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REMARKS <p>Forwarded herewith is the 1969 memorandum on the Equal Employment Opportunity Commission. While its statute has been amended since (see 42 U.S.C. (Supp. III) 2000e-4), the amendments do not appear to affect the removal issue. I will be in touch with you later today on removal for "cause."</p> <p>It seems to me that it may be possible to maintain the legal position that the individual serves at the pleasure of the President but at the same time to state some reasonable factual basis for removal.</p> <p>Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions</p>			
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*EEOC
File*



OCT 22 1969

cc: Files
Copeland
MarcuseMEMORANDUM FOR THE HONORABLE PETER M. FLANIGAN
Special Assistant to the PresidentRe: Tenure of Members of the Equal
Employment Opportunity Commission*W. F. L. O. S.
M. C. S.
10/22*

This Office has examined the memorandum of the Civil Service Commission on the above-entitled subject and agrees with the result reached therein, viz., that the President has the power to remove the members of that Commission.

The basic rule that the President has the power to remove the officers of the United States whom he has appointed by and with the advice and consent of the Senate goes back to the first session of the First Congress. It was finally restated in Myers v. United States, 272 U.S. 52 (1926). Since then, however, the Court has held that the President lacks the removal power with respect to such officers who perform quasi-legislative and quasi-judicial functions, such as the members of the independent regulatory commissions, or of commissions charged with the adjudication of claims against the United States "according to law" and not subject to any review, judicial or otherwise. Humphrey's Executor v. United States, 295 U.S. 602 (1935); Wiener v. United States, 357 U.S. 349 (1958). The question, then, is whether members of the Equal Employment Opportunity Commission fall within the exception to the rule of Myers recognized in Humphrey's Executor and Wiener.

The Equal Employment Opportunity Commission has no adjudicatory powers; its functions are primarily to investigate and to conciliate. Its quasi-legislative powers are limited. While it has the power under section 713 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-12) to issue regulations, those regulations are primarily of an interpretative nature, i.e., they do not generally have the effect of law.



Reliance on these regulations does create an affirmative defense and to this extent they do have legal effect. But reliance on the rules promulgated by the Wages and Hours Administrator has a similar effect, and he unquestionably is an officer in the Executive Branch. See section 10 of the Portal to Portal Act of 1947, 61 Stat. 89, 29 U.S.C. 259. Moreover, some rulemaking power is vested in virtually all heads of Executive agencies, and we are not aware of any judicial ruling to the effect that the President may not remove an officer who has rulemaking but no adjudicative powers.

The grant of five year terms to the Commissioners is no indication of a congressional purpose to preclude the removal of the Commissioners during that statutory term. It is well established that such term is in the nature of a limitation but not of a grant; in other words, its purpose is to prevent the appointee from remaining in office for a period in excess of that term without reappointment, but it is not designed to preclude removal by the President prior to the expiration of the term. Parsons v. United States, 167 U.S. 324, 342 (1897).

A final although not necessarily conclusive argument in support of the President's power to remove the EEOC Commissioners is the absence of any provision in section 705 of the Civil Rights Act for their removal for neglect of duty or malfeasance in office. Such a provision has been customarily included in statutes setting up regulatory agencies intended to be independent of Executive control, see, e.g., 29 U.S.C. 153(a) (NLRB); 42 U.S.C. 2032(a) (AEC); 49 U.S.C. 1321(a) (CAB), except for those statutes passed in the interval between the Myers and Humphrey decisions, see 15 U.S.C. 78d (SEC); 47 U.S.C. 154 (FCC). Wiener v. United States, 357 U.S. 349 (1958), it is true, held that the absence of a specific provision for removal for cause does not necessarily imply that the officer serves at the President's pleasure. The absence of such provision, nevertheless, strongly implies that the President is intended to have the power to remove the Commissioners, since otherwise the only



means of removing them in case of neglect of duty or malfeasance in office would be the cumbersome and virtually non-existent method of impeachment.

It is therefore the conclusion of this Office that the President has the power to remove the Commissioners of the Equal Employment Opportunity Commission. We must, however, add the caveat that the course which the courts will take in this area is singularly unpredictable. The Humphrey case was an unheralded departure from Myers, and the Wiener case, again not only broadened the Humphrey rule but overstressed the judicial and discounted the routine bureaucratic functions of the War Crimes Commission. In these circumstances, removal does create some risk of litigation.

William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel



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(202) 638-2269

March 5, 1975

The Editor
The Washington Post
1150 - 15th Street, N. W.
Washington, D. C. 20071

Dear Sir:

The Post's editorial of March 4, 1975, titled "Crisis of Leadership in EEOC," suggests that "President Ford ought to review whether Mr. Powell is the proper person" to remain in his position of Chairman. Since its beginning in 1964, EEOC has had five chairmen. In each case there were persons or groups that insisted a replacement of the chairman would be necessary to solve EEOC's problems. Without commenting on the merits or demerits of persons who have held that post in the past, it is logical to conclude that since problems still exist such ills must be rooted in circumstances that cannot be changed by the mere replacement of one individual.

Today, the agency is trying to come to grips with discriminatory layoffs, protecting affirmative action programs and dozens of other problems covered by the statute it administers. Unfortunately, many writers ignore the constructive side of EEOC and concentrate on internal controversies. In fairness it must be said that most of the fuel for these reports on controversies comes from within the agency. Anyone familiar with the ways of Washington knows that reporters and columnists usually get much of their derogatory material about government agencies from persons employed by such agencies. EEOC cannot afford and does not deserve this kind of treatment from those inside of it.

EEOC is a kind of David against a Goliath of discrimination. Under the statute authorizing its existence, a great deal of good has been accomplished by the EEOC, the Civil Rights Division of the Department of Justice and by lawyers acting for organizations or individuals. Nevertheless, all who are familiar with the problem of employment discrimination know that the nation is only in the early stages of making a successful attack on the problem.



The Editor
The Washington Post
Page 2
March 5, 1975

At this point, it is my hope that we can change the focus of finding fault with the Chairman of EEOC and consider ways to identify the real problems. I also offer possible solutions. Here are a few of them:

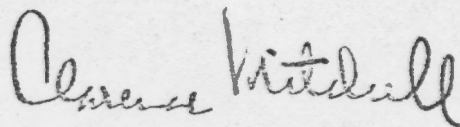
1. From the very start of the agency Congress required that justification of its budget be based to a large extent on its case load. It is my opinion that this led to a policy of not consolidating cases that really involve the same issues and could be handled as one case. I venture the guess that whatever may be the backlog at this time it could be reduced substantially by consolidation. Since this problem was inherited by Chairman Powell it is very unlikely that it could be corrected merely by ousting him and installing another in his place.
2. The original concept of EEOC gave the members of the Commission quasi-judicial functions. Had this idea prevailed the members of the Commission would be so busy handling and disposing of cases that they would be calling for help to accomplish their tasks. Instead, the statute requires that cases against parties charged with discrimination must be heard by Federal Judges. This leaves Commissioners in a kind of limbo where they must seek duties which, in some instances, may be clearly the duties of the Chairman. This is not an insurmountable problem and, in my judgment, careful handling by the White House, interested members of the House and Senate and outside parties can resolve it.
3. It will be remembered that in 1972 there was a considerable drive in Congress to make the general counsel an official independent of the Commissioners, like the pattern of the general counsel of the National Labor Relations Board. This failed after the Commission was deprived of power to decide cases. Once that change was made in the statute there could be no more real justification for a completely independent general counsel than in the Department of Defense, the Labor Department or the Department of Health, Education and Welfare. If this fact of life can be accepted by all concerned it would seem that mutual respect and basic consideration for personal feelings will prevent strained relationships and the writing of sharp memoranda that somehow get to the Congress, to the press and to the public at large.



4. Another problem is the relationship between the EEOC and the United States Department of Justice. The record will show that lawyers in the Justice Department frequently cast unwarranted aspersions on the work of lawyers in EEOC. If the parties in this kind of mischief will remember that the target of their activity should be these who practice discrimination, and not fellow lawyers who are carrying out the same mission as themselves, much of the current confusion would end.
5. Inevitably, the stronger and older agencies of government are likely to try to downgrade and ignore the role of EEOC. This can be halted if the White House establishes a clear channel of communication between EEOC and the President himself. This has gotten started at times, but changes in the Presidency and the pressures of other matters have aborted it. This must be done and the President's backing of the agency must be clear to all.
6. Finally, it must be remembered that this is a relatively new agency when compared with many others that have been on the scene for decades. This means that as it builds precedents and make policies EEOC may make mistakes. It may even seem to make mistakes when, in fact, it is being innovative. Sometimes, staff members who perform certain functions may make mistakes in figures or availability of funds for certain purposes, but when one considers the errors of older government agencies, EEOC seems like a model of efficiency by comparison. To play up some of these mistakes can hardly be called a service to the cause of Equal Employment and, at least, should be put in proper perspective.

Let us hope that the entire EEOC family will seek to settle internal differences without trying to supply sensational headlines. Let us hope that there will be a generous sharing of functions and responsibilities, whether such sharing is or is not required by the law. Let us hope also that those who write about the agency will be more interested in what it is doing to correct discrimination and less interested in spicy tid bits about motions of censure, differences about scope of authority and how to keep the Chairman in a frying pan of controversy.

Sincerely yours,



Clarence Mitchell
Director
Washington Bureau

CMM/ewh



Carey
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March 6, 1975

The Honorable William Carey
General Counsel
Equal Employment Opportunity Commission
Washington, D. C. 20506

Dear Bill:

Just a note of congratulations to you and your staff on the result obtained recently in the case of Douglas v. Hampton. I am certain that the substantial help given by your staff to the appellants went a long way in assisting the Court to arrive at its decision. Of course, the Amicus Brief filed by the Commission was a thing of beauty.

I certainly hope that the Commission continues to be in the forefront of the fight to secure equal employment opportunities for all. Again, my congratulations.

With warmest personal regards, I am,

Sincerely,

Bill/db

William H. Brown III



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Wash. Post 3/4/75 p. A-14

A Crisis of Leadership at EEOC

THE GREATEST SHARE of the federal government's responsibility for putting an end to illegal discriminatory practices in the American job market falls on the agency established by Congress at the time of the passage of the Civil Rights Act of 1964. That agency, the Equal Employment Opportunity Commission, is charged with investigating and helping to resolve the thousands of cases brought by minorities and women in industries and places of work across the nation.

Since none of these is an easy or obvious question, every determination made by the EEOC is a source of potential controversy. It would follow, then, that EEOC's credibility undergoes a serious test with each case and that the commission and its staff are under fairly steady scrutiny by those alleging discrimination, those

"virtual standstill," with the exception of the office of the general counsel.

Even at that, the problems of Mr. Powell's leadership go beyond administration, important as that aspect of his job may be. For if the relationship between EEOC and those it seeks to serve is poor, the relationships within the commission are far worse. Mr. Powell and his fellow commissioners are barely on a cordial basis. Consider the mid-day meeting of Feb. 11. The deliberations ended in a shambles when Mr. Powell abruptly left the meeting, depriving it of a quorum. Mr. Powell apparently objected to the stance of his fellow commissioners who were questioning his right to act on his own in approving a contract for \$141,000. With Mr. Powell absent, there was no quorum to continue dis-

EEOC Chairman Secretly Censured

**Jack Anderson
and Les Whitten**

The pepperpot 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

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

"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

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,

File: W. A. Carey

NOMINATION

HEARING BEFORE THE COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

WILLIAM A. CAREY, OF EVANSTON, ILL.,
TO BE GENERAL COUNSEL OF THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
(NEW POSITION)

JULY 10, 1972

Printed for the use of the Committee on Labor and Public Welfare



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(II)



NOMINATION

THURSDAY, JUNE 8, 1972

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., Senator Harrison A. Williams (chairman) presiding.

Present: Senators Williams, Randolph, Javits, and Mondale.

Also present: Senator Charles Percy of Illinois.

Committee staff present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Eugene Mittelman, minority counsel.

The CHAIRMAN. The committee on Labor and Public Welfare is meeting this morning to consider the nomination of Mr. William A. Carey to be General Counsel of the Equal Employment Opportunity Commission. This position was created by the Equal Employment Opportunity Act of 1972. In view of the great involvement of members of this committee in that legislation, we are naturally most interested in the person who will be filling this key position.

Mr. Carey comes to us from Chicago, Ill., where he has been in private law practice since 1961. Prior to that, he served with the Justice Department for several years.

A copy of Mr. Carey's biography will be included in our hearing record at this point.

(The biography of Mr. Carey, and an excerpt from Public Law 92-261, authorizing the Office of General Counsel follow:)

(1)



RESUME

William A. Carey

Office: Pope, Ballard, Shepard & Fowle
69 West Washington Street
Chicago, Illinois 60602
Telephone: 346-0900

Home: 408 Greenwood Avenue
Evanston, Illinois
Telephone: DA 8-8129

I. VITAL STATISTICS:

Age: 39 years (May 16, 1932)

Birthplace: Chicago (moved to Massachusetts at early age)

Marital Status: Married; three children

II. COLLEGE EDUCATION:

Boston College (1950-1954):

Received B.S. in Business Administration in 1954.

III. LEGAL EDUCATION:

(a) Boston College Law School (1954-57):

Graduated in 1957 with LL.B. degree; honor student;
member of the law review for 2 years; first year
class president; member of the Board of Governors
of the Student Bar Association;

(b) Georgetown University Law Center (1957-58):

Attended evening division and received LL.M.
degree in 1958.

IV. LEGAL EXPERIENCE:

Admitted to practice in Massachusetts in 1957 and in
Illinois in 1961. Member Massachusetts and Chicago
Bar Associations.

(a) Justice Department, Washington, D.C. (June 1957-
October 1958):

Appointed Trial Attorney, United States Department
of Justice, in June 1957. This appointment was
made under the Attorney General's Recruitment
Program for Honor Law Graduates. Under this



program about 60 honor law graduates were selected each year from nearly 1000 applicants. Assigned major responsibility for obtaining indictments in national security cases growing out of Cuban revolution, e.g., United States v. Carlos Prio, et al. (deposed President of Cuba conspiring to violate Neutrality Act), and United States v. Bachman (gun dealer shipping unregistered sub-machine guns to Cuba).

(b) Justice Department, Chicago, Illinois (October 1958-February 1961):

Commissioned Special Attorney in October 1958 (at age 26) and assigned to Chicago to serve as the Deputy Chief of the Midwest Office of the Attorney General's Special Group on Organized Crime. Served until February 1961 under (Governor) Richard B. Ogilvie and acted as his chief trial assistant, e.g., United States v. Anthony J. Accardo (income tax fraud) and United States v. Joseph Bronge (perjury case in which the defendant was assassinated by unknown gunmen prior to his trial). Devised the legal theory and obtained the indictments in two leading perjury cases arising out of the Accardo trial: United States v. Nicoletti and United States v. Letchos. Assisted in the trial preparation of United States v. Bonanno, et al. (case involving the notorious Apalachin, New York crime syndicate meeting).

(c) Private Practice (February 1961 - Present):

Pope, Ballard, Kennedy, Shepard & Fowle. Former hiring partner and partner in charge of the associate lawyers. Specialty is major litigation, e.g., Dearborn Glass Co. v. Corning Glass Works (successfully represented plaintiff in antitrust treble damage action involving the color television picture tube industry); Florists' Nationwide Telephone Delivery Network v. Florists' Telegraph Delivery Association (successfully represented defendant in antitrust treble damage action involving the flowers-by-wire industry); Boese, et al. v. Randolph-Wells Building Corporation and LaSalle National Bank (successfully represented LaSalle National Bank in a suit involving the fiduciary obligations of banks acting as indenture trustees). Presently the partner jointly responsible (with Donald Page Moore) for all firm fraud litigation



on behalf of Federal Savings And Loan Insurance Corporation (a government agency) arising out of the liquidation of defunct savings and loan associations in the Chicago area, e.g., Federal Savings And Loan Insurance Corporation v. William Szarabajka, Joseph Nowak, et al. (the fraud and conspiracy complaint alleged a \$93,000 cash bribe to induce the granting of a \$3,100,000 construction loan by Service Savings And Loan Association); Federal Savings And Loan Insurance Corporation v. Paul Newberg, Sam Mercurio and James B. Wilson, (alleged use of insured funds to obtain personal loans - Service Savings And Loan Association); Federal Savings And Loan Insurance Corporation v. Henry Krueger, William Randall, et al. (the complaint alleges fraud and conspiracy in the granting of more than \$10,000,000 in construction loans by Lawn Savings and Loan Association); Federal Savings And Loan Insurance Corporation v. Edward Kelly, et al. (fraud and conspiracy complaint involving the collapse of Apollo Savings).

(d) Teaching Experience (1960-65):

Part-time member of the faculty of Loyola University Law School; taught equity course.

V. SIGNIFICANT CIVIC AND POLITICAL ACTIVITIES:

(a) Civic:

Member of the Evanston Human Relations Commission, 1967 through 1969. Only member of five appointed during 1967 to receive the unanimous approval of the Evanston City Council. Drafted the new rules for the Commission when it was reorganized during 1968. Member of the Evanston Fair Housing Review Board 1967-1968.

(b) Political:

Member of the United Republican Fund - 500 Club from its inception to present; Vice-President Evanston Republican Club - 1963 to 1971; Ward Chairman, 1963-68, and precinct captain, 1963 to 1971; for the Evanston Regular Republican Organization; member of the Evanston Young Republican Club, 1962 to present (political affairs Vice-President 1963-64) Evanston Campaign Co-Chairman for Charles H. Percy, 1964; 13th Congressional District Campaign Chairman for Richard B. Ogilvie, 1962.

(Excerpt from Public Law 92-261—Equal Employment Opportunity Act of 1972)

Sec. 8(e)(1) * * *

* * * * *

“(b)(1) 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. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 706 and 707 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

“(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this title.”

* * * * *

(The complete text of Title VII of the Civil Rights Act of 1964 as amended through March 24, 1972, appears as an appendix to this hearing.)

The CHAIRMAN. We are pleased to have our colleague, Senator Percy, here to introduce Mr. Carey to the committee.

STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator PERCY. Mr. Chairman, I am glad that this nomination is not as controversial as another one that has been conducted in the room for the past several months.

I am very pleased by the President's nomination of William A. Carey to be General Counsel of the U.S. Equal Employment Opportunity Commission.

Mr. Carey, whom I have known for many years, is an outstanding attorney in Illinois, with 10 years of experience in trial and appellate work with a major law firm. His previous experience with the Department of Justice both in Washington and Chicago further qualifies him for this appointment.

Of special interest to those of us who are deeply concerned about equal opportunity in American life is his background as a member of the Evanston, Ill., Human Relations Commission and the Evanston Fair Housing Review Board. In these roles he made constructive contributions to the advancement of justice in that city.

I can say that of all the cities I know in Illinois, Evanston has best handled the problem of equal opportunity in housing and education. It has a totally integrated school system of the best possible type. I think it is simply due to the outstanding citizens who are residents who have given their time to make certain their own city is a model. I think for that reason, in addition to his fine legal background and training, it is a great privilege to have this opportunity to present Mr. Carey to the committee this morning.

The CHAIRMAN. Thank you very much, Senator Percy.

Senator PERCY. If I may be excused, Mr. Chairman.

The CHAIRMAN. I believe you have a statement, Mr. Carey, that you would like to make?

STATEMENT OF WILLIAM A. CAREY, NOMINATED TO BE GENERAL
COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. CAREY. Yes, Mr. Chairman.

I would first like to thank Senator Percy for those flattering remarks and for taking time from his busy schedule to be here to introduce me. I appreciate it very much.

Mr. Chairman, and members of the committee, it is an honor for me to be here this morning. I am particularly grateful to President Nixon for nominating me to be the first Presidentially appointed General Counsel of the Equal Employment Opportunity Commission.

With the passage of the Equal Employment Opportunity Act of 1972 (amending title VII of the 1964 Civil Rights Act) by a wide margin, Congress has issued a clear mandate to the EEOC to attempt to bring to an end all forms of employment discrimination based upon race, color, religion, sex, or national origin. To help achieve this end, Congress has armed the Commission with the power to seek the aid of our Federal courts, with their broad remedial powers, to both deter those who violate the act and to redress the injuries done by such violations. I recognize that this new power to bring civil actions in the Federal courts must be exercised fairly and even-handedly; but I also recognize and believe that a true commitment to human rights requires that it be exercised vigorously.

I am also aware that employment discrimination may often be more subtle than direct; and I am also fully aware of the pervasive, albeit sometimes unintentioned, discrimination against women. My point is that the resources of the Commission must be used to combat every form of invidious employment discrimination.

I want to assure you, Mr. Chairman, and the members of this committee, that if confirmed as General Counsel I shall strive by every honorable means at my disposal to make the Equal Employment Opportunity Commission that which you so sincerely want it to be: the bulwark in the fight against employment discrimination in this country.

That concludes my prepared statement, Mr. Chairman. I will be glad to respond to any questions the committee may have.

The CHAIRMAN. I certainly appreciate your statement. It is a fine statement and you stated it with great conviction.

I think you will certainly agree that the Commission itself should be a model in terms of its employment practices in this area of discrimination.

Mr. CAREY. I would agree to that.

The CHAIRMAN. If any discrimination gets notoriety, the greatest amount of attention would be given here. It has been recently, has it not? Was there not a case recently where there was a claim of discrimination within the Commission?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Well, I am sure within your authority, this would not be a problem—discrimination within the Commission.

Mr. CAREY. I certainly hope not. I cannot imagine it would be any problem at all. Certainly, we must be holier than the employers.

The CHAIRMAN. Let me ask you, have you had time to think through in your mind the organization of the Commission needed to meet the new enforcement responsibilities, and do you see any restructuring of the Commission?

Mr. CAREY. In answer to your first question, Senator, I thought through generally the structure, restructuring that might be involved. Basically this is an internal matter for the Commission and unless and until I am confirmed I would not be privy to what is going on within the Commission.

But I have given some thought to the problems which the enforcement powers present.

My basic feeling is that more and more of the responsibility has to be out in the field and that the Commission needs many, many new lawyers because after all, it is not only a litigating commission—it needs a lot of lawyers, a lot of money, lest it be criticized for not doing that which Congress wants it to do.

The CHAIRMAN. As I recall, the legislation provides for concurrence in the approving of regional attorneys. Is that your understanding?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Is that true, too, in the selection of lawyers, to work in the regions? That is your responsibility?

Mr. CAREY. I believe the act speaks only of regional attorneys. I would foresee no difficulty whatsoever in reaching concurrence with Chairman Brown on the selection of regional attorneys or staff attorneys.

The CHAIRMAN. Your personal background concerned with discrimination is expressed in your hometown of Evanston?

Mr. CAREY. Yes, Evanston.

The CHAIRMAN. What was your activity at the community level?

Mr. CAREY. I was a member of the first Evanston Community Relations Commission in its early days, and later it was reorganized and I was a member of the human relations commission.

I drafted the human relations commission bylaws. I was responsible in large measure for the passage of what was considered to be at the time the strongest fair housing act in the State, if not in the country. I tried to act as a mediator between those who felt that human rights progress was going too slow and those who thought it was going too fast.

My position as a mediator was, let's just move human rights along. I was active in obtaining from the city council funds to operate the commission, since it was an arm of Evanston. I fought hard for funds for a black executive director and funds for a new position—for a position as an assistant to the executive director. In those efforts I was happily successful.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Well, Mr. Carey has been in to see me and I have had quite an interesting talk with him before his testimony and I am very impressed with him, Mr. Chairman. He is a man who has the capacity to do this job.

Mr. Carey, do you foresee any difficulty in the recruitment of the necessary personnel on the regional or the Washington level?

Mr. CAREY. No, sir; I understand already there are hundreds, if not at least a thousand applicants for positions as attorneys for the Commission, and I would anticipate that for graduating law students legal work for the Commission would be among the most attractive areas of government.



Senator JAVITS. Mr. Carey, we cannot of course hold you accountable for anything beyond your own capacity to do this job, but in your work, in finding out what the facts are, you are aware that the Commission received its authority to institute suits just a few months ago, right.

Mr. CAREY. Yes.

Senator JAVITS. Have you inquired as to how many suits they filed since?

Mr. CAREY. Well, I have not inquired, but I do know how many. I understand that two suits, major suits, have been filed, and there has been temporary injunctive relief yet obtained in a third suit.

Senator JAVITS. Do you have any idea how many cases they have which are ready for instituting suit or which are under review by the General Counsel?

Mr. CAREY. No, sir.

Senator JAVITS. You have no idea. Do you know whether it is a big backlog, a small backlog, or what?

Mr. CAREY. I think it is common knowledge that there is a big backlog.

Senator JAVITS. Is there anything you could tell us from before you are on the job in a sense, and it would be perhaps a little less tied into the hierarchy in the agency, as to whether your researches have shown where the problem is, where the holdups are, if any?

Mr. CAREY. May I regress just a second to the question on backlog? There is a big backlog, but I suspect, although I have no inside information, that the size of the backlog is due to the fact that each individual complaint is given a separate number, for example, and there may be a number of complaints against one employer which really would end up to be one case.

The size of the backlog is probably a lot less than the figures might indicate. How to handle the backlog, what the plans of the Commission are for that, this is a matter of internal workings of the Commission, which I am not privy to.

Senator JAVITS. As yet.

Mr. CAREY. As yet. I hope to be.

Senator JAVITS. I hope you will, too.

You spoke of much money being required. It is a fact, is it not, that the Senate Appropriations Committee has recommended almost a doubling of the budget? Is that correct? You are aware of that?

Mr. CAREY. I am aware—I don't know whether the budget has been doubled. I am aware that members of the Commission are happy that quite a bit of additional money has been earmarked by the Senate.

I would think that this is one area where we ought not to skimp. We need a lot of lawyers and a lot of money. But I do understand there has been a substantial increase recommended by the Senate.

Senator JAVITS. Now, could you give us—or have you thought through so you could give us—any guideline which you would use in determining, as General Counsel, what cases you would want to see instituted?

You are not as autonomous in this job as the General Counsel of the National Labor Relations Board. But you do have more authority than just a lawyer retained by an agency. So it is important for us to have some idea, if you have one, as to how you would look at cases

which you would select for action, as this is always a big problem in an agency.

Mr. CAREY. Yes, I think there are a number of considerations which must be reviewed with respect to any alleged violation of the act. Without meaning to suggest that a small company ought to be given a pass, one consideration would be the size of the employer, another consideration would be the impact on the public interest. By that I mean the importance of the case in the overall enforcement of the act.

Another consideration, of course, would be the seriousness of the violation—is it a willful intentional violation?

Another consideration would be overall, how many employees would benefit from the bringing of this particular lawsuit?

Those would be some of the considerations which I would bring to bear.

Senator JAVITS. You would not, however, exclude a small concern where you did feel that there was a serious case, a novel question, a case that could be a landmark, for example, or a particularly willful case, would you?

Mr. CAREY. No, sir; because oftentimes a smaller case—a case against a smaller employer—would be easier to prove in terms of the number of man-hours involved; and if the issues were important, it would probably be a good device to go after a smaller company to establish a national precedent.

Senator JAVITS. As a generality, would you not agree that if the Commission has the personnel and the ability and resources, that there is a duty to sue in every case in which there is a violation?

Mr. CAREY. As a theoretical proposition, that is true. I know of no Government agency or department of Government, including the Justice Department with its various U.S. attorneys offices, which has the manpower to prosecute every single violation. I would be less than candid if I did not make that observation.

Senator JAVITS. I think that is true.

Mr. Chairman, when we are through with the testimony of the witness, I would like to suggest that as a prelude—to our action on the witness—I would not wish it to appear in the hearing about him, but I do think that we ought to inquire of the Commission why so very few cases have been instituted in the 4 months, and at least I think it would be helpful to a new General Counsel to have this accounting.

The gentleman will remember when it was argued on the floor, one of the arguments used against us which prevailed with the Senate was they could get off the ground very fast, if they had the power to sue. They have not gotten off the ground very fast.

At the appropriate time when we are through with this witness, Mr. Chairman, I will ask the Chair for that permission.

Thank you, Mr. Carey.

The CHAIRMAN. Mr. Randolph?

Senator RANDOLPH. No. I have checked, Mr. Chairman, as far as I felt it was necessary, into the qualifications of the nominee. I believe that he will bring to this position, if he is approved by the committee and by the Senate, those qualities which will enable him to do the job which is set before him. I have confidence he will do that.

Mr. CAREY. Thank you, sir.



Senator MONDALE. Evanston has been one of the national examples in the school system. You did serve as a member of the City Human Rights Commission?

Mr. CAREY. Yes, sir.

Senator MONDALE. What is your attitude toward desegregation?

Mr. CAREY. Well, in response to your first question, virtually all of the mothers and fathers of schoolchildren in Evanston feel that it worked admirably. Most of the parents want their children to go to school with minority groups. I personally feel it is a very healthy thing.

Second, in response to your second question, I favored the integration of the schools in Evanston, first, because as a lawyer I felt the Supreme Court had mandated that, and as a citizen I supported it because I felt that in the long run it is in the best interests of the country and the children going to school.

Senator MONDALE. Thank you very much.

The CHAIRMAN. There are no further questions.

Our best wishes go with you for fair, effective, and forceful implementation of this law. If you fail, we will be right back here climbing the mountain with "cease and desist." We wish you well.

Mr. CAREY. I will do my best. Thank you very much for your time.

(Whereupon, at 10 a.m., the committee was adjourned.)



EEOC File

The Washington Merry-Go-Round

THE WASHINGTON POST

Tuesday, Feb. 25, 1975

B11

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.

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 Welch introduced the unprece-

"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

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 Carev, "is the essence of intimidation."

Aside from his arbitrary ways, Powell has taken some strange steps recently to inspire his

Friday 3/7/75

Meeting
3/7/75

10:20 Called Alan Woods about the meeting you were
scheduling at noon today on EEOC.

Bill Walker is also invited to the swearing-in at noon.

Bill has a 2 p.m. and a 5 p.m. with the President --
and would like to schedule the EEOC meeting with you
before the 5 p.m. meeting.

We will be in touch again -- but hopefully, we can have
the EEOC meeting after the swearing-in -- whatever time
that is.

*Maybe we
could do
at 3:30-3:30*



Thursday 3/6/75

Meeting
3/11/ 75
10 a.m.

5:00 Alan Woods is scheduling a meeting on EEOC
on Tuesday 3/11 at 10 a.m. -- Mr. Walker and
Jack Shaw will also attend.

2794

I have put it on your calendar.

*Meeting
after returning
from*

*Walker
2x5*

*We are now
to meet at 12 noon today.*

*Eva please return
this copy.*



E E S C

Friday 3/7/75

Meeting
3/25
2:30 p.m.

11:00 Chairman John Powell's office called.

634-6700
Jane Valentine

Said in discussions with you yesterday on the phone you agreed to a meeting at 10:30 a.m. on Thursday 3/21 and she was calling to confirm.

Advised that you might be out of town that day.

The Chairman would be available any time after 3/17 ----- so I have scheduled a meeting for 2:30 p.m. on Tuesday 3/25.

Is this O.K. with you?



Saturday 3/8/75

Meeting
3/8/75
9:30 a.m.

9:20 The meeting on EEOC will be held at 9:30 a.m.
today (Saturday 3/8). Those attending:

Bill Walker
Alan Woods
Jack Shaw
Jack Marsh
Dick Cheney

The White House operator advises that there is
a holdup in air traffic in New York, and Stan Scott
will not be here until 10 o'clock.



EEOC

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Monday, March 10

Powell,
~~John~~

1:00
Mr. Buchen,

The file you asked Jay French to get you on Powell will either be in late today or early tomorrow morning. Jane Dannenhauer has to make a formal request for it from Justice.

Shirley

3/11/75 file read.



EEOC

Tuesday 3/11/75

Meeting
3/11/75
5 p.m.

9:20 Mr. Rumsfeld is meeting with Clarence Mitchell
of the NAACP at 5 o'clock this afternoon (Tuesday 3/11)
and would like you to join.



2nd, 3/14/75 Powell

1:30 John Powell has left Hilton Head and is flying back to Savannah, Georgia; they have left word for him to call you when he gets in.



EEAL

Friday 3/14/75

Meeting
3/14/75
3:30 p.m.

1:35 William Carey, General Counsel of EEOC,
will be over to meet with you this afternoon
(Friday 3/14) at 3:30 p.m.

343-7246



Friday 3/14/75

*Powell
John*

3:40 John Powell's secretary has just talked with
Mr. Powell (who is now back in Hilton Head).

(803) 671-3330

He will be catching a plane in a short time
to fly to Atlanta ----- so suggested we call him
right away and can catch him.

Shall I put the call through?

Doesn't plan to be back in Washington until next Monday.



Powell
John

4:15 Bill Walker would like to talk with you as soon as possible... hopefully before his 4:45 meeting with the President.

Friday 3/14/75

3:50 Bill Walker said he had conferred with Dick Shubert, who has in turn talked with John Dunlop re the Powell consultancy at the Labor Dept.

He is anxious to have Powell prepare for him a study of relationship with government agencies involved in equal opportunity enforcement with a view to advising John Dunlop on those matters (such things as rationalizing? the position of the Justice Dept., CSC, Labor and EEOC on issues like coordinated case investigations, information exchange, prior consultation on enforcement targets and an array of important differences in substantive approaches to EEO. All of these things are important and need to be looked at in a very legitimate sense and Dunlop would be prepared to have Powell prepared to do that as Special Counsel to the Solicitor of Labor.



EEOC

Monday 3/17/75

Meeting
3/17/75
4:30 p.m.

11:10 The meeting with John Powell, Chris Rogerson,
Ed Morgan and Bill Walker has been changed to
4:30 this afternoon (3/17).

ARMY
GERM

Monday 3/17/75

10:55 Ed Morgan said Mr. Powell is preparing the letter and they would like to change the meeting to 4:30 this afternoon.

Is that O. K. ?

Bill Walker is holding on the White House line to talk with you.



Monday 3/17/75

9:55 We have scheduled the meeting for John Powell
at 11:30 a.m. today (Mond. 3/17).

He said he is expecting this to be a meeting between
the two of you. If you expect to have anyone else
with you, he wants me to call Jan Valentine (his secretary)
and have Chris Rogerson and Ed Morgan come to the
meeting.

Said he is drafting the letter that you want and he intends
to remain as Commissioner. Expects the White House to
exercise the degree of restraint necessary. He assures
that he will leave at an appropriate time -- but wants
to be sure it is properly handled.



Monday 3/17/75

EEOC

9:45 Virgil Day (law firm of Vedder, Price, Kaufman, Kammholz & Day in New York) called to discuss the business round-table and the current EEOC situation. (212) 838-5544

