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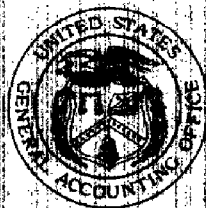
United States General Accounting Office

Report to the Chairman, Subcommittee
on Oversight and Investigations,
Committee on Post Office and Civil
Service, House of Representatives

March 1994

**SEX
DISCRIMINATION**

**DEA's Handling of
Sexual Harassment and
Other Complaints**





United States
General Accounting Office
Washington, D.C. 20548

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Office of Special Investigations

B-255813

March 4, 1994

The Honorable William L. Clay
Chairman, Subcommittee on Oversight
and Investigations
Committee on Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

At your request, we examined the Department of Justice Drug Enforcement Administration's (DEA) investigation and resolution of equal employment opportunity (EEO) complaints, with specific emphasis on sexual harassment. We were also asked to look at factors affecting the promotion and retention of women.

Both DEA's EEO office and the Office of Professional Responsibility (OPR) may be involved in the investigation and resolution of sexual harassment complaints. Accordingly, we reviewed all 22 agency-identified sexual harassment complaints filed with these offices from January 1989 to May 1993. These reviews were supplemented by reviews of other agency files. We also interviewed a total of 63 current and former DEA employees at both the supervisory and nonsupervisory levels in 10 offices, private attorneys, and other federal employees. These interviews included alleged victims and harassers, witnesses, coworkers, EEO counselors and staff, OPR investigators, and field and headquarters management.

In brief, we found that a number of factors impeded the successful implementation of the EEO program at DEA, especially as related to sexual harassment—employee skepticism, dissatisfaction, fear, perception, and misunderstanding. Specifically, DEA employees lacked confidence in the competence of the EEO counselors, and they questioned the sensitivity of OPR investigators assigned to investigate many of the incidents. The employees also expressed a lack of confidence in the objectivity in some of the OPR investigations and the EEO staff assigned to process complaints. Several employees told us that because they feared retaliation, they had not filed complaints of sexual harassment and sexual discrimination. When incidents were reported, employees perceived that many management responses were insufficient. Although DEA states that training on these issues was available, employee statements (both management and nonmanagement) reflected confusion on what constitutes prohibited behavior and what action to take when the behavior was brought to their attention. Employees also expressed dissatisfaction with the length of time

involved with the investigation and processing of their allegations, as well as what they perceived as incomplete investigations. In addition, different internal processes afford sexual harassment victims different rights. (See app. II.) DEA employees also perceived disciplinary actions taken for harassment as ineffective deterrents to future harassment. Finally, women agents identified a lack of enforcement-related assignments and promotion opportunities as factors affecting the retention and promotion of women. (See app. III.)

As we discussed the agency's handling of EEO issues and sexual harassment complaints with employees, some senior employees noted that they had seen improvements in the agency's approach to these issues during their tenure. In addition, individuals in two offices we visited felt that EEO and OPR investigations conducted in their offices were fairly and competently performed.

We cannot attest to the completeness of our review because DEA restricted our access to EEO and OPR files, inspection reports, and certain statistical files, citing what they termed as the documents' alleged sensitivity. Although DEA provided us redacted EEO files which we could reproduce, DEA refused to allow reproduction of OPR files and inspection reports. We were frequently unable to verify the integrity of these files. Additionally, our inability to reproduce the files for field work adversely affected our ability to conduct comprehensive field interviews.

In addition, on a number of occasions, in writing and in person, we had limited success when we requested assistance from representatives of the Assistant Attorney General for Administration, Department of Justice, to help change DEA's position on our access. (See app. I.)

Despite these constraints, the majority of both supervisory and nonsupervisory employees cooperated with our investigations. Many nonsupervisory employees also gave unsparingly of their time in interviews conducted after work hours. Consequently, we are able to report on DEA's handling of these issues.

As arranged with your office, unless you publicly release its contents earlier, we will not make this report available to others until 30 days after the date of this letter. At that time, we will send copies of the report to the Attorney General, the Drug Enforcement Administration, the Equal Employment Opportunity Commission, appropriate congressional

committees, and interested parties. We will also make copies available to others on request.

If you have questions concerning this report, please contact me or Assistant Director Barney Gomez of my staff on (202) 512-6722. Major contributors to this report are listed in appendix VI.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard C. Stiener". The signature is written in a cursive style with a large, prominent initial "R".

Richard C. Stiener
Director

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Abbreviations

ASAC	Assistant Special Agent in Charge
DEA	Drug Enforcement Administration
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
MSPB	Merit Systems Protection Board
OPR	Office of Professional Responsibility
SAC	Special Agent in Charge
SES	Senior Executive Service

Background and Methodology

DEA's EEO Office and Counselors

In July 1992, DEA reorganized its EEO Office into two units—the Complaints Processing Unit and the Affirmative Employment Unit, which is not involved in the processing of EEO complaints. The Complaints Processing Unit staff has a unit chief, two EEO specialists, one EEO investigator, and an EEO assistant.

In addition, DEA has EEO counselors in its investigative and other units who are trained to provide counseling, usually within their divisional area. The counselors—who may volunteer and/or be nominated by their management—receive 3 days of training covering EEO regulations and rules as well as mediation techniques. EEO counseling is a collateral duty assumed with the employee's other duties. Thus, EEO counselors have simultaneous responsibilities to their field division management and the EEO headquarters staff. According to an EEO management directive, which discusses counselor duties, an EEO counselor must perform six clearly defined duties for each completed counseling in which an informal resolution was not achieved: advise the person about the EEO complaint process, determine the issues and basis of the complaint, conduct a limited inquiry, seek a resolution of the matter at the lowest level, document the resolution or advise complainants of the right to file a formal complaint, and prepare a report showing that required counseling actions have been taken.

Employees should make complaints or voice concerns about sexual harassment¹ to their immediate supervisor or an EEO counselor, according to DEA's personnel manual. A DEA employee who alleges sexual harassment and who wishes to pursue legal remedies must first participate in an informal process, as follows:

- Employee contacts EEO counselor within 45 days of last alleged discriminatory event.
- EEO counselor tries to resolve matter within 30 days.

¹Sexual harassment is a form of sex discrimination. Equal Employment Opportunity Commission (EEOC) regulations, 29 C.F.R. § 1604.11 (1993), state, in part, the following:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

- If no resolution is reached and no extensions have been mutually agreed upon, the EEO counselor holds a final interview and advises the complainant of the right to file a formal complaint within 15 days.

If an employee chooses to file a formal complaint and the complaint is accepted for investigation, since 1991 the EEO Office has been contracting with a private firm to investigate the complaint. (See app. IV for steps in the formal process.) However, if the case represents a conflict of interest for DEA, for example, if an employee of the EEO Office files a complaint, the EEO Office instead refers it to another Justice Department agency.

DEA's Office of Professional Responsibility

DEA's OPR is authorized to conduct, assign, direct, and coordinate all investigations of alleged serious misconduct by DEA employees. The OPR staff at DEA headquarters consists of the Deputy Assistant Administrator, 15 senior agents, and 3 clerical personnel. An additional three agents are in the Los Angeles field office, and four are in the Miami field office. According to OPR officials, as of October 1993, OPR had one female agent. When asked what training OPR staff received for sexual harassment investigations, the OPR Director said that the OPR staff received instruction from a police department on sexual assault cases and from the EEO Office on sexual harassment.

The DEA personnel manual refers employees with sexual harassment complaints to the EEO Office or their supervisor. In practice, however, complainants or their supervisors have reported harassment allegations to OPR because agency policy requires employees to report to OPR all allegations of employee misconduct, which is considered to include sexual harassment. Thus, as an OPR official advised, although OPR does not normally get involved in sexual harassment complaints, sexual harassment allegations can be reported to OPR or EEO. Normally, OPR does not investigate sexual harassment complaints made to the EEO Office. However, OPR may investigate a sexual harassment issue as part of its investigation into misconduct complaints.

According to OPR information, from January 1989 to May 1993, OPR opened 684 investigations. Of the 684, 15 involved incidents of sexual harassment. During this same period, of the 100 EEO discrimination complaints filed with the EEO Office, 7 involved sexual harassment allegations. In addition, we obtained information on a sexual harassment investigation done by management during this time period.

Methodology

We examined general policies and procedures of the EEO Office and the OPR. We reviewed all 22 agency-identified sexual harassment-related investigations conducted between 1989 and 1993—7 by the EEO Office and 15 by the OPR. We further selected an additional 22 of the 100 EEO complaints filed between January 1989 and May 1993 and 15 other OPR-related investigations. The supplementary OPR investigations included some whose subjects or witnesses corresponded with those of the EEO files. Included in our review were randomly selected cases and others that the Subcommittee staff asked us to review. Finally, we reviewed relevant personnel files, internal memoranda, inspection reports, affirmative employment program plans, workforce profiles, and employees' personal records. The cases were reviewed to obtain a representative cross section of complaints and to determine if recurring patterns or trends existed in DEA's processing of these complaints.

We interviewed 63 current and former DEA personnel, private attorneys, and other federal employees in 9 states and the District of Columbia. We visited or contacted personnel in 10 DEA offices. Our interviews included male and female supervisory and nonsupervisory personnel ranging in grade from GS-6 to the Senior Executive Service. Their individual lengths of service with DEA, or its predecessor organization, ranged from 1 to 30 years. These persons included managers and personnel working as criminal investigators, "diversion investigators," clerical and administrative staff, forensic chemists, and EEO specialists. Also included were alleged victims and harassers, EEO counselors, coworkers, witnesses, and EEO and OPR staff.

When we began our work in April 1993, we requested access to DEA's EEO and OPR records from January 1989 to May 1993. We received access to redacted EEO and OPR files and were able to reproduce the EEO files. We supplemented our request in August, September, and October 1993 with requests for additional workplace profile data, inspection reports, and deciding-officials' files. We experienced delays of up to 6 weeks from the date of our request for documents and information until our receipt of them.

DEA would not provide us access to a comprehensive list of OPR investigations between 1989 and 1993. Instead, it provided a list of cases that it identified as representing all sexual harassment-related cases. In addition, DEA agreed to check this master list for the names of individuals we identified through a review of the EEO records to determine if corresponding OPR files existed. Subsequent to receiving the list, we

independently identified two additional cases involving sexual harassment issues that OPR had opened as misconduct cases; thus, what DEA provided us did not represent the total universe of cases.

We cannot attest to the completeness of our review, because DEA restricted our access to OPR files, inspection reports, and certain statistical files. In some instances, DEA provided us redacted documents. While the redactions appeared minimal in some cases, we could not determine the extent of redactions or verify the integrity of the files presented to us because many files did not contain tables of contents or indexes.

In addition, although we took notes, DEA refused to allow us to reproduce copies of the OPR files or the heavily redacted inspection reports, citing the documents' alleged sensitivity. DEA's decision adversely affected our ability to conduct comprehensive field interviews. For example, during field interviews, it was not always possible to confront individuals on potential discrepancies between statements they had made to OPR, which were contained in lengthy files maintained in Washington, and statements made to us.

We discussed our opposition to DEA's access position in three letters to, and two meetings with, representatives of the Assistant Attorney General for Administration, who has yet to respond to our August 1993 letter requesting assistance in securing the access.

In November, we asked officials in the Office of the Assistant Attorney General for Administration to intervene with DEA after DEA denied us access to data on the current assignments of women agents. Initially, DEA said that we could review relevant raw data concerning women's job placement, although it would not be in the format requested. Six weeks later it changed its position and denied us access. Justice took no exception to DEA's withholding the information, citing DEA's concern over its public disclosure.

Factors Adversely Affecting DEA's Handling of Sexual Harassment and Other Complaints

DEA employees expressed concern over DEA's handling of sexual harassment and other EEO complaints. With respect to the EEO Office, employees questioned the EEO counselors' training and competency and believed that the EEO staff lacked objectivity. Concerning OPR, employees were dissatisfied with OPR staff insensitivity. They also lacked confidence in OPR staff objectivity. The employees described all manner of procedural problems: lengthy processing time for complaints, incomplete investigations and files, and the fact that the EEO and OPR processes provide complainants different rights.

Employees also feared retaliation for participating in the EEO process or reporting discrimination and felt that management failed to adequately respond to the hostile workplace perceptions that employees held. Finally, DEA employees did not understand what behavior might constitute sexual harassment.

The EEO Office

DEA Employees Questioned EEO Counselors' Competency

Both supervisory and nonsupervisory DEA employees that we interviewed expressed a lack of confidence in the training and competency of the EEO counselors. In 7 of the 10 offices we contacted, employees expressed concern over the EEO counselors' ability to perform their duties. Some EEO officials and counselors expressed reservations about the training that the counselors received, citing instances when counselors sometimes gave out erroneous information and guidance. Employees also told us they thought that EEO staff made inappropriate remarks to complainants. Because of concerns about counselors' ability to provide competent advice, EEO officials stated that they intend to restructure the EEO counselor program.

Some EEO personnel, as well as those they counselled, felt that the training of EEO personnel was inadequate. Typically, EEO counselors received a 3-day training course at DEA headquarters and no refresher training. According to an EEO official, often "EEO counselors are spoon fed information on how to handle the cases by headquarters EEO personnel." One EEO counselor, who had handled a number of complaints for a large field office, felt obligated to do the job but also felt that the training he had received was inadequate. Additionally, the counselor expressed concerns about his inadequate training and management response when, as a junior grade employee, he presented employee complaints to management. In

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contrast, two newly appointed counselors, one of whom had minimal counseling opportunities, stated that they felt adequately prepared for the job.

Several employees who had contacted counselors told us that they felt the counselors were sincere in their desire to assist them but were ill-equipped to do so. At one office, after undergoing counseling with the EEO counselor, 17 employees filed a reprisal and sexual discrimination complaint against a senior manager in December 1992. The EEO Office documented receipt of the complaint in February 1993. In more than 10 calls during February, March, and April to the counselor and headquarters EEO, the employees sought acceptance and investigation of their complaint. In April and by letter in May, the EEO Office advised the employees that the complaint had procedural problems, that a group complaint was not feasible, and that they should file individually. The May letter also said ". . . the counselor's report submitted was procedurally defective." Employees declined to continue the process, citing inaccurate depictions of the employees' problem with management in the counselor's report, erroneous information given to them by the counselor, and a lack of responsiveness by EEO staff when they sought additional assistance. However, headquarters EEO staff said that these employees had impeded the complaint's progress because they kept raising issues outside the scope of the initial complaint.

Procedural problems with obtaining a counselor were also identified in another case involving an employee who had allegedly been sexually assaulted and who sought assistance from the headquarters EEO staff. The staff advised the employee that they would get her a counselor but then failed to provide a counselor's name until she had made more than five follow-up phone calls over a 2-month period. Internal DEA records confirm, with regard to the woman's contacts with members of the headquarters EEO staff, "There clearly was a breakdown in the process of providing [her] with a counselor." Furthermore, according to the records on this case, the complainant was not, as required by federal EEO regulations, provided a notice of final interview. This notice must be provided within 30 days after a matter is brought to the counselor's attention. During the final interview, the counselor discusses what occurred during the EEO counseling process and informs the complainant of the right to pursue the matter through the formal complaint procedure.

DEA Employees Question EEO Counselors' and Staff Objectivity

According to a female agent, a female coworker contacted a counselor to complain about sexual harassment from a male agent who had been previously accused of sexually harassing another woman. The employee was told, "He [the male agent] has already been punished enough." We attempted to discuss the incident with the complaining employee and the counselor; both declined to talk with us.

In addition, two employees told us that they and two others had contacted a counselor to complain of actions they felt constituted unlawful sexual discrimination by an Assistant Special Agent in Charge (ASAC). However, the counselor downplayed the complaint by telling them that she had never had problems with that particular ASAC. According to two of the complainants, after the discussion, two of the employees declined both to continue counseling and to pursue the complaint through the EEO process because they believed that the counselor had acted inappropriately. The counselor did not return our telephone calls.

In three offices, we received complaints about the headquarters EEO processing staff who allegedly had made inappropriate comments to complainants. In one case, headquarters EEO staff members had allegedly accused a male coworker of soliciting a female complainant to file a sexual harassment complaint. According to the complainant and the coworker, EEO staff members asked the coworker if he was having a personal relationship with the female complainant. These EEO staff members denied asking questions about a personal relationship.

An EEO official stated that DEA intends to restructure the current EEO counselor program because of concerns about the counselors' ability to provide competent and objective advice. One EEO official acknowledged that some counselors did not possess the skills necessary to be effective. The new counselor program will require interested individuals to submit a Standard Form 171 and to express specific reasons why they should be chosen for the counseling program.

The OPR

Employees Dissatisfied With OPR Staff Sensitivity

Complainants and witnesses in OPR investigations related to sexual harassment incidents expressed concern over a perceived lack of sensitivity on the part of OPR investigators. Dissatisfaction stemmed from

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the use of male investigators in interviews with female complainants and the use of investigative tactics perceived as "intimidating." In contrast, DEA management officials expressed confidence in OPR's professionalism and competence.

Two women that we interviewed complained about OPR's use of male investigators with whom they were required to discuss sensitive issues. It is appropriate, whenever possible, to offer complainants a choice between male and female investigators to discuss sensitive details of alleged harassment. However, during the period of our review, OPR had only one female agent. We noted that OPR used the female agent on two sexual harassment cases to provide some assistance. However, according to the complainant in one of these cases, the female agent who assisted was her former supervisor in the field office where the alleged incidents occurred—a fact which the complainant felt may have affected her former supervisor's objectivity.

In another instance, a woman who alleged sexual harassment withdrew her complaint with OPR. According to her attorney, the alleged victim had stated that the OPR investigator was insensitive and she felt "intimidated" and "bullied."

Four other sexual harassment complainants also found OPR investigators to be insensitive, less than objective, or intimidating in their interviews. Two females stated that their contact with OPR made them feel "victimized" again. Two complainants stated that the investigators focused primarily on whether a personal relationship existed between the complainant and the alleged harasser, attempting to characterize the incidents as "lovers' quarrels." In contrast, a male subject of an OPR investigation, who was subsequently charged with sexually harassing a female subordinate, stated that he felt that OPR had done a competent job.

**DEA Employees Lacked
Confidence in OPR Staff
Objectivity**

Some employees believed that OPR investigators lacked objectivity. Employees told us of incidents in which OPR investigators socialized with the alleged harasser and OPR investigators disproportionately focused on a complainant's credibility and "maturity," rather than details relevant to the complaint.

In one case involving alleged sexual harassment of a female agent by an ASAC, agents who worked with the complainant stated that the OPR investigators sent to investigate the alleged sexual harassment complaint

were seen both joking in the office and going to lunch, as well as having drinks after work, with the alleged harasser. According to an OPR official, the ASAC and an investigator had lunch together, but OPR officials denied other allegations that the ASAC had had drinks with the investigators. However, an OPR official stated that the OPR agents had met the accused at a "lounge" to get his signature on a statement but "only stayed 15 minutes." The official also stated that having lunch and drinks with an alleged harasser was not standard procedure. In this instance, the investigation concluded that the sexual harassment allegations against the ASAC were not supported.

In another case, a female trainee alleged improper sexual advances by an instructor. However, the OPR investigators' work appeared to focus more on the complainant's character than on facts surrounding the specific alleged incidents. While establishing the credibility of participants in an investigation is essential, particularly when there are no witnesses to the alleged incidents, we did not observe a similar focus on ascertaining the alleged harasser's character and credibility. We noted that a significant number of the interviews concerned the complainant's character, her "maturity," and the circumstances under which she was hired; however, the investigation failed to sufficiently focus on determining the conduct of the alleged harasser. This alleged victim also lodged complaints with OPR about the objectivity of the investigators involved.

Employee Dissatisfaction With Procedural Problems of the Internal Processes to Address Complaints

Employees told us of various procedural problems they encountered when attempting to use the EEO complaints process. They perceived the process as lengthy and described inadequate searches for corroborative evidence that resulted in incomplete investigations. We also noted that some of the files were missing information. Finally, we found that the complainants who reported allegations to OPR do not have the right to representation that is guaranteed in the EEO complaint process.

Processing Times Were Lengthy

Although DEA officials had created the complaints-processing unit to address a backlog in complaint processing, complainants raised questions about the length of time that the unit took to process their complaints. As of September 30, 1993, the EEO complaint process—from date of filing to date of resolution, closure, dismissal, or withdrawal—averaged 382 days

for files we reviewed from the EEO Office.² The time ranged from 15 to 867 days.

The OPR sexual harassment cases that we reviewed showed that the average elapsed time between the case opening date and the closing date was 356 days. For other OPR investigations reviewed, we noted that the average elapsed time between the date of the case opening to the date closed was 298 days.

Investigations and Files Were Incomplete

On the issue of thorough investigations, EEOC guidelines suggest that the investigator should determine whether the employer was aware of other instances of harassment and what the corresponding management action was. The investigator should also thoroughly search for corroborative evidence of any nature.

During our inquiry into a sexual harassment allegation, we noted that OPR investigators summarized the statements of one coworker in whom the complainant had confided by saying she could provide no direct knowledge of the harassment. However, the summary did not state that the woman had confided in this coworker about the alleged unwanted sexual advance the day it occurred, although the coworker told us she had informed OPR of this fact. Another coworker whom the investigators interviewed told us that the investigators had never asked him about a similar conversation with the alleged victim, although the alleged victim had spoken to him about the incident.

Another alleged victim stated that an OPR investigator did not interview three non-DEA employees—all law enforcement personnel then assigned to other Department of Justice agencies—whom she felt could corroborate her allegations. The OPR investigator stated that he had interviewed everyone whom he believed had relevant information, including two employees from another agency alleged to be witnesses to a specific incident. We interviewed the three Justice Department employees that OPR had not interviewed. Two of the three stated that the woman had confided in them about harassment contemporaneous with the event. The third individual stated that the alleged victim had not confided in him and that he did not believe any sexual harassment incidents had occurred.

²These dates reflect only time elapsed while the complaint was internally processed. Time for cases continuing through the process outside DEA is not included. Processes outside DEA include referral to the EEOC, another Department of Justice agency, or a federal court for action.

In two cases we reviewed, complainants stated that OPR investigators would not pursue, or stated they could not pursue, other allegations the complainants had provided of the alleged harasser's having engaged in similar behavior with other females. The investigators said that these incidents were outside the scope of their inquiry. In contrast, we noted one case in which OPR investigators had interviewed other women alleged to have been harassed by the same individual and included information from their statements in the investigative report. The statements were discussed in the Board of Professional Conduct's recommendations for disciplinary action.

Three complainants also cited examples in which headquarters EEO personnel lost documents included in, and relevant to, their filings. In one case, in which an individual had filed seven complaints, we noted that the file contained only five.

In contrast to complaints received about internal investigations, we received no complaints about investigations conducted by the outside firm used by the EEO Office.

EEO and OPR Processes Did Not Afford Complainants the Same Rights

The procedural rights afforded alleged victims of sexual harassment differ depending on whether the EEO Office, its designated representative, or OPR investigates the matter. For example, federal regulations entitle federal employee complainants to have a representative present during any part of the EEO complaint process and require EEO counselors to inform complainants about their rights during various stages of the process. In contrast, according to an OPR official, an employee with a matter pending before OPR in a noncriminal inquiry "does not have the statutory right to representation." The official stated that although representation is not prohibited, the final decision rests with the OPR supervisor or the head of OPR. Thus, although a complainant alleging sexual harassment under the EEO process has a right to have a representative present, the right of the same individual to representation under OPR procedures is left to OPR management's discretion. OPR's procedures do not address the rights of persons alleging discrimination except for the rights they might otherwise have under the Constitution or a collective bargaining agreement.

In addition to procedural disparities, there are key differences in the approach and the end result of an OPR and EEO investigation into alleged sexual harassment. OPR investigations seek to determine whether agency officials violated standards of conduct or criminal law. An investigation

showing prohibited conduct by an agency official should result in appropriate disciplinary action or prosecution. An EEO investigation into the same matter, however, focuses not on whether there was prohibited conduct, but on whether employees were denied an equal employment opportunity. Although an investigation into the alleged harassing conduct is necessary in both types of investigation, the end result of an EEO investigation showing harassment should be whatever action is necessary to preserve or restore employees' rights to be free from workplace discrimination. Accordingly, under the EEO process, not only should appropriate disciplinary action be taken against wrongdoers, but victims of the prohibited conduct whose employment rights were violated are also entitled to remedies for the discrimination. The right to a remedy is not guaranteed under the OPR process.

Employees Feared Reprisal for Reporting Alleged Harassment

The predominant concern raised by DEA employees we contacted about their willingness to use the internal processes was fear of reprisal for participation in them. Most complainants interviewed stated that once they had reported the discrimination, management's and coworkers' attitudes toward them changed in a negative way. In several offices we visited, employees stated that they had refused to report incidents because they feared retaliation from management, including the threat of negative career repercussions.

At 6 sites visited, 12 different women related recent unreported incidents of what they termed sexual harassment and sex discrimination by management officials. They would not report these incidents because they feared reprisal. At two separate offices during our interviews, three or more women alleged sexual harassment by ASACs in their respective offices. The women stated that they believed division management was aware of at least some of one ASAC's actions, had in one case witnessed it, but would not support the women if they filed complaints. The women's allegations against the ASAC's conduct ranged from sexual propositions to offensive statements and unwelcome touching. Because the women were afraid management would retaliate against them if they reported the problem or participated in the complaint process, they stated that they would do nothing but await the ASAC's transfer.

In one office, coworkers of an alleged sexual harassment victim stated that they would not file sexual harassment complaints, after observing what had happened to a complainant when she alleged sexual harassment by an ASAC. After the woman had made a complaint, she was transferred to a new

office where her new manager mentioned to coworkers about her sexual harassment complaint and made derogatory remarks about her. The remarks were confirmed by coworkers in her new office. She also indicated to coworkers and to us that the experience had been extremely stressful.

A female agent who had made sexual harassment allegations about a supervisor contacted a counselor to discuss filing a reprisal complaint. She said that the counselor and her supervisor "talked me out of it," stating that she was told that filing such a complaint would have negative career repercussions. A complainant in another office stated that a counselor declined to counsel her on her sexual harassment complaint because the counselor feared reprisal from management. At a third office, an employee claimed that when he tried to bring problems regarding alleged sexual discrimination in the office to the attention of a senior headquarters official, he was told to look for a job elsewhere if he did not like the way management was handling things.

However, in two offices we visited, employees expressed confidence in the EEO process. At one location, the employees were in the midst of a sex discrimination investigation by the outside firm under contract to DEA's EEO Office. Personnel characterized the investigation as fair. In the other office, in which OPR had investigated a sexual harassment incident, employees stated that they still had confidence in the agency's internal processes.

Employees Believe Management Failed to Adequately Respond to Allegations of Sexual Harassment and Hostile Workplace Perceptions

In DEA offices we visited, managers believed that they were responding appropriately to sexual harassment and discrimination issues while nonsupervisory employees believed many of management's responses were insufficient. Managers declared, for example, that problems were part of the past or were caused by a limited number of disgruntled employees.

We further determined that some managers' understanding and implementation of appropriate corrective action varied. In some cases, their responses indicated a lack of understanding of their legal obligation to take immediate and appropriate action. Employees also told us they considered management's responses—including denial, increased scrutiny, and transfer—to be inappropriate. Although managers indicated they had an open-door policy that allowed employees to present concerns and complaints about sexual harassment issues, employees disagreed,

stating that instead management's "chain-of-command" policy did not encourage or permit discussion.

Management's Responses to Employee Allegations and Perceptions

Managers should take immediate and appropriate corrective action if they know or should have known of the existence of a hostile work environment. The EEOC compliance manual is clear on the kind of management response necessary to resolve sexual harassment issues. It explains that an employer's action is appropriate when it "fully remedies" the conduct without adversely affecting the terms or conditions of the complainant's employment, for example, requiring the employee to work in a less desirable location. However, when asked what action they would take when confronted with an allegation of sexual harassment, several managers stated that they would do a preliminary inquiry to establish the facts and then report the matter to EEO or OPR without taking any steps to assure a hostile-free environment. Several stated that they would not take any corrective action until OPR or EEO investigative efforts were complete.

Managers' actions upon initial receipt of allegations of sexual harassment included authorizing women to leave the work area if they became upset when harassed; restricting the alleged victim's law enforcement responsibilities; transferring women, and in one case the alleged harasser, out of the group or field division; or issuing general memoranda against sexual harassment to groups as opposed to addressing specific problems. In other instances, managers took no action upon receiving an allegation and engaged in what the women termed retaliatory behavior. In several of these cases, managers failed to take immediate and appropriate action to stop the alleged harassment, demonstrating their lack of understanding of management's legal responsibilities in this area. Managers were also unclear as to the difference between their responsibility to take immediate and appropriate action to stop the alleged harassment and their responsibility to investigate and report alleged misconduct.

At six offices, women who reported sexual harassment to their supervisors claim they were victims of retaliation or that management's responses were inadequate. Reported forms of retaliation included management's increased scrutiny of their time and attendance, work products, and other activities; derogatory comments to coworkers; and removal from enforcement-related tasks. In other cases, no action was taken. In two cases, the alleged victims were transferred to other states in their field division during the investigation while the accused supervisor remained in place. In a letter to the EEO Office, one woman stated, "I have

suffered tremendously, physically, mentally, and emotionally, and have been under unbelievable stress and pressure in my working environment. DEA increased that stress when they transferred me. . . ." Management officials stated they felt the women wanted the relocations, an action the officials described as an attempt to remove the women from potentially hostile office environments.

Most management officials interviewed did not believe their offices had a problem with sexual harassment or sex discrimination. One manager acknowledged a perceived problem with sex discrimination in the office, but he attributed the perception to employees' problems with the manager's style. Another said he was aware of past problems in the office, but he felt he had "turned the office around." Others said that complaints within an office were the result of a limited number of disgruntled employees who were tainting others.

When asked why they believed a group of female agents wanted to pursue a class-action suit alleging they were denied access to foreign assignments or promotion above the GM-14 level, two senior managers, both SACs, said that the participants might be motivated by economic gain. Referring to class-action suits by black and Hispanic agents, one SAC stated that the "blacks and Mexicans" participating in the prior suits had each personally received a sizeable economic settlement. He speculated that the results of those suits might have motivated the women to file.

Our review of heavily redacted portions of DEA inspection reports³ for several offices revealed that inspectors also did not identify problems with the offices' implementation of EEO policy. Similarly, an August 1993 fact sheet distributed by DEA managers to DEA agents stated, "DEA has a positive record in EEO matters."

Employees' Views About Management's Responsiveness

In contrast to the views of DEA managers, at every office we visited men and women related incidents of behavior they believed constituted sex discrimination, including sexual harassment. Many of the employees making the allegations also stated that they believed the problems originated at the management level and when they brought the concerns to the attention of management, its responses were inadequate.

³DEA did not provide us access to, or copies of, the complete inspection reports that we requested for 10 offices. Instead, we were provided access to a limited number of paragraphs that DEA represented as the sections of the reports that dealt with EEO issues. Our views are therefore based on the notes we took on these redacted reports.

Appendix II
Factors Adversely Affecting DEA's Handling
of Sexual Harassment and Other Complaints

In six offices, employees stated that their complaints were met with denials or retaliation by management; meaningful dialogue did not take place; and resolution of the problem did not occur. However, we did receive information on two instances in which managers had acted quickly and satisfactorily to address reports of sexual harassment. Furthermore, personnel with longer lengths of service with the agency believed that they had seen the agency make strides in the handling of complaints during their tenure.

According to interviewees, a common management response to allegations of sex discrimination was to characterize the behavior as a "communication problem" between the employee and management. At two offices, employees said when they approached management with the problems, they were told it was not a sex discrimination issue but a "communication" issue. Senior officials at DEA headquarters and at one of the offices stated that they had taken affirmative steps to address the problems at the office, including the use of trained clinicians to work with management and the employees. However, problems continued and culminated in an EEO complaint filed 3 years after the clinicians' visit.

In another case, when a woman reported unwelcome sexual advances to her second-line supervisor, his resolution was to curtail her activities on a task force, thereby decreasing her contact with the alleged harassers. She stated that she initially reported it to her first-line supervisor, but she did not expect resolution because he too had made unwanted sexual advances toward her. The second-line supervisor merely issued a general statement to the males allegedly involved, saying he would not tolerate sexual harassment. The male coworkers then berated the alleged victim for what they perceived was a decrease in her workload. One male coworker refused to work with her on any future assignment. The woman said that management, knowing the reasons for the reassignment, failed to deal properly with the coworkers' attitudes and refusal to work with her.

Managers that we interviewed told us they maintained an open-door policy and employees were free to come to them with allegations of discrimination. A significant number of employees interviewed said an inviolate chain of command existed, and they did not feel free to bring issues to the attention of senior management.

Employees Lacked Understanding of What Behavior Might Constitute Sexual Harassment

Employees interviewed—both management and nonmanagement—had difficulty articulating what behavior might constitute sexual harassment. Sexual harassment is a form of sex discrimination occurring when employees of one sex are subjected to unwelcome treatment of a sexual nature that is sufficiently pervasive to alter the terms or conditions of their employment. One individual accused of unwanted sexual advances by a coworker commented to us that he could not define sexual harassment; he felt that more education and training on the subject would be helpful.

Headquarters EEO staff told us they did not accumulate statistics on the total number of DEA employees who had undergone training in EEO and sexual harassment. However, the complaints-processing manager stated that he had personally visited all field offices between 1985 and 1991 to train personnel. Additionally, according to EEO personnel, in response to a 1990 requirement from the Acting Administrator, supervisory personnel received a 6-hour block of instruction on EEO and sexual harassment. New agents received 1/2-hour to 1-hour instruction in their basic training school. In April 1992, the EEO Office sent videotapes to all DEA field offices and laboratories concerning the EEO process, including a segment on sexual harassment. However, one-fourth of all employees we interviewed stated that they had not received any specialized training on sexual harassment.

Most personnel interviewed said they had received DEA agency memoranda on sexual harassment including a June 29, 1993, memorandum from Attorney General Janet Reno that stated “discrimination or harassment of any kind simply will not be tolerated in a Department charged with enforcing the laws and protecting the rights of all Americans.”

In spite of the availability of training sessions, videotapes, and memoranda issued against sexual harassment, allegations of harassment continue to be filed and many alleged incidents go unreported. In one field division, the Special Agent in Charge said that he had designated an ASAC to canvas the area daily for offensive materials. However, the individual he designated was the individual who five women in the office alleged to us had treated them in a demeaning manner because of their sex. In two other offices, managers told us that they did not think offensive or sexually oriented material was appropriate in the DEA workplace. Yet, at one of these offices, employees gave us a copy of a questionnaire on sexual practices that had been placed in their mail files and a note about a “panties party” that had

Appendix II
Factors Adversely Affecting DEA's Handling
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been circulated throughout the office. At the second office, we observed a sexually suggestive bumper sticker attached to a desk in a public spot.

Other Issues

Disciplinary Actions Perceived as Ineffective Deterrents to Future Sexual Harassment

Through recommendations of the Board of Professional Conduct and the final decision rendered by the deciding official, DEA determines appropriate disciplinary actions. However, these actions, which are inadequately communicated to DEA employees, are not perceived as effective deterrents to subsequent sexual harassment.

Upon completion of an OPR investigation, when charges are supported, OPR refers a summary investigative report to the Board of Professional Conduct for a recommendation of disciplinary action. The Board, which is composed of three GS-15 staff at headquarters, considers the individual's conduct, prior rulings of the Merit Systems Protection Board (MSPB), agency disciplinary precedents, agency table of penalties, and Douglas⁴ factors before developing a recommendation for discipline. If charges are substantiated, proposed disciplinary actions are forwarded to the charged individual, together with a copy of the OPR investigation. The accused then has an opportunity to provide a verbal or written response to the proposed action to the agency's deciding official before the final agency decision on discipline. The deciding official considers the information in the response before making a final decision.

To effectively communicate that sexual harassment will not be tolerated, employees need to be advised of the penalties for engaging in the prohibited behavior. In this regard, we note that a 1988 MSPB report recommends that agencies state the range of disciplinary penalties that can be taken against harassers and include reinforcing facts. The report notes that such facts can include summary information about penalties already levied within the agency or at other agencies against individuals found to have engaged in harassment. Further, in determining liability, the courts examine whether the corrective action taken will demonstrate to the other employees that harassment will not be tolerated.

⁴The MSPB, in Douglas v. Veterans Administration, 5 MSPB 313 (1981), identified the following factors as relevant for determining the appropriateness of a penalty: (1) The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; (2) the employee's job level and type of environment; (3) the employee's past disciplinary record; (4) the employee's past work record; (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties; (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; (7) consistency of the penalty with any applicable agency table of penalties; (8) the notoriety of the offense or its impact upon the reputation of the agency; (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense; (10) potential for the employee's rehabilitation; (11) mitigating circumstances surrounding the offense; and (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

DEA's personnel manual contains a listing of sanctions and penalties for employee misconduct. However, the listing does not address sexual harassment or its corresponding penalties and sanctions. While the agency and the Justice Department issued general policy statements stating that engaging in harassment will result in sanctions and penalties, specific information on what constituted prohibited behavior and how it was disciplined was not communicated to employees. Alleged victims of sexual harassment who had utilized internal processes stated that they were never advised of the disposition of their complaints to OPR and whether disciplinary action had been taken. Disciplinary agreements reached between the agency and employees who allegedly engaged in sexual harassment cite poor judgment, sexual harassment, and conduct unbecoming an agent in supporting disciplinary actions. However, OPR and EEO officials advised us that the personnel office issues summary data on disciplinary actions taken during specific periods of time. These summaries provided a listing of agency disciplinary actions but did not provide examples of the specific behavior that resulted in the discipline.

The lack of information on specific prohibited behaviors and disciplinary actions led to employee confusion over what constituted prohibited behavior and to the perception that disciplinary actions taken were disproportionate to the severity of the offense. On the basis of our discussions with both employees who had actual knowledge of specific disciplinary actions taken as well as those who had only heard rumors of actions taken, DEA employees do not perceive agency disciplinary actions for engaging in sexual harassment as effective deterrents.

We also noted a common perception among the alleged victims and their coworkers that disciplinary actions were inadequate. Two women stated that OPR investigators or EEO counselors had advised them that even if their allegations were supported through an investigation, the most severe penalty they could expect was some time off for the alleged harasser or "little or no repercussions." In one instance, a female employee alleged that a supervisor had assaulted her after taking her to dinner in a government vehicle. The assault allegations were not substantiated during the internal investigation, and the supervisor was charged with misuse of a government vehicle. In a letter to then-DEA Administrator Robert Bonner, the alleged victim of this assault stated, "In DEA, it appears that it is worse to misuse a government vehicle than it is to assault a government employee since there is a mandatory penalty for the former but not the latter. The penalty is not what I take issue with here, but the reasoning

seems skewed. The message to management is that they better not misuse their cars, but their support staff is expendable.”

Of the 30 OPR investigations we reviewed, 15 individuals were investigated for their involvement in alleged sexual harassment incidents. Of these 15, disciplinary action was recommended in 9 cases. Appendix V provides a summary of the actions taken by the agency in these cases.

We noted differences in the proposed and actual disciplinary actions. The deciding official stated that differences were the result of oral and written information provided by the accused or the accused’s attorney which may have mitigated against the harsher penalty recommended by the Board. We asked to review this information, but the agency could locate only a limited amount.

In the cases we reviewed, only one management official was disciplined for failing to take appropriate action. Additionally, in two of the cases, the alleged harasser had had prior disciplinary actions for similar offenses, leading us to question the deterrent value of the first disciplinary action. Finally, if employees are not aware of the penalties for engaging in a prohibited behavior, it is difficult for the disciplinary actions to serve as deterrents.

Sex Discrimination Issues Alleged to Have Affected Promotion and Retention of Women

During our field work, we asked employees to identify issues affecting the retention and promotion of women. Career-limiting job assignments and limited representation of women in managerial positions were those most commonly and universally identified as impeding successful implementation of equal employment opportunities.

Job Assignments

Several female agents attributed their lack of career progression to assignments that limited their chances for enforcement positions and thus made them less competitive for promotions and assignments. These agents stated that women were “tracked into” positions such as intelligence, asset forfeiture, and training. In three offices, women provided examples of male coworkers with less experience and seniority being selected as group supervisors over them. In contrast, in one office males complained that women with less experience were promoted over their male counterparts. After initially stating that we would be allowed to review data relevant to women’s job assignments, DEA refused us access to the information.

Although the agency has not analyzed the data, Justice officials said the agency decided to withhold the data out of concern over their public disclosure.

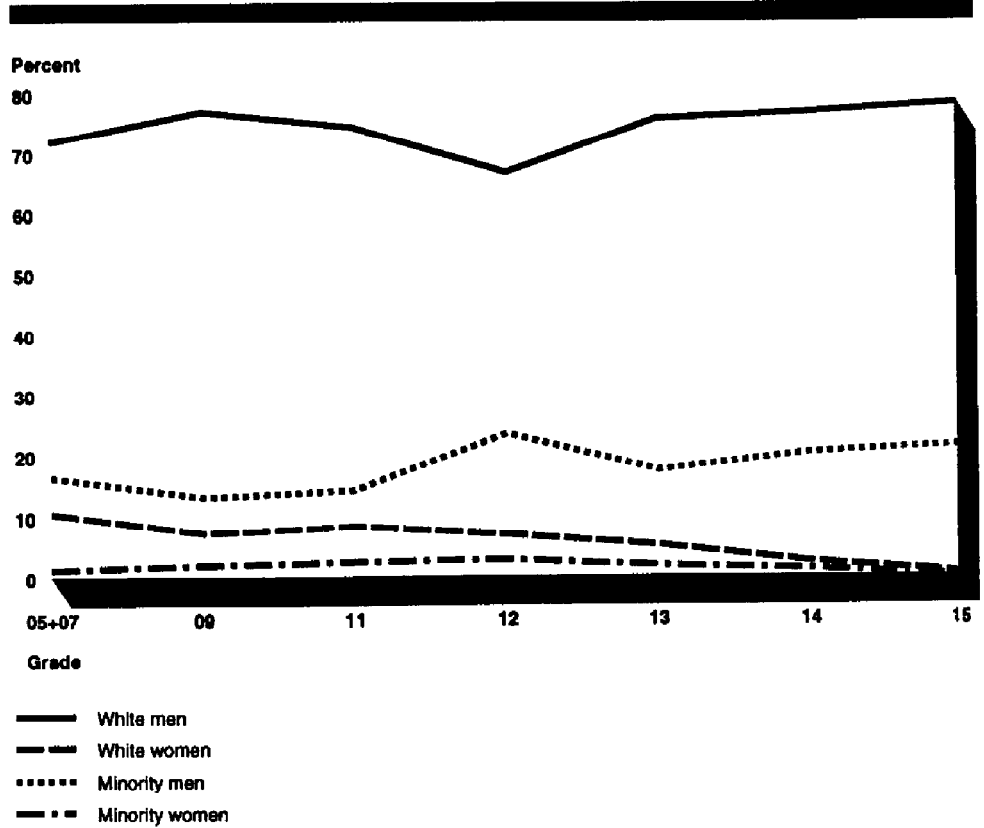
Twenty-six female agents initiated a class-action suit in early 1993 alleging that they were denied access to foreign assignments and promotions to GM-14 and above because of their sex. An EEOC administrative judge in November 1993, however, recommended that DEA dismiss the complaint because it did not meet the prerequisites of a class complaint. Although it disagreed with some of the administrative judge's opinion, DEA agreed with the recommendation and dismissed the complaint. The agents may appeal the dismissal to EEOC's Office of Federal Operations.

Representation in Upper Grades

A 1992 GAO congressional testimony⁵ stated that since 1987 the number of women in law enforcement has increased in the criminal investigative field. Nonetheless, the presence of women decreased as the grade level increased. See figure III.1, which analyzes grade distribution within the Department of Justice, including DEA.

⁵Federal Affirmative Employment: Status of Women and Minority Representation in Federal Law Enforcement Occupations (GAO/T-GGD-93-2, Oct. 1, 1992).

**Figure III.1: Justice Department
(Excluding FBI) Grade Distribution by
Group for the Criminal Investigating
Occupation (Sept. 1991)**



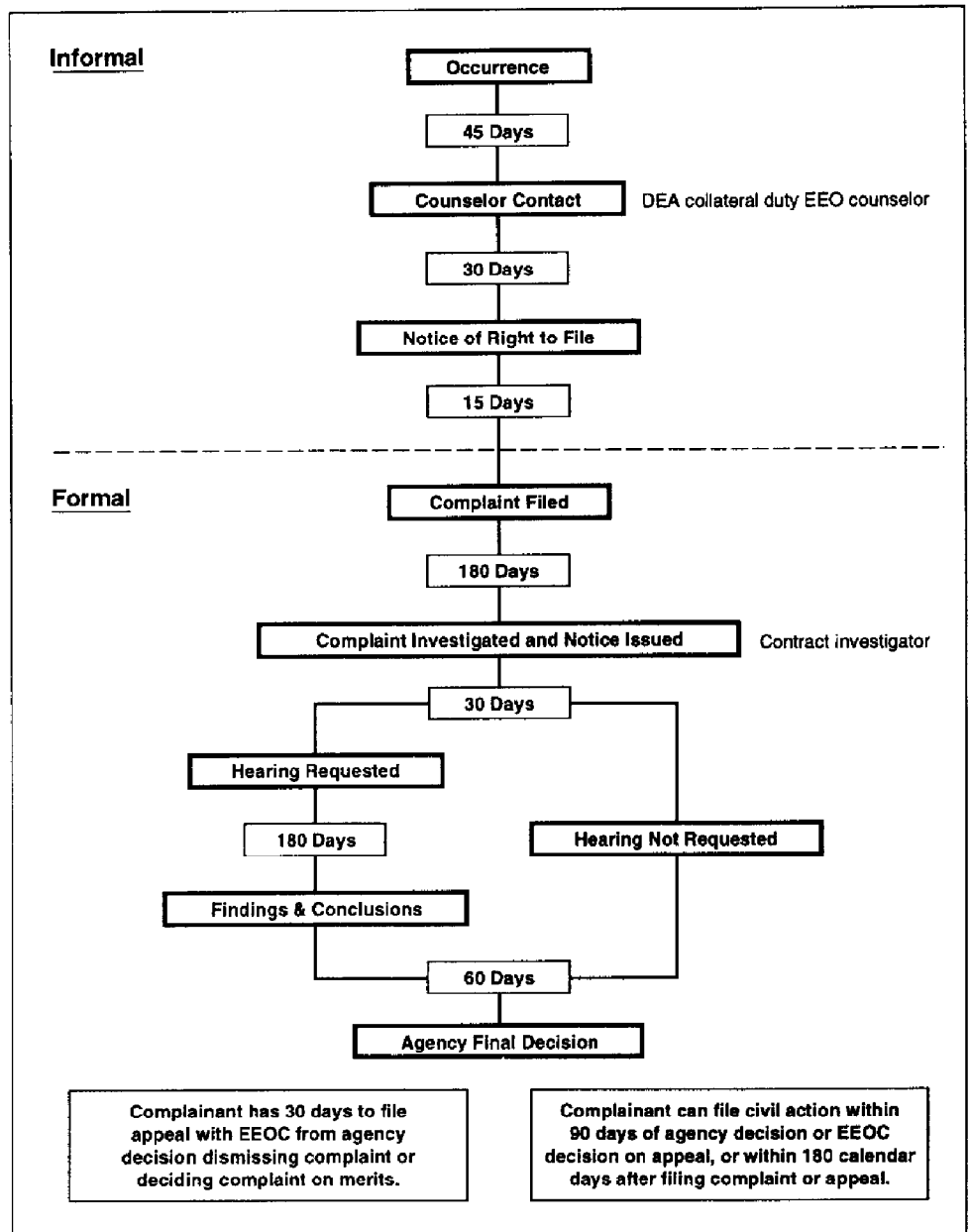
Source: Data from the Office of Personnel Management's Central Personnel Data File

According to data provided by DEA, between 1989 and 1993, the DEA workforce increased by 18 percent to 7,475. As of October 1993, its agent population was 92.6-percent male and 7.4-percent female. Management positions increased by 1,000 employees, of which 21 percent were female.

According to DEA data, as of December 1993, the following agents were women: 9.5 percent (79) of GS-12s, 8.1 percent (117) of GS-13s, 8.7 percent (8) of GM-13s, 3.5 percent (22) of GM-14s, and 1.3 percent (2) of GM-15s. No Senior Executive Service (SES) positions were occupied by women. An EEO official advised that increased representation of women is desirable in most of the DEA labor categories. As a result, the agency has identified recommended actions for increasing the representation levels.

For example, as a result of a prior class-action suit, DEA has established a court-approved promotion system for agents seeking promotion to grades 14 and 15. This system, implemented in 1992, included establishment of an assessment center for personnel eligible for promotion. With 3 years as a GS-13 and 4 years as a GS-14 and a recent performance evaluation that is at least fully successful, an agent is eligible for evaluation by the assessment center. GM-15 managers serve as "assessors" for employees seeking promotion to 14; GM-15 or SES employees serve for employees seeking promotion to 15. The assessors score the participants on exercises that are designed to simulate typical activities performed by agents at the grade level for which they are competing. Participants demonstrate their subject knowledge and managerial capabilities.

Overview of Federal Sector Complaint Processing Under 29 C.F.R. Part 1614



Sexual Harassment Investigations Handled by OPR/Management, January 1989 Through May 1993

Case	Type of sexual harassment allegation	Board of Professional Conduct's finding and proposal	Deciding-official's decision	Days in process ^a
1	Sexual advances/verbal and physical	Evidence supported allegation. Removal proposed.	Removal mooted by subject's retirement. Subject placed on leave pending retirement conditioned upon 2-week participation in Employee Assistance Program (EAP). ^b	292
2	Failure to take required, prompt action upon receipt of information of sexual harassment	Investigation indicated subject had attempted to resolve situation without notifying chain of command. Letter of reprimand proposed.	Letter of caution	292
3	Telephone harassment of former coworker, including physical threats	Investigation substantiated telephone calls to female former coworker. Letter of caution proposed.	Letter of caution	299
4	Sexual assault	Investigation did not substantiate allegation but revealed misuse of official government vehicle (OGV). 30-day suspension proposed for misuse of OGV.	30-day suspension	175
5	Unwelcome sexual comments to and physical contact with coworker	Investigation confirmed sexual contacts but disclosed evidence that contacts were not unwelcome. Letter of caution proposed.	Letter of caution	183
6	Unwelcome sexual comments to and physical contact with subordinate	Investigation of four incidents indicated inappropriate behavior involving verbal statements and physical contact. 14-day suspension proposed.	Negotiated Disciplinary Agreement: 14-day suspension, holding 9 days in abeyance pending completion of 1-year probation and successful participation in EEO/EAP programs.	322
7	Unwelcome sexual comments and anonymous mailing of sex paraphernalia to coworker	Investigation revealed discrepancies in allegations. Complainant withdrew allegations. Administratively closed by OPR.		96

(continued)

**Appendix V
Sexual Harassment Investigations Handled
by OPR/Management, January 1989 Through
May 1993**

Case	Type of sexual harassment allegation	Board of Professional Conduct's finding and proposal	Deciding-official's decision	Days in process^a
8	Unwelcome sexual comments and anonymous mailing of sex paraphernalia to coworker. Subject, former DEA employee	Investigation revealed discrepancies in allegations. Complainant withdrew allegations. Administratively closed by OPR.		96
9	Unwelcome sexual advances to trainee	Charge not sustained. Letter of clearance proposed.	Letter of clearance	284
10	Unwelcome sexual comments to and physical contact with coworker	Investigation indicated subject had engaged in conversation with complainant, including unwanted sexual comments and innuendos. Also unauthorized use of firearm and improper outside employment revealed. Removal proposed.	Negotiated Disciplinary Agreement: Demotion from GS-12 to GS-11; 30-day suspension, held in abeyance 1 year pending successful EAP participation.	1,260
11	Sexual advances/physical contact toward subordinate	Active investigation.		
12	Unwelcome sexual comments to and physical contact with number of subordinates	Allegations supported. Misappropriation of gov't property and misuse of OGV also investigated. OGV misuse supported but not misappropriation of gov't property. Demotion from GS-15 to GS-13 and 30-day suspension proposed.	Negotiated Disciplinary Agreement: Dismissed charges of sexual harassment and misappropriation of gov't property. In lieu of reproposing additional charges of failure to properly supervise and poor judgment, subject agreed to 45-day suspension, transfer, and 40 classroom hours of EEO training. 1-year probation.	405
13	Unwelcome sexual comments to subordinate	Charge not sustained. Letter of clearance proposed.	Letter of clearance	224

(continued)

**Appendix V
Sexual Harassment Investigations Handled
by OPR/Management, January 1989 Through
May 1993**

Case	Type of sexual harassment allegation	Board of Professional Conduct's finding and proposal	Deciding-official's decision	Days in process^a
14	(a) Sexual comments to trainee	(a) Claim unsubstantiated. Subject exercised poor judgment while a Basic Agent Training Class Counselor. 10-day suspension proposed.	(a) 10-day suspension	(a) 404
	(b) Unwelcome physical contact with coworker	(b) Investigated by Field Division management. Allegation substantiated. 20-day suspension proposed.	(b) 20-day suspension	(b) ^c
15	Sexual comments	Active investigation.		

^aTime between OPR's case-opening date and its case-closing date. Includes investigation conducted by OPR, review by the Board of Professional Conduct and the deciding official, and any negotiations with employee regarding punishments.

^bThe subject of this investigation appealed the matter to the Merit Systems Protection Board. The subject was also involved in a prior sexual harassment investigation by the EEO Office during which the allegations were supported and removal proposed. The prior event occurred outside the time frame covered in this chart.

^cUnavailable. We were made aware of allegation through review of a prior OPR investigation.

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