

The original documents are located in Box 38, folder “Personnel - Conflict of Interest, Powell, John (3)” of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON

January 22, 1975

MEMORANDUM FOR:

LAURENCE H. SILBERMAN
DEPUTY ATTORNEY GENERAL

FROM:

PHILLIP AREEDA ^{PA}
COUNSEL TO THE PRESIDENT

I attach two memoranda (with their attachments) prepared by Jay French summarizing the various allegations that have been made against Chairman Powell of the EEOC.

It appears that some of these allegations may reflect personality conflicts within the Commission. Yet, some of the allegations, particularly those concerning "wasteful contracting", might imply the need for further inquiry when examined by Justice Department officials experienced in the detection of corrupt and illegal practices.

Could you advise me whether the enclosures suggest improprieties of sufficient dignity to warrant further inquiry. I would appreciate an oral and preliminary response as early as you find convenient.



CRIMINAL DIVISION

JAN 24 1975

Received Fraud Section

76
EXEC
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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

December 6, 1974

FOR: Phillip Areeda
FROM: Jay French
SUBJECT: Allegations of misconduct against the Chairman
of the Equal Employment Opportunity Commission

Allegations of misconduct have been made against John Powell, Jr., who was appointed in January 1974, to a five-year term, as Chairman of the Equal Employment Opportunity Commission (EEOC). The allegations are brought by the other members of the Commission and the General Counsel. Set forth below is a discussion of these charges, the law pertinent to such conduct and certain available courses of action.

The allegations against Powell may be broadly listed as follows:

- a. Interference in Purex Litigation.
- b. Unilateral Issuance of Contracts.
- c. Waste of Funds.
- d. Irregularities in Chairman's Accounts.
- e. Lack of Cooperation with Other Commissioners.
- f. Mistreatment of Commission Personnel.
- g. Inefficient Accounting and Overexpenditure of Appropriated Funds.

Following is a discussion in greater detail about each of the above-listed categories.

a. Interference in Purex Litigation.

Allegations: The Chairman met with an officer of a corporate defendant, in a case presently before a Federal Court for violation of



Title VII, and offered to remove the case from the court and reopen an administrative compliance review. The meeting, followed by a letter confirming the agreement, was held without the knowledge or agreement of the Commission or the General Counsel. It is alleged that the Chairman interfered with and undermined this litigation.

Discussion: The Chairman has no statutory authority to interfere in litigation which was properly commenced by the Commission. The Commission alone, may bring a civil action if it is unable to secure a conciliation agreement. 42 U.S.C.A. § 2000 e-5 (f) (1). Also, by statute, the General Counsel shall have responsibility for the conduct of litigation. 42 U.S.C.A. § 2000 e-4 (b) (1). The rules of the Commission similarly make clear that it is the Commission which may bring civil actions, not any single Commissioner or the Chairman. 29 C.F.R. § 1601.25b (a). I conclude that the Chairman's attempted action is without legal authority, although, I find no specific unlawful conduct. At the very least, the interference was highly improper and gives the appearance of partiality and preferential treatment.

b. Unilateral Issuance of Contracts.

Allegations: The Chairman has issued or attempted to issue contracts without the approval or the consent of the Commission. The contracts involved are valued in millions of dollars and some are listed on the schedule in Tab A.

Discussion: The contracts in controversy are of two kinds; those which relate to administrative matters and and those which relate to substantive policy decisions. The issue is complicated because the Chairman is by statute responsible for administrative operations on behalf of the Commission. 42 U.S.C.A. § 2000 e-4. The Chairman is of the opinion that he may issue most contracts under this authority. He believes that all administrative contracts are clearly within his purview. As to contracts dealing with substantive matters, he believes that it is only necessary for the Commission to pass on general policy before he is free to administratively issue contracts pursuant to the general policy decisions.

The legal arguments on this subject are very detailed and have already brought about decision papers and memorandums from the Commission, the Chairman, the General Counsel and the Comptroller General. The simplest summary is that there have been hints of impropriety and



attempts to usurp authority. There is no clear allegation of unlawful activity. The attached decision of the Comptroller General, September 19, 1974, is at Tab B.

c. Waste of Funds.

Allegations: The Chairman has wasted appropriated funds by issuing unnecessary contracts or contracting to pay more than the value of the service to be performed. The Chairman unilaterally approved a move of the Commission's headquarters to a new building. Further, he issued appropriate contracts to consummate the move, at a cost in excess of \$1,000,000. This expenditure included \$32,000 for a private kitchen and bath in the Chairman's new office, while only \$23,500 was charged for the physical move of the headquarters. A space study was authorized for \$187,000. On another occasion, the Chairman issued a contract for \$125,000 to produce a Contract Management manual which the other Commissioners believed could have been produced within the Commission for \$10,000.

Discussion: The agreement to expend these funds is not unlawful if the Congress authorized these actions and appropriated funds for their use. 31 U.S.C. § 665 (a)* However, it is probable that such expenditures would be considered highly improper and the result of poor management.

d. Irregularities in Chairman's Accounts.

Allegations: In a Memorandum of December 2, 1974, from Dick Cheney to the White House Counsel, an allegation was noted that the Chairman had personal irregularities in his travel and expense accounts. There is no other reference to this matter in the other material.

Discussion: All claims for reimbursement of travel expense are submitted on Government Form No. 1012, August 1970. Each form contains a warning that a knowingly false, fictitious or fraudulent claim may result in prosecution and the imposition of a fine and imprisonment. 18 U.S.C.A. § 287.

* See also 41 U.S.C.A. § 11 and 12, prohibiting contracts in excess of appropriations and those which are not authorized.



e. Lack of Cooperation with Other Commissioners.

Allegations: The Chairman has acted in a number of matters without the approval and advice of the other members of the Commission. On November 11, 1974, the Commission agreed to create a new organizational structure based upon a report of a management consulting firm that had been retained to make a study. Thereafter, the Chairman issued a directive to the staff to disregard this Commission decision. Also, the Chairman has not consulted the Commission as a body about the following:

- (1) Submission of a supplemental budget request to the OMB.
- (2) Allotment of personnel positions or appointments and discharge of heads of major administrative units.
- (3) Selection or approval of major Tract I Cases for processing like Sears, General Motors, and General Electric.
- (4) Negotiations and agreements with the AFL-CIO on major policy concerning processing charges.

In another example, the Commission as a body passed a resolution directing the audit staff to conduct a thorough investigation of the Financial Management Division upon the belief that this Division's monthly financial reports were inaccurate. The Chairman, at first, refused to allow the audit. Although, the audit was commenced, two interim reports concerning this audit have been withheld from the members of the Commission by order of the Chairman. The Chairman has reportedly threatened to discharge the Chief of the audit staff if these interim copies are provided to the Commissioners.

Discussion: It is doubtful that the Chairman has acted unlawfully with regard to the above matters since he has a basic statutory authority to handle the administrative affairs of the agency. However, such allegations are evidence of highly offensive conduct and are the result of poor management ability.

f. Mistreatment of Commission Personnel.

Allegations: The Chairman has intimidated and harassed employees by: reprimanding them in front of others, threatening to and actually summarily discharging them, telephoning personnel at home at all hours, and directing them to report to his office on weekends. As a result of



these allegations, morale is described as very low. Senior staff personnel are resigning and seeking new positions with other agencies.

Discussion: Such intimidation and harassment, however ill-advised or representative of poor judgment, is not unlawful.

g. Inefficient Accounting and Overexpenditure of Appropriated Funds.

Allegations: An example of inefficient accounting has already been cited above in paragraph e. concerning the Financial Management Division. Additionally, it is alleged that the Chairman has knowingly overexpended appropriated funds.

Discussion: The Director of the Office of Management and Budget is already reviewing the allegation of overexpenditure of appropriated funds under the Anti-Deficiency Act. It is unlawful for an officer of the United States to authorize an expenditure under any appropriation or fund in excess of the amount available therein, and it is similarly prohibited for an officer to involve the Government in any contracts in advance of appropriation, unless such contract is authorized by law. 31 U. S. C. A. § 665.

A summary of the above discussions does not disclose any unlawful conduct per se, although, it does indicate poor management ability and the commission of certain improprieties. The nature of these allegations demands consideration of an investigation and the removal or suspension of Chairman Powell.

The Federal Bureau of Investigation could be requested to conduct an investigation to determine whether the Chairman had violated any section of Chapter 11 of Title 18 dealing generally with bribery, graft and conflicts of interest when he interfered in the Purex litigation. Also the FBI could be asked to investigate the alleged irregularities in the Chairman's travel and expense accounts to determine whether there are grounds to believe the Chairman violated 18 U. S. C. § 287.



An investigation into any budget irregularities should be conducted by the Office of Management and Budget pursuant to 31 U. S. C. A. §§ 21 and 665. If such irregularities are determined to exist, they must be reported to the President and the Congress.

With regard to the charge that the Chairman unilaterally and improperly issued numerous contracts, on behalf of the Commission, I recommend no action because the Comptroller General, the Commission as a body, and the General Counsel of the Commission has each expressed an opinion on this issue. Further, the General Accounting Office has sufficient statutory authority to review all public contracts.¹ Similarly, I do not recommend any action concerning the broad allegation of lack of cooperation with the other Commissioners. This is a general charge, the specifics of which would be covered in other investigations.

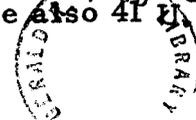
Finally, with regard to the alleged mistreatment and harassment of Commission personnel, it might be wise to request the Civil Service Commission to make a review of those personnel actions at the EEOC which appear improper.

In addition to considering the necessity for these investigations, it is helpful to review the President's power to remove public officers from their posts. The President has unlimited authority to remove any appointed official who performs an administrative function in the Executive department. Humphrey's Executor v. United States, 295 U. S. 602 (1935); Myers v. United States, 272 U. S. 52 (1926). This authority is inherent in the President and the Congress cannot constitutionally restrict it. Myers, supra. And, if the official is appointed to a primarily administrative body with executive functions, it is clear that the President may remove the appointee for any reason unless the Congress manifests a clear legislative intent that the President is not to have such power. Morgan v. Tennessee Valley Authority, 6th cir., 115 F. 2d 990 (1940).² Such power to remove, for any reason, may be exercised irrespective of whether the statute states specific grounds for removal. Morgan, supra.

However, the President may not remove an appointee to an agency whose function is adjudicatory and whose independence from the executive whim is necessary for the achievement of its purpose, unless the President does so for the grounds stated in the statute. Humphrey's, supra. See also Wiener v. United States, 357 U. S. 349 (1958).

1. The Comptroller General shall report to the Congress every expenditure and contract made in violation of the law, and he shall make such investigations as the Congress requests. 31 U. S. C. A. § 53 (c) and (d). See also 41 U. S. C. A. § 11 and 12.

2. cert. den. 312 U. S. 701 (1941).



In Humphrey and Wiener, the Supreme Court held that the Federal Trade Commission and the War Claims Commission were independent regulatory agencies with adjudicatory functions. In Humphrey at pages 620-621, the Supreme Court noted that the Federal Trade Commission must issue a complaint stating its charges and giving notice of a hearing. Further, the respondent is given the right to appear and show cause why an order should not be issued to cease and desist the unlawful competitive practice. If the Commission finds the method of competition prohibited by its statute, it must report its findings of fact and issue such an order. Should the respondent disobey the order, the Commission may apply directly to the circuit court of appeals for enforcement.

The Congress created the Equal Employment Opportunity Commission in Title VII of the Civil Rights Act of 1964 and the powers and duties of the Commission were broadened to include certain enforcement powers in 1972. Pub. L. 88-352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub. L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104. The Commission's function however does not indicate that it is adjudicatory in nature, but rather that it is primarily an administrative agency. By statutory authority, the Commission issues or receives charges which are made in writing under oath. It then serves a notice of the charge upon the respondent and then promptly conducts an investigation to determine if there is reasonable cause to believe that the charge is true. If such a determination is made, then the Commission attempts to eliminate the unlawful practice by informal methods. It is noteworthy that nothing which is said or done during this informal stage may be subsequently introduced into evidence without the consent of all parties. If the informal method fails, the Commission may bring a civil action in any United States district court to enjoin the respondent from engaging in such unlawful employment practice. The trial in the district court is a thorough hearing of the case and not just a determination of whether or not to enforce any order or decision of the Commission.

Based upon the foregoing discussion, I conclude that the President could remove Chairman Powell from his office without stating any grounds for his action.

In addition to the power of removal, the President could designate any other member of the Commission to serve as Chairman. 42 U. S. C. A. § 2000 e-4 (a).



There are a great many possible combinations of actions which the President might take. Set forth below are the four principal actions.

- A. Request FBI/OMB investigations
- B. Removal without cause
- C. Suspension
- D. Designation of a new Chairman

The above actions may be arranged in any desirable combination. For example, the President could investigate and as a result either suspend or remove the Chairman. On the other hand, the President could suspend and then investigate and finally remove Powell. I recommend that the President immediately designate a new Chairman pursuant to his authority in 42 U.S.C.A. § 2000 e-4 (a), and request the FBI and OMB to investigate the allegations which have been set forth above. I believe this is the best course because instinctively I believe Chairman Powell will resist his removal from office. The designation of a new Chairman is a reasonable course of action in light of the obvious poor management ability which Chairman Powell possesses. If the investigations prove negative, then Powell could remain on the Commission. On the other hand, if the investigations reveal evidence of unlawful conduct, Powell's resignation could be requested immediately. This course of action sidesteps the entire issue of the President's power to remove officers from their positions. It therefore insures that Powell would never have a legal issue on which he could challenge the President's decision.

TAB A

<u>Contractor (or Subject)</u>	<u>Value (in Dollars)</u>	<u>Date Issued</u>	<u>Comments</u>
Opportunity System, Inc.	320,000	March 11, 1974	
	60,000	March 11, 1974	
	150,000	March 11, 1974	subsequently cancelled
Opportunity System, Inc.	360,000	unknown	considered by Chairman but not granted because OSI was proving unable of delivering on its earlier commitments
Clinical Training Program (6 contracts)	575,548	June 26, 1974	Commission debated and agreed to issue; Chairman then acted without approval by issuing them
Lawyers Committee Contract	338,873	unknown	\$52,000 was paid out although contract was not approved by Commission
Training Center Contract	280,000	unknown	Chairman recommended but Commissioners rejected this contract. Commissioners issued the same contract to a different firm for \$207,000



TAB B

File
EE

9/20/74



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-167015

September 19, 1974

The Honorable John H. Powell, Jr., Chairman
Equal Employment Opportunity Commission

Dear Mr. Powell:

Enclosed is a copy of our decision of today concerning the administrative authority of the Chairman of the Equal Employment Opportunity Commission.

As our decision contains a recommendation for corrective action to be taken by the Commission, i.e., formal consideration and adoption by the Commission as a body of an affirmative policy concerning contracting and spending procedures, it is being transmitted by letters of today to the House and Senate Committees on Government Operations and Appropriations. Your attention is directed to section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. 1176, which requires the submission of written statements of the action to be taken with respect to our recommendation. The statements are to be sent to the House and Senate Committees on Government Operations not later than 60 days after the date of this letter, and to the House and Senate Committees on Appropriations in connection with the first request for appropriations made by the Commission more than 60 days after the date of this letter.

We would appreciate advice of whatever action is taken on our recommendation.

Sincerely yours,

Ronald R. Ford

Comptroller General
of the United States

Enclosure

cc: The Honorable Luther Holcomb, Vice Chairman
The Honorable Colston A. Lewis, Commissioner
The Honorable Ethel Bent Walsh, Commissioner



B-167015

SEP 19 1974

The Honorable John H. Powell, Jr., Chairman
Equal Employment Opportunity Commission

Dear Mr. Powell:

Enclosed is a copy of our decision of today concerning the administrative authority of the Chairman of the Equal Employment Opportunity Commission.

As our decision contains a recommendation for corrective action to be taken by the Commission, i.e., formal consideration and adoption by the Commission as a body of an affirmative policy concerning contracting and spending procedures, it is being transmitted by letters of today to the House and Senate Committees on Government Operations and Appropriations. Your attention is directed to section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. 1176, which requires the submission of written statements of the action to be taken with respect to our recommendation. The statements are to be sent to the House and Senate Committees on Government Operations not later than 60 days after the date of this letter, and to the House and Senate Committees on Appropriations in connection with the first request for appropriations made by the Commission more than 60 days after the date of this letter.

We would appreciate advice of whatever action is taken on our recommendation.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure

cc: The Honorable Luther Holcomb, Vice Chairman
The Honorable Colston A. Lewis, Commissioner
The Honorable Ethel Dent Walsh, Commissioner

sca





FILE: B-167015

DATE: September 19, 1974

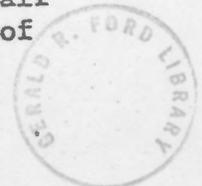
MATTER OF: Administrative authority of the Chairman of the
Equal Employment Opportunity Commission

DIGEST: 1. Section 705(a) of Civil Rights Act, which vests responsibility for administrative operations of Equal Employment Opportunity Commission (EEOC), in the Commission Chairman, is analogous to provisions in several reorganization plans which assign administrative responsibilities to chairmen of independent commissions. Since background of these reorganization plans, which seems applicable under section 705(a), indicates generally that such provisions are not intended to supersede or diminish substantive powers of full commissions, EEOC Chairman's exercise of administrative functions is subject to general policies and directives of full Commission and cannot derogate from substantive responsibilities of full Commission.

2. Matters of basic Equal Employment Opportunity Commission staff organization and budget formulation, while in part administrative, normally involve substantive determinations of legitimate concern to full Commission, and spending and contracting matters are in part administrative but may raise substantive issues which should be determined by full Commission. While GAO is not in position to delimit such substantive issues and therefore cannot in abstract question Chairman's judgment as to whether particular transactions should be submitted to full Commission, Commission as a body can and should formally consider and adopt affirmative policy in this regard.

This decision to the Equal Employment Opportunity Commission (EEOC) is in response to a request by three Commissioners of EEOC for our interpretation of that portion of section 705(a) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-4(a), which in establishing EEOC provides, quoting from the Code:

"* * * The Chairman shall be responsible on behalf of the Commission for the administrative operations of



the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. * * *"

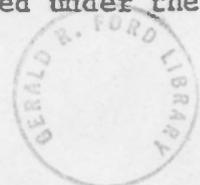
The three Commissioners who have written to us refer to a difference in interpretation of section 705(a) between the Chairman and other Commissioners in terms of what EEOC activities must be submitted to and decided by the Commission as a whole. Of particular concern, it is said, is a continuing controversy over EEOC contracts which the Chairman believes he may approve and execute without consideration and approval by the full Commission. Accordingly, our opinion is requested concerning the respective roles and responsibilities of the Chairman and of the Commission under section 705(a).

The request of the three Commissioners also refers to the relative roles and responsibilities of each individual Commissioner under section 705. However, it appears that the context presented raises issues only in terms of the Chairman vis-a-vis the other Commissioners as a body. In addition, the three Commissioners requested that pending issuance of our opinion a freeze be placed on expenditures, all pending contracts be held in abeyance, and no new contracts be entered into unless such actions are approved by a majority of the full Commission, but we would have no basis for taking such action.

Subsequent to the request for our opinion, we received a letter from the Chairman of EEOC transmitting a copy of a memorandum to him dated March 14, 1974, from the General Counsel of EEOC, captioned "Authority of the Chairman of EEOC." This memorandum addresses the issues raised by the three Commissioners, and provides a focal point for our consideration of these issues.

In terms of the general effect of section 705(a), the General Counsel's memorandum states:

"The Equal Employment Opportunity Commission was structured so as to embody the ongoing Congressional intent, as reflected in the structure of other independent executive agencies, that the administrative responsibility for the day to day operation of the Agency be centralized in a chief executive officer. As a general rule, where the Chairmen of similarly structured agencies have been given the executive and administrative functions, such functions include (1) the appointment and supervision of personnel employed under the



agency, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds. See Reorganization Plan No. 9 of 1950 for the Federal Power Commission (effective May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, historical note to 16 U.S.C.A. Section 792); Reorganization Plan No. 10 of 1950, for the Securities and Exchange Commission (15 F.R. 3175, 64 Stat. 1265, 15 U.S.C.A. Section 78d). In other similarly structured multi-member agencies, as in the Commission, the collective body makes policy determinations and promulgates substantive regulations. The full Commission has authority to determine policy objectives of activities through which EEOC carries out its statutory mandate.

* * * * *

"While policy determinations must be made by the full Commission as a body, the Chairman does have the responsibility and authority for implementing all policy objectives once the Commission has made its determination. The adoption of the agency's basic strategy for discharge of its statutory mandate and, incident thereto, the overall allocation of resources among the operating divisions or program functions of the Commission, are matters of policy determinable by the Commission as a body. The specific implementation of such a strategy, however, is the assigned responsibility of the respective program managers of the Commission, for which they report to the agency's administrative head, the Chairman. The establishment of the major program units within any agency assumes that these units will use their particular expertise and experience to implement and give meaning to the policy decisions of the governing body. Accordingly, where the Commission has set the policy in a particular matter designed to implement most effectively the principles of Title VII [of the Civil Rights Act], it is the Chairman's responsibility through the staff of the Commission to use the special skills and expertise of the staff to see that these aims are properly carried out. This same principle should apply to the allocation of resources for enforcement. Once the Commission has determined that the most effective enforcement of Title VII requires that certain strategies of enforcement be followed, and has set out the broad criteria, it becomes the responsibility of the Chairman through the appropriate operational units to implement that policy."



The General Counsel's memorandum also observes the relationship between the Chairman's administrative authority and the authority of the Commission as a whole to determine policy—

"* * *the legislative history of the Hoover Commission report * * * reveals that it was Congress' intent, in multi-member bodies that, in spite of the statutory provisions giving the Chairman of such bodies primary responsibility for administrative matters, that the Chairman's primary responsibility for administration should not supplant the ultimate authority of the entire Commission on matters which are of major significance to the agency."

The memorandum elaborates upon the foregoing observation in an accompanying footnote:

"In fact the 1950 Congressional debate on a reorganization plan for the Interstate Commerce Commission transferring administrative responsibilities to the Chairman reveals the intent of Congress that where there is a conflict between the Chairman of a multi-body agency and the other members over what is procedural or administrative, and what is policy, the Commission as a whole may overrule the administrative decision of the Chairman, 96 Cong. Rec. 7163-7164, May 7, 1950."

The General Counsel's memorandum indicates and discusses several specific examples of the Chairman's administrative powers as follows:

Appointment and removal of employees; determination, organization and allocation of staff resources. The General Counsel states that, under section 705(a), the Chairman has authority subject to Civil Service requirements, to appoint, remove and fix the compensations of most EEOC personnel, and to determine the number and grade of personnel needed in any given area. Inherent in the Chairman's staffing authority, the General Counsel states, is authority to structure administrative offices and units and to allocate their work so as to provide for efficient operations. He adds:

"* * * The authority to reorganize the administrative units of the Commission can also be said to be contained in the specific statutory provision of Section 705(a) giving the Chairman authority to appoint officers and employees he deems necessary to assist the Commission in the performance of its functions. Thus the Chairman has



the authority to restructure or reorganize administrative units of the Commission in the interest of efficiency of operation. While it can be argued that a complete reorganization of the administrative structure of the agency is an administrative or procedural matter clearly within the Chairman's authority, unilateral action to accomplish such a reorganization would be unwise, as such a move would fall within the category of actions which are of such 'major significance to the agency' that the Chairman's responsibility should not be exercised without consulting the entire Commission."

Delegation of authority. The Chairman has authority to delegate to subordinates performance of his administrative responsibilities.

Budget formulation. The General Counsel notes that the Chairman exercises primary responsibility for preparation of the EEOC budget. However, since budget submissions involve policy decisions, budget proposals and any significant modifications must be approved by the full Commission.

Contracts. The award of contracts--those made to implement Commission policy decisions as well as those dealing with normal administration--is said to be an administrative responsibility of the Chairman. On the other hand, the General Counsel goes on to observe:

"* * * The award of certain contracts, however, may peculiarly fall within the realm of policy determinations and should therefore properly be approved by the Commission as a whole. This would include a contract which by the very fact of authorization is a policy determination, as for example, a contract for a large expenditure of funds which would effect program resource allocations to the point of establishing policy."

In a memorandum to the Chairman dated July 15, 1974, the Commission's General Counsel further elaborated upon his view of the Chairman's contracting authority. The July 15 memorandum is discussed in more detail hereinafter.

The General Counsel's memorandum discusses several matters which have arisen apparently as a result of the controversy between the Chairman and other Commissioners. On November 30, 1973, EEOC Office of Management issued EEOC Order No. 365, to establish an agency policy on the use of appropriated funds, including contracting. This order

provides that the Chairman has prime responsibility for the lawful expenditure of appropriated funds in support of Commission programs and objectives, and that such authority may be delegated by the Chairman to heads of the procuring offices or units within EEOC. In December 1973 three Commissioners issued a memorandum disavowing EEOC Order No. 365, which declared that any contracting policy stated in the order was not based upon a Commission action and therefore that the order was void. The General Counsel comments:

"* * * If the three Commissioners involved view the authority to expend appropriated funds as the responsibility of the entire Commission rather than the Chairman, this could seriously impair the power of the Chairman to administer the agency efficiently, as he would be required to obtain the approval of the Commission for each expenditure necessary to the administrative operation of the Agency. This would clearly be an infringement of the administrative responsibility given to the Chairman by Section 705(a) and would clearly be counter to the Congressional purpose of centralizing administrative authority and responsibility in the Chairman. In any event, this area needs substantial further clarification."

Finally, the General Counsel refers to the following policy agreed to by the Commission on January 12, 1966:

"That the Executive Director submit for Commission approval (a) the first issue of any Commission publication; (b) any budget proposal or any significant modification thereof; (c) any proposed significant change in the Commission Table of Organization; and (d) any proposed significant project or conference!"

At a Commission meeting on February 12, 1973, a motion was adopted to the effect that the Chairman, on behalf of the Commission, instruct the Executive Director to adhere to the 1966 policy agreement. The General Counsel comments:

"The ramifications of this policy agreement by the Commissioners on the administrative authority of the Chairman should be examined. Submission of the first issue of any Commission publication, i.e., documents to be distributed or used outside the Commission, can be said to be a legitimate prerogative of the Commissioners, since such publications in many respects will reflect Commission policy and

interpretations. It is important to note that in the other three areas where the motion requires submission of actions for approval by the Commission, with the one exception of budget proposals, only 'significant' budget modifications, 'significant' changes in table of organization, and 'significant' projects or conferences are to be submitted to the Commissioners for approval."

The General Counsel notes that the policy agreement is subject to differing interpretations in terms of what is considered "significant," but submits:

"A broad interpretation of the word 'significant' could conceivably encroach on areas which are clearly administrative responsibilities exercised to implement Commission policy. Such an interpretation would result in tying the hands of the Chairman in exercise of his authority and in frustrating the Congressional intent that primary administrative responsibility rests in the Chairman. To be consistent with the statutory language and Congressional intent, the motion in parts (b), (c) and (d) should be interpreted narrowly to include only those major areas which would reflect a change in direction of Commission programs or policy. It seems to us that without more clarification, the motion as passed fails to provide sufficient guidance for those who must comply with it and needs further clarification."

At the outset of our consideration of this matter, we agree with the EEOC General Counsel that section 705(a) of the Civil Rights Act insofar as it vests in the Chairman responsibility on behalf of the Commission for the administrative operations of EEOC is analogous to provisions addressing the administrative responsibilities of heads of other independent regulatory agencies. Many such provisions derive from reorganization plans. For example, section 1 of Reorganization Plan No. 8 of 1950, 64 Stat. 1264, dealing with the Federal Trade Commission, provides:

"(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Federal Trade Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission,



- (2) the distribution of business among such personnel and among administrative units of the Commission, and
- (3) the use and expenditure of funds.

"(b) (1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

"(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

"(3) Personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman shall not be affected by the provisions of this reorganization plan.

"(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes."

Identical language, except for references to the agency concerned, is continued in sections 1 of Reorganization Plan No. 9 of 1950, 64 Stat. 1265 (Federal Power Commission), and Reorganization Plan No. 10 of 1950, 64 Stat. 1265 (Securities and Exchange Commission). Substantially similar language is found in section 1 of Reorganization Plan No. 1 of 1969, 83 Stat. 859, dealing with the Interstate Commerce Commission.

The foregoing reorganization plans implemented the recommendation by the United States Commission on Organization of the Executive Branch of the Government (the "Hoover Commission") that with reference to the regulatory agencies, "* * * all administrative responsibility be vested in the chairman of the commission." Recommendation No. 1, Report to the Congress on Regulatory Commissions, page 5 (1949). In support of this recommendation, the Hoover Commission observed, id. pp. 3-5:

"Purely executive duties--those that can be performed far better by a single administrative official--have been imposed upon these commissions with the result that these duties have sometimes been performed badly. The necessity



for performing them has interfered with the performance of the strictly regulatory functions of the commissions.

* * * * *

"Administration by a plural executive is universally regarded as inefficient. This has proved to be true in connection with these commissions. Indeed, those cases where administration has been distinctly superior are cases where the administrative as distinguished from the regulatory duties have been vested in the chairman. There are many of these administrative duties. Their efficient handling will frequently make the difference between a commission's keeping abreast of its work or falling woefully behind."

At the same time, the record of consideration of these reorganization plans makes it abundantly clear that the administrative authority vested in the chairman of each commission was not intended to supersede or diminish in any way the substantive authorities and responsibilities of the commission as a whole. For example, the Senate Committee on Expenditures in the Executive Departments stated in reporting unfavorably a resolution to disapprove Reorganization Plan No. 8 of 1950:

"The single objective of plan No. 8 is to improve the organization, the administration, and the operation of the Federal Trade Commission by providing clear-cut channels of authority, by strengthening management and by eliminating confusion identified with 'multi-headed' direction. It should be noted with all the emphasis that can be brought to bear that this reorganization plan in no way alters, modifies, or diminishes the substantive quasi-judicial or quasi-legislative functions of the Federal Trade Commission which are vested by statute in the Chairman and the Commissioners or the Commission as a whole. Beyond successful refutation, plan 8 retains those substantive functions in the Commission as provided by law.

"Nothing could be clearer than the statement of the President in his message transmitting plans 7 through 13 dealing with regulatory agencies to the Congress. It follows in part:

"In regard to the regulatory agencies, the plans distinguish between two groups of functions



necessary to the conduct of these agencies. One group includes the substantive aspects of regulation--that is, the determination of policies, the formulation and issuance of rules, and the adjudication of cases. All these functions are left in the board or commission as a whole. The other group of functions comprises the day-to-day direction and internal administration of the complex staff organizations which the commissions require. These responsibilities are transferred to the chairman of the agencies, to be discharged in accordance with policies which the commissions may establish. The chairman is to be designated in each agency by the President from among the commission members.'

"It is equally clear that the Commission on Organization of the Executive Branch of the Government was firmly convinced that the consummation of its recommendations, upon which plan No. 8 is based, would have no effect whatsoever upon the quasi-judicial or the quasi-legislative functions of any regulatory agency. In referring to its important recommendation that all administrative responsibility be vested in the Commission Chairman, the Hoover Commission stated:

"' This recommendation does not derogate from the statutory responsibilities placed upon the other members of the Commission. They remain exactly as they are, and because of the better functioning of the organization the Commission members will be enabled to discharge these responsibilities much more effectively.'" S. Rept. No. 1562, 81st Cong., 2d sess., p. 3.

* In addition, as the EEOC General Counsel's memorandum points out, the Senate debate on a 1950 reorganization plan for the Interstate Commerce Commission (subsequently disapproved) indicated that where disputes arise as to what matters are procedural or administrative and what are substantive, the full commission should have the final say, 96 Cong. Rec. 7163-64 (May 7, 1950). See, also, the remarks of Senator O'Connor during Senate debate on Reorganization Plan No. 9 of 1950, 96 Cong. Rec. 7381 (May 22, 1950). Finally, section 1 of these reorganization plans expressly affirms the dominant role of the full commission on substantive matters by making each chairman's exercise of administrative



functions subject to general policies of the commission, and by including specific reservations of powers to the full commission.

As in the case of the reorganization plan provisions discussed above, we believe that section 705(a) of Civil Rights Act in vesting administrative responsibilities in the Chairman of the EEOC on behalf of the Commission contemplates that the exercise of such responsibilities is subject to general policies adopted by the Commission as a whole. The General Counsel apparently shares this view. We offer several observations concerning the specific matters discussed hereinabove.

While section 705(a) specifically authorizes the Chairman of EEOC to appoint and fix the compensation of officers and employees, this provision refers to the appointment of such officers and employees as "it"--the Commission--deems necessary. Accordingly, it appears that the Commission as a whole must pass upon the allotment of personnel positions. We agree with the General Counsel that the authority of section 705(a) concerning personnel carries with it the functions of day-to-day distribution of the Commission's work and direction of its staff. Compare section 1(a)(1) and (2) of the 1950 reorganization plans discussed previously. We cannot, however, concur fully in the General Counsel's broad statement of the Chairman's authority to restructure or reorganize the EEOC staff--particularly his statement that the Chairman's administrative authority could arguably support a complete reorganization without full Commission approval. Rather, we believe that organizational issues, inasmuch as they relate to effectiveness and efficiency in carrying out the agency's statutory functions and implementing substantive Commission actions, would generally be characterized as involving policy issues. We believe the reference in section 705(a) to the appointment of such personnel as the Commission determines necessary indicates that the Commission as a whole has a legitimate role in organizational matters. See, also, to the same effect, section 705(d) of the Act, which provides that the "Commission" may establish such regional or State offices as "it" deems necessary.

The General Counsel's memorandum recognizes that budget submissions generally involve policy decisions. Accordingly, he notes that while the Chairman exercises primary responsibility for budget preparation, budget proposals and any significant modifications thereof must be approved by the full Commission before submission to the Office of Management and Budget and to the Congress. We fully agree that budget submissions involve policy determinations; and we note that the 1950 reorganization plans discussed hereinabove expressly reserve to the full commissions the "reviewing of budget estimates and * * * determining



upon the distribution of appropriated funds according to major programs and purposes." Section 1(b)(4) of Reorganization Plan No. 1 of 1969, supra, dealing with the Interstate Commerce Commission, is even more specific in this regard:

"Requests for regular, supplemental, or deficiency appropriations for the Commission (prepared by or under the Chairman in pursuance of section 214 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. '22) and as affected by this reorganization plan) shall require the approval of the Commission prior to the submission of the requests to the Bureau of the Budget by the Chairman."

The latter portion of EEOC General Counsel's memorandum addressing the 1966 policy agreement appears to backtrack somewhat on this point by suggesting that the requirement therein for full Commission approval of "significant" budget modifications should be narrowly construed. It is notable that under the 1966 agreement, the Commissioners themselves have limited their review and approval to "significant" budget modifications. In view of the considerations discussed above, we do not believe that a requirement for Commission approval of all budget submissions would in any way conflict with the Chairman's administrative responsibilities. In any event, the same considerations indicate to us that the requirement for Commission approval of "significant" budget modifications should be construed and applied broadly. Put a different way, perhaps, we would assume that budget modifications would in most cases be significant in terms of policy matters.

The major difference of opinion between the Chairman and other members of the Commission apparently relates to the use of appropriated funds, with particular reference to contracting procedures. As noted previously, the General Counsel's March 14, 1974, memorandum to the Chairman expressed the opinion that contracts which are executed to implement policy decisions made by the Commission and those made in the conduct of normal administrative functions are within the administrative authority of the Chairman acting alone. At the same time, the March 14 memorandum recognized that contracts which fall within the realm of policy determinations should be approved by the full Commission. In a subsequent memorandum to the Chairman, dated July 15, 1974, the General Counsel discussed contracting authority in more detail as follows:



"* * * The routine awarding of contracts which carry out previously announced policies established by the Commission and/or which carry out its purely administrative operations are exclusively within the administrative responsibility of the Chairman. Most contracts, therefore, let in the ordinary course of business would be the exclusive responsibility of the Chairman.

"That administrative responsibility is, however, set within a framework of budgetary limitations and policy considerations. For example, it goes without saying that the awarding of any contract by the Chairman must be made within the budgetary capabilities of the Commission.

"Furthermore, there may be some contracts whose award would not normally be financed from general administrative appropriations or whose award would in effect establish a new Commission policy or alter a policy previously established by the Commission. In these instances, the awarding of such a contract would not be within the administrative operations of the Commission and would not therefore be within the exclusive responsibility of the Chairman."

The July 15 memorandum also addresses specifically the awarding of "clinical" grants (designed to develop expertise on the part of the private bar in handling equal employment cases under title VII of the Civil Rights Act) as follows:

"The decision to make grants for clinical programs, whether university or otherwise, falls outside the normal administrative function and is a policy decision. Even with respect to selecting particular institutions, there are a number of factors to be weighed such as community needs, ability of the institution to carry out functions etc. Under these circumstances, it is our view that the granting of clinical awards is a policy matter which should be approved by the Commission."

In a memorandum dated July 17, 1974, the Commission Chairman took exception to the General Counsel's July 15 memorandum concerning contracting authority. The Chairman objected to what he considered a basic change in position from the General Counsel's March 14 memorandum, and also disagreed with the General Counsel's conclusions concerning the "clinical" grants.



The actual making of expenditures and awarding of contracts or grants are, to a large extent, administrative functions. For example, section 1(a)(3) of the reorganization plans discussed hereinabove expressly vests commission chairmen with executive and administrative functions with respect to "the use and expenditure of funds." Thus we agree with the suggestion in the EEOC General Counsel's March 14 memorandum that to consider each and every use of funds as a Commission function would be inconsistent with the Chairman's administrative authority under section 705(a) of the Civil Rights Act. However, we also recognize, as does the General Counsel, that certain grants, contracts, and other expenditures may involve matters bearing upon legitimate substantive interests and responsibilities of the full Commission.

While the Commission as a body has adopted official policy statements and directives on certain issues concerning the relationship between the Chairman and the full Commission--as in the case of the 1966 "policy statement" discussed hereinabove--it appears that no formal action has ever been taken with specific reference to the use of funds. The 1966 policy statement does not require full Commission approval of spending or contract transactions as such; nor does it even address such transactions except to the extent that they may involve matters otherwise covered in the policy statement, such as "a proposed significant project * * *." The action of the three Commissioners in disavowing EEOC Order No. 365, also discussed previously, does not--whatever its effect may be--establish any affirmative guidelines or requirements concerning the use of funds. We understand that, while several efforts have been made to seek a policy on contracting and spending procedures, this matter has never formally come before the full Commission.

Our Office neither can nor should attempt to delimit in the abstract what contracts or other expenditures involve substantive or policy issues which should be submitted to the full Commission. Accordingly, in the absence of an affirmative Commission policy in this regard, we have no real basis for questioning the Chairman's judgment that particular transactions may be undertaken without Commission approval. At the same time, we believe that adoption by the Commission as a body of a general policy on contracting and spending procedures is both legally appropriate and desirable under the present circumstances.

On the basis of the statutory provisions and legislative history discussed herein, it is our opinion that the full Commission has authority to establish reasonable standards to govern contracts and other uses of funds, including requirements for Commission approval of transactions of a certain nature or amount. Thus, in our view, the Commission's substantive authority and responsibility as a body renders

it the proper source for separating policy matters from administrative matters; and the Chairman's administrative authority must be considered subordinate to such Commission determinations so long as they are not patently unreasonable or excessive. It also seems to us that adoption of an affirmative Commission policy in this regard is the only viable solution to the problems which prompted three Commissioners to write to us. Absent such a policy, the Chairman is left to operate essentially in a vacuum, with the unfortunate result--evident from the letter of the three Commissioners as well as the other materials submitted to us in connection with this matter--that disputes arise on a case-by-case basis with no clear standards for their resolution. We believe that this situation is not in the best interests of either the Chairman or the other Commissioners; and that it cannot help but interfere with the efforts and ability of the Commission to carry out its statutory functions. Finally, we note that problems involving the relationship between the Chairman and other Commissioners, including those relating to contracting and spending matters, have been the subject of congressional interest and concern. See Hearings before a Subcommittee of the House Committee on Appropriations, 92d Cong., 2d sess., on Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1973 (Part 4), 866-919.

For the foregoing reasons, we recommend that the matter of whether, and to what extent, proposed contracts and other uses of funds should require Commission approval be presented before, and considered by, the Commission as a body; and that any determinations resulting from this process, under the Commission's parliamentary procedures, be promulgated as a formal and affirmative Commission policy. Since this is a recommendation for corrective action to be taken by the Commission, it is subject to the requirements of section 236 of the Legislative Reorganization Act of 1970, approved October 26, 1970, Pub. L. 91-510, 84 Stat. 1140, 1171, 31 U.S.C. 1176.

James B. Stacks

Comptroller General
of the United States



January 29, 1975

MEMORANDUM FOR THE EEOC FILE
FROM: PHILLIP AREEDA



We received various materials complaining about John Powell's administration of the EEOC.

I sent these materials to the Justice Department on January 22, 1975 for an impression from their more experienced observers of whether these materials suggested any criminal activity.

Jack Keeney and Larry Silberman suggested that there is enough material to warrant further inquiry, although not necessarily an FBI inquiry at this stage. They suggested that OMB be asked to broaden its inquiry already underway into matters of waste, irregularity in personnel accounts, etc. I sent Paul O'Neill a copy of the materials and he agreed to broaden their inquiry.

Justice also suggested that the Civil Service General Counsel's office has the capacity to examine ethical violations. I sent a copy of the materials to Dudley Chapman with a request that he ask the Civil Service Commission to make such an inquiry.



EEUC
file

Tuesday 2/11/75

11:10 Stan Scott advises that he feels we should have Mitchell in before Mr. Areeda's meeting with Chairman Powell, which he understands will be Thursday.

Jane said they have postponed the meeting with Powell. (I have so advised Scott's office.)

Mr. Areeda feels Paul O'Neill should also be invited to the meeting.

When would you like it scheduled?

And who do you want invited?

2/13
Scott will want



Monday 2/10/75

3:35 Stan Scott advises he will be able to meet with you later in the week -- after Wednesday.

Subject: EEOC chairmanship and other matters.

Those attending will be Mr. Areeda, Bill Walker and Mr. Scott.

*Mr. Areeda feels Paul O'Neill
should also be invited.*



EEOD

Wednesday 2/12/75

7:40 Mr. Areeda:

John Powell would like you to call him in the morning --

634-6700

private line

634-1998

But he wanted me to give you the following message:

"It has been reported, and it is true, that I have been considering at least, as chairman, the feasibility of issuing guidelines with respect to layoff -- what we think employees should do before layoff. What we would like to do is explore the feasibility of other cost-cutting things before they lay off people. That's all we've ever been thinking. Probability is that no such guidelines will be issued -- this is a matter now before the courts and it might not be -- it would not be.

"I hope that any matter which would be of concern to either Mr. Buchen or Mr. Areeda would be expressed either to me by phone or by my coming to the office for discussion. What I am doing now is shadowboxing. I don't like that.

"I thought Mr. Areeda would be interested in knowing that the likelihood of this agency issuing guidelines in view of the fact that this matter is being considered in courts is not likely."

I am not sure I got every word -- as he was sort of "going on" -- but that is the essence ----- at the end, he said I could just tell you that final statement.

He wanted you to know this and then would like you to be in touch with him or let him know a good time for him to call you.

Eva



Tuesday 2/11/75

11:10 Stan Scott advises that he feels we should have Mitchell in before Mr. Areeda's meeting with Chairman Powell, which he understands will be Thursday.

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Monday 2/10/75

*mtg
after
2/12*

3:35 Stan Scott advises he will be able to meet with you later in the week -- after Wednesday.

Subject: EEOC chairmanship and other matters.

Those attending will be Mr. Areeda, Bill Walker and Mr. Scott.



THE WHITE HOUSE
WASHINGTON

February 21, 1975

MEMORANDUM FOR: BILL WALKER
FROM: PHIL AREEDA P.A.
SUBJECT: EEOC

Upon receiving suggestions that all was not well at EEOC, we first made some preliminary inquiries of our own. On January 22, 1975, I asked the Justice Department for a preliminary review of the material that had been submitted to us. Justice suggested that the matter was not ripe for an FBI investigation, but suggested that further inquiry be made through OMB and the Civil Service Commission. This is being done.



January 29, 1975

MEMORANDUM FOR THE EEOC FILE

FROM:

PHILLIP AREEDA

We received various materials complaining about John Powell's administration of the EEOC.

I sent these materials to the Justice Department on January 22, 1975 for an impression from their more experienced observers of whether these materials suggested any criminal activity.

Jack Keeney and Larry Silberman suggested that there is enough material to warrant further inquiry, although not necessarily an FBI inquiry at this stage. They suggested that OMB be asked to broaden its inquiry already underway into matters of waste, irregularity in personnel accounts, etc. I sent Paul O'Neill a copy of the materials and he agreed to broaden their inquiry.

Justice also suggested that the Civil Service General Counsel's office has the capacity to examine ethical violations. I sent a copy of the materials to Dudley Chapman with a request that he ask the Civil Service Commission to make such an inquiry.



THE WHITE HOUSE
WASHINGTON

January 22, 1975

MEMORANDUM FOR:

LAURENCE H. SILBERMAN
DEPUTY ATTORNEY GENERAL

FROM:

PHILLIP AREEDA *PA*
COUNSEL TO THE PRESIDENT

I attach two memoranda (with their attachments) prepared by Jay French summarizing the various allegations that have been made against Chairman Powell of the EEOC.

It appears that some of these allegations may reflect personality conflicts within the Commission. Yet, some of the allegations, particularly those concerning "wasteful contracting", might imply the need for further inquiry when examined by Justice Department officials experienced in the detection of corrupt and illegal practices.

Could you advise me whether the enclosures suggest improprieties of sufficient dignity to warrant further inquiry. I would appreciate an oral and preliminary response as early as you find convenient.

CRIMINAL DIVISION

JAN 24 1975

Received Fraud Section



76
EXEC
1-24

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

December 6, 1974

FOR: Phillip Areeda
FROM: Jay French
SUBJECT: Allegations of misconduct against the Chairman
of the Equal Employment Opportunity Commission

Allegations of misconduct have been made against John Powell, Jr., who was appointed in January 1974, to a five-year term, as Chairman of the Equal Employment Opportunity Commission (EEOC). The allegations are brought by the other members of the Commission and the General Counsel. Set forth below is a discussion of these charges, the law pertinent to such conduct and certain available courses of action.

The allegations against Powell may be broadly listed as follows:

- a. Interference in Purex Litigation.
- b. Unilateral Issuance of Contracts.
- c. Waste of Funds.
- d. Irregularities in Chairman's Accounts.
- e. Lack of Cooperation with Other Commissioners.
- f. Mistreatment of Commission Personnel.
- g. Inefficient Accounting and Overexpenditure of Appropriated Funds.

Following is a discussion in greater detail about each of the above-listed categories.

- a. Interference in Purex Litigation.

Allegations: The Chairman met with an officer of a corporate defendant, in a case presently before a Federal Court for violation of



Title VII, and offered to remove the case from the court and reopen an administrative compliance review. The meeting, followed by a letter confirming the agreement, was held without the knowledge or agreement of the Commission or the General Counsel. It is alleged that the Chairman interfered with and undermined this litigation.

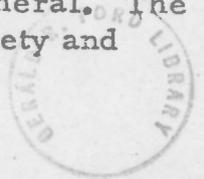
Discussion: The Chairman has no statutory authority to interfere in litigation which was properly commenced by the Commission. The Commission alone, may bring a civil action if it is unable to secure a conciliation agreement. 42 U.S.C.A. § 2000 e-5 (f) (1). Also, by statute, the General Counsel shall have responsibility for the conduct of litigation. 42 U.S.C.A. § 2000 e-4 (b) (1). The rules of the Commission similarly make clear that it is the Commission which may bring civil actions, not any single Commissioner or the Chairman. 29 C.F.R. § 1601.25b (a). I conclude that the Chairman's attempted action is without legal authority, although, I find no specific unlawful conduct. At the very least, the interference was highly improper and gives the appearance of partiality and preferential treatment.

b. Unilateral Issuance of Contracts.

Allegations: The Chairman has issued or attempted to issue contracts without the approval or the consent of the Commission. The contracts involved are valued in millions of dollars and some are listed on the schedule in Tab A.

Discussion: The contracts in controversy are of two kinds; those which relate to administrative matters and those which relate to substantive policy decisions. The issue is complicated because the Chairman is by statute responsible for administrative operations on behalf of the Commission. 42 U.S.C.A. § 2000 e-4. The Chairman is of the opinion that he may issue most contracts under this authority. He believes that all administrative contracts are clearly within his purview. As to contracts dealing with substantive matters, he believes that it is only necessary for the Commission to pass on general policy before he is free to administratively issue contracts pursuant to the general policy decisions.

The legal arguments on this subject are very detailed and have already brought about decision papers and memorandums from the Commission, the Chairman, the General Counsel and the Comptroller General. The simplest summary is that there have been hints of impropriety and



attempts to usurp authority. There is no clear allegation of unlawful activity. The attached decision of the Comptroller General, September 19, 1974, is at Tab B.

c. Waste of Funds.

Allegations: The Chairman has wasted appropriated funds by issuing unnecessary contracts or contracting to pay more than the value of the service to be performed. The Chairman unilaterally approved a move of the Commission's headquarters to a new building. Further, he issued appropriate contracts to consummate the move, at a cost in excess of \$1,000,000. This expenditure included \$32,000 for a private kitchen and bath in the Chairman's new office, while only \$23,500 was charged for the physical move of the headquarters. A space study was authorized for \$187,000. On another occasion, the Chairman issued a contract for \$125,000 to produce a Contract Management manual which the other Commissioners believed could have been produced within the Commission for \$10,000.

Discussion: The agreement to expend these funds is not unlawful if the Congress authorized these actions and appropriated funds for their use. 31 U.S.C. § 665 (a)* However, it is probable that such expenditures would be considered highly improper and the result of poor management.

d. Irregularities in Chairman's Accounts.

Allegations: In a Memorandum of December 2, 1974, from Dick Cheney to the White House Counsel, an allegation was noted that the Chairman had personal irregularities in his travel and expense accounts. There is no other reference to this matter in the other material.

Discussion: All claims for reimbursement of travel expense are submitted on Government Form No. 1012, August 1970. Each form contains a warning that a knowingly false, fictitious or fraudulent claim may result in prosecution and the imposition of a fine and imprisonment. 18 U.S.C.A. § 287.

* See also 41 U.S.C.A. § 11 and 12, prohibiting contracts in excess of appropriations and those which are not authorized.



e. Lack of Cooperation with Other Commissioners.

Allegations: The Chairman has acted in a number of matters without the approval and advice of the other members of the Commission. On November 11, 1974, the Commission agreed to create a new organizational structure based upon a report of a management consulting firm that had been retained to make a study. Thereafter, the Chairman issued a directive to the staff to disregard this Commission decision. Also, the Chairman has not consulted the Commission as a body about the following:

- (1) Submission of a supplemental budget request to the OMB.
- (2) Allotment of personnel positions or appointments and discharge of heads of major administrative units.
- (3) Selection or approval of major Tract I Cases for processing like Sears, General Motors, and General Electric.
- (4) Negotiations and agreements with the AFL-CIO on major policy concerning processing charges.

In another example, the Commission as a body passed a resolution directing the audit staff to conduct a thorough investigation of the Financial Management Division upon the belief that this Division's monthly financial reports were inaccurate. The Chairman, at first, refused to allow the audit. Although, the audit was commenced, two interim reports concerning this audit have been withheld from the members of the Commission by order of the Chairman. The Chairman has reportedly threatened to discharge the Chief of the audit staff if these interim copies are provided to the Commissioners.

Discussion: It is doubtful that the Chairman has acted unlawfully with regard to the above matters since he has a basic statutory authority to handle the administrative affairs of the agency. However, such allegations are evidence of highly offensive conduct and are the result of poor management ability.

f. Mistreatment of Commission Personnel.

Allegations: The Chairman has intimidated and harassed employees by: reprimanding them in front of others, threatening to and actually summarily discharging them, telephoning personnel at home at all hours, and directing them to report to his office on weekends. As a result of



these allegations, morale is described as very low. Senior staff personnel are resigning and seeking new positions with other agencies.

Discussion: Such intimidation and harassment, however ill-advised or representative of poor judgment, is not unlawful.

g. Inefficient Accounting and Overexpenditure of Appropriated Funds.

Allegations: An example of inefficient accounting has already been cited above in paragraph e. concerning the Financial Management Division. Additionally, it is alleged that the Chairman has knowingly overexpended appropriated funds.

Discussion: The Director of the Office of Management and Budget is already reviewing the allegation of overexpenditure of appropriated funds under the Anti-Deficiency Act. It is unlawful for an officer of the United States to authorize an expenditure under any appropriation or fund in excess of the amount available therein, and it is similarly prohibited for an officer to involve the Government in any contracts in advance of appropriation, unless such contract is authorized by law. 31 U. S. C. A. § 665.

A summary of the above discussions does not disclose any unlawful conduct per se, although, it does indicate poor management ability and the commission of certain improprieties. The nature of these allegations demands consideration of an investigation and the removal or suspension of Chairman Powell.

The Federal Bureau of Investigation could be requested to conduct an investigation to determine whether the Chairman had violated any section of Chapter 11 of Title 18 dealing generally with bribery, graft and conflicts of interest when he interfered in the Purex litigation. Also the FBI could be asked to investigate the alleged irregularities in the Chairman's travel and expense accounts to determine whether there are grounds to believe the Chairman violated 18 U. S. C. § 287.



An investigation into any budget irregularities should be conducted by the Office of Management and Budget pursuant to 31 U. S. C. A. §§ 21 and 665. If such irregularities are determined to exist, they must be reported to the President and the Congress.

With regard to the charge that the Chairman unilaterally and improperly issued numerous contracts, on behalf of the Commission, I recommend no action because the Comptroller General, the Commission as a body, and the General Counsel of the Commission has each expressed an opinion on this issue. Further, the General Accounting Office has sufficient statutory authority to review all public contracts.¹ Similarly, I do not recommend any action concerning the broad allegation of lack of cooperation with the other Commissioners. This is a general charge, the specifics of which would be covered in other investigations.

Finally, with regard to the alleged mistreatment and harassment of Commission personnel, it might be wise to request the Civil Service Commission to make a review of those personnel actions at the EEOC which appear improper.

In addition to considering the necessity for these investigations, it is helpful to review the President's power to remove public officers from their posts. The President has unlimited authority to remove any appointed official who performs an administrative function in the Executive department. Humphrey's Executor v. United States, 295 U. S. 602 (1935); Myers v. United States, 272 U. S. 52 (1926). This authority is inherent in the President and the Congress cannot constitutionally restrict it. Myers, supra. And, if the official is appointed to a primarily administrative body with executive functions, it is clear that the President may remove the appointee for any reason unless the Congress manifests a clear legislative intent that the President is not to have such power. Morgan v. Tennessee Valley Authority, 6th cir., 115 F. 2d 990 (1940).² Such power to remove, for any reason, may be exercised irrespective of whether the statute states specific grounds for removal. Morgan, supra.

However, the President may not remove an appointee to an agency whose function is adjudicatory and whose independence from the executive whim is necessary for the achievement of its purpose, unless the President does so for the grounds stated in the statute. Humphrey's, supra. See also Wiener v. United States, 357 U. S. 349 (1958).

1. The Comptroller General shall report to the Congress every expenditure and contract made in violation of the law, and he shall make such investigations as the Congress requests. 31 U. S. C. A. § 53 (c) and (d). See also 41 U. S. C. A. § 11 and 12.
2. cert. den. 312 U. S. 701 (1941).

In Humphrey and Wiener, the Supreme Court held that the Federal Trade Commission and the War Claims Commission were independent regulatory agencies with adjudicatory functions. In Humphrey at pages 620-621, the Supreme Court noted that the Federal Trade Commission must issue a complaint stating its charges and giving notice of a hearing. Further, the respondent is given the right to appear and show cause why an order should not be issued to cease and desist the unlawful competitive practice. If the Commission finds the method of competition prohibited by its statute, it must report its findings of fact and issue such an order. Should the respondent disobey the order, the Commission may apply directly to the circuit court of appeals for enforcement.

The Congress created the Equal Employment Opportunity Commission in Title VII of the Civil Rights Act of 1964 and the powers and duties of the Commission were broadened to include certain enforcement powers in 1972. Pub.L. 88-352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104. The Commission's function however does not indicate that it is adjudicatory in nature, but rather that it is primarily an administrative agency. By statutory authority, the Commission issues or receives charges which are made in writing under oath. It then serves a notice of the charge upon the respondent and then promptly conducts an investigation to determine if there is reasonable cause to believe that the charge is true. If such a determination is made, then the Commission attempts to eliminate the unlawful practice by informal methods. It is noteworthy that nothing which is said or done during this informal stage may be subsequently introduced into evidence without the consent of all parties. If the informal method fails, the Commission may bring a civil action in any United States district court to enjoin the respondent from engaging in such unlawful employment practice. The trial in the district court is a thorough hearing of the case and not just a determination of whether or not to enforce any order or decision of the Commission.

Based upon the foregoing discussion, I conclude that the President could remove Chairman Powell from his office without stating any grounds for his action.

In addition to the power of removal, the President could designate any other member of the Commission to serve as Chairman. 42 U. S. C. A. § 2000 e-4 (a).



In Humphrey and Wiener, the Supreme Court held that the Federal Trade Commission and the War Claims Commission were independent regulatory agencies with adjudicatory functions. In Humphrey at pages 620-621, the Supreme Court noted that the Federal Trade Commission must issue a complaint stating its charges and giving notice of a hearing. Further, the respondent is given the right to appear and show cause why an order should not be issued to cease and desist the unlawful competitive practice. If the Commission finds the method of competition prohibited by its statute, it must report its findings of fact and issue such an order. Should the respondent disobey the order, the Commission may apply directly to the circuit court of appeals for enforcement.

The Congress created the Equal Employment Opportunity Commission in Title VII of the Civil Rights Act of 1964 and the powers and duties of the Commission were broadened to include certain enforcement powers in 1972. Pub.L. 88-352, Title VII, § 706, July 2, 1964, 78 Stat. 259; Pub.L. 92-261, § 4, Mar. 24, 1972, 86 Stat. 104. The Commission's function however does not indicate that it is adjudicatory in nature, but rather that it is primarily an administrative agency. By statutory authority, the Commission issues or receives charges which are made in writing under oath. It then serves a notice of the charge upon the respondent and then promptly conducts an investigation to determine if there is reasonable cause to believe that the charge is true. If such a determination is made, then the Commission attempts to eliminate the unlawful practice by informal methods. It is noteworthy that nothing which is said or done during this informal stage may be subsequently introduced into evidence without the consent of all parties. If the informal method fails, the Commission may bring a civil action in any United States district court to enjoin the respondent from engaging in such unlawful employment practice. The trial in the district court is a thorough hearing of the case and not just a determination of whether or not to enforce any order or decision of the Commission.

Based upon the foregoing discussion, I conclude that the President could remove Chairman Powell from his office without stating any grounds for his action.

In addition to the power of removal, the President could designate any other member of the Commission to serve as Chairman. 42 U. S. C. A. § 2000 e-4 (a).



There are a great many possible combinations of actions which the President might take. Set forth below are the four principal actions.

- A. Request FBI/OMB investigations
- B. Removal without cause
- C. Suspension
- D. Designation of a new Chairman

The above actions may be arranged in any desirable combination. For example, the President could investigate and as a result either suspend or remove the Chairman. On the other hand, the President could suspend and then investigate and finally remove Powell. I recommend that the President immediately designate a new Chairman pursuant to his authority in 42 U.S.C.A. § 2000 e-4 (a), and request the FBI and OMB to investigate the allegations which have been set forth above. I believe this is the best course because instinctively I believe Chairman Powell will resist his removal from office. The designation of a new Chairman is a reasonable course of action in light of the obvious poor management ability which Chairman Powell possesses. If the investigations prove negative, then Powell could remain on the Commission. On the other hand, if the investigations reveal evidence of unlawful conduct, Powell's resignation could be requested immediately. This course of action sidesteps the entire issue of the President's power to remove officers from their positions. It therefore insures that Powell would never have a legal issue on which he could challenge the President's decision.



TAB A

<u>Contractor (or Subject)</u>	<u>Value (in Dollars)</u>	<u>Date Issued</u>	<u>Comments</u>
Opportunity System, Inc.	320,000	March 11, 1974	
	60,000	March 11, 1974	
	150,000	March 11, 1974	subsequently cancelled
Opportunity System, Inc.	360,000	unknown	considered by Chairman but not granted because OSI was proving unable of delivering on its earlier commitments
Clinical Training Program (6 contracts)	575,548	June 26, 1974	Commission debated and agreed to issue; Chairman then acted without approval by issuing them
Lawyers Committee Contract	338,873	unknown	\$52,000 was paid out although contract was not approved by Commission
Training Center Contract	280,000	unknown	Chairman recommended but Commissioners rejected this contract. Commissioners issued the same contract to a different firm for \$207,000



TAB B

File
E

9/20/74



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-167015

September 19, 1974

The Honorable John H. Powell, Jr., Chairman
Equal Employment Opportunity Commission

Dear Mr. Powell:

Enclosed is a copy of our decision of today concerning the administrative authority of the Chairman of the Equal Employment Opportunity Commission.

As our decision contains a recommendation for corrective action to be taken by the Commission, i.e., formal consideration and adoption by the Commission as a body of an affirmative policy concerning contracting and spending procedures, it is being transmitted by letters of today to the House and Senate Committees on Government Operations and Appropriations. Your attention is directed to section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. 1176, which requires the submission of written statements of the action to be taken with respect to our recommendation. The statements are to be sent to the House and Senate Committees on Government Operations not later than 60 days after the date of this letter, and to the House and Senate Committees on Appropriations in connection with the first request for appropriations made by the Commission more than 60 days after the date of this letter.

We would appreciate advice of whatever action is taken on our recommendation.

Sincerely yours,

Comptroller General
of the United States

Enclosure

cc: The Honorable Luther Holcomb, Vice Chairman
The Honorable Colston A. Lewis, Commissioner
The Honorable Ethel Bent Walsh, Commissioner



SEP 19 1974

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Equal Employment Opportunity Commission

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We would appreciate advice of whatever action is taken on our recommendation.

Sincerely yours,

(SIGNED) ELMER B. STAATS

Comptroller General
of the United States

Enclosure

cc: The Honorable Luther Holcomb, Vice Chairman
The Honorable Colston A. Lewis, Commissioner
The Honorable Ethel Beak Walsh, Commissioner

sca





FILE: B-167015

DATE: September 19, 1974

MATTER OF: Administrative authority of the Chairman of the
Equal Employment Opportunity Commission

- DIGEST: 1. Section 705(a) of Civil Rights Act, which vests responsibility for administrative operations of Equal Employment Opportunity Commission (EEOC), in the Commission Chairman, is analogous to provisions in several reorganization plans which assign administrative responsibilities to chairmen of independent commissions. Since background of these reorganization plans, which seems applicable under section 705(a), indicates generally that such provisions are not intended to supersede or diminish substantive powers of full commissions, EEOC Chairman's exercise of administrative functions is subject to general policies and directives of full Commission and cannot derogate from substantive responsibilities of full Commission.
2. Matters of basic Equal Employment Opportunity Commission staff organization and budget formulation, while in part administrative, normally involve substantive determinations of legitimate concern to full Commission, and spending and contracting matters are in part administrative but may raise substantive issues which should be determined by full Commission. While GAO is not in position to delimit such substantive issues and therefore cannot in abstract question Chairman's judgment as to whether particular transactions should be submitted to full Commission, Commission as a body can and should formally consider and adopt affirmative policy in this regard.

This decision to the Equal Employment Opportunity Commission (EEOC) is in response to a request by three Commissioners of EEOC for our interpretation of that portion of section 705(a) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-4(a), which in establishing EEOC provides, quoting from the Code:

"* * * The Chairman shall be responsible on behalf of the Commission for the administrative operations of

the Commission, and shall appoint, in accordance with the civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of Title 5. * * *

The three Commissioners who have written to us refer to a difference in interpretation of section 705(a) between the Chairman and other Commissioners in terms of what EEOC activities must be submitted to and decided by the Commission as a whole. Of particular concern, it is said, is a continuing controversy over EEOC contracts which the Chairman believes he may approve and execute without consideration and approval by the full Commission. Accordingly, our opinion is requested concerning the respective roles and responsibilities of the Chairman and of the Commission under section 705(a).

The request of the three Commissioners also refers to the relative roles and responsibilities of each individual Commissioner under section 705. However, it appears that the context presented raises issues only in terms of the Chairman vis-a-vis the other Commissioners as a body. In addition, the three Commissioners requested that pending issuance of our opinion a freeze be placed on expenditures, all pending contracts be held in abeyance, and no new contracts be entered into unless such actions are approved by a majority of the full Commission, but we would have no basis for taking such action.

Subsequent to the request for our opinion, we received a letter from the Chairman of EEOC transmitting a copy of a memorandum to him dated March 14, 1974, from the General Counsel of EEOC, captioned "Authority of the Chairman of EEOC." This memorandum addresses the issues raised by the three Commissioners, and provides a focal point for our consideration of these issues.

In terms of the general effect of section 705(a), the General Counsel's memorandum states:

"The Equal Employment Opportunity Commission was structured so as to embody the ongoing Congressional intent, as reflected in the structure of other independent executive agencies, that the administrative responsibility for the day to day operation of the Agency be centralized in a chief executive officer. As a general rule, where the Chairmen of similarly structured agencies have been given the executive and administrative functions, such functions include (1) the appointment and supervision of personnel employed under the



agency, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds. See Reorganization Plan No. 9 of 1950 for the Federal Power Commission (effective May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, historical note to 16 U.S.C.A. Section 792); Reorganization Plan No. 10 of 1950, for the Securities and Exchange Commission (15 F.R. 3175, 64 Stat. 1265, 15 U.S.C.A. Section 78d). In other similarly structured multi-member agencies, as in the Commission, the collective body makes policy determinations and promulgates substantive regulations. The full Commission has authority to determine policy objectives of activities through which EEOC carries out its statutory mandate.

* * * * *

"While policy determinations must be made by the full Commission as a body, the Chairman does have the responsibility and authority for implementing all policy objectives once the Commission has made its determination. The adoption of the agency's basic strategy for discharge of its statutory mandate and, incident thereto, the overall allocation of resources among the operating divisions or program functions of the Commission, are matters of policy determinable by the Commission as a body. The specific implementation of such a strategy, however, is the assigned responsibility of the respective program managers of the Commission, for which they report to the agency's administrative head, the Chairman. The establishment of the major program units within any agency assumes that these units will use their particular expertise and experience to implement and give meaning to the policy decisions of the governing body. Accordingly, where the Commission has set the policy in a particular matter designed to implement most effectively the principles of Title VII [of the Civil Rights Act], it is the Chairman's responsibility through the staff of the Commission to use the special skills and expertise of the staff to see that these aims are properly carried out. This same principle should apply to the allocation of resources for enforcement. Once the Commission has determined that the most effective enforcement of Title VII requires that certain strategies of enforcement be followed, and has set out the broad criteria, it becomes the responsibility of the Chairman through the appropriate operational units to implement that policy."



the relationship between the Chairman's administrative authority and the authority of the Commission as a whole to determine policy—

"* * *the legislative history of the Hoover Commission report * * * reveals that it was Congress' intent, in multi-member bodies that, in spite of the statutory provisions giving the Chairman of such bodies primary responsibility for administrative matters, that the Chairman's primary responsibility for administration should not supplant the ultimate authority of the entire Commission on matters which are of major significance to the agency."

The memorandum elaborates upon the foregoing observation in an accompanying footnote:

"In fact the 1950 Congressional debate on a reorganization plan for the Interstate Commerce Commission transferring administrative responsibilities to the Chairman reveals the intent of Congress that where there is a conflict between the Chairman of a multi-body agency and the other members over what is procedural or administrative, and what is policy, the Commission as a whole may overrule the administrative decision of the Chairman, 96 Cong. Rec. 7163-7164, May 7, 1950."

The General Counsel's memorandum indicates and discusses several specific examples of the Chairman's administrative powers as follows:

Appointment and removal of employees; determination, organization and allocation of staff resources. The General Counsel states that, under section 705(a), the Chairman has authority subject to Civil Service requirements, to appoint, remove and fix the compensations of most EEOC personnel, and to determine the number and grade of personnel needed in any given area. Inherent in the Chairman's staffing authority, the General Counsel states, is authority to structure administrative offices and units and to allocate their work so as to provide for efficient operations. He adds:

"* * * The authority to reorganize the administrative units of the Commission can also be said to be contained in the specific statutory provision of Section 705(a) giving the Chairman authority to appoint officers and employees he deems necessary to assist the Commission in the performance of its functions. Thus the Chairman has



the authority to restructure or reorganize units of the Commission in the interest of efficiency of operation. While it can be argued that a complete reorganization of the administrative structure of the agency is an administrative or procedural matter clearly within the Chairman's authority, unilateral action to accomplish such a reorganization would be unwise, as such a move would fall within the category of actions which are of such 'major significance to the agency' that the Chairman's responsibility should not be exercised without consulting the entire Commission."

Delegation of authority. The Chairman has authority to delegate to subordinates performance of his administrative responsibilities.

Budget formulation. The General Counsel notes that the Chairman exercises primary responsibility for preparation of the EEOC budget. However, since budget submissions involve policy decisions, budget proposals and any significant modifications must be approved by the full Commission.

Contracts. The award of contracts--those made to implement Commission policy decisions as well as those dealing with normal administration--is said to be an administrative responsibility of the Chairman. On the other hand, the General Counsel goes on to observe:

"* * * The award of certain contracts, however, may peculiarly fall within the realm of policy determinations and should therefore properly be approved by the Commission as a whole. This would include a contract which by the very fact of authorization is a policy determination, as for example, a contract for a large expenditure of funds which would effect program resource allocations to the point of establishing policy."

In a memorandum to the Chairman dated July 15, 1974, the Commission's General Counsel further elaborated upon his view of the Chairman's contracting authority. The July 15 memorandum is discussed in more detail hereinafter.

The General Counsel's memorandum discusses several matters which have arisen apparently as a result of the controversy between the Chairman and other Commissioners. On November 30, 1973, EEOC Office of Management issued EEOC Order No. 365, to establish an agency policy on the use of appropriated funds, including contracting. This order



provides that the Chairman has prime responsibility for the lawful expenditure of appropriated funds in support of Commission programs and objectives, and that such authority may be delegated by the Chairman to heads of the procuring offices or units within EEOC. In December 1973 three Commissioners issued a memorandum disavowing EEOC Order No. 365, which declared that any contracting policy stated in the order was not based upon a Commission action and therefore that the order was void. The General Counsel comments:

"* * * If the three Commissioners involved view the authority to expend appropriated funds as the responsibility of the entire Commission rather than the Chairman, this could seriously impair the power of the Chairman to administer the agency efficiently, as he would be required to obtain the approval of the Commission for each expenditure necessary to the administrative operation of the Agency. This would clearly be an infringement of the administrative responsibility given to the Chairman by Section 705(a) and would clearly be counter to the Congressional purpose of centralizing administrative authority and responsibility in the Chairman. In any event, this area needs substantial further clarification."

Finally, the General Counsel refers to the following policy agreed to by the Commission on January 12, 1966:

"That the Executive Director submit for Commission approval (a) the first issue of any Commission publication; (b) any budget proposal or any significant modification thereof; (c) any proposed significant change in the Commission Table of Organization; and (d) any proposed significant project or conference!"

At a Commission meeting on February 12, 1973, a motion was adopted to the effect that the Chairman, on behalf of the Commission, instruct the Executive Director to adhere to the 1966 policy agreement. The General Counsel comments:

"The ramifications of this policy agreement by the Commissioners on the administrative authority of the Chairman should be examined. Submission of the first issue of any Commission publication, i.e., documents to be distributed or used outside the Commission, can be said to be a legitimate prerogative of the Commissioners, since such publications in many respects will reflect Commission policy and



- (2) the distribution of business among such personnel and among administrative units of the Commission, and
- (3) the use and expenditure of funds.

"(b) (1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

"(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

"(3) Personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman shall not be affected by the provisions of this reorganization plan.

"(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes."

Identical language, except for references to the agency concerned, is continued in sections 1 of Reorganization Plan No. 9 of 1950, 64 Stat. 1265 (Federal Power Commission), and Reorganization Plan No. 10 of 1950, 64 Stat. 1265 (Securities and Exchange Commission). Substantially similar language is found in section 1 of Reorganization Plan No. 1 of 1969, 83 Stat. 859, dealing with the Interstate Commerce Commission.

The foregoing reorganization plans implemented the recommendation by the United States Commission on Organization of the Executive Branch of the Government (the "Hoover Commission") that with reference to the regulatory agencies, "* * * all administrative responsibility be vested in the chairman of the commission." Recommendation No. 1, Report to the Congress on Regulatory Commissions, page 5 (1949). In support of this recommendation, the Hoover Commission observed, id. pp. 3-5:

"Purely executive duties--those that can be performed far better by a single administrative official--have been imposed upon these commissions with the result that these duties have sometimes been performed badly. The necessity



for performing them has interfered with the performance of the strictly regulatory functions of the commissions.

* * * * *

"Administration by a plural executive is universally regarded as inefficient. This has proved to be true in connection with these commissions. Indeed, those cases where administration has been distinctly superior are cases where the administrative as distinguished from the regulatory duties have been vested in the chairman. There are many of these administrative duties. Their efficient handling will frequently make the difference between a commission's keeping abreast of its work or falling woefully behind."

At the same time, the record of consideration of these reorganization plans makes it abundantly clear that the administrative authority vested in the chairman of each commission was not intended to supersede or diminish in any way the substantive authorities and responsibilities of the commission as a whole. For example, the Senate Committee on Expenditures in the Executive Departments stated in reporting unfavorably a resolution to disapprove Reorganization Plan No. 8 of 1950:

"The single objective of plan No. 8 is to improve the organization, the administration, and the operation of the Federal Trade Commission by providing clear-cut channels of authority, by strengthening management and by eliminating confusion identified with 'multi headed' direction. It should be noted with all the emphasis that can be brought to bear that this reorganization plan in no way alters, modifies, or diminishes the substantive quasi-judicial or quasi-legislative functions of the Federal Trade Commission which are vested by statute in the Chairman and the Commissioners or the Commission as a whole. Beyond successful refutation, plan 8 retains those substantive functions in the Commission as provided by law.

"Nothing could be clearer than the statement of the President in his message transmitting plans 7 through 13 dealing with regulatory agencies to the Congress. It follows in part:

"In regard to the regulatory agencies, the plans distinguish between two groups of functions



necessary to the conduct of these agencies. One group includes the substantive aspects of regulation--that is, the determination of policies, the formulation and issuance of rules, and the adjudication of cases. All these functions are left in the board or commission as a whole. The other group of functions comprises the day-to-day direction and internal administration of the complex staff organizations which the commissions require. These responsibilities are transferred to the chairman of the agencies, to be discharged in accordance with policies which the commissions may establish. The chairman is to be designated in each agency by the President from among the commission members.'

"It is equally clear that the Commission on Organization of the Executive Branch of the Government was firmly convinced that the consummation of its recommendations, upon which plan No. 8 is based, would have no effect whatsoever upon the quasi-judicial or the quasi-legislative functions of any regulatory agency. In referring to its important recommendation that all administrative responsibility be vested in the Commission Chairman, the Hoover Commission stated:

" This recommendation does not derogate from the statutory responsibilities placed upon the other members of the Commission. They remain exactly as they are, and because of the better functioning of the organization the Commission members will be enabled to discharge these responsibilities much more effectively.'" S. Rept. No. 1562, 81st Cong., 2d sess., p. 3.

In addition, as the EEOC General Counsel's memorandum points out, the Senate debate on a 1950 reorganization plan for the Interstate Commerce Commission (subsequently disapproved) indicated that where disputes arise as to what matters are procedural or administrative and what are substantive, the full commission should have the final say. 96 Cong. Rec. 7163-64 (May 7, 1950). See, also, the remarks of Senator O'Connor during Senate debate on Reorganization Plan No. 9 of 1950, 96 Cong. Rec. 7381 (May 22, 1950). Finally, section 1 of these reorganization plans expressly affirms the dominant role of the full commission on substantive matters by making each chairman's exercise of administrative



functions subject to general policies of the commission, and by including specific reservations of powers to the full commission.

As in the case of the reorganization plan provisions discussed above, we believe that section 705(a) of Civil Rights Act in vesting administrative responsibilities in the Chairman of the EEOC on behalf of the Commission contemplates that the exercise of such responsibilities is subject to general policies adopted by the Commission as a whole. The General Counsel apparently shares this view. We offer several observations concerning the specific matters discussed hereinabove.

While section 705(a) specifically authorizes the Chairman of EEOC to appoint and fix the compensation of officers and employees, this provision refers to the appointment of such officers and employees as "it"--the Commission--deems necessary. Accordingly, it appears that the Commission as a whole must pass upon the allotment of personnel positions. We agree with the General Counsel that the authority of section 705(a) concerning personnel carries with it the functions of day-to-day distribution of the Commission's work and direction of its staff. Compare section 1(a)(1) and (2) of the 1950 reorganization plans discussed previously. We cannot, however, concur fully in the General Counsel's broad statement of the Chairman's authority to restructure or reorganize the EEOC staff--particularly his statement that the Chairman's administrative authority could arguably support a complete reorganization without full Commission approval. Rather, we believe that organizational issues, inasmuch as they relate to effectiveness and efficiency in carrying out the agency's statutory functions and implementing substantive Commission actions, would generally be characterized as involving policy issues. We believe the reference in section 705(a) to the appointment of such personnel as the Commission determines necessary indicates that the Commission as a whole has a legitimate role in organizational matters. See, also, to the same effect, section 705(d) of the Act, which provides that the "Commission" may establish such regional or State offices as "it" deems necessary.

The General Counsel's memorandum recognizes that budget submissions generally involve policy decisions. Accordingly, he notes that while the Chairman exercises primary responsibility for budget preparation, budget proposals and any significant modifications thereof must be approved by the full Commission before submission to the Office of Management and Budget and to the Congress. We fully agree that budget submissions involve policy determinations; and we note that the 1950 reorganization plans discussed hereinabove expressly reserve to the full commissions the "reviewing of budget estimates and * * * determining



upon the distribution of appropriated funds according to major programs and purposes." Section 1(b)(4) of Reorganization Plan No. 1 of 1969, supra, dealing with the Interstate Commerce Commission, is even more specific in this regard:

"Requests for regular, supplemental, or deficiency appropriations for the Commission (prepared by or under the Chairman in pursuance of section 214 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. '22) and as affected by this reorganization plan) shall require the approval of the Commission prior to the submission of the requests to the Bureau of the Budget by the Chairman."

The latter portion of EEOC General Counsel's memorandum addressing the 1966 policy agreement appears to backtrack somewhat on this point by suggesting that the requirement therein for full Commission approval of "significant" budget modifications should be narrowly construed. It is notable that under the 1966 agreement, the Commissioners themselves have limited their review and approval to "significant" budget modifications. In view of the considerations discussed above, we do not believe that a requirement for Commission approval of all budget submissions would in any way conflict with the Chairman's administrative responsibilities. In any event, the same considerations indicate to us that the requirement for Commission approval of "significant" budget modifications should be construed and applied broadly. Put a different way, perhaps, we would assume that budget modifications would in most cases be significant in terms of policy matters.

The major difference of opinion between the Chairman and other members of the Commission apparently relates to the use of appropriated funds, with particular reference to contracting procedures. As noted previously, the General Counsel's March 14, 1974, memorandum to the Chairman expressed the opinion that contracts which are executed to implement policy decisions made by the Commission and those made in the conduct of normal administrative functions are within the administrative authority of the Chairman acting alone. At the same time, the March 14 memorandum recognized that contracts which fall within the realm of policy determinations should be approved by the full Commission. In a subsequent memorandum to the Chairman, dated July 15, 1974, the General Counsel discussed contracting authority in more detail as follows:



"* * * The routine awarding of contracts which carry out previously announced policies established by the Commission and/or which carry out its purely administrative operations are exclusively within the administrative responsibility of the Chairman. Most contracts, therefore, let in the ordinary course of business would be the exclusive responsibility of the Chairman.

"That administrative responsibility is, however, set within a framework of budgetary limitations and policy considerations. For example, it goes without saying that the awarding of any contract by the Chairman must be made within the budgetary capabilities of the Commission.

"Furthermore, there may be some contracts whose award would not normally be financed from general administrative appropriations or whose award would in effect establish a new Commission policy or alter a policy previously established by the Commission. In these instances, the awarding of such a contract would not be within the administrative operations of the Commission and would not therefore be within the exclusive responsibility of the Chairman."

The July 15 memorandum also addresses specifically the awarding of "clinical" grants (designed to develop expertise on the part of the private bar in handling equal employment cases under title VII of the Civil Rights Act) as follows:

"The decision to make grants for clinical programs, whether university or otherwise, falls outside the normal administrative function and is a policy decision. Even with respect to selecting particular institutions, there are a number of factors to be weighed such as community needs, ability of the institution to carry out functions etc. Under these circumstances, it is our view that the granting of clinical awards is a policy matter which should be approved by the Commission."

In a memorandum dated July 17, 1974, the Commission Chairman took exception to the General Counsel's July 15 memorandum concerning contracting authority. The Chairman objected to what he considered a basic change in position from the General Counsel's March 14 memorandum, and also disagreed with the General Counsel's conclusions concerning the "clinical" grants.



The actual making of expenditures and awarding of contracts or grants are, to a large extent, administrative functions. For example, section 1(a)(3) of the reorganization plans discussed hereinabove expressly vests commission chairmen with executive and administrative functions with respect to "the use and expenditure of funds." Thus we agree with the suggestion in the EEOC General Counsel's March 14 memorandum that to consider each and every use of funds as a Commission function would be inconsistent with the Chairman's administrative authority under section 705(a) of the Civil Rights Act. However, we also recognize, as does the General Counsel, that certain grants, contracts, and other expenditures may involve matters bearing upon legitimate substantive interests and responsibilities of the full Commission.

While the Commission as a body has adopted official policy statements and directives on certain issues concerning the relationship between the Chairman and the full Commission--as in the case of the 1966 "policy statement" discussed hereinabove--it appears that no formal action has ever been taken with specific reference to the use of funds. The 1966 policy statement does not require full Commission approval of spending or contract transactions as such; nor does it even address such transactions except to the extent that they may involve matters otherwise covered in the policy statement, such as "a proposed significant project * * *." The action of the three Commissioners in disavowing EEOC Order No. 365, also discussed previously, does not--whatever its effect may be--establish any affirmative guidelines or requirements concerning the use of funds. We understand that, while several efforts have been made to seek a policy on contracting and spending procedures, this matter has never formally come before the full Commission.

Our Office neither can nor should attempt to delimit in the abstract what contracts or other expenditures involve substantive or policy issues which should be submitted to the full Commission. Accordingly, in the absence of an affirmative Commission policy in this regard, we have no real basis for questioning the Chairman's judgment that particular transactions may be undertaken without Commission approval. At the same time, we believe that adoption by the Commission as a body of a general policy on contracting and spending procedures is both legally appropriate and desirable under the present circumstances.

On the basis of the statutory provisions and legislative history discussed herein, it is our opinion that the full Commission has authority to establish reasonable standards to govern contracts and other uses of funds, including requirements for Commission approval of transactions of a certain nature or amount. Thus, in our view, the Commission's substantive authority and responsibility as a body renders



it the proper source for separating policy matters from administrative matters; and the Chairman's administrative authority must be considered subordinate to such Commission determinations so long as they are not patently unreasonable or excessive. It also seems to us that adoption of an affirmative Commission policy in this regard is the only viable solution to the problems which prompted three Commissioners to write to us. Absent such a policy, the Chairman is left to operate essentially in a vacuum, with the unfortunate result--evident from the letter of the three Commissioners as well as the other materials submitted to us in connection with this matter--that disputes arise on a case-by-case basis with no clear standards for their resolution. We believe that this situation is not in the best interests of either the Chairman or the other Commissioners; and that it cannot help but interfere with the efforts and ability of the Commission to carry out its statutory functions. Finally, we note that problems involving the relationship between the Chairman and other Commissioners, including those relating to contracting and spending matters, have been the subject of congressional interest and concern. See Hearings before a Subcommittee of the House Committee on Appropriations, 92d Cong., 2d sess., on Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1973 (Part 4), 866-919.

For the foregoing reasons, we recommend that the matter of whether, and to what extent, proposed contracts and other uses of funds should require Commission approval be presented before, and considered by, the Commission as a body; and that any determinations resulting from this process, under the Commission's parliamentary procedures, be promulgated as a formal and affirmative Commission policy. Since this is a recommendation for corrective action to be taken by the Commission, it is subject to the requirements of section 236 of the Legislative Reorganization Act of 1970, approved October 26, 1970, Pub. L. 91-510, 84 Stat. 1140, 1171, 31 U.S.C. 1176.

James B. Stacks
 Comptroller General
 of the United States



THE WHITE HOUSE
WASHINGTON

March 17, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN

SUBJECT: Equal Employment Opportunity
Commission (EEOC)

1. Background: Conditions of mismanagement and dissension within the EEOC and its staff have led your staff to recommend to you that changes be made in the composition of the Commission (now consisting of four members, including Chairman John Powell, with one Democrat vacancy) and in the position of General Counsel (now held by William Carey).

The statute (42 U.S.C.A. §2000e et. seq.) provides:

"Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years . . . The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman."

"There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years."

Chairman Powell's term on the Commission started 15 months ago, and it does not expire until 1978. Counsel Carey took office in early 1973, and his 4-year term does not expire until 1977.

The statute makes no provision for removal from office of any of the Presidential appointees. However, the President has been held in the courts to have unlimited authority to remove any appointed official within the Executive branch. This principle was last restated



by the Supreme Court in a decision of 1926, and by a Circuit Court of Appeals in 1940. Yet this principle has been departed from in Supreme Court decisions of 1935 and 1958, which involved appointees to an independent regulatory agency or to one having adjudicatory powers.

It is the opinion of the Department of Justice that EEOC is not an independent regulatory agency or one having adjudicatory powers. Its functions are primarily to investigate and conciliate complaints of discrimination, although it is also entitled when it finds probable cause to bring court actions to have complaints adjudicated. Therefore, it is the further view of DOJ that you have removal power over the persons in question, based on the present state of the case law, but they do believe there is risk that litigation of the issue may in today's climate bring a contrary holding. Only on your authority to designate another member of the Commission as Chairman would there be no risk of litigation, because this designation is not for any specified term.

Although the statute is silent even on removal for cause, it could be argued that a better case for removal authority could be made if you acted to remove for cause. However, the DOJ raises a note of caution that a court may still require administrative due process before upholding removal for cause and could review the adequacy of the administrative finding of cause warranting removal.

On the question of whether an appointee who claims he has been unlawfully removed may get preliminary injunctive relief, the answer in the past would have been he could not because of his adequate remedy at law for damages. But as you know courts are currently giving unprecedented early injunctive relief, and the DOJ is concerned on this issue.

2. Positions taken by the appointees.

With much help from Dick Cheney and Bill Walker, I have sought the immediate resignations of Powell as both Chairman and Commissioner and by Carey as General Counsel. Carey says he will resign but only after Powell resigns and his resignation is announced. He contends that otherwise he can only be removed for cause. Powell indicates he may resign as Chairman on



Wednesday, because he knows you can readily remove him from that office, but he would only resign as a Commission member if and when he found another acceptable opportunity. He too thinks he is protected from removal except for cause.

3. Options

a) Send removal letter immediately explaining the concerns which have led to your actions but not predicating the removal on any administratively determined cause.

Pro argument:

-- A resolution quickly of two major personnel problems which if coupled with top-notch re-placements could lead to a much improved functioning of the Commission and a reduction in its vast case backlog.

Con arguments:

- Risk of litigation.
- Public reaction from those who would regard the steps as precipitous and unfair.
- Congressional offense at your defying the statutory terms of the appointees.

b) Removal only after administrative hearings and findings of adequate casue.

Pro arguments:

- Avoids risk of losing litigation on due process issue.
- Better public and Congressional reaction.

Con arguments:

- Delay and more turmoil before hearings can be completed.



-- Uncertainty over appropriate mechanism for hearings and findings when the arguments and evidence are likely to be extensive and confusing.

c) Removal of Powell as Chairman, interim designation of another member as acting Chairman, and naming of new Republican, when the next position for such an appointee opens in May 1975, who would be truly qualified to be designated as Chairman.

Pro argument:

-- Avoids risk of litigation and most risk of adverse public and Congressional reaction.

-- Would still permit trying to get resignations by persuasion.

Con argument:

-- Leaves prime sources of trouble in position to continue making difficulties.

4. Decision

Approve option "a" _____.

Approve option "b" _____.

Approve option "c" _____.

See me to discuss _____.



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THE WHITE HOUSE
WASHINGTON

February 25, 1975

TO: PHILIP BUCHEN ✓
FROM: STAN SCOTT *SS*

For Your Information

Henry
Dr. Lucas

FBI report
Bill Kendrick to fill vacancy.
Monday or Fulhouse?

JET MAGAZINE--WEEK OF MARCH 6/1975

Mitchell Backs Powell In EEOC Chairmanship Dispute

Clarence Mitchell's "baby," the Equal Employment Opportunity Commission, is running into flack left and right, and its chairman, John Powell, is on the carpet.

Various groups are asking the Harvard-trained lawyer to step aside for the sake of unity but

plaints long have been above the 100,000 mark. Leaders of the women's movement are charging that the EEOC is not enforcing its equal rights commitment.

But Mitchell is attempting to bridge the gap between Powell and the three other commissioners.

Behind the maneuvers--involving the strategems of leaders of

EEOC Chairman Secretly Censured

**Jack Anderson
and Les Whitten**

The peppercorn chairman of the Equal Employment Opportunity Commission, John Powell, has been secretly censured by his fellow commissioners for his bizarre behavior.

The secret minutes of a Feb. 11 session show that he was censured by a 3-to-0 vote after he twice stalked out of the meeting. The censure motion accused him of leaving the room "to break a quorum," exceeding his authority and indulging in "in-

out, and Powell magisterially "ordered the tape (which was recording the minutes) to be turned off. The chairman said 'have fun' to the three commissioners as he left."

When the abandoned trio recovered from their astonishment, Commissioner Ethel Walsh introduced the unprecedented censure motion, and the distinguished Telles seconded it. The vote was unanimous.

Yet the incredible episode was almost repeated at a second commission meeting on Feb. 19.

"A major impediment to the effective and efficient operation of this commission . . ." declares the memo with remarkable candor, "flows directly from your personal behavior. This behavior so lacks in understanding, sensitivity and honest compassion that" it is impossible for employees to respect the chairman.

The Carey memo recalled that Powell had embarrassed the commission in public recently by "abandoning the lectern at New Orleans in a personal pi-

high ranking and respected government official as having 'no guts'" and caused "debilitating" loss of morale by publicly threatening to fire staff members. This, avowed Carey, "is the essence of intimidation."

Aside from his arbitrary ways, Powell has taken some strange steps recently to inspire his troops. He distributed a memo to all employees, for example, reporting: "I was privileged this morning to attend the 23d Annual Prayer Breakfast. It was a truly inspiring experience."

February 19, 1975

IN REPLY REFER TO:

MEMORANDUM

TO: John H. Powell, Jr.
Chairman

FROM: William A. Carey *WAC*
General Counsel

SUBJECT: The Commission's Public Image

In a February 14, 1975 memorandum to Mr. Sharpe, Acting Director of the Office of Public Affairs, copies of which you provided me and twelve other Commission personnel, you express your concern about the "gross failure of this agency to get its story told." You have invited my comments, and those of others, about this problem.

This memorandum constitutes my personal comments, which I make because I share your concern. However, since I think the overall problems of the Commission are much broader than any possibly emanating from the Office of Public Affairs, I am taking this opportunity to enlarge my comments. Ordinarily, I would make these comments to you personally, and in private, as you might have done with Mr. Sharpe. I feel compelled, however, to use the more formal medium of the written word in an effort to present my comments in a cohesive, complete manner, a mode which my experience with you indicates would not have resulted from a personal conversation.

Let me say that while these comments go beyond the particular items of your memorandum to Mr. Sharpe, they deal with matters which I believe to be a major impediment to the effective and efficient operation of this Commission, its personnel, and its mission, matters which are of primary concern to me as General Counsel. It is also a major reason why I believe the Commission story



is neither being properly told nor properly heard. That impediment is harboured in the ultimate leadership of this Commission and flows directly from your personal behaviour. This behaviour frequently so lacks in understanding, sensitivity, and honest compassion that it precludes the maintenance of the level of respect essential for a Chairman to have in order to operate effectively.

The comments and suggestions set forth below are provided only in the interest of seeing this Commission well served. Each item is merely an example of a larger pattern of behaviour, and each has many other examples behind it.

I. Your Public Appearances

These appearances are most important because in large measure the public draws its conclusions about an agency from the conduct of its public officials. Abandoning the lectern at New Orleans in a personal pique over close questioning about the steel decree, and preempting the time of Judge Skelly Wright during your introduction at Los Angeles and then leaving the room during his presentation* are hardly means of getting this agency's story told in its proper perspective.

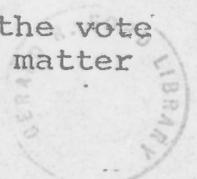
II. Your Conduct of Commission Business

Because of the semi-public nature of Commission meetings**, the Chairman has a special responsibility to conduct these meetings in a fair and even handed manner. The February 11, 1975, censure of you by your fellow Commissioners seems to ring the changes on this proposition.

However, I believe additional thoughts are appropriate in line with the Commission's policy that Roberts Rules of Order govern the conduct of Commission business.

* While stopping by at least one table to chat on your way out.

** E.G. The Freedom of Information Act requires that the vote of Commissioners taken at Commission meetings be a matter of public record.



The Chairman of a collegial body should act as a moderator of its meetings. He should withhold his views unless they involve superior knowledge likely to properly influence the outcome of the body's vote; and when this is the case he must surrender the chair when expressing his views. Not only do you not follow this basic parliamentary approach, you dominate every meeting with your lengthy views on virtually every subject.

The Chairman should set firm meeting dates, appear on time, and change the meeting dates only in extreme situations. No less is required since the busy schedules of so many people are involved.* Unfortunately, the times and dates of Commission meetings have at best become a guess.

III. Your Failure to Abide by Commission Policy

Inherent in the role of the Chairman is his responsibility to conduct Commission business in conformity with the expressed policy of his fellow Commissioners. Failure to do so not only creates serious internal conflicts among the Commissioners and the program directors, but it undermines public confidence in the integrity of the Commission's administrative process. As far as I have been able to determine, you follow the policies established by majority vote of your fellow Commissioners only when you feel that to do so serves your purposes. A few examples will suffice:

* In this regard I believe it appropriate to note your continued objections to the Commission's inability to obtain sufficient funding. Yet at the FY 76 OMB budget hearing you arrived 40 minutes late and despite OMB's request, your budget officer refused to begin the hearing until you arrived.



(1) Your failure to obtain Commissioner approval of major and costly Commission contracts.

(2) Your failure to obtain Commissioner approval (e.g. the 10 year history of the agency) of major publications.

(3) Your failure, upon their specific request, to provide the Commissioners with the true and accurate financial condition of the Commission. (Not only is it their right to have such information but it is their responsibility to have it in order to carry out their statutory responsibilities.)

(4) Your termination of Commission meetings at your own whim without any motion to adjourn even though the Commissioners express their desire to conduct important Commission business and even though they attempt, quite properly, to appeal your action.

Inherent in this part of my discussion is your apparent inability to understand that although you are the administrative head of the agency (with all the perquisites that position carries) the major business of the Commission must be carried on in joint cooperation with your fellow Commissioners. On that score you are but one of five Commissioners designated by Title VII.

IV. Your Continued Disparagement of Government Officials

This is perhaps the most serious flaw in your efforts to get the agency's story told because it sets one agency against another. Very recently, in the presence of myself, four members of my staff, and



other Commission personnel, on two occasions you described a high ranking and respected Government official as having "no guts." (Your comments at this meeting concerning your fellow Commissioners were equally disparaging as are many other comments concerning major Commission personnel.) I do not believe it requires discussion to demonstrate how debilitating such conduct also is concerning staff respect for the Chairmanship of this agency.

V. Your Attempted Intimidation of Commission Personnel

The Commissioners' February 11, 1975, censure of you speaks to this point in detail. However, I believe additional observations are appropriate. Often a change in mood on your part or desire to accomplish what you consider to be a significant goal is accompanied by the threat of firing Commission personnel. Central to this problem seems to be your inability to realize that discipline is a very personal matter and the discussion of it at the outset with the person involved should take place in private. A threat of discipline made in front of large numbers of people is not only bad management but is the essence of intimidation which can only destroy the morale of an agency.

A recent case in point is your unannounced visit to my office on February 12 at which time you collected members of my senior staff and three line attorneys. You began the meeting by hovering over one of my line attorneys and under the threat of discipline demanded to know who his "boss" is. What you were attempting to achieve escapes me. The point again is that this is hardly the way to get the agency's "story told."

VI. Your Disparagement of the Work of Your Own Program Heads

At the outset it should be understood that I am not suggesting that unsatisfactory work should be



tolerated. On the other hand, as with the discipline of Commission personnel, which I have discussed above, critical comments concerning the operation of component parts of the agency should in the preliminary stages be dealt with in private in a compassionate and constructive manner.

A classic example of your failure on this score (and thus the failure to get the agency's story told) is the captioned memorandum to which I am responding. In simple terms, it denigrates before the entire Commission the work of the Office of Public Affairs.* On a personal note, I do not believe for a minute that your harsh criticism of that office is warranted. For the reasons I have expressed above, I believe the failure to communicate the good work of this agency rests at the door of the Chairman.

Another classic example is personal to me. As you know, my office for many weeks has been conforming the Commission regulations to the requirements of the new amendments to the Freedom Of Information Act. This has been a tedious, difficult, and time consuming effort. The reward this office received for its efforts arrived at 4:00 P.M. February 14 in the form of a memorandum which accused my office of an inability to utilize "correct grammatical use of the English language." This memorandum was signed by you.**

* You, as well as anyone in the Commission, should realize that when you circularize large numbers of Washington based personnel with adverse comment it becomes common knowledge. I suggest this fact of life is internally inconsistent with your announced desire to get the agency's story told.

** When I discussed this memorandum with you, your comment was that this was the result of staff work and not your own views. I suggest that as the Chairman of the agency you adopt a general position as to whether you will accept or reject the statements of your senior staff.



VII. Your Attempt to Destroy The Professional Integrity of The Office of General Counsel

This section of the discussion is held to last because it may well be the best example of the headwinds set up by your office in getting "this agency's story told." In sum, on at least five occasions a week you ask this office for legal advice under time limitations which no operation could meet and still insure the professional accuracy of its work.

While many examples reside in my files and will be provided on request by you, I refer at the outset to the most recent example. At 4:00 P.M. on February 14, 1975, a member of your staff delivered your February 14 request for a legal opinion by the close of business the same day (two hours) involving a complex and difficult legal opinion as to whether your employment of a business oriented special assistant on a part time basis constituted a conflict of interest.* Thus under your view of things this office should have done legal research, prepared a text, had it typed, submitted for my approval, and delivered to you within 2 hours. To state the proposition is to demonstrate its folly.

* The complexities of this problem are apparent from the proposed job description which includes a study of plant suburban relocation.



I am prepared to respond with documents and statements from your own office in support of each of the assertions made above.





OFFICE OF
THE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

February 14, 1975

MEMORANDUM TO: Chuck Sharpe, Acting Director
Office of Public Affairs

FROM: John H. Powell, Jr.
Chairman

A handwritten signature in dark ink, appearing to read "John H. Powell, Jr.", written over the typed name.

Ever since before the current Director of the Office of Public Affairs came on board, this office has expressed its concern about the gross failure of this agency to get its story told.

Despite the continuing dialogue that has taken place about that concern, I see very little evidence of even an awareness on the part of the staff of the Office of Public Affairs of the overriding importance of the role that office is to play if this agency is to become effective. It is my conviction that the public perceptions shape the context within which the cause of equal employment can first be understood and ultimately be accepted by the public and policy makers.

Since this problem impacts upon each of your operations, it has undoubtedly from time to time been of concern to you. By copy of this memorandum to the General Counsel and the senior staff listed below, I ask each of you (and your respective staffs) to devote some time and attention to this problem. We need a better fix on this problem. Perhaps doing this may enable us to formulate more effective methods of getting "the facts" vis-a-vis the continuing need for greater compliance with Title VII before the public. The public needs to better understand the extent to which EEOC needs more realistic funding if the present thrust toward increased effectiveness is to be manifested.



In the event you are able to come up with suggestions for improvements please give them to the Acting Executive Director. A meeting should be held on behalf of the Acting Executive Director no later than noon, Thursday, February 20, 1975. As above indicated, any ideas or suggestions that you may be able to devise in response to this memorandum should be put in writing and forwarded (with a copy to this office) to the Acting Executive Director no later than noon, Tuesday, February 18, 1975.

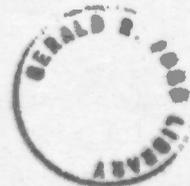
A meeting of the entire executive staff will be devoted to this problem sometime in the near future.

cc: Mary Brown
George Butler
William Carey
Harold Fleming
Ann Marshall
Edgar Morgan
Mary Ann Parmley
Eduardo Pena
Suzanne Reifers
Evangeline Swift
Melinda Upp
Reginald Welch

February 21, 1975

MEMORANDUM FOR: BILL WALKER
FROM: PHIL AREEDA
SUBJECT: EEOC

Upon receiving suggestions that all was not well at EEOC, we first made some preliminary inquiries of our own. On January 22, 1975, I asked the Justice Department for a preliminary review of the material that had been submitted to us. Justice suggested that the matter was not ripe for an FBI investigation, but suggested that further inquiry be made through OMB and the Civil Service Commission. This is being done.



DRAFT

[ca. 3/19/75]

THE WHITE HOUSE
WASHINGTON

Dear Chairman Powell:

I have reluctantly concluded that changes in the Equal Employment Opportunity Commission are necessary and will advance both the work of the Commission and the Equal Employment Opportunity programs which it is pursuing. Senior White House officials have discussed with you in recent days my concerns over the increasing case backlog and agency management problems which the Commission has experienced. They have advised you of my desire to make a change in the membership of the Commission and asked you to submit your resignation both as Chairman and as a member of the Commission so that a new person may be appointed. You have declined to do so and I understand your reluctance.

Nonetheless, the mission of the Equal Employment Opportunity Commission is of paramount importance and as part of my responsibility to ensure that this mission is efficiently and effectively carried out, I have decided that I must relieve you of your responsibilities as Chairman and as Commissioner of the Equal Employment Opportunity Commission effective at once.



In taking this action, however, I wish to acknowledge your strong personal commitment to the cause of equal employment opportunity. None can doubt your dedication to the goals that the agency is seeking to implement. It is my hope that the commitment to this mandate, shared by both of us, can contribute to an agency which will effectively accomplish its goals.

Sincerely,

The Honorable John H. Powell, Jr.
Chairman
Equal Employment Opportunity
Commission
1800 G Street, N. W.
Washington, D. C. 20506

