

# SPECTRUM

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*Liberty does not consist in mere declarations of the rights of man. It consists in the translation of those declarations into definite actions.*

## From the Executive Director's Chair

The new year is upon us and the Commission certainly wants to continue the great progress it has made over the last several years with the reduction in open cases and waiting time. We also want to continue the progress of keeping the staff current in specific training techniques in order to keep abreast of the kind of discrimination the agency receives in complaints. The complaints being received now are more diverse in nature; the issues are no longer simple. Because the complaints are more complex, continual staff training is necessary to investigate the kinds of allegations being made.

With the Legislature in session, we also need to relate the Commission's work to the oversight committee so that they are acquainted with the Commission's work and budgetary needs. KHRC's great success in this area over the last few years has helped the agency reach the level of praise it has garnered from the public, the Administration, and the Legislature.

Recent vacancies on the Commission Board have been filled with two new appointments made by the Governor's office, Errol Williams from Topeka and Deborah Wheeler from Emporia.



*William V. Minner,  
KHRC Executive Director*

I am pleased to comment on the harmonious relationship that the Commissioners, as a body, have experienced over the last several years. This relationship reflects the high professionalism and standards of the agency and its commitment to its mission and to the people of the State of Kansas.

The Kansas Human Rights Com-



## New Commissioners Appointed to KHRC

On November 16, 2000 Governor Graves appointed Errol Williams of Topeka as the new Commissioner representing one of the two statutory Commission positions for industry. Mr. Williams replaces Robert Lay who relocated to

Oregon.

Deborah Wheeler of Emporia was appointed on December 21, 2000 as the other industry representative. She replaces Onofre Astorga of Dodge City.

## COMMISSION MEETING

The Kansas Human Rights Commission meets monthly at various locations throughout the state. Commission meetings are open to the public and individuals interested in attending may obtain more information by contacting the Commission's main office.



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## KHRC COMMISSIONERS

**ROBERT A. WESLEY**  
Chairman

*Real Estate, Independence*

**JAMES E. BUTLER**  
Vice Chairman

*At Large, Manhattan*

**DEBORAH WHEELER**  
*Industry, Emporia*

**BRENDA C. JONES**  
*Labor, Kansas City*

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*Law, Topeka*

**BETH BRADRICK, Ph.D.**  
*Labor, Pittsburg*

**ERROL WILLIAMS**  
*Industry, Topeka*



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## Assistant Director Celebrates Tenure with the State

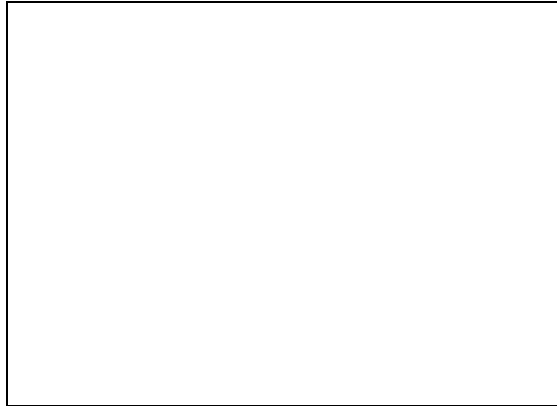
A KHRC staff member recently celebrated his tenure with the State of Kansas. Robert "Mike" Hollar has been with the State for a total of ten years. Mike has been Assistant Director of the KHRC for 2 1/2 years. He was awarded an anniversary pin and a certificate of appreciation by the KHRC Commissioners at their November meeting.



*KHRC Commission Chairman Robert A. Wesley congratulates Assistant Director Mike Hollar.*

# Investigators Acknowledged for Achievements

Special Investigators Vamba Nzwilli, Bill Wright, and Kathy Prochazka were honored by the KHRC Commissioners for their achievement in the number of closed cases they have garnered in the past year. In a ceremony during the October KHRC Commission meeting, the Investigators received award certificates to acknowledge their hard work. In addition, the three were sent to Florida in October to the National Association of Human Rights Worker's annual conference. In recent years, the KHRC has reduced its case load significantly from an all-time high reported in March 1995.



*Pictured are Chairman Robert A. Wesley, Investigators Bill Wright & Vamba Nzwilli, Vice-Chairman James E. Butler and Executive Director William V. Minner. Not pictured, Kathy Prochazka.*

## Pretext Significant Issue in Reeves vs.

*By Barbara Scott Girard, Staff Attorney*

On June 12, 2000, a unanimous U.S. Supreme Court reversed a U.S. Court of Appeals for the Fifth Circuit ruling, which overturned a jury's verdict in favor of an age discrimination plaintiff. Justice O'Connor's decision in *Reeves v. Sanderson Plumbing Products, 120 S. Ct. 2097 (2000)*, re-adopted prior Supreme Court precedents on the burden of proof standards in discrimination cases.

### **Facts**

In the *Reeves* case, Mr. Reeves was a 57-year-old supervisor who had 40 years of seniority with the company. Reeves and two other supervisors (a 45-year old manager and mid-thirties supervisor) were in charge of the "Hinge Room." The manager informed the Director of Manufacturing, who was married to the company President, that production was down because employees were often absent, arriving late, and leaving early. After a review of time records demonstrated that there were no problems with attendance, the Director ordered an audit. The audit disclosed a number of timekeeping errors and alleged handwritten misrepresentations. The Director of Manufacturing, together with other upper level officers of the company, recommended that both the plaintiff and his 45-year old manager, but not the younger supervisor be terminated for falsification of records. The

Court noted that the defendant's evidence revealed that two years earlier, Reeves had been placed on 90-day probation for unsatisfactory performance after an audit disclosed a "very lax assembly line."

### **Supreme Court Decision and Rationale**

In reversing the Fifth Circuit, the Supreme Court held: "The Court of Appeals impermissibly substituted its judgment concerning the weight of the evidence for the jury's." The Court opined that a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit, but does not require, the "trier of fact to conclude that the employer unlawfully discriminated." In reaching this conclusion, Justice O'Connor reaffirmed the shifting inferences and burdens that the Supreme Court has previously found applicable in discrimination cases. She assumed, but did not decide definitively (because the issue was not briefed by the parties), that the prima facie case set out in the Court's opinion in *McDonnell Douglas v. Green, 411 U.S. 792 (1973)*, is applicable to claims under the ADEA.

Once a plaintiff has made a showing--which many circuit courts have described as being a low threshold--the defendant must provide a legiti-

*Change is the law of life. And those who look only to the past or the present are certain to miss the future.*

**John F. Kennedy**

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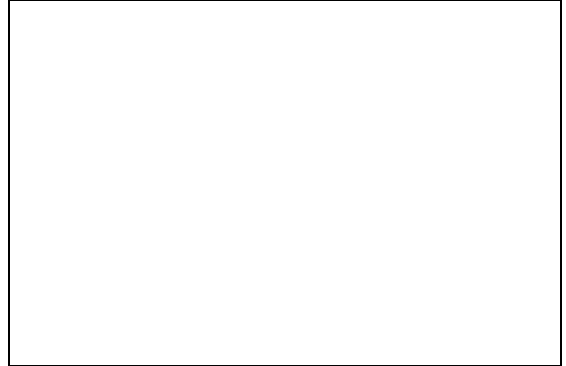
# Senators & Staff Honored at Commission Meeting

By Caryl Hines, Secretary to the Director

At the December 15 Commission Meeting two retiring Kansas senators were honored by the Kansas Human Rights Commission and were given plaques in appreciation of their support of the agency during their tenures in the legislature. Vice-Chairman James Butler made the first presentation to Senator Sherman Jones from Kansas City, saying that Senator Jones carried out his duties in a distinguished manner. Senator Jones remarked that with his retirement all is by no means final, that he will find something to do, "if I have to buy a horse and ride off into the sunset."

Executive Director Bill Minner made the presentation to Senator Tim Emert from Independence, highlighting his legislative accomplishments and saying that his replacement "had some big shoes to fill". Senator Emert commented, "I sincerely believe, that in the eight years I've been in the legislature, that no organization has come so far. . . everybody in this room has done a magnificent job. . ."

Executive Director Minner also presented Chief Legal Counsel Brandon Myers



*Executive Director William V. Minner honors Chief Legal Counsel Brandon Myers for his many years of service with the State of Kansas.*

a certificate and pin for his over 20 years of state service, calling him "the glue that holds us together." In addition, Chief Legal Counsel Myers was recognized by former Executive Director/Commissioner Robert Lay (by way of letter) for his excellence and dedication.

Following the presentations, Judy Krueger, Secretary of Appointments from the Governor's office, brought greetings from the Governor. She said, "We are very proud of all of you, you've done a remarkable job. You have a great agency." She also acknowledged that this meeting was Commissioner Onofre Astorga's last, as he

*Hold fast to  
dreams for if  
dreams die, life  
is a broken  
winged bird that  
cannot fly.*

**Langston  
Hughes**



*Senator Tim Emert with KHRC Executive Director William V. Minner.*



*Senator Sherman Jones with KHRC Vice-Chairman James E. Butler.*

# Pretext in Reeves vs. Sanderson

(Continued from page 3)

mate, nondiscriminatory reason for the employment action taken. The burden then shifts back to the plaintiff to show that the employer's justification for the adverse employment action was pretextual. *Community Affairs v. Burdine*, 450 U.S. 248, 254, 101 S. Ct. 1089 (1981). However, in large part due to the Supreme Court's cryptic analysis of the McDonnell Douglas test in its 1993 decision in *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742 (1993), the circuit courts have disagreed over how to apply this final step in the burden-shifting analysis. The Court's decision in *Reeves*, without explicitly referring to either of these two approaches by name, resolved the conflict by adopting the "pretext only" standard.

Having found that the three replacements for Reeves were all in their thirties, the Supreme Court held that the prima facie case had been established, and that the burden of production, but not persuasion, then shifted to the employer, who must state a legitimate non-discriminatory reason for its discharge decision. Justice O'Connor found that Sanderson Plumbing indeed met its burden by producing evidence sufficient for a jury to determine that the discharge was due to inaccurate attendance records.

Reeves then had the ultimate burden to prove discrimination. In order to meet this burden, he had to establish that the proffered rationale was a pretext for discrimination "by showing that the employer's proffered explanation is unworthy of credence." In its ruling on this point, the Court reaffirmed its decision in *St. Mary's Honor Center v. Hicks*, 509 U.S. 505 (1993), that rejection of the employer's proffered explanation does not compel judgment for the plaintiff because the ultimate question is the existence of discrimination, and disbelief of the employer does not necessarily prove discrimination. However, it is certainly permissible for the trier of fact to conclude that there was discrimination if it disbelieves the stated rationale for the decision. The Supreme Court held that proof that the employer's proffered rationale should not be believed can be "quite persuasive" in establishing a "cover up" for a discriminatory purpose.

## Importance of Reeves

The Reeves decision effectively overruled lower courts that applied the "pretext-plus" standard. Consequently, the decision may place employers in a precarious position when the plaintiff

has shown that the employers' proffered reason is false, but where such reason may have been offered to disguise a reason that is nondiscriminatory yet "unbecoming or small-minded, such as back-scratching, log-rolling, horse-trading, institutional politics, envy, nepotism, spite or personal hostility."

The Court's decision in *Reeves* may have significant legal consequences for both employees and employers. Employees will no longer be required to provide independent evidence of discrimination to survive motions for dismissal, which means they can take their case to a jury and not let a judge decide it. Employees may now attempt to sharpen the fact-finder's focus on whether the employer was being "candid" in the reason it gave for the adverse employment action. Even if the plaintiff's case is submitted to the jury, the plaintiff still bears the ultimate burden of showing both that the employer's explanation was false and that discrimination was the real reason for the employment action. Accordingly, simply casting doubt on an employer's legitimate, nondiscriminatory reason will not, in most circumstances, be enough for a plaintiff to prevail before a jury.

The Reeves decision will likely lead lower courts to become more stringent when considering whether to grant summary judgment in discrimination litigation. The ultimate issue in discrimination lawsuits is the decision-maker's motive, which suggests a relatively easy burden for plaintiffs to proffer some evidence that the articulated reasons for the decision were pretextual. Once this minimal showing is made at the summary judgment stage of litigation, the jury should resolve the ultimate issue of discrimination. In other words, some legal scholars believe that the Reeves decision will mean that more employers will have to go to trial and let the jury decide an employment discrimination case.



*The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.*

**Martin Luther King, Jr.**

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We're on the web!  
[www.ink.org/public/khrc](http://www.ink.org/public/khrc)

*Eternal Vigilance is the Price of Freedom.*



*February is Black History Month...*

## **The Life of Frederick Douglass**

Born into slavery, Frederick Douglass lived to become one of the most influential figures in African American history. As a young man and a slave in Maryland, Frederick Douglass was recognized as a bright young man by both blacks and whites. During his life as a slave in Baltimore he learned to read and write and passed his knowledge along to other blacks in Baltimore. Douglass is remembered as a great speaker. His speaking abilities were developed in the secret debating club called the East Baltimore Mental Improvement Society.

He escaped from slavery to New Bedford, Massachusetts in 1838. There he discovered the newspaper of the leading white abolitionist William Lloyd Garrison, *The Liberator*. Because of his speaking ability, Douglass soon became the major drawing card at meetings of the abolitionist society.

From 1845 to 1847, Douglas would travel in Great Britain speaking for the elimination of slavery. While in Britain he expanded his view of the struggle for human rights. In 1846 he wrote to Garrison, "I cannot allow myself to be insensitive to the wrongs and sufferings of any part of the great family of man [sic]."

During the Civil War Frederick Douglass worked as an enlistment officer and encouraged President Lincoln to make Emancipation an issue in the Civil War. Following the war Douglass would work for the Freedman's Bureau, the Freedman Bank and hold various government appointments including minister to Haiti and US marshal for the District of Columbia.

*A Black History Profile from Brightmoments.com. Complete biography available at <http://www.brightmoments.com/>*