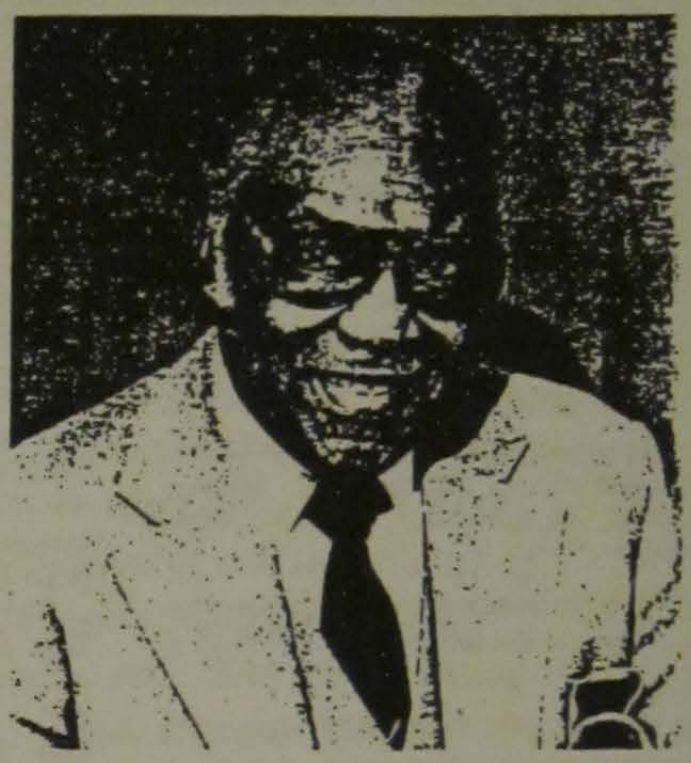
Guest Editorial

Art Fletcher

Equal Employment Opportunity Commissioner



EEOC Commissioner Art Fletcher has worked for equal employment opportunity for 25 years.

I became the Assistant Secretary for Employment Standards in the United States Department of Labor in May 1969. From the moment I was sworn into office, my efforts were geared toward ensuring that minorities experienced employment opportunities on contracts that were financed by taxpayer dollars. Executive Order 11246 gave me the power to do that where all federal contracts were concerned. When a construction industry contractor or other contractors signed their contracts, they all agreed to abide by the specification in the contract. In doing so, they agreed to be fair employment employers. However, the fair employment stipulations were agreed to only after the contract had been signed. Therefore, it was not a binding part of the contract, and as such, was merely a voluntary agreement that had no standing in court.

The reason for this is that in drafting Title VII of the landmark 1964 Civil Rights Act, Congress did not provide a legal definition of racial or gender discrimination. The same holds true for President Johnson's Executive Order 11246, which mandated that all government contractors must be fair employment employers.

Therefore, when I became the Labor Department Assistant Secretary for Employment Standards, I was responsible for affirmative action compliance throughout the entire federal government. And, I found that employment affirmative action was a voluntary enterprise with no legally binding compliance standards whatsoever. However, more importantly, I learned that the entire federal government contracting universe - construction, supplies, material, equipment, services, etc., all agreed that they would not try to determine what the government meant by equal opportunity or racial, gender, or ethnic discrimination.

Furthermore, I learned that without legally binding definitions and standards, etc., spelled out in the law, they were not going to risk breaching a collective bargaining agreement with their respective unions, nor violate state statutes or county/city ordinances. Thus, we were in a catch-22. In other words, if there were no legally binding measurement standards in the law nor any regulations designed to carry out the law, it was impossible to breach a contract. Thus, we had fair employment law that was unenforceable; and the contractor knew it. The same held true for procurement officials throughout the government.

I concluded that the only way to overcome that dilemma was to specify that reasonable percentages of the person-hours (working hours) in a given contract be earmarked for minorities and women to work. Thus, the revised Philadelphia Plan, that I alone signed, didn't specify the number of minorities and women to hire on a given contract. It simply specified that a certain number of person-hours be worked by the latter, and the contractor could hire as many or as few as he liked to performed the task in question.

The federal, district and appeals courts agreed that this approach did not violate the Constitution or the intent of the Congress. Thus, the employment affirmative action enforcement movement was launched for all government contracts, be they construction, service, equipment, etc., and, as the saying goes—the rest is history.

During the last 25 years, the change in occupational profiles, jobs, careers, etc., for minorities and women as whole and African- Americans in particular, is nothing short of phenomenal. Keep in mind that the initial affirmative action enforcement effort had to satisfy Constitutional muster and establish case law before it could be applied in the nation's workplaces. Because I was the only official in the government willing to sign and issue the regulation in question, I call the affirmative action enforcement movement my personal footnote in history.

When my next birthday arrives I'll be 70 years of age. I have spent 25 years, a quarter of a century, on the national scene. During this period I have worked in and out of government trying to make sure that the civil rights legislation that my generation established achieved its objectives. The statutes in question concern voting and employment rights, education and housing rights, business opportunity, and public accommodation rights. The passage of those laws is what the civil rights legislative revolution has accomplished to date.

The above-mentioned legislation has worked for some, and by worked, I mean up-graded, the level of citizenship and

enhanced the quality of life for those who had positioned themselves to benefit from its mandates. And now that the sun is setting on my public career, people are asking me if I have any observations or advice for the generation currently assuming that leadership role regarding the responsibilities of the role and using and making it more effective.

My response is as follows: African-Americans who are elected to public office and serve in the legislative, executive or judicial branches of government must thoroughly familiarize themselves with the overall governing process. They must come to know and recognize the many and varied ways that are employed to prevent various civil rights legislative mandates and judicial decisions from achieving their intended objectives. More importantly, they must have the personal courage and collective will to keep that from happening.

Some of the strategies that have been used to thwart the intended objectives of civil rights legislation are as follows:

- Volunteerism, that is, convincing the prime interest agency, responsible for enforcing the law that the target - industry, employers, unions etc. will voluntarily comply with mandates.
- Delaying the drafting of the required implementation regulation needed to enforce the law and carry out the intent of Congress.
- Not appropriating a budget for the statute in question.
- Instituting administration policies that would restrict using the funds in a given agency's civil rights budget so as to limit its intended impact.

The point is, getting civil rights laws passed is only step one in the process. After the President signs a bill passed by the Congress, it becomes the law of the land. We might call that suiting up and preparing to get in the game. However, we are not there yet. There have to be rules to play by before either the season or a single game gets under way. The latter exercise is called rulemaking and is comprised of writing the regulation designed to carry out the law and implement the intent of the Congress.

This is where the game gets tricky. If one or more special interest groups initially opposed certain language contained in the law or whole sections in the law, they still have another chance to achieve their objective. It is not uncommon for them to go to the enforcement agency and recommend wording in the implementing regulation that will cancel the intent of the section in the legislation that they couldn't keep out of the bill.

In addition, before the regulation is put in force, a 60 to 90 day public comment period is allowed. The purpose of this period is to give that part of the universe, business, industry, etc. governed by the law, an opportunity to make observations, offer suggestions, and recommend that specific or certain language be included in the regulation. This presents a splendid opportunity to cancel out the intent of a segment and in some cases the entire intent of the bill.

I cited the above public comment period because very few African- American leadership groups committed to championing civil rights are either aware of the public comment period, and, or if they are aware, fail to respond and or monitor the process. In addition, its not uncommon for a new administration to initiate policies that will require a radical revision of an existing regulation or writing a new one altogether. In either case, they can regulate a civil rights bill out of existence.

African-Americans can't assume that the battle is over because they get a law enacted, got elected to legislative seats, or are appointed to decision-making positions in the executive branch in any level of government. They are in the right place, for sure, but they must be ever vigilant, constantly alert and permanently on the case. If not, the progress African-Americans have made during the 30 years of civil rights evolution can melt right before their very eyes.

Another point I would make is this: we must also recognize the contribution that African-Americans make as tax-paying citizens. Certain right-wing elements have succeeded beyond their wildest imaginings in making a case against civil rights advances and legitimate welfare legislation as a waste of taxpayers' dollars. How? By presenting their views in a way that suggests that African-Americans don't pay taxes. In short, the right-wing has convinced the vast majority of fair-minded white Americans of good will that all African-Americans are on the dole, on welfare and contribute nothing to government coffers at any level. One thing that bothers me is, that except for a few well-informed individuals, African-American leadership appears to be standing by silently and allowing the right-wing to get away with this argument scot-free.

There are 11.5 million African-Americans in the work force. Thus, like the vast majority of all other employed citizens, the vast majority of these 11.5 million pay taxes too. My point is that it is not a waste of my tax dollars to employ African-American citizens, educate African-American children, support the homeless, provide subsidized housing, health maintenance services and training programs for the unskilled, poorly skilled and so on.

When provisions are made for African-Americans, women, Hispanics, Asians and other ethnic minorities to become contractors where our tax dollars along with that of other citizens, underwrite federal, state, and local government contracts, we should keep in mind that all tax dollars eventually find their way back into the economy. They are used to either employ people, or underwrite contracts. Therefore, all taxpayers, race and gender not withstanding, should have a fair opportunity to be employed and or be a contractor where their dollars created the opportunity.

There is one more issue I want to raise as the curtain descends on my civil rights activist and public service career. I sincerely hope the day will come when African-Americans and other minorities will stop allowing the right-wing and other civil rights naysayers to get away with deliberately confusing civil rights legislation with welfare laws. The primary civil rights legislation areas of concern are voting rights, employment rights, education rights, housing rights, business opportunity rights, and public accommodation rights. Except for voting rights, each of the above requires the spending of personal money as opposed to the granting of a public subsidy.

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On the other hand, aid to dependent children, food stamps, public housing, etc., are true welfare legislation areas. They require a public subsidy. The right-wing has been very clever in convincing well-meaning white citizens of good will that civil rights laws are welfare legislation in disguise and therefore a waste of taxpayers' dollars too. In addition, the religious conservative element has convinced a host of their African-American counterparts of the validity of this argument as well. This is true even though the latter have benefitted mightily from the very civil rights laws that have uplifted their citizenship and enhanced the quality of life they experience everyday.

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While there is still much to be done, like everything else, it progresses in spurts and phases. When the NAACP was formed in 1908, its main agenda was to get African-Americans written into the Constitution. This involved specific performance legislation. The civil rights I mentioned above—voting rights, employment, education, housing, business opportunity, public accommodation rights—are rights that native born or naturalized white citizens take for granted from the moment of birth or the instance of citizenship. African-Americans had to have federal, state, and local laws enacted before we could do the same. Nevertheless, as I write these words, my generation has accomplished that agenda and in doing so brought an end to phase one of the civil rights movement.

The question is now: What's phase two? Are we getting all out of the legislation that we believed we would when we sacrificed to get it on the statute books? And the answer, in a number of instances is yes. However, we must meet the threshold levels, having the necessary staying power and the tenacious will to continue to accomplish our respective personal and career objectives and move on up the achievement ladder.

Even though this legislation has been imperfectly enforced, it still has worked. For instance, the number of African-American doctors, lawyers, accountants, engineers and other professionals has increased several-fold. The same is true in the semi-skilled, medium and high tech occupational areas. Likewise for the huge increase in businesses owned by African-Americans. If we use the landmark 1964 Civil Rights Act as the starting point, we have accomplished much, and, we did it without a consensus, organized plan, strategies, or tactics. In other words, we had no agreed upon agenda that African-America's 400 plus local, state, regional, and national organizations could use to plot a course of action. We had no agenda, blue print, or road map essential to sustaining progress. Everyone did his or her own thing. Those who achieved stumbled upon it in their own unique way.

That might have worked then, but now the climb to full citizenship will be complex, and on a very narrow path. Therefore, we need to know all there is to know about how those who used the above mentioned legislation achieved their initial objectives. And, having done so, what did they do to sustain themselves and/or move on to a higher level.

As an example, when the landmark 1964 Civil Rights Act was passed, there were three African-Americans serving in the Congress. Today, in less than two generations, there are 40 nationwide. There are several times that many serving in decision-making positions in the federal, state and local governing bodies. They represent symbols of progress. Nevertheless they are in a position to promote and support their own cause - in other words we have only just begun the march toward full citizenship. If, however, African-American organizations would cooperate and collaborate on a national agenda for sustained progress, we could quadruple what we have done in the past 30 years. By the time 2024 rolls around, the 1964 Civil Rights bill will have been on the books 60 years, and 3 generations will have benefitted from its mandates. By that time, African-Americans and other minorities could be ready to begin another phase or, possibly, the problem will have been reduced to a level of insignificance and the struggle for full citizenship will be over.

In the past 30 years, we have positioned ourselves to pursue our dreams, visions, hopes and objectives. Thus, our fate and our very destiny is in our hands. Its up to us to pursue it.

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