JENNIFER WOODWARD

Borrowed Agency: The Institutional Capacity of the Early Equal Employment Opportunity Commission

Abstract: Borrowed capacity builds upon institutional capacity scholarship to discuss how interactions between government agencies and interest groups can increase agency resources and scope during agency formation and development. Equal Employment Opportunity Commission scholars often note the lack of capacity to implement Title VII of the Civil Rights Act of 1964 during the first years of the agency. I argue that current assessments of the agency's capacity between 1965 and 1968 are incomplete by expanding the definition of capacity to include borrowed and non-traditional forms of capacity, reviewing congressional allocations to the agency and agency budgets, and considering the active roles state and local agencies as well as interest groups played in the early implementation of Title VII. I demonstrate the agency amassed not only claims but also capacity during its early years.

The author wishes to thank the American Bar Foundation and Law and Society Association for their financial support during the preliminary stages of project. This article benefited from insightful comments provided by the anonymous reviewers and editors at the *Journal of Policy History* as well as comments generously provided by Julie Novkov; Patricia Strach; Alethia Jones; George Lovell; Robert L. Nelson; Laura Beth Nielsen; Tim Lindberg; and panels at the 2015 Midwest Political Science Association Annual Meeting, 2017 Southern Political Science Association, and 2018 Policy History Conference.

JOURNAL OF POLICY HISTORY, Vol. 35, No. 2, 2023.

doi:10.1017/S0898030622000379

Keywords: institutional capacity, institutional development, borrowed capacity, EEOC, Title VII

Capacity is the ability to take action once policy makers decide that they want to act.[1] For bureaucracies, it is the ability to implement effectively both policy objectives and specific programs through staff, an adequate budget, and infrastructure.[2] Without this type of capacity, agencies are considered ill-equipped to implement their programs and policies.

With the passage of the Civil Rights Act of 1964, Congress created the Equal Employment Opportunity Commission to enforce the employment protections provided in Title VII of the law. Traditionally, scholars have assumed the EEOC (or Commission hereafter) was a weak agency when its doors opened in 1965. However, this story usually focuses on the role of the National Association for the Advancement of Colored People in advocating for more enforcement of Title VII or how the agency originally lacked, then later gained, litigation powers to increase its ability to act.[3] Yet, this narrative overlooks the important role that state and local employment practice commissions had in processing Title VII employment discrimination claims in the agency's first years and how congressional allocations during the prelitigation years allowed the EEOC to increase the number of individuals and offices available to process claims. This provides an important view of institutional development and capacity building that is often overlooked by EEOC scholars and that provides all scholars of institutional development a window into how agencies may respond to large volumes of claims at the same time they are establishing the staff, norms, and regulations necessary to respond to these claims.

In this article, I ask, how did the EEOC build its capacity in its prelitigation years?[4] In doing so, I look at congressional records and Commission reports during this period and also use archival records to show how other government agencies and the NAACP provided nontraditional forms of capacity in the agency's first years.[5] I demonstrate that by focusing on nontraditional capacity and what Congress *did* provide during the first years of the agency, it was able to set the stage for both increased response rates and increased agency powers in future years.

Even before the EEOC was able to obtain litigation powers in 1972, the agency was developing in terms of both traditional forms of capacity and forms of capacity considered nontraditional by scholars. Traditional capacity includes facilities for the agency's operations and agency funds to pay salaries and purchase supplies or services for day-to-day operations. When conventional forms of capacity are inadequate or poorly managed, there are other forms of capacity that agencies can turn to achieve their goals and mission, such as

borrowed capacity from interest groups or other governments and agencies. Agencies borrow capacity when they use the staff, office space, knowledge, and other resources of another agency, person, or entity to complete its mission.

Perhaps the best-known example of nontraditional capacity in the context of the EEOC is how the NAACP aided the EEOC in its early years, especially in terms of intellectual capacity related to the law. This capacity borrowed from the NAACP, along with formal powers provided by legal mandates, did lead to more capacity or justification for action.[6] When such mandates provide justification for action, they also provide support agencies need when requesting more resources to implement the mandates.[7] Although I found support for this assessment of how law can increase capacity, this article demonstrates that the help provided by the NAACP was just one piece of a larger puzzle about how the EEOC established its institutional norms and reputation alongside congressional actions in its first years by using borrowed capacity from other agencies as well.

CREATING OPPORTUNITIES FOR CAPACITY BUILDING

Before the establishment of the EEOC, claims of employment discrimination were handled briefly by a federal level commission, but increasingly by state and local entities.[8] By 1962, twenty states and localities had laws against employment discrimination. The following year, several more states and 200 local governments had passed employment protections.[9] During this time of increased state and local antidiscrimination activity, the US Commission on Civil Rights made a recommendation for the establishment of a federal agency with the sole purpose of addressing employment discrimination.[10] When President Lyndon B. Johnson signed the Civil Rights Act of 1964, this recommendation became a reality.[11] Section 705 of the Civil Rights Act of 1964 established the EEOC to enforce Title VII of the law. Title VII provided protections against unlawful employment practices that created unequal employment opportunities. At the time, these protections extended to hiring, firing, compensation, terms, conditions, and privileges of employment, as well as employment opportunity and status based on race, color, religion, sex, or national origin.

The US Commission on Civil Rights recommended that the agency have "strong enforcement mechanisms."[12] However, the EEOC was provided only with the administrative mechanisms of investigation, negotiation, and conciliation.[13] This meant the EEOC was legally less powerful than most of the state and local fair employment practice agencies at the time. At the state and local levels, agency powers ranged from conciliation to cease-and-desist power.[14]

https://doi.org/10.1017/S0898030622000379 Published online by Cambridge University Press

The powers granted to the EEOC were the result of a political compromise. President John F. Kennedy feared the strong Title VII protections Civil Rights leaders wanted would cause a loss of support for the Civil Rights Act of 1964. Briefly, following the church bombing in Birmingham, Alabama, the proposed legislation was going to give the EEOC cease-and-desist powers. Yet, following concerns over how cease-and-desist powers were used by the Illinois Fair Employment Practice Committee to prevent Motorola from administering job application tests in the case *Myart v. Motorola* (1963), Senators Everett Dirksen (R-IL) and Mike Mansfield (D-MT) created the Dirksen–Mansfield Amendment on May 25, 1964, which became section 703(a) of the Act.[15] This section stripped the EEOC of enforcement powers and limited the agency to mediation.[16] These compromises and the loss of judicial remedies through the agency formed the basis of the NAACP's efforts to convince Congress that the EEOC needed additional powers and resources. It also supports the scholarly narrative that the EEOC was weak by congressional design.

Another point used by supporters of the weak agency narrative is that the EEOC never received all the funds it requested from Congress. However, what many scholars fail to realize is that in its first few years the EEOC also neglected to spend all the money allocated to the agency. Congress was also willing to provide additional allocations when the Commission requested them. Although some of the failures to spend allocations may be attributed to the continuous overturn of commissioners, as they served staggered terms (again, as designed by Congress in Section 705[a] of the law), the role that other provisions of the law—like Section 705(d) requiring reporting and recommendations to Congress—helped the EEOC justify the need for not only an expanded budget but also additional laws to enforce.

From the agency's first budget (October 1, 1964 through September 30, 1965), the EEOC spent only $400,000 of its $2,250,000 appropriation from Congress.[17] It failed to take advantage of its operating budget because it failed to staff the agency until June 1965.[18] The Commission's first chair, Franklin D. Roosevelt, Jr. (son of President Franklin D. Roosevelt), was more of a symbolic head that agency officials considered too preoccupied with campaigning for the governorship of New York to properly organize and staff the agency when it opened.[19] As a result, the EEOC had to borrow about 100 employees from other agencies to process the claims and handle the daily operations of the agency as Vice Chairman Luther C. Holcomb led many of the agency's efforts.[20] This in and of itself is a form of capacity building, as their employees were not only literally borrowed from other agencies to meet the temporary staffing needs but also brought with them preexisting norms and

knowledge from their original agencies. These in turn would help shape the norms and culture of the EEOC.

During the agency's slow start from the passage of the law until its opening day, the NAACP mobilized to collect employment discrimination claims, which resulted in an immediate backlog of nearly 1,000 race-based claims submitted by the NAACP to the agency on its first day.[21] This instant backlog of claims would become crucial to support the NAACP's argument that the EEOC needed more capacity. In addition, the agency faced a number of unexpected claims that emerged because of the addition of sex to the list of protected classes in the Civil Rights Act of 1964, a class that many thought would result in few, if any, claims.[22] The agency had only prepared for up to 2,000 charges in the first year but actually received 8,852 complaints (see Table 1).[23]

The fiscal year beginning in October 1966 and ending September 1967 resulted in fewer unused funds. For the 1966 fiscal year, Congress provided $2,750,000 (of the $3,200,000 originally requested) and an additional $500,000 (of the $742,000 requested) in January 1966 due to the high volume of claims that neither Congress nor the EEOC had expected. This budget included funds for not only operations but also programs and an additional 45 headquarter and 98 field positions.[24] By the end of the second fiscal year, only $6,000 of the appropriated funds went unspent.[25]

Fiscal year 1967 found the agency appropriated $5,240,000 (plus $40,000 for salary increases) of the $5,870,000 requested by the agency. This appropriation included $700,000 for grants that supported around 50 state and local antidiscrimination projects among 36 fair employment practice

Table 1. Claims Filed with the EEOC in 1966

Race	3,254	53.1%
Sex	2,053	33.5%
National origin	131	2.1%
Religion	87	1.4%
Not specified	608	9.9%
Total	8,854	

Sources: "Early Enforcement Efforts," United States Equal Employment Commission, accessed May 31, 2017, http://www.eeoc.gov/eeoc/history/35th/1965-71/early_enforcement.html; "Shaping Employment Discrimination Law," United States Equal Employment Commission, accessed May 31, 2017, http://www.eeoc.gov/eeoc/history/35th/1965-71/shaping.html.

organizations.[26] By fiscal year 1968 (October 1967 to September 1968), the agency's budget had increased to $6,655,000 (of the $7,170,000 requested). This included $5,800,000 (of $6,470,000 requested) for operating expenses, $700,000 to create a grant program for state and local governments to "combat discrimination in employment" (of the $700,000 requested), and a $155,000 supplemental appropriation for pay increases.[27] Of these allocated funds, $74,000 went unspent. By 1968, the EEOC had a staff of approximately 380 people, 13 offices, and an over $6.6 million budget with at least a minor surplus in funds every year.[28]

The additional allocations from Congress in the second and third years indicate that it was responsive to the calls for additional resources to process the unexpected number of claims received by the agency (see Table 2) and that it was also relying on state and local agencies to assist the EEOC with Title VII enforcement. This included the EEOC providing Charge of Discrimination Forms and "How to File a Complaint Against Unlawful Job Discrimination" pamphlets to state and local agencies.[29] By the end of the 1969 fiscal year, 20,119 claims (of the 54,111 received) were investigated by the agency.[30] This is remarkable considering the agency was only expecting 2,000 claims a year. Yet the backlog created by the NAACP and the number of non-race-based claims received by the agency helped support perceptions of the agency as inept to handle the claims it was receiving.

Even with the delay in claims, the weak agency narrative fails to explain how so many claims were processed in responsive ways. Claims were investigated (albeit sometimes slowly) or claimants were referred to other agencies for assistance if the agency could not assist them. They were not outright dismissed, as they often were by the Civil Rights Section of the Department of Justice decades before.[31]

Table 2. Number of Claims Filed by Year

1966	8,854
1967	12,927
1968	15,058
1969	17,272
1970	20,310

Source: "Early Enforcement Efforts," United States Equal Employment Commission, accessed May 31, 2017, http://www.eeoc.gov/eeoc/history/35th/1965-71/early_enforcement.html.

https://doi.org/10.1017/S0898030622000379 Published online by Cambridge University Press

The average time that it took for claims to be processed in the agency's first three years was 16 months, a fact that supported NAACP efforts to show that Congress was not providing enough resources to allow the agency to be effective in its implementation of Title VII.[32] However, each year as the size and budget of the agency grew and the Commission began to delegate conciliation authority to the field offices and reasonable cause decisions to a Decisions and Interpretations Division, its processing time decreased. By 1969, the Commission increased from an average of 12 decisions a week to approximately 25 decisions a week.[33] Yet, Congress also provided another form of capacity to meet the high demand for relief from employment discrimination —state and local employment protection agencies and their employees were required under Title VII to help process and investigate claims.

CLAIM PROCESSING: BORROWED STATE AND LOCAL CAPACITY

When there is a lack of capacity to act at one level of government, capacity may be borrowed from another level of government.[34] Scholars typically think about this in terms of federal grant money that is used by states and localities to implement various programs and policies. Indeed, this can be seen in the allocations for state and local governments, supporting the types of efforts set out in Section 709(b) of Title VII.

Yet, capacity can also mean borrowing innovative ideas and expertise from states, localities, and other federal agencies increasingly staffed by experts in antidiscrimination laws. In the case of the EEOC and Title VII, the EEOC borrowed state and local capacity in two forms: (1) investigative power and claims processing provided by state and local fair employment practice commissions and (2) expertise acquired by these commissions before the enactment of Title VII.

The scholarship on the EEOC has neglected to discuss the important role state and local fair employment practice commissions played in the implementation of Title VII. Nevertheless, Congress provided a procedural mechanism for expanding the capacity of the EEOC by requiring lower-level agencies to investigate claims of discrimination before the EEOC. Under Title VII, claims of employment discrimination had to be filed within 90 days after the alleged act occurred if there was not a state law regarding fair employment practices. If there was a state law, claimants had 210 days for the claim to be sent to the relevant state or local agency. If the charge involved ongoing discrimination, such as discriminatory pay scales, seniority systems, or segregated facilities, charges could be filed at any time.[35]

https://doi.org/10.1017/S0898030622000379 Published online by Cambridge University Press

According to Section 705(g)(1) of the original Title VII of the Civil Rights Act of 1964, the EEOC was empowered to cooperate with and, with consent, use regional, state, local, and other agencies (public and private). Under Section 706(c), when there was a state or local law prohibiting the alleged illegal employment practice, the EEOC had to wait at least 60 days (unless a shorter period was requested) for state and local agencies to investigate and remedy unlawful practices before the Commission would act on the claim.

Of the 8,854 claims of discrimination received in the agency's first year, 977 (11%) were deferred to state and local agencies and, furthermore, the 3,773 claims recommended for investigation were investigated by 111 individuals provided by 15 state and federal agencies.[36] Not only were other agencies investigating claims; the EEOC was able to house staff from other agencies to act in its first year—demonstrating how other agencies can potentially use these resources in their first moments of institutional development. Out of 12,927 claims, the agency deferred 1,158 (11%) claims in its second year.[37] In fiscal year 1968, the EEOC deferred 2,136 of 10,095 (5%) claims to state and local fair employment practice commissions and 1,941 (5%) were returned to the Commission from these agencies.[38] The *Fourth Annual Report* of the EEOC notes that 2,774 (6%) of the 17,272 claims received were returned from state and local fair employment practice commissions and 2,980 (6%) of these claims were deferred to these state and local agencies.[39] Although the percentages of overall claims handled by state and local agencies were relatively low overall in the first years of the EEOC, in the first two years it was not uncommon for claims to be processed by state and local agencies.

Congress was willing to fund this cooperation. Section 709(b) goes on to state that the EEOC may cooperate with state and local fair employment agencies "for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist the Commission in carrying out this title." Even in its first year, the EEOC provided $165,000 to Wayne State University to help eight states and three local agencies study patterns of discrimination in employment.[40] The Office of Research in the EEOC oversaw $97,000 in grants to academic institutions funded by the EEOC and other federal agencies the following year to study patterns of discrimination in specific areas and industries.[41] Meanwhile, 30 state and local organizations were awarded 40 grants for establishing job opportunities for underrepresented groups.[42] Therefore, Congress was also willing to use the EEOC budget

to support the development of affirmative action programs at the state and local levels.

In 1969, Congress provided the EEOC $700,000 with which to award grants to state and local agencies.[43] These grants were used to investigate the hiring and recruitment efforts of "employers who were significantly underutilizing minority group individuals" with the goals of making long-term institutional change directed at eliminating discrimination.[44] This was paired with research designed to make state agencies more efficient and effective in their processing of claims, funds to enforce their antidiscrimination legislation, and contracts to establish Affirmative Enforcement Projects to initiate charges against employers.[45] Even in a short amount of time, it appears these efforts increased the amount of initiative taken by state and local agencies to establish affirmative action programs, much as the EEOC was establishing them with employers under Title VII.[46]

This relationship between the EEOC and other agencies was not a model of efficiency. Individuals would often view the delegation to state and local agencies as a confusing process that delayed or ended their claims. This meant that by fiscal year 1969, the EEOC found that claimants were losing their Title VII rights when they failed to ask the EEOC to take over their claims. This prompted the EEOC to amend its rules and regulations to automatically provide the EEOC jurisdiction after the 60-day time limit, although it was already an informal practice to continue to consider charges past the 60-day time limit in cases.[47]

Agency memos and documents from this period reference the regular use of other federal agencies as well as state and local laws to help inform their interpretations and decisions regarding Title VII throughout this process. An Office of Liaison established agreements between the EEOC and federal agencies such as the Department of Labor; Office of Economic Opportunity; National Labor Relations Board; Department of Justice Civil Service Commission; Civil Rights Commission; Community Relations Service; Office of Federal Contract Compliance; and the Department of Health, Education, and Welfare. The office also maintained communication between states and localities with fair employment practice laws, including information about cases deferred to these agencies.[48] Conferences and speeches were organized to bring state and local agencies together with the EEOC.[49] Data-sharing agreements were also established with other federal, state, and local agencies, including information collected from EEO-1 reports quantifying patterns of discrimination in various locations and industries.[50]

The staffing choices at all levels of the agency also helped the EEOC gain expertise. Not only did the EEOC benefit from state agencies and the President's Committee on Equal Employment Opportunity; during her short duration as one of the first Commissioners of the EEOC (from 1965 to 1966), Aileen C. Hernandez brought with her knowledge of employment protections from her time as the former assistant chief of the California Division of Fair Employment Practices from 1962 to 1965.[51] At times the state or local agent handling a claim would even follow a claim as they moved from employment at the lower-level agency into a new position with the EEOC. For example, a commissioner with the Kansas Commission on Civil Rights brought a claim by Joe Vernon Sears against the United Transportation Union and Santa Fe Railroad with him to the EEOC when he joined the agency. This claim eventually resulted in a lawsuit with an $8.5 million dollar verdict in favor of Sears and his fellow porters.[52] Therefore, the EEOC was able to gain expertise capacity from these state and local commissions. By all indications, this was just one way in which Congress relied on other entities to help implement Title VII. This form of borrowed capacity is not necessarily a sign of agency weakness as much as it is often an attempt by Congress to hide the growth of government reach, including in contested areas.[53]

After a charge was filed, field representatives investigated. The representatives would interview the parties involved and review any relevant documents. If the accused was an employer, hiring and payroll records, collective bargaining agreements, and an on-site visit to the employer usually occurred. When unions were accused, the membership, apprenticeship, and hiring records and qualifications would be examined. If a respondent refused to provide the relevant records, a court order could be issued.[54] With claims sent first to state and local commissions, this meant lower-level entities often completed the initial investigations. For example, Patricia McElroy was asked to immediately contact the EEOC if the Commission for Human Rights had not satisfactorily resolved her case 60 days after submitting it to the state commission. In doing so, Chairman Franklin D. Roosevelt, Jr. forwarded her letter with the claim to the state agency, explained "Under Section 706(b) of Title VII this Commission [EEOC] is unable to accept jurisdiction in your case until the matter has been deferred to the Chairman, Commission for Human Rights … for 60 days."[55] Indeed, the EEOC even provided a claim form from the relevant Virginia agency to help with a complaint against discriminatory hiring practices submitted by J. Francis Pohlhaus of the NAACP Washington Bureau.[56]

If the claimant returned to the EEOC, after an investigation was complete, the field office would submit the final report on the claim to the Commission in Washington, DC, and the commissioners would rule whether there was reasonable cause to charge the respondent with discrimination.[57] Until fiscal year 1967, the EEOC Commissioners wrote the decisions and cases were assigned on a rotating basis. If reasonable cause was found, the EEOC would attempt conciliation efforts. These efforts began by writing the claimants, respondents, and interested parties (such as the NAACP and unions). The Washington, DC office handled conciliation during the first two years, but in 1967 field offices were also granted the power of conciliation. If conciliation efforts failed, the claimant was notified of their right to sue. If provided the right to sue, a claimant had 30 days to file the suit. The EEOC could also refer the case to the United States Attorney General to file suit if there was a pattern or practice of discrimination by the accused.

These examples already demonstrate the complexities and numerous actors that could be involved in one claim. For many claimants, getting their claim to the EEOC in the first place often involved contacting elected officials or other agencies that referred their claims to the EEOC. Additionally, claims that reached the agency were routinely referred to other agencies for assistance or deferred to state and local governments. It was this convoluted process that prompted the EEOC to clarify its process of deferring claims to state and local agencies via regulations. While describing the process, the EEOC stated, "It is the experience of the Commission that because of the complexities of the present procedures, persons who seek the aid of the Commission are often confused and even risk loss of the protection of the Act."[58] By publically pointing out the confusion and delays claimants experienced during the agency's early years, the Commission seized this as an opportunity for capacity building by demonstrating an unmet need that Congress could remedy by providing the EEOC more power instead of outsourcing this work to state and local entities. Thus, not only gaining temporary capacity but also using flaws in the capacity to set the stage for more traditional forms of capacity in the future.

THE NAACP AND CAPACITY BUILDING

Amid the interactions between the EEOC and other agencies, the NAACP also consistently interacted with the EEOC to build capacity. The NAACP is known for assisting Blacks with claims of employment discrimination, but it is also known for advocating for resources for the EEOC to act.[59] Now, with the enactment of Title VII, the NAACP found itself able to shape the

development of the law by filling legal and institutional voids. Inside the organization, the NAACP had ties to employees of the Commission, and outside the agency, the NAACP facilitated the submission of claims to the EEOC through education campaigns and by helping individuals file their claims of employment discrimination. By assisting individuals claiming their rights under Title VII, the NAACP ensured that the first institutional developments would favor the interests and policy goals of the group, including their goal of obtaining additional powers and capacity for the EEOC.

Along with a slow start to staff the agency and high turnover rates among the agency's highest ranking officials, the NAACP became a consistent source of expertise and borrowed capacity in the agency's first years.[60] In other words, the agency's "intellectual and administrative weakness created a vacuum, which the NAACP and LDF [Legal Defense Fund] eagerly filled."[61] The NAACP not only assisted claimants during the claims process but also took a number of other actions, which aided the agency's everyday operations. Members of the NAACP were active in education, affirmative action, and conciliation efforts. They also provided advice on the staffing, processing, and policy decisions of the agency. Through this association and collaborations with other civil rights groups, government agencies, and via use of the media, the EEOC became an innovative and autonomous agency. The agency was gaining a reputation that could aid in its justification for additional resources to interpret and expand the law.[62]

This coordination and support aided EEOC goals rather than threatened their autonomy, as may be the case in other agencies.[63] Agency autonomy allows agencies to develop their mission and achieve their goals with minimal interference from external stakeholders, rival agencies, and peripheral tasks. As Wilson has argued, the best time to match an agency's mission with its jurisdiction is during the creation of the agency.[64] With the developing EEOC, we see this borrowed capacity helping the agency gain autonomy and its reputation as having primary jurisdiction over matters of employment discrimination, even before the agency gained the power to litigate claims in 1972.

Pedriana and Stryker argue that the EEOC, an agency that "lacked all the administrative resources—money, personnel, bureaucratic development—needed to achieve broad policy goals" was actually a strong agency because it was able to expand its capacity by mobilizing law to achieve broad policy goals with the support of the NAACP.[65] I also found that the NAACP provided the agency institutional capacity via outsider expertise. In addition, I discovered that by helping people claim their rights under Title VII, the NAACP was able to control the framing of the law and provide evidence for

https://doi.org/10.1017/S0898030622000379 Published online by Cambridge University Press

the need for additional money and personnel to process the claims. In doing so, the NAACP efforts served as a backdrop to the EEOC's increasing capacity. However, as the interactions between the EEOC and other agencies demonstrate, this was just one aspect of the larger story of institutional development in the Commission's early years.

As Greenberg, director of the NAACP Legal Defense Fund, called the EEOC "weak, cumbersome, and [probably] unworkable," he made sure that the agency was overwhelmed with claims because "the best way to get it [Title VII] amended is to show that it doesn't work."[66] This enabled the legal arm of the NAACP to vocally chastise the agency and push for litigation powers for the agency while those with connections to the group inside the agency were able to deal with the more practical everyday considerations of implementing the law.

Over the summer and fall of 1965, the NAACP published announcements regarding Title VII in *The Crisis*; educated members and the public about the law at their branches and in churches, barbershops, fraternities, civic associations, and regional and national meetings; and conducted a summer education campaign.[67] By the time the EEOC opened its doors, the organization had collected nearly half of the 2,000 claims expected in its first year, and by the end of the first year, at least a third of the claims and backlog were attributed to the efforts of the NAACP.[68] Indeed, states with the highest number of claims also had the most active NAACP efforts to facilitate claims.[69]

In the process of collecting claims before the agency opened, the NAACP developed basic forms for individuals to fill out. These forms were similar to the ones later adopted by the agency. After the EEOC published their own forms, the archives show that the agency routinely provided forms to all levels of the NAACP. The EEOC also regularly received forms completed with the aid of the NAACP along with letters from the organization. Many individuals went to the NAACP or individuals known to be associated with the group for assistance in filing their claim. For example, Oscar W. Adams, an attorney for the NAACP, sent the EEOC claims of six individuals that came to him with their complaints of employment discrimination because of his association with the organization.[70] The archives of the EEOC demonstrate that these referrals continued through the agency's early years. As a result, the reputation of the EEOC as supportive of employment discrimination claims grew.

On July 2, 1965, the EEOC opened its doors, and within days the NAACP was clear that it hoped to "cooperate as much as we can in the effective implementation of Title 7 … [in order that] the Association may best work with [the EEOC] in the ordinary processing of complaints and in their

submission and disposition by the Commission."[71] This interest continued throughout the early years of the agency. In addition to aiding with claims and providing recommendations to the EEOC, the NAACP actively worked on Title VII conciliation efforts. In several cases during the agency's first year, employers were required to contact civil rights groups including the NAACP for the referral of employees when there were vacancies. For example, one conciliation required employees of a large retail chain go through a grievance process with the NAACP for private adjustment of claims before the claims were submitted to the EEOC.[72] It was also common for representatives from the NAACP to have conferred with individual commissioners and staff members of the EEOC not only about specific claims filed with the EEOC but also regarding future goals involving employment discrimination, such as the development of affirmative programs.[73]

At times the agency solicited input from the NAACP as well. In September 1965, EEOC Chairman Franklin D. Roosevelt, Jr. requested that the NAACP and representatives from other Civil Rights organizations attend a meeting "of upmost importance to the Equal Employment Opportunity Commission."[74] Commissioner Samuel C. Jackson recommended to Chairman Roosevelt that the agency use the meeting for substantive purposes to report on the number, types, and status of claims that had been received by the agency. It was also suggested that the invited organizations be able to recommend people to fill vacancies in the EEOC and discuss potential legislative proposals that the EEOC could send to Congress.[75] The meetings between the NAACP and EEOC provided opportunities for the NAACP to offer policy and staff recommendations that helped advance the agenda of the NAACP while aiding the agency by providing it the group's expertise on employment discrimination law. The NAACP Legal Defense and Educational Fund also "worked closely with the staff of the Equal Employment Opportunity Commission in seeking to implement Title VII of the Civil Rights Act of 1964."[76]

The NAACP also wasted no time following up on claims delayed for significant amounts of time in the agency's first year as well. James Abernathy, chairman of the Labor and Industry Committee of the NAACP, wrote to the EEOC twice to follow up on a claim submitted by one woman requesting immediate action, because she was "undergoing considerable, on the job, strain" despite Title VII protections against employer retaliation.[77] Although this and other examples demonstrate an interest in the individuals filing the claims, the NAACP interactions with the EEOC appear focused on the protected class as a whole.

Interest groups, like the NAACP, that sponsor multiple claims (or are "repeat players") are more interested in achieving favorable rules and legal development for the groups they represent than favorable outcomes in individual claims.[78] Anne Brinkley's claim of employment discrimination against the A&P grocery stores provides one example of this phenomenon. In its letter regarding Brinkley's case, the NAACP challenged a new EEOC requirement for individuals to report to their employer before submitting claims to the agency. This strategy would have provided a layer of capacity borrowed from employers, as they would have spread some of the implementation burden onto the accused. Although this did not happen, today we do have an army of human resource workers that help interpret and implement Title VII and other employment discrimination laws under the purview of the EEOC.[79]

Initial reports to employers did not become reality because in March 1966 Chester I. Lewis referred to potential reprimands from employers under this strategy as making it "impossible ultimately for your Agency [the EEOC] to correct or even disturb patterns of racial discrimination and the result effect would be tantamount to placing E.E.O.C.'s blessings on the worst kind of tokenism." Lewis even threatened the EEOC by stating that "[i]f the policy of your Agency is to follow the procedure outlined in the A&P case, then upon receiving confirmation from you of this fact, I shall proceed on behalf of our clients to immediately withdraw the cases that we have pending, from your Commission's consideration." Then he challenged the need for an agency with this type of policy by stating that "[i]f this procedure is followed then where does the necessity arise for the existence of your Commission … [a]llowing the robber to investigate his own robbery, after being informed by the victim, prior to the victim's submission of this case to the Police Department, is almost unbelievable."[80]

Not only does this letter demonstrate the role of the NAACP in interacting with the EEOC in the everyday processing of claims; it also shows how early on it influenced the institutional development of the EEOC. Individuals do not have to approach an employer before filing a claim with the EEOC. Yet, this option was on the table as the EEOC looked to outside sources of capacity for Title VII implementation. Having employees go to employers first would have delayed the claim reaching the agency and presumably would have served as a deterrent to employees reluctant to lose their jobs or suffer other harms as a result of their claim.[81] It is worth noting that although requiring claimants to go to their employer might have helped the agency temporarily to process claims, if the agency had maintained this position, it would have weakened the argument that the EEOC needed the additional resources that it

was requesting under the distressed situation of having more claims than resources to process them. Therefore, by threatening to remove Anne Brinkley's claim (and other claims) from the EEOC, the NAACP was not only pressuring the agency to stop this procedure but also acting in the long-term interest of the group to increase the powers of the EEOC.

When the EEOC responded to Lewis, it sent a letter apologizing for a delayed response and stated that "we respectfully request that you seek to understand the nature of our burden," as it was buried under the backlog of claims coming not only from the NAACP but also an unexpected number of individuals that saw the law as capable of providing them immediate changes they desired in their employment.[82] This correspondence also provides a look at the unique and privileged position that the NAACP had in the agency. The reply to Lewis was dated two months and 12 days after the letter Lewis wrote to the agency, noted an earlier phone conversation about the issue, and should be considered in the following context: claims were often delayed for months and required multiple follow-up letters from claimants or organizations writing on their behalf. It was also common for claims made based on sex to be postponed for several months or even a year while waiting for interpretations from the EEOC Office of the General Counsel.[83] Correspondence from the NAACP received special attention and more timely responses than stand-alone claims or correspondence.

In the response to Lewis, the agency also offered to send a representative from the EEOC to the annual NAACP conference "to exchange views with the representatives of your organization on this subject and others which may be of concern to you."[84] Offers to attend NAACP meetings or to invite the NAACP to the agency continued to be commonplace in the early years of the agency and demonstrate the willingness of the EEOC to work with the NAACP to discuss the enforcement and interpretations of Title VII. Indeed, the same repeat player strategies that the Legal Defense Fund of the NAACP used effectively in the judicial system at the time—flooding the system with claims, providing support to claimants, and educating the public about their rights—all translated naturally to claims directed at an agency the creation of which the NAACP both advocated and envisioned as interacting immediately with the judicial system through the agency's power to litigate.

Yet, the NAACP did not always get what it wanted from the EEOC. For example, the Legal Defense Fund of the NAACP was so adamant that claims of employment discrimination reach the courts that Legal Defense Fund Director Jack Greenberg offered to have the Defense Fund lawyers investigate the

claims so that the EEOC would quickly move the claims along in order to provide claimants the right to sue.[85] Yet, this did not appear to have happened.

Nevertheless, the NAACP helped individuals overcome the obstacles of one-time claimants by assisting them in the claiming process. The group educated individuals about their Title VII rights, provided claimants charge forms while helping them complete the forms using terminology from the law, directly submitted claims to the EEOC on behalf of claimants, became a third-party recruiter and negotiator for conciliations, and sponsored litigation after claimants were provided the right to sue. In addition, these actions supported the argument for the need for additional agency powers while the understaffed EEOC benefited from this collaboration. The agency was able to increase its capacity and use the expertise of the NAACP, which made policy and individual case decisions based on race faster to process and less likely to be delayed or denied.

CONCLUSION

The intellectual capacity borrowed from the NAACP as well as individuals from state and local governments with stronger employment protections allowed the EEOC to adopt an innovative view of Title VII during its early years. This is the same type of innovation and reputation building that has been viewed as a source of capacity building and power in other federal agencies.[86] The EEOC was able to take an innovative approach to create broad interpretations of Title VII's race provision because it was able to use the extra capacity of the NAACP and borrowed from other agencies, as well as increasing resources provided by Congress. With this mandate and capacity, the EEOC was publically announcing itself as an autonomous agency with the power to expand Title VII.[87] As such, with the aid of the coalitions and constituency that mobilized around the agency, the EEOC served as an important venue for rights protections that were claimed by the NAACP and individuals it aided. The agency transformed affirmative action into specific guidelines for employers in the United States, including the collection of demographic data by applicants and targeted recruitment strategies all under the agency's mandate to eliminate "unlawful employment practice by informal methods of conference, conciliation, and persuasion."[88]

Still, especially in consideration of the number of claims it had to process, it is easy to see why scholars fail to view the EEOC as an agency with the capacity to complete the mission assigned to it by Title VII "to eradicate employment discrimination in the workplace," let alone achieve broad policy

https://doi.org/10.1017/S0898030622000379 Published online by Cambridge University Press

goals or create social change.[89] This mission included not only the investigation of claims of discrimination but also a full remedy for employment discrimination via conciliation and voluntary compliance efforts.[90] Although it is debatable whether the agency ever achieved its mission, I argue that the agency did grow in terms of traditional views of agency capacity, as it was aided by the additional nontraditional forms of capacity it gained through its collaboration with the NAACP and employment practice commissions. Thus, I think it is important to consider the decisions the agency and its constituency made during these early years of institutional development that enabled the agency to expand Title VII law and survive as a major equal rights agency in the United States.

By relying on different forms of capacity, the EEOC had more capacity than prior scholarship has acknowledged. My objective is not to argue that the EEOC had all the capacity that it needed. In general, it is rare for any agency to have sufficient capacity to thoroughly complete its mission and goals. However, considering how an agency can borrow resources and justify the need for additional resources through claims and reputation building helps provide a more complete contextual understanding of how an agency can overcome capacity constraints to aid its clients and expand its jurisdiction. It also demonstrates how the EEOC was able to respond to far more claims than either Congress or the EEOC anticipated in its first years.

Via this in-depth view of the EEOC in its earliest years, my goal is for scholars to consider the range of capacity that agencies use in their day-to-day operations while also raising questions for scholars to consider regarding the capacity of agencies to fulfill their goals and mission. Would claims collection campaigns result in increased support and justification for new rights and governmental benefits? Exactly what types of borrowed capacity do agencies rely on the most? To what extent do state and local government agencies provide capacity to the federal government? Although further research is needed to answer these and other questions of capacity, by shedding light onto the way the EEOC was able to grow during its first years I demonstrate that the EEOC was stronger than we as scholars have assumed.

Middle Tennessee State University
Center for Policy Research, University at Albany, SUNY

https://doi.org/10.1017/S0898030622000379 Published online by Cambridge University Press

NOTES

1. Paul Manna, *School's In: Federalism and the National Education Agenda* (Washington, DC: Georgetown University Press, 2006), 31.

2. Nicholas Pedrina and Robin Stryker, "The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965-1971," *The American Journal of Sociology* 110, no. 3 (2004): 711–12.

3. For example, see Sean Farhang, *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* (Princeton, NJ: Princeton University Press, 2010); Robert C. Lieberman, *Shaping Race Policy: The United States in Comparative Perspective* (Princeton, NJ: Princeton University Press, 2005); Robert C. Lieberman, "Private Power and American Bureaucracy: The EEOC and Civil Rights Enforcement" (Paper presentation, 2007 Annual American Political Science Association Meeting, Philadelphia, PA; Quinn Mulory, "Private Litigation, Public Policy Enforcement: The Regulatory Power of Private Litigation and the Equal Employment Opportunity Commission" (Paper presentation, 2010 Annual American Political Science Association Meeting. Seattle, WA; Pedriana and Stryker, "The Strength of a Weak Agency."

4. The EEOC did not engage the judicial system directly during its early years; rather, the agency referred claims involving patterns or practices of discrimination to the Attorney General to pursue or provided individuals the right to sue. In 1968 the Commission begin to file amicus curiae briefs with the Supreme Court, but it was not until the Equal Employment Opportunity Act of 1972 that the EEOC gained authority to directly litigate; see "Milestones in the History of the U.S. Equal Employment Opportunity Commission: 1968," The U.S. Equal Employment Opportunity Commission, accessed May 31, 2017, http://www.eeoc.gov/eeoc/history/35th/milestones/1968.html." I end my study of EEOC capacity in 1968, because this increased interaction with the judicial system and additional litigation powers corresponds with the end of the weak agency narrative. A more practical reason for ending my study with fiscal year 1968 is that access to agency documents in Record Group 403 at the National Archives are limited for the 1968–1972 time frame.

5. According to Sec. 705 (d) of the original act, the Commission was required at the end of each fiscal year to report to Congress and the president actions taken, names, salaries, and duties of employees, money dispersed, and recommendations for further legislation. As is discussed later in this article with respect to state and local agencies, the original text of the law also included means for other agencies to aid in the enforcement of Title VII. For example, under Section 709 (c) and (d), employers, employment agencies labor organizations, and joint labor–management committees were not required to keep records to report to the EEOC if there was a state or local law requiring these reports, and under Section 705 (g)(6) the agency was to refer cases to the Attorney General for civil suit action. For my search of *Congressional Records*, I searched for "equal employment opportunity commission" in the 1965 to 1969 reports.

6. Pedriana and Stryker, "The Strength of a Weak Agency."

7. Paul Manna *School's In*; Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton, NJ: Princeton University Press, 2010).

8. In the early 1940s, President Franklin D. Roosevelt issued Executive Orders 8802 (1941) and 9346 (1943) to create and enable the Fair Employment Practice Commission "to eliminate discrimination in regard to hire, tenure, terms or conditions of employment, or union membership because of race, creed, color, or national origin," see Executive Order 9346 as quoted in footnote 22 from Robert Belton, "A Comparative Review of Public and Private Enforcement of Title VII of the Civil Rights Act of 1964," *Vanderbilt Law Review* 31 (1978): 905–61. Yet, with the Russell Amendment of 1944, Congress facilitated the committee's end in 1946, which meant government contracts became the principle means of reducing employment discrimination at the federal level until Title VII. Despite its closure, the Fair Employment Practice Commission helped set the stage for further fair employment practice efforts, including failed bills to create a Fair Employment Practice Commission-type agency that would have strong regulatory powers. See Belton, "A Comparative Review," 910; Anthony S. Chen, *The Fifth Freedom: Jobs, Politics, and Civil Rights in the United States, 1941-1972* (Princeton, NJ: Princeton University Press, 2009), 40; Dona C. Hamilton and Charles V. Hamilton, *The Dual Agenda: Race and Social Welfare Policies of Civil Rights Organizations* (New York: Columbia University Press, 1997), 61; William G. Howell, *Power without Persuasion: The Politics of Direct Presidential Action* (Princeton, NJ: Princeton University Press), 133. Generally, the short-lived committee is considered a symbolic gesture regarding the need to reduce discrimination in government contracts and prevent protests against racial discrimination in the military and defense industries.

9. Belton, "A Comparative Review," 912.

10. United States Commission on Civil Rights and Mary Frances Berry, *Overcoming the Past, Focusing on the Future: An Assessment of the U.S. Equal Employment Opportunity Commission's Enforcement Efforts* (Washington, DC: United States Commission on Civil Rights, 2000), 5.

11. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964), at 253–266.

12. United States Commission on Civil Rights and Berry, *Overcoming the Past*, 5.

13. At the beginning of its operations (and until 1970), the EEOC required full field investigations and written reasonable cause findings before attempts at conciliation were made, see United States Commission on Civil Rights and Berry, *Overcoming the Past*, 5.

14. Belton "A Comparative Review," 912. With the exception of Delaware, all state Fair Employment Practice Commissions had the following provisions in common in 1961: they declared discrimination in public and private employment on racial, religious, or ethnic grounds to be illegal; they authorized a state administrative agency to receive and investigate complaints; they empowered the agency to eliminate, by persuasion and mediation, any discrimination found to exist; if unsuccessful in such efforts, the agency was authorized to proceed by public hearings, findings of fact and law, and cease-and-desist orders, which were enforceable by court decree; judicial review was available to a person claiming to be aggrieved by an agency ruling; and finally, the state agency was responsible for an educational program intended to reduce and eliminate discrimination and prejudice, paraphrased from Milton R. Konvitz and Theodore Leskes, *A Century of Civil Rights* (New York: Columbia University Press 1961), 203.

15. Smith, *Race, Labor and Civil Rights*, 28.

16. Lieberman, *Shaping Race Policy*, 162.

17. United States Equal Employment Opportunity Commission, *First Annual Report* (1967), 56.

18. EEOC, *First Annual Report* (1967), 56.

19. "Recollections of Luther Holcomb Vice Chairman of the Equal Employment Opportunity Commission from 1964-1974," Dana Whitaker, accessed May 31, 2017, http://www.eeoc.gov/eeoc/history/35th/voices/oral_history-luther_holcomb-dana_whitaker.wpd.html.

20. "1965–1971: A 'Toothless Tiger' Helps Shape the Law and Educate the Public," United States Equal Employment Commission, accessed May 31 2017, http://www.eeoc.gov/eeoc/history/35th/1965-71/index.html.

21. A 'Toothless Tiger'; Pedriana and Stryker, "The Strength of a Weak Agency," 711.

22. United States Equal Employment Opportunity Commission, *Legislative History of Titles VII and XI of Civil Rights Act of 1964* (Washington, DC: U.S. Government Printing Office, 1968), 3117.

23. Belton, "A Comparative Review," 921; "Toothless Tiger."

24. EEOC, *First Annual Report* (1967), 56.

25. EEOC, *Second Annual Report* (1968).

26. EEOC, *Second Annual Report* (1968).

27. EEOC, *Third Annual Report* (1969), 31.

28. "Milestones in the History."

29. EEOC, *First Annual Report* (1967), 24.

30. Benjamin W. Wolkinson, *Blacks, Unions, and the EEOC: A Study of Administrative Futility* (Lexington, MA: Lexington Books, 1973), 2. Of the 4,793 cases it had decided, 2,493 (52%) were found to have "reasonable cause." Of these, 1,350 claims were conciliated, which meant that claimants and the accused had reached an agreement regarding some form of remedy. Only 729 claims were unsuccessfully resolved, allowing the agency to provide these claimants the right to sue.

31. George Lovell, "Justice Excused: The Deployment of Law in Everyday Political Encounters," *Law and Society Review* 40, no. 2(2006): 283–324; George Lovell, *This is Not Civil Rights: Discovering Rights Talk in 1939 America* (Chicago: University of Chicago Press, 2012).

32. "Milestones in the History"; Pedriana and Stryker, "The Strength of a Weak Agency."

33. Wolkinson, *Blacks, Unions, and the EEOC*, 2.

34. Manna, *School's In.*

35. EEOC, *First Annual Report* (1967), 49.

36. EEOC, *First Annual Report* (1967), 14.

37. EEOC, *Second Annual Report* (1968).

38. EEOC, *Third Annual Report* (1969), 5.

39. EEOC, *Fourth Annual Report* (1970), 34.

40. EEOC, *First Annual Report* (1967), 33.

41. EEOC, *Second Annual Report* (1968).

42. EEOC, *Second Annual Report* (1968).

43. EEOC, *Fourth Annual Report* (1970), 23.

44. EEOC, *Fourth Annual Report* (1970), 23–24.

45. EEOC, *Fourth Annual Report* (1970), 23–24.

46. EEOC, *Fourth Annual Report* (1970), 23–25; Chen, *The Fifth Freedom.*

47. EEOC, *First Annual Report* (1967), 53; EEOC, *Fourth Annual Report* (1970), 22.

48. EEOC, *First Annual Report* (1967), 32.

49. EEOC, *First Annual Report* (1967), 33–34.

50. EEOC, *Second Annual Report* (1968).

51. EEOC, *First Annual Report* (1967), 17.

52. Eric Arnesen, *Brotherhoods of Color: Black Railroad Workers and the Struggle for Equality* (Cambridge, MA: Harvard University Press), 239–40.

53. Patricia Strach and Kathleen Sullivan, "Choosing Public or Private: Nineteenth-Century Cities and the Development of Municipal Garbage Collection" (Paper presentation 2013 Annual Midwest Political Science Association Meeting. Chicago, IL).

54. For more information on the claims processing in the agency's first years, see Wolkinson, *Blacks, Unions, and the EEOC*, 1–5.

55. Franklin D. Roosevelt, Jr. to Miss Patricia A. McElroy, November 2, 1965, file no. 5-10-1734, Non-jurisdiction, Compliance Division 1965-1966, Records of the Equal Employment Opportunity Commission, Record Group 403, National Archives at College Park, MD (hereafter cited as EEOC-NACP). The claim involved McEloy allegedly being passed over for promotion and receiving $65 less per a week than a similarly situated male employee. She stated that her income was not sufficient to provide her food every day. Other letters in the records contain the same language, demonstrating this was a standard form letter, see George L. Holland, Director of Compliance, to Mr. Raymond L. Ambris, October 28, 1965, Non-jurisdiction, Compliance Division 1965-1966, EEOC-NACP.

56. FDR, Jr. to Mr. J. Francis Pohlhaus, December 14, 1965, Non-jurisdiction, Compliance Division 1965-1966, EEOC-NACP.

57. In February 1966, the agency opened its first field office in Atlanta, Georgia, and by 1973 the agency had 13 regional and area offices to conduct investigations; see Wolkinson *Blacks, Unions, and the EEOC*, 2.

58. 33 Fed. Reg. 16409 (1968).

59. Risa Lauren Goluboff, *The Lost Promise of Civil Rights* (Cambridge, MA: Harvard University Press, 2007).

60. I consider the capacity borrowed from the NAACP to be due to the NAACP positioning itself predominately at the policy table through its submission of claims and continued interaction with the agency, as well as the support the group had from members inside the agency. I do not consider the borrowed capacity as a sign that the agency was weak. Regarding how choosing private or public agents to implement the law is not necessarily a sign of agency or staffing weakness, see Patricia Strach and Kathleen Sullivan, "Choosing Public or Private."

61. Judith Stein, *Running Steel, Running America: Race, Economic Policy and the Decline of Liberalism* (Chapel Hill: University of North Carolina Press, 1998), 101–2.

62. Carpenter, *Reputation and Power*.

63. Karl Hagen Bjurstrøm, "How Interagency Coordination is Affected by Agency Policy Autonomy," *Public Management Review* 23, no. 3 (2021): 387–421.

64. James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), 183, 188.

65. Pedriana and Stryker, "The Strength of a Weak Agency," 710.

66. Greenberg quoted in Pedriana and Stryker, "The Strength of a Weak Agency," 725; Chen *Fifth Freedom*, 190.

67. Jack Greenberg, *Crusaders in the Courts: Legal Battles of the Civil Rights Movement* (New York: Twelve Tables Press, 2004), 443; Pedriana and Stryker, "The Strength of a Weak Agency." Letters from individuals also mention EEOC staff on the radio encouraging individuals to go to the agency if they were experiencing discrimination on the job. For example, one claimant wrote to Franklin D. Roosevelt, Jr., Chairman of the EEOC, because Sanchez heard a radio statement by the EEOC staff that (in his words), "if any Spanish person has any complaint on their job to inform you"; see Arsenio F. Sanchez to Roosevelt, 1966; box 2, EXSEC Controlled, Compliance Division 1965-1966, EEOC-NACP. Gerald J. Yourman also wrote the EEOC, because of a message Chairman Franklin D. Roosevelt, Jr. made on a local radio station; see Gerald J. Yourman to Franklin D. Roosevelt, Jr., June 3, 1966, box 2, EXSEC Controlled, Compliance Division 1965-1966, EEOC-NACP.

68. "Toothless Tiger"; Stein, *Running Steel, Running America*, 102; Pedriana and Stryker, "The Strength of a Weak Agency," 725; Chen, *Fifth Freedom*, 190 and fn42.

69. EEOC, *First Annual Report* (1967), 7.

70. Oscar W. Adams, Jr. to Franklin D. Roosevelt, Jr., May 27, 1966, box 2, EXSEC Controlled, Compliance Division 1965-1966, EEOC-NACP.

71. Robert L. Carter to Franklin D. Roosevelt, Jr., July 9, 1965, box 2, Correspondence: Civil Rights Leaders, Records of Chairman Stephen Shulman, EEOC-NACP.

72. EEOC, *First Annual Report* (1967), 19.

73. Jack Greenberg to Franklin D. Roosevelt, Jr., March 22, 1966.

74. Chester I. Lewis to Franklin D. Roosevelt, Jr., March 14, 1966; Roosevelt to Clarence Mitchell, Director NAACP, no date, box 2, Correspondence: Civil Rights Leaders, Records of Chairman Stephen Shulman, EEOC-NACP. The leaders of the Brotherhood of Sleeping Car Porters, Southern Christian Leadership Conference, Congress of Racial Equality, and National Urban League were also invited to the meeting.

75. Samuel C. Jackson to Franklin D. Roosevelt, Jr., September 1, 1965, box 2, Correspondence: Civil Rights Leaders, Records of Chairman Stephen Shulman, EEOC-NACP.

76. Jack Greenberg to Franklin D. Roosevelt, Jr., March 22, 1966, box 2, Correspondence: Civil Rights Leaders, Records of Chairman Stephen Shulman, EEOC-NACP.

77. James Abernathy to Franklin D. Roosevelt, April 18, 1966, box 2, EXSEC Controlled, Compliance Division 1965-1966, EEOC-NACP.

78. Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9, no. 1 (1975): 95–160.

79. Frank Dobbin, *Inventing Equal Opportunity* (Princeton, NJ: Princeton University Press, 2009).

80. Chester I. Lewis, State Legal Counsel for the NAACP to Roosevelt, March 14, 1966, box 2, EXSEC Controlled, Compliance Division 1965-1966, EEOC-NACP.

81. This phenomenon has been observed in employees who are reluctant to request reasonable accommodations or make discrimination claims based on ability, see David M. Engel and Frank W. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (Chicago: University of Chicago Press, 2003).

82. Kenneth F. Holbert to Chester I. Lewis, May 26, 1966, box 2, EXSEC Controlled, Compliance Division 1965-1966, EEOC-NACP.

83. Jennifer Woodward, "Making Rights Work: Legal Mobilization at the Agency Level," *Law and Society Review* 49, no. 3 (2015): 691–723.

84. Kenneth F. Holbert to Chester I. Lewis, May 26, 1966.

85. Stein, *Running Steel, Running America*, 102. I found no evidence in the archives of the EEOC that the EEOC outsourced its investigations to the NAACP.

86. See the discussion of how the Federal Drug Administration became a powerful public health entity in the United States in Carpenter, *Reputation and Power*.

87. Wilson, *Bureaucracy*; Daniel Carpenter, *The Forging of Bureaucratic Autonomy: Reputations, Networks, and Policy Innovation in Executive Agencies, 1862-1928* (Princeton, NJ: Princeton University Press, 2001).

88. Civil Rights Act of 1964, Public L. No. 88-352, 78 Stat. 241 (1964), at 253–266.

89. Quoted in United States Commission on Civil Rights and Mary Frances Berry 2000, 56.

90. EEOC, *First Annual Report* (1967), 2.