REPORT

OF THE

FAIRFAX COUNTY

HUMAN RIGHTS COMMISSION

2001

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STATEMENT OF PURPOSE

In July 1974, the Fairfax County Board of Supervisors adopted the Human Rights Ordinance, establishing the Human Rights Commission **"to institute an affirmative human rights program of positive efforts to eliminate discrimination and provide citizen recourse for discriminatory acts."**

INTRODUCTION

I. This is a report of matters generated under provisions of Chapter 11, Human Rights Ordinance, Code of the County of Fairfax, Virginia, focusing upon the activities of the staff under the administration of the Executive Director, as well as the Human Rights Commission. While this report will concentrate principally on the most immediate fiscal year, FY 2001, we have also selected a ten-year envelope of data, which reflects the trends, behaviors, and central tendencies of the relevant activities.

II. Case load adjudication is the primary focus of work performed by the Commission appropriately categorized as "cases" and "charges." The term "case" refers to all activities generated by a complaint filed with this Commission. Each case may contain several charges; and each charge must be investigated, analyzed and decided upon separately.

EXECUTIVE SUMMARY

Commission's Workload and Staffing

The Commission processed 723 cases in FY 1992 and 1042 cases in FY 2001[1], representing a 44 percent increase in caseload over ten years. The Commission had 16 staff members in FY 1992 and 19 staff members in FY 2001, representing a 13 percent increase in staff. During this ten-year period, the Board authorized the addition of two new investigators and a Fair Housing Program Manager to manage the County's Fair Housing Program.

The Commission's receipt of new cases stayed essentially the same in FY 2001 as it was in FY 2000.[2] However, due to staff turnover, the staff closed 14.9% fewer cases in FY 2001 than in FY 2000. Yet, this reduction in closed cases did not translate into a significant increase in cases pending at the end of the year. A total of 580 cases were pending at the end of FY 2000, and 584 cases were pending at the end of FY 2001. This is very good news. The data shows a continued growth in the end-of-year pending inventory from FY 1992 to FY 1999. That growth stopped in FY 2000, also there was relatively no growth in FY 2001. The Commission does not believe that there is any need for additional staff in FY 2003. The Executive Director has been successful in recruiting very talented new staff members, who along with the excellent staff already on board should be able to expeditiously handle the case load of the agency absent any unforeseen increases

[1] 366 cases pending at the end of FY 1991 are added to 357 cases received in FY 1992 to get the total of 723 cases processed in FY 1992. 580 cases pending at the end of FY 2000 are added to 462 cases received in FY 2001 for a total of 1042 cases processed in FY 2001.
[2] 461 cases were received in FY 2000, and 462 cases were received in FY 2001.

in new cases. The aim is to reduce the pending inventory so that the new cases receive quicker attention and get resolved faster.

In FY 2001 the average number of days needed to resolve cases was 422 days, up from 411 days in FY 2000. We believe that the average number of days needed to resolve cases in FY 2002 will hover around 400 days also due to the age of the pending inventory. However, if the staff is able to reduce the pending inventory in FY 2002, the average time it takes to resolve cases will begin to decrease.

Housing Discrimination

The Board of Supervisors passed amendments to the County's Human Rights Ordinance in October 2000 designed to bring the Ordinance into substantial equivalency with the Virginia Fair Housing Act and the Federal Fair Housing Amendments Act. The Commission has partnered with the County Attorney in submitting the necessary information to the U. S. Department of Housing and Urban Development (HUD) seeking substantial equivalency certification. Upon receipt of this certification the County will have the opportunity to enter into a contract with HUD that will provide funds to the Commission to pay for processing fair housing cases that are jurisdictional with both the County and HUD. By the end of FY 2001 the County had not heard from HUD.

The Commission recently contracted for fair housing sales testing. A report to the Board of Supervisors is targeted for April 2002.

The Commission has issued a report on ***Source of Income Discrimination in Housing*** recommending that the Board of Supervisors seek the authority to amend the Ordinance to include protection against source of income discrimination as defined in the report. This recommendation has been returned to staff to provide further coordination among the housing stakeholders in the County, in order to gather more data.

Outreach Programs

In recent years the Fairfax County Human Rights Commissioners have continued their efforts to publicize the Human Rights Ordinance and the work of the Commission and to provide for a forum to discuss the issue of civil rights throughout the county. The Commission has made presentations at the County Fair, participated in a housing seminars, worked with diversity councils at local corporations and made presentations to affected communities both in person and on public access television. Among its major outreach programs in FY 2001, the Commission partnered with the Department of Information Technology and redesigned its web pages on the County's web site. Again, in FY 2001 the Commission successfully sponsored its annual human rights awards banquet and for the first time awarded a human rights award to a County agency. The Fairfax County Police Department received an award for its bias crimes protocol. The Commission believes that the Police Department is a national leader in this regard.

Sexual Orientation Discrimination

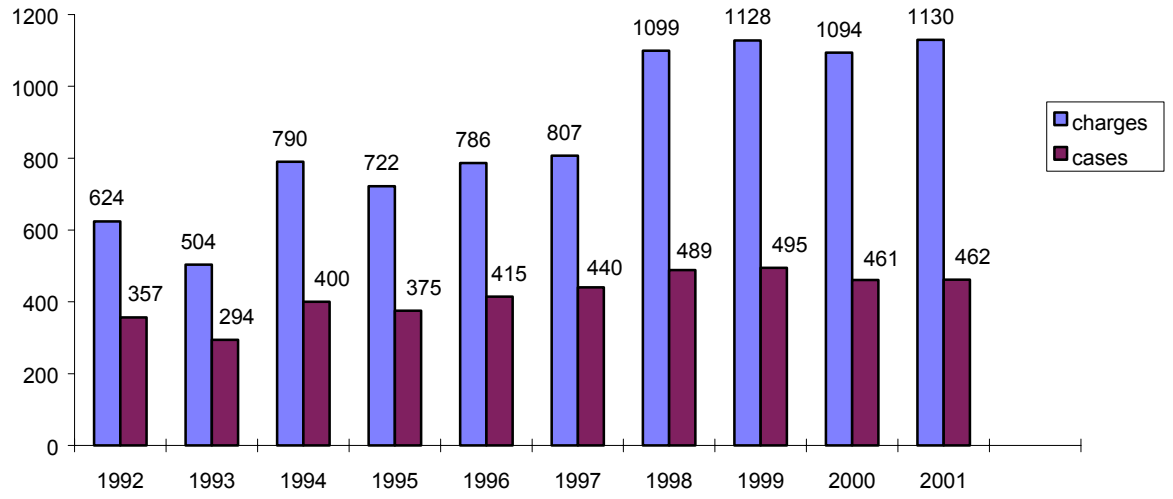
The Fairfax County Human Rights Ordinance does not currently provide protection against such discrimination in employment, housing, public accommodations, credit, or education. Individuals facing discrimination based on their actual or perceived sexual orientation at this time have no recourse, either at the county level or at the state or federal level. Virtually all other jurisdictions in the Washington metropolitan area now cover this class in their human rights statutes. Of all the local jurisdictions that have human rights laws, Fairfax County and Prince William County do not provide such coverage.

The Commission issued a report on Sexual Orientation Discrimination in May 2000 recommending amendment of our ordinance by adding protection against sexual orientation discrimination. This recommendation was adopted and SB 1147 was introduced in the Senate in January 2001 and subsequently defeated in Local Government Committee of the Senate. We request that the Board approve the re-introduction of similar legislation in the next legislative session.

SECTION I

Figure 1

CHARGES AND CASES RECEIVED

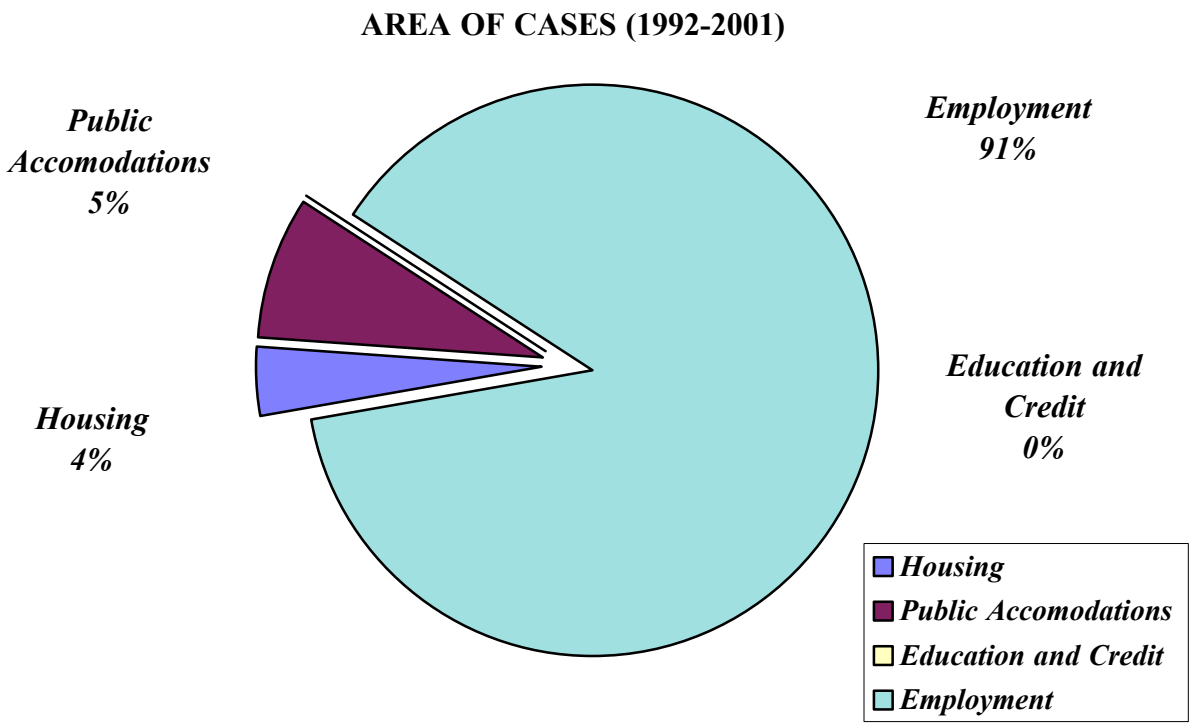


The general attitude of the slope of this graph is upward, with charges showing approximately a 2-to-1 ratio.[3] However, there has been a leveling out of new cases received in the last two years. The Commission had predicted receipt of 500 cases in FY 2001 but received 462. At this time, it

[3] A case may contain more than one allegation of a violation of the Ordinance. Each discrete allegation is referred to as a charge in this chart.

is difficult for us to tell if this is a trend in fewer new cases and what the reasons are for this decline. There are reductions in the number of employment cases in FY 2001 when compared to FY 2000. The number of housing cases rose from 17 in FY 2000 to 42 in FY 2001 largely due to our rental testing program. The number of public accommodations cases went down in FY 2001 when compared to FY 2000. In addition, the number of employment cases received has gone down three years in a row.

Figure 2



This chart depicts a breakdown of the major categories of cases received during the last decade. As you can see employment, comprising 91 percent of the total continues to be the principal concern among persons filing allegations of discrimination. Figures 3 through 5 reflect the actual numbers of cases in these relevant categories. One will note that employment cases declined in FY 2001 when compared to FY 2000 and housing cases increased. The increase of housing cases is directly attributed to the fair housing testing that the Commission conducted. The decline in employment cases is believed to be affected by the local economy which during FY 2001 continued to experience growth.

Figure 3

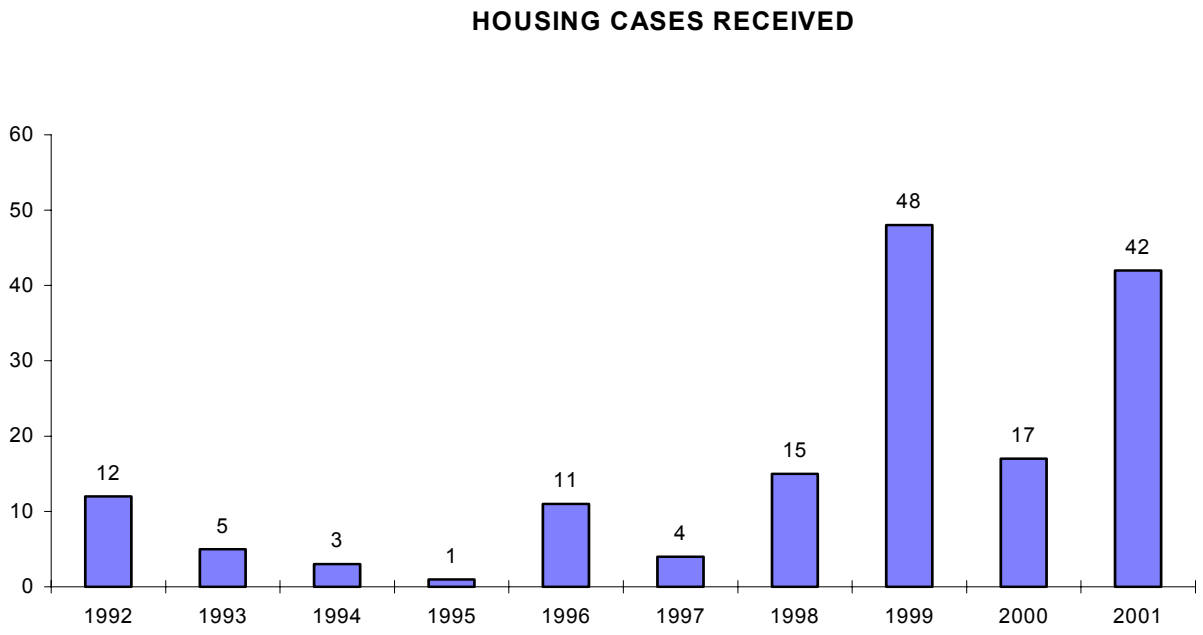


Figure 4

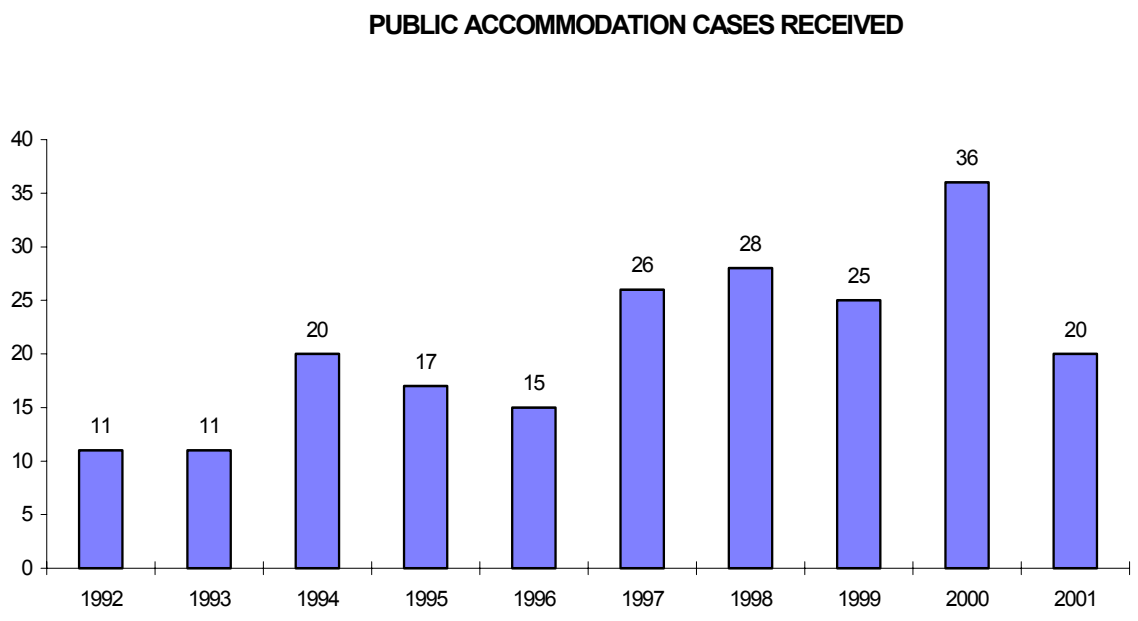


Figure 5

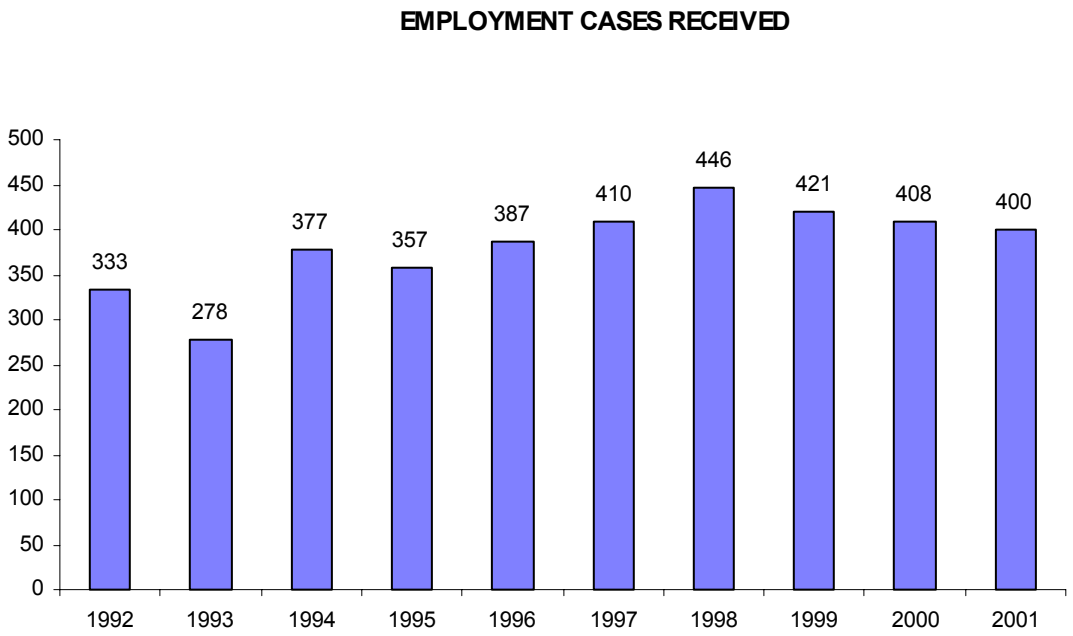
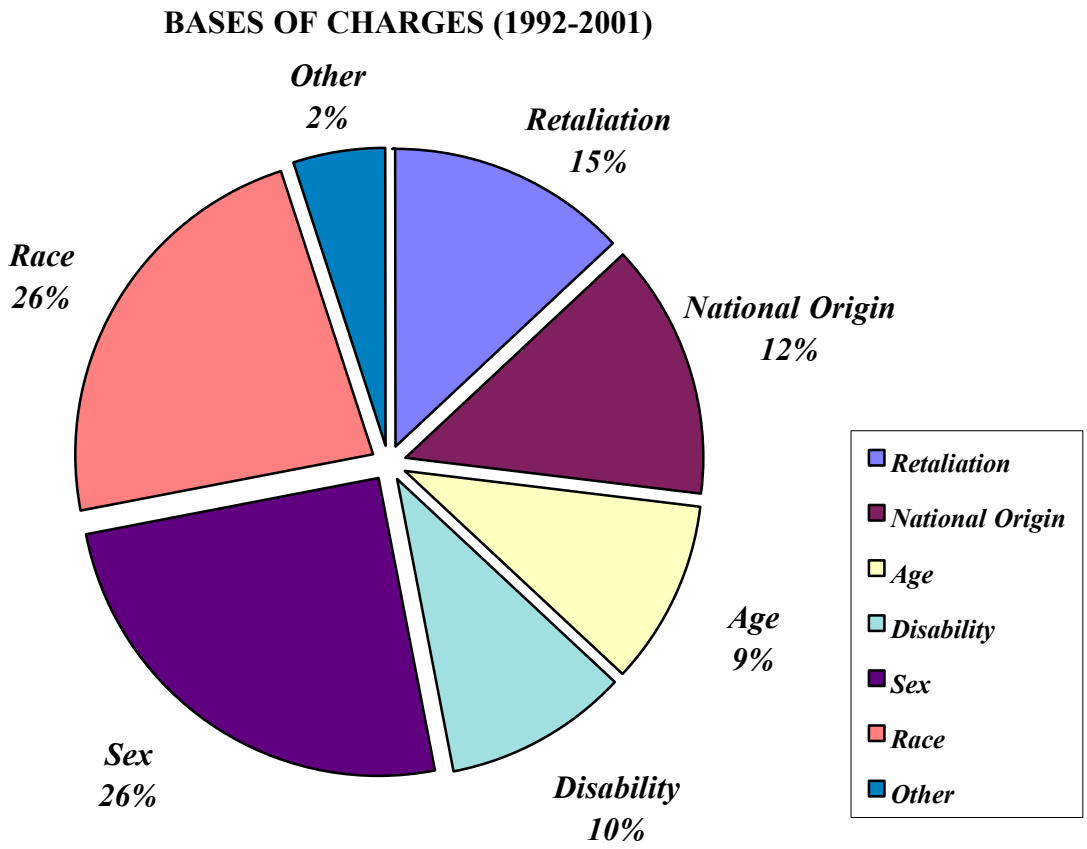

EMPLOYMENT CASES RECEIVED
500
450
400
350
300
250
200
150
100
50
0
333
278
377
357
387
410
446
421
408
400
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001

Figure 6



Among all of the charts and graphs in this report, Figure 6 tells the most compelling story of why individuals believe they are discriminated against.[4] The first conclusion is that persons are more likely to believe that they are discriminated against because of how they look and sound. This is supported by the groupings of charges filed under Race and National Origin, 26 percent and 12 percent respectively.

A second conclusion is that Sex is another major concern among complaints of discrimination, with 26 percent of the charges filed. By combining the numbers of cases which are distributed under these three prohibitive bases of discrimination, it appears that how individuals look and sound account for 64 percent of all charges.

The next most significant cluster of charges fall under the prohibitive bases of Retaliation at 15 percent. These charges are filed against respondents or their agents who take retaliatory actions against individuals who previously exercised their rights under the county ordinance, state law, or federal statute.

The following Figures 7-8-9-10-11, 12, and 13 show the actual numbers of charges filed under all the relevant bases of prohibitive discrimination.

[4] The category of "Other" bases in this chart includes familial status, marital status and religion.

Figure 7

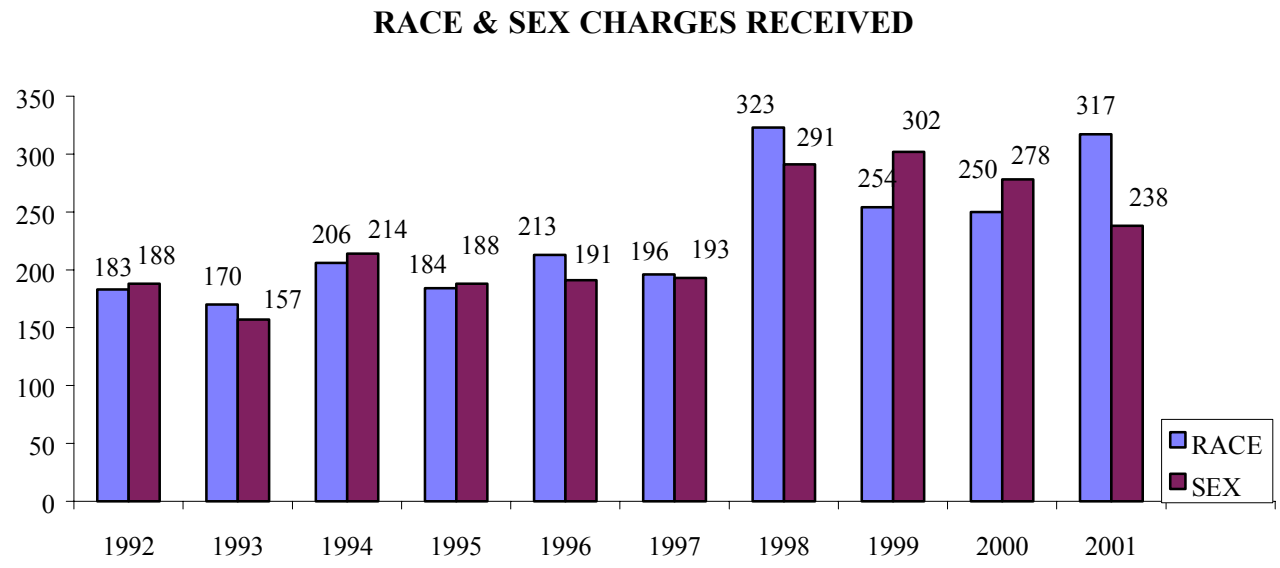


Figure 8

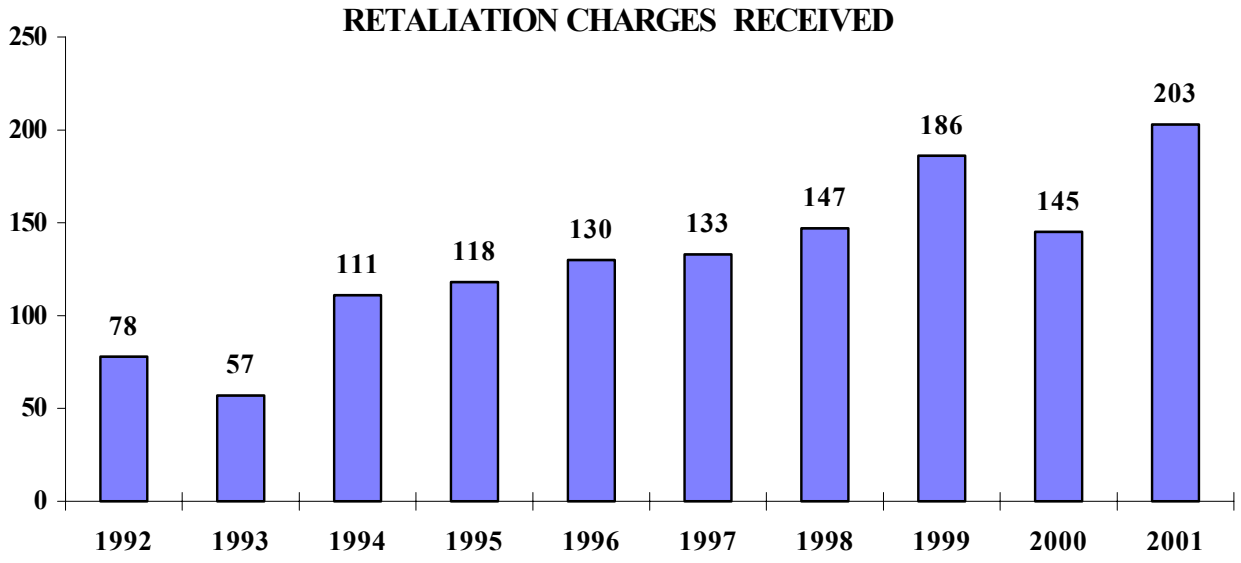


Figure 9

NATIONAL ORIGIN CHARGES RECEIVED

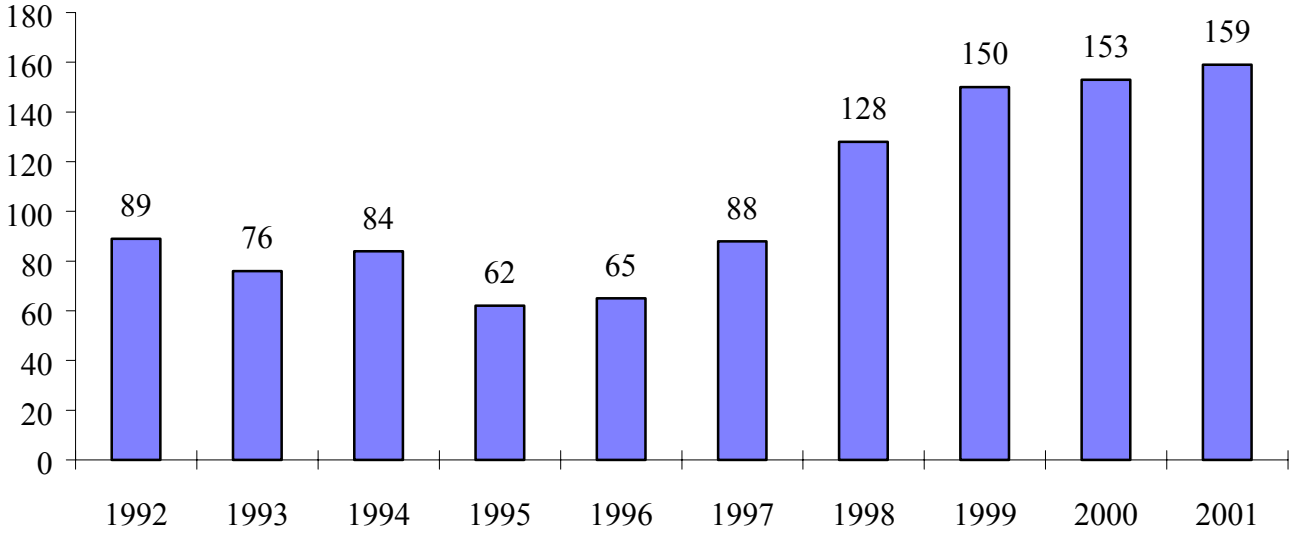


Figure 10

DISABILITY CHARGES RECEIVED

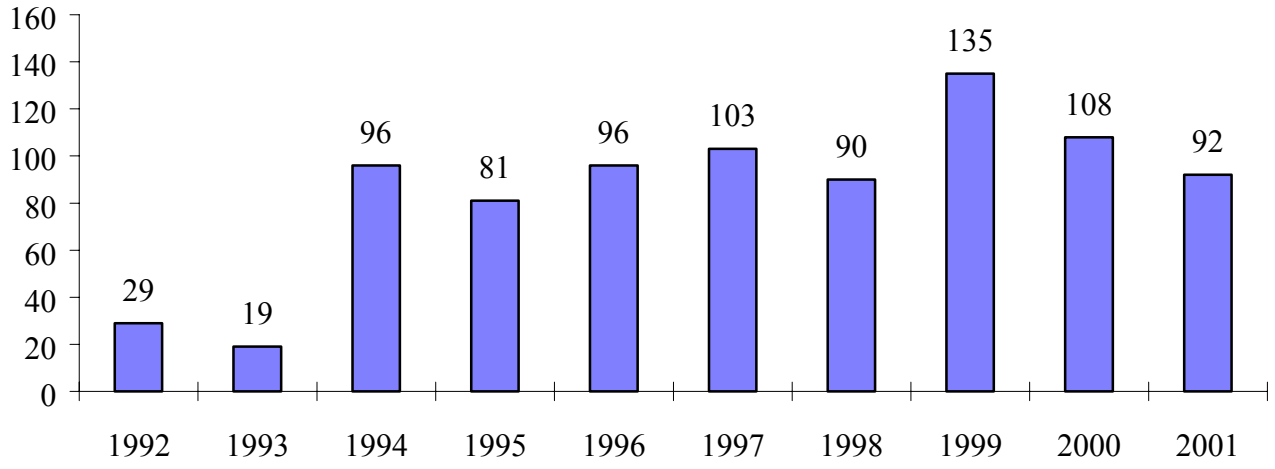


Figure 11

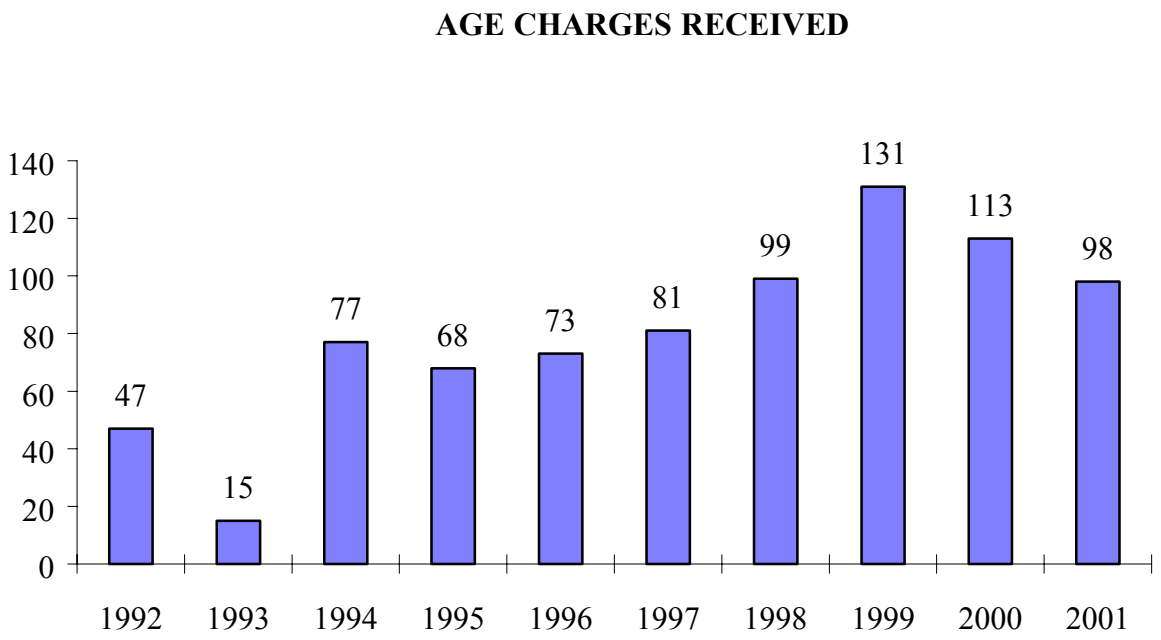


Figure 12

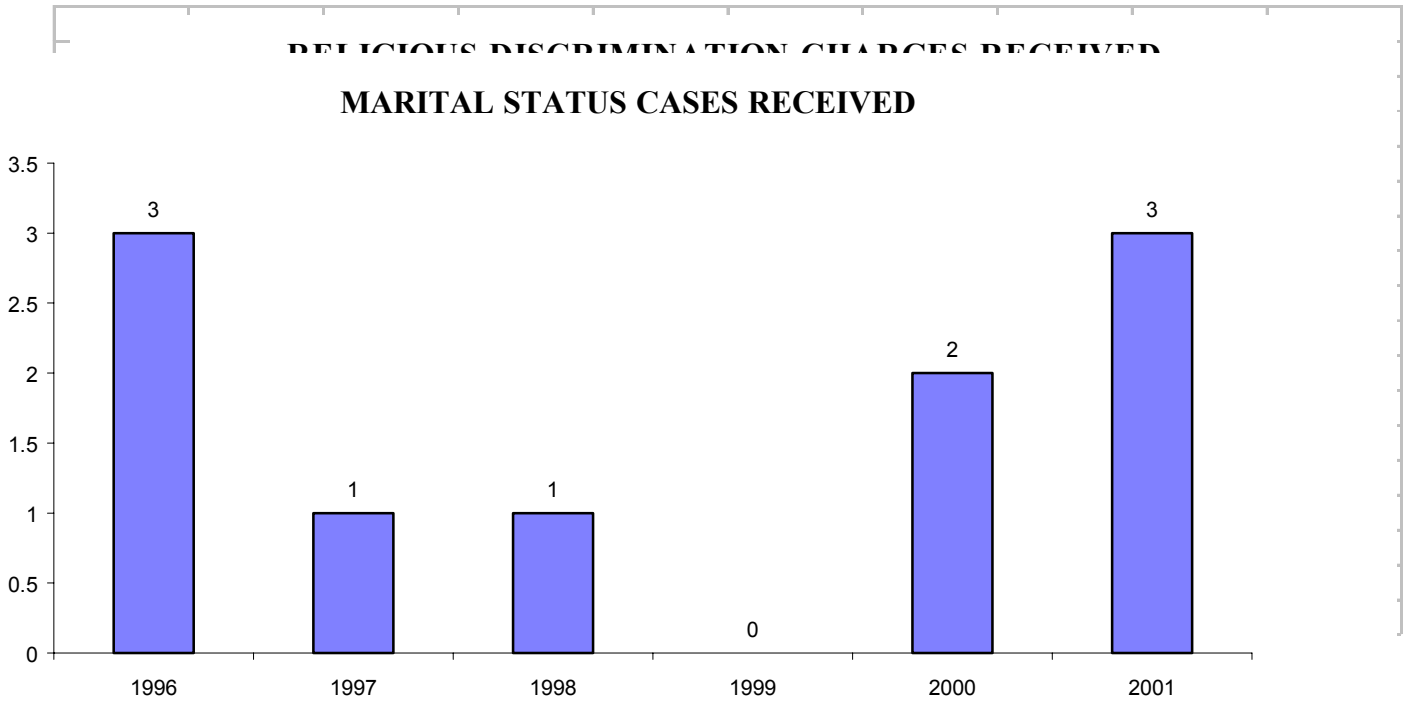
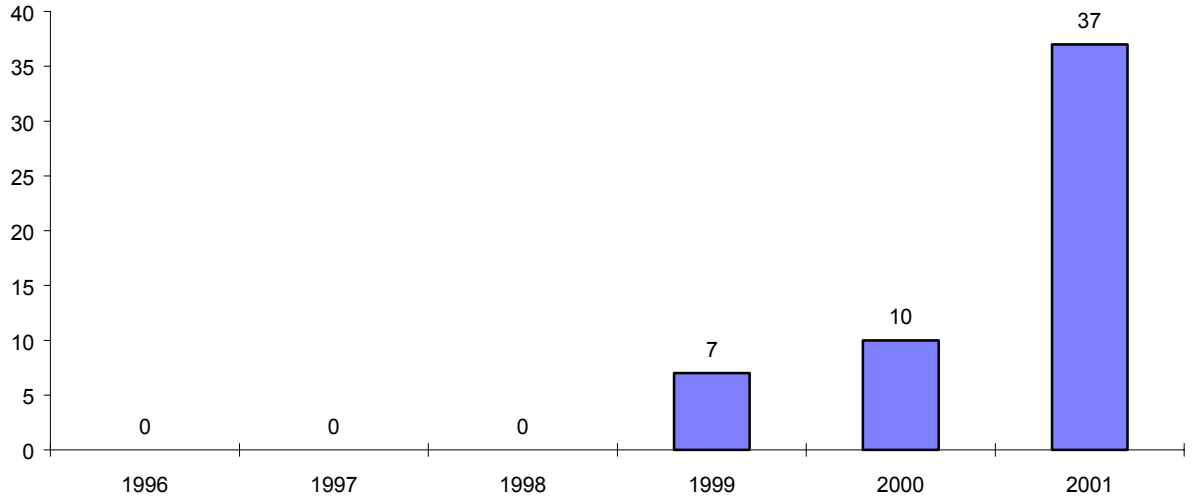


Figure 13

Figure 14

FAMILIAL STATUS CHARGES RECEIVED



Charges of race discrimination grew to the highest level in three years and nearly to the all time highest level. Charges of sex discrimination declined for the second year in a row. Retaliation charges rebounded from a one-year drop in FY 2000 to and all time high in FY 2001. National Origin charges grew to an all time high in FY 2001 as well. Charges of disability discrimination fell for the second year in a row in FY 2001, as did charges of age discrimination. Religious discrimination charges hit a ten year high in FY 2001. Although disability, age and national origin charges represent smaller percentages of the total charges received over the last ten years, their actual numbers reflect startling growth. Disability discrimination charges grew as much as 365 percent over the last 10 years, although they are down in FY 2001 to 92 from the all time high of 135 in FY 1999. Age discrimination charges grew as much as 178 percent, although they are down in FY 2001 as well. National origin charges grew 78 percent over the last 10 years. Sex discrimination charges grew as much as 60 percent and race charges grew as much as 65 percent during the last 10 years. Familial status charges apply to housing only and recently rose dramatically due in part to the results of the Commission's Fair Housing Testing results.

SECTION II

Thus far this report has focused upon how cases and charges are received into the process; how they are separated into the major areas of cases classification, and how they allocate themselves among various bases of prohibited discrimination. Next we will observe how the many cases and charges develop into workload, the disposition of the workload, and perhaps more importantly, the workload vis-a-vis staff resources.

Figure 15

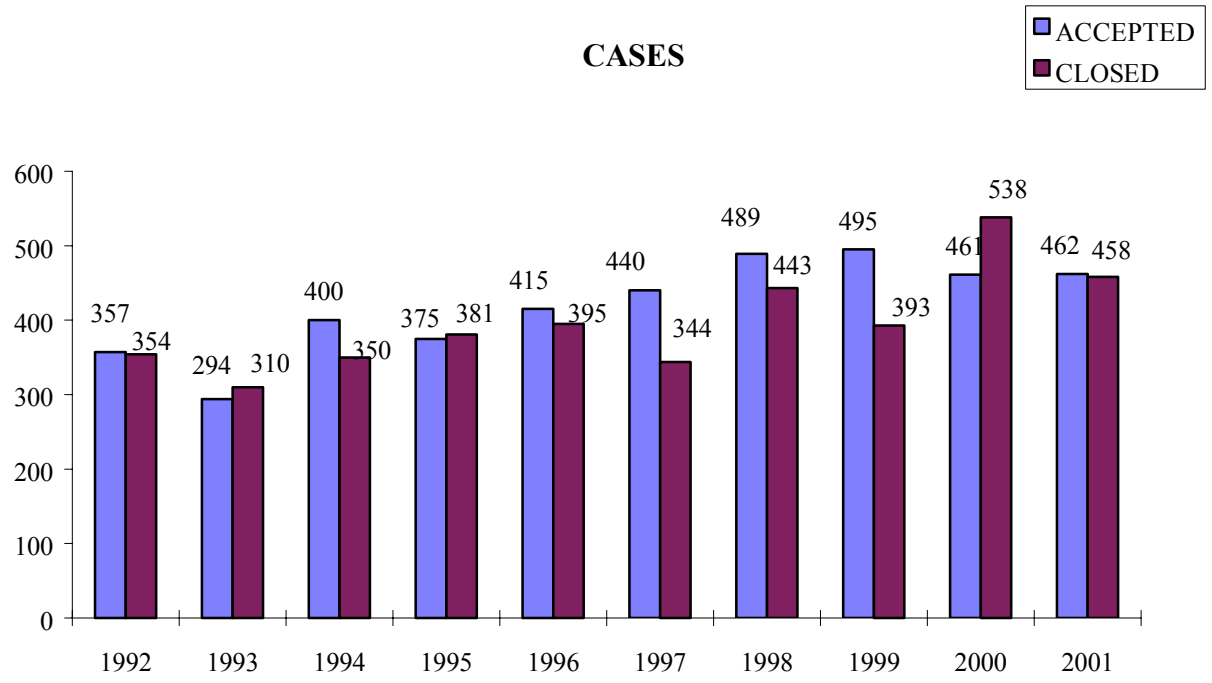


Figure 15 compares the numbers of new cases accepted by the Commission to the numbers of cases closed during the last ten years. As the numbers of cases increased, the staff management undertook a number of measures to increase the output of the staff investigators. In the process, the Executive Director set higher standards of performance and supported more productive employees.

It is significant to note here that the number of new cases accepted by the Commission each year began to decrease in FY 2000 for the first time in five years. In addition, the staff had a significant increase in the productivity of resolved cases. [5]

[5] In FY 2000 the staff increased its productivity of resolved cases by 37 percent when compared to FY 1999 and by 21 percent when compared to the previous most productive year in FY 1998.

Figure 16

CHARGES

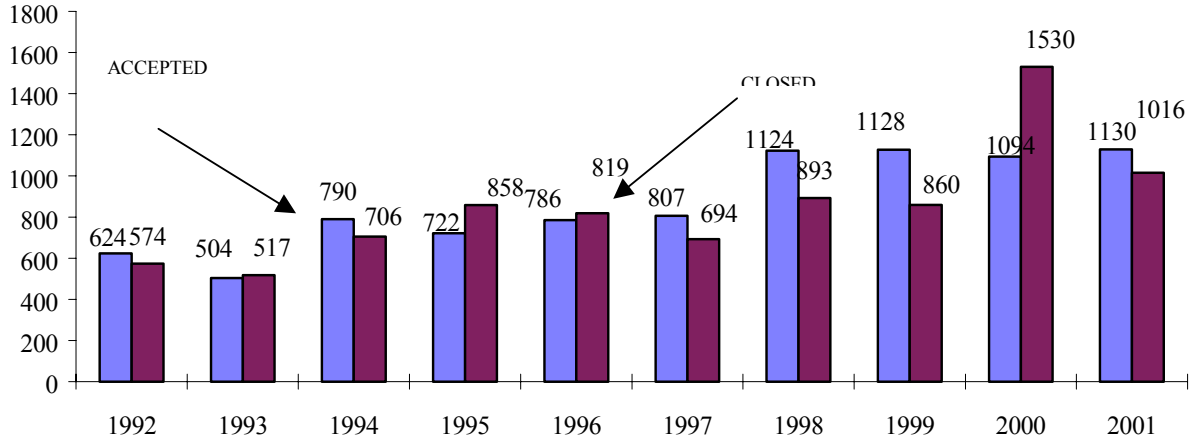
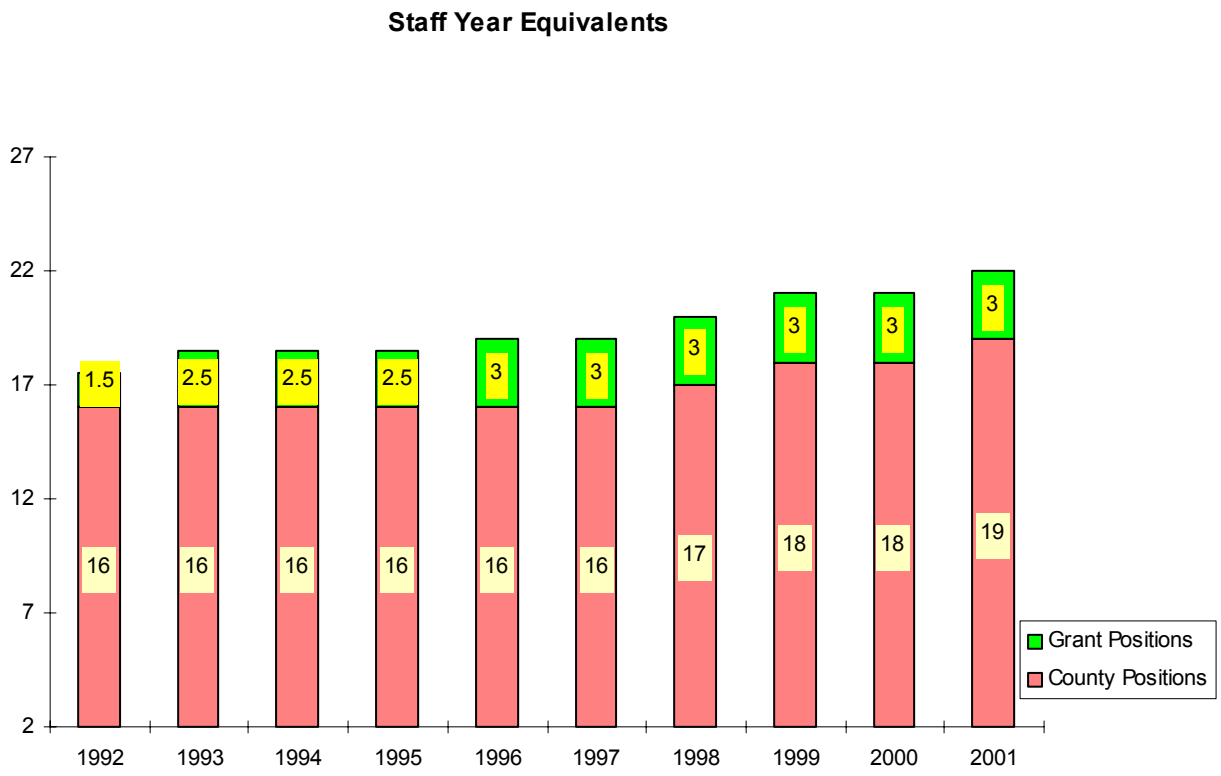


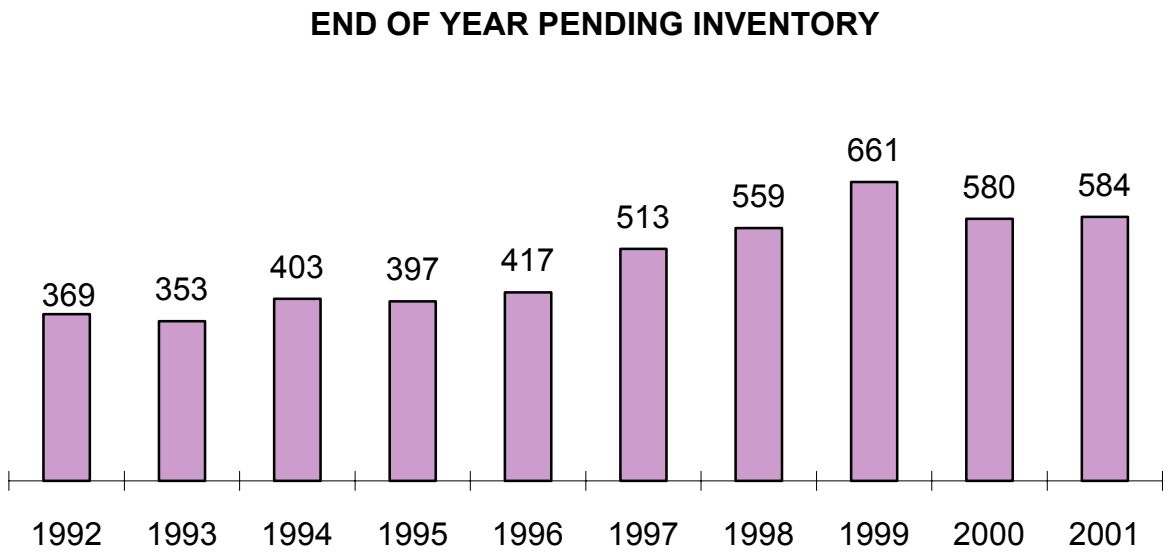
Figure 16 further depicts the disparity between the numbers of new charges accepted each year and those which are closed. It is not realistic to expect the difference to zero-out at the end of each year; however, because of the year-to-year disparity between the number of charges received and the number which exit the system, a substantial backlog remains. This is confirmed by a review of Figure 17, especially the years 1996 through 1999. In FY 2000 we see a reversal in that trend, and in FY 2001 the staff was able to keep the backlog from increasing too much in spite of a larger than anticipated staff turnover rate. The Commission anticipates that with the recent addition of new staff and without a large increase in intake this reversal will continue if we stay fully staffed.

Figure 17



A review of Figures 1, 15 and 16 graphically displays how the caseload has grown since 1992, Two full-time and one half time investigator positions have been added to the staff since 1992. One support staff position was added in 1993 and a fair housing program manager was added in FY 1998. This brings the total staff count to 22 full-time equivalents (18 full-time and 2 part-time County paid staff and 3 full-time persons paid from EEOC grant funds). In FY 2001 the Commission had 13 investigator positions, 4 support staff positions, 2 supervisor positions, one housing program manager, a deputy director and an executive director.

Figure 18



The number of new cases coming to the Commission for investigation decreased in FY 2000 for the first time in five years, yet the overall number of charges per case is increasing, adding complexity to the cases.[6] Additionally, the Commission's data show that at present the number of cases carried over from one year to the next exceeds the number of cases that the staff is capable of closing in a single year. However, we expect to receive 450 cases and close 500 cases in FY 2002. While this will be great progress in eliminating the size of the pending inventory at the end of the year it will take another year or two to see if we are making good progress in reducing the amount of time it takes to process a case. We need to decrease the number of cases pending at the end of the year to less than 400 in order to significantly decrease the amount of time the respondents and complainants wait to have their cases resolved. It may take the addition of another staff person to do this; however, the Commission wants to assess the situation throughout the next year to see if that is the case.

Although there are still resource concerns because of the unmet caseload needs, the Executive Director and staff have applied innovative methods and personal determination to process as many cases as possible and bring equity and relief to many individuals.[7] (See Figures 18-19 and 20.)

[6] In FY 1999 the Commission received 2.28 charges per case. In FY 2001 the Commission received 2.44 charges per case as compared to 1.57 charges per case received in FY 1991.
[7] The efforts of the staff have at times been heroic considering that two staff members died during the last five years.

Figure 19

In Figure 18 we see the numbers of persons who received money as part of the settlement of their cases.

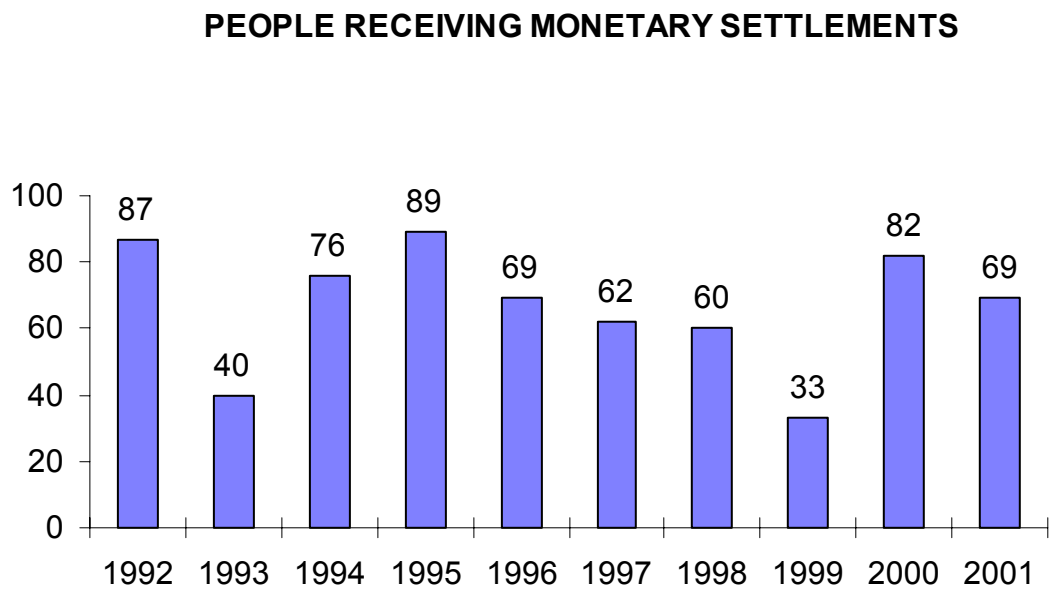
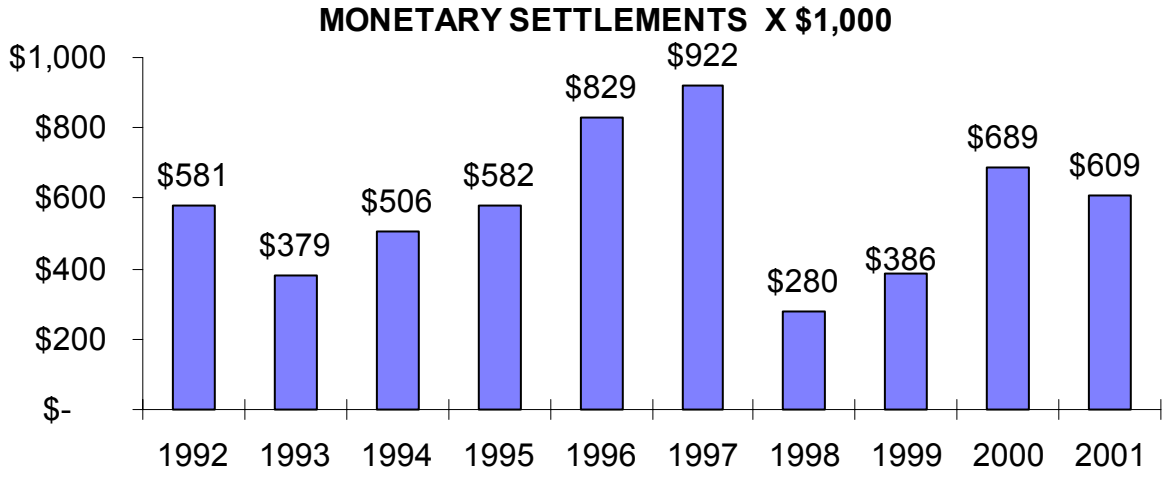


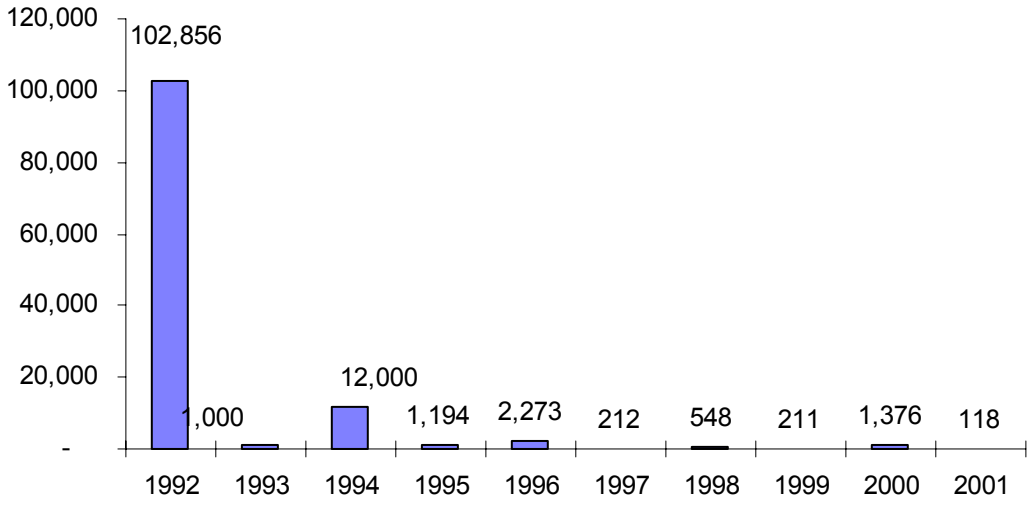
Figure 20



The largest monetary settlements in the last ten years occurred in a 1997 case involving race discrimination that was settled for $200,000, a 1997 sex discrimination and retaliation case that was settled for $175,000, and a 1992 case of age discrimination that was settled for $119,000. All three cases involved employment discrimination.

Figure 21

PEOPLE RECEIVING NON-MONETARY BENEFITS



When a case is settled, in addition to the relief granted to the complainant, settlement agreements often include a commitment on the part of the respondent to take some deliberate corrective action that has the effect of improving the environment for all of the employees in a company or tenants in an apartment complex, etc. The benefits resulting from these actions are non-monetary in nature. A corrective action may result in a simple policy change with regard to an employment practice that was found to be in violation of the ordinance. Another type of corrective action may involve training of the company's management personnel in matters relating to the kinds of employment decisions permitted under the law. Such actions are considered to affect all of the employees or tenants and improves fairness regarding the terms, conditions, and benefits of their employment or tenancy.

In FY 1992 we settled cases with national cinema chains that resulted in making all of the company's theaters accessible. The companies calculated that at least 100,000 people across the country benefited from the changes annually. Though these benefits still exist, we calculate the benefits for only one year.

APPEALS

The Fairfax County Human Rights Ordinance provides for an appeal process that allows a complainant who is not satisfied with the staff's decision to request that the decision be reviewed by the Commissioners. The appeal has always been available and well used, but the Commission has collected data on this process for only the last nine years. The staff preparation in support of scheduled appeals involves a significant amount of time, including overtime pay for the investigators attending the appeals. Because the numbers of appeals have increased significantly in the past few years, this part of the Commission's work is consuming an ever greater share of the available resources and deserves notice in this report.

During the appeal, complainants may be represented by counsel, but may choose to represent themselves. At this point the complainant has an opportunity to point out to the Commissioners why the evidence was misinterpreted or inappropriate or that there was some shortcoming in the investigation and that these factors adversely affected the outcome of the investigation.

	Appeals Scheduled	**Appeals Held**	**Percent of Scheduled**
1992	52	31	59.6%
1993	24	13	54.2%
1994	23	16	69.6%
1995	31	27	87.1%
1996	24	21	87.5%
1997	26	23	88.46%
1998	14	13	92.86%
1999	27	22	81.48%
2000	13	12	92.3%
2001	14	13	92.8%

Usually the Commission meets only twice per month, however during 1997, the Commission found it necessary to conduct three meetings per month for a period of three months in order to reduce the backlog of appeals, since it became necessary to devote one full meeting to general business matters. Additional meetings still take place when needed. Some scheduled appeals never take place because the complainant fails to show or the complainant withdraws the request for appeal prior to the date and time the appeal is to be heard. Also, appeals may be canceled because the complainant fails to respond to attempts of contact by the staff before the appeal is to be heard.

PUBLIC HEARINGS

Sections 11-1-11 through 11-1-13 of the Fairfax County Human Rights Ordinance provides for the holding of a public hearing in order to determine if there are reasonable grounds to believe that a violation of the ordinance has occurred. The public hearing is another area where the staff, the Commissioners and the Office of the County Attorney expend a significant portion of available resources in preparation, execution, debating, reaching a decision, and issuing findings and recommendations.

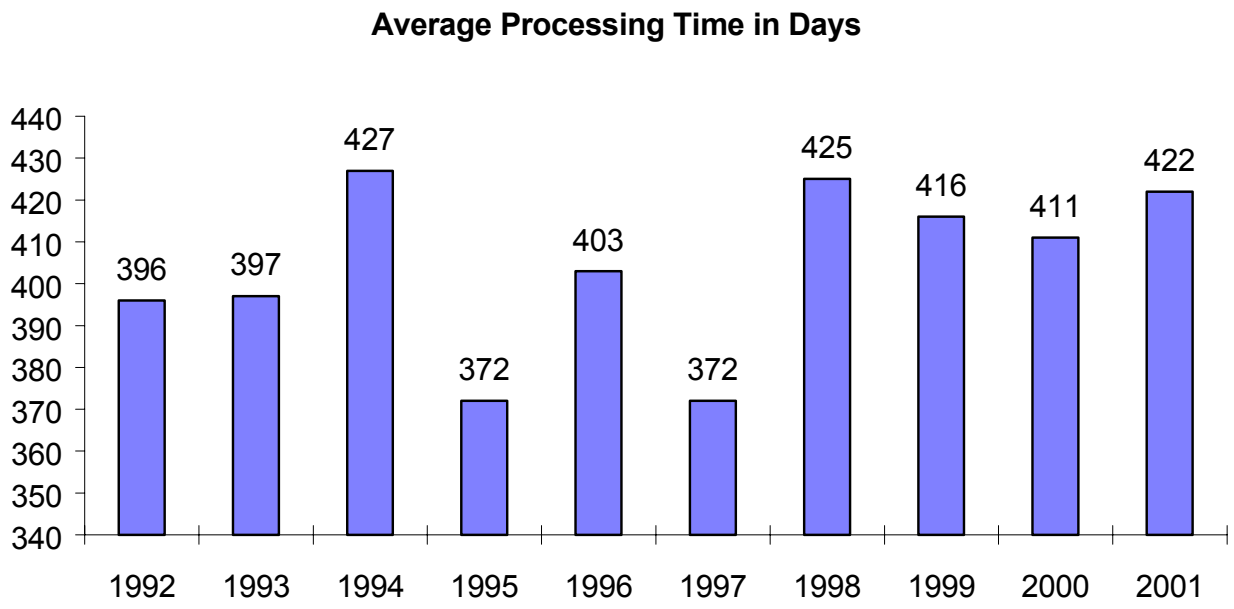
The public hearing is an investigative tool that the Commissioners use to determine the facts in a case that has not otherwise been resolved by staff action. The public hearing is a de novo process where both sides have an opportunity to present their evidence and witnesses to the Commissioners and to cross-examine the opposing witnesses. As a result of these hearings, the Commission issues a decision, and based on case law recommends a settlement of the case. When the case is not settled after a public hearing, the Commission may recommend that the Board of Supervisors pursue enforcement of the ordinance in the courts. Since 1994, there has only been one occasion when the Commission found it necessary to take this drastic step.

	Hearings	**Hearings**	**Percent of**

	Scheduled	Held	Scheduled
1992	2	0	0.0%
1993	10	3	30.0%
1994	11	7	63.6%
1995	9	6	66.7%
1996	11	5	45.5%
1997	2	0	0.0%
1998	5	4	80.0%
1999	1	0	0.0%
2000	0	0	0.0%
2001	0	0	0.0%

Many times, after a public hearing is scheduled and advertised and before it actually occurs, the parties will reach a settlement.

Figure 22



Finally, after all of the staff and management efforts over the years to minimize case processing time, the average number of days it takes to completely process a case through the investigative procedures rose to and remained around the 400 day mark since 1989. The longer it takes to conclude an investigation, the less value there is to the service the County provides for the respondents and complainants. The Commission projects that the average number of days it takes to process a case will hover around 400 – 425 days in FY 2003. However, if the staff continues to close more cases than are received each year during FY 2002 and FY 2003, the amount of time it takes to process cases should fall sharply in FY 2003 and beyond, due to the reduction, in the number of pending cases carried forward into the next year.

As this report shows, allegations of discrimination are not going away. The need to investigate and resolve them efficiently according to law is paramount to a society that values equal opportunity.