

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-825

TITLE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Petitioner
v. SHELL OIL COMPANY

PLACE Washington, D. C.

DATE October 31, 1983

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WASHINGTON, D.C. 20001

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 EQUAL EMPLOYMENT OPPORTUNITY :

4 COMMISSION :

5 Petitioners : No. 82-825

6 v :

7 SHELL OIL COMPANY :

8 - - - - - x

9 Washington, D.C.

10 Monday, October 31, 1983

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 11:03 a.m.

14 APPEARANCES:

15 RICHARD G. WILKINS, ESQ., Office of the Solicitor

16 General, Department of Justice, Washington, D.C., on
17 behalf of the Petitioner.

18 ROBERT E. WILLIAMS, ESQ., Washington, D.C.; on behalf of
19 the Respondent.

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: Mr. Wilkins, I think
3 you may proceed whenever you are ready.

4 ORAL ARGUMENT OF RICHARD G. WILKINS, ESQ.

5 ON BEHALF OF THE PETITIONER

6 MR. WILKINS: Thank you, Mr. Chief Justice,
7 and may it please the Court.

8 Three terms ago this Court concluded in
9 Federal Trade Commission versus Standard Oil Company of
10 California that an administrative complaint should not
11 be subjected to routine judicial review to determine
12 whether it had been properly issued because such review
13 necessarily resulted in undue delay in the resolution of
14 the administrative proceeding, improperly subjected or
15 rendered the prosecuting agency the Defendant at the
16 very outset of its proceeding, and in the end resulted
17 in unnecessary and piecemeal appellate review.

18 Although this case arises in a somewhat
19 different context, it presents a very similar issue,
20 that is, whether there must be a trial and a consequent
21 judicious or appellate review, with all the attendant
22 delays, of the question whether or not a complaint under
23 Title VII of the Civil Rights Act of 1964 has been
24 properly issued. The practical considerations that
25 compelled this Court's result in the SOCAL case requires

1 similar result here.

2 QUESTION: Mr. Wilkins, you say that one of
3 the issues here is whether there must be a trial. Even
4 in the days before the Federal Rules of Civil Procedure
5 were adopted and complaints were held to a fairly strict
6 standard of pleading facts, I don't think there ever
7 were trials with witnesses called.

8 MR. WILKINS: I misspoke. I meant some sort
9 of a hearing, some sort of judicial probing into those
10 facts.

11 On October 16, 1979, Eleanor Holmes North, who
12 was then Chair of the Equal Employment Opportunity
13 Commission, issued a sworn Commissioner's complaint
14 against the Respondent, Shell Oil Company, alleging
15 unlawful employment practices of Shell's Wood River,
16 Illinois, Refinery.

17 Commissioner Norton stated that she had cause
18 to believe that the Respondent had unlawfully excluded
19 Blacks from managerial, professional, technical, office
20 clerical craft, and service worker positions, and had
21 similarly excluded women from managerial, professional,
22 technical craft, operative labor, and service worker
23 positions. A copy of the charge was duly filed on the
24 Respondent, and it was subsequently amended to state
25 that Commissioner Norton had reason to believe that the

1 acts had occurred on a continuing basis since at least
2 July 1965.

3 The Commission then began an investigation to
4 determine whether there was reasonable cause to support
5 the allegations of Commissioner Norton's complaint. The
6 Commission, pursuant to Section 709(a) of the Act,
7 requested the Respondent to provide certain employment
8 information.

9 The Respondent, on the basis of its own
10 statistical analysis, refused, arguing that its
11 employment practices did not -- "were clearly not the
12 profile anticipated for a Commissioner's charge."

13 After informal methods of administrative
14 investigation failed, the Commission filed a subpoena
15 pursuant to Section 710, and the Respondent filed this
16 action to squash the subpoena and enjoy the Commission's
17 investigation. The Respondent argued that Commissioner
18 Norton had not shown sufficient facts to form a basis
19 for her allegations of discrimination.

20 The District Court dismissed these factual
21 specificity arguments as meritless and enforced the
22 Commission's subpoena. On appeal, the Eighth Circuit
23 reversed, however, finding that there was indeed
24 insufficient factual basis to support the charge.

25 On denial of a hearing en banc, Chief Judge

1 Lay of the Eighth District dissented, stating that the
2 decision placed the circuit in direct conflict with the
3 decisions of all other courts of appeal addressing the
4 issue of factual allegations in a Title VII charge.

5 QUESTION: Was he alone in the dissent?

6 MR. WILKINS: He was alone in the dissent as
7 far as I am aware.

8 As noted by Chief Judge Lay, the single most
9 significant characteristic of the decision below is that
10 it does fly in the face of previously uniform precedent
11 rejecting any factual pleading requirement for Title VII
12 charges. Indeed, since the decision below was rendered,
13 two additional courts of appeals have looked at the
14 question and have concluded that the factual pleading
15 requirement created by the court below is inappropriate
16 and is not in conformity with the Title VII enforcement
17 scheme.

18 This Court has recognized that Title VII
19 creates an integrated, multi-step enforcement procedure
20 culminating in the Commission's authority to bring an
21 enforcement action in Federal Court.

22 QUESTION: Mr. Wilkins, I think that the
23 Eighth Circuit relied on a particular provision of the
24 Civil Rights Act, did it not?

25 MR. WILKINS: Exactly. Section 707 of the

1 Civil Rights Act authorizes the Commission to --
2 authorizes a member of the Commission to file a
3 complaint based upon a suspected pattern or practice of
4 discrimination. Section 706(b) requires that that
5 charge be in writing, under oath or affirmation, and
6 contain such information and be in such form as the
7 Commission requires. Section 706(b) also requires that
8 within ten days, the Commission serve a copy or a notice
9 of the charge on the Respondent containing the date,
10 place and circumstances of the alleged --

11 QUESTION: And it was that last language that
12 you mention now that the Eighth Circuit relied on,
13 wasn't it?

14 MR. WILKINS: Exactly.

15 But the purpose of a charge, and the purpose
16 of the notice of the charge under Section 706(b) have
17 quite discrete and limited functions. The charge does
18 not begin in any sort of formal enforcement action. It
19 does not have, in the words of this Court's prior
20 decisions involving similar issues, "It does not have
21 determinative consequences on the Respondent.

22 QUESTION: What has that got to do with the
23 definition of the terms, date, place, and circumstances
24 that Congress put in the Act.

25 MR. WILKINS: You have to look at what purpose

1 Congress intended that notice provision to serve. As we
2 explain in some detail in our brief, prior to 1972, when
3 that provision was added to the Act, the Commission, to
4 prevent retaliation against complaining parties,
5 developed a practice or adopted a practice of not
6 serving a notice of the charge or a copy of the charge
7 on the Respondent until Commission staff was available
8 to begin investigation.

9 Congress was concerned in 1972 that this
10 practice resulted in some delay between the time that
11 the charge was filed and the time the Respondent was
12 aware that the charge was indeed pending. So it adopted
13 this notice provision to ensure that, in the words of
14 the legislative report, "they would have fair notice
15 that charges were pending against them."

16 QUESTION: They defined "fair notice" as
17 including the date, place, and circumstances, didn't
18 they?

19 MR. WILKINS: Yes, and this charge fully
20 complied with that requirement. The charge in this case
21 informed the Respondent that a Commission of the EEOC
22 had reason to believe that it discriminated against
23 Blacks by excluding them from six specifically
24 designated job categories, and women from seven
25 specifically designated job categories since at least

1 July 1965. It gave them fair notice of date, place, and
2 circumstances.

3 QUESTION: You think that complied with the
4 circumstances requirement?

5 MR. WILKINS: Yes.

6 QUESTION: Mr. Wilkins.

7 MR. WILKINS: Yes.

8 QUESTION: Why would the Government not want
9 to provide, in these pattern and practice case, the real
10 circumstances that the Government is relying, the
11 statistical information that they looked at. What is
12 the matter with furnishing that, to give the Respondent
13 an actual look at what it is that prompted the filing; I
14 just don't understand.

15 MR. WILKINS: There is a two-fold answer to
16 that, Justice O'Connor, and I think there is a very good
17 reason for not getting into that kind of detail at the
18 very outset.

19 On the initial level, this is a pattern of
20 practice charge, as the prior decisions of this Court
21 recognized. The pattern of practice charge is not based
22 on specific, individual kinds of occurrences. It is
23 based on broad, general occurrences that take place over
24 a period of time. So it is impossible, it really is
25 impossible to describe it beyond general terms.

1 QUESTION: Sure, but what the Government in
2 these cases is doing is putting together a few simple
3 statistics covering given years, and saying these are
4 the total number of employees in this category, and in
5 that community there are so many Blacks, and so many
6 women, and these are the actual figures that the company
7 has. Why can't you include that, and why shouldn't you
8 that in the notice of the charge?

9 MR. WILKINS: As the Ninth Circuit noted in
10 the Dean Witter case, to require the Commission to get
11 into providing a certain level of factual specificity,
12 or providing the statistics, would merely prompt, as
13 what has happened in this case, the Respondent would
14 come back and say, "But my statistics show that -- Our
15 bottomline statistics show that we are in conformity.
16 Your statistics aren't adequate to commence this
17 investigation."

18 Going back to general notions of modus
19 pleading --

20 QUESTION: The Court doesn't have to buy that,
21 obviously, as a requirement and the Court wouldn't
22 necessarily have to turn this into a mini-trial. But it
23 is just -- I just have difficulty understanding why the
24 Government can't disclose in the notice of the charge
25 what it really is basing this on.

1 MR. WILKINS: As Professor Moore stated in his
2 treatise on civil procedure, just as a general precept,
3 a requirement that facts be pleaded in a charge is
4 illusory and unsound. It said that results in a battle
5 of the form of pleadings.

6 QUESTION: Sure, but we have the job of trying
7 to figure out why Congress included this specific
8 language, and they had something in mind and we have to
9 determine what that something is. It is just hard to
10 know why the Government in these cases wouldn't want --

11 Let me ask you another question. Suppose the
12 notice of charge just said, "The Commission believes
13 that Shell has conducted discriminatory employment
14 practices in its United States operations since 1965."
15 Is that enough?

16 MR. WILKINS: I am not certain. I believe
17 that that probably would be insufficient, but here we
18 don't have that sort of a charge. They have been given
19 the circumstances. They have been told that they
20 excluded Blacks from designated categories, and women
21 from designated categories.

22 Perhaps if you understand the purpose or how
23 the Title VII enforcement scheme proceeds, it will help
24 you understand.

25 The charge under Section 706 does not commence

1 a formal enforcement action. It merely commences
2 administrative investigation to determine whether there
3 is reasonable cause to believe that the allegations of
4 the charge are true. When such reasonable cause is
5 found, then the Commission attempts to conciliate the
6 employment dispute and settle. Only if such efforts
7 fail, do you commence the formal enforcement action.
8 Therefore, in light of the limited function that the
9 charge serves, requiring the Commission to come forth to
10 present its facts, present its proof at the very outset
11 is inappropriate.

12 QUESTION: Mr. Wilkins, your answers assume
13 that this is kind of a judicially fashioned doctrine.
14 Professor Moore has said pleading of facts is illusory
15 and, therefore, why shouldn't the court strive to make
16 that rule a common sense one. But it is not a court
17 rule at all, Congress has said "circumstances." The
18 Federal Rules of Civil Procedure don't say
19 "circumstances."

20 MR. WILKINS: Yes, but, Justice Renquist,
21 Congress in 1964 said that a commissioner's charge had
22 to state its facts, and the courts never required that
23 as requiring any sort of factual pleading.

24 QUESTION: Do you think that those were sound
25 decisions, if Congress said "facts," and the courts said

1 "no facts."

2 MR. WILKINS: I believe, when you look at the
3 purpose and the overall Title VII enforcement scheme, I
4 believe they were indeed sound decisions. In 1972 --

5 QUESTION: How would you rationalize those?
6 You say that Congress had said that facts must be
7 specified, and the courts said, no, you don't have to
8 specify facts, and you say that those are sound
9 decisions. How would you explain that?

10 MR. WILKINS: The uniform position that has
11 been taken since 1964, beginning in the early '70s, in
12 the Ninth Circuit's decision in Local 104 Sheetmetal
13 Workers, was that the purpose of the charge is merely to
14 commence an administrative investigation and inquiry to
15 determine whether there is reasonable cause. Because
16 that is at the very outset, it is merely a prelude to
17 the formal enforcement sorts of proceedings, it clearly
18 would be an anomaly to require the Commission to present
19 more facts, more factually specific material at the very
20 beginning of its administrative investigation than it
21 needs to present, indeed, to start a formal enforcement
22 action in Federal District Court.

23 QUESTION: In other words, Congress should
24 have provided the same provisions as the Rules of Civil
25 Procedure, and so we'll assume that it did. That sounds

1 like about the reasoning of those cases.

2 MR. WILKINS: The courts reasoned this way.
3 Section 707 in 1964 authorized the Attorney General to
4 bring a pattern of practice charge. That section also
5 required the Attorney to set forth the facts upon which
6 it was based, and the courts uniformly construed that as
7 saying, we don't believe that Congress intended the
8 Commission to have to state all of the facts underlying
9 its -- the Attorney General to state all the facts
10 underlying its cause of action at the very outset. The
11 courts viewed that, well, then, if you are initiating
12 merely an administrative proceeding before that, we will
13 not impose a greater factual specificity burden at the
14 outset than we do to file the formal enforcement
15 action.

16 QUESTION: Mr. Wilkins.

17 MR. WILKINS: Yes.

18 QUESTION: Your position, of course, is that
19 the charge adequately puts Shell Company, in this case,
20 on fair notice as to what is being charged against it.
21 I have the appendix open at page 66, that is the
22 commencement of the first request for information.

23 MR. WILKINS: Yes.

24 QUESTION: Is that filed the same day the
25 charge is filed?

1 MR. WILKINS: Yes. I believe that that was
2 filed along with the --

3 QUESTION: Does that suggest to you that the
4 EEOC either doesn't know the facts, the basic facts and
5 circumstances, or does it suggest that it has them and
6 is unwilling to disclose them?

7 MR. WILKINS: It suggests to me, Justice
8 Powell, that the Commission has sufficient facts to have
9 reason to believe there is indeed a pattern of practice
10 of discrimination. The purpose of the administrative
11 investigation is to determine what the actual cause of
12 the pattern of practice that the Commission has.

13 QUESTION: Is that first request for
14 information a standard form?

15 MR. WILKINS: To the best of my knowledge
16 there are standard requests that are made. They are
17 detailed to the particular needs of each case. This is
18 not a standard request that is just churned case after
19 case. There are elements that are asked in particular
20 cases.

21 QUESTION: It goes on for 16 pages, doesn't
22 it?

23 MR. WILKINS: Yes, it does.

24 QUESTION: If you were counsel for the company
25 and received this, what would your reaction be?

1 MR. WILKINS: I am certain that I would sit
2 down and recognize that I was going to be busy for the
3 next little while.

4 QUESTION: Little while -- how many weeks?

5 MR. WILKINS: I have no way of knowing.

6 QUESTION: How many people would be required
7 in a major corporation to help you gather all of this
8 information which really undresses the corporation for
9 years. Perhaps that is your purpose, but that is not
10 the way Government normally operates.

11 MR. WILKINS: There's a couple of things to
12 keep to bear in mind on this question. First, the
13 Commission has offered to send in its staff to help
14 compile this information. The Commission has also
15 offered to pay --

16 QUESTION: They aren't very helpful once in
17 there.

18 MR. WILKINS: The Commission also has
19 procedures where it will help pay for the development of
20 this information. The District Court in this case found
21 that this information sought was relevant to the
22 administrative investigation, and the compliance with
23 the request or with the subpoena was not unduly
24 burdensome. The Court of Appeals didn't disagree with
25 that.

1 So while it may be extensive, and I don't
2 disagree that it is extensive and that it would require
3 some substantial looking, the Commission has offered to
4 help in that looking, has offered to help pay for that
5 looking, and the lower court did not find it unduly
6 burdensome.

7 QUESTION: I'll come back to my initial
8 question. If, indeed, the EEOC had enough information
9 to make a charge, why was it necessary to file 16 pages
10 of questions that asked every conceivable piece of
11 information about the employment practices of this
12 corporation over a period of years?

13 MR. WILKINS: That is the exact purpose of the
14 conciliation and administrative litigation.

15 QUESTION: They make a charge without knowing
16 the circumstances.

17 MR. WILKINS: No, the purpose of the charge --
18 In this case, we had from our analysis of the EEO-1
19 reports that had been filed by the Respondent, there
20 were indications, statistical indications that Shell had
21 engaged -- had excluded Blacks and women from certain
22 job categories.

23 It is not clear from those EEO-1 reports at
24 the very outset exactly what happened, what's going on,
25 what the underlying facts are. Congress recognized that

1 this would be the case and it would be the case at the
2 very beginning of these systemic charges. They're
3 difficult to prove. They're difficult to know --
4 exactly what has happened over a period of years.

5 QUESTION: Congress chose this very curious
6 language, if it really understood that the agency was
7 going to file this sort of fishing expedition; don't you
8 think so? You wouldn't be here if the language were
9 more specific, perhaps.

10 MR. WILKINS: Well, Congress was aware in 1972
11 that the Commission needed more enforcement power and
12 needed more investigatory power. Indeed, they expressly
13 empowered the Commission in 1972 to file these pattern
14 of practice charges because, as you read in the
15 legislative reports, the Commission has access to the
16 statistical analyses, it has access to this
17 information. Because they knew that this information
18 would be somewhat sketchy at the outset, it provided for
19 this administrative investigation for the -- It provided
20 the Commission with the authority to request to inspect
21 copy, to subpoena information to find out out what is
22 going on.

23 The Commission only undertakes conciliation
24 efforts or, indeed, formal enforcement actions after it
25 has looked at facts and determined that there is

1 reasonable cause.

2 QUESTION: Why didn't you -- Why not furnish
3 some of those facts that you have looked at?

4 MR. WILKINS: For the exact reason that has
5 occurred in this case. We allege we gave them the
6 circumstances, we told --

7 QUESTION: What do you think qualifies as the
8 circumstances?

9 MR. WILKINS: In this case, we told them that
10 they excluded women from seven designated job
11 categories, and Blacks from six designated job
12 categories. We told them what we believed they had
13 done. They argued, well, you don't have enough facts to
14 prove that right now. Our response is, of course, we
15 don't, that is the purpose of the administrative
16 investigation. Congress didn't require us, Congress
17 does not require us to have reasonable cause at this
18 point.

19 QUESTION: But you did have facts -- You did
20 have more facts than just an assertion that they had
21 discriminated in these respects.

22 MR. WILKINS: Certainly, we had facts to back
23 up those allegations.

24 QUESTION: Why wouldn't you think that some
25 summary of those facts shouldn't have been furnished?

1 MR. WILKINS: It may be wise, and the
2 Commissioners, the individual Commissioners of the EEOC
3 certainly have discretion to give those facts. But any
4 judicially imposed requirement that the Commission set
5 forth its facts will clearly, as the Ninth Circuit --

6 QUESTION: Judicially, the question is whether
7 Congress anticipated it

8 MR. WILKINS: Well, Congress --

9 QUESTION: -- in the word "circumstances."

10 MR. WILKINS: That is right. Let's look at
11 the legislative history of Section 706(b) for a moment.

12 QUESTION: How about the language? How about
13 the circumstances?

14 MR. WILKINS: That is how you can understand
15 the language, that is why I want to look at the
16 history.

17 QUESTION: I don't blame you.

18 MR. WILKINS: In '64, Congress provided that
19 Commissioner's charges could only be filed when they set
20 forth the facts on which they were based, and the
21 Commissioner had reasonable cause to believe that a
22 violation of the Act had occurred. In 1972, as part of
23 legislation that was generally designed, as this Court
24 has recognized, to increase the enforcement powers of
25 the Commission, Congress deleted these two requirements

1 and rendered Commissioner's charges subject to the exact
2 same requirements generally applicable to all charges,
3 that is, they must be in writing, under oath or
4 affirmation, and contain such information and be in such
5 form as the Commission requires. I think that is a very
6 important factor that clearly was overlooked by the
7 court below.

8 QUESTION: You would be in a much better
9 position if the provision that is at issue here had been
10 included.

11 MR. WILKINS: But the purpose of the
12 provision, Justice White, was, as I have said earlier,
13 merely to provide that the Respondent had some notice of
14 that charge.

15 QUESTION: So you think that the Commissioner,
16 in prescribing requirements which you mentioned a moment
17 ago, can say, we are not going to require circumstances
18 the way the other section does?

19 MR. WILKINS: Excuse me.

20 QUESTION: You say that the statute provides
21 that a charge shall be in such form as the Commission
22 may provide.

23 MR. WILKINS: Yes.

24 QUESTION: Do you think that the Commission
25 could provide saying that the form of charge shall be

1 the following, but it need not include either date,
2 place, or circumstances?

3 MR. WILKINS: The charge could be -- could
4 provide that. The notice, then, would have to provide
5 the date, place, and circumstances. But the Commission
6 certainly could choose to say that the charge will have
7 this information, and not necessarily include the date,
8 place, and circumstances.

9 QUESTION: Even though the notice of the
10 charge would have to be more specific, then?

11 MR. WILKINS: No, the notice would have to
12 include the date, place, and circumstances. It is
13 important to remember that the purpose of the notice
14 provision was as we said, merely to provide notice. The
15 word "circumstances" does not in and of itself indicate
16 some sort of a congressional intent to set forth the
17 facts. Indeed, Congress in 1972 deleted the requirement
18 that the Commissioner's charge would set forth the
19 facts.

20 QUESTION: But, Mr. Wilkins, also, didn't the
21 '64 Act require the Commissioner's charge to be based on
22 reasonable cause?

23 MR. WILKINS: Yes.

24 QUESTION: In '72, in those amendments, that
25 requirement was dropped

1 MR. WILKINS: Right.

2 QUESTION: But Congress tightened up in
3 another way. It said, okay, you don't have to show
4 reasonable cause, but we do want you to put it under
5 oath, and set forth the date, place, and circumstances.
6 It just looks on the surface like they wanted to tighten
7 up the requirements of what you disclose as the basis
8 for the charge, even though they dropped the reasonable
9 cause requirement. So I am not sure that the
10 legislative history argument is helping you.

11 MR. WILKINS: Justice O'Connor, if you look at
12 the comments that were made and the comments in the
13 legislative report, there is no indication whatsoever
14 that Congress felt that they were imposing any sort of a
15 new factual pleading requirement or any kind of
16 disclosure requirement.

17 When they talked about notice, they talked
18 merely about informing the Respondent that a charge was
19 actually pending against them, so that the Respondent
20 could begin to prepare its defense and gather the
21 information to sustain itself.

22 The charge in this case clearly performs those
23 functions. They don't need more information to be able
24 to know that the charge is pending, to be able to gather
25 their information, to be able to sustain themselves

1 during the administrative investigation.

2 QUESTION: Mr. Wilkins, may I ask you a rather
3 fundamental question on another point which your
4 argument has brought up. In Part 3 of your brief -- Up
5 to now, you have basically been arguing the meaning of
6 Section 706(b) of the statute. In Part 3 of your brief,
7 you refer to the SOCAL case. You argue, if I understand
8 you correctly, that the issue should not be reviewable
9 at all until after the proceeding comes to an end. You
10 are relying, as I understand it, on the Administrative
11 Procedure Act.

12 I am wondering whether, with reference to the
13 SOCAL case, you're contending that this is not agency
14 action at all, it is interlocutory agency action or that
15 it is agency action under the limited discretion of the
16 agency? Which of those three positions?

17 MR. WILKINS: No, we are not really making any
18 of those assertions, if I understand what you are
19 getting at.

20 QUESTION: I just want to understand exactly
21 why your position is based on SOCAL.

22 MR. WILKINS: Our position based on SOCAL is
23 that the issuance of an administrative complaint is
24 something that can always be challenged. If the
25 Respondent in this case -- there is always some sort of

1 a standard, whether it is reasonable cause, or reason to
2 believe --

3 QUESTION: But is it always -- can it be
4 challenged in an independent proceeding in Federal Court
5 or only in the proceeding itself?

6 MR. WILKINS: After the SOCAL case -- After
7 the SOCAL decision, of course, they can't bring an
8 initial proceeding under the Administrative Procedure
9 Act. In this case, the only reason this question arose
10 is because there is a subpoena enforcement action, and
11 they're still trying to make the same sort of an
12 argument, that somehow this charge was improperly
13 issued. The Government's response is that the rationale
14 of the SOCAL case applied across the board at this
15 point. This has no determinative requirement.

16 QUESTION: Is it your position that in
17 subpoena enforcement proceeding, they have no right to
18 test the sufficiency of the charge?

19 MR. WILKINS: The sufficiency of the charge is
20 to be determined in the administrative proceeding. The
21 subpoena --

22 QUESTION: You should have won on motion to
23 dismiss without even looking at the language of the
24 charge, is what I am asking?

25 MR. WILKINS: Exactly.

1 QUESTION: Okay.

2 MR. WILKINS: If the Court has no further
3 questions, I would like to reserve a few moments for
4 rebuttal.

5 CHIEF JUSTICE BURGER: Mr. Williams.

6 ORAL ARGUMENT OF ROBERT E. WILLIAMS, ESQ.

7 ON BEHALF OF THE RESPONDENT

8 MR. WILLIAMS: Mr. Chief Justice, may it
9 please the Court. With the Court's permission.

10 I believe the questions that the Court has
11 asked this morning focus on the narrow issue that is
12 presented in this case, and that is what Congress meant
13 when it specified in Section 706(b) that the Respondent
14 in a Title VII proceeding must be notified of the date,
15 place, and circumstances of the violations alleged in
16 the charge.

17 The Commission is here arguing for an
18 interpretation which in our view would effectively read
19 the words "date, place, and circumstances" out of the
20 text of the statute. They maintain that the only notice
21 the Commission is required to give to a Respondent is
22 notice of the fact that a charge is pending against it.
23 At no time, at least until this morning, has the
24 Commission acknowledged any obligation to provide
25 anything more than bare notice of the existence, of the

1 pendency of the charge.

2 Perhaps counsel's qualified concession in
3 answer to Justice O'Connor's question may indicate that
4 there may be some need to provide something more than
5 bare notice of existence, but whether it actually
6 requires that a date, a place, or any circumstances at
7 all be set forth has never been clarified from the
8 Commission standpoint.

9 QUESTION: Whether that is so or not, I
10 understand to say that any requirement like that is
11 satisfied by the notice that was given in this case, and
12 he says that saying there was discrimination in these
13 particular categories is enough of a notice of the
14 "circumstances."

15 MR. WILLIAMS: Which brings us back, Your
16 Honor, to the basic question which is what did Congress
17 mean by that word "circumstances." We think the Eighth
18 Circuit was right when it concluded that notice of date,
19 place, and circumstances was intended to provide
20 something more meaningful than a bare recitation of
21 categories of alleged unlawful employment practices.

22 QUESTION: What would you say they should have
23 furnished to you?

24 MR. WILLIAMS: The word "circumstances," Your
25 Honors, generally, in dictionary definitions and in

1 court opinions, is tied to facts.

2 QUESTION: I know, so I am asking you what
3 facts do you think they should have given you?

4 MR. WILLIAMS: At a minimum -- I think what
5 the Eighth Circuit required in its decision really sets
6 forth a very minimal standard. It has been argued --

7 QUESTION: What specifically would have
8 satisfied you in this case?

9 MR. WILLIAMS: In an instance such as this,
10 where the charge apparently is based on statistics, the
11 Eighth Circuit indicated that the fact that the charge
12 is based, at least in part, on statistics, the general
13 nature of the statistical data relied on --

14 QUESTION: Because it is a practice, the
15 charge necessarily is a statistical charge; is that it?

16 MR. WILLIAMS: Well frankly, of course, we are
17 at a disadvantage because we don't know for sure what
18 this charge was based on. The Government has some
19 forward belatedly and made some assertions about what
20 the charge was based on, but because the charge itself
21 or the notice did not include any explication, we don't
22 really know.

23 But assuming that their representations are
24 correct, and that this charge was based on statistical
25 compilations, comparisons between internal data that the

1 company had provided to the EEOC with standard data
2 referring to availability in the labor market, I think
3 what the Eighth Circuit was indicating is the fact that
4 those data were used, the general nature of the data,
5 including dates that would enable the Respondent to
6 identify what the Commission was basing this charge on,
7 that is all that seems to be required.

8 The Court also indicated that in the instance
9 where there is an individual charge that forms the basis
10 for the Commissioner's charge that the identity of the
11 individual need not be disclosed, but that the fact that
12 it is based on an individual charge, coupled with some
13 indication of the position held by that individual,
14 ought to be provided.

15 QUESTION: Suppose, in addition to actually
16 furnishing you notice, giving circumstances some
17 meaning, would also assure that the Commissioner
18 actually had facts on which to base a charge.

19 MR. WILLIAMS: That would be correct, Your
20 Honor.

21 QUESTION: Mr. Williams, suppose the charge
22 says that you have 316 people assigned to the broom
23 section of your plant, and not a single woman is there.
24 Would you know what they were talking about?

25 MR. WILLIAMS: Yes, Your Honor, I think that

1 would be sufficient.

2 QUESTION: That would be all right.

3 MR. WILLIAMS: That would certainly set forth
4 the circumstances.

5 QUESTION: What would this one say? This
6 charge says that there were no women in one area, and no
7 negroes in another area.

8 MR. WILLIAMS: The charge said that it charged
9 Shell with discriminating in various forms of employment
10 practice against Blacks and women. It did not

11 QUESTION: Because there were none in these
12 particular sections.

13 MR. WILLIAMS: It didn't say that the
14 Commission had considered that there were none in
15 certain sections.

16 QUESTION: Didn't it say that?

17 MR. WILLIAMS: That information did not come
18 forward until much later on in this litigation, Your
19 Honor.

20 QUESTION: Didn't you know what they were
21 talking about?

22 MR. WILLIAMS: Well, Your Honor --

23 QUESTION: The question is, didn't you know
24 what they were talking about.

25 MR. WILLIAMS: The Joint Appendix sets forth

1 documents, about six months of correspondence and
2 meetings between Shell and the Commission.

3 QUESTION: I am asking you. You didn't know
4 what they were talking -- You didn't know what they were
5 talking about; is that your position or not?

6 MR. WILLIAMS: Yes, Your Honor, that is the
7 position. During those meetings and in that
8 correspondence, the company repeatedly asked the
9 Commission point blank, "What is this charge based on?
10 What statistics have you considered, if you are basing
11 it on statistics?" The Commission's response was a
12 consistent stonewall.

13 The answer that came back was, "We don't have
14 to tell you. You are invading our agency privilege."

15 QUESTION: Who had the facts, the agency or
16 you -- your client?

17 MR. WILLIAMS: Of course, the --

18 QUESTION: Who had it the first?

19 MR. WILLIAMS: The company has facts, and the
20 agency purportedly has some facts that it has considered
21 in determining to bring this charge. But the issue as
22 we see it is whether the agency has complied with the
23 statutory requirement of giving a sufficient indication
24 of what the charge is based on in order to meet the
25 notice requirement.

1 QUESTION: Mr. Williams, what if the EEOC in a
2 pattern of practice case did give you information that
3 it was basing their charge on statistical compilations
4 it had made, let's say, the years '78 and '79, which
5 reflected an insufficient number of women and Blacks
6 being hired in certain categories, so you got presumably
7 what you're asserting you should have had. Then, let's
8 suppose they issue subpoenas asking for information
9 relating to the year '77 as well as '78 and '79, because
10 they want to dig into the real facts, maybe they'd like
11 to amend the charge later, maybe they think that what
12 was done before is relevant somehow to '78 and 79.

13 Would it be your position that you could
14 challenge them on a subpoena request for prior years
15 because it didn't relate to those years --

16 MR. WILLIAMS: No, Your Honor.

17 QUESTION: -- specified in the charge?

18 MR. WILLIAMS: No, Your Honor, it would not.

19 We are not here disputing the Commission's broad
20 investigatory power or their subpoena power once a valid
21 charge and notice has been provided.

22 QUESTION: You concede that the subpoena could
23 request any relevant information for prior or subsequent
24 time-frames?

25 MR. WILLIAMS: Yes, Your Honor, that is

1 correct.

2 QUESTION: You really would have to, under
3 that Oklahoma Press case, wouldn't you?

4 MR. WILLIAMS: The question of its relevance,
5 of course, would be determined under the usual standards
6 of subpoena enforcement procedures, but it is a standard
7 that is easily met at that stage, and we are not arguing
8 that they can't look into those materials given a valid
9 charge and notice.

10 QUESTION: The concern, obviously, would be
11 that if we were to agree with you, you don't want to put
12 the EEOC in the position of having to have a mini-trial
13 every time they issue a subpoena.

14 MR. WILLIAMS: No, and that is not the
15 concern. In fact, we believe, Your Honor, that the
16 prospect of litigation would be -- of that type of
17 litigation would be reduced, rather than increased, by
18 letting the Respondent know upfront what the charge is
19 based on.

20 If a adequate charge and valid notice is
21 given, then really the only complaint that a Respondent
22 could raise is if it could affirmatively show that there
23 has been some abuse of discretion or that the Commission
24 is clearly acting outside the scope of its powers. That
25 would be in the very unusual situation. We think that

1 these concerns about a flood of mini-trials at the
2 outset of every case are greatly overstated.

3 QUESTION: Do you contend that a Respondent in
4 a proceeding like this, such as Shell, has any right to
5 challenge the facts produced by the Commission and
6 saying those facts aren't correct; in other words, we
7 have other facts, so let's find out whose version of the
8 facts is correct at this stage of the proceeding.

9 MR. WILLIAMS: That's not our argument, Your
10 Honor, no.

11 I would like to address --

12 QUESTION: May I ask about the procedure.

13 MR. WILLIAMS: Yes, Your Honor.

14 QUESTION: Do you still maintain -- Do you
15 maintain that you could have raised these issues in an
16 independent judicial proceeding?

17 MR. WILLIAMS: No, we're really -- Given the
18 posture in which the case is before this Court, we are
19 really only dealing with the subpoena enforcement
20 procedure.

21 QUESTION: It is your position that in a
22 subpoena enforcement proceeding, you contest the
23 sufficiency of the charge.

24 MR. WILLIAMS: Yes.

25 QUESTION: Any defect in the charge at all can

1 be raised.

2 MR. WILLIAMS: Yes.

3 QUESTION: Are there precedents for that
4 procedure?

5 MR. WILLIAMS: Yes, Your Honor. Every case
6 that we are aware of that has involved these
7 requirements of the sufficiency of a Commission charge,
8 the Dean Witter case, the K-Mart case, the Staley case
9 in the Seventh Circuit, none of those cases has held
10 that the Respondent can't charge the sufficiency of the
11 subpoena -- or the sufficiency of the charge in the
12 subpoena enforcement proceeding. They have all allowed
13 that charge. None of them have been dismissed on the
14 basis of the SOCAL case.

15 QUESTION: So there is really no precedent at
16 all, is your submission, for the Government's -- the
17 third part of the Government's brief?

18 MR. WILLIAMS: We are not aware of any, Your
19 Honor.

20 I would like to address the legislative
21 history briefly in response to some of the arguments
22 that have been made.

23 First, the fact is, there is nothing in this
24 legislative history that bears directly on the intended
25 meaning of the words "date, place, and circumstances."

1 We take that as a point in our favor because it means
2 there is no basis for giving those words anything other
3 than their ordinary, everyday meaning.

4 Secondly, what is clear from the legislative
5 history is that Congress was not willing to give this
6 Commission completely unbridled, roving investigative
7 powers. They set this up as a charged based agency,
8 rather than an agency with a self-initiating
9 investigative process like the FTC, and other agencies.

10 To the extent that they gave Commission
11 members authority to file charges, Congress took pains
12 to see that that authority would not lead to abuse, and
13 particularly to fishing expeditions. That is why the
14 1964 Act required reasonable cause before a Commissioner
15 could file a charge. The concern about fishing
16 expeditions was very explicit in the 1964 legislative
17 history.

18 That same basic concern is reflected again in
19 the compromise that was reached in the Conference
20 Committee on the 1972 amendments with regard to the
21 authority for the requirements for issuance of
22 commissioner's charges.

23 The Senate bill would have cut back on the
24 authority for commissioner's charges to allow their use
25 only where there was an individual claiming to be

1 aggrieved, who wished to be anonymous. The Senate bill
2 added the oath requirement and added the new notice
3 language requiring notice of date, place, and
4 circumstances.

5 In conference, the Senate receded with respect
6 to the provision that there needed to be an individual
7 claiming to be aggrieved who didn't wish to come
8 forward, but the Senate prevailed with respect to the
9 addition of the oath and the notice requirement.

10 Given this history, we think that it is simply
11 not accurate to argue, as the Government does, that the
12 '72 amendments simply eliminated any and all factual
13 pleading requirements or any requirement to articulate
14 the basis for a charge. What it did was, it replaced
15 general language of the '64 Act, which required that a
16 charge set forth the facts on which it's based, with
17 specific language requiring notice of date, place and
18 circumstances, and the oath.

19 The point is, for the first time it spelled
20 out three particular elements that have to be disclosed
21 to every Respondent before a Title VII investigation can
22 proceed.

23 We also think that it is significant that when
24 the Attorney General's authority to bring pattern of
25 practice cases under Section 707 of the statute was

1 transferred to the Commission after the '72 amendments,
2 that authority was also made subject to the requirements
3 that there be a valid charge under oath, and supported
4 by notice. Those requirements had not been present when
5 that authority was in the hands of the Attorney
6 General. We think the fact that they were added when
7 the authority passed to the Commission again illustrates
8 the unwillingness of Congress to give this Commission
9 completely self-initiating investigative powers.

10 Given this background, we submit that insofar
11 as commissioner's charges can be used to initiate
12 investigations without an independent request from an
13 outside party, that the formal oath and notice
14 requirements that Congress imposed must be enforced
15 strictly -- we are not saying hypertechnically, but
16 literally -- in order to avoid conflict with the reasons
17 why Congress set this up a charge based investigative
18 process.

19 We also believe, in light of the legislative
20 history and the context of these provisions in the
21 statute, that the oath and notice requirements ought to
22 be read as interrelated. If a charge didn't have to
23 contain any facts or any specific indication of what it
24 is based on, the oath would become practically
25 meaningless.

1 We don't think Congress intended that, we
2 think they perceived this as a meaningful requirement.
3 Given the statutory context, it seems clear that
4 Congress contemplated that the information that would
5 have to be in the notice would come from the charge.
6 Therefore, there would be a statement under oath setting
7 forth these basic details.

8 The Commission has stressed that the statute
9 gives it the authority to specify the form and content
10 of charges. But, Your Honors, that does not empower the
11 Commission to repeal the basic statutory requirements
12 pertaining to notice, those elements have to be
13 present. As long as they're satisfied, sure, the
14 Commission can require as much or as little other
15 information in whatever form it sees fit.

16 The Commission has also argued that its
17 regulations have consistently provided that a charge is
18 sufficient if identifies the parties and generally
19 describes the action or practice complained of. The
20 fact is, the regulations relied on by the Commission for
21 that point, it's Section 1601.12(b) of the current
22 regulations, was not adopted until 1978.

23 That regulation supplanted the earlier
24 regulation, 1601.11(b), which said that a charge would
25 be "deemed filed if it identified the parties, and

1 generally described the action or practice complained
2 of." Both versions then provide that a charge, after
3 being filed, can be amended to correct technical defects
4 of omissions.

5 The difference is that the current regulation
6 provides that such a charge is sufficient without being
7 amended, whereas the earlier version prior to 1978
8 required only that the charge be -- provided only that
9 such a charge would be deemed filed.

10 Finally, with regard to the Commission's
11 regulations, we think the Court should be particularly
12 cautious about deferring to the Commission's standards
13 for a valid charge insofar as they are applied to the
14 Commission's own members.

15 It may be necessary at times to apply formal
16 requirements leniently in order to avoid injustice to
17 individuals who may not be sophisticated in the
18 procedures. But we see no reason why the Commission
19 shouldn't hold its own members to a standard that at
20 least fully satisfies the requirements of the statute.
21 We don't think that there is anything burdensome or
22 disruptive about requiring the Commission to do that.

23 No one is arguing here that the Commission has
24 to disclose its entire investigative file, all the facts
25 in its possession, that is certainly not what the Eighth

1 Circuit required. We feel that that is the fallacy of
2 those courts -- the other circuits that have ruled in
3 such a way as not to give effect to the circumstances
4 requirement of the statute. They failed to see that
5 there is a middle ground here. There need not be a
6 choice between a strict factual -- detailed factual
7 pleading requirement on the one hand, and no standard at
8 all on the other.

9 We think that as a matter of policy, early
10 disclosure of the basic facts that the Commission relied
11 on in deciding to file a charge would help to focus the
12 issues; would lay a better groundwork for conciliation;
13 would assist both the Commission, district offices, and
14 the Respondent in identifying facts and data that might
15 be relevant; would help to promote early voluntary
16 compliance --

17 QUESTION: As a matter of policy, of course,
18 you can make some very strong arguments the other way.
19 The Federal Rules of Civil Procedure have worked pretty
20 well. They pretty well limited fact requirement almost
21 out of existence in its notice pleading. It seems to me
22 that your strongest case is based on the statute, and
23 not on what be the best policy for Congress to choose.

24 MR. WILLIAMS: I would agree that the
25 principal argument is based on the statute. I do think,

1 though, Your Honor, that in a statute such as this,
2 which places such heavy emphasis on voluntary compliance
3 and conciliation, it is relevant to consider the impact
4 that the Commission's stonewall approach of not
5 disclosing anything has on the relationships between the
6 parties at the early stage.

7 If the Respondent knows basically what the
8 Commission is basing its case on, he may be able in many
9 cases to come forward with an explanation or some
10 exculpatory data at the very outset of the investigation
11 that will obviate the need for this kind of extremely
12 time-consuming, and expensive probing into every aspect
13 of its employment practices. So we think that that
14 policy consideration is simply -- is consistent with the
15 literal interpretation of the statute.

16 I haven't said much to this point about the
17 date requirement, Your Honors. Obviously, the date of
18 an alleged violation is somewhat more difficult to spell
19 out in a case involving a continuing practice, or an
20 alleged continuing practice of discrimination, than it
21 is in an individual discharge situation.

22 But we still think that a fair construction of
23 Section 706(b) requires something more specific than a
24 mere reference to the effective date of the act,
25 particularly where there is nothing else recited in the

1 charge that would indicate any basis for the selection
2 of that date.

3 In other words, the date and circumstances
4 notifications may compliment one another. The
5 circumstances when properly set forth should indicate
6 why the date chosen is a good faith estimate of the
7 probable time periods of the violations. A date that
8 would be insufficient standing alone, might be
9 sufficient in the context of a recitation of
10 circumstances.

11 In the worst offender situation that the
12 Government cites, it should be relatively easy to set
13 forth circumstances that would support a starting date
14 going all the way back to the beginning of the Act. In
15 other situations, the dates may have to be more specific
16 in order to make it clear what the circumstances are
17 that are being referred to. Without something more than
18 a mere insertion of the July 2nd, 1965, date is no more
19 -- is really no more informative than a citation to the
20 Act itself.

21 In summary, let me just emphasize again that
22 this is a straightforward case of statutory
23 construction. To uphold the Commission's construction
24 is to read the statute as if the words "date, place and
25 circumstances" were not there. To affirm the decision

1 below is to give those words their ordinary meaning.
2 This does not require a choice between a hypertechnical
3 pleading standard or no standard at all. We think the
4 Eighth Circuit properly perceived a middle ground.

5 We do believe, though, Your Honors, that since
6 the case is here that some further clarification of what
7 the terms "date and circumstances" mean in the context
8 of a systemic discrimination case, based primarily on
9 statistics, might be helpful. We suggested some fairly
10 minimal factors in our brief at Footnote 38 that we
11 think should be required in a case such as this.

12 QUESTION: May the Commission file a charge
13 just at the sheer request of another party?

14 MR. WILLIAMS: If there is a complaint or
15 request from an individual, yes, the Commissioner can
16 file a charge to --

17 QUESTION: What if the Commission just gets a
18 letter from somebody that complains in exactly these
19 words that were in this notice, that this company has
20 since the date of the Act discriminated against women
21 and Blacks in certain categories, period, and the
22 Commission files the charge in those very words, and
23 gives notice in those very words.

24 MR. WILLIAMS: I think, then, Your Honor, the
25 charge would be deficient because the individual's

1 complaint has not complied with the basic requirement
2 that the date, place and circumstances be specified.

3 QUESTION: So you're saying that the
4 Commission may not file a charge based on the kind of a
5 letter that I indicated.

6 MR. WILLIAMS: Not without something more. If
7 there is some -- I think it is appropriate, Your Honor,
8 to interpret those terms perhaps somewhat more leniently
9 where a layperson, an individual is filing the charge.
10 The Commissioner's charge then might say, "Based on a
11 complaint received from an individual -- The Eighth
12 Circuit indicated that it should --

13 QUESTION: So that any kind of a charge, in
14 any circumstance, the Commission must satisfy this
15 "circumstances" requirement.

16 MR. WILLIAMS: Yes, Your Honor.

17 If there are no further questions, the company
18 will rest on its brief.

19 CHIEF JUSTICE BURGER: Very well.

20 Mr. Wilkins, do you have anything further, you
21 have three minutes remaining.

22 REBUTTAL ARGUMENT OF RICHARD G. WILKINS, ESQ.

23 ON BEHALF OF THE PETITIONER

24 MR. WILKINS: Just one or two points, Mr.
25 Chief Justice.

1 We specified, or the Government specified in
2 its charge the date, place, and circumstances of the
3 Respondent's alleged discriminatory conduct. The
4 statute simply does not require us to file a bill of
5 particulars before we can begin administrative
6 investigation.

7 Mr. Justice Stevens, responding to your
8 inquiry regarding SOCAL, we believe -- the Government
9 believes that it is very clear that you should not, even
10 in a subpoena enforcement proceeding, inquire beyond the
11 facial validity of the charge. This charge in this case
12 was facially valid. Indeed, the Court's prior precedent
13 in subpoena enforcement is very clear that inquiry is
14 limited --

15 QUESTION: How do you know whether the charge
16 in this case was facially valid?

17 MR. WILKINS: We gave the date, place, and
18 circumstances of the alleged discriminatory conduct.

19 QUESTION: If the Eighth Circuit had agreed
20 with that, they would have --

21 MR. WILKINS: They wanted more than the date,
22 place, and circumstances. They wanted the facts.

23 QUESTION: You are saying, though, that the
24 question of whether the circumstances requirement has
25 been complied with is something that can be raised in a

1 subpoena enforcement proceeding.

2 MR. WILKINS: If --

3 QUESTION: Surely there is a yes or no answer
4 to that, Mr. Wilkins.

5 MR. WILKINS: Well, the subpoena enforcement
6 proceeding should not become a forum for broad-base
7 inquiry into such questions as whether or not the
8 Commission had more facts, whether they could have given
9 more information.

10 QUESTION: That doesn't help us much. Is it
11 yes or no? Is the answer to my question yes or no?

12 MR. WILKINS: If you could restate your
13 question, I will give you a yes or no answer.

14 QUESTION: May the question of whether the
15 circumstances requirement of the statute has been
16 complied with in the notice be raised in a subpoena
17 enforcement proceeding?

18 MR. WILKINS: Yes, but it should be determined
19 on the face of the subpoena enforcement -- on the face
20 of the charge itself. If you go beyond that, as we
21 state on page 45 of our brief, we list a whole range of
22 administrative agencies that have some sort of
23 sufficiency requirement before they can commence their
24 investigation, they must base a charge on reasonable
25 cause, et cetera -- If the Court goes beyond facial

1 validity, the first salvo in any sort of litigation is
2 going to be whether or not the charging party had enough
3 facts. In civil litigation in District Court, it could
4 become --

5 QUESTION: Nobody is arguing that you should
6 go beyond the facial validity. Shell doesn't content
7 you should go beyond the facial validity. We are just
8 saying that one element of the facial validity is
9 whether the circumstances requirement has been complied
10 with.

11 MR. WILKINS: Exactly. But the only purpose
12 of the circumstances requirement will be to give some
13 sort of notice. In this case, that purpose has been
14 fulfilled. If they had more specific facts, if they had
15 a more precise date, as they claim they need, or more
16 precise factual underpinning that it was in the broom
17 that they were excluded, instead of just from the
18 general EEO-1 categories, that wouldn't limit the
19 administrative investigation. The administrative
20 investigation can still inquire into the patterns of
21 practices outside the specifics of the charge.

22 So the supposed benefits of giving them the
23 specifics and the factual specifics are simply illusory,
24 because --

25 QUESTION: What is you think that one of the

1 purposes for requiring the circumstances was to assure
2 that the Commission didn't have unlimited discretion to
3 file a charge, that it was a fact-based -- that it had
4 to be a fact-based charge. If the Commission has facts,
5 it should summarize them in the notice, and thereby
6 carry out Congress's intention not to file charges just
7 for the purpose of having an investigation.

8 MR. WILKINS: That argument makes some sense
9 assuming that that is what Congress indeed did. The
10 Government submits that the legislative history of this
11 Act is clear that Congress did not impose such a
12 requirement.

13 CHIEF JUSTICE BURGER: Thank you, gentlemen.
14 The case is submitted.

15 (Whereupon, at 11:59 a.m., the case in the
16 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION , Petitioner vs.
SHELL OIL COMPANY

82-825

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

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