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RTNDA

Radio Television News Directors Association & Foundation

RTNDA/F RESEARCH**RECEIVED****2002 WOMEN & MINORITIES SURVEY**

SEP 18 2002

[Click here for survey results](#)FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**Making Diversity Work**

KVUE-TV has made a commitment to diversity, in both its hiring practices and its news coverage. Here's how the diverse staff enriches the news product.

By Bob Papper for July-August 2002, *Communicator*

"I don't remember a time when we were lily white," says Judy Maggio about the KVUE-TV newsroom in Austin, TX, and she should know. Austin's top anchor has been there for more than 20 years-through three owners. And gradually, KVUE has come to very closely resemble the demographic makeup of its community. And not by accident. KVUE and its managers have a history of commitment to diversity.

The Austin market is 37.8 percent minority (25.3 percent Hispanic, 7.7 percent African American, 3.3 percent Asian American, 0.6 percent Native American, and 0.9 percent other). The relatively recent loss of three minority staffers (two Hispanics and one Asian) has dropped the KVUE newsroom down from a market-mirroring 36 percent minority to a still impressive 31 percent. Women make up 43 percent of the newsroom.

"You need to have a mix of ideas, backgrounds, cultures. We're in the broadcasting business," says Patti Smith, vice president and general manager of the station. Smith came in when Belo bought the station from Gannett in 1999. "KVUE was diverse when I came over three years ago," says Smith, "and we've added to that."

Both Smith and executive news director Frank Volpicella have the same policy in regard to hiring. "You have to mirror the community in which you live," says Smith. "If not, how do you expect to understand the issues in that community? If you hire without prejudice, then you will have the most diverse staff."

A Diverse History

Morning executive producer Thea Williams says a lot of the station's success with diversity has to do with KVUE's history of having women general managers and "nontraditional" people in positions of power. Williams says those people "have different ideas and different viewpoints in terms of who [else] can be in power."

Several people in the newsroom cite the legacy of KVUE's legendary vice president of news Carole Kneeland. She became news director in 1989 and worked tirelessly to make sure her staff reflected the community. Beyond that, Kneeland insisted the staff understand and cover all the varied segments of the Austin market and that the station have a "rainbow Rolodex." Morning meetings always included discussions about ensuring diversity among the people interviewed for stories. Kneeland died at age 49 in 1998 after an eight-year battle with breast cancer.

"She was my mentor," Maggio says. That legacy has helped keep the staff vigilant, and they make clear that they have no hesitation to speak up if they're at all concerned.

"I remember one meeting," says reporter Kris Gutierrez, "when one of our reporters stood up and said, 'I think we're getting away from [making sure we have diverse soundbites]. That's something I took to heart, and I think others did as well. We need to make a conscious effort that we're not just reporting the news to Miss Betty White.'"

"If it's a story that requires a medical perspective, it doesn't always have to be an Anglo male doctor,"

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says 5 o'clock anchor Olga Campos, an eight-year veteran of the station.

Ron Oliveira thinks he may have been the first Hispanic main anchor in Austin-starting in 1981. "A nice, bold move for [KVUE] back then," he says. "There were very few Hispanic anchors when I started. Not just here, everywhere.

"Olga and I are making broadcast history here in town," notes Oliveira. "Two Hispanics anchoring a primetime newscast. None of the other stations has ever done that." Campos and Oliveira co-anchor the 5 o'clock newscast. Oliveira and Maggio co-anchor the 6 and 10.

"Both Ron and I are bilingual," says Campos. "When we were ad-libbing on our first day, it was in Spanish. We promised our viewers that the news will be delivered in English. We said that in Spanish. That is a historic moment."

Last Christmas, Gutierrez suggested a story about Christmas tamales. "It's something I grew up with," says Gutierrez. "Every Christmas we have tamales here in Texas. It's a Hispanic tradition. We did this great story of people lining up outside Rosie's Tamale Shop trying to get their hands on these tamales. And one of our African American reporters said, 'You know what? We have a black Santa in town.'"

Two points. First, diversity brings stories and culture into the newsroom that you might not otherwise have. Second, diversity isn't just about checking off boxes on a form. It's about people who are familiar with, have contacts with, and are part of the various communities in the market. The station did both of those stories, and the people at KVUE argue that their news is richer because of the diverse experience of the staff.

An Ongoing Process

While KVUE has one of the most diverse staffs in television news, there are some concerns in the newsroom. Of seven newsroom managers (news director, operations manager, two executive producers, special projects producer, assignment manager and chief photographer), one is a minority, and two are women.

"Sometimes I think the numbers aren't necessarily indicative of the power or the voice that particular groups may have in the newsroom," notes Williams, the one minority manager in the newsroom, although she thinks KVUE probably does a better job at diversity than most other stations.

The people who work at KVUE say they're not shy about making sure that the station maintains the kind of diversity that has been a hallmark.

Reporter Quita Culpepper says she doesn't worry about Belo maintaining diversity because she knows it's a priority at the company. But she also says she wouldn't hesitate to speak up if she thought that diversity was threatened. "Plenty of people feel that way," she says.

"Morally and ethically, it's right to have a newsroom that's diverse and reflects your market," says Volpicella. "With that good intention, it will always equate to good business."

"Everybody brings some personal experiences and opinions to the table every day," says Maggio. And does that make it a more interesting place to work? "You bet," she says.

-Bob Papper is a professor of telecommunications at Ball State University.

Sidebar: The Latest on EEO at the FCC

At the FCC Commissioner's Breakfast at NAB2002, FCC chairman Michael Powell made it clear that he believes the commission can put together EEO guidelines that will pass court review. However, Powell gave no time frame for the implementation of new rules, and as of this writing FCC staff members were unwilling to hazard a guess. Earlier this year, the FCC extended the public comment period on the new guidelines to mid-April and extended the reply period to mid-May.

The latest FCC proposal would require "broad outreach to all qualified job candidates for positions at radio, television and cable companies." It would accomplish that by requiring most stations to send job vacancy announcements to recruitment organizations that request them, and to select from a menu of specific outreach approaches, such as job fairs, internship programs and interaction with educational and

community groups.

Small broadcast stations might be exempt from the rules; others would have to explain their recruiting efforts in an annual EEO report in their public file. Stations also would be required to file annual employment reports with the commission, but the information would be used only "to monitor industry employment trends and prepare reports to Congress."

The latest proposals come in response to the latest D.C. Circuit Court of Appeals decision in 2001 throwing out the FCC's previous changes to the EEO guidelines.

Sidebar: Rainbow Rolodex

RTNDF Newsroom Diversity Campaign

Phone: 202.467.5217

Fax: 202.223.4007

www.rtna.org/diversity/index.shtml

walts@rtndf.org

American Women in Radio and Television (AWRT)

Phone: 703.506.3290

Fax: 703.506.3266

www.awrt.org

info@awrt.org

Asian American Journalists Association (AAJA)

Phone: 415.346.2051

Fax: 415.346.6343

www.aaja.org

Association for Women in Communication (AWC)

Phone: 410.544.7442

Fax: 410.544.4640

www.womcom.org

nancy@womcom.org

The Carole Kneeland Project

Phone: 512.231.1800

Fax: 512.345.8911

www.carolekneelandproject.com

kbarnesckp@austin.rr.com

Emma L. Bowen Foundation for Minority Interests in Media

Phone: 212.456.1992

Fax: 212.456.1997

www.emmabowenfoundation.com

International Women's Media Foundation

Phone: 202.496.1992

Fax: 202.496.1977

www.iwmf.org

info@iwmf.org

National Association of Black Journalists (NABJ)

Phone: 301.445.7100

Fax: 301.445.7101

www.nabj.org

carolyn@nabj.org

National Association of Hispanic Journalists (NAHJ)

Phone: 202.662.7145

Fax: 202.662.7144

www.nahj.org

National Lesbian and Gay Journalists Association
Phone: 202.588.9888
Fax: 202.588.1818
www.nlgja.org

Native American Journalists Association (NAJA)
Phone: 612.729.9244
Fax: 612.729.9373
www.naja.com
info@naja.com

UNITY: Journalists of Color
Phone: 703.469.2100
Fax: 703.469.2108
www.unityjournalists.org
info@unityjournalists.org

MIXED RESULTS

The 2002 RTNDA/Ball State University Annual Survey shows a drop in minority representation in radio and television newsrooms, particularly among Hispanics. But the survey has good news for women.

Note: *Survey results in red have been corrected from the July/August 2002 issue of Communicator. The original results were incorrect due to an editing error.*

By Bob Papper and Michael Gerhard for July/August 2002 *Communicator*

There are more women news directors than ever, according to the latest figures from the RTNDA/Ball State University Annual Survey. The percentage of minority news directors is also up slightly, even though there's a slight decrease in the percentage of minorities overall.

Women now make up 25.9 percent of TV news directors—that's almost 2 percent higher than the previous record. Minorities make up 9.2 percent of television news directors, up from 8 percent last year.

At 20.6 percent, the TV minority work force slid back from last year's all-time high of 24.6 percent to just above the level from two years ago. Excluding Hispanic stations, the drop is less: from last year's 21.8 percent minority level to this year's 19 percent. Other than last year, that's the highest percentage of minorities at non-Hispanic stations ever recorded.

So why are minority numbers down from last year? There are two possibilities. First, last year's data could simply represent a statistical anomaly. We're always at the mercy of those who return the survey, and last year's sample could have overrepresented the population. Another possibility is that the downturn in the economy has hurt minority numbers: As minority journalists moved up in market size, stations were unable to replace them. That could lead to an overall drop in percentage.

Most of the decrease from last year is among Hispanics. Michael Reyes, member services manager of the National Association of Hispanic Journalists, says the group can't really compare last year's membership figures with this year's, but that there "definitely has not been a drop." He says the numbers have been "consistent if not up slightly."

The other segment taking the biggest hit is the Asian American group. Randall Yip, executive producer at KNTV in San Francisco and vice president of broadcast for the Asian American Journalists Association, says much the same thing—his group has no evidence of a drop in numbers.

Since this year's numbers for both Hispanics and Asian Americans tend to represent historical norms, that suggests that last year's data may well have overstated the percentages.

--Bob Papper and Michael Gerhard, professor and associate professor, respectively, at Ball State

University, conducted the research with support from Communicator magazine at RTNDA and the Department of Telecommunications at Ball State.

BROADCAST NEWS WORK FORCE

Television

	2002	2001	1994
Caucasian	79.4%	75.4%	82.9%
African American	9.3%	9.9%	10.1%
Hispanic	7.7%	10.1%	4.2%
Asian American	3.1%	4.1%	2.2%
Native American	0.5%	0.6%	0.6%

Radio

	2002	2001	1994
Caucasian	92%	89.3%	85.3%
African American	4.1%	5.2%	5.7%
Hispanic	2.4%	5.5%	7.5%
Asian American	0.8%	<1%	0.6%
Native American	0.7%	<1%	1%

In television, minorities dropped to 20.6 percent-but the numbers are generally in line with historical trends (other than last year's). Without Hispanic stations, the minority percentage fell from last year's 21.8 percent to 19 percent this year. In radio, after a slight uptick last year, minorities continued the general slide that started with the elimination of the EEO guidelines. Note, column totals may not be 100 due to rounding.

BROADCAST NEWS DIRECTORS

Television

	2002	2001	1994
Caucasian	90.8%	92.0%	92.1%
African American	2%	0.6%	1.6%
Hispanic	5.8%	5.7%	3.8%
Asian American	0.4%	1.1%	1.5%
Native American	1%	0.6%	1%

Radio

	2002	2001	1994
Caucasian	94.9%	95.6%	91.4%
African American	1.9%	1.5%	5.4%
Hispanic	2.6%	2.9%	2.4%
Asian American	0	<1%	0
Native American	0.6	<1%	0.8%

There has been a slight rise in the percentage of minority television news directors, primarily among African Americans. Among non-Hispanic stations, the percentage of minority news directors rose from 5.3 percent to 6.7 percent. Radio has changed little in the past few years.

WOMEN IN LOCAL BROADCAST NEWS

Television

	News Staffs With Women	Women News Directors	Women as Percentage of Work Force	Average Number of Women on Staff
All Television	93.6%	25.9%	38.6%	11.3
Network Affiliates	97.4%	20.3%	39.9%	12.2
Independents	93.3%	29.4%	33.8%	9.4
DMA 1-25	100%	28%	38.5%	19.7
DMA 26-50	93.9%	14.3%	38.9%	17.0
DMA 51-100	94.7%	13.3%	37.5%	13.2
DMA 101-150	93.1%	24.6%	40.4%	9.1
DMA 151+	90.6%	23.2%	38.1%	5.9
Staff 51+	100%	15%	38.9%	24.2
Staff 31-50	98.7%	17.7%	39.2%	13.2
Staff 21-30	100%	22.6%	35.5%	8.4
Staff 11-20	100%	35.9%	42.1%	5.9
Staff 1-10	52.6%	4.8%	35.4%	1.4

Radio

	News Staffs With Women	Women News Directors	Women as Percentage of Work Force	Average Number of Women on Staff
All Radio	49.2%	22.3%	32.5%	1.4
Major Market	66.7%	26.1%	42.9%	3.2
Large Market	62.5%	31.0%	37.6%	1.5
Medium Market	50%	22.4%	32%	1.3
Small Market	32.7%	13.3%	19.5%	0.6

The biggest change here is the record number of women news directors-now 25.9 percent. It's possible that the number hasn't really jumped, but that we're just "finding them" for the first time. While most of the numbers are projected from the smaller sample of returned surveys, the overall number is an actual census count. If we used projected numbers based on survey returns, we'd report that 20.4 percent of TV news directors are women. The upshot here is that for some reason women news directors were less likely to fill out the annual survey than men. In radio, there were no dramatic changes from last year. The percentage of staffs with women increased a little (from 46.4 percent), and women news directors remained steady, but the percentage of women in the radio work force dipped from last year's record high of 37.4 percent. Major markets are those with 1 million or more listeners. Large markets are from 250,000 to 1 million. Medium markets are 50,000 to 250,000. Small markets are fewer than 50,000.

MINORITIES IN LOCAL BROADCAST NEWS

Television

	News Staffs With Minorities	Minority News Directors	Minorities as Percentage of Work Force	Average Number of Minorities on Staff
All Television	83.1%	9.2%	20.6%	5.2%
Network Affiliates	86.9%	4.1%	16.3%	5.1
Independents	73.3%	33.4%	41%	11.5
DMA 1-25	95%	8.7%	30.2%	16.1
DMA 26-50	87.9%	8.6%	18.7%	8.2
DMA 51-100	96.4%	5.2%	15.7%	5.4
DMA 101-150	78.6%	6.9%	13.6%	3.1
DMA 151+	66%	7.4%	13.2%	2.1
Staff 51+	100%	10.5%	22%	13.9
Staff 31-50	94.7%	5.3%	17.3%	5.7
Staff 21-30	92%	5.8%	14.8%	3.1
Staff 11-20	65.8%	8.6%	16.9%	2.4
Staff 1-10	35%	5%	5.1%	0.8

Radio

	News Staffs With Minorities	Minority News Directors	Minority as Percentage of Work Force	Average Number of Minorities on Staff
All Radio	19.8%	5.1%	8.0%	0.4
Major Market	43.5%	8.6%	13.1%	1.2
Large Market	32.1%	14.3%	11.2%	0.5
Medium Market	10.2%	3.6%	3.2%	0.1
Small Market	11.4%	0	5.7%	0.2

The percentage of TV news staffs with minorities slipped slightly from last year's 86 percent, but the average number of minorities remained the same at 5.2. While there were not strong geographic differences in whether a television station was likely to have minorities on staff, stations in the South and West were far more likely to have minority news directors and a higher percentage of minorities on staff than stations in the Northeast or Midwest. Radio results are mixed; the percentage of staffs with minorities rose from last year's 15.5 percent, but the minority work force dropped from last year's 10.7 percent. Minority radio news directors edged up from last year's 4.4 percent.

GENERAL MANAGERS

Television

	Percent Caucasian	Percent Minority	Percent Men	Percent Women
All Television	94.8%	5.2%	87.0%	13.0%
Network Affiliates	97.5%	2.5%	87.4%	12.6%
Independents	72.2%	27.8%	77.8%	22.2%
DMA 1-25	91.7%	8.3%	92.0%	8%
DMA 26-50	94.1%	5.9%	88.6%	11.4%
DMA 51-100	91.7%	8.3%	82%	18%
DMA 101-150	96.7%	3.3%	90.3%	9.7%
DMA 151+	98%	2.0%	85.5%	14.5%
All Radio	96.2%	3.8%	89%	11%

The percentage of men and women general managers in television is virtually unchanged from a year ago, although women slipped slightly among network affiliates and rose substantially among independents. Minority TV GMs have dropped from 10 percent two years ago to 8.7 percent last year to 5.2 percent this time around, and minority GMs at network affiliates have dropped by more than half from last year (5.5 percent). In radio, there's little change in the percentage of women GMs from the last two years, but minority GMs dropped from last year's 5.7 percent to this year's 3.8 percent. Note that the figures for GMs include only those stations with news departments; those without news departments are not included in this survey.

NEWSPAPER VS. BROADCAST NEWSROOMS

	Daily Newspapers	TV Newsrooms	English-Language TV Newsrooms
Minorities Overall	12.07%	20.6%	19%
African Americans	5.29%	9.3%	9.5%
Hispanics	3.86%	7.7%	5.8%
Asian Americans	2.36%	3.1%	3.2%
Native Americans	0.56%	0.5%	0.5%
Women	37.05%	38.6%	
Minority Supervisors	9.7%	9.2%	

The newspaper statistics come from the American Society of Newspaper Editors. Supervisors include the news director, assistant news director, managing editor and executive producer. The 9.2 percent minority supervisors represents the lowest number since we began collecting this data in 1996.

TV POSITIONS BY GENDER AND RACE

	Male	Female	White	Minority	African American	Hispanic/Latino	Asian American Native American	
News Director	74.1%	25.9%	90.8%	9.2%	2.0%	5.8%	0.4%	1%
Asst. News Director	67.4%	32.6%	87.4%	12.6%	6.2%	3.8%	0	2.6%
Executive Producer	50.4%	49.6%	89.4%	10.6%	7.4%	2.4%	0	0.8%
Managing Editor	70.3%	29.7%	86.9%	13.1%	7.4%	1.9%	3.8%	0
Assignment Editor	59.6%	40.4%	78.2%	21.8%	13.2%	6.1%	2.5%	0
News Producer	35.7%	64.3%	85%	15%	7.9%	5.0%	1.9%	0.2
News Anchor	43%	57%	79.1%	20.9%	12.0%	5.0%	3.6%	0.3%
Weathercaster	80.5%	19.5%	90.9%	9.1%	3.1%	5.0%	1%	0
Sports Anchor	92.6%	7.4%	89.4%	10.6%	6.0%	3.8%	0.8%	0
News Reporter	41.7%	58.3%	73.8%	26.2%	12.3%	7.9%	5.4%	0.6%
Sports Reporter	91.9%	8.1%	89.9%	10.1%	6.1%	4%	0	0
News Writer	33%	67%	64.7%	35.3%	14.8%	10.2%	10.3%	0
Photographer	92.7%	7.3%	82.7%	17.3%	9.1%	6.7%	1.1%	0.4%
Tape Editor	68.5%	31.5%	74.9%	25.1%	13.4%	10.2	1.5%	0
Graphics Specialist	68%	32%	78.6%	21.4%	8%	6.7%	6.7%	0

Internet Specialist	63.3%	36.7%	93.9%	6.1%	2%	4.1%	0	0
News Assistant	36.1%	63.9%	77%	23%	12.5%	7.9%	2.6%	0

We see relatively few trends developing as we look at specific newsroom positions. We collect these data every three years, and this marks the third time. Three years ago, it looked like both women and minorities were making headway in many of the higher-end positions. This year's numbers tend to split the difference between 1996 and 1999; women continue to be more likely than men to be news anchors, and that will probably continue as women reporters continue to outpace men. On the other side, women made no gains in weather, although minority weathercasters rose slightly. In sports-both sports anchor and sports reporter-neither women nor minorities have advanced at all. And photographers, if anything, are slightly more likely to be white and male.

[Click here for 2001 Women & Minorities Survey results](#)

[Click here for 2000 Women & Minorities Survey results](#)

About the Survey

The RTNDA/Ball State University Annual Survey was conducted in Q4 2001 among all 1,396 operating, non-satellite television stations and a random sample of 1,505 radio stations. Valid responses came from 818 television stations (58.6 percent) and 249 radio news directors and general managers representing 622 radio stations.

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A Study of the Litigation Program Fiscal Years 1997 - 2001

A. Introduction

This study reviewed five years of litigation, Fiscal Years 1997-2001.⁽¹⁾ The study includes an analysis of monetary benefits recovered, suits filed and resolved, staffing and litigation workload. It also contains a five year cumulative program overview, which details the total number of trials conducted by the legal units. The study concludes with an in-depth analysis of types of resolutions and the win/loss record of each district office and of the litigation program overall.

B. Summary Discussion of Litigation Data

1. Tables IA and IB: Monetary Recovery

Tables IA and IB shows the monetary recovery by statute obtained through the administrative enforcement process and through litigation for each fiscal year from 1997 - 2001 and cumulatively for the five year period. First, it should be noted that the components of the total monetary recovery obtained through the enforcement process include projected amounts, such as the estimated value of new jobs, expected promotions and recalls projected out for one year, that traditionally have not been included in the total monetary recovery obtained in litigation. Thus, these Tables, while reporting the total monetary recovery from the enforcement process, also break that recovery down into two categories: "Actual," which corresponds to the amounts included in the litigation total, e.g., back pay, the value of restored benefits, compensatory damages, punitive damages, liquidated damages (i.e., monies actually recovered), and "Projected," which includes money not yet actually obtained but anticipated as likely to be obtained in the future. Consequently, the most accurate comparison of the monetary recoveries obtained through the enforcement process and in litigation focuses on the actual amounts recovered in enforcement with the total amount obtained in litigation.

When such a comparison is made for the five year period, it indicates that the charge process resulted in approximately \$821 million in actual monetary recovery while the much smaller litigation program resulted in almost half that amount - \$409.7 million (see Table IA). Recoveries under Title VII account for more than half the monies obtained in both enforcement (\$451.6 million) and litigation (\$271.1 million); while monies recovered under the ADA (\$184.4 million) account for the second largest recovery in the enforcement process, monies obtained under the Age Discrimination in Employment Act (ADEA) (\$104.4 million) constitute the second largest recovery in litigation.

Table IB further breaks down the monetary recovery in the Enforcement process by the amount recovered through the mediation program. The actual monies obtained

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through mediation began with a low of \$7.2 million in FY 97 and grew to a high of \$93.3 million in FY 2000. The total five-year actual amount obtained through mediation is \$235.1 million or 28.6% of the total actual monetary recovery, compared with \$585.9 million or 71.4 % of the total actual monetary recovery obtained through the other aspects of the administrative process. After extracting the amount garnered in mediation, the amount otherwise obtained (\$585.9 million) compares favorably to the amount obtained through litigation (\$409.7), which, as mentioned above, is a much smaller program dealing with many fewer cases than the administrative process. In fact, the actual monies recovered through litigation equal 69.9% of the actual monies recovered in the administrative process.

2. Tables II - VII: Lawsuits Filed

Table II shows the cumulative number of lawsuits filed by each legal unit by basis for the five year period. Tables III - VII show the number of suits filed by each legal unit by basis for each fiscal year. Each of these tables includes breakdowns of the number of class and individual suits filed as well as the number of direct suits, interventions, subpoena enforcement actions, temporary restraining orders and administrative agreement enforcement actions. Over the five year period, OGC filed a total of 1,963 suits; of those, 1768 were direct suits, 14 were interventions, 162 were subpoena enforcement actions, 15 were Temporary Restraining Orders and four were suits to enforce administrative agreements resolving charges. A total of 570 direct suits and interventions (31.9% of all filings) were filed on behalf of a class; another 1,212 (68.1%) were filed on behalf of individuals. Interventions over the five year period account for less than 1 % of all suits filed (0.71%) and of suits filed on the merits (0.79%)

Table II also illustrates that suits alleging discrimination based on sex account for the largest number (732) over the five year period, with suits alleging retaliation constituting the second most frequently alleged basis (541), race discrimination suits the third most often alleged basis (328), disability a close fourth (311), and age the fifth (199). Thus, of the total number of bases alleged (2432)⁽²⁾, suits alleging sex discrimination account for 30.1%; suits alleging retaliation constitute 22.2%; those alleging race discrimination comprise 13.5%; disability 12.8%; age 8.2%; national origin 7%; religion 4.3%; equal pay 1.6%; and color 0.25%.

Tables III - VII demonstrate the effectiveness of focusing on specific types of cases and issues. For example, since 1997, increasing the number of class cases on the litigation docket has been a priority. "Class" cases are defined as suits on behalf of multiple aggrieved individuals who were victims of discriminatory employment practices as well as suits on behalf of one or more individuals who were victims of discriminatory employment policies. By filing these types of suits, the EEOC often obtains injunctive and remedial relief for a greater number of employees and has a broader educational and deterrent impact on employers than it would have bringing a suit on behalf of one person.

As Table III indicates, in FY 1997, the Office of General Counsel filed 93 class cases. This number was exceeded in each of the successive years, peaking in FY 2001 (Table VII), with a total of 133 class cases filed, a 43% increase in the number of class cases filed in FY 1997. As discussed in the OGC report on the Government

Performance and Results Act (GPR) Goals for FY 2001, in FY 1997, the number of class cases on the active litigation docket was 112, or 30% of the total docket; by FY 2001, this had increased to 210 class cases on the active litigation docket, or 40% of the total docket.

Another priority identified in FY 1997 was to increase the number of suits alleging equal pay violations. In that year, the Commission filed a total of four suits under the Equal Pay Act (EPA) and concurrently under the EPA and Title VII of the Civil Rights Act of 1964.⁽³⁾ (See Table III.) Again, this number was exceeded in each of the following years, peaking in FY 2001 (Table VII) when OGC filed a total of 12 suits under the EPA and the EPA/Title VII, a threefold increase over the number filed in FY 1997. After the baseline year of FY 1997, OGC filed 36 suits alleging equal pay violations in just four years, averaging nine such suits each year.

The number of suits alleging disability discrimination dropped in fiscal years 1999 (54 filed; Table V) and 2000 (25 filed; Table VI) from a high in fiscal years 1997 (83; Table III) and 1998 (85; Table IV). This drop is directly related to the Supreme Court's decisions in June 1999 in *Sutton v. United Airlines*; *Murphy v. UPS* and *Albertsons, Inc. v. Kirkingburg*, in which the Court narrowed the definition of disability by requiring mitigating measures to be considered in determining whether an individual has a "substantially limiting" impairment. Thus, for example, an individual with insulin dependant diabetes, historically considered disabled, might not be "disabled" under the Supreme Court's interpretation of the statute if the individual is able to control his/her diabetic condition with the insulin. In the aftermath of these three decisions, the agency refocused its efforts and analysis of Americans with Disability Act (ADA) cases and has gradually rebuilt the ADA litigation program. In FY 2001 (Table VII), OGC filed 64 suits alleging disability discrimination; 39 more than the previous fiscal year.

3. Tables VIII - XIII: Lawsuits Resolved

Table VIII shows the cumulative number of lawsuits resolved by each legal unit by basis for the five year period. Tables IX - XIII show the number of suits resolved by each legal unit by basis for each fiscal year. Each of these tables includes breakdowns of the number of class and individual suits resolved as well as the number of direct suits, interventions, subpoena enforcement actions, temporary restraining orders and administrative agreement enforcement actions. Over the five year period, OGC resolved a total of 1,723 suits; of those, 1,534 were direct suits, 18 were interventions, 151 were subpoena enforcement actions, 17 were Temporary Restraining Orders and three were suits to enforce administrative agreements resolving charges. Of the 1,552 direct suits and interventions resolved, 439 resolved suits (28.3%) had been brought on behalf of a class; another 1,113 (71.7%) of those resolutions had been filed on behalf of individuals.

Similar to the distribution of cases filed as shown in Table II, Table VIII shows that suits alleging discrimination based on sex account for the largest number (641) resolved over the five year period, with suits alleging retaliation constituting the second largest number resolved (427); the third largest number of suits resolved were those alleging race discrimination (297), with disability (292) the fourth largest number of suits resolved. The number of age cases resolved (205) is almost identical

to the number filed (199); likewise the EPA cases resolved (35) are close to the number filed (40).

4. **Table XIV: Staffing in Legal Units - FY 1997-2001**

Table XIV shows the attorney staffing in each legal unit for each of the fiscal years 1997 through 2001.⁽⁴⁾ The table includes Regional Attorneys, Supervisory Trial Attorneys and line or Trial Attorneys in each count. The lowest two years, FY 1997 (196 attorneys) and FY 1998 (195 attorneys), were also the years in which the fewest number of class suits were filed (93 in FY 1997, Table III; 109 in FY 1998, Table IV). When more attorneys were hired in FY 1999 (248 total on board), the number of class cases filed rose to 129 (Table V). When the attorney numbers declined in FY 2000 (226), the number of class suits filed decreased to 106. Predictably, when additional attorneys were again hired in FY 2001 (248 total on board), the number of class suits filed increased also - 133 were filed in that fiscal year (Table VII).⁽⁵⁾

5. **Table XV: Litigation Workload in Legal Units - FY 1997-2001**

This Table shows the litigation workloads in each of the legal units for each fiscal year. The litigation workload consists of the active suits on the docket of each legal unit at the beginning of each fiscal year plus the number of suits filed during that fiscal year. It does not include administrative duties, enforcement cases, outreach activities, Freedom of Information Act (FOIA) requests or any other duties that are regularly assigned to attorneys in the legal units. In fact, a study of attorney time conducted in fiscal year 1998 discovered that legal staff spent 44.9% of their time on litigation matters (after a complaint was filed); 20.8% of their time assisting investigators with charge resolution; 6.1% on responding to public requests for information; and 1.7% on public outreach and education.⁽⁶⁾

Tables XIV and XV when viewed together show a correlation between the number of attorneys on board and the litigation workload. In FY 1997, when 196 attorneys were on staff (Table XIV), the total litigation workload was 582 (Table XV); in FY 1999, when the number of attorneys on board rose to 248 (Table XIV), the workload had increased to 890 (Table XV). In FY 2000, the number of attorneys decreased to 226 (Table XIV); the workload also decreased (to 875; Table XV). Although the workload was lower in FY 2001 (842; Table XV), while the number of attorneys rose again (248; Table XIV), this was due to the fact that more cases were resolved in FY 2000 - a total of 405 (Table XII), compared with 319 in FY 1999 (Table XI) and 295 in FY 1998 (Table X). Thus, the number of suits carrying over to FY 2001 was fewer than in previous years, resulting in a lower workload.

6. **Table XVI: Five Year Cumulative Program Overview for Fiscal Years 1997 through 2001**

Table XVI serves as the summary table for the five-year period of the litigation program review. It shows the total number of cases filed and resolved, both broken down by the number of class and individual suits, as well as the total monetary benefits and the average monetary benefit per case recovered by each legal unit. Additionally, it includes the cumulative number of trials conducted by each legal unit, the average number of attorneys in each legal unit and the average number of

cases filed per attorney in each district office. Those legal units with the highest number of cases filed (New York - 119; Philadelphia - 113; Baltimore - 100) are among the offices with the highest attorney averages (New York - 17.6 attorneys; Philadelphia - 10.6; Baltimore - 14.6). Those legal units with the highest number of class cases filed (New York - 71; Chicago - 42) are also among the offices with the highest attorney averages (New York - 17.6 attorneys; Chicago - 15.6).

Among other things, Table XVI shows that the average monetary benefit per case resolved over the five year period equals \$263,945, with a range of \$26,400 on average among cases resolved by the Systemic Litigation Services, to \$1,609,130 on average among cases resolved in Miami.⁽⁷⁾ Within those extremes, Chicago (\$633,766 average per case) and New York (\$607,278 average per case) account for the highest averages. Dividing the total monetary benefits obtained (\$409,641,905) by the average number of attorneys (231) over the entire time period yields an average monetary amount of \$1,773,341.6 recovered per attorney on board.

7. 7. Tables XVII - XXII : Resolution Types & Frequencies (Including Trials Won & Lost)

Table XVII shows the types and frequencies of the resolutions of each legal unit by basis for the five year period. Tables XVIII through XXII show the types and frequencies of the resolutions of each legal unit for each fiscal year. As indicated in Table XVII, over the entire five year period, 57.73% of all resolutions were by consent decree; 27.45% were resolved by settlement agreement; 5.54% by favorable court order; 7.15% by unfavorable court order; and 2.13% by voluntary dismissal. Thus, the total percentage of successful resolutions (consent decrees, settlement agreements and favorable court orders) was 90.72%.

Table XVII also reveals that over the five years studied, the field legal units conducted 87 trials. Of these, four could not be categorized as either a win or a loss; three resulted in a "hung jury" and a fourth was settled after an adverse jury verdict and a grant of a new trial. The Commission won 50 of the remaining 83 trials, for a success rate of 60.24%. This compares very favorably with the success rate for the private bar. A recent study of data from the Administrative Office of the U.S. Courts showed that private plaintiffs prevailed in only 26.8% of all employment discrimination cases tried in the federal courts from 1978 to 1997. Schwab, *How Employment Discrimination Cases Fare in the Federal Courts* (May 19, 2001) (report filed in the fairness hearing for *Ingram v. The Coca-Cola Company*, District of Columbia).

8. 8. Table XXIII: Results of Trials Appealed By District Office - Fiscal Years 1997-2001 (cumulative)

Table XXIII demonstrates the success rate of the appeals of trials. Of the 87 trials, 26 were appealed either by the EEOC or defendants. Of these, five were settled on appeal and six were pending in the appellate court at the time of this study. Fifteen of the 26 cases appealed were decided; the EEOC won 12 of those and lost only three. This represents an overall success rate of 80%, which compares extremely favorably to the success rate of approximately 16% for the private bar. Eisenberg and Schwab, *Double Standard on Appeal: An Empirical Analysis of Employment*

Discrimination Cases in the U.S. Courts of Appeals (July 16, 2001).

In general, the party that wins in the district court has much greater likelihood of success on appeal. Thus, Eisenberg and Schwab report that for appeals decided between 1988 and 1997, employment discrimination plaintiffs won 56.4% of the appeals where they were the prevailing party below, but only 5.8% of the appeals where they had lost below. *Id.* At 8-9. Broken out this way, the EEOC won 10 of the 11 cases in which we had won below, or 90.9%; EEOC won two out of the four cases where we had lost below, or 50%. Both percentages are vastly greater than the success rates for the private bar.

9. 9. Table XXIV: Summary Judgment Rulings By District Office - Fiscal Years 1997-2001 (cumulative)

Table XXIV indicates that over the five year period, the Commission won 17 motions for summary judgment or for default judgment. During the same period, defendant won 83 summary judgment or dismissal motions. Appeals were taken, either by EEOC or by defendants, in 54 of the suits resolved by these court orders. Three of those appeals were pending at the time of this study. The Commission won 16 of the 51 appeals that were resolved; 14 suits, which had been lost at the district court level, were settled on appeal (one of these had been won on appeal prior to settling). Thus, of the 51 appellate resolutions, the EEOC obtained successful outcomes in 29 or 56.86%.

These statistics, however, present an incomplete picture because they do not include a tally of the motions for summary judgment filed by defendants and defeated by the EEOC. Unfortunately, these numbers have not historically been tracked in a database.⁽⁸⁾ Nine field offices have been able to reconstruct those numbers for the five year period under study. Those nine offices together defeated a total of 77 summary judgment motions filed by defendants. (Table XXIV.)

Given the data reported, EEOC defeated 3.5 motions for every motion that was not defeated. Extrapolating from the results in those nine offices (assuming the other offices had a similar success rate), EEOC would have successfully defeated an additional 213.5 motions, for a total of approximately 290. The success rate on summary judgment motions would thus be 307 (290 motions defeated plus 17 won) out of a total number of 390 or 78.7%.

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1. The information forming the basis of this study was drawn from the General Counsel Database the weeks of June 24 through July 15, 2002. To the extent that it differs from previously reported data, it is the result of the database being under constant verification and correction.
 2. The total number of bases alleged is more than the number of suits filed because many suits allege more than one basis of discrimination.
 3. This does not include wage claims based on sex filed only under Title VII.
 4. At the end of FY 1999, attorneys were hired in area/local offices to provide legal assistance to

investigators and to enhance litigation development in those offices.

5. Class cases are generally staffed with more than one attorney due to their complexity; almost all class cases always require the use of experts, often entail complicated database analyses, cover longer periods of time and numerous discriminatory events involving several individual victims and decision-makers compared with the typical one event in time in issue in an individual case.

6. Another 13.7% of attorney time was spent on leave or on details to non-litigation activities, such as acting deputy director or acting administrative judge. Other activities, such as responding to inquiries from Congress, charging parties, respondents, and the general public; attending or conducting essential training; attending staff meetings; reporting litigation activity and verifying litigation data, account for 12.8% of attorney time.

7. Miami obtained the highest recovery in a single case in the Commission's history: \$81.5 million in *Shores & EEOC v. Publix Super Markets, Inc.*

8. The IMS does contain a field to track this information.

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The U.S. Equal Employment Opportunity Commission

FOR IMMEDIATE RELEASE
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CONTACT: Ann Colgrove
David Grinberg
(202) 663-4900
TTY: (202) 663-4494

EEOC ISSUES COMPREHENSIVE LITIGATION REPORT

Five-Year Study Shows High Success Rate for Commission Lawsuits, Trials and Appeals

WASHINGTON - Approximately 91% of federal employment discrimination lawsuits by the U.S. Equal Employment Opportunity Commission (EEOC) are successfully resolved through Consent Decrees, settlement agreements, and favorable court orders, according to an extensive five-year litigation study released today by the EEOC. The report, covering Fiscal Years 1997 through 2001 (October 1, 1996 - September 30, 2001), will be available shortly on the Agency's web site at www.eeoc.gov.

In addition to the 90.72 percentage rate of successful litigation resolutions over the five-year period, the study shows that the EEOC's success rate in trials is 60.24% - compared to a success rate of 26.8% for private plaintiffs in workplace bias suits - and the Agency's success rate is 80% in the appeal of trials - compared to a 16% rate of success for private bar attorneys.

"EEOC litigation is a highly effective tool to remedy employment discrimination when the Agency exhausts its conciliation efforts to reach voluntary settlements with employers," said Commission Chair Cari M. Dominguez. "The EEOC must make the greatest impact possible in the workplace using all the resources at its disposal. While proactive prevention of discrimination is our first priority, we will not hesitate to utilize litigation when necessary and appropriate."

She added: "Our high success rate reflects the care and selectivity with which we choose our actions to advance the public's interest. At the same time, we must vigorously pursue the types of egregious discrimination cases that have historically accounted for a large part of our workload."

Chair Dominguez requested the litigation study by the EEOC's Office of General Counsel in order to examine the success of the Commission's litigation program as part of her efforts to improve the efficiency and effectiveness of overall Agency operations. The Commission evaluates litigation success by injunctive relief - court orders immediately stopping discriminatory practices; remedial relief for victims, including jobs, backpay, and other benefits; and changes to discriminatory policies and practices by employers.

Other key points of the study show that over the five-year period:

- The EEOC filed a total of 1,963 suits - including 1,768 direct suits, 162 subpoena enforcement actions, 15 Temporary Restraining Orders, 14 interventions, and four suits to enforce administrative agreements resolving charges.

- A total of 570 cases were filed on behalf of a class (31.9% of all cases); another 1,212 (68.1%) were filed on behalf of individuals. About one-third of total EEOC suits in each of the past two years have been class cases, as defined by the Commission.
- Of the total suits filed, cases alleging sex discrimination account for 30.1%; suits alleging retaliation constitute 22.2%; those alleging race discrimination comprise 13.5%; disability 12.8%; age 8.2%; national origin 7%; religion 4.3%; equal pay 1.6%; and color 0.25%.
- Interventions, where the EEOC joins existing litigation, account for less than 1% of all suits filed (0.71%).
- The EEOC obtained \$409.7 million in remedial relief through litigation, with average monetary benefits per lawsuit resolved of \$263,945.

"EEOC attorneys in all of our offices have worked hard to accomplish impressive litigation results," said Nicholas M. Inzeo, Acting Deputy General Counsel, who is in charge of day-to-day litigation operations until a General Counsel is nominated by President Bush and confirmed by the U.S. Senate. "From regional attorneys, to appellate attorneys, to trial attorneys, the Agency's litigation team deserves accolades for a job well done." Inzeo noted that the attorneys in the Office of General Counsel also provide important non-litigation enforcement assistance to Agency investigators.

According to preliminary litigation data through the third quarter of Fiscal Year 2002 (October 1, 2001 - June 30, 2002), the EEOC has filed a total of 168 lawsuits (direct suits and interventions, and subpoena enforcement and other actions). The total number of suits filed includes 52 class cases (those involving multiple parties or victims). The Agency has obtained \$26.6 million in monetary benefits for victims of discrimination through the litigation program.

The EEOC is the federal agency responsible for enforcing the federal statutes which prohibit employment discrimination, including Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, sex, national origin, or religion; Title I of the Americans with Disabilities Act (ADA), which prohibits job discrimination in the private sector and state and local governments based on the existence or perception of a disability; the Age Discrimination in Employment Act, which prohibits discrimination against persons age 40 and over; and the Equal Pay Act (EPA), which prohibits wage discrimination based on sex. Further information about the Commission is available on its web site at www.eeoc.gov.

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The U.S. Equal Employment Opportunity Commission

Legal Unit Summary of Lawsuits Filed, by Bases - Fiscal Years 1997 - 2002 (Cumulative)

Table II

DISTRICT OFFICE	LAWSUITS (D & I) FILED			BASES								
	TOTAL	CLASS	INDIVIDUAL	DISABILITY	AGE	EPA*	RACE	COLOR	RELIGION	SEX	NATIONAL ORIGIN	RETAL
ATLANTA	63	14	49	5	8	0	12	0	5	27	3	21
BALTIMORE	100	24	76	19	6	5	21	0	9	44	10	26
BIRMINGHAM	81	22	59	7	5	0	26	0	2	38	7	23
CHARLOTTE	84	30	54	10	5	0	20	1	7	40	4	13
CHICAGO	88	42	46	28	5	0	15	0	9	26	7	29
CLEVELAND	46	12	34	11	5	3	8	0	1	21	5	12
DALLAS	80	20	60	9	9	1	15	0	2	35	5	32
DENVER	53	14	39	9	8	2	8	0	2	23	3	15
DETROIT	87	18	69	23	12	4	14	0	7	21	6	28
HOUSTON	65	22	43	9	12	3	14	1	5	22	8	17
INDIANAPOLIS	59	20	39	14	6	3	7	0	6	25	3	13
LOS ANGELES	61	17	44	12	9	2	6	0	4	19	9	24
MEMPHIS	86	32	54	19	6	0	16	0	1	38	2	30
MIAMI	62	16	46	2	9	2	16	0	5	28	7	22
MILWAUKEE	65	20	45	22	7	2	15	1	1	21	9	15
NEW ORLEANS	59	16	43	10	6	0	18	0	5	21	2	10
NEW YORK	119	71	48	28	15	1	16	0	11	51	18	32
PHILADELPHIA	113	25	88	10	16	0	25	0	8	46	14	40

PHOENIX	68	37	31	13	4	2	4	0	4	41	12	25
SAN ANTONIO	100	35	65	10	19	3	16	0	0	47	19	23
SAN FRANCISCO	92	17	75	17	11	1	12	2	4	29	7	36
SEATTLE	91	31	60	8	8	3	11	1	5	48	10	40
ST. LOUIS	55	13	42	14	8	3	11	0	1	20	1	13
SYSTEMIC	2	1	1	2	0	0	0	0	0	1	0	0
WASHINGTON**	3	1	2	0	0	0	2	0	0	0	0	2
TOTALS	1782	570	1212	311	199	40	328	6	104	732	171	541

*NOTE: Do not include wage claims based on sex, filed only under Title VII.

**NOTE: During the 4th quarter of fiscal year 2001, a legal unit was established in the Washington Field office.

D = Direct Suits

I = Interventions

S = Subpoena Enforcements

T = Temporary Restraining Orders

C = Administrative Agreement Enforcements

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The U.S. Equal Employment Opportunity Commission

Resolution Types & Frequencies (Including Trials Won & Lost) for Fiscal Years 1997 Through 2001

TABLE XVII

OFFICE	CONSENT DECREEES	SETTLEMENT AGREEMENTS	FAVORABLE COURT ORDERS	UNFAVORABLE COURT ORDERS	VOLUNTARY DISMISSALS	TOTAL CASES RESOLVED	TRIAL WINS	TRIAL LOSSES
ATLANTA	39	11	4	6	1	61	2	2
BALTIMORE	42	32	4	16	2	96	1	5
BIRMINGHAM	36	29	1	5	3	74	2	1
CHICAGO	56	15	2	8	3	84	3	0
CLEVELAND	25	8	2	6	0	41	1	1
CHARLOTTE	47	13	1	3	2	66	0	1
DALLAS	37	12	6	3	0	58	5	2
DENVER	27	10	3	3	0	43	3	1
DETROIT	38	30	2	11	1	82	5	3
HOUSTON	43	8	4	2	1	58	2	0
INDIANAPOLIS	32	6	4	4	2	48	1	0
LOS ANGELES	22	21	6	1	1	51	0	0
MEMPHIS	60	13	3	2	0	78	2	3
MILWAUKEE	31	19	4	1	1	56	2	0
MIAMI	30	10	9	4	0	53	4	3
NEW ORLEANS	25	17	0	2	5	49	0	1
NEW YORK	74	13	8	16	0	111	1	4
PHILADELPHIA	19	59	6	3	6	93	2	1

PHOENIX	34	13	6	6	3	62	5	3
SAN ANTONIO	55	23	4	2	2	86	4	0
SEATTLE	58	14	2	3	0	77	0	1
SAN FRANCISCO	40	32	2	0	0	74	2	0
ST LOUIS	24	16	3	3	0	46	3	1
SYSTEMIC	2	2	0	1	0	5	0	0
GRAND TOTAL	896	426	86	111	33	1552	50	33
% OF TOTAL :	57.73%	27.45%	5.54%	7.15%	2.13%			

* NOTE: The trials won / lost do not add to the total trials due to trials ending in a hung jury.

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