

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)
)
) Plaintiff,)
) Civil Action No.)
 v.) 79-C-4373)
))
 SEARS, ROEBUCK AND CO.,) Judge Nordberg)
))
) Defendant.)

WRITTEN DIRECT TESTIMONY OF RAY J. GRAHAM

1. My name is Ray J. Graham. My address is 2865 Hillcrest Lane, Northbrook, Illinois. I am the President of Graham Associates, Inc., a consulting firm in the human resource and minority economic development field.

2. From 1968 to 1980, I was the Director, Equal Opportunity for Sears, Roebuck and Co. (Sears). In that capacity, I was responsible for the development and implementation of Sears' affirmative action programs at all facilities nationwide. See Sears Exhibit 9. Also, from 1975 to 1980, I was President of Tower Ventures, a Sears wholly-owned Minority Enterprise Small Business Investment Company (MESBIC) which assisted minority and women-owned businesses. After 33 years at Sears (minus one and one-half years for the Korean war), I retired under Sears' Early Retirement Incentive Plan in 1980 at age 58.

Personal History and Career With Sears

3. I was born in 1922 in the little farm community of Cedar Springs, Virginia. My father was a school teacher, high school principal, farmer, postmaster, and devout Methodist. My mother

was an over-worked mother of seven, a school teacher, a talented artist, a college art professor, and a devout Methodist.

4. We moved from Cedar Springs to Rural Retreat when I was three and in 1935, to Bridgewater, where I went to high school. I won letters in baseball and basketball, was president of my senior class of about 30, met my future wife (daughter of my high school principal), and became vaguely aware that problems were developing in Europe.

5. In early 1941, after two years at Bridgewater College, I went to Washington, D.C., to seek my fortune and continue my education. As a country boy who had never used a dial telephone or ridden on public transportation (I hitch-hiked to Washington with \$9.00 in my pocket), I suddenly was thrust into the metropolitan scene.

6. Having worked part-time at J.C. Penney's and the Gay Clothing Co. while in school and being familiar with the Sears Catalogue, a fixture in our house, it was perfectly natural that the first--and only--place I applied for work was the Sears store on Bladensburg Road. After a short stint selling hardware, I was moved to the more prestigious and demanding job of handling complaints in the Customer Service Department -- at no increase

in my \$25 per week starting salary.¹ I also enrolled part-time at George Washington University.

7. I was the third child in a family of seven--three boys, two girls, then twin boys. My oldest brother, Hale, already had served for several years in the Army Air Force (he was captured at Clark Field in Manila and spent three and one-half years in a Japanese prison camp) so my next brother, Bruce, age 20, and I at

1. My post-World War II Sears assignments follow:

- 1947-49 Division Manager D/41 (Men's Work Clothing), later added D/33 (Men's Furnishings) at Bladensburg Road Store, Washington, D.C.
- 1950-51 Leave of absence for duty with Marine Corps in Korea.
- 1952-53 My first checklist assignment. The job's title, "floor manager," probably was invented by store manager Arthur Jacobs. I acted as liaison between division managers, the store manager, and his staff.
- 1954-55 Personnel Manager, Wisconsin Avenue Store, Washington, D.C.
- 1956-57 Operating Superintendent Trainee, North Avenue Store, Baltimore, Maryland; then Operating Superintendent of the Mondowmin Store in Baltimore. This was the first of several physical relocations during my Sears career.
- 1958-59 Relocated to Trenton, New Jersey, store as Operating Superintendent.
- 1960-61 Transferred to Eastern Territory Headquarters in Philadelphia as Assistant Operating Manager, later became Assistant Territorial Personnel Director reporting to Charles F. Bacon.
- 1961-62 Store Manager, Perth Amboy, New Jersey (B-2 store).
- 1963-64 Store Manager, Hagerstown, Maryland (B-1 store).
- 1965-68 Store Manager, South Hills Village, Pittsburgh, Pennsylvania (A-store).
- 1968-80 Equal Opportunity Director, Headquarters, Chicago, Illinois.

19 joined the effort. Bruce became a submarine officer making runs between Australia, the Philippines, and Japan. His submarine was lying on the bottom of Tokyo Bay when the Japanese surrender came.

8. I enlisted in the Navy's V-5 program for training pilots. I was called up in late 1942. After training at several different bases, I was commissioned as a second lieutenant in the Marine Corps in August 1944 at Pensacola, Florida.

9. Immediately, after graduation from flight training, I married my high school sweetheart, Dorothy. We packed and immediately took the train west to my first duty station. During the next ten months we lived out of suitcases as the Marine Corps shifted me from San Diego to Santa Ana to Santa Barbara to Mojave while I qualified in various airplanes and practiced dive bombing, torpedo runs, and fighter tactics. My wife, then seven-months pregnant, returned to her mother's home in Bridgewater while I shipped out on a Liberty ship that had been converted into the carrier, Saldor.

10. I was honorably discharged in 1946. I had enjoyed flying and had qualified for my commercial and flight instructor ratings in the service, so I decided to try to make a living in aviation. My wife and I, now with one son, moved to Columbus, Ohio. I worked as a flight instructor and, under the educational benefits program of the GI Bill of Rights, was a part-time student at Ohio State University. After one semester, I accepted an offer from Ercoupe Corporation, a small airplane manufacturer in Riverdale, Maryland. The small plane business did not

prosper; but because I had not immediately returned to Sears after the war, I believed that I had surrendered my right to my pre-war job. Sears, however, had a form of affirmative action even then. It favored hiring veterans even if they had not worked there prior to the war. In 1947, after some discussion with my former store manager, Arthur Jacobs, I rejoined Sears.

11. As with many Sears people, my career there began as much by accident as by design. I was originally attracted to Sears because of my previous part-time retail experience and because my father had had a good experience in returning a defective pen to Sears and had had a bad experience at Wards. We had relied on the Sears catalogue rather than Wards when I was growing up. At Sears, I had quickly learned that its customs, habits, and routine practices were attuned to the interests of its employees and customers. These included merchandise guarantees and profit sharing, promotion from within and an open-door to those with responsibility,¹ decentralization and training by doing, and the custom of striving not merely to meet but to

1. See, e.g., Getting Acquainted with Sears at 4 (1972):

OPPORTUNITY TO EXPRESS YOURSELF

Your personnel manager or department manager will help you in every way possible. Any matters you wish to discuss will be considered confidential and will be handled impartially. Periodically, you will be called for an employe review. This will give you an opportunity to present any questions, comments, or criticisms you may have. At the same time, you will also have a chance to find out about your progress on the job.

Accord, Getting Acquainted with Sears at 7 (1979).

exceed legal requirements (e.g., affirmative action for veterans and exceeding minimum wage rates). Sears' routine practice was summed up in the phrase "living right with our people," so I decided that this was the place I wanted a career.

Experience as a Store Manager

12. In my early Sears days, becoming a store manager had been my dream, as it was of most trainees. In 1961 I was appointed manager of an old, four-level, poor profit facility in Perth Amboy, New Jersey. Within two years I was able to show some sales and profit improvement. To raise the level of employee morale, I, like other Sears store managers, stressed the expansion program underway in the Eastern Territory and the opportunities this presented for current employees. Like other Sears store managers, I stressed the promotion from within policy and encouraged employees to obtain additional training. I regularly emphasized that those who desired a change in jobs or promotional opportunities should talk with me. In annual performance review meetings with individual employees, my staff and I followed Sears' routine practice of encouraging the discussion of career opportunities. Some employees did not take advantage of the open door policy. Some did. Several division manager appointments occurred after employees asked to be included in Division Manager Training Classes. Almost without exception, promotions and transfers between selling divisions involved employees who had taken advantage of Sears' open door policy to express their desire for such a change. Despite this, no female employee ever inquired about a transfer or promotion

into commission sales or indicated any interest in those positions.

13. After about two years in Perth Amboy, I was promoted to manage a B-1 store in Hagerstown, Maryland. We moved and, in Hagerstown, my experience was very similar to that of Perth Amboy. Sales went up appreciably. I conducted the same kinds of meetings and encouraged employees to talk with me to explore possible job changes. In Hagerstown, however, I had several women who were selling on commission so there was no absence of female role models. Again, not one non-commission female salesperson suggested that she would like to be considered for a commission sales position.

14. In the spring of 1965, I was transferred to Pittsburgh, Pennsylvania, to open Sears' new South Hills Village A store.

15. There is a vast difference in the number of job opportunities that are created by the opening of a new store when compared with those occurring at an established facility. In Pittsburgh, as a result of "mass interviewing," my staff and I talked to approximately 9000 people in order to fill about 600 full- and part-time positions. Of these, about 50 were commission sales jobs.

16. I read and heard the conclusions that Dr. Bernard Siskin drew based on applicant flow. This was ironic because, at an earlier time in this case, Sears told the Equal Employment Opportunity Commission (EEOC) that the reason that the percentage of black employees in Catalogue Merchandise Distribution Centers (CMDC's) was much higher than it was in Sears' suburban stores

was the racial makeup of their respective neighborhoods, which resulted in a much higher proportion of black applicants to CMDC's than to suburban stores. Top EEOC official David A. Copes rejected applicant flow as an answer. Instead, he told us to bus whites from the North Store to the Chicago CMDC. He also suggested that we bus blacks to Sears' suburban stores.

17. Additionally, based upon my entire Sears experience I found Dr. Siskin's reliance on application forms surprising. The application form is relatively unimportant in the total hiring process. In reality, the form is scarcely more than an admission ticket into the hiring process. Its primary use is to provide the interviewer a basis for questioning the candidate. Its secondary use is to provide basic information such as name, address, and telephone number. Sears does not select employees at random from stacks of application forms. It interviews prospective employees--one, two, three, or more times.

18. Dr. Siskin testified that he knew little about Sears' commission and non-commission sales jobs, little about Sears as a company, little about retailing and little about Sears' affirmative action program. He relied on the false assumption that women and men were equally interested in, available, and qualified for jobs in commission sales. How far from reality that assumption is had been brought home to me in 1965 in Pittsburgh's South Hills A Store. The National Sales Manager of Department 22 (stoves) had asked me if I would be interested in staffing that department with women commission salespeople, and I had enthusiastically agreed. The problem was that very few

female applicants were interested, qualified, or available for the jobs. We placed three women in the division, but a combination of their particular inadequacies and the failure of our big ticket sales to develop as planned doomed that to failure. Within a few months two had quit. The third asked to be transferred to Housewares. We still had commission saleswomen selling shoes and custom draperies so there was no shortage of role models at the South Hills A store. Again, I stressed promotion from within, the open door policy, and opportunities for training and advancement. Again, not one woman came to me, my big ticket merchandise manager, or my personnel manager to indicate any interest in any commission sales position other than custom draperies. See also Sears Exhibit 39. Although women's attitudes have changed since 1965, Dr. Siskin's assumption remains untrue in 1985 - let alone in 1973 through 1980.

19. To explain how commission selling at Sears differs from non-commission selling, Charles F. Bacon and I, working with Sears personnel and counsel have produced Commission Selling at Sears, which is Appendix A to this testimony. My experience with Sears as a store manager and in personnel verifies the accuracy of Appendix A.

Affirmative Action

20. In 1963, when managing the Hagerstown, Maryland, store, I had become acutely aware of the developing civil rights movement and the unrest among black citizens. A particular event epitomized for me the difference between words and actions, and I kept this difference in mind during my affirmative action work at

Sears. Soon after the September 15, 1963 Birmingham Church bombing in which four little girls were killed, our Methodist minister spoke of it at our church service. He told the congregation that there would be a march that afternoon which would conclude with a service at the black church in town. My wife and I joined those marching. I recall some strange looks from our white neighbors as we walked by. ~~Our minister, a man of~~
~~was ^{still} ~~present~~ ^{at} ~~the~~ ~~service~~ ~~and~~ ~~was~~ ~~not~~ ~~present~~.~~

21. I had (and have) strong moral and philosophical concerns for the equal rights of all citizens to have a chance at the American dream, but, in part, my affirmative action motivation was (and is) pragmatic. I believe that intelligently applied affirmative action is good business. I also believe that we, as a society, sow the seeds of our destruction if we fail to assist those who have been wrongfully excluded from the opportunities presented by our economic and political systems. So, in Pittsburgh, when our church became involved in efforts to alleviate the plight of poor blacks living in that city's "Hill" section, my family and I involved ourselves. I was appointed to lead a "Bridge Builders" campaign between the white and black communities. Although I did not then know it, my minister had written a letter acknowledging my efforts to Sears' Chicago Headquarters. This may have influenced my appointment in early 1968 to the newly created position of Equal Opportunity Director for the corporation in Chicago.

22. I reported directly to the Vice President, Personnel and Employee Relations. He instructed me, "Here's your new job,

here's an office, we'll get you a secretary, you'll have to write your own job description." I devoted the first few days to reading as much as I could about Title VII and civil rights in general. Then I went to the Vice President and said, "I've decided it would be helpful in this job if one were a sociologist, an anthropologist, a historian, a legal scholar, and an educator; because I am none of these, I plan to disappear for a while so I can attend some seminars and meetings being held by various groups, including the United States Department of Labor (DOL) in order to learn what we should be doing." After attending a few such sessions at which executives and government officials redefined the problem and engaged in collective hand-wringing, I reported to Sears, "These people don't know any more than we do; there are no answers out there; we're going to have to develop our own program from scratch." The Vice President, Personnel and Employee Relations, said, "I guess you've just defined your job."

23. Initially my job appeared to be unprecedented but there was a historical basis for its work.

a. After World War II, Sears had the following policy:

When men begin to return from service and when general unemployment again becomes a problem, pressures are likely to develop to bring about a substantial reduction in the ratio of female employment. There is no question but what women may have to be released to make way for returning soldiers, but such releases should be based on the serviceman's reinstatement and not on the fact that the present incumbents are women. Exactly the same practice should be followed for both men and women, with no discrimination because of sex.

The only basis for hiring or firing or for assignment to particular jobs should be ability and performance. The serviceman question aside, jobs should be given to people solely on the basis of their capacity without regard to sex. Sears has need for large numbers of women, not only for rank and file positions but for certain staff assignments as well. Highly qualified women simply will not be interested in Sears if any sex discrimination is practiced.

Offer of Proof of James C. Worthy at 4-5.

b. As early as 1952, Sears' personnel manual contained this language:

Some states have passed laws which prohibit inquiry into the race, color, creed or national origin of the applicant. Any of the instructions given in the employment section which are contrary to the provisions of any state or local law are to be disregarded. In states which have passed such laws eliminate any mention of race, creed, color or national origin on local forms which the applicant must fill out. Interviewers must also be careful in questioning an applicant to avoid making any statements which can give him the impression that Sears is discriminating against him because of his race, creed, color or national origin.

Sears Exhibit 20 (Sears, Roebuck and Co., Personnel Manual, § 1059 (1952)).

c. In 1955, nine years before the Civil Rights Act of 1964 was passed, Sears conducted its first national survey of blacks in its workforce. To increase and upgrade black employment, the company established recruiting programs through the Congress of Racial Equality, the Urban League, the National Association for the Advancement of Colored People, and local community organizations. By 1962, the survey of minority employment had become an annual procedure. As a result of these

efforts, minority employment nearly doubled between 1962 and 1964.

d. In August 1963, the first woman to serve on Sears' Board of Directors was selected. (Now of the 17 members, three are women.)

e. In 1964 Title VII of the Civil Rights Act was passed and on July 2, 1965, it became effective. Sears added the following provision to its July 1965 personnel manual:

It is the responsibility of the Store Manager and Personnel Department to fill each vacancy with the best qualified individual who will be the most productive on the job, without regard for race, color, religion, sex or national origin.

In carrying out this responsibility, the Company policy of promotion from within is to be followed whenever possible, without regard for race, color, religion, sex or national origin.

Sears Exhibit 20 (Sears, Roebuck and Co., Personnel Manual, § 1001 (July 1965)). Sears also added this provision:

It is the Company's policy to employ the best qualified applicant for any job opening, regardless of race, color, religion, sex or national origin. The Store Manager should review all forms applicants are asked to complete to make certain they contain no reference to race, color, religion, sex or national origin. Interviewers must also be careful in questioning an applicant to avoid making any statements which could give the impression that we are attempting to inquire into his race, color, religion, sex or national origin.

Sears Exhibit 20 (Sears, Roebuck and Co., Personnel Manual, § 1051 (July 1965)).

f. Posters explaining equal opportunity employment and summaries of the new law were distributed to all units; personnel

advertising included the phrase "AN EQUAL OPPORTUNITY EMPLOYER;" and equal employment opportunity was emphasized by Sears at numerous management conferences.

24. In the fall of 1968, Sears developed and distributed a questionnaire to assist in the development of its affirmative action program. Sears Exhibit 94 (Sears, Roebuck and Co., Questionnaire for the Development of Affirmative Action (Nov. 1968)). It requested information about minorities and women employed at Sears, including their promotions and training. It required units to identify local minority and human relations organizations and to state which of them had been asked to assist Sears in securing minority employees. It asked for a list of local media directed toward members of minority groups and which of these were available for the advertisement of job openings. One of the four pages of the questionnaire was devoted specifically to women.

25. The questionnaires were returned to territorial offices in late 1968. After that territorial executives visited Sears units to help their managers develop individual affirmative action programs. It was the duty of the territorial offices to help individual units to translate policy into procedures in order to achieve the goals established by Headquarters. But Sears was decentralized, so each Sears store had its own written plan tailored to that particular unit. I spent a great deal of my time in 1969 visiting facilities in all territories to ascertain how the program was progressing and to provide them assistance. Seeking their help, I presented Sears' 1969 plans

and its employment statistics to the Chairman of the Equal Employment Opportunity Commission (EEOC) and his staff in a special meeting.

26. Sears was the first major retailer to institute an affirmative action plan. Thereafter, Sears shared its affirmative action plans with its competitors. Montgomery Ward adopted an affirmative action plan in 1971. J.C. Penney's plan began in 1972. Their plans were, in large measure, based upon Sears' plan. For years, Sears had assumed a leadership role in the industry. That had become a custom and routine practice. Others in the industry led Sears to believe that it had again provided leadership. ~~as the following statement by a retail company~~

~~Indicates~~

STAFF
2-1

I want to express our deep appreciation to you for once again going far beyond the call of duty in giving us a hand in areas of common civic concern. Your most informative and clear presentation of what Sears has been doing in the equal opportunity area over the last five years . . . was especially helpful to all of us. . . . I would like to add that every one of us was particularly impressed at what you, Mr. Wood and all of the Sears top officers committed the company to do at your May meeting in terms of checklist ledger personnel, as well as the manner in which that program was launched.

Sears Exhibit 113 (Letter from Peter T. Jones, Vice President, Legal and Government Affairs, MARCOR, to Ray J. Graham (Aug. 13, 1973)).

27. Sometimes the rest of the industry did not follow Sears' lead. For example, I recommended that Sears declare itself a government contractor, subject to the equal opportunity requirements of Executive Order No. 11,246, 3 C.F.R. 336

(1965). I believed that would assist us with our program and that the retail industry should lead American business in this important area. In 1968, Sears voluntarily did this. During the ensuing decade, no other national retail merchant followed Sears' lead.

28. By declaring itself to be a government contractor, Sears had submitted itself to the stringent affirmative action and recordkeeping requirements of the Office of Federal Contract Compliance Programs (OFCCP). Other government agencies had been assigned by OFCCP to review the employment practices of government contractors in various industries. To review the retail industry, OFCCP selected the General Services Administration (GSA). Thereafter, Sears underwent approximately 2000 compliance reviews. Although this was burdensome, Sears cooperated, as was repeatedly noted by GSA officials.

29. GSA organized workshops to help companies develop affirmative action plans. Sometimes it asked Sears to take a leadership role. On occasion, GSA even requested that Sears assist it in the training of the government's equal opportunity personnel.

30. Sears' work with GSA and OFCCP, the requirement of complicated information-keeping for compliance reviews, and Sears' increasing sophistication in affirmative action led Sears, in April 1970, to break from its custom, habit, and routine practice of decentralized personnel management and to institute, instead, a centralized, company-wide, step-by-step affirmative action

program. Sears Exhibit 23. Sears, Roebuck and Co., Affirmative Action Manual (Apr. 1970).

31. The 1970 Affirmative Action Manual stated that "employment of minorities, training of minorities and women, movement of minorities and women into supervisory and executive positions is a legal requirement, and it is a moral obligation assumed by your company." Sears Exhibit 23 at 1. Each unit manager was required to document recruitment efforts; chart the race of applicants, new hires, and terminations; chart the race and sex of employees receiving promotions into checklist and timecard positions, including commission sales; detail training programs; and report that unit's community activities. Id. The 1970 manual also required that two statistical reports be filed each year, the EEO-1 report which was required to be filed with the EEOC annually, and an additional mid-year report to be used by Sears in the monitoring of its affirmative action efforts. Id. at 13.

32. In 1970, women and minorities were treated differently for purposes of affirmative action. Well prior to the outbreak of World War II, there had been large numbers of women in the Sears workforce. The percentage of women in the civilian labor force varied somewhat, but the percentage differences among Sears' groups and zones were not wide so Sears established a single nationwide long-range goal for women and, because minority presence varied greatly between hiring locations, required the development of minority goals on a local basis. Goals for minorities were specifically described in the 1970 manual. Id. Information regarding applicants and new hires was recorded, and

promotion records were kept by race and sex. Additionally, a special section in the 1970 manual, "Women in Supervision," required that the names of all checklist and timecard female supervisors be recorded. Id.

33. The long-range goal for women was set at 38 percent. That was based on the Bureau of Labor Statistics' estimate of female participation in the civilian labor force. Because Sears hired a higher percentage of women, that figure, used in presentations across the country, was not spelled out in the 1970 manual. It was used, however, by individual facilities in 1970.

34. EEOC witness Carol A. Watkins testified that even as late as 1968, "the government was not yet interested in the problems of the employment of women." Transcript of Proceedings at 1237 (Sept. 21, 1984). But Sears had undertaken affirmative action for women even prior to the growth of the women's movement.

a. By the early 1970s, the priorities of government enforcement agencies, including the EEOC, had begun to change. Racial discrimination had been the original focus of Title VII, and the ban on sex discrimination had been added to prevent its enactment. Sears Exhibit 101. 110 Cong. Rec. H 2577-78 (daily ed. Feb. 8, 1964) (Statements of Cong. Smith and Celler). Even the Women's Bureau of the Department of Labor had opposed the inclusion of sex in Title VII. Sears Exhibit 101 at H 2577 (Statement of Cong. Celler). ~~Herman Edelsberg, the first executive director of the EEOC, for example, stated that Title VII protection for women had been "a fluke," and "conceived out~~

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~~of wedlock." Speech of Herman Edelsberg at New York University
Labor Conference on Labor (Aug. 25, 1966)~~

b. The government's regulation of contractors under Executive Order No. 11,246 originally prohibited discrimination not on the basis of sex but upon the basis of "race, creed, color, or national origin." Exec. Order No. 11,246, 3 C.F.R. 339 (1965). In 1967 the Executive Order was amended to extend its protection to women; Exec. Order No. 11,375, 3 C.F.R. 684, 1966-70 Compilation (1971). Guidelines continued to emphasize race discrimination requiring affirmative action for minorities but not for women until 1970. See Public Contracts and Property Management, 33 Fed. Reg. 7804 (May 28, 1968), codified in 41 C.F.R. Ch. 60 and Public Contracts and Property Management, Part 60-20, Sex Discrimination Guidelines, 35 Fed. Reg. 8888 (June 9, 1970), codified in 41 C.F.R. 60-20. That year the House of Representatives passed the Equal Rights Amendment, and "Strike for Equality Day" was inaugurated on August 26, 1970, by the National Organization for Women (NOW). Thereafter, as a direct result of the feminist movement, Americans generally became more aware of the issue of sex discrimination.

c. In 1972, the 92d Congress (1971-73) passed the Equal Rights Amendment, and enacted Title IX of the Education Amendments of 1972, which addressed issues of sex discrimination that included the government's channeling of women into stereotypical types of education. See Education Amendments of 1972, 20 U.S.C. § 1681 (1972). MS. magazine was founded the same

year. Sears Exhibit 107 (MS., Aug. 1982 (10th Anniversary Issue)).

d. "Consciousness raising," which recognized the importance of changing women's own attitudes about themselves and their roles in society, became an integral part of the feminist movement.

All over the country, women have caught the bug, understood very clearly what is wrong with their lives, and begun to ask the hard questions:

"How do I stop playing the same old role every day?"

"How do I change my husband? my boss? my family? my friends? the limitations that surround me?"

And hardest of all, "How do I change myself?"

Sears Exhibit 108 at 18 (A Guide to Consciousness Raising, MS. (July 1972) (emphasis added)).

e. I witnessed these changes and their effect, including how language changed. In the 1960s, for example, employees had been called battery men, draftsmen, repairmen, watchmen, stockmen, and floormen, reflecting the overwhelming male interest and participation in these jobs. In those days, most employees were referred to as "he." Even Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) used only male pronouns.¹ In the

1. In 1970, EEOC Chairman William H. Brown told a Congressional committee, "[I]f a person is going to be a secretary, if you need a secretary you want to know if she can type. She is given a typing test. . . . You would give her a test to find out if she can take shorthand." Hearings before the Senate Appropriations Committee for Fiscal Year 1971, 91st Cong., 2nd Sess. 988-1050 (1970) (emphasis added). And in 1971, he told Congress, "Every individual deserves his day in court whether or not an administrative agency thinks his cause is just or not." Hearings on S. 2515, S. 2617, and H.R. 1746 before the Subcomm.

1970s, Sears' manuals routinely used "he" and "she." By 1980, employees were called battery specialists, drafting specialists, repair technicians, security guards, stock clerks, and floor supervisors.

35. By 1971, Sears had broadened its efforts at affirmative action leadership. In May 1971, for example, Sears helped fund a conference which focused on "upgrading women into management positions and moving women into jobs now generally held by men." There I spoke about Sears' experience. In June, 1971, Sears convened a two and one-half day meeting of the top officials of the major manufacturers and suppliers of goods to Sears. The meeting's purpose was to explain to company representatives the law, Sears' commitment to it, Sears' program, and Sears' expectations regarding the affirmative action programs of those who sold to Sears. The EEOC's Chairman, William H. Brown, two other EEOC Commissioners, the EEOC's General Counsel, and several of its key staff members attended. About this meeting the EEOC wrote:

An example of the private forum was a model hearing and seminar on equal employment opportunity conducted with one of the nation's largest retailers and top corporate officials of fifty of its major suppliers. Witnesses from the corporation subjected themselves to questions from the Commission to show the suppliers the kinds of issues they needed to deal with in testing, selection, recruitment and upward mobility for women and minority group persons.

Sears Exhibit 97 at 38 (EEOC Annual Report (1971)).

on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong., 1st Sess. 74 (1971) (colloquy between Chairman Brown and Senator Harrison Williams).

36. Sears Exhibits 97-100 demonstrate the results of Sears' customary exercise of leadership. The conference caused many companies to expand their equal opportunity programs. For example, one wrote, "[W]e are immediately starting to supplement and update our own programs and will follow closely your guidelines." Sears Exhibit 98 (Letter from C. Stuart Robertson, President, Robertson Factories, Inc., to Ray J. Graham (June 23, 1971)). The Converse Rubber Company wrote that the conference helped it "in its effort to stamp out non-job related criteria for employment and promotion all in the spirit of applicable statutes." Sears Exhibit 99 (Letter from Stephen A. Stone, President, Converse Rubber Company, to Arthur M. Wood (July 15, 1971)). Four months after that conference Sears ascertained that its message to its suppliers had been clearly understood and had resulted in changes in Sears suppliers' employment practices. Sears Exhibit 100 (Memorandum from J.F. Golen to Ray J. Graham (Oct. 18, 1971)).

37. In 1971, Sears also added full-time executives, whose special responsibility was affirmative action for women, to equal opportunity staffs in headquarters and the territorial offices.

38. In 1972, Sears further centralized its affirmative action program and, again, revised its 1970 Affirmative Action Plan. Sears Exhibit 23 (Sears, Roebuck and Co., Affirmative Action Manual (1972)).

39. Between 1970 and 1972, the number of female college graduates recruited into Sears' Management Training Program doubled.

40. Although realistic short term goals were impossible to establish with accuracy, OFCCP's continually changing requirements for government contractors required them. So Sears' 1972 manual required that they be established in conjunction with long-range goals. These were designed to, "with good faith effort, move [a] unit aggressively toward full participation by minorities and women at all levels of the workforce." Id. at 2.

41. The long-range goal for women of 38 percent women in all checklist and timecard jobs also was spelled out in the 1972 manual. Id. at Instructions.

42. Employers are required by Title VII to report employment statistics to the EEOC. For purposes of these "EEO-1 reports," the EEOC had established nine job-reporting categories: officials and managers, professionals, technicians, sales workers, office and clerical, craft, operatives, laborers, and service workers. Because Sears found these categories inadequate for affirmative action purposes, Sears' 1972 manual required Sears' managers to go beyond the law and analyze minorities and women in more specific job categories, such as checklist officials and managers, timecard division managers, and commission sales. Id. at Instructions.

43. Government guidelines permitted lower long-range goals for higher level jobs than for entry level jobs. Thus, the government acknowledged the limited availability of women and members of minority groups qualified to hold these jobs. Sears, however, chose not to do this. Instead, Sears voluntarily

imposed on itself stringent long-range goals for jobs at all levels.

44. To assist Sears' managers, Sears' Equal Opportunity Department established a broad internal program of "awareness training." Films and a film library, seminars and women's forums, and employee publications were used to "raise the consciousness" of Sears' managers and employees to help them see and reject stereotypical thinking. See, e.g., Sears Exhibit 109 (Today Not for Men Only, Sears South, Oct. 1973 at 3; The Manager is a Ms., Pacific Coaster, April 1973 at 4; Not for Men Only, Sears Midwest, July-August 1973 at 6; Service Technicians, Sears South April-March 1973). See also Sears Exhibit 31 (Fracturing a Fairy Tale, Parent Today, Mar. 1974 at 12). Additionally, in the ordinary course of Sears' business, research was done regarding Sears' customers -- most of whom are women. See Sears Exhibit 36 (report entitled Women (November 1975)). The Introduction of Mandatory Goals

45. On February 1, 1973, A. Dean Swift became the President of Sears. Within days of assuming his duties and before Sears had any knowledge that it was going to be singled out by the EEOC, he met with the Vice President, Personnel and Employee Relations, and me to conduct a lengthy review of Sears' progress in affirmative action. At my suggestion, Mr. Swift decided to call for the first time in 23 years a conference of Sears' top 250 executives. The meeting was unprecedented because its purpose was not to communicate to Sears' top management, its vice presidents and zone and group managers, Sears' concerns about

profit and sales. Instead it was to provide them a clear understanding of their own personal accountability as line managers for a single subject -- affirmative action.

46. The meeting took place on May 21, 1973. It was a landmark occasion. Arthur M. Wood, Sears Chairman of the Board and Chief Executive Officer, spent four hours speaking and introducing others who spoke not of sales or profits but of equal employment opportunity at Sears and Sears' executives' role in minority economic development.

47. Chairman Wood told this audience of those who mold opinion within Sears, that Sears could not seriously consider for promotion any person who performed well in sales and profits, but who was unable to perform equally well in developing promotable female and minority employees. He told them that to be promoted they had to successfully implement Sears' affirmative action programs.

48. There were several direct outgrowths of the May meeting. First, Sears established an Affirmative Action Task Force consisting of approximately fifteen people including the Chairman of the Board and Chief Executive officer, the President, the Vice President, Personnel and Employee Relations, other officers and key staff members. They met monthly (later quarterly) to monitor affirmative action progress.

49. Second, in October 1973, an "Affirmative Action Questionnaire" was distributed to timecard employees. Sears Exhibit 22C (Sears, Roebuck and Co., Affirmative Action Questionnaire (1973)). It asked employees about their career aspirations and

desires regarding checklist, supervisory, and commission sales jobs. The "Affirmative Action Questionnaire" later was renamed the "Career Aspirations Questionnaire." Sears Exhibit 22C (Sears, Roebuck and Co., Career Aspirations Questionnaire). This changed name reflected the evolving nature of affirmative action for, by 1977, the process had become an integral part of career planning at Sears. Id.

50. Third, employment application forms were updated. To the 1973 form the following statement was added:

Sears is an Equal Opportunity Employer and fully subscribes to the principles of Equal Opportunity. Sears has adopted an affirmative action plan to insure that all applicants and employees are considered for hire, promotion, and job status, without regard to race, color, religion, national origin, age, or sex.

Sears Exhibit 22A (Sears, Roebuck and Co., Application for Employment (rev. ed. Oct. 1973)). The 1974 employment application form deleted references to marital status and, more importantly, a space was added to allow a description of training or experience which had been gained outside of an employment setting. Sears Exhibit 22A (Sears, Roebuck and Co., Application For Employment (rev. ed. Jan. 1974)). This addition was especially designed to assist women who had never entered the civilian labor force or who had left it and were trying to return to work after an absence. By providing a place to display different kinds of "work experience" that were not recognized on standard employee application forms, Sears' interviewers were provided a basis for inquiries into additional areas of qualifications and interests.

51. Fourth, Sears strengthened its affirmative action plan by expanding its reporting requirements and providing additional steps to be taken to disseminate, implement, and monitor equal employment. Sears Exhibit 23 (Sears, Roebuck and Co., Affirmative Action Manual (1974)).

52. Fifth, Sears completed its examination of its checklist and timecard job titles and substituted gender-neutral names for titles which suggested that they were usually performed by members of one sex only. Sears Exhibit 110 (Sears, Roebuck and Co., Timecard and Checklist Job Titles (rev. Aug. 1974)).

The Mandatory Achievement of Goals Program

53. Sixth, and most important, Sears developed the Mandatory Achievement of Goals Program (MAG Plan). Sears Exhibit 24C (Sears, Roebuck and Co., Mandatory Achievement of Goals Program (MAG), Affirmative Action Manual (rev. ed. 1974)). The MAG Plan retained the long-range goals established in 1970 and spelled out in the 1972 and 1973 plans for both timecard and checklist women. In order to meet Sears' long-range goals for timecard jobs, the MAG Plan instituted an "input ratio" of 50 percent "at the minimum, to fill one out of every two openings with minority men or women of whatever races." Id. at 1.

54. Most affirmative action programs waste tremendous effort by requiring the establishment of short-range goals. These programs require managers to guess at how many openings there may be in the future. Despite that, this was called for by OFCCP regulations. Under the MAG Plan, the setting of short-term

goals was simplified to reflect a fixed proportion of openings that actually occurred. The MAG Plan stated:

[T]he . . . estimates of possible openings is a legal requirement; under Sears MAG Program the . . . thing that . . . is important is actual openings. If you estimate 10 openings, allocating a minimum of 5 to under-represented groups, but actually have 20 openings, MAG . . . requires[s] a minimum of 10 appointments of under-represented group members.

MAG further requires the maintenance of . . . representation [Y]ou are required to replace minorities and women already in . . . commission sales, on a one-for-one basis. Therefore, MAG requirements . . . take effect only as turnover occurs among majority members Example: you anticipate 20 commission sales openings: . . . 6 . . . are minorities and women, . . . 14 being white men. MAG requires that the 6 be replaced in kind and the 1 out of 2 (50%) rule apply to the 14. If . . . not . . . it would be possible in a high minority or women turnover situation to apply the 1 out of 2 rule and suffer an actual decrease in the required representation.

MAG Program goals . . . are minimums: you are encouraged to exceed them

Id. at 2 (emphasis original).

55. The only circumstance under which the one-of-two rule was not applied for women was in technical service, automotive, and other craft-type jobs. Because very few women were interested or experienced in, or trained or available for these non-traditional jobs, the rule for hiring women into those jobs was set at one out of three. Id. Goals for men in non-traditional jobs, e.g., secretarial and clerical work, were established at one out of three. These goals for men and women in non-traditional jobs were later changed to one out of five.

56. When the MAG Plan was implemented in 1974 by Charles F. Bacon, Vice President, Personnel and Employee Relations, he repeated what Chairman Wood had communicated to Sears' executives at the May 1973 meeting. He wrote to unit managers: "If an individual fails to carry out his responsibility in this important area, our actions toward him and the advance admonitions we gave him should be the same as for any other serious management failure." Sears Exhibit 111 (Letter from Charles F. Bacon to Messrs. Davies, Kennedy, Lowe, Prado, and Telling (May 20, 1974) (emphasis added)).

57. In 1974, Sears became the first major corporation to disclose its EEO-1 Report data publicly in its annual report. Sears Exhibit 93 (Sears, Roebuck and Co., Sears 1973 Annual Report at 4 (1974)). These numbers revealed substantial progress from 1966 to 1973 in each of the nine job categories established by the EEOC. Id. The MAG Plan was explained. Id. The report also noted that half of Sears' management trainees hired in 1973 were women or members of minority groups. Id. Sears has continued to publish this information each year to demonstrate to Sears' employees, shareholders, and the general public, Sears' commitment to and progress in equal employment opportunity. Even now Sears is one of the few American corporations to publish such information.

58. In 1974, Sears, with the Business and Professional Women's Foundation (BPW), established a loan program to assist women in obtaining graduate degrees in business. Sears Exhibit 114 (Loan Fund for Women in Graduate Business Studies,

Eligibility Criteria (leaflet)). During the ensuing five years, Sears provided BPW \$300,000 in grants. Id.

59. Again, in 1977, Sears' affirmative action program was revised. This time Sears prepared a "Nationwide Affirmative Action Plan Format Agreement" designed to be acceptable to Sears, OFCCP, and GSA. This time Sears raised its 38 percent goal for women to 40 percent. Sears Exhibit 116 (Letter from Ray J. Graham to Edward E. Mitchell, Director of Contract Compliance, General Services Administration (Dec. 13, 1977) (discussing nationwide Affirmative Action Plan Format Agreement)). The 40 percent goal applied to each Sears facility and to each Sears job group except non-traditional craft-type jobs where the long-range female goal was 20 percent.

Mandatory Achievement of Goals in Management Positions

60. By 1979, the timecard MAG Plan, the increased interest of women in management careers, and the aggressive recruitment of women and minorities into management training at Sears had produced internal pools that were sufficient to fill checklist openings at a faster pace. Thus, Sears Chairman Edward R. Telling was able to announce two important steps to strengthen and expand the company's affirmative action program. Sears Exhibit 23 (Letter from Edward R. Telling to Officers (Sept. 26, 1979), incorporated into Sears, Roebuck and Co. Checklist Mandatory Achievement of Goals Program 1979)). First, a new requirement was added to the affirmative action program for checklist employees--50 percent of all openings were required to be filled by women and minorities. Sears Exhibit 23 (Sears, Roebuck and

Co., Checklist Mandatory Achievement of Goals Program (1979)).
Second, Sears formally included in the performance evaluation of managers the following:

effectiveness in administering Equal Employment Opportunity (EEO) and Affirmative Action (AA) policies along with achievement of goals set for the unit. This includes effectiveness in developing a positive organizational climate within which EEO and AA decisions take place.

Id. at 7.

61. The motivation and training of managers to implement affirmative action and monitor the results has been a key element in the system.

a. Sears' Affirmative Action Newsletter was first published in April 1971 to inform and train managers in often changing areas of affirmative action. Its topics included "interpretation of new EEOC rulings"; "suggestions for improving your affirmative action plan"; "evaluation of significant discrimination cases"; "analyses of E.E.O. statistics"; "explanations of government legislation and Sears legal obligations"; and "significant equal opportunity activities in Sears." See, e.g., Sears Exhibit 95 at 1 (Sears, Roebuck and Co., Affirmative Action Newsletter, No. 1 (Apr. 9, 1971)).

b. In 1974, there was a serious recession. Despite that, President Swift wrote to the Territorial Vice-Presidents, warning them not to allow recession-induced reductions in force to injure Sears' affirmative action efforts. Sears Exhibit 115 (Letter from A. Dean Swift, President, to A.I. Davies, Territorial Vice-President (Nov. 25, 1974)). Simultaneously,

Sears conducted an audit of its existing affirmative action and equal pay affirmative action programs at each unit. At least 125 executives spent more than a year on this auditing project.

c. From its beginning, Sears' affirmative action program called for the monitoring of results at the local, territorial, and national levels. Under the MAG Plan, equal opportunity directors located in Sears' major administrative units monitored adherence to MAG Plan requirements. These directors had no authority to allow deviations from the MAG Plan. If the MAG Plan's requirements had not been met in a particular unit and its manager found no one other than a qualified white male available for a particular job, the manager had to request a "deviation" from the Territorial Vice-President and Personnel Director. Only they had the power to approve applications for deviations and to do so they had to determine that the request had been made in good faith. In 1975, a "Request for Deviation from MAG Program Requirements" form was added to the Affirmative Action Manual to insure that any such request was documented and properly approved or disapproved. Sears Exhibit 112 (Sears, Roebuck and Co., Request for Deviation from MAG Program Requirements (1975)).

d. In January 1978, when a new version of the affirmative action manual was issued, Sears produced a slide presentation to emphasize the program and the mechanics of administering it. It was shown to unit managers and others in Sears' groups and zones who had affirmative action responsibility. Sears Exhibit 259 (Managing Sears Affirmative Action Plan).

e. In 1979, Sears took another step to insure that affirmative action was being properly implemented at all levels of the company. This affirmative action certification program required unit managers annually to review their unit's affirmative action results and to certify in writing that the plan was being fully and conscientiously administered. See extract from Sears Exhibit 23 (Affirmative Action Unit Certification Form).

f. Throughout the years 1973 through 1980, inclusive, my staff and I continuously worked with Sears' territorial personnel directors and equal employment directors. They and their staffs were constantly in the field advising unit managers about compliance with company directives regarding affirmative action and their and the company's progress, problems, and solutions to problems.

Tests

62. As a personnel manager, operating superintendent, and store manager, I had oversight responsibility for test administration and, on occasion, used test results in evaluating applicants for employment.

a. Tests were but one element in the evaluation process and had little importance when compared to the personal interview of the applicant and the review of the applicant's personal history.

b. Test results were frequently ignored in favor of impressions gained in the interview.

c. Regarding the tests and the manual, in practice the only document used was the graph which was produced after the

test had been given. Regardless of what the tests or the manual may say, the graph displays different recommended scores for males and females.

d. Test results are usually ignored when there is an aggressive affirmative action program.

e. Tests were not particularly helpful in predicting success on the job. I often commented that I could throw darts at a listing of applicants and achieve as good or better results.

f. At no time until the EEOC in this case implied that the vigor component of the Thurstone Temperament Schedule favored a "male style" had the EEOC said anything derogatory about any Sears tests. No one with the EEOC mentioned any such problem to me from 1968 through April 19, 1977 and, during those years, I spoke with the EEOC's testing experts. ~~Additionally I actually attended a trial in Chicago and heard the United States Department of Justice's expert witness testify favorably about Sears' tests.~~ As shown by Sears Exhibit 46, which I have

examined for accuracy, the EEOC made no findings about Sears' tests in Commission Decision No. 77-21.

Commission Sales and Affirmative Action

63. Women never were excluded from commission sales positions at Sears. Since 1968, increasing the number of women in commission sales has been part of Sears' affirmative action program. In 1968, when the affirmative action program was being formulated, unit managers were asked how many females were selling in big ticket or hard-line divisions, which female employees would be able and willing to accept such positions, and

whether any had requested them. Sears Exhibit 94 (Sears, Roebuck and Co., 1968 Questionnaire for the Development of the Affirmative Action Program). Changes from non-commission to commission sales were required to be reported in the 1970 plan's section on promotions. Sears Exhibit 23 (Sears, Roebuck and Co., Affirmative Action Manual (Apr. 1970)). As I previously mentioned, in January 1971, Sears revised the form from which EEO-1 reports were compiled and required that each unit report the number of its male and female commission salespersons. In the 1972 manual and in every manual thereafter, long- and short-range goals were established for the movement of women into commission sales, and commission sales was specifically set forth as an area of new hire opportunities and of promotions to be monitored. Sears Exhibit 23 (Sears, Roebuck and Co., Affirmative Action Plans (1972-1980)). In 1973 all Sears employees were provided a questionnaire which asked whether they were interested in other positions. Big ticket sales was one choice listed. Sears Exhibit 23 (Sears, Roebuck and Co., Affirmative Action Questionnaire (1973)). All Sears employees are informed about Sears' "open door" policy and are advised to bring their concerns and interests to management's attention. As I previously mentioned, as a store manager in the 1960s, I hired women as commission sales people and regularly encouraged existing employees to discuss career opportunities. Prior to 1968 no women employees ever voluntarily expressed any interest in, suggested their availability for, or inquired about commission sales. They had to be persuaded to take these jobs. Many store managers

reported that they had interviewed every woman in their stores and found not one who was willing to sell big ticket merchandise. Other store managers reported that they had lost sales due to their retention of women who were poor commission salespeople. They retained them to meet the strict numerical requirements of affirmative action at Sears. Of course, the retention of inadequate salespeople was not an affirmative action requirement but this demonstrated the importance that store managers attached to meeting their numerical affirmative action goals.

Equal Pay and Affirmative Action

64. In the late 1960s and early 1970s, Sears re-examined retail unit compensation practices. In the summer of 1972, after many months of preliminary work, Sears implemented an Equal Pay Affirmative Action Plan for Retail Stores which examined pay for retail positions and established a nationwide formula for determining compensation in these positions. See Sears Exhibit 204. Each store manager received instructions and worksheets. Territorial audit teams visited each unit to insure that employees were properly compared and raises were made where necessary. In 1974, Sears developed its "Equitable Pay Package," a set of administrative procedures to insure that there was uniform application of wage scales to male and female employees, see Sears Exhibit 205, and special teams visited each Sears unit to audit Sears' affirmative action program and its equitable pay program. Although compensation personnel had primary responsibility for the equality of pay, I participated in the development

of the standards and in the formula and design of the auditing mechanism. I also was involved in the monitoring of equal pay programs to assure adherence to the standards set by Sears. In 1976, Sears adopted an entirely new checklist compensation system which it had developed with Hay Associates. This compensation system had been arrived at during the 1974-1976 period when affirmative action was a key item on the agenda of all Sears executives.

Government Hinderance to Affirmative Action: Changing Priorities, Policies, and Practices

65. From 1968 through 1980, Sears was hindered by the government's inability to develop a consistent set of guidelines concerning affirmative action. The MAG Plan allowed Sears to bypass the government's inability or unwillingness to devise a single, simple, consistent, and manageable program. GSA, to which OFCCP had delegated its Sears responsibilities, studied the MAG Plan for 18 months. In early 1978, GSA approved it. Sears Exhibit 118 (Letter from Edward E. Mitchell, Director, Contract Compliance Division, General Services Administration to Weldon J. Rougeau, Director, Office of Federal Contract Compliance Programs, Department of Labor (Jan. 3, 1978)). ~~OFCCP expressed reservations about the MAG plan not because it was weak because it was too strong~~ Simultaneously, the EEOC was alleging that Sears was practicing discrimination against women and minorities through decentralized, subjective decision making.

66. The problems of conflicting governmental agency positions and their inability to agree were worsened by conflicting federal statutory and enforcement priorities. These

problems affected each Sears unit manager each time a job opening occurred.

a. During the five year period from 1968 through 1972, Sears, as a government contractor, had an affirmative action program for members of minority groups as well as women. That program was audited by the OFCCP's agent GSA. In 1972, the EEOC became the enforcement agency for Title VII, which prohibits discrimination on the basis of race, color, religion, and national origin, as well as sex.

b. The Vietnam war was still underway and by August, 1972, Sears had added a survey of Vietnam veterans to its Affirmative Action Manual and recorded the number of full- and part-time veteran employees by race and sex. Sears Exhibit 23 (Sears, Roebuck and Co., Vietnam Era Veterans Employment Summary, Affirmative Action Manual (Aug. 1972)). This, too, complied with government directives. For a number of years the government had encouraged private employers and government contractors to provide employment preference for Vietnam veterans. State employment offices provided them a preference and, by 1974, the government had required private employers to provide employment preferences to Vietnam veterans. See Vietnam Era Veterans Readjustment Act of 1974, 38 U.S.C. §§ 219 et seq. In 1976, in response to newly-promulgated regulations administering the Vietnam Era Veterans Act, Sears instituted a formal affirmative action plan for Vietnam veterans. Sears Exhibit 24B (Sears, Roebuck and Co., Affirmative Action Manual, Vietnam Veterans Section (1976)).

c. Since 1947 -- long before the proliferation of employment preferences -- Sears has voluntarily assumed a policy of employing people with disabilities. In 1973, Congress required government contractors to implement affirmative action plans for the physically and mentally handicapped. Rehabilitation Act of 1973, 29 U.S.C. 793. Thus, Sears was required to adopt and follow another affirmative action plan, this one devoted to the hiring and promotion of the handicapped.

67. The Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 et seq. (1967), especially its 1978 Amendment which extended protection to age 70, further conflicted with Sears' program to promote women and minorities. Sears estimated that a third of its age-eligible employees would continue in its employment if Sears' mandatory retirement age of 63 were to be eliminated. In fact, more than double that number chose to continue as employees after January 31, 1978. The resulting loss of openings for new hires and promotions put one more government priority in direct conflict with affirmative action efforts for women and minorities.

68. Despite these conflicts, EEOC representatives recognized Sears' achievements. Commissioner Colston A. Lewis, the only black member of the EEOC, cast the dissenting vote against the votes of the two Commissioners who decided to issue Commission Decision No. 77-21. Regarding Sears' belief that it led the industry in affirmative action he was quoted as saying, "Sears has the best damn affirmative action program of any company in the country." ~~Later an acting General Counsel of the~~

EEOC was quoted as writing that "Sears has been in the vanguard of voluntary affirmative action since 1974 and, with respect to minorities, possibly as early as 1969." EEOC Discovers Its Investigation of Sears Is So Flawed, It Should Settle and Not Sue, Employment Relations Report, Vol. 1, No. 15 (Aug. 1, 1979).

69. In 1974, the EEOC announced standards for affirmative action programs:

The essence of your Affirmative Action Program should be:

- ° Establish strong company policy and commitment.
- ° Assign responsibility and authority for program to top company official.
- ° Analyze present work force to identify jobs, departments and units where minorities and females are underutilized.
- ° Set specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.
- ° Make every manager and supervisor responsible and accountable for helping to meet these goals.
- ° Re-evaluate job descriptions and hiring criteria to assure that they reflect actual job needs.
- ° Find minorities and females who qualify or can become qualified to fill goals.
- ° Review and revise all employment procedures to assure that they do not have discriminatory effect and that they help attain goals.
- ° Focus on getting minorities and females into upward mobility and relevant training pipelines where they have not had previous access.
- ° Develop systems to monitor and measure progress regularly. If results are not

satisfactory to meet goals, find out why, and make necessary changes.

Sears Exhibit 263 (EEOC Guidebook: Affirmative Action and Equal Employment, Vol. I at 3 (Jan. 1974)). Sears' program had met these standards before the EEOC formulated them.

70. This EEOC Guidebook set forth the EEOC's test for measuring an affirmative action program:

The most important measure of an Affirmative Action Program is its RESULTS.

Extensive efforts to develop procedures, analyses, data collection systems, report forms and fine written policy statements are meaningless unless the end product will be measurable, yearly improvement in hiring, training and promotion of minorities and females in all parts of your organization.

Just as the success of a program to increase sales is evaluated in terms of actual increases in sales, the only realistic basis for evaluating a program to increase opportunity for minorities and females is its actual impact upon these persons.

Id. (emphasis in original).

71. As Sears Director, Equal Opportunity, I attempted to demonstrate Sears' affirmative action record of steady progress to the Commissioners before the Commission Decision was issued. I participated in the predetermination settlement discussions and, on March 1, 1977, I made a lengthy slide presentation to the Commissioners. In my presentation, I traced Sears' actions and progress and urged the EEOC not to deal with Sears as it would with the most recalcitrant corporation in the United States, but instead to recognize it as a working model of what affirmative action is all about.

72. Despite the Commission's refusal then and now to recognize what Sears has done, our numbers tell our story. In 1966, women were 20.8 percent of Sears' officials and managers; in 1980, they were 37.8 percent. In 1966, women were 19.2 percent of Sears' professionals; in 1980, they were 48.7 percent. Sears Exhibit 93 at 58 (Sears, Roebuck and Co., 1980 Annual Report (1981)). Despite substantial reductions in the number of Sears' officials and managers, the percentage of women in those ranks continued to grow. Id.; see also Sears Exhibit 33 (EEO-1 Reports (Companywide) 1970-1980). Since the adoption of the 1979 checklist MAG plan, the percentage of promotions received by checklist women has exceeded their percentage of the checklist workforce. Of course, checklist white males have received a lower percentage of promotions than their percentage of the checklist workforce. Sears Exhibit 33 (Sears Checklist MAG Summary 1980 and 1981). The percentage of women in management jobs at Sears is almost one and a half times greater than is their percentage in the civilian labor force. Sears Exhibit 93 at 58 (Sears, Roebuck and Co., 1980 Annual Report (1981)).

73. Minority officials and managers within Sears increased from 1.4 percent in 1966 to 11.4 percent by 1981. Sears Exhibit 93 at 58 (Sears, Roebuck and Co., 1980 Annual Report (1981)). Since the adoption of the checklist MAG Program, the percentage of promotions received by members of minority groups has exceeded their percentage of the checklist workforce. Sears Exhibit 33 (Sears Checklist MAG Summary 1980 and 1981). Between 1966 and

1981, minority professionals at Sears increased from 1.7 percent to 13.1 percent. In timecard jobs during these years, minority technicians rose from 3.3 percent to 23.5 percent, minority office and clerical workers from 5.8 percent to 20.7 percent, and minority craftworkers from 6.4 percent to 17.1 percent. Sears Exhibit 93 at 58 (Sears, Roebuck and Co., 1980 Annual Report (1981)).

74. When I began as Equal Opportunity Director in 1968, women were approximately 8 percent of the commission sales workforce. By 1980, women were 27.8 percent. Sears Exhibit 6D (Female Composition of Total Commission Sales Workforce by Territory and Year). From 1973 to 1980, women's share of hires and promotions into commission sales grew steadily: 13.8 percent in 1973, 27.2 percent in 1974, 36.6 percent in 1975; 34.5 percent in 1976, 39.4 percent in 1977, 44.5 percent in 1978, 45.2 percent in 1979, and 42.6 percent in 1980. Id.

75. Sears has spent a massive amount of time, money, and energy promoting and achieving equal employment opportunity. The total amount probably exceeds \$100 million. By 1977, the Company had spent more than \$20 million on the administrative costs of maintaining its affirmative action program--on staff, recruitment programs, program development, and data processing systems alone.

76. In 1973, Sears' President Swift told Sears' executives that when Sears wanted to accomplish something, it always used numbers to track its progress. These numbers tell the success of Sears' equal employment and affirmative action story. .

Ray J. Graham
Ray J. Graham

Sworn to and subscribed before me this 18th day of February, 1985.

William J. Ann
Notary Public

My commission expires: May, 1985