
Remarks of Robert A. Canino, Regional Attorney, Dallas District Office.

Madame Chair, Vice Chair and Commissioners, my name is Robert Canino and I am the Regional Attorney for the EEOC’s Dallas District Office. I am currently responsible for the litigation program for much of the State of Texas and part of New Mexico. Until recently, our jurisdiction included the state of Oklahoma, thus our legal staff has always practiced law in both the Fifth Circuit and Tenth Circuit Courts of Appeal. Today, I hope to share some perspectives on race discrimination based on almost 20 years with the Commission, and to leave you with a sample of some of the more traditional, as well as some of the less obvious, types of race discrimination we have encountered.

As a young and admittedly naïve Trial Attorney at the EEOC’s Miami District Office in about 1987-88, I was shocked when I was assigned a pattern and practice race case against Jacksonville Shipyards in which I came face-to-face with a cruel reality – because after all, this was the late 80’s not the late 60’s. I found myself in a case representing a class of Black pipefitters and welders who suffered various forms of discrimination, including verbal and physical abuse, intimidation with a confederate flag and stories of the KKK, accelerated promotion of junior White workers over the senior Black workers who trained them, dramatically disparate discipline, constant jokes and slurs, and even job assignments that threatened their health. We were ultimately able to settle that case for lost wages, promotional opportunities for some, and a total overhaul of personnel procedures, but it was all pre-Civil Rights Act of 1991, so the compensation to the aggrieved was quite limited. The emotional harm these employees suffered for over a decade was not remedied, and deterrent damages did not flow. What was incomprehensible to me was that this kind of blatant racial hostility at the workplace had all happened more than 20 years after passage of Title VII of the Civil Rights Act of 1964.

That was 1987, fast-forward now, 20 more years, and what are we encountering in the context of race discrimination on the job today? How much has it changed? Well, I can tell you a little bit about what we are seeing in our region, which may or may not be reflective of the kinds of cases my colleagues are finding and addressing around the country. A review of the Annual Reports prepared by the Office of General Counsel, and accessible through the EEOC website, reveals examples of litigation of great breadth and depth in scope and substance. Certainly, when you look to the extraordinary facts and far-reaching remedies presented by recent cases such as Abercrombie &Fitch, involving recruitment and hiring practices nationwide, or the settlement with the Ford Motor Co. and the UAW, about disparate impact in testing for apprenticeships, it might be easy to overlook the cumulative significance of the great number of cases involving only individuals or small groups who are, still today, subjected to the most egregious and offensive sorts of harassment in racially hostile environments.

For reasons that I am ill-equipped to explain, not being trained in industrial psychology or sociology, I can see that our jurisdiction continues to present many cases which are most often blatant and obvious forms of hostile environment harassment. Race harassment is generally not secretive or subtle. The claims are not constructed on circumstantial evidence or complex comparisons as other cases might be. There are almost always witnesses, and among those witnesses, there are often conscientious White co-workers who can and are willing to attest to the treatment. It is not even surprising to have supervisors acknowledge the most obvious and open conduct, but then describe it as “joking” or even “welcome” as if borrowing from a defense that might be applicable in a sexual harassment case. For all of these reasons, EEOC’s investigation of these kinds of cases should not be difficult or time-consuming except to the extent that other issues such as tangible employment actions are also intertwined with a hostile environment. In other instances, a case may be complicated by some intervening event which was the likely result of an employee’s frustration, such as a confrontation with another worker or supervisor.

Because the individuals or small groups affected in cases like these are not always employed with a major highly visible corporation, or may not be high wage earners, settlements can sometimes be lower profile and limited in their broader public impact. However, the trial of these cases and the remedies which might be obtained in settlement are no less important to the overall education of a particular employer’s workforce or all those other people who may hear about the litigation through media sources. The end result is education of a public who might otherwise believe that mistreatment and abusive conduct of this kind, based on a racial animus and hostility, is a thing of the past...from way back in the 60’s in the South...or back in the 80’s at a shipyard in the Southeast...but surely not still here and now in 2007 in the Southwest.

First, I would like to address some of the more traditional or historical forms of race discrimination we continue to
see in 2007. Cases investigated, conciliated and litigated in our jurisdiction are typically neither sophisticated, nor subtle. Fact scenarios often involve intimidating and degrading environments. It is in the cases from our region that we find the hangman’s nooses defended as “rodeo art” or the rope actually put around the neck of a Black employee; the KKK impersonations and drawings, Nazi insignia or “coon hunt” flyers. Ours are the charges or cases with the “Whites Only” sign over the water fountain, the references to “boy,” “monkeys,” “slaves,” and of course the “n-word”. Our charging parties are the ones told to go back to Africa, or ridiculed for celebrating Martin Luther King Day by white co-workers wearing confederate flag bandanas. If the “n-word” is not the moniker of choice, victims are given nicknames like “Buckwheat” or “Sambo” or referred to with the prolific use of the adjective “black”. In our cases, we find the employers who make employment decisions based on whether they think customers want to interact with or see black people at the front end of a grocery store, or in the lobby of a nursing home referred to by managers as “the plantation”. Certainly, this is not to say that these repugnant acts are unique to our part of the country, there are obviously cases like this which arise in our other jurisdictions, such as the case against Cracker Barrel settled by Mr. Hendrickson’s office last year. My point is, however, that these kinds of hostile environment cases are emblematic of the way that race discrimination at the workplace most often manifests itself in our region.

In addition to these most recognizable cases of offensive behavior toward African-Americans, we are also seeing cases presenting race or color discrimination in fact-patterns and circumstances not quite so familiar. For instance, we are all well aware of the “same-sex” harassment scenario, but this past year our District successfully litigated EEOC v. Renaissance III, a case of “same-race” harassment. In the Renaissance III case, African-American employees were humiliated, verbally abused, and even physically threatened by their Director, who, as it turns out, was also African-American. Daily verbal assaults, intimidating references to slavery, and degrading comparisons to “Whites”, were all punctuated by the constant use of the “n-word”. In recent years there has been much social and cultural debate about whether it is a positive or negative for the “n-word” to be exchanged between people of the same race, but at the EEOC, we determined that there should be no real controversy on that subject when it infects the workplace and Title VII protections are implicated. The deep pain and embarrassment expressed by the African-American victims of this cruel harassment at the Renaissance III community center made clear to our attorneys why anti-discrimination laws are rightly focused on the wrong-doing, irrespective of the race of the wrong-doer.

Other forms of discrimination based on race, which have surfaced in Commission cases in recent years, are the tragic examples of human trafficking and exploitation of foreign workers. These are cases in which the motivation for the discrimination is actually driven by simple greed, and a willingness to dehumanize others for the sake of the “bottom line.” The U.S. Department of State reports that of the millions of victims of human trafficking from countries throughout South Asia, East Asia and Africa, a great many are eventually brought to America. Race, color and national origin, language limitations, and economic disadvantage are common coordinates in targeting of the groups victimized by the traffickers or employers. In EEOC v. John Pickle Co., the Dallas Office recently prevailed on behalf of skilled workers from India, who were chosen by an Oklahoma company because of prejudice and a condescending belief that people from that part of the world would be appreciative of even the most dismal of working and living conditions. The President of the company summed up his recruitment plan alluding to race or color when he said:

"Bring them over here and give them a place to sleep, a little bit of food, pay them 2-3 dollars an hour, and they think they are getting a deal. Hell that's cheap labor, they will work harder than any White son of a bitch you can find here."

The Indians were not paid minimum wage or overtime. They were subjected to harassment, and forced into servitude, behind locked gates and armed guard in horrible living conditions. Job assignments were also discriminatory. For instance, evidence of animus based on race or color was evident when highly-skilled Ambrose Panacalpuracal, described as the darkest-skinned of the 52 Indians, was assigned to clean toilets, replacing the janitors who were dark-skinned African-Americans. These Indian steel workers, are not unlike the 48 dark-skinned Thai welders in a similar Title VII/human trafficking case settled just this past January by the LA District Office in EEOC v. Trans Bay Steel. The idea that a foreign worker’s color may lead to his/her mistreatment is not just speculation. As a matter of fact, the negative impact of color on employment opportunities is supported by the recent findings of a study by Joni Hersh, a Law and Economics professor at Vanderbilt University. On January 25, Vanderbilt Law School announced the results of a study that examined a government survey of legal immigrants to the U.S. from around the world and found that those with the lightest skin earned an average of 8% -15% more than similar immigrant workers with much darker skin. The exploitation of workers from India and Asia reveals the reality that race and national origin, color and other earmarks of ethnicity are often inextricably intertwined. The Court in the Pickle case aptly pointed out that even technical classifications, such as those by which people of India may be considered Caucasian, do not exclude them from the statutory protections against “race”-based
discrimination. Madame Chair and Commissioners, I am firmly convinced that just as the slavery which is sadly a part of our country's history was about race then, trafficking for forced labor, or "modern-day slavery", as it sometimes called, is still about race today.

As we continue identify and address race cases, and try to educate employers and employees about their rights and responsibilities, we understand that it is not expected of us to be able to change hearts, only to promote compliance with statutes that prohibit unlawful conduct. However, when it comes to race issues in America, I cannot help but feel that, as a public servant, I and my colleagues, attorneys and non-attorneys at the EEOC, must continue to do our job in a way that will somehow encourage civility, tolerance and cross-cultural understanding for a more healthy and productive workplace. Our goal should not only be to promote the concepts of diversity through equal opportunity, but to do what we can to ensure that diversity achieved is not then compromised by hostile work environments, which might lead to divisiveness, dysfunction and displacement.

Madame Chair, at this time it is my pleasure to introduce to the Commission, Mr. Jagdish Prajapati, one of the men who were brought here from India to pursue an American dream, only to experience a nightmare in the land of opportunity as a result of race and national origin discrimination. I think you will find from Mr. Prajapati's testimony on behalf of his friends and co-workers, that he is an overcomer, who has a special appreciation for the laws of this land and for the freedoms they make possible.

Thank You.

[REMARKS OF JAGDISH PRAJAPATI ]

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