

May 3, 2011

Administrator Lisa P. Jackson  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue  
Washington, D.C. 20460

Dear Administrator Jackson:

I am in receipt of the Deloitte Consultant Report submitted to the agency on March 21, 2010 that contains an evaluation of the EPA Office of Civil Rights (OCR) as dysfunctional and unproductive. While the report includes some valid issues and recommendations, it unfortunately places the major blame on the employees rather than where it belongs – on the ineffective management and leadership in OCR for over a decade.

My colleagues and I are dismayed and angered by the inaccuracies and misleading statements made throughout the report. After enduring years of bad management and discrimination in OCR, the employees should not have to endure further mis- and disinformation. We believe that you have a responsibility to hold those who violated laws and regulations accountable and that we have a right to defend ourselves from what we consider to be false statements and a corrupt system.

When I joined the agency in 2001 there was an armed guard at the entrance to the OCR office. It was shocking to know that I was coming to work at an agency and office in which matters had reached the level of workplace threats. Eight years later in 2009, I wrote to you and the EPA Office of Inspector General outlining my own frustration and chagrin over violations, cronyism, nepotism, favoritism, retaliation, discrimination and a hostile work environment. In my prophetic letter, I wrote about the “EPA Mafia” and the horrendous situation of being attacked day in and day out by Karen Higginbotham and her cronies, which would probably result in my demise as a career public servant. I wondered how this small group of corrupt Federal employees in a small agency could ignore my years of outstanding performance and recognition as a civil rights professional to carry this out (see Attachment C).

The actions taken by EPA management do not take environmental geniuses to know what is going on. EPA does not appear to care about violations of laws and regulations because they will be defended by more than 1,000 agency attorneys and use taxpayer money to carry out their vendettas. Employees are dragged through hell for years, while the agency defends itself from these so-called disgruntled employees. Women are discredited by besmirching their characters and treating them with shocking contempt and name-calling. The question is why EPA is in the same turmoil and chaos ten years after the armed guard left? Deloitte should not be patting EPA on the back for hiring them for \$350,000, making civil rights a priority again, making diversity the buzz word, and recycling a failed Director. One woman said that she was just glad that Mr. DeLeon ended up in OCR and not her office. Your tolerance of the corruption and lack of appropriate action on your watch leads employees to believe that you condone violations of laws and regulations. The perception is that is it an intentional strategy of making civil rights meaningless and simply paid “lip service.” I believe women and other employees deserve better than this from you and the Obama administration.

After five members of my staff in Affirmative Employment & Diversity (AE&D) wrote to Congress for assistance to stop the harassment, a fact finding was conducted on your behalf. As a result of telling the truth in signed statements that exposed racist and threatening statements against me, they have been subjected to unbelievable retaliation. In response to my attempt to alert you and your inner circle that the Director refused to submit mandatory MD-715 Reports to EEOC for four years (which would be reported to Congress under a new EEOC policy), I was subjected to retaliation for whistle blowing. You allowed me to be terminated after 30 years of outstanding public service and you allowed others to receive undeserved awards and praise (see

Attachments C and F). Unfortunately, all of this misery and corruption is being done using taxpayers' money and has been continuing for years (see Attachment G – NTE Union *Inside the Fishbowl* 2004). You are allowing these employees to move along as if nothing is happening, particularly Mr. DeLeon who appears to be on a rampage against my staff. Four complaints have been filed against him already and two of my staff are out on extended sick leave due to a hostile work environment and retaliation.

As you know, I was returned to the agency under a Mandatory 90-Day Stay implemented by the Office of Special Counsel (OSC) for being retaliated against for whistle blowing (October 18, 2010 to January 21, 2011). Amazingly, EPA does not appear to take OSC, EEOC, MSPB or any other regulatory agency seriously. Instead of being embarrassed by a mandatory stay, the agency attacked the OSC investigator in a motion to MSPB. Rafael DeLeon ignored the MSPB Order and I spent three months on mundane projects he assigned, while trying to protect my staff from him and the gang of attorneys he brought into OCR. Laura FentonMiller, a lawyer on a detail, spent her time taking copious notes in all meetings Rafael DeLeon had with me and then the EPA attorneys had the gall to list her as a witness against me. When the stay ended, Rafael terminated me again. I had never worked for him and was shocked to find his behavior punitive, threatening and dictatorial, braggadocios, egotistical, misogynistic and bias, all unacceptable behaviors for a manager of people. After years of reporting to civil rights leaders, General Officers and CEOs of industry, Mr. DeLeon is frightening to me and others. He runs from meeting to meeting talking down to people and making negative statements. Can you imagine the egoism of a man with his history saying to me, "I hope you don't think anyone has any respect for you or your staff?"

The horrendous statements and name-calling mainly against women at EPA do not start or stop with Mr. DeLeon, who recently referred to me and Marsha Coleman-Adebayo as "Pink Elephants" and her as an "EPA Rosa Parks." Ms. Higginbotham made a libelous statement against me in an OIG investigation; her Administrative Assistant Stephanie McCoy was allowed to call me "low class" and a "bitch" in front of my staff and was later promoted by Rafael; Gordon Schisler, former OCR Deputy, threatened me by saying I was lucky "he could only be angry," meaning he would have hit me if he could; Ms. Higginbotham called me a "little white woman," and threatened me professionally. I had to be defended by a male subordinate in a meeting with Gordon screaming, while two females were crying because of his disturbing behavior. Before he retired, Gordon wrote that I was "evil," and had "no soul," among other horrible things. He threatened the two women on my staff so they were afraid and took sick leave until he retired. What kind of place is EPA that would allow this type of behavior against women?

I have thoroughly evaluated the Deloitte Report (Attachment B) as a subject matter expert and civil rights career professional. The report attempts to show that the problems are so immense that more "leaders" need to be involved. I have witnessed this maneuver before - it did not work then and I believe it will not work again. It is unimaginable that EPA cannot handle a small civil rights program for 17,800 employees. I am requesting that this report be corrected, the agency settle complaints of discrimination and retaliation filed against the agency (there are now four internally against Mr. DeLeon and one in District Court), and correct the misdirected awards and recognition of nonperformers. I plan to share this with everyone who will listen and take action on behalf of the EPA and OCR employees who have been seriously damaged by this terribly polluted workplace environment. An agency that cannot protect its own employees cannot possibly protect the public.

Sincerely,

**Susan Morris**

Susan M. Morris  
1300 Army Navy Drive PH 1  
Arlington, VA 22202  
(703) 271-8889

Attachments A-G

**ATTACHMENTS**

<b><u>Attachment</u></b>	<b><u>Subject</u></b>	<b><u>Pages</u></b>
<b>A</b>	<b>OCR EPA Background</b>	<b>3-4</b>
<b>B</b>	<b>Deloitte Report Incorrect &amp; Misleading Statements</b>	<b>5-15</b>
<b>C</b>	<b>Susan M. Morris Awards &amp; Recognition</b>	<b>16</b>
<b>D</b>	<b>AE&amp;D Staff Credentials</b>	<b>17</b>
<b>E</b>	<b>AE&amp;D Policies, Procedures, Plans Developed</b>	<b>18</b>
<b>F</b>	<b>EPA Violations</b>	<b>19</b>
<b>G</b>	<b>NTEU <i>Inside the Fishbowl</i>, March 2004</b>	<b>20-23</b>

**ATTACHMENT A****EPA OCR Background**

A decade ago, EPA experienced problems in the Office of Civil Rights (OCR) as reported in the Deloitte Report. EPA was subject to Congressional hearings on the failure to process Title VI external complaints, the *Marsha Coleman Adebayo v EPA* Title VII complaint led to a \$600,000 (reduced to cap) jury award in 2000 and in response Congress passed the 2002 No FEAR Act. Thereafter, EPA Administrator Carole Browner made the same commitments that are being made by Administrator Lisa P. Jackson a decade later: 1) Making EEO a top priority; 2) Hiring a consultant firm; and, 3) Involving other organizations and requiring “Diversity Plans.” Ms. Browner also transferred the OCR Director into another position and selected a new Director. This is referred to as the EPA Senior Executive Service (SES) Fraternity Circle. As Deloitte reported, EPA is repeating itself by: 1) Making OCR a top priority again; 2) Hiring Deloitte (for \$350,000); and 3) Involving other organizations, along with making “diversity” the buzz word. The former OCR Director was moved out and a new Director moved in – and again the subordinates were blamed instead of the leadership. The entire process cost the taxpayers millions of dollars in costs, time and effort.

**A. Cronyism, Favoritism and Other Violations:** Major problems at EPA are because positions are filled noncompetitively, non-careerists are selected, favoritism, nepotism and pre-selection are rampant. Directors and Deputies in OCR have been selected without the experience or background necessary to effectively lead a civil rights office. For example, Ray Spears, the recently-retired Deputy Chief of Staff, mentored and supported Karen Higginbotham for the Director’s position when her career was in contracting. She micromanaged OCR and lacked the experience to make sound decisions in leading a dynamic civil rights program. Gordon Schisler was an absentee Deputy without a civil rights commitment or experience; the current Acting Deputy is on her way to basic EEO training; and it goes on and on. John Pickering, the High Performing Organizations guru, reported that OCR senior staff operated at a low level due to poor management. An administrative employee spoke up at a meeting and was immediately terminated by Karen and Gordon, so HPO failed in OCR.

**B. Another Decade of Problems:** Ray Spears and Rafael DeLeon supported Karen Higginbotham for nine years to the detriment of the employees, so that the program went further downhill. She was given a 2008 award on behalf of the Administrator in spite of OCR staff protests to the Awards Board controlled by Mr. Spears. He overturned the panel and she later received \$8,000. He later tried unsuccessfully to get Rafael the award and prevented me from getting it for three years. From 2001 until my retaliatory removal, I had a front seat to their shenanigans and knew I would have to protect myself and staff. Compounding typical management problems was the constant chaos and confusion caused by prevarication, micromanagement, propaganda, unprofessionalism, false allegations, smear campaigns, constant gossip, sneaky behavior, managed isolation, undue monitoring, fear and intimidation, bullying, threats, name calling, retaliation, harassment, favoritism, nepotism, cronyism and racism/sexism. There is no question that a reasonable person would consider this a hostile work environment.

**C. Friends and Mentors:** Ray Spears, Rafael DeLeon and Karen Higginbotham were a tight-knit threesome that were part of the larger EPA SES fraternity circle – they had their own circle within the circle in the Administrator’s office and OCR. These individuals supported each other with legal and management fervor. Their history of problems and adverse actions are well-documented in discrimination and IG complaints, union and administrative grievances, investigations, Freedom of Information Act (FOIA) requests, union news articles and press releases. The circle works like this: Rafael proposes and Ray approves the removal of Marsha Coleman-Adebayo; Karen proposes and Ray approves my removal for whistle blowing. Disinformation is spread on Marsha’s inability to get along with others; Karen spread gossip that I do not get along with others; and it goes around and around. The destruction is done in a systematic way and is symptomatic of the serious adverse actions taken by these unethical people. I never asked to be a complainant or whistle blower, but just tried to protect myself and my staff. Leaders are responsible for their actions not the subordinates.

**D. Mafia Mentality:** In a more prophetic moment in 2009, I wrote to the EPA Inspector General and the Administrator quoting PEER Senior Counsel Dinerstein about the “Management Mafia at EPA” in the *De Los Santos v EPA* case, in which he said:

***“In many Federal agencies there is a management mafia that will defend one of their own no matter how outrageous the conduct....In our experience, EPA employees who file complaints are subjected to a new ordeal, presided over by an Office of General Counsel that gives no quarter and is willing to use every tactic to delay, discourage and demonize.”***

I can attest to the fact that this group takes adverse actions against employees, drives them out of the Agency, and ruins their professional careers and personal lives. They ban together and go after those who are not of their same mentality, take opposing views, file complaints and report violations. Civil rights professionals are not exempt in spite of their civil rights responsibilities and protections. I have never witnessed an agency “ban” non-threatening employees from entering a Federal facility except EPA. And, I have never experienced a more corrupt and scary work environment where anything will be done to destroy employees.

The story of the refusal to submit MD-715 reports to EEOC is well-documented. The hidden agenda was that Karen told my employees in 2005 to “lay low” because she was going after me, and said that the “little white woman” (the only one in OCR) had better stand in line because this was EPA. I ended up complaining to Ray Spears because no one else would meet with me. Immediately afterward, a 1-year IG investigation was conducted against me based on an anonymous letter. After a comprehensive review of 19,904 emails, our personal property and interviews with my neighbors, I was exonerated. She and Ray were then required to come up with new allegations and did.

Progressive discipline was instituted in order to move to the next step because of my years of outstanding performance and awards (see Attachment C). First, I was suspended without pay for “insubordination,” and then they removed me from my position and then the agency. It is a systematic method of destroying employees. Karen refused to submit the MD-715 Reports (certified by me as a subject matter expert) and engaged the field and the lawyers in CRLO to assist her in holding them up. She forced me to remove a statement in the report that EPA senior officials hire their own children in the Summer Intern Program (which was developed to give opportunities to disadvantaged youth). Karen’s daughter and purportedly Rafael DeLeon and Administrator Johnson’s sons were in the program for years. She then used the excuse that she did not submit the reports (for 4 years) because of the content and inability of me and my staff to develop barriers. Mr. DeLeon stepped in and has been singing the same refrain as propaganda on behalf of his frat circle.

Ms. Higginbotham did not seem to worry about the non-submission of the reports to EEOC and ignored numerous letters from EEOC asking the agency to comply with the regulations. I believe that she felt insulated because of her regular interface with EEOC and contracting for them to conduct basic EEO training for over \$1.5 million. However, after four years and receipt of a new policy from Dexter Brooks at EEOC that reports not submitted would be reported to Congress as “failed to submit,” I reported her dereliction and was terminated for whistle blowing rather than rewarded for saving the Administrator from embarrassment.

**ATTACHMENT B****Deloitte Report – Incorrect & Misleading Statements**

The original submission to the “EPA project team” for approval was January 19, 2011. Yet, it took two months, until March 21, 2011, to submit the report with final edits after review, comments and approval by EPA (page iv). The report is disjointed, repetitive, contains errors and makes statements that can be misinterpreted. It also fosters misperceptions favorable to the EPA leadership.

**1. EXECUTIVE SUMMARY (page 1)**

The executive summary states that Deloitte was contracted to “Assess Headquarters, field office, and laboratory interactions.” The report states that EPA OCR is simply divided into three components, which is incorrect. There are EEO employees in the OCR Director’s immediate office and employees in the Regions and major laboratories.

**Comments:** A contract and report that only assesses “interactions” instead of including over half the employees in the Director’s office and Regional offices is seriously flawed. There are approximately 30 employees and work years missing, along with a cadre of lawyers in CRFLO that are not being assessed on their functions and impact on the three functional areas covered in the report.

Instead of assessing all of OCR (56 employees), the report assesses the 26 (46%) employees in HQs and leaves out the Director’s immediate office (8), Area Directors (3), and Regional EEO Offices (19). Key positions in the Director’s office (the GS-15 National Reasonable Accommodation Coordinator and his assistant) were not evaluated in spite of failure to process timely requests that is included in the MD-715 Report. The EEO work is centralizatiied for all functions and processes, which significantly reduces the work in the field offices. HQ’s Title VI, VII and AE&D are responsible for staff work (e.g., policies, procedures, training and plans) and operations (e.g., processing complaints and cultural events), while the regions only handle pre-complaints and provide input into the MD-715 reports. The entire program and the allocation of resources should have been reviewed and evaluated by Deloitte. For example, Mr. DeLeon recently hired a GS-13/14 (\$89,033 to \$136,771) Area Director in Las Vegas to manage a civil rights program for 170 employees, which is a waste of government funds when the RTP Area Director could have done the work.

**Findings and Conclusions (page 1-2):** The report states that EPA’s senior leadership has increased the agency’s emphasis on resolving civil rights issues by investing significant time and resources to the problems. The agency said the same thing 10 years ago and threw millions of dollars into OCR for it to fail again.

The assessment that OCR employees suffer from a lack of an organization infrastructure, employees are confused on their job duties, and there are no adequate record-keeping systems in place is incorrect. A generalized statement for an evaluation is ineffective. The report points out that the challenges were at the leadership levels, but then missed the point by not going high enough in the hierarchy. The statement that OCR does not have “specialized expertise,” is also false. Much of the report is filled with half-truths and the following should have been reported:

- Civil rights statutes, regulations, guidelines, management directives, policies and procedures are well-documented and clearly defined but not followed
- Who and how many employees are “confused about their job duties?” Painting with a broad brush is both inaccurate and unfair
- EEO positions are covered under Classification Standards (series 260 and 360). EPA put lawyers (series 905) and program analysts (343) in OCR, as if civil rights professionals are not necessary
- The current Acting Deputy (lawyer) lacks EEO experience and is currently getting basic EEO training
- The EEO database (Visual Power Files) is outstanding and effective
- OCR has had leadership challenges for decades and OCR is known as a “dumping ground”

- OCR does have specialized expertise, but it is ignored and underutilized
- Karen Higginbotham was responsible for not submitting MD-715 Reports, not the AE&D staff
- “Heritage” observances are not a “minor responsibility,” but are a significant aspect of the program and help to prevent complaints.
- Complaint programs – while essential – are reactive, labor and resource intensive, and thus inefficient for creating an atmosphere of equal employment opportunity.

**Recommendations (page 3-4):** The report credits EPA as having taken the same three positive initial steps it took 10 years ago to: 1) Hire Deloitte 2) Appoint “an experienced Director with strong understanding of OCR priorities” and, 3) Make OCR a top priority.

- The steps are the same as stated in the Holland & Knight Report 10 years ago
- Civil rights should already be a top priority at EPA, but is instead crises driven
- EPA has already taken steps to ensure the failure of the OCR program by placing attorneys that lack EEO experience in an office that requires program operators, not litigators
- There should be an “arms-length” policy between defensive functions and EEO that is ignored at EPA
- Mr. DeLeon created the Civil Rights Law Office (CRLO) to defend the agency against complainants, which is why the report leaves out the real stakeholders – those discriminated against
- Many OCR employees are hired on favoritism, nepotism, pre-selection and cronyism
- The “networking” approach to lead a civil rights office has been used in the past and found to be ineffective
- OCR is responsible for reviewing personnel policies, practices and procedures for the entire agency
- The recommendations are like, “Putting the foxes in charge of the chicken coop”

#### **Incorrect Information and Analysis: Affirmative Employment & Diversity**

- The report jumbles AE&D and Title VII together under an internal team, which shows a lack of understanding of the functions or more likely done for political reasons
- Identifying barriers and eliminating them has been a part of the affirmative program since the 80’s. Only the inexperienced believe that barriers came into vogue with MD-715, which is incorrect
- The EPA FY 09 and FY 10 MD-715 Reports are noncompliant with the laws and regulations
- MD-715 Reports were a priority until Ms. Higginbotham refused to submit them (see FY 02, 03 and 05 EPA Plans and Reports for comparison with FY 09 and 10)
- The statement to hire, train or realign staff in AE&D, “who possess a balance of ability to analyze barriers and a “passion” for civil rights and diversity is a bizarre statement that Mr. DeLeon continues to repeat. Realignment is the operative word in this statement against specific employees
- The AE&D staff I hired is highly-educated, -experienced, -committed (see Attachment D).
- OCR has continued to train collateral-duty SEPMS to the exception of managers and supervisors
- Directors use the collateral-duty SEPMS against permanent AE&D staff members
- Mr. DeLeon is currently using the FWP field employees against the National FWPM

The report recommends reestablishing a dotted line relationship between Regional EEOOs and the OCR Director when there has always been a “dotted line relationship” between EEOOs and the Director.

#### **Incorrect Information and Analysis: Title VII Internal Complaints**

- There are already effective complaint processing tools available for tracking, reporting and analysis
- The ADR program at EPA has been ineffective for years because of poor placement and in-fighting
- The OCR management uses subjective criteria to detail inexperienced employees into HQ’s OCR
- The addition of investigators on OCR staff increases the current conflicts of interest in the office

## 2. INTRODUCTION (page 6)

This section stated there were interviews conducted with nine Federal agencies on their OCR programs (FHA, DOI, DOE, NASA, HUD, DS, DOA-FS, DOL and NIH).

- These 9 agency OCR offices are well-known throughout the EEO community. A number are known to be ineffective with serious staff problems, complaint backlogs, high turnover of Directors, class complaints, untimely processing and findings of discrimination. Size, scope, mission and functions were also not considered, which impacts on civil rights programs.

### 2.2 Approach (page 7)

The report states that “diversity and inclusion” were considered, where relevant. The civil rights program is a statutory program; affirmative employment and Title VI-VII are statutory; diversity is a business imperative. The ODOC has a different role to play in the agency, but EPA continues to be confused, which is a continuation of the Browner administration. “Diversity Plans,” were discontinued because they take the emphasis from the statutory program and may conflict. A union grievance was upheld previously on a policy in a Diversity Plan.

### 2.4 Stakeholder Interviews (page 9)

The report states that interviews were confidential and non-attributable and included “Stakeholders” in AO, OCR (40); OGC and OIG (5); POs (7) and EEOC (1). These are all management stakeholders. Unfortunately, the report fails to include the real stakeholders in a “broken civil rights program” - the aggrieved employees, environmental groups, external community complainants, internal complainants, class complainants, discriminated against employees, targeted class groups, bargaining unit employees, non-labor employee groups operating within EPA, and applicants.

**NOTE:** Non-attribution and confidentiality appears to have been violated. The National Reasonable Accommodation Coordinator (NRAC), William Haig, wrote an email to Rafael DeLeon saying a statement was made to Deloitte against him. This was forwarded by Mr. DeLeon only to me and my staff as if we were guilty of saying something about Mr. Haig. This should be investigated because it is unethical and undermines the credibility of the study. Interestingly, Mr. Haig was also directly involved in the Marsha Coleman-Adebayo termination with Mr. Spears and Mr. DeLeon.

## 3. OVERVIEW OF OCR (page 11)

As mentioned, the OCR Director’s immediate office employees and regional employees are missing from this study, which is a serious omission. There was no mention of the lack of administrative support in AE&D. One of Mr. DeLeon’s first acts was to terminate SEE worker, Jean Baptiste, who was earning minimum wage and provided essential administrative support to AE&D. The SEE program is an EPA initiative for older workers who need employment. When I protested, Rafael asked me, “What would you think if I told you Jean is employed and earning more money than she did here?” I contacted Jean Baptiste, who said she was in desperate need of a job and still unemployed, so his statement was insincere and a sham.

### **Incorrect Information and Analysis: Affirmative Employment & Diversity**

The statement that my position was vacant “when the report was issued,” is disingenuous. I was in the office having been returned by OSC. The Deloitte consultants met with me and I provided input as a subject matter expert. The Disability Program Manager’s position is also not vacant since he is currently on extended leave. Also, there are six Special Emphasis Programs (SEPs) not seven as reported, because the Diversity Program is not covered by statute.



The statement that the “majority of EEMs have previous experience in “employment complaints programs or counseling, though few have experience or education directly related to their affirmative employment program area to assist in developing remediation strategies to address affirmative employment barriers,” is a complete fabrication and apparently politically-motivated. Such an obviously erroneous statement could only serve the purpose of those who are attacking the AE&D staff. The AE&D staff credentials are at Attachment D. A comparison of AE&D credentials and performance with the OCR Director’s office, Title VI and VII staff should correct this inaccurate statement.

### **Incorrect Information and Analysis: Title VII Internal Complaints**

- The three stages of Title VII are incorrectly listed. Title VII complaints do not involve the same stages as Title VI complaints.

### **3.3 Organizational Context (page 13-15)**

There is potentially a serious problem when statutory programs are mixed with those that are non-statutory. EPA continues to use “diversity plans” to correct issues in a statutory civil rights program. The EEOC cautions agencies to not place EEO programs under the control of HR because the evaluation of personnel policies, practices and procedures extends to HR. OHR and ODOC are areas in which personnel policies, practices and procedures are developed that may have an adverse impact on targeted class groups and create barriers to equal employment opportunity.

## **4. CURRENT STATE ASSESSMENT (page 16-20)**

The statement that OCR has lacked stable (meaning consistent) leadership is totally false. Ms. Higginbotham was the Director for almost a decade and the Assistant Director’s positions were also stable. The report vacillates between then (stability) and now (chaos) in order to make such statements. The problem in OCR has been ineffective leadership; the stability of the leadership was not the problem.

OCR also does not have an inability to fill subordinate leadership positions. The positions have been filled through bad personnel decisions. The transfer of non-careerists and non-performers into the office is well-documented. Management practices and SOPs do exist, they are simply not followed. The OCR AE&D staff does not lack the competencies to do their job as supported by their credentials and recognition of their work products.

### **4.1 ORGANIZATION-WIDE CHALLENGES (page 16-24)**

#### **Incorrect Information and Analysis**

The distinct functions of each area in OCR are either misunderstood or incorrectly evaluated, along with the assignment of functions that do not reside in OCR. Office of Human Resources (OHR) has responsibility for outreach, recruitment, hiring, and career development, not AE&D staff. Unfortunately, OHR failed to carry out their responsibilities to OCR AE&D for years. The last two OHR Directors were Mr. DeLeon and a former Admiral. Former military-trained officers and civilians tend to be a bad fit for EPA (organizational culture) because they are trained to follow rules and regulations.

When Mr. DeLeon was the OHR Director he refused to provide me with requested data; he failed to get approval from OMB for the collection of required applicant flow data; he objected to AE&D and ORD defining “diversity;” he “bad-lipped” me and an Army expert in complaints processing; he demanded an Hispanic IMAGE award that I did not support because he had done nothing. He allowed me and my husband (an invited trainer) to be seriously mistreated at an OHR training program when we were told we could eat from the OHR funded employee buffet after other employees had eaten if something were left. My husband was so insulted, he walked to a nearby restaurant for our food and no letter was sent thanking U.S. Army for his gratis training. Mr.

DeLeon was finally removed from OHR for other reasons. As Director OCR, Mr. DeLeon recently denied support to IMAGE for their annual training conference and convinced others to do the same.

Applicant and employee data is collected by OHR and transferred to the official EEO database by codes. If the data is inaccurate, it is a question of “garbage in from OHR = garbage out in AE&D.” Instead of violating the regulations in ODOC or OHR, the system should be fixed.

**Incorrect Information and Analysis: Affirmative Employment & Diversity**

The statement that the MD-715 “is seen as an administrative task with disjointed processes of collecting each element,” is incorrect (pages 19-20). AE&D staff can develop a compliant MD-715 report with input from the field offices and proper use of the EEO database that includes all statistics and reports necessary.

As a Command EEO Chief, I prepared Affirmative Employment Plans since 1988 and am fully aware of the requirements. In addition to the numerous outstanding events AE&D staff design, MC and implement, policies, procedures, plans and programs developed under my leadership are fully documented and available (see Attachment E).

In 2001, EPA was violating regulations and employee privacy by distributing RNO information by name. Management has used RNO data for decision-making and interns were selected using last names. In spite of my guidance and advice, these violations continued. I wrote Privacy statements for applicants for approval of the collection of RNO data and OMB approval, which is collected voluntarily for use in gross statistics only. The OCR AE&D is the official records holder of the data to ensure it is not used for decision making.

**Violations of Regulations:** The Deloitte Report states that ODOC is gathering and using this data outside OCR. ODOC has no authority to gather, use or distribute RNO data and is in violation of the regulations. Diversity is not affirmative employment and should not be used as a metric in performance ratings. OGC is not a “partner office” of OCR, but is to ensure legal sufficiency. OGC should not insert themselves into EEO programmatic issues or the entire complaint process. The critical elements of an effective Title VII program were not included in the report perhaps because of the lack of knowledge or experience.

**Figure 4.2 Recommended Management and Resource-Related Improvements (page 21)**

The report recommends OCR Work Plans aligned with Agency goals and strategies and mapping current staff to newly defined roles according to KSAs and career fit. “Make busy” work plans are not a substitute for performance. Staff members were hired in AE&D in line with their experience and KSAs. Staff members are intentionally isolated by the Director OCR as a strategy and restricted from attending key meetings on their responsibilities. Collateral-duty SEPMs attend the Human Resource Council (HRC) meetings instead of AE&D staff. I attended once to provide a briefing on MD-715 and was so terribly mistreated that I wrote an Issue Paper for which I was suspended for “insubordination.”

- “Mapping current staff to newly defined roles” does not state by whom and for what reason. The roles and responsibilities of EEO professionals are clearly defined
- The constant emphasis on OCR employees instead of leadership is a standard political maneuver
- The problem in OCR is mismanagement and a hostile work environment

**Figure 4.3 Recommended OCR Organizational Structure (page 22)**

1. The report recommends “Networked Teams” to accomplish a set of specific goals with a Chair or “Champion” to lead and sponsor the effort. This entire section is contrary to an effective civil rights program and is generally used as a solution for civil rights offices (minorities and women) and not other organizations.

- The report suggests the “Diversity Champion” should be “goaled” to address “diversity barriers identified in MD-715 Reports.” This shows a lack of understanding.
  - ❖ There are no “diversity barriers” in MD-715 Reports
  - ❖ Diversity is not statutory; it is not synonymous with affirmative employment
  - ❖ The goal of the Diversity Champion should be to promote diversity
  - ❖ EPA has no mandatory MD-715 reports for FY 06, 07, 08 and 09, 10 are noncompliant
  - ❖ The OCR requires effective management, not layers of management teams
  - ❖ “Affinity groups” are undefined, but are generally restricted from agency management and policy

2. The report uses an example that the “MD-715 might indicate low advancement rates for Hispanic engineers in Region 10.” A team would be chartered by the Champion with Region 10 (lead), AE&D, Region 10 EEO, Region 10 SEPM, Hispanic Affinity Group and OHR to “identify root cause and offer suggestions.”

This statement shows that the EPA MD-715 process is not understood at EPA. The process outlined may result in more serious problems at EPA. The Regional EEO Officers are responsible for this work. The analysis and barriers developed in the MD-715 FY 10 report were changed by Mr. DeLeon from those submitted by AE&D staff that included the large number of black females in entry-level positions and a glass ceiling for all women. Instead, four barriers on hiring and promotions of Hispanics were inserted based on 5 months of applicant flow data, which is ludicrous. Non-Hispanic males were not addressed in the report.

3. The report states that the Director OCR should be involved in the selection, certifying, input and feedback on performance goals, and promotion consideration for ARA EEOOs. The EEOO structure is decentralized so that EEOOs are selected, rated and promoted by their ARAs. The Director OCR should not be inserted in the process. If so, any complaints associated with these processes can be elevated to the Administrator’s office. There are already significant conflicts of interest in the Title VII process in EPA OCR.

The report recommends a consideration of moving Title VI to OCEA as a part of overall enforcement. Title VI is a civil rights program that should be handled by civil rights professionals; the inability to process complaints will not be alleviated by moving it to OCEA.

#### **4.2 TITLE VI - EXTERNAL COMPLAINTS (page 25-29) – INPUT PROVIDED BY A TITLE VI EMPLOYEE.**

Following are comments from a Title VI employee on this section of the report:

- The report places too much emphasis on staff deficiencies. OCR's failures are management failures, not staff failures.

OCR management was inept, unfocused, and unknowledgeable. There was a focus on their advancement rather than operational and routine work of Title VI. Management was often absent and missed meetings that were not rescheduled; communication was limited; information was filtered or not shared; and decisions and work backlogged. Matters were only handled when they became critical and very little, or only sporadic, meaningful direction or guidance was given employees.

- The report mistakenly adopts the view, offered by existing EPA management, that Title VI complaints are scientifically complex and difficult.

This view is nonsense. Title VI complaints concern civil rights, not technical or scientific issues. Established civil rights law is not extraordinarily difficult to learn and follow. EPA's civil rights and environmental justice (EJ) managers are committed to changing civil rights law to implement rights not presently recognized. The EJ Executive Order made it Federal policy for all five Federally-recognized races (not individuals) to have the same environmental conditions and circumstances within existing law, but did not change existing law. The law

requires race-neutral governmental processes, but does not guarantee a race-neutral result or condition. EPA managers have interpreted the EO and law to require race-conscious/discriminatory processes in order to guarantee the same environmental results and conditions by racial group.

- The preceding two considerations suggest that current EPA management influenced this report.

The report, though critical, is presented as if OCR problems are the result of previous managers and staff. The managers principally responsible for the OCR's deplorable record and condition are presently in charge and previous errors are being continued.

- The report states that the Administrator has already taken steps to turn around OCR by appointing a new Director who is capable, experienced, and knowledgeable.

The new Director managed OCR and CRLO when many of its present errors and problems were promulgated. The Administrator returned a "senior civil rights attorney" from DOJ to assist in forming the process when that attorney previously worked on Title VI for EPA. He was one of the principle authors and progenitors of the legal errors and sources of OCR Title VI difficulties. CRLO rehired an attorney who is another of the principle authors of EPA legal errors and disastrous Title VI guidance. The OCR AD for Title VI who failed to manage the Title VI program for years still works in OCR Title VI, but does not appear on OCR roster. The current AD is a protégé of the previous AD, who was mentored by Ray Spears, along with being a case manager with a negligible record of success. The entire situation is incestuous and not related to performance.

#### **4.3 AFFIRMATIVE EMPLOYMENT & DIVERSITY (AE&D)**

There is so much wrong with this section, that I assume it was intentional. The AE&D AD and staff did not have the authority to carry out the work of the office without undue monitoring, micro-management, and constraints that adversely impacted on the program. For nine years we did the best we could under extremely adverse circumstances and excelled in spite of the hostile work environment. The current OCR Director continues to make decisions that are contrary to an effective and model EEO program and are a continuation of issues and positions of his mentor Ray Spears and friends, including Ms. Higginbotham. For example, Ms. Higginbotham had a problem with the National FWP Manager, and immediately Mr. DeLeon put her on a PIP trying to drive her out of EPA and using FWPMs in the field. There are many other examples.

Incorrect statements will be dealt with again since they were repeated in the report.

1. The statement that AE&D had difficulty accessing data for the MD-715 is incorrect.

- Visual Power Files (VPF) contains all data necessary for the MD-715 Reports. AE&D has had years of difficulty in getting OHR to provide necessary data to be transferred to the official EEO database in accordance with the regulations. Violations of data include ages on certificates for hiring.

2. The statement that AE&D has a tendency to complete responsibilities (MD-715) as last-minute exercises is incorrect.

- The AD and AEP Manager prepared EPA AEP FY 02 and 03 manually, which were timely and compliant
- The OCR Director contracted out the function in FY 04 and the contractor failed. She paid \$200,000 for her mistake and an additional amount of about \$100,000 to correct it
- Barriers are something new with MD-715, barrier analysis was in FY 88-92 five-year AEPs
- The former OCR Director refused to submit reports and then attempted to shift the blame onto the AE&D staff. The agency is continuing this ruse
- Rafael DeLeon violated the MSPB Mandatory Order

3. The statement that the “MD-715 contractor analysis capabilities” are “underutilized and redundant to AE&D staff” shows a lack of understanding.

- VPF is a proprietary system that maintains the EEO database in accordance with the regulations and includes MD-715 reports and analysis. Numerous agencies use this system.
- The problems are related to OHR data input and transfer as stated
- Requested data from OHR has taken years or been ignored
- The former OCR Director has been attempting to remove Tech Solutions as a contractor for years
- The contractors hired by her have failed
- The current Director OCR is continuing to place the blame for inaccurate data on the contractor in support of Ms. Higginbotham

4. The statement that “data accuracy is frequently questioned” is due to incorrect or untimely OHR data input and that there is a “redundancy in guidance and inconsistent direction provided to SEPMS and it is not coordinated with the EEO offices,” was created by Ms. Higginbotham and continued by Mr. DeLeon.

- “Garbage in” is transferred from OHR to the official EEO database VPF as “garbage out.”
- A structure of Councils has been created to increase the authority of collateral-duty SEPMS over permanent EE Managers in AE&D. This is politically motivated and the case at EPA for decades.
- Millions of dollars have been spent on training SEPMS who have a high turnover and to assist OCR.
- Ray Spears recruited collateral-duty SEPMS at his level as Deputy Chief of Staff of EPA which is nonsense.
- EPA emphasizes training of collateral-duty SEPMS over managers and supervisors.
- Collateral-duty SEPMS are used against AE&D staff members by the Directors.
- Mr. DeLeon is currently using three (White) collateral-duty FWPs against the National FWPM (Black) to demote, transfer or fire her, which has been reported and ignored.
- These groups should not have separate councils, sit on the HRC, or receive annual training in lieu of managers and supervisors.

5. The statement that AE&D staff tends to have “higher grade levels without unique KSAs or competencies typically required to justify high non-supervisory grade level” is totally self-serving and false.

- The EE Managers are graded in accordance with classification standards, not KSAs.
- There was no comparison with Federal agencies that have GS-15 EE Managers in HQs offices.
- Regional EEOOs are at GS-13/14 levels with less responsibility and authority than HQs SEPMS.
- The Equal Pay Act has been violated in OCR because Ms. Higginbotham prevented the NFWP position from full performance at a GS-13, under her peers with less responsibility.
- Mr. DeLeon immediately put her on a PIP continuing Ms. Higginbotham’s retaliation.
- EE Specialists and Managers are graded under different classification standards.
- Non-supervisory EEM positions with staff and operational functions are graded higher.
- This is an attempt by management to downgrade these employees, which would be an adverse and discriminatory action.
- The AE&D AD and staff were prevented from carrying out their work due to micromanagement and restrictions imposed by the OCR Director(s).

6. EPA staff lacks focus on staff training and customer service. In spite of the policies set by the Director OCR to restrict the visibility of the AD AE&D and staff, not fund program reviews or staff assistance visits, and focus on CD SEPMS training, AE&D staff was successful. As a civil rights professional, I was not officially put in charge of the OCR for 9 years in retaliation, as were my peers. I was actually in charge on many occasions by default, never acknowledged or appreciated.

7. The statement that minimal collaboration with the Title VII program and little engagement with other EPA functions occur is due to a bizarre concept of the Director OCR. She said there was a line down the office due to “conflicts of interest.” She appeared not to know what represented a conflict of interest. On two occasions, I requested the opportunity to process Title VII complaints to train AE&D staff and was rejected. The AE&D staff was not shared Title VI or VII information; the VPF EEO database has an effective complaint component rejected for use by the Director; no EEO literature is routed to OCR staff so they could stay abreast of current issues and trends; and experts in civil rights were bad-lipped and never returned to EPA as trainers.

- When I requested manuals for AE&D staff, Mr. DeLeon rejected the request and allowed the purchase of “one.” This is a mentality of not providing employees with professional information.

8. The statement that there are no formal meetings, reporting relationships or operational guidelines to ensure consistency, strategic messaging, and resource allocation is incorrect. I held weekly staff meetings and there was a monthly staff meeting with OCR. Reporting lines were clear, but ignored. Operational guidelines were available, but also ignored. Supervisory authority was usurped so often that it was nearly impossible for senior staff to operate. I returned the AE&D budget to the Director three times because of the lack of authority and accusation of procurement violations, including violation of the Anti-Deficiency Act, which was unfounded and ridiculous at that level in the agency.

- Mr. DeLeon personally supervised my staff for the FY 10 MD-715
- Mr. DeLeon rated my staff with his Deputy and retaliated against the five who wrote Congress
- Mr. DeLeon has set policies that restrict the AE&D staff
- Mr. DeLeon conducts and participates on collateral-duty SEPM teleconferences regularly
- Mr. DeLeon work directly with collateral-duty FWPMs around the NFWPM
- Mr. DeLeon controls the budget and proposed expenditures

9. The statement that redundant OCR functions have developed outside the purview of OCR is an excuse for mismanagement and is a waste of taxpayer funds. Rafael DeLeon created an entire office for attorneys to defend the agency against complainants; he created four positions in OHR for no reason but to conflict with AE&D staff; he hired a GS-13/14 Las Vegas EEOO to service 170 employees; he transferred attorneys into the OCR on detail with others.

#### **Figure 4.5 MD-715 Data, Regional Participation (page 31)**

1. The report states that “...OHR and ODOC question the accuracy and validity of the numbers and analysis leading ODOC to begin developing its own dashboard tracking diversity workforce demographics based on the same HR database used by OCR for the MD-715 demographic analysis.”

This is simply nonsense. The EPA Quarterly Statistical Report (QSR) I developed in 2002 was institutionalized and currently being eliminated by Mr. DeLeon for no valid reason. It was inserted in the EEO database at my request. OHR is responsible for the accuracy and validity of the data, not OCR AE&D. A “dashboard diversity workforce demographics” is a typical response and in violation of the regulations. This was not done because they “question the validity” of the numbers. This entire matter is the reason for continuous violations throughout EPA.

2. The statement that “...it appears the majority of AED’s interactions involve coordinating national observance events (e.g. Women’s History Month) with the HQs PMOs and CD SEPMs located in the HQs, regions and laboratories,” is false (see Attachment E). The AE&D staff has been required to design, plan and implement the observances and events due to the lack of a HQs EEO office and inappropriate policies. The staff is dual-hatted requiring staff and operational work for the HQs, e.g., write policies, procedures, plans, then operate by putting on events. These programs have been used for political purposes by Directors. Ms. Higginbotham required her brother be a guest speaker on two occasions; Mr. DeLeon now requires two observances/group which overwhelms the AE&D staff; Mr. Martinez accepted more work for the FWP observance.

3. Events, such as the National MLK Jr. Birthday observance, the Holocaust Remembrance, Day of Service and AO Diversity Day programs were all in AE&D because of the capability of the staff to design, MC, and implement successful and outstanding programs for years attended by thousands of employees. These are the Administrator's programs.

4. The report needs to clearly state that outreach, recruitment and hiring procedures are the responsibility of OHR, not AE&D. The elimination of barriers is a responsibility of managers and supervisors throughout the agency, not AE&D.

**Figure 4.6 Redundant OCR Functions Across EPA (page 33)**

1. The statement that AE&D is "responsible for designing and coordinating targeted recruitment plans" is incorrect. OHR is responsible for designing and coordinating recruitment plans. OHR is also responsible for the annual Federal Equal Opportunity Recruitment Plan (FEORP) submitted to Office of Personnel Management, not EEOC. The FEORP is supposed to be in line with the MD-715 report for the agency.

2. The statement that AE&D is "responsible for coordinating outreach and targeted recruitment and cultivating mission-related relationships with Minority Academic Institutions (MAIs) is also incorrect. The OHR is responsible for outreach and recruitment; MAI programs are the responsibility of the Office of Small & Disadvantaged Business (OSDBU), where Jonathan Newton and his position was transferred years ago. OSDBU even created new positions and transferred Mr. Newton elsewhere. AE&D interfaces with these groups.

3. The statement that "ODOC duplicates AE&D's core responsibility for statistical analysis and reporting" is a violation of the regulations. ODOC has no authority under the laws or regulations to do so and this is being done for political reasons, not programmatic.

**Figure 4.7 Summary of Findings and Example Benchmark Approaches (page 33)**

1. This section uses other Federal EEO programs for comparison of various aspects of the programs. This is an ineffective approach of assessing the EPA OCR. Many of the statements in this section are incorrect and are duplicative to what has already been stated in the report. Some of these statements show that there was inadequate civil rights knowledge and experience and the lack of understanding of the differences between OCR AE&D and other organizational functions.

2. The statement that "observance events should not be a part of AE&D's program of activities; they should communicate relevant barriers and recommend speakers, activities and other targeted measures to be included in events as a further means for addressing barriers," is so wrong that it is not even worthy of response. Presidential proclamations on national observances and events, such as Women's History Month, are not related to barrier analysis and elimination. They are designed to recognize and appreciate cultural, gender and ethnic differences. OCR has failed to allow AE&D the funds and authority to develop projects and programs.

3. An analysis of Title VII complaints was done in previous MD-715 reports, but removed from the FY 09 and FY 10. Resolution of complaints is a function of Title VI and VII not AE&D.

**4. Hire, train, or realign staff that possess a balance of barrier analysis expertise and experience with a strong passion for civil rights and diversity.** This is a totally self-serving statement. I hired the entire AE&D employees, who are well-qualified and fully trained to do a barrier analysis. They are also committed to civil rights and have "passion." They all have the ability to do public speaking and conduct training. They are all highly-educated and knowledgeable. The key words are "realign staff" so that the employees can be moved under the guise of "passion" and possession of "barrier analysis expertise."

5. “AE&D should not circumvent EEOs by providing input and direction to regional SEPMS.” This is absolutely true and ignored. I made this recommendation for years to no avail because the Directors want to use these employees against their own employees. Rafael DeLeon is currently using the collateral-duty FWPMs for political reasons to remove, demote, or fire the Federal Women’s Program Manager.

#### **4.4 TITLE VI – INTERNAL COMPLAINTS (page 36)**

1. The problems in Title VII are clearly evident if previous complaint reports were reviewed. Three complaints against Mr. DeLeon were changed in a report so that his name did not appear as a “Responsible Management Official,” which allows deniability. A complaint I filed was lost; other complaints with findings are withheld; complaints filed are not recorded; complaints are untimely; one complainant was forced to use the Deputy as a counselor or withdraw (a real conflict of interest); and the legal office is involved in the entire process. The process has been distorted and mishandled for years (see the NTE *Fishbowl* on Manager Minus).

2. As a Command EEO Officer, I was responsible processing 125 complaints/year, achieved one of the highest resolution/settlement rates and had one of the most effective complaints, ADR and affirmative employment programs. Only one lawyer, a Captain, was assigned to provide legal sufficiency and a total of 8 civil rights staff members, assisted by collateral-duty SEPMS and managers/supervisors. The entire program serviced 14,000 employees, 25 servicing agreements with on-site organizations, and a worldwide program of civilians and military members. As an EE Manager at U.S. Treasury, I was responsible for developing complaints and ADR policies and selected to handle complaints against the Secretary and high-level officials. EPA does not appear to want their OCR program to excel by continuing to make ineffective decisions.

3. Terminology used throughout the report is incorrect, such as “Jurisdictional Review,” “IRs,” “admittance” into the formal complaints program, “repeat offender,” “incident anomalies,” “interventions,” and “one employee thread.” The term repeat offenders is used against complainants and incident anomalies is referring to the bases or claims of complaints, which are not anomalies. This is shameful in a report on civil rights.

#### **Figure 4.8 Summary of Findings and Example of Benchmark Approaches (page 39)**

1. The statement that “Title VII staff should have attorneys on staff to advise the Director OCR on Title VII issues and perform leadership roles for the office,” is against the basic principles of civil rights and shows how out of touch the crafters of this report are when it comes to EEO. The attorneys should be used for legal sufficiency only.

2. The report emphasizes that this process requires knowledge and skills for “deep analytical and communication skills” and “frequent interface with complainants and other parties necessitates competence in translating legal jargon into common language.” Both these statements are ridiculous. Valid analysis was missing from both the FY 09 and 10 MD-715 Reports, never mind “deep,” analysis. Frequent interface with complainants absolutely does not require “translating legal jargon into common language,” it requires common sense. I do not believe that these statements were made by Deloitte consultants.

3. More nonsense statements are made in the report that “Title VII process staff should “proactively identify hot spots of employment complaints and coordinate with AE&D to institute remedial actions, as feasible and proactive,” and EEOs should “gain insight into the mechanics of the formal investigation process enhancing their ability to inform prospective complainants through real-life experience.” It is very sad to be reading such statements. AE&D is not involved in “remedial actions” for complaints and telling complainants real-life experiences after learning the formal process is embarrassing.



**5. APPROACH TO IMPLEMENTATION (page 42)**

The recommendations and approach to implementation are incorrect since they are based on incorrect statements and assumptions. Instead of fixing the problems, it appears that the agency is determined to repeat itself or as Yogi Berra said, it's "déjà vu all over again."

**ATTACHMENT C****Susan M. Morris Awards & Recognition**

1. 2009 Federal Asian Pacific Advisory Council plaque for support of Asian community
2. 2008 Distinguished Public Service Award, National IMAGE on behalf of Hispanics
3. 2006 Plaque from AE&D Team for support and supervision
3. 2003, 2004, 2005, 2009 - Nominated for Administrator's Manager of the Year by AE&D staff
4. 2003 On-the-Spot Award, EPA
5. 2001 EPA Bronze Medal for EEO
6. With-in Grade Increases US EPA
7. 2000 Recognition for development of ADR Program and Settlement Agreement Policy, U.S. Treasury
8. 2000 On-the-Spot Award, U.S. Treasury
9. 1999 Humanitarian Award for life-saving assistance to Hispanic Employment Program Manager
10. 1999 Superior Civilian Service Award
11. 1996 Department of the Army Meritorious Civilian Service Award and Medal
12. 1995 Proclamation and Recognition from NJ Governor for Holocaust Program
13. 1995 Certificate of Recognition from DA HQ AMC for Holocaust Observance
14. Secretary of the Army EEO Award nominee 3 years
15. 14 years of Exceptional Performance Appraisals and Awards: FY 99, 98, 97, 96, 95, 94, 93, 92, 91, 90, 89, 88, 87, 85; US. Army; Promoted 86; Sustained 84
16. 1992 Human & Civil Rights Association of New Jersey award for continued achievements in civil and human rights
17. 1992 Hispanic Association of Colleges & Universities (HACU), Washington, DC award for Outstanding programs to further the advancement of Hispanics
18. 1-Star from Brigadier General Otto J. Guenther, EEO Achievements and Outstanding EEO Program
19. NJ Garden States Art Center certificate of recognition for Charter Membership in planning first Annual Afro-American Arts Festival
20. U.S. Congressman Robert E. Andrews certificate of recognition for contributions to civil rights
21. Camden Mayor Aaron A. Thompson certificate of appreciation for achievements in human and civil rights
22. NJ Senator Walter Rand citation for leadership in civil and human rights
23. Letter of Recognition, Freehold YMCA for continued support of MLK Jr. Memorial Breakfasts
24. 1991 Federal Executive Association Award as Conference Chair and Interface with Historically Black Colleges & Universities (HBCU) and Hispanic Serving Institutions (HSI)
25. Certificate of Recognition from Secretary of State, Georgia, for outstanding EEO programs for women, minorities and the disabled
26. 1991 2-Star from Major General Mallette for EEO Achievements & FEA/EEO Executive Training Conf.
27. 1991 Letter of Recognition from Monmouth County Head Start for Holidays Around the World Program for 125 economically disadvantaged children annually
28. Certificate of Recognition from DA HQ AMC for Annual Secretary of the Year Awards Program
29. Outstanding program reviews from: US Defense Institute, DOL; DA Equal Employment Complaints Compliance Review Agency; DA Civilian Personnel Survey Agency; HQ AMC EEO Officer; and EEOC New York Region
30. Two-Star letter from Major Gen Billy Thomas for EEO Achievements
31. White Tail from 4-Star General Tuttle for outstanding EEO programs and national leadership
32. 1990 Commander's Coin Award for significant achievements from MG Billy Thomas
33. 1990 4-Star letter from General Tuttle, US AMC, for EEO Achievements and Trainer
34. 1990 2-Star letter from Major General Mallette for 100% resolution rate for EEO complaints 3<sup>rd</sup> Q
35. 1990 4-Star Certificate of Recognition for EEO Achievements
36. 1986 Promoted to Command EEO Officer - U.S Army, Chief of Staff Colonel Ketchum
37. 1984 Sustained Superior Performance Award, U.S. Army, from EEO Officer Ermon Jones
38. 1983 Recognition for drafting Youth legislation with National Director
39. 1979-1984 Regional Director commendations and awards as Deputy Regional Director, Region II, US Department of Interior, Office of Secretary, for Outstanding Programs

**ATTACHMENT D****Affirmative Employment & Diversity Staff Credentials**

**The statement in the report that the AE&D staff lack the credentials or “passion” for civil rights is false. Following are their credentials:**

**Susan M. Morris (only White female in OCR)**

30 years of Federal service; Subject Matter Expert in civil rights, ADR, complaints processing and affirmative employment  
Master’s Degree, American University, Key Executive Program, Public Administration, Honors  
Bachelor’s Degree, Rutgers College, New Brunswick, NJ; Major Psychology  
Army Management Staff College (4 months onsite); EEO Officer’s training; Director of Management Development &  
Training (U.S. Dept of Labor); Deputy Regional Director, Region II (U.S. Dept of Interior); Command EEO Chief (U.S.  
Dept of Army); EE Manager, Complaint Policy & ADR (U.S. Dept of Treasury); EE Manager AE&D (EPA)

**Alease Wright, EE Manager and Federal Women’s Program Manager (Black female)**

39 years in Federal government; 18 years in civil rights, 12 years Title VII and 6 years affirmative employment; trained in  
complaints processing and barrier analysis, affirmative employment; EEO; English teacher nights  
Bachelor’s Degree, University of Maryland, Business and Management Technology

**Mirza Baig, EE Manager and Affirmative Employment Program Manager (Asian male)**

19 years in civil rights, 11 years in affirmative employment, 2 years Title VI, state government EPA  
Master’s Degree, University of Mississippi, Chemical Engineering and Management  
Training in affirmative employment, barrier analysis, statistics, MD-715, complaint processing and investigations

**Dr. Secody Hubbard, EE Manager and American Indian/Alaska Native Manager (American Indian)**

5 years civil rights training; barrier analysis training, ADR, workforce diversity, EEO  
PhD, University of Arizona, Public Policy  
Master’s Degree, University of Arizona, Public Administration  
Bachelor’s Degree, University of Arizona, Health Administration

**June Turner, EE Manager and Asian Pacific Islander Program Manager (Asian female)**

25 years in Federal government; 19 in civil rights; 6 in human resources  
Master’s Degree, George Mason University, Science and Organizational Development  
Bachelor’s Degree, Texas A&M, Business and Public Administration

**Christopher Emanuel, EE Manager and Disability Employment Manager (Black male)**

11 years in Federal government; 6 years in civil rights; 5 years as budget officer  
ADR, Reasonable Accommodation, ADA, affirmative employment, Dept of Justice Accessibility Investigator,  
Workforce Recruitment Disability Program Recruiter, ORD detail  
Bachelor’s Degree, University of Southern California, International Relations & Public Policy

**Jerome King, EE Manager and Diversity Program Manager (Black male)**

26 years in Federal government; 7 years in civil rights; training in all aspects of program  
Post graduate work, University of Michigan  
Master’s Degree, University of Ohio, International Relations  
Bachelor’s Degree, University of Illinois, Speech and Communications

**Cleveland Williams, EE Manager and Black Employment Program Manager (Black male)**

Sergeant First Class, 31 U, Signal Assistance Support Specialist and MOU as EO Advisor and training  
8 years in Federal civil rights; 5 years Title VII; 3 years affirmative employment; Excellence in Government Training and  
education/training in all aspects of program

**Ismael Martinez, EE Manager and Hispanic Employment Program Manager (Hispanic male)**

12 years civil rights experience; 10 years at Customs Border Patrol; EE Manager EPA  
Bachelor’s Degree, University of Puerto Rico; promoted to Acting AD

**ATTACHMENT E****AE&D Policies, Procedures, Plans Developed****Work of AE&D that shows that the statement of simply putting on cultural observances is false. Following are policies, procedures, a handbook, training materials, and briefings developed:**

- \*Developed Administrator's EEO policy statements
- \*Developed effective EEO database, contracted with Visual Power Files (VPF) for maintenance of data
- \*Developed a 2005 OCR SEPM Handbook
- \*Developed policies and procedures on Non-Labor Employee Groups (NLEGs)
- \*Developed policies and procedures on Special Emphasis Programs
- \*Distributed the Comptroller General decision on cultural observances to stop violations
- \*Provided regular advice and input on civil rights to managers, supervisors and employees
- \*Provided input for OCR on the EPA Order on serving food and cultural entertainment
- \*Developed EPA Order on Sexual Orientation and Status as a Parent
- \*Developed EPA settlement agreement policy, procedures and Model agreement (K. Higginbotham and S. Pressman refused to distribute)
- \*Developed Reasonable Accommodation Procedures with AFGE as part of negotiation team
- \*Established collateral-duty local Reasonable Accommodation Coordinators (LoRACs) in the field
- \*Designed and created the Quarterly Statistical Report that was institutionalized
- \*Developed National Reasonable Accommodation Coordinator (RAC) position and wrote the job description
- \*Developed the Diversity Program position for Sexual Orientation and Older Workers and wrote job description
- \*Hired the Diversity Program Manager and included collateral-duty DPMs for the field
- \*Developed Affirmative Employment Plans (AEPs) for FY 02 and 03 manually and approved by EEOC
- \*Developed OCR Roster for OCR, SEPMs, LoRACs and field updated and distributed quarterly
- \*Developed the first OCR AE&D Tri-fold to be used for training purposes and distribution
- \*Developed an OCR newsletter (K. Higginbotham disapproved)
- \*Developed a Task List for designing and implementing annual observances throughout the year
- \*Joined 25 Federal agencies for the Holocaust Remembrance Program and selected Kirk Marusak as lead
- \*Developed an EEO Awards Program for the Director OCR and implemented a training programs
- \*Designed and sponsored major training programs that included EEO experts and were outstanding
- \*Approved Disability Program Manager to work with Dept of Justice as Accessibility Investigator
- \*Reviewed and submitted comments on Presidential Executive Order for Nursing Mothers
- \*Designed and created numerous training documents and briefing charts
- \*Planned and implemented major observances for the Administrator considered some of the best in the area
- \*Designed and developed training programs for targeted programs annually
- \*Developed Privacy Act statements for inclusion in the collection of RNO data by OHR
- \*Assisted OHR in developing Applicant Flow form approved by OMB for collection of RNO data
- \*Designed and implemented a "Day of Service" program with the Administrator's Office
- \*Interfaced and worked with the D.C. government offices on Day of Service programs
- \*Participated regularly with Federal Asian, Black Employment, Women, Disability, GLBT, Hispanic, American Indian and Older Worker groups and organizations
- \*Designed and worked with AO on first "Diversity Day Program" and received awards for work
- \*Researched and provided paper on facilities and decommissioning American Indian paintings
- \*Developed civil rights job descriptions and performance standards
- \*Conducted statistical and barrier analysis at EPA since 2001
- \*Prepared and conducted training for HR employees on EEO and affirmative employment
- \*Reviewed annual FEORP reports and submitted comments
- \*AD Received 2008 Outstanding Public Service Award for EEO work from IMAGE on behalf of Hispanics
- \*AE&D Received Bronze Award for MD-715 work and EEO programs
- \*AD Received commendation from Federal Asian Pacific Advisory Council for work on behalf of Asians
- \*AE&D received years of commendations for outstanding observances that served thousands of employees from January through November annually on behalf of the Administrator

This is not all inclusive and the AE&D team was considered an outstanding performing team. They received outstanding performance ratings and monetary awards and a Bronze Award for MD-715 work. The AE&D also interfaces on a regular basis with Federal, state, local and community organizations.

**ATTACHMENT F****EPA VIOLATIONS**

1. Karen Higginbotham was transferred out of her position to head up Office of Executive Services for the 288 EPA SES members, yet she failed miserably in OCR and violated laws and regulations under Title VI, VII and AE&D. The woman being considered for that position left the agency.
2. Ray Spears was considered the AO “fixer” for problems with women and minorities. He mentored black males in his home for promotions and is well-known as Rafael DeLeon’s personal friend. He also mentored black females, such as Karen and Helena Wooden-Aguilar. He retaliated against me as the only white woman in OCR and engaged in unethical actions. Yet, the Administrator and others praised him when he was retiring. Mr. Spears used the EEO complaint resolution process to transfer Ms. Coleman-Adebayo under his supervision and then fired her with Mr. DeLeon.
3. Rafael DeLeon failed previously with numerous complaints filed against him. Again, four OCR employees have filed against him. Regardless, he creates positions to the disadvantage of the taxpayer. He created the Civil Rights Law Office (CRLO) office of attorneys; he created four positions that mirrored positions in OCR; he was removed from HR to a small office under his friend and mentor, Ray Spears. They terminated Ms. Coleman-Adebayo and as a reward he was put back into OCR and is being praised by the Administrator. The Administrator worked for EPA years ago, so it may represent the same old EPA frat circle. More OCR employees are being hired to join the dysfunction.
4. Yasmin Yorker, the Title VI Assistant Director, was transferred out of her position after much publicity (see *Inside EPA* and *Rosemere Neighborhood Association*) for nonperformance. Thereafter, at a highly attended Administrator’s Awards ceremony, she received a Bronze Award. Ms. Yorker is now a Special Assistant to Rafael DeLeon. Unbelievably, Ms. Higginbotham accused me of inappropriately objecting to this travesty as part of her proposed removal.
5. Stephanie McCoy, Admin. Asst. to Karen Higginbotham, called me “low class” and a “bitch” publicly. She rarely came to work on time, went shopping evenings on duty time, yet she was in charge of time and attendance for the other employees. Ms. Higginbotham detailed her to Mr. DeLeon’s office so that she could be promoted in an upward mobility position. Ms. Higginbotham used this in her proposal as my having an altercation with a junior employee. Values of honor or integrity are not part of their system.
6. James Young, Senior EPA Employee contractor, was a personal friend of Ms. Higginbotham said he was her “spy” and slept at his desk, but remained while other SEE employees (3 women) had their contracts terminated. My protest of sleeping on the job was also in my proposal.
7. Natalie Twyman, Title VII, was given an upward mobility position by Ms. Higginbotham after not performing in another office and my office. She was Ms. Higginbotham’s daughters’ former babysitter, who they call “Auntie.”
8. Helena Wooden-Aguilar, who admits that Mr. Spears was her mentor, was created a position so she could travel to North Carolina to be with her boyfriend. Employees filed an IG complaint and reported that they found nothing “criminal,” when the issue was misuse of government funds for personal use. She was also given a Bronze Award and Ms. Yorker’s position without consideration of merit system principles.
9. Jonathan Newton, OGC attorney, received a promotion to a GS-15 in OCR where he studied for his Doctorate of Divinity for 2 years. The position was created by Ms. Higginbotham and reviewed by Mr. Pressman in CRLO. Jonathan was promoted as a lawyer to the GS-15 so that a management reassignment could be effectuated. This was all a violation in many areas.
10. Katherin Hall, a lawyer involved in the MD-715 fiasco against me, had a position created for her with another detail for two years to Colorado to be with her husband who was transferred there. Purportedly, she does civil rights work and travels occasionally to D.C. and meets with Rafael DeLeon.
11. Steve Pressman, was involved in promoting Jonathan Newton. This was done after Ms. Higginbotham said, “If that white woman in OCG won’t promote him, I will.” Mr. Pressman and Karen refused to distribute a Settlement Agreement policy and procedures for EPA that I developed. A similar document was distributed throughout U.S. Treasury with 160,000 employees at the time, yet EPA would not. Mr. Pressman also was involved in the non-submission of the MD-715 reports with Katherin Hall and Tonya Lawrence.

**ATTACHMENT G**      **NTEU *Inside the Fishbowl*, March 2004 - Volume 20 – Number 3**

The issue outlines major issues 7 years ago (2004) naming Rafael DeLeon, Karen Higginbotham, Gordon Schisler, Ray Spears, et al and includes the No FEAR Act and Agency corruption.

Dwight/Seth

Ok-- I can live with being accused of approving removal of the Holland and Knight Report. I did.

What I can't live with is your sloppy, misleading and inflammatory description of the report and my career. This is EXACTLY what I am talking about when I talk about Union Communications.

You mislead people to think the Holland and Knight report says what you appear to be quoting. That is not true and is a willful disregard for the truth. This is highly unfair, defamatory and libelous. You took a passage from the report, inserted my name where it fit your purposes and you published it as if the Report says that. It doesn't.

Furthermore, either being incredibly malicious or just taking rank liberty with the truth, you assert that I was promoted after my 1-year OCR Director stint to be Director of OHROS. For those who don't know, they will consider this to be true. The Fact is that this is factually incorrect and MISLEADING. I went to OGC, where I established the Civil Rights Law Office and practiced for approximately 5 years, before coming to OHROS. When you look at the law in this area, what you are doing looks a lot like what the threshold is for proving defamation of character and libel.

I strongly urge you to immediately correct what you have published and to refrain from publishing these misleading, defamatory attacks in the future.

Rafael DeLeon, Director  
Office of Human Resources and Organizational Services

Ed. Note: In the quote from the Holland & Knight Report, we added two names in brackets and then stated that: we note that paragraph B 3 on page A-2 states that: "the [then] current OCR Director's predecessors [e.g., Rafael DeLeon] were not strong managers; therefore, the Director [Ann Goode] inherited a poorly-managed organization." We expected that our readers would know that, if there is a quote and within the quoted text there appears bracketed language, the bracketed text is not from the quoted text.

## **2. Office of Civil Rights Responds to NTEU That There are No Disciplinary Procedures in Place for Use Against Discriminating Managers**

On February 24, 2004, NTEU, Chapter 280 wrote to Administrator Leavitt regarding a GAO report dated June 26, 2003, reporting on EPA's civil rights program and the need for improvement. Our letter stated, in part, that:

"GAO also reports that since 1995, EPA has not disciplined any manager or employee for discriminatory conduct. We note that EPA's No Fear Act Data Report, found on EPA's internet site at <http://epa.gov/civilrights/nofearact.htm>, reports that for FY03 there were two findings of discrimination. [Ed. note: there is also one for FY04 that was not included in the EPA report.] But our question to you is - were these individuals held accountable for their discriminatory actions?"

We agree with GAO that a process that holds managers accountable for discriminatory conduct should enhance employee confidence in the EEO environment and demonstrate EPA's commitment to providing a fair and discrimination free environment. Accordingly, we urge that you direct that EPA fully implement GAO's recommendations. . . ."

On March 10, 2004, EPA's Office of Civil Rights hand carried the Agency's response to NTEU Chapter 280's "union hall" a/k/a 3376 EPA East. The letter, from Karen Higginbotham, but signed by Gordon Schisler, states that: "Procedures for a system of disciplinary actions to be taken, when cases are settled or managers/supervisors are found to be discriminating, are still being reviewed and have not been finalized." In other words, there have been no disciplinary actions taken against the three managers who were found to have discriminated.

We have asked to see a copy of the draft procedures and have urged the Administrator to direct that such procedures be put in place ASAP, and that, in the meantime, the Agency proceed against the three managers and hold them accountable for their discriminating actions.

In the December edition of *Inside the Fishbowl*, we reported that on December 10, 2003,

Karen Higginbotham, Director of EPA's Office of Civil Rights, withdrew her Final Agency Decision, a decision which was on appeal to the EEOC, that dismissed an EEO complaint. That complaint alleged, in part, that Ray Spears, Deputy Chief of Staff, retaliated against an EPA employee for pursuing rights under EEOC regulations.

In Ms. Higginbotham's memo to Administrator Leavitt, she states:

"To avoid any real or perceived conflict of interest [because Ray Spears is her supervisor], I have withdrawn the Final Agency Decision that was issued on this complaint on August 25, 2003, and I am referring . . . [the] complaint to you for processing and final decision, pursuant to Delegation 1-83." [Delegation 1-83, the authority to accept or dismiss EEO complaints, provides that the Director of the Office of Civil Rights can refer any EEO complaint to the Administrator for final decision.]

So what will Administrator Leavitt do with that EEO complaint? Will he make the decision himself or will he delegate it to some other EPA official? Or, will he use this as an opportunity to demonstrate the ENLIBRA concept? In other words, have a meeting with the complainant and work out a resolution in a non-confrontational, common sense manner.

We now have the answer. On January 30, 2004, Administrator Leavitt's Chief of Staff, Thomas J. Gibson, issued the Final Agency Decision dismissing the complaint. An appeal was filed, on March 26, 2004, with the EEOC. What is troubling is that the decision does not reference under whose authority Mr. Gibson was acting. Also troubling is that it is not clear if Mr. Gibson was acting at the direction of the Administrator or Deputy Chief of Staff Ray Spears. This confusion is caused by the Agency failing to respond to a FOIA requesting a copy of the document from Administrator Leavitt authorizing Mr. Gibson to be the deciding official. Compounding the confusion is the existence of a July 2, 2003 memorandum from Acting Administrator Linda Fisher delegating such authority to Deputy Chief of Staff Ray Spears with the unbridled right to redelegate that authority to anyone he deems appropriate.

That memorandum states:

"By this memorandum, Ray Spears, in his capacity as Deputy Chief of Staff, is hereby delegated the authority to receive, evaluate and make the final Agency decision on such referrals [referrals by EPA's Director, Office of Civil Rights to the Administrator for final decision] and to redelegate this authority to whomever he deems appropriate."

So did Ray Spears redelegate his authority to Mr. Gibson? We don't know, but if he did would that comport with the Management Directive of the EEOC that, "Agencies *must avoid* conflicts of position *or conflicts of interest* as well as the appearance of such conflicts." EEO-MD-110, Ch. 1, Section III at 1-2. (Emphasis added)? What do you think?

Casting further doubt on the appropriateness of the selection of Thomas Gibson as the deciding official, is the past practice of Karen Higginbotham when a similar conflict of interest arose also involving Deputy Chief of Staff Ray Spears and then Chief of Staff Eileen McGinnis. In those past cases, which arose in Washington DC, the referral for Final Agency Decision, was to Carl Dierker, the Regional Counsel of Region 1, located in Boston. In Mr. Dierker's decision is the statement that: "I have been delegated the authority to issue a final decision on your complaints of discrimination in order to avoid any real or perceived conflict of interest issues." The Agency's position in those cases was that, although Higginbotham did not first refer those complaints to the Administrator, as EPA Delegation 1-83 at 3.d provides, "Higginbotham did what the Administrator would have done anyway: she referred those complaints to an objective, impartial, senior EPA official for review."

Based on the Agency's statements noted above, how could the Agency now take the position that having the Final Agency Decision issued by Administrator Mike Leavitt's Chief of Staff, who works on a daily basis and in the same office with Deputy Chief of Staff Ray Spears, complies with the Commission's requirements to avoid conflicts of interest as well as the appearance of conflicts of interests?

Considering the close working relationship of Mr. Gibson with Mr. Spears, is it likely that Mr. Gibson could be "an objective, impartial, senior EPA official" regarding a complaint that names Mr. Spears as one of the alleged discriminating Agency officials? Stay tuned on this one.

### **Chief of Staff, Thomas Gibson, Refuses to Meet Over NTEU Allegations of Agency Corruption and Finds No Corruption**

On January 7, 2004, NTEU Chapter 280 requested that Administrator Mike Leavitt, take action to investigate the alleged corruption of Agency officials claiming to have the Administrator's civil rights settlement authority in civil rights cases involving EPA, when, in fact, they do not, and are violating Agency Delegation 1-39 (settlement authority) and Administrative Judges' Orders, and are, in essence, negotiating in bad faith. The letter stated that such actions, no doubt, have had an adverse impact on the settlement terms that EPA employees were forced to accept, under the threat that, if not accepted, the alternative was to continue with expensive litigation that few EPA employees can afford. It is not uncommon for litigation costs to reach into the six figure range.

NTEU also requested an immediate investigation regarding the May 2, 2001 report of Ray Spears regarding redelegation of settlement authority to an Office of General Counsel attorney without a written redelegation. We stated our belief that Ray Spears and his ad hoc task force intentionally distorted the record to achieve their goal of finding that the Agency OGC attorney had full settlement authority.

As a further example of alleged corruption in the Administrator's Office, NTEU pointed to the actions of Ms. Karen Higginbotham, a member of Mr. Spears' ad hoc task force and now the Director of EPA's Office of Civil Rights. We noted that, contrary to the redelegation provision of Agency Delegation 1-39, Karen Higginbotham, has redelegated the Administrator's Delegation of Authority 1-39, the Administrator's EEO settlement authority, to Agency officials not authorized to receive such authority.

[Ed. Note: See the January edition of *Inside the Fishbowl* for a copy of NTEU's January 7<sup>th</sup> letter.]

On March 2, 2004, Chief of Staff Thomas Gibson responded for the Administrator and declined to take action. The basis is that:

"I [Thomas Gibson] have carefully reviewed the information included in your letter and find nothing to support your allegations that the Agency officials therein engaged in any corruption whatsoever. In addition, nothing included in your letter leads me to conclude that the actions of these officials in any way adversely affected the terms that EPA employee complainants accepted in settlement of their complaints. As such, I do not find a factual basis for your contention that Agency employees were "forced to accept" the terms of settlement agreements."

The allegations were against Deputy Chief of Staff Ray Spears; Karen Higginbotham, Director, EPA's Office of Civil Rights; Rafael DeLeon, Director, Office of Human Resources and Organizational Services; Bridget Shea, former manager of OGC's Employment Labor Practice Group, currently serves as Senior Policy Advisor to the Assistant Administrator for Administration and Resources Management; Jonathan Newton; as well as Office of General Counsel attorneys who represented that they had EPA civil rights settlement authority, when, in fact, there was no redelegation of settlement authority to them.

We had hoped that Administrator Leavitt would have conducted a full, fair, and independent investigation regarding our allegations of corruption by agency officials, including senior officials of his Office. The fact that Chief of Staff Thomas Gibson responded to our request speaks for itself regarding an investigation by an objective, impartial, senior EPA official. In any event, at least Administrator Leavitt is now on notice of our concerns and hopefully has directed his staff to stop such practices that allegedly corrupt EPA's civil rights process.