

June 1, 2000

Shirley Odekirk
District Director
Employment Standards Administration
Office of Federal Contract Compliance Programs
Kluczynski Federal Building
230 S. Dearborn St., Rm. 570
Chicago, IL 60604

Dear Director Odekirk,

As the result of a 1994 audit, the University of Kansas was found by OFCCP to be in violation of several tenets of Executive Order 11246. Five years later, despite their promise to OFCCP to remedy those violations, they have made only cosmetic changes to their hiring, promotion, and retention policies and procedures and have done little to comply with Executive Order 11246. In fact, there is evidence that the current KU administration is working diligently to undermine and disregard any practice of affirmative action. Soon after Robert E. Hemenway became Chancellor, he changed the name of the Office of Affirmative Action to the Office of Equal Opportunity. He changed the name of the Office of Minority Affairs to the Office of Multicultural Affairs. The faculty-governed Affirmative Action Board was dissolved.

What should really interest you is KU's lack of compliance with their own remedies supplied in response to OFCCP's 1994 audit and subsequent notification of violations. KU notified OFCCP in 1995 that its remedies would include annual reporting of its affirmative action program—which they apparently don't do. They also told OFCCP that they would "address the underutilization of minorities and females, and the corrective action it will take to correct the underutilization, by job groups in its future AAP's." But, as you can see in the statistical report we have attached, the utilization of minorities and women is not improving at a significant pace and in some cases is actually becoming worse. I have attached a copy of KU's 1995 response to OFCCP. We have asked for the applicant data flow since 1995, so we could see just how many minorities and women have been passed over for hiring, but they have not produced it.

On our most recent visit to the Office of Equal Opportunity, two of us from the Coalition were there to review documents we had requested, including all conciliation agreements with OFCCP and all applicant flow data. They did not produce the applicant flow data at all and they produced correspondence with OFCCP only through 1996. When I asked Director of Equal Opportunity Maurice Bryan if, indeed, KU had not corresponded with OFCCP since 1996, he responded "that is correct." How can that be? Aren't they required to file annual reports on their affirmative action efforts? Their conciliation agreement from 1995 says they will.

I am hereby filing a complaint with your office against the University of Kansas for violations of my Title VII Civil Rights and those rights guaranteed me under Executive Order 11246. I am filing this complaint on behalf of all minority people and women in this workplace, as a representative of the Kansas University Sexism and Racism Victims Coalition. I have attached your form CC-4, as well as many other documents. This is a large packet of information. Our past experience with government agencies leads us to believe that most of you are terribly overburdened. We are hoping that if we produce for you a lot of the information that you would seek through a complete and thorough investigation, you'll be more likely to be able to come to a realistic determination. In fact, because of the poor climate for minorities and women on this campus, there is a great deal of important evidence that has come to light through the many legal actions. Otherwise, much of what you will find here would never have been uncovered. I have attached a list of enclosures immediately following the form CC-4 and this letter.

Also enclosed in this packet are additional formal complaints filed by Associate Professor Raymond Pierotti, Professor W. John O'Brien, and Dr. Cynthia Annett. Their narratives and forms CC-4 are included. Professor O'Brien's complaint should interest you: he is a tenured white male full professor who has been directly retaliated against for publicly defending the rights of his minority and female colleagues. When he tried to file a retaliation complaint with the KU Office of Equal Opportunity, Director Bryan told him that because he is a white male, he has no protection under the law.

In the weeks ahead, you will also be receiving complaints from other individuals, but many employees in this workplace are too afraid to speak out because of the blatant and unrelenting retaliation in this workplace. That's also why you'll find anonymously-submitted narratives attached to this letter. Also included are narratives from people no longer employed here at KU—who now feel more secure in speaking out. This assertion of retaliation has recently been proven out in federal court during two trials resulting in a jury verdict finding KU liable for Title VII retaliation. My own previous discrimination and retaliation lawsuit remains pending in federal court, where I'm currently having to proceed pro se. There is one case pending in state court and more complaints and lawsuits forthcoming. If you come to Lawrence and conduct an investigation, many people would be willing to speak with you.

Several of us are in need of immediate and, in some cases, injunctive relief. One complainant, who will lose his job as of June 30, is sending his complaint to you under

separate cover. Others of us have one year remaining in our contracts and are laboring in extremely hostile work environments. Two members of our group have been unemployed for the past year.

As you read our complaint narratives, please note KU's lack of protection for those who stand up for themselves. KU's Office of Equal Opportunity, whose director testified under oath that his job exists to satisfy your office, also made it clear that he "works for the University" and that there is no advocacy for complaining employees. The Director of Equal Opportunity is only employed half-time and is a graduate student. How can he stand up against the University administration, when he's beholden to them for a degree? When I recently filed a new discrimination and retaliation complaint, based on my recent termination and other adverse actions, he rejected the complaint, telling me that his office is not the proper venue for the complaint. He has testified that as soon as a complaining employee files a complaint with an outside agency, the case is then assigned to the KU Office of the General Counsel, which takes an extremely adversarial and retaliatory stance; badgering and bullying complainants into dropping their cases.

You will find a lack of any systematic practice of Affirmative Action, either in hiring, retention, or promotion, as is required by Executive Order 11246. We have tried to review KU's Affirmative Action plans required by Executive Order 11246, but they refuse to give them to us, saying that they're lost in troublesome computer software. They have supplied us only those plans provided to OFCCP for the years 1994-1995. When we asked for the statistics regarding the promotion and retention of minorities in the tenure and promotion process, they told us that they don't keep those statistics and that they wouldn't release them if they did. I ask you: how can an employer practice and report affirmative action in promotion and retention if they don't even bother to track their actual progress? What you'll see on the statistics produced by the University regarding tenure track hires, is that during the years 1996 through 1999, direct hires of white males equaled the number of direct hires of minority males and is greater than the number of direct hires of minority females. So, one might surmise that they do seem to be practicing affirmative action for white males.

Another pattern you'll see in the narratives is that the KU Office of Equal Opportunity often discourages employees from filing complaints either internally or externally. When it does receive complaints, that office often classifies them as non-reportable complaints. For example, when all three female employees of one particular office complained to the Office of Equal Opportunity about sexual harassment in their office, the Director classified their complaint as "sexual intimidation". He then told the three that they would be required to sit down individually with their supervisor—alone with him in his office—to work things out on their own.

I personally served as the chair of the University Human Relations Committee for two years and experienced first-hand in that capacity the administration's stonewalling of any close investigation into the state of equal opportunity in this workplace. Before Chancellor Hemenway came here, there were two such committees. One was the

Affirmative Action Board, which actually had the charge of overseeing discrimination complaints and working as a hearing body. That committee was folded into the Human Relations committee, which was always more geared toward the general state of social relations on campus. The two were merged, becoming an overly large committee with a vague mission. As a direct result, faculty involvement in and/or oversight of discrimination complaints was eliminated. The action is one more example of the deemphasis of affirmative action on this campus. Although the committee members were appointed by faculty governance, several ex officio members—including the Director of Equal Opportunity—were appointed by the administration. These ex officio members often argued to prevent the committee from conducting any real oversight of the University's equal opportunity and affirmative action efforts. I was always surprised by the Director of Equal Opportunity's arguments against the committee looking into the very issues which were specifically his charge—and which I thought should be his passion.

KU stubbornly contests discrimination and retaliation complaints and the resulting lawsuits, secure in the knowledge of how hard it is for complainants and plaintiffs to prevail in courts—or even to make it to court. Their attitude can be summed up in the response of one administrator who told an employee who had filed a complaint against him that "discrimination is one thing, proving it is another." Some of our members were told by KU counsel when they initiated their complaints that they would never even be able to find attorneys willing to take a case against KU. In many cases, they prove to be correct. Many people are unable to afford either the emotional or the financial burden of a protracted, pitched battle for justice.

KU's Office of the General Counsel defends against complaints with negative ethnic and gender stereotypes, attacks on the character of the complainants, and technical issues. For example, those of us who are minority males are stereotypically accused of being hostile and bad-tempered. The women are accused of being hysterical. Also, during a recent trial, KU asserted that one plaintiff didn't qualify for protection under the law because he's "only" 25% Native American, which caused an uproar in this city where the only intertribal Native American university is located. In my own case, KU's attorney tried to use the same tactic, in a deposition insinuating that I'm not dark-skinned enough to really be a minority.

Generally, once an employee complains in this institution, they are subjected to hypercriticism and slander. Once an employee complains, that employee is then subjected to the most demeaning retaliatory scrutiny, during which their supervisors and the Office of the General Counsel try to use anything negative at all they can find—no matter how common or petty or trivial—to discredit the employee and/or justify their victimization. They operate on the assumption that if they can find any character or professional flaw at all in a complainant, that alone will refute that employee's complaint or it will at least give them a threat of embarrassment or humiliation with which to discourage the complainant from continuing. They often use students in their personal attacks by either

claiming that the students were harmed by the faculty employee or by encouraging students to file complaints against the faculty employee. Those of us who stand up live in a constant state of emotional siege; wondering what they'll accuse us of next. On the other hand, those who have supported the University against us have been rewarded with promotions, honors, and prestigious appointments. For example, KU's administration recently named their general counsel—the person who carries out most of this type of retaliation—as the employee of the year.

One of the most compelling examples of how KU responds to potential legal liabilities came last year. A blind graduate teaching assistant was walking on campus and was injured when he fell into an open manhole cover that was not properly barricaded. KU refused to take responsibility for his injuries and they even fired him soon after, spreading the word that there had been complaints from students about him. His story shows that KU attacks anyone who may have a claim of liability against KU—no matter how innocent they are. (Of course, the fact that this graduate teaching assistant is a Hispanic Colombian exchange student didn't help him with the University, either.)

I should tell you that none of us have ever been offered any relief from our victimization. For example, in my own case, the only offer of resolution I've ever received came just this month. I was offered reassignment outside of the School of Journalism—something that should have been done long ago to protect me from the hostility in the workplace while the complaint was resolved. But the conditions for this offer were that I drop my entire case, which would leave me with no job after this next academic year and no hope for restitution. Please understand, we're not a group of malcontents holding out for some pie-in-the-sky financial settlement. We're a group of people who have lost our jobs and/or our reputations and standing in our professional fields, who are fighting desperately for even an acknowledgement of the validity of our complaints. We're still fighting to stop the victimization, let alone gain restitution. Those of us who have resorted to the court system have done so only because we have few other remaining options.

Members of the Coalition recently made individual and group presentations to the ad-hoc Committee A on Academic Freedom and Tenure of the Kansas Conference of the American Association of University Professors, which is the governing body for faculty employment standards. These committee members are from several of the other Kansas institutions. They filed a report highly critical of KU's tenure review practices, affirming our assertions of improprieties. Their report is included in this packet.

To give you an idea of what it's like for us here, the following are some of the facts we discovered in the University's own statistics:

- Nearly **60%** of this faculty are tenured white males.
- The number of African American male faculty has **decreased**. KU has **only 14 African American male faculty**.
- KU has only 16 Hispanic male faculty.

- The number of minority male full professors has **decreased**.
- KU achieved the **lowest proportion of women** of any of the Kansas Regents institutions.
- The number of white women assistant professors has **decreased**.
- The number of white women associate professors has **decreased**.
- KU has **only 33 minority women** on a faculty of nearly 1000.
- On average, it now takes women **longer** to achieve tenure than men. That's if they even bother to go up for tenure at all.
- The net rate of increase of women faculty has **decreased** by 25%.
- The number of African American students has **decreased** by 5% over the past five years.
- At the current rate of increase, it will take **105 years** for the proportion of African Americans on the KU faculty to equal the proportion of African Americans in the current US population.

We have placed a great deal of information about our plight online at <http://www.seekpeace.com/KUSRVC>. On this website, you can see our various federal court filings, as well as the incredible number of newspaper articles that have been published just in the past year regarding the poor climate here for minorities and women.

You might have heard from us earlier, but we were unaware of your existence or our right to seek help from you. The Office of Equal Opportunity does not advise complainants of your office's oversight of KU, nor have they previously had your poster posted anywhere in or around their office. A month ago, when I asked them to show me your poster, they showed me the EEOC poster and said it was the same thing. I advised them otherwise and when I returned to the office this week, I found that they have now posted the poster.

I can't emphasize enough our need for your aid and intervention. The workplace environment is not welcoming to women and minorities and it is extremely hostile for those who stand up for their rights—or for the rights of others. Even after we succeeded in winning one of our court battles in this extremely conservative legal environment, KU has refused to back down. They are diligently fighting against our fight for civil rights, equal opportunity, affirmative action, and to be free of retaliation. They have appealed the recent jury decision and have stepped up their efforts to terminate many of us. I hope you'll agree that there is no justification for such a determined fight against workplace civil rights. By retaliating against those who would stand up for individual rights, they oppress the voices of many, effectively denying the Constitutionally-guaranteed right to free expression. We are all whistleblowers in the truest sense and KU should be held accountable for their actions to silence us and retaliate against us.

We've even sought help from the Governor and the Board of Regents, but considering that the Board of Regents itself has been faced with recent complaints of gender discrimination, you shouldn't be surprised to hear that they haven't helped us. We are all employees of the State of Kansas, governed by the Board of Regents. I hope you will remember that and that you will consider including the Board of Regents and the State of Kansas in possible remedial actions.

I think it's important to point out that in all of our cases, we originally complained directly to our supervisors, only to face unchecked retaliation and derision. None of us went public or filed outside complaints until after realizing that there is no hope for internal resolution. It has been only after exhausting all of our internal administrative options that we now come to you for help. Also, none of us in the Coalition previously knew each other (except for one married faculty couple), nor did any of us know of our individual battles, prior to meeting after publicity about our individual cases. The fact that so many of us have been victimized in departments across the university should indicate to you how bad things really are.

Sincerely,

Michael R. Cuenca
Assistant Professor
Representative, KUSRVC

cc: Alma Jackson
Acting Regional Director Joyce Morgan
Deputy Assistant Secretary Shirley Wilcher
Deputy Director Joe Kennedy