

EXECUTIVE DIRECTOR

IVIN B. LEE

CHARLESTON, WV 25301-1400

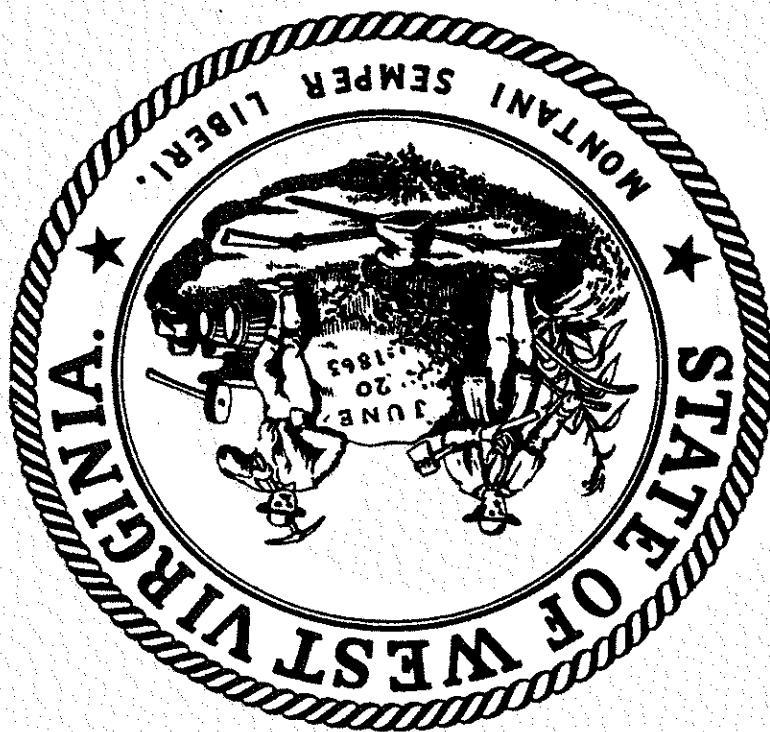
ROOM 108 A

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HUMAN RIGHTS COMMISSION

WEST VIRGINIA

ANNUAL REPORT



WEST VIRGINIA HUMAN RIGHTS COMMISSION

ANNUAL REPORT

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Preface Letter from the Executive Director

January 1999

Dear Legislators:

The West Virginia Human Rights Commission was created by the West Virginia Legislature in 1961 under the West Virginia Human Rights Act (W.Va. Code § 5-11) of 1961. This Commission is delegated with the responsibility of administering the West Virginia Human Rights Law.

The West Virginia Human Rights Commission steadfastly retains its commitment of guaranteeing equal opportunity to every resident of the State of West Virginia in their pursuit of full and productive lives. In charting the course for human rights for the Millennium, the Commission renews its commitment and goal to provide the best possible services to the citizens of the State of West Virginia.

The Commission encourages active involvement from all sectors of this great state in participating in the continuing fight against all forms of discrimination. It is our sincere pledge to cultivate an appreciation for our differences in our constant endeavor to maintain respect for the dignity and lawful rights of others.

Ivin B. Lee

Executive Director



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East
Room 108A
Charleston, WV 25301-1400

TELEPHONE (304) 558-2616
FAX (304) 558-0085
TDD - (304) 558-2976
TOLL FREE: 1-888-676-5546
November 30, 1999

Ivin B. Lee
Executive Director

Cecil H. Underwood
Governor

The Honorable Cecil H. Underwood
Governor, State of West Virginia
State Capitol Complex
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Dear Governor Underwood:

The West Virginia Human Rights Act guarantees that every individual within the State of West Virginia is afforded an equal opportunity to enjoy a full and productive life. The Human Rights Law assures protection to our citizens in the jurisdictions of employment, housing, and public accommodations. The West Virginia Human Rights Commission exists to administer and enforce our Human Rights Law to ensure the vision of a just and inclusive society.

Given this mandate, it is the pleasure of the appointed Board of Commissioners and the staff of the West Virginia Human Rights Commission to present to you our 1998-1999 Annual Report. We have worked diligently during the past year to safeguard the fundamental rights afforded every individual within the State of West Virginia.

We stand ready and most willing to discuss any part of the work of the West Virginia Human Rights Commission and pledge to continue our commitment to serve as a resource to your office in facilitating any questions or concerns.

Respectfully submitted,

Ivin B. Lee
Executive Director

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HISTORY

The West Virginia Human Rights Act (W.Va. Code § 5-11) was enacted in 1961 and is administered and enforced by the West Virginia Human Rights Commission.

Employment Discrimination and Harassment W.Va. Code § 5-11-9(1)

"It shall be an unlawful discriminatory practice . . . For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment . . ."

Public Accommodations Discrimination W.Va. Code § 5-11-9(6)(A)

"It shall be an unlawful discriminatory practice . . . For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to: (A) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations; . . ."

Reprisal Related to Employment or Public Accommodation W.Va. Code § 5-11-9(7)(A)(C)

"It shall be an unlawful discriminatory practice for any person to . . . (A) Engage in any form of threats or reprisal, . . . or otherwise discriminate against any person because he has . . . filed a complaint, testified or assisted in any proceeding under this article."

Housing Related Reprisal and Intimidation W.Va. Code § 5-11A-16

"It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by sections four, five, six or seven . . . of this article."

**West Virginia
Human Rights Commission
MISSION STATEMENT**

The West Virginia Human Rights Commission will encourage and endeavor to bring about respect, tolerance, and mutual understanding among all citizens of West Virginia regardless of their race, gender, religious persuasion, ethnicity, or disability. The Commission will administer and ensure adherence to, through education, investigation, mediation, and adjudication, the Human Rights Act, which prohibits discrimination in employment, housing, and places of public accommodation.

DECLARATION OF POLICY

It is the public policy of the State of West Virginia to provide all citizens equal opportunity for employment, equal access to places of public accommodations and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right of all persons without regard to race, religion, color, national origin, ancestry, sex, age (40 and above), blindness or disability. Equal opportunity in housing accommodations or real property is hereby declared a human right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

Unlawful discrimination damages both the individual and society in a myriad of ways, not the least of which is shame and humiliation experienced by the victim—feelings that diminish the person's ability to function in every area of life. Society is damaged by the unwarranted and foolish refusal to accept an individual's talents and efforts merely because of race, sex, religion, age, color, ethnicity or disability. With regard to housing, discrimination strikes at the dignity of the individual. It says to the victim that "No matter how much money you have," "No matter what your social position, you cannot live here." The victim is denied basic necessities of life (shelter) and fundamental freedom (the right to live where one chooses).

Specifically, the West Virginia Human Rights Act prohibits discrimination by any employer employing 12 or more persons based on race, color, religion, national origin, ancestry, sex, age (40 and above), blindness or disability in the selection, discharge, discipline or other terms and conditions of employment. The Act also prohibits any advertisement of employment that indicates any preference, limitation, specification or discrimination based on race, religion, color, national origin, ancestry, sex, blindness or disability. Lastly, it is unlawful under the Act to retaliate or discriminate in any manner against a person because the person has opposed a practice declared unlawful by this Act or because the person has made or filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing concerning an unlawful practice under the Act.

The Fair Housing Act protects each person's right to personal dignity and freedom from humiliation, as well as the individual's freedom to take up residence wherever the individual chooses. This Act prohibits discrimination in housing based on race, religion, color, sex, national origin, ancestry, disability and familial status (the presence of children

under the age of 18 years of age in the household). Wide ranges of discriminatory practices are prohibited, affecting a variety of persons and businesses. Realtors, brokers, banks, mortgage lenders, insurance companies, developers, real estate buyers and sellers, landlord and tenants are all affected by the Fair Housing Act. It is important that all those covered by the Act know their rights and duties under the Act.

ADMINISTRATIVE REPORT

MY VISION

It is my hope to continue to motivate and inspire the staff to process and bring cases to a timely closure. In doing this, it is believed that the people in the State of West Virginia will be better served.

Believing education is the major key to eliminating all forms of discrimination, we intend to set up dialogue with understanding between this Commission and all people of West Virginia. By having a better public awareness, we will be able to promote respect and develop a team effort, earning respect, and thereby will reduce the level of intolerance among all cultures. We are striving to build credibility between the public and our Commission in order to bring forth a team effort with respect.

We are working toward hiring additional investigators. We believe that with the additional investigators, we will be able to reduce the burden on the current investigators and this will facilitate expediting the handling of cases.

Mediation is an effective tool and its effect is that it is less time consuming and less expensive than adjudication. Our goal is to process cases in a timely manner without jeopardizing the quality of our investigations. Utilization of mediation whenever possible promotes practicality.

Ivin B. Lee
Executive Director

Community Outreach

When first appointed to the position of Executive Director, a foremost goal was set by Ms. Ivin B. Lee to expand awareness of the West Virginia Human Rights Commission to include an Outreach Program designed to meet with community leaders and organizations which had expressed concern for representation. A series of meetings were set and well attended by many organizations. The first Community Outreach meeting consisted of members of the minority community. Those attending and their affiliations are listed:

- Rev. Homer Davis, NAACP
- Ms. Donna Campbell, Kanawha-Charleston Neighborhood Watch
- Ptl. Marie Creed, Charleston Police Department
- Dr. Erwin Griffin, West Virginia State College
- Ms. Geneva A. Foster, Parents of Murdered Children
- James L. Johnson, West Virginia Black Law Enforcement United
- Dallas Staples, Charleston Urban Renewal Authority
- Edward Clark, Jr., Civilian Review Board
- Orlando Lewis, West Virginia State College
- Rev. Aaron Hairston, Metropolitan Baptist Church
- Coston Davis, West Virginia National Guard
- Rev. Ron English, Ferguson Memorial Church

The second Community Outreach meeting consisted of representatives from the West Virginia Lesbian and Gay Coalition and the Commission. These representatives were Chuck Smith of West Virginia State College, Sue Julian, Scott Britton and Linda Bodie.

The third Community Outreach meeting consisted of representatives from the Bahai faith listed below:

- Gretchen Border
- Bahiyih F. Nazhad
- Lynda Tae Reed
- Minu Sabet
- Laurence W. White
- Winifred W. White

A Minority Awareness Workshop is scheduled to be presented on February 20, 2000 at the New Covenant Baptist Church in Charleston to cover the subject of **RESOURCES** for minority individuals. The workshop is designed to have minorities become familiar with the resources that are available. The theme of the workshop is "All those things you always wanted to ask, let us answer!" The workshop is sponsored by:

- Action:**
- (1) Continue to enforce the statutes to prevent discrimination in housing.
 - (2) Take a position of leadership to dissuade all kinds of discrimination and those who advocate discrimination.

Issue No. One:
 Clarify the goals and objectives of the West Virginia Human Rights Commission, i.e., what, how, when and who is responsible:

In addition to the above, one-year strategic plan was developed utilizing the donated services of David Harris, Director of Equity Programs of Marshall University. The goals which were determined at the retreat are set out below:

- The Nine Commissioners
- Executive Director
- Deputy Director
- A Mission Statement was developed and formally adopted.
- An Organizational Chart for the Commission was clarified, approved, and adopted.
- Job Descriptions for the following were drafted and approved--

At the very successful annual retreat for the West Virginia Human Rights Commission Commissioners and Directors, many issues were confronted. Listed here are the accomplishments achieved at the retreat:

Annual Human Rights Commission Retreat

Select members of these Community Outreach meetings are invited to appear before the Commission to express their concerns after the initial meetings. These meetings are designed to fulfill the promise of encouraging and endeavoring "to bring about respect, tolerance and mutual understanding among all citizens of West Virginia" as stated in the Mission Statement.

- West Virginia Human Rights Commission and its Commissioners
- Hillary Chiz, American Civil Liberties Union
- Debbie Hart, Governor's EEO Director
- Dallas S. Staples, Former Chief of Police, "Black While Driving"
- Rev. Matthew Watts, Grace Memorial Church
- Rev. James Ealy, New Covenant Baptist Church.

(3) Achieve compliance by the Commission with the admonition of the Legislative audit in the Review Report of December 6, 1995 by:

- (a) Achieve compliance with the Allen Decision.
- (b) File annual Governor's and Legislative report.
- (c) Organizational conflict of interest.
- (d) Inadequate management information system to be addressed.
- (e) More active role by Commissioners.
- (f) Confidentiality of records and safety.

Issue No. Two:

Division of Labor.

Action:

Position descriptions for Executive Director, Deputy Director and Commissioners were adopted.

Issue No. Three:

Community relations staff needed to develop community programs.

Action:

This position was posted, interviews are being conducted and hiring will be completed by January 1, 2000.

Issue No. Four:

Strategic Planning.

Action:

The Executive Director's "My Vision" for the Commission was adopted as the strategic plan. This plan consists of placing investigators in Cabell and Upshur Counties in satellite offices. One investigator has been transferred from the Central Office to the Upshur County vacancy and plans are presently being made to transfer two Central Office investigators into Cabell County.

AN OVERVIEW OF INVESTIGATION AND COMPLIANCE PERFORMANCE

The following statistical report has been prepared to provide a picture of the investigation and outcome of cases filed before the West Virginia Human Rights Commission. In order to provide a context for these statistics, a summary of the investigation and compliance operation is included.

The central charge of the West Virginia Human Rights Commission is to enforce compliance with the provisions of the West Virginia Human Rights Act. To this end, allegations of discrimination in employment, housing or public accommodations due to membership in any of the nine protected categories are subjected to a three-part process:

Step One: Intake

The intake process evaluates that allegation for jurisdiction under the law and prepares those jurisdictional charges for formal service and investigation. A charge must identify an act of harm to the complainant and state the complainant's reason for believing that illegal discrimination has occurred.

Step Two: Investigative Process

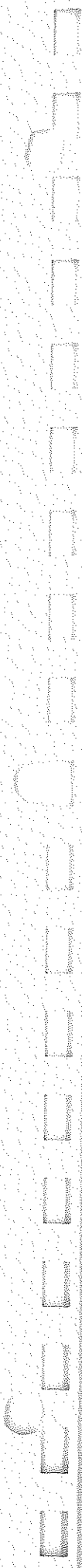
At this stage, the accused party (the respondent) must provide a rationale for defense of nondiscrimination in the alleged case. This explanation is called a *position statement*.

Newly received position statements are brought to a weekly "triage" meeting, along with the original complaint. At this meeting, the assigned investigator, the investigator's supervisor, the Deputy Director, the Intake Officer and an attorney from the Civil Rights Division of the Attorney General's Office review the charge, position statement and all relevant materials submitted by all parties. Triage ensures that issues have been properly identified and allows for early disposition of urgent cases and promotes resolution of cases which require minimal investigation.

The investigator presents the case to the group. The case is reviewed until a consensual plan is developed in this phase of the investigation.

If at this point a rebuttal to the position statement from the complainant has not been received, the investigator must obtain one. It is helpful for the respondent to provide supporting documentation of its position; however, the respondent has no burden to prove innocence during this phase of the complaint process.

To reach a finding of probable cause, evidence must be provided by the



complainant or developed by investigation showing the position statement to be a pretext for illegal discrimination. Additionally, in disparate-treatment allegations, the complainant's membership in one of the protected categories must be motivating in the act of harm. Where motive is not present, evidence must establish a disproportionate, adverse impact upon the protected category of an otherwise neutral policy or procedure.

The investigative staff is trained in investigative techniques, theories of discrimination and associated formulas to determine if such evidence exists. The investigator's role is not to "prove the case" for either the complainant or respondent. It is to simply identify, obtain and evaluate evidence which will allow the investigator to write a recommendation of whether probable cause exists to believe that a violation of the West Virginia Human Rights Act has occurred.

During this process, administrative closure or predetermination settlement is possible. Administrative closures occur when new facts are brought forward by investigation to show that the complaint is in some way non-judicial, the complainant chooses to withdraw the complaint or fails to cooperate with the Commission's investigation.

In predetermination settlements, the investigator does not propose or negotiate settlement terms. The investigator facilitates the exchange of offers and responses and will prepare a Predetermination Settlement Agreement which protects the interests of each party and the Commission in a contract.

If an administrative closure or settlement does not occur, the investigation must continue until a determination of No-Probable Cause or Probable Cause can be supported by evidence. If Probable Cause is found, the case begins to move toward a hearing.

However, several intervening events may occur prior to the hearing:

- First, settlement may yet be reached.
- At the Pre-hearing stage, the cause determination stands, but a settlement agreement to the parties and the Commission may avert a hearing.
- Mediation may be ordered for cases determined to have a likelihood of successful resolution by this process.
- If mediation fails, the case continues to a hearing.
- Finally, the complainant may choose to withdraw the case to circuit court. This ends the Commission's involvement in the matter.

Step Three: A Hearing is Held.

If a hearing is held, evidence will be presented before an Administrative Law Judge who will render a judgment.

The judge's decision may be appealed to the West Virginia Human Rights Commission Commissioners. In turn, the Commissioners' decision may be appealed to the West Virginia Supreme Court of Appeals or to the Kanawha County Circuit Court. The Kanawha County Circuit Court may be utilized only if the Commission has awarded damages in excess of \$5,000.00 or back pay in excess of \$30,000.00, or by agreement of the parties. Cases on appeal to the courts remain on the active docket until the court issues its determination.

INVESTIGATIVE DIVISION REPORT

The Investigative Division of the West Virginia Human Rights Commission has a total of eight investigators divided into two groups: Group A is responsible for completing investigations, providing computer support services and mediation. Group B is dedicated to investigations and case recommendation preparation.

Since 1992, the West Virginia Human Rights Commission's inventory of cases has steadily decreased from a high of 1048 cases to the present level of 637 cases. This has resulted in more manageable investigator caseloads.

The West Virginia Human Rights Commission's performance in case resolution for the fiscal years of 1997-98 and 1998-99 is summarized as follows:

Fiscal Year 1997-98

During Fiscal Year 1997-98, the West Virginia Human Rights Commission closed 478 complaints with the following rates:

No-Probable Cause	68.20%
Administrative Closures	18.60%
Probable Cause Determination or Settlement	<u>13.20%</u>
	100.00%

Monetary benefits to complainants totaled: **\$1,061,362.12**

Fiscal Year 1998-99

During Fiscal Year 1998-99, 440 cases were closed as follows:

No-Probable Cause	61.80%
Administrative Closures	18.60%
Probable Cause Determination or Settlement	<u>19.60%</u>
	100.00%

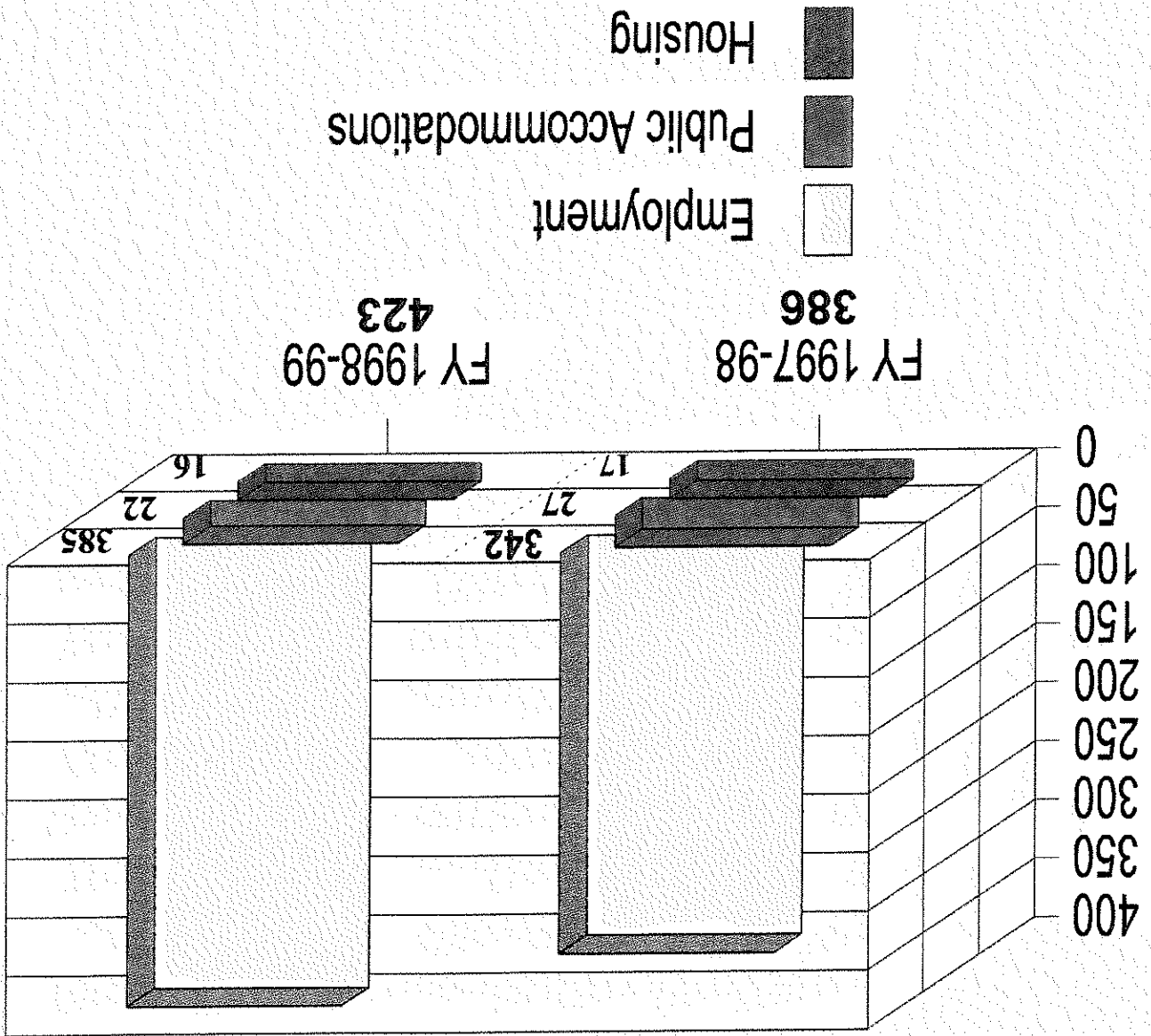
Monetary benefits to complainants totaled: **\$594,841.87**

CASE LOAD MANAGEMENT

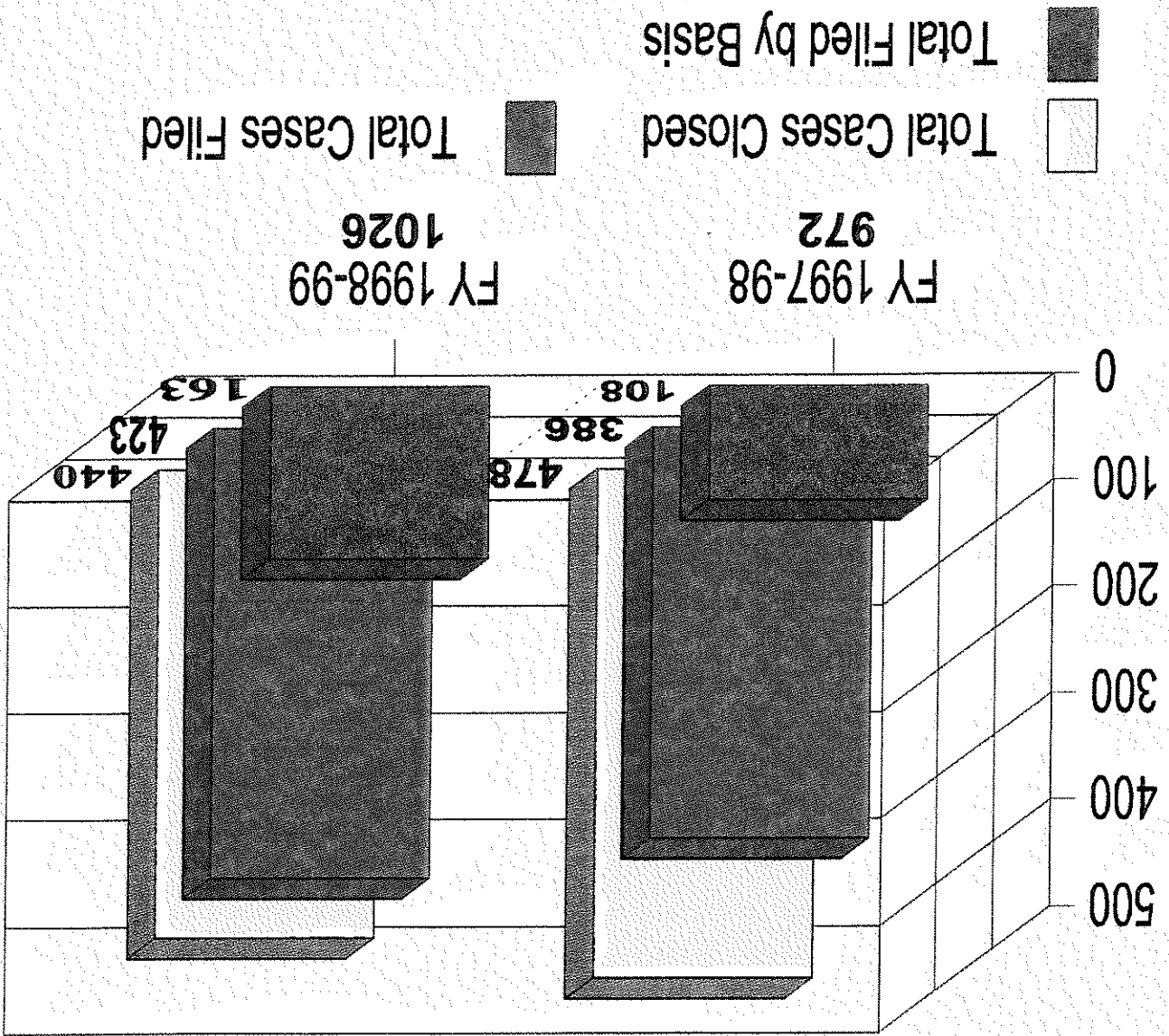
The West Virginia Human Rights Commission has continued to reduce the number of pending cases while maintaining high quality investigative processes. In Fiscal Year 1998-99, 423 new charges were filed while 440 were closed. These new filings are set out below by county:

COUNTY	FY 1997-98	FY 1998-99	COUNTY	FY 1997-98	FY 1998-99
Barbour	0	2	Mineral	2	1
Berkeley	11	27	Mingo	3	6
Boone	4	4	Monongalia	10	16
Braxton	0	2	Monroe	0	0
Brooke	11	0	Morgan	1	0
Cabell	27	24	Nicholas	6	4
Calhoun	0	1	Ohio	4	6
Clay	1	1	Pendleton	0	0
Doddridge	0	0	Pleasants	0	0
Fayette	13	8	Pocahontas	0	0
Gilmer	0	0	Preston	2	1
Grant	1	3	Putnam	7	11
Greenbrier	5	5	Raleigh	22	39
Hampshire	0	0	Randolph	4	8
Hancock	28	8	Ritchie	1	0
Hardy	0	5	Roane	1	0
Harrison	7	14	Summers	3	1
Jackson	4	8	Taylor	2	1
Jefferson	7	4	Tucker	2	0
Kanawha	141	145	Tyler	3	0
Lewis	1	0	Upshur	0	2
Lincoln	1	1	Wayne	6	3
Logan	9	8	Webster	0	0
McDowell	3	3	Wezel	3	2
Marion	8	10	Wirt	0	0
Marshall	2	2	Wood	9	17
Mason	0	4	Wyoming	2	0
Mercer	10	16	TOTAL	386	423

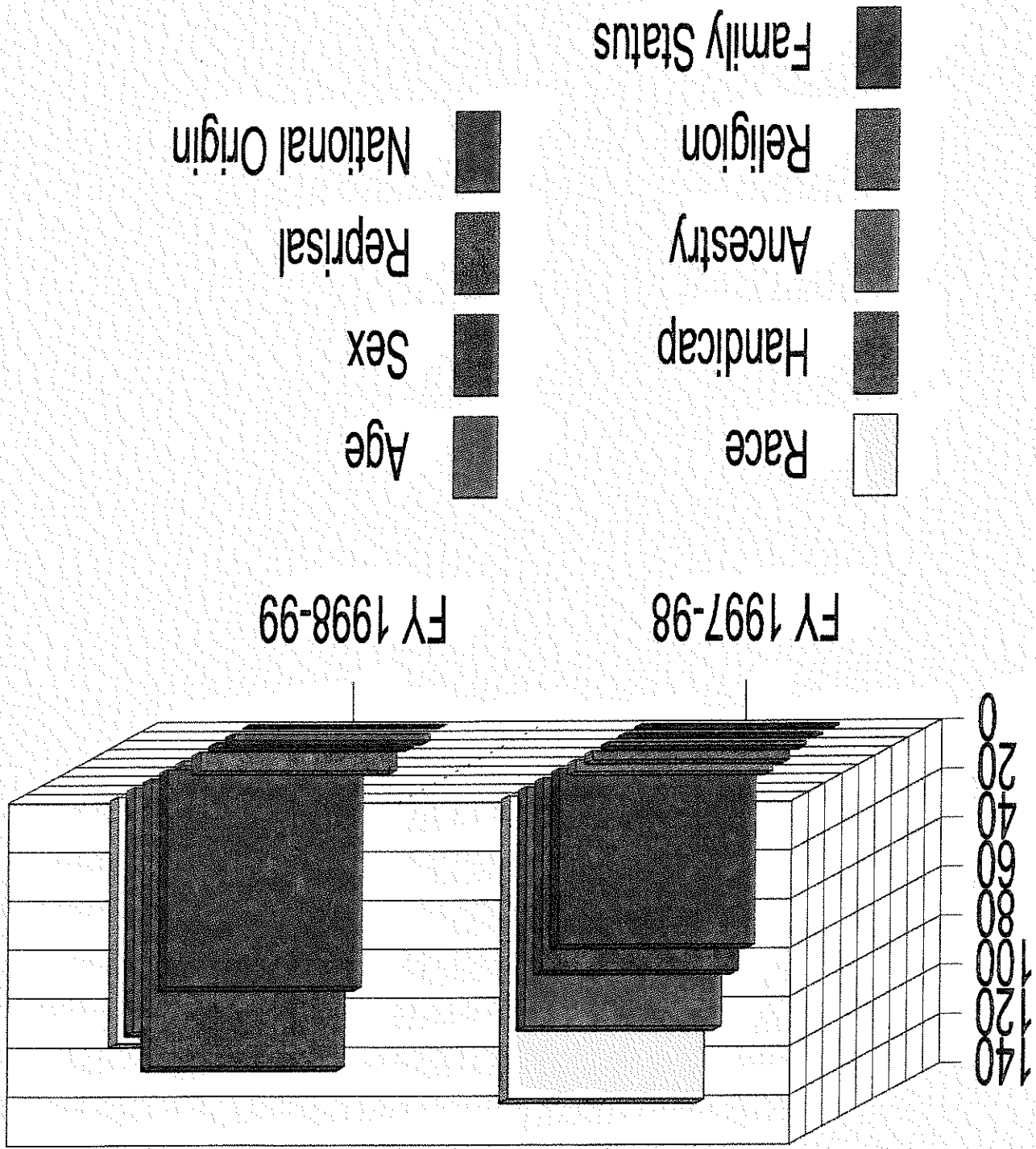
Breakdown of Total Cases Filed



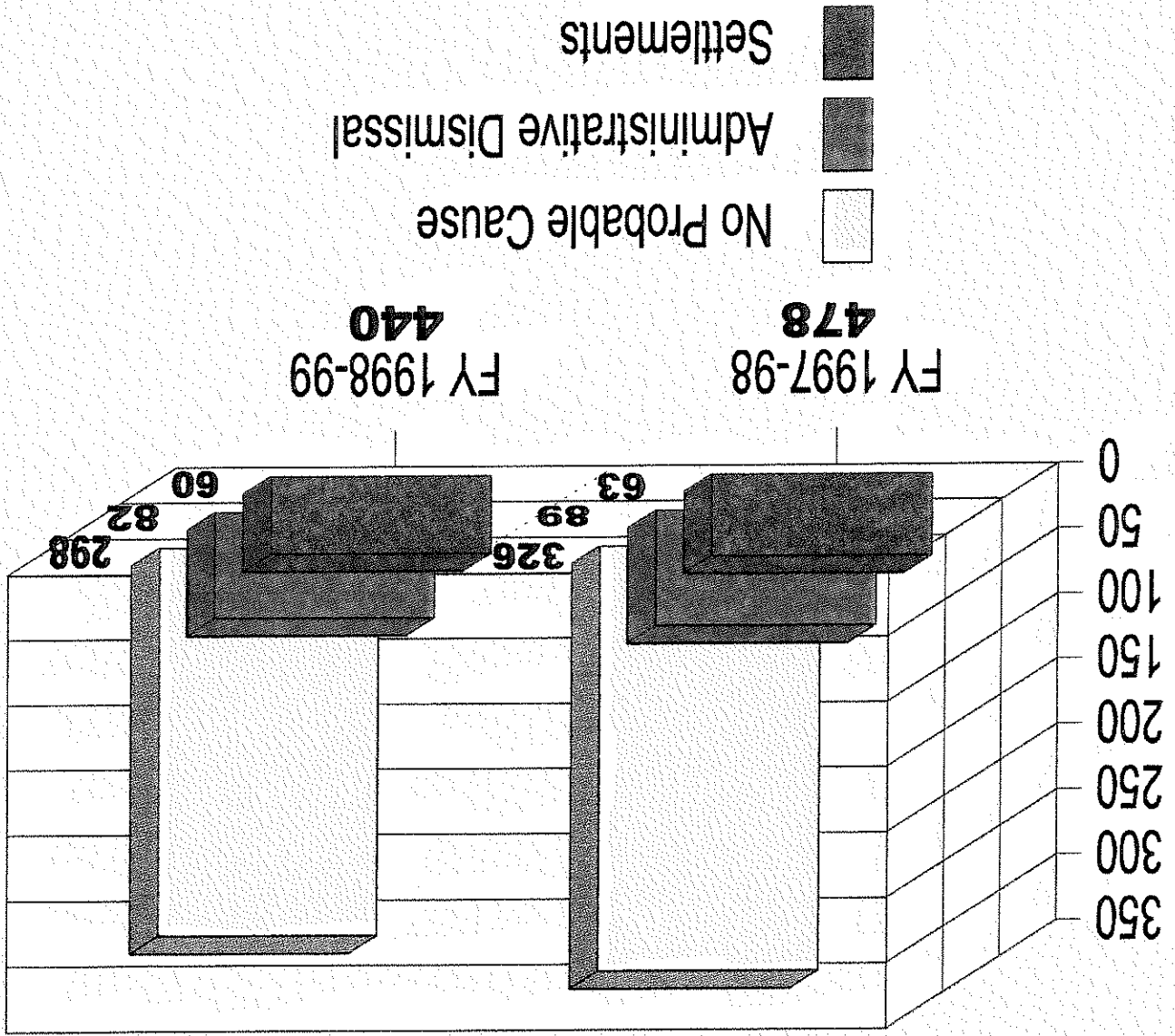
Breakdown of Total Cases



Bases for Complaints



Category of Cases Closed



**WEST VIRGINIA HUMAN RIGHTS COMMISSION
COMPLAINT PROCESS**

Step One:

You must act quickly! A person may call, write or visit the office of the West Virginia Human Rights Commission to report an incident of discrimination. The complaint must be filed within 365 days of the most recent incident.

Step Two:

After all facts have been examined, an investigator makes a recommendation as to a finding. The finding will either be that there is not enough evidence to support the allegation(s) of discrimination (no probable cause) or that there is reason to believe that discrimination did occur (probable cause).

Step Three:

Following a probable-cause determination, conciliation is attempted. In this stage, the Commission or the complainant may agree to a settlement with the parties against whom the complaint is filed (the respondent). If a settlement cannot be reached, a public hearing will be held.

Step Four:

An Administrative Law Judge will conduct a public hearing which is similar to a trial. After the judge hears all the evidence, a decision is issued by the judge on behalf of the West Virginia Human Rights Commission.

Step Five:

The judge's decision may be appealed to the West Virginia Human Rights Commission. The appeal is reviewed by the nine Commissioners who are appointed by the Governor. The party aggrieved by the Commissioners' decision may then seek judicial review in the courts.

SUMMARIES OF SELECTED PUBLIC HEARING CASES

Summary No. One.

The complainant worked for a white water river rafting company as a guide from 1989 through mid-March, 1995. The company was purchased by the respondent and complainant was subsequently terminated at which time the respondent was charged with age discrimination. The complainant had contended that all the employees of the former company would be retained. Th rafting industry is seasonal and in the off-season, the guides are given low-earnings slips in order to obtain unemployment benefits.

The respondent contended that the complainant was discharged for insubordination in that he entered into a shouting match with the manager and cursed him over having to wait for him to sign the low-earnings slip.

The Administrative Law Judge determined, based on the credibility of the witnesses, that the complainant was discharged due to his age (56) rather than the contended insubordination. The judge ordered that the respondent provide the appropriate relief to the complainant.

Summary No. Two.

The complainant alleged that he was denied a specific type of hunting-and-fishing license due to his disability. This special license is reserved for persons who have mobility impairments of the lower extremities. The complainant had a diagnosed mobility disability. Respondent contended that the regulations require that only persons *permanently paralyzed* in the lower extremities could qualify for this special permit. The complainant had a severe mobility impairment, but was not permanently paralyzed in the lower extremities. On occasion he used a wheel chair and at other times relied on crutches to ambulate.

The Administrative Law Judge ruled that the respondent's policy of having to be permanently paralyzed in the lower extremities was a violation of the Human Rights Act. The Commission affirmed the order and issued a Cease and Desist Order and ordered the respondent to provide the complainant with the special license.

Summary No. Three.

The complainant alleged that he was denied the opportunity for employment as a heavy-equipment operator due to his disability. The respondent stated it referred the complainant to its medical doctor for a pre-employment physical. Based on the recommendations of the physician, the complainant was disqualified from employment. The company's physician discussed the complainant's condition with the specialist treating the

The nature of the respondent's business required that its employees make themselves available for overtime work as needed, referred to as "call-out." Respondent averred that complainant had a very low call-out rate and had been the subject of numerous disciplinary actions in the past due to this and other purported violations of the respondent's work

to his low call-out rate. The complainant alleged that he was discharged from employment due to his race (African-American) and reprisal for complaining to the respondent's EEO representative of discriminatory treatment. The complainant further alleged that he was the victim of racial harassment. The respondent contended that the complainant was discharged due

Summary No. Six:

The Administrative Law Judge found that the nepotism defense was a pretext and ordered the appropriate relief.

The complainant alleged that the respondent refused to reinstate her employment following a medical leave-of-absence. Respondent contended that it had changed policies to include a nepotism policy, thus disqualifying the complainant from returning to employment. The evidence at hearing failed to corroborate the respondent's defense.

Summary No. Five:

The Administrative Law Judge ruled that complainant was the victim of sex discrimination, ordered appropriate restitution and ordered a Cease-and-Desist Order.

Testimony at the hearing revealed that the complainant had been the victim of sex discrimination. The evidence indicated that respondent's foreman denied complainant bathroom privileges and continually spoke to her in a derogatory manner, often referring to her in vulgar terms. The complainant voluntarily resigned her position.

The complainant alleged she was the victim of constructive discharge due to her sex (female) from her employment as a flag person for the respondent. The respondent

Summary No. Four:

The Administrative Law Judge found the medical evidence persuasive and ruled that the complainant had not been the victim of discrimination.

complainant and was informed that the condition was not being successfully controlled by medication. Due to the nature of the condition, both physicians believed the complainant presented a serious risk to both himself and others.

rules.

Testimony at the hearing revealed that complainant had been the victim of racial comments made by both co-workers and management personnel. In addition, the respondent had no policy regarding what was an acceptable call-out rate. The complainant's call-out rate compared to other employees at this facility was higher than most and lower than other employees' call-out rates. The complainant received discipline that was harsher than white employees with similar or lower call-out rates.

The complainant had also been accused of having aligned himself with a co-worker who continually complained of discriminatory treatment. Respondent informed its employees that it had installed a hotline to the regional office to report concerns of discrimination to the Human Resources Department's EEO representative. The complainant called the hotline to complain of discriminatory treatment and was discharged within two weeks. Respondent contended that the EEO representative had not discussed the call from the complainant with the complainant's supervisors.

The Administrative Law Judge did not believe this testimony to be credible. The judge found the company to be in violation of the Human Rights Act and ordered the appropriate relief.

Summary No. Seven:

The complainant alleged that she was forced to resign her employment with the respondent due to sexual harassment by her supervisor. The complainant worked for the respondent for two and one-half years. The complainant alleged her supervisor requested sexual favors and when she refused, he began to criticize her work performance. The hearing also revealed another female employee who testified that this same supervisor had sexually harassed her.

Respondent stated that the complainant's work performance was unsatisfactory and when confronted with these alleged shortcomings, resigned her position. The respondent offered no written documentation to corroborate its defense, even though their policies allowed for such documentation.

The Administrative Law Judge found the supervisor's testimony to not be credible and ruled that the complainant had been the victim of unlawful discrimination. The judge ordered the appropriate relief.

1999 West Virginia Civil Rights Summit

The Fourth Annual Civil Rights Summit was held at the Charleston Civic Center on October 18 and 19, 1999. The theme of the summit was "The Road to Equality: New Century, Familiar Problems, Action Ahead."

Approximately 200 people from throughout the state came to share interests and concerns related to civil rights. Loretta Ross, founder and Executive Director of the Center for Human Rights Education, served as the keynote speaker during the summit.

The Summit's opening address was given by Curt Goering, Senior Deputy Director of Amnesty, International, USA. Mr. Goering addressed issues relating to human rights violations in the United States.

Loretta Ross gave the keynote address at the Summit Dinner Banquet. Ms. Ross provided her vision of a united human rights movement that will strive to provide basic human rights to all citizens in the United States. The movement is based on love and compassion and will endeavor to treasure our diversity.

The address at the Commission's luncheon was given by Jan Lilly-Stewart, Advocacy Specialist for the West Virginia Developmental Disabilities Council. Ms. Lilly addressed civil rights issues faced by the disability community.

The 1999 West Virginia Human Rights Commission award was presented to Ms. Joan Hairston, a well-known civil rights activist of Logan County, West Virginia. Ms. Hairston serves as the Executive Director for New Employment for Women, a nonprofit service organization.

In addition to these speakers, approximately 19 workshops were presented by experts in their individual areas of interest. Workshop topics at this year's Summit included: Diversity Issues; Peaceful Partners; Teaching Tolerance to Preschool and Elementary Students; ADA Ten Years--Where are We Now; Hate Crimes in West Virginia.

This Summit also included a Youth Tract. Approximately 90 high school students from around the state participated in a specially designed tract for youths. The tract



included a special video produced for this Summit which included vignettes relating to civil rights issues, such as interracial dating, diversity and dealing with issues of harassment. The Commission would like to thank the State Department of Education for its support in arranging for the youth tract.

The Summit is a cooperative effort between the West Virginia Human Rights Commission and several agencies and organizations committed to the enforcement of the State's Human Rights Act. Organizations actively involved in the planning of the 1999 West Virginia Civil Rights Summit include: The West Virginia Developmental Disabilities Council, WV Chapters of the NAACP, WV Coalition Against Domestic Violence, Civil Rights Division of the State's Attorney General, Charleston Legal Aid Society, WV Department of Education, National Council of Jewish Women, ACLU of WV, Parents of Murdered Children, WV Lesbian and Gay Coalition, WV Center for Alternative Dispute Resolution, WV Mental Health Consumers Association, Municipal Human Rights/Relations Commissions from Beckley, Charleston, Huntington and Wheeling, WV Chapter of the National Association of Social Workers, WV Hate Crimes Task Force and the WV Equal Employment Opportunity Office.

Both the West Virginia Human Rights Commission and the Civil Rights Summit Planning Committee are deeply grateful for the support of Governor Cecil H. Underwood. It is most admirable that the Governor has remained consistent in his support of the Civil Rights Summit as a forum for open dialogue among the varied constituent groups of the state. It is our belief that the Civil Rights Summit has served as an implementing tool for Governor Underwood's Initiative on Race: **One West Virginia in the 21st Century**. To underscore his strong commitment to racial equality, Governor Underwood has stated: "My vision is to create a statewide atmosphere of racial harmony through respect, understanding and tolerance." We believe the Civil Rights Summit provides a dynamic atmosphere for discussion and vision-setting for the future of human rights in West Virginia.

In addition to the support of the Governor, we are also most grateful for the continued support from both the public and private sectors of our state. We welcome participation from all in shaping a stronger West Virginia, fortified in meeting the challenges of the next century.

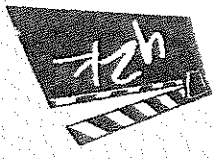
Special Recognition:

We ask for your continued support and welcome your participation in this vital mobilization of human rights forces. Special thanks goes to the members of the Civil Rights Planning Committee who give tirelessly of their time and talents. We are particularly grateful for the steady and clear direction provided by Jackie Switzer who serves as the chairperson of the Civil Rights Summit Planning Committee.

The Civil Rights Planning Committee was very fortunate to secure the services of Cindy Koepsel to serve as the coordinator for the Civil Rights Summit.

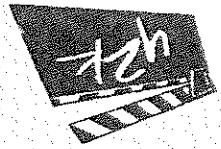
The Civil Rights Planning Committee also wishes to extend its appreciation to Pat Frye, Director of Newspapers in Education for the Charleston Newspapers for her outstanding work in creating the **Issues for Youth in West Virginia: Exploring Diversity**. This publication was sent to every school in the state and also distributed as an insert in the Charleston Newspapers.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



- Integrate policy makers into the planning process and program when appropriate.
- Transmit the reflected concerns of the Summit participants to people who can initiate change.
- Connect people (including youth) in the state who want to be involved in Civil Rights "strategizing" for future action.
- Create a forum for people to express experiences and concerns in pursuing Civil Rights in West Virginia.
- Work to keep Civil Rights issues and concerns before the public.
- Inspire, invigorate, and energize participants.
- Provide participants with tools and resources for action.

GOALS OF THE CIVIL RIGHTS SUMMIT



**WEST VIRGINIA
1999 CIVIL RIGHTS SUMMIT
PLANNING COMMITTEE**

Cindy Koepsel, Coordinator

Jackie Switzer, Chairperson

Norman Lindell, Deputy Director

West Virginia Human Rights Division

Susan Allen, National Council of Jewish Women

Hilary Chiz West Virginia Civil Liberties Union

Geneva Foster, Parents of Murdered Children

Henry Hale, First Baptist Church

Sallie Harrington, West Virginia Department of Education

John Johnson, West Virginia Developmental Disabilities Planning Council

Sally Lind, Huntington Human Rights Commission

Marshall Moss, Charleston Human Rights Commission

John Rogers, West Virginia State College

Paul Sheridan, Senior Assistant Attorney General

Office of the Attorney General, Civil Rights Division

Chuck Smith, West Virginia Lesbian and Gay Coalition

Debby Smith, Charleston Human Rights Commission

Adrienne Worthy, Executive Director

Legal Aid Services

THE IMPACT OF HATE CRIMES

Hate crimes, sometimes referred to as "bias crimes" are: (1) Criminal acts which are motivated, in whole or in part, by the bias of the perpetrator. Hate crimes are acts of violence, intimidation or harassment, directed at particular persons or property because of the race, ethnicity, religion, sexual orientation or other characteristic of the victim. (See 28USC534)

Hate crimes are acts of terrorism. These crimes victimize not only those directly harmed by the act, but because they create fear and insecurity for all those who share the targeted characteristic--these crimes victimize whole communities. A single act of vandalism, the burning of a cross in a yard, for example, can create enough fear and insecurity to cause groups of people to move from their homes and can shape housing choices for years to come. Hate crimes, when they occur, are serious events which have profound social consequences.

The Frequency of Hate Crimes

Since 1992, the Hate Crime Task Force has been maintaining a database of hate crimes and hate incidents. Included in the data are incidents covered in the media or reported to the Human Rights Commission or the Hate Crime Task Force. At the end of 1997, the Task Force created a hate crime information and referral hotline which has been tied to this database. Since that time, citizens have been encouraged to report hate crimes and hate incidents through the information and referral line. Nevertheless, it is clear that most citizens are unaware of the information and referral line and reports to this system continue to be sporadic and incomplete.

Notwithstanding the very incomplete nature of this database, we believe it to be as reliable as any source of information on hate crimes within the state. As incomplete as it is, the Hate Crime Task Force data on hate crime incidents also gives some evidence of the extent and nature of the problem.

Since the Task Force began keeping records of incident reports, a total of 89 suspected bias crimes have been reported to the Task Force. Although the Task Force also takes reports of incidents such as hate group rallies, hate message lines, hate group leafleting and other noncriminal hate-related activities, these incidents are not included in this statistic. The 89 incidents are suspected bias crimes. (It is also worth pointing out that there are apparently no overlaps between the State Police UC reported incidents in

In order to be a hate crime, an event must be a criminal act. Hateful acts which are not criminal acts, such as the expression of hateful views which are protected by the First Amendment of the U.S. Constitution, are "hate incidents," but not hate crimes.

The strategies employed by the Hate Crime Task Force are aimed at responding to hate crimes and preventing them. They include efforts to improve the enforcement of laws, education to change attitudes and behaviors and services to assist victims. The activities of the Task Force make use of the variety of institutions described above.

The West Virginia Hate Crime Task Force is dedicated to the proposition that the most effective way to address the problem of hate crime is through a combination of strategies, pursued through broad-based collaboration. At one level, this collaborative approach is reflected in the breadth of organizations and agencies represented on the Task Force. The Task Force includes: Public agencies and civil rights organizations; state, federal and local law enforcement agencies; police departments and human rights agencies; police officers and prosecutors; and government lawyers and educators. As a result, the Task Force initiatives are planned with the consideration of a variety of perspectives and they are implemented by people from opposite sides of some traditional dichotomies. In addition, Task Force initiatives have been pursued in a way which tries to maximize the involvement of other entities.

Strategies for Addressing the Problem of Hate Crime

Twenty-six (29%) of the 89 reported hate crimes occurred at a school or were related in some way to school activities. Twenty-seven (30%) of the 89 reported hate crimes related to the housing rights of the victims. Five (6%) involved the burning of a cross in front of a home.

Of these 89 suspected bias crimes reported to the Task Force, 41 (46%), involved violence against one or more persons. Four of these resulted in death. Of the ones that did not result in death, two involved kidnapping, five involved arson and 13 involved weapons. Twenty-four (27%) of these 89 reported bias crimes involved the destruction or defacing of property.

●	Racial Bias	59	65.20%
●	Sexual Orientation Bias	16	16.54%
●	Religious Bias	7	12.57%
●	Ethnic Origin Bias	4	3.37%
●	Disability Bias	2	1.12%
●	Other	1	1.00%

follows:

These 89 suspected bias crimes, by category, reported to the Task Force are as

1996 and 1997 (seven) and those reported to the Task Force.) So, there were at least 96 specific reported bias crime incidents in the state during this period.

Over the past several years, a major part of the work of the Hate Crime Task Force has been in the area of law enforcement training. Effective and appropriate law enforcement response to hate crime depends upon police officers who recognize a hate crime when it occurs and know how to respond appropriately. Through the efforts of the Hate Crime Task Force, this type of training is currently offered at the State Police Academy and through in-service training which is made readily available to police officers throughout the state.

As it has become increasingly apparent that schools are an important context for addressing the problem of hate crime, the Task Force has directed an increasing amount of its energy toward school-based strategies. In 1997 and 1998, the Task Force assisted the West Virginia State Board of Education in enacting regulations addressed at bias-motivated harassment and violence in schools. The Task Force has conducted training on how to implement these policies. In the school year 1999-2000, the Task Force will make available to secondary school facilities in-service training to address these problems in schools.

The Task Force has engaged in a variety of public education programs. Good public understanding of the problem of hate crime is an important component to addressing the problem effectively. Whether it is a state level conference or local community meeting, the Task Force welcomes every opportunity to talk with people about the problem of hate crime and about what people can do to address the problem.

In 1997, the Hate Crime Task Force initiated an Information and Referral Telephone Service. By calling the Human Rights Commission toll free at 888-676-5546, callers can report hate crimes and hate incidents and receive referrals for enforcement and support services.

**SUMMARY OF RECENT WORK OF THE
WEST VIRGINIA HATE CRIME TASK FORCE**

1. TECHNICAL ASSISTANCE

The Hate Crime Task Force has offered technical assistance to law enforcement officials. In at least four separate cases, legal assistance was made available to county prosecutors regarding W. Va. Code § 61-6-21. In several cases, assistance has been provided directly to police officers.

The Task Force has developed computerized protocol and a set of forms for responding to hate crimes with civil rights injunction petitions.

2. VICTIM ASSISTANCE

Human Rights Commission Information and Referral Program:

The Hate Crime Task Force, in collaboration with the West Virginia Human Rights Commission and the West Virginia State Police, has established an information and referral system for the reporting of hate crime and bias-related incidents. This system is making use of the new Human Rights Commission toll-free line (888-676-5546).

Referrals are being made directly from the Human Rights Commission to the West Virginia State Police and to the West Virginia Department of Education, if appropriate. Depending upon circumstances, other referrals are made to community and/or advocacy organizations. Records of incidents are also being kept on file in order to facilitate follow up and accurate assessment of the hate crime problem.

3. COMMUNITY TRAINING AND ACTION

(a) In May 1999, the Task Force co-hosted a Hate Crime Prevention Training of Trainers in Charleston, a program conducted by the National Center for Hate Crime Prevention. Approximately 40 West Virginia professionals from various disciplines received the training and are currently providing hate crime prevention training in their communities.

(b) Over the last several years, the Task Force has given hate crime related presentations for various groups including: Association of Chiefs of Police, West Virginia State College Violence Conference, West Virginia Association of Social Workers, Elkins Civil Rights Group, Center for Democratic Renewal (Atlanta, Georgia), State Volunteer Conference, WCA, West Virginia

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The National Associations of Attorneys General Bias Crime Committee and the U.S. Department of Education Office of Civil Rights have cooperated in the development of an anti harassment guide for school officials which was published in February 1999, entitled *Protecting Students from Harassment and Hate Crime: A Guide for Schools*. The anti harassment guide is

(c)

The best long-term hope for addressing hate and intolerance in the state lies in working with young people to help them develop respect for differences and skills for the constructive resolution of conflicts. There are many very good resources for this work within our state. During 1998 and 1999, the Hate Crime Task Force has worked to increase awareness of these resources and explored other ways to increase the availability of resources and training for teachers.

(b)

The State Board of Education adopted most of the suggestions made by the Task Force. However, the suggestion by the Task Force that harassment based on sexual orientation be included in the regulations was not adopted by the board. Since then, the Task Force has assisted with materials for the implementation of the regulations at the local level.

At the end of 1996, the West Virginia Department of Education established regulations prohibiting sexual, racial or religious/ethnic harassment in schools, and which require procedures for investigating and responding to incidents. The Hate Crime Task Force provided advice and comments on the drafting of the regulations.

(a)

4. SCHOOLS

On the eve of the 1997 Civil Rights Summit, the West Virginia Human Rights Commission declared a "Not in Our State" campaign, calling upon the communities of the state to actively stand against hate and intolerance. This campaign, based upon the inspiring example set by the Town of Billings, Montana, is designed to be an umbrella for some of the efforts of the Hate Crime Task Force. The story of what happened in Billings is told in a documentary entitled "Not in Our Town." Upon our request, the West Virginia Library Commission and several libraries around the state have recently obtained copies of the "Not in Our Town" documentary. The tape can be obtained from the West Virginia Library Commission through inter-library loan from any local library within the state. "Not in Our Town" has been shown in town meetings and gatherings all over the state.

(c)

Council of Churches, West Virginia State EEO Conference, Marshall University, Civil Rights Summit and State Victim Symposium.



currently available at the following website:
<http://www.ed.gov/pubs/Harassment/title.html>.

(d) In 1999, the Civil Rights Division of the West Virginia Attorney General's Office is initiating a pilot program with a select group of secondary schools to address the problem of bias-motivated harassment and violence in schools. The program will involve a team of students from each participating school who will receive training and support for student-initiated activities. The program will also involve faculty training for each of the schools.

5. FEDERAL-STATE COORDINATION IN ADDRESSING HATE CRIME

(a) There have been calls for better state-federal coordination in response to increased concern at the federal level in the wake of the domestic terrorism such as the Oklahoma City bombing and the burning of African-American churches. The West Virginia Hate Crime Task Force has been in dialogue with federal officials and officials of other states on this subject.

(b) For several years, Paul Sheridan, Coordinator of the West Virginia Hate Crime Task Force, has served as a member of the Bias Crime Task Force of the National Association of Attorney General Janet Reno's Working Group on Hate Crime Training for State and Local Law Enforcement.

(c) In 1999, the United States Department of Justice, the National Association of Attorneys General entered into a Memorandum of Understanding to improve cooperation regarding the prosecution of hate crimes.

SUMMARY OF STATE HATE-CRIME RELATED LAWS

Like most states, West Virginia has several statutes which specifically address hate-motivated offenses. They were enacted at various times in history and are directed at different hate-related problems.

1. West Virginia Hate Crime Statute
W.Va. Code § 61-6-21 creates a separate criminal offense for bias-motivated violence or threats where they are motivated by race, color, religion, ancestry, national origin, political affiliation or sex. This statute also addresses conspiracies to commit hate crimes and calls upon courts to consider bias motive as an aggravation circumstance for sentencing with any criminal conviction.

2. The Offense of Wearing a Mask, Hood or Face Covering
W.Va. Code § 61-6-22 provides that it is a misdemeanor to use a mask or face covering in public to conceal one's identity. (There are some exceptions.)

3. Unlawful Military Organizations
W.Va. Code § 15-1F-7 makes it unlawful to organize or participate in a military company or organization other than the Armed Forces of the United States or the National Guard.

4. Civil Rights Injunctions
As a result of a statute enacted by the West Virginia Legislature in 1998, the State's Attorney General has the authority to seek a civil rights injunction against any person who intentionally interferes or attempts to interfere with another person by actual or threatened physical force, violence or destruction of property, when such interference is motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability.

5. Violation of Fair Housing (Civil Injunction and Civil Enforcement)
W.Va. Code § 5-11A-16 makes it unlawful for any person to coerce, intimidate, threaten or interfere with any person exercising or enjoying their rights to fair housing. Fair housing rights provide that persons may rent or lease homes without regard to race, color, religion, ancestry, sex, familial status, blindness, disability or national origin. W.Va. Code § 5-11A-16 can be enforced by the West Virginia Human Rights Commission, or by private enforcement. A related provision authorizes injunctive relief to stop violations of this section.



6. Harassment in the Schools

The West Virginia Board of Education has promulgated regulations (126CSR18) prohibiting all harassment in the schools based upon race, sex, religion or ethnicity. The regulations also require County Boards of Education to have in place procedures for investigating and addressing incidents and discipline for those found to have engaged in such harassment.

**LIST OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION
COMMISSIONERS**

Robert L. Morris, Esq., Chair
Eikins, WV

William L. Williams, Jr., Vice Chair
Omar, WV

Marion Capehart
Welch, WV

George Darling
Grafton, WV

Robert T. Goldenberg, Esq.
Parkersburg, WV

Betty Hamilton
Charleston, WV

Charlene Marshall
Morgantown, WV

William Peddicord
Huntington, WV

Lew G. Tyree, Esq.
Charleston, WV

**WEST VIRGINIA
HUMAN RIGHTS COMMISSION**

CENTRAL OFFICE STAFF

1321 Plaza East - Room 108 A
 Charleston, WV 25301-1400
 (TDD) 304-558-2976
 (Fax) 304-558-0085
 888-676-5546

* For employee e-mail, ADD: @wvhrc.state.wv.us to e-mail name

201	baredr	Office Assistant II	Bare, Dawn
226	booth	Investigator II	Booth, Yodora
213	bowersll	Investigator II	Bowers, Linda
221	chup	Docket Clerk	Chupick, Leona
227	cookde	Investigator II	Cook, Don
223	cookpw	Investigator II	Cook, Paul
222	dixontn	Audit Clerk	Dixon, Tom
202	fergusongm	Admin. Law Judge	Ferguson, Gail
225	gillesp	Investigator II	Gillespie, David
215	hamilton	Supervisor	Hamilton, Paul
208	heathjl	Investigator II	Heath, Jackie
210	johnsonjl	Investigator I	Johnson, J. L.
216	knottsje	Secretary	Knotts, Joyce
214	leeb	Executive Director	Lee, Ivin B.
206	lindelnl	Deputy Director	Lindell, Norman
205	lucasae	IS Coordinator	Lucas, Amy
204	martinel	Admin. Svcs. Mgr.I	Martin, Edna
212	raynesdr	Investigator II	Raynes, Don
220	robinsondk	Mail Runner	Robinson, Deborah
211	stfg	Investigator I	Stigall, Tausha
218	turleyms	Legal Secretary	Turly, Monia
200	vealeykp	Office Assistant II	Vealey, Kaye
203	wilhelmbf	Admin. Secretary	Wilhelm, Bette
224	wilsonrb	Admin. Law Judge	Wilson, Robert

Hate Crimes Task Force e-mail = hatecrimes@wvhrc.state.wv.us
 WVHRC e-mail = wvhrc@wvhrc.state.wv.us