Department of Human Rights
Anita Fineday, MN Indian Affairs Council
Roy Garza, MN Spanish Speaking Affairs Council
Lester Collins, MN Council of Black Minnesotans
Hoang Tran, Southeast Asian Refugee Community Home

Appendix B

Workplace Justice EEOC Recommendations

We are pleased to have this opportunity to introduce **Workplace Justice** and present to you efforts that we are making to help our community address employee complaints of discrimination, harassment, and retaliation in the workplace. We thank you for allowing us to present to your three concerns that we have with the current EEOC investigational process.

In November 1993 several women began meeting to offer each other mutual support and exchange information on workplace abuses that they had either experienced directly or seen perpetuated on others. Out of these informal meetings has grown a social action group, **Workplace Justice**, which works to promote community awareness of the serious problem of employer retaliation which is designed to silence those who would speak out against abuses in the workplace. In addition, we offer mutual support to other employees who have similar experiences.

Our goals are to provide information and support to employees and to work for changes that will expedite and strengthen the current complaint-resolution process. We also work to hold employers more accountable for how they treat employees who have voiced a grievance. As a group, we have agreed to take a role in the community as supporters of our state and federal employment rights enforcement agencies. In our support-group sessions we focus on how individuals can best work within the investigative process and document their particular situations. We want to support the legislation that empowers our enforcement agencies to effectively carry out their work.

From our efforts we have identified EEOC guidelines that need to be strengthened to provide a more level playing field for the Charging Party as well as the Respondent Company.

Specifically, our three concerns are that:

1. The Charging Party and the Charging Party's witnesses are held to a higher level of accountability, i.e., sworn affidavits of facts, than is the Respondent Company. This creates an unequal playing field and allows a determination to be influenced by half-truths, untruths, and advantageously-presented positions which have no demonstrable support. Not only is there no requirement for truth and completeness from the Respondent Company, if a discrepancy is later pointed out, there are no detrimental effects to the Respondent Company.

To resolve this disparity, we propose that both sides and their witnesses are held to the same high standard of truth.

2. The unsworn position statement and any supporting data presented by the Respondent are neither provided to nor made available to the Charging Party. Once a decision has been rendered by the agency, the Charging Party can seek access to these data only through the Freedom of Information Act, at which point it is too late for the Agency to benefit from any comment, refutation, clarification, or exposition by the Charging Party.

We propose that a photocopy of all materials submitted by the Respondent be forwarded in a timely manner for the Charging Party's review and input. In this way the Charging Party can serve as a helpful adjunct to the Agency in its investigative process, serving to alleviate some of the increased workload and limited investigative resources the Agency is currently experiencing.

3. When the Charging Party initiates an EEOC claim, the investigator rarely provides

information regarding which federal statutes may be involved nor is this information regularly supplied during the investigative process. Therefore, during the investigation, the Charging Party will not know which additional information may be pertinent to the facts being investigated. Even at the time the Agency renders its decision, no federal statutory/legal citations are clearly identified or enumerated to support that decision. As a result, if the Agency finds "no probable cause," the Charging Party has no way to determine if there is any basis to further pursue action.

While we recognize the funding and personnel constraints under which the local EEOC offices operate, we propose that Agency investigators disclose to the Charging Party the facts that are being investigated and the criteria (applicable laws, court cases, federal statutes) that were considered in rendering a cause or no cause decision. The EEOC investigator should also be able to certify that all facts were investigated and all witnesses presented by the Charging Party were interviewed.

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