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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

JAMES D. HODGSON, Secretary of Labor,
United States Department of Labor,

and

UNITED STATES OF AMERICA,

Plaintiffs,

CIVIL

v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY,
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY,
NEW YORK TELEPHONE COMPANY,
NEW JERSEY BELL TELEPHONE COMPANY,
THE BELL TELEPHONE COMPANY OF PENNSYLVANIA
AND THE DIAMOND STATE TELEPHONE COMPANY,
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY,
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY
OF MARYLAND,
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY
OF VIRGINIA,
THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY
OF WEST VIRGINIA,
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
SOUTH CENTRAL BELL TELEPHONE COMPANY,
THE OHIO BELL TELEPHONE COMPANY,
CINCINNATI BELL INC.,
MICHIGAN BELL TELEPHONE COMPANY,
INDIANA BELL TELEPHONE COMPANY, INCORPORATED,
WISCONSIN TELEPHONE COMPANY,
ILLINOIS BELL TELEPHONE COMPANY,
NORTHWESTERN BELL TELEPHONE COMPANY,
SOUTHWESTERN BELL TELEPHONE COMPANY,
THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH
COMPANY,
PACIFIC NORTHWEST BELL TELEPHONE COMPANY,
THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY
AND BELL TELEPHONE COMPANY OF NEVADA,

Defendants

TRANSCRIPT
for
1/18/73

Before HON. A. LEON HIGGINBOTHAM, JR., J.

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Philadelphia, Pa., January 18, 1973

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PRESENT:

ROBERT E.J. CURRAN, ESQ.
United States Attorney
and
DAVID L. ROSE, ESQ.

For Plaintiffs;

WILLIAM A. CAREY, ESQ.
CHARLES WILSON, ESQ.
LAWRENCE GARTNER, ESQ.

For Equal Employment Opportunity Commission;

CARIN ANN CLAUSS, ESQ.
PAUL E. MYERSON, ESQ.

For James D. Hodgson, Secretary of Labor
United States Department of Labor;

GEORGE E. ASHLEY, ESQ.
HAROLD S. LEVY, ESQ.
CLARK G. REDICK, ESQ.

SCHNADER, HARRISON, SEGAL & LEWIS
By KIMBER E. VOUGHT, ESQ.

and

STEPTOE & JOHNSON
By THOMPSON POWERS, ESQ.
and JAMES D. HUTCHINSON, ESQ.

For the Defendants;

KLOVSKY, KUBY & HARRIS
By BENJAMIN KUBY, ESQ.
and MICHAEL H. COX, ESQ.

For Plaintiffs Harris, et al.,
in Related Action.

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P R O C E E D I N G S

(In Chambers.)

THE COURT: Off the record.

(Discussion off the record.)

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(In Court, 4:52 p.m.)

THE COURT: Ladies and gentlemen, if you would be kind enough to give my court reporter your names, your appearances, and the institution or persons whom you represent.

It shows that our system is working. Mr. Buttery has them.

I will hear from the U.S. Attorney, and after that anyone else whom you think should be heard from, Mr. Curran.

MR. CURRAN: Mr. Carey will speak.

THE COURT: Fine.

MR. CAREY: Your Honor, I am William Carey, the general counsel of the Equal Employment Opportunity

Commission. This is Mr. Charles Wilson, Associate General Counsel, and this is Mr. Larry Gartner, an attorney from the office of general counsel.

We have for your consideration today, your Honor, a Consent Decree, proposed Consent Decree, together with a Memorandum of Agreement which has been signed in Washington today and which is embodied in the terms of the Consent Decree.

The Consent Decree has been agreed to, the entry of the Consent Decree, by on the Plaintiffs' side the Equal Employment Opportunity Commission, the Secretary of Labor, and the United States of America through the Justice Department representing the Secretary of Labor and the Justice Department.

This proceeding began some two years ago when the Government began an extensive investigation of possible violations by the Defendants AT&T, American Telephone and Telegraph Company, and its subsidiary companies throughout the United States. The charges involve employment violations under various civil rights statutes, including Title VII of the Civil Rights Act of 1964, and the Equal Pay Act that is part of the Fair Labor Standards Act.

At the time investigations began there were -- there was an administrative action instituted by EEOC before the Federal Communications Commission. Since that time

there have been extensive investigations, extensive efforts at a voluntary settlement of these matters.

From the standpoint of the Equal Employment Opportunity Commission, this investigation and the conduct of these proceedings was under the personal direction of our chairman, William Brown, and his staff which he personally selected especially for this job, Mr. Gartner, Mr. Copus, who is in Washington today, and Mr. Wilson.

Shortly after I began as general counsel, negotiations speeded up and it looked like an attempt at a settlement would be a possibility.

Within the last month or so these proceedings, these negotiations have speeded up. They have gone on night and day, based upon what my staff tells me, based upon everything I can determine from the documents which I have reviewed. This is a lawful resolution of this matter and in my judgment a resolution which is fair and equitable to all concerned.

There is one thing that I think the Court ought to be aware of, and that is that the terms of the Consent Decree in my judgment would not operate to bar assertion of rights by anybody with respect to matters which occurred prior to the entry of this Consent Decree if your Honor chooses to sign the Order. This was a point that was of some concern to the Equal Employment Opportunity Commission.

THE COURT: May I ask you one question on that

point? I had the opportunity to speedread through the proposed Consent Decree. Is it your position that Paragraph II A. on Page 21, as all the parties interpreted, reserves to the individual litigants still the right to litigate their cases, and I sped through your memorandum agreement. It is the first time since I was with the FTC where speedreading has been really helpful, and I noticed that you have a provision in the memorandum of agreement on settlement of pending litigation at Page 22.

Are these the two core sections in your judgment, and I want to hear from the Defendants of course on this as well, which assure to the individual litigants the right to pursue any of the suits now filed under Title VII? Are these the provisions which you are relying on?

MR. CAREY: In part, yes, your Honor. The intent of the parties and the intent of the document with the exception of the matter which the Labor Department will address itself to, with respect to Title VII, the intent of these documents and the intent of the agreement is to preserve to litigants the assertion of the rights which arose prior to these proceedings, prior to the proceedings which we are about today. There is no intent on the part of the parties to bar those rights. In other words, those rights which accrued prior to the entry of the Consent Decree are still there.

THE COURT: Very well.

MR. CAREY: I might say I feel like I am hogging the limelight a little bit here, because I didn't have very much to do with these proceedings, and if you have any specific questions I think the people who really did the job for the EEOC would be Mr. Wilson and Mr. Gartner, who are here, and any specific questions I know they are prepared to answer.

THE COURT: I gather, Mr. Wilson and Mr. Gartner, that you agree with your general counsel on the issues which I have raised on the total reservation to individual litigants to pursue their rights provided they don't accept the settlement and the money therein.

MR. WILSON: That is a correct statement of our representation, your Honor.

THE COURT: I noted also in speedreading through this, I have some indication of the magnitude of what this could mean. I noted that on Page 18 that indicates that under some circumstances it could mean as much as \$4 million which employees could receive. Do you have any cost figures of what the maximum which you believe the beneficiaries could receive under this Consent Decree?

MR. CAREY: The figures which I have heard and which I guess fluctuate back and forth but seem to be going up rather than down indicate something between \$12 million

and \$15 million in outright back pay, and in the future some \$23 million of additional benefits which would result by way of the change in the ATT systems' employment practices.

THE COURT: Now, as to that figure, I gather as I look at Page 18 the \$4 million is really a floor, is that correct, of the Consent Decree?

MR. WILSON: If your Honor please, may I just address this question.

The \$4 million to which your Honor refers is really the floor for one particular item in the back pay package.

I might say, if I might, that we are talking about a projection of a minimum of 10,000 people who will in the future be promoted to higher paying jobs, and when they have been promoted to these jobs they will receive these additional sums of money to which your Honor refers. These will total in the area of \$4 million. This is simply one of the back pay items.

I might also point out, if your Honor please, that there are persons who have transferred from one job to another and who arguably have not received the compensation which it is felt they should have. These people are getting retroactive benefits which could reach \$7 million.

THE COURT: So I gather -- and I know that EEOC speaks in unison as all administrative agencies and everyone

on the staff get along so very well. So I will assume that the Agency as a whole agrees that there is a figure roughly in the area of \$12 million to \$15 million of back pay as an amount which could be generated as a result of this Consent Decree, and an area, a figure in the amount of approximately \$23 million in the future.

Is that the cost figure on the basis of your independent analysis of the exposure of the Defendants?

MR. WILSON: It is the cost figure on the basis of our joint analysis of the exposure of Defendants. I think that the Defendants would -- the Defendants have participated with us in making some projections as to what that figure is likely to be.

THE COURT: Very well, fine.

Anything else you would like to tell me?

I have read through it and I will make a comment very shortly, but anything else you would like to enlighten me on, Mr. Carey, Mr. Wilson, or Mr. Gartner, I will be pleased to hear.

MR. CAREY: You have impressed me so much with your speedreading ability, your Honor, I think I will just sit down.

Thank you very much.

THE COURT: Thank you.

MR. CURRAN: If your Honor please, Miss Carin

Clauss from the Department of Labor would also like to say something.

THE COURT: Thank you.

MS. CLAUSS: Your Honor, Carin Clauss here, representing the Solicitor of Labor.

The part of the Complaint that reflects our particular activity is the equal pay provisions of the Complaint, and your Honor was just asking questions about the back wages and what relief the people would receive.

On Page 15 of the Consent Order, that would be the back pay award for the women involved in the equal pay complaints which would also be incorporated as a Title VII violation for EEOC. This would be women who already transferred into jobs where there were men but because under the existing promotion system their salaries would be based on their old salary in clerical or operator jobs. So they would be performing equal work at a lower wage, and this agreement not only corrects that for the future but makes restitution over a two-year period.

In the Decree we are asking your Honor to consider and sign, at Page 15 AT&T is directed to pay an amount equal to the difference between the amount which the women were paid under the old system which we say was discriminatory, and the new system which removes the effects of that discrimination.

Your Honor also asked about Page 23 of the agreement, memorandum agreement. You said that indicated some element of pending cases.

THE COURT: I was referring only to Title VII.

MS. CLAUSS: I see.

THE COURT: Title VII and also 1981 and 1983 of the Civil Rights Act.

MS. CLAUSS: Well, I might note the last mentioned -- I did notice it might be a little ambivalent as we wrote it, but Page 23 refers to the Michigan Bell case and the New England Bell. Now, of course, those are cases brought by the Government. Those are Department of Labor Act cases, and because the Michigan Bell case where suit was filed some time ago involves the same violations we would then, when Michigan Bell signs the agreement, we would move for dismissal in this case, and I might echo and reflect the unanimity you noticed with EEOC to say that the Department does feel that this is an extremely fair agreement and does much to set a pattern for the future to eliminate the sex discrimination.

THE COURT: Thank you very much. I'm delighted to have you here.

MR. CURRAN: Lastly, your Honor, Mr. David L. Rose for the Department of Justice.

MR. ROSE: Thank you, your Honor.

Our role here is to represent the Secretary of

Labor and the United States with respect to the enforcement of the executive order which requires nondiscrimination in employment and affirmative action to achieve that end.

I think that my colleagues have set forth the agreement well.

The only thought that I might add is that -- or thoughts that I might add is that we are here as the lawyers for the Labor Department, if you will, with respect to the executive order and the United States as a contractor and subcontractor -- I'm sorry, the United States, which deals with AT&T as a contractor and subcontractor.

I would note the fact that to the best of my knowledge this is the first time that a private company and all of the government agencies which have responsibilities in the field of equal employment opportunity have entered into one agreement and one settlement at a time. I think it is a large step forward, and I think particularly the Equal Employment Opportunity Commission and the Department of Labor should be commended for their efforts, and the company and its subsidiaries, their efforts which have led to this agreement, Consent Decree.

THE COURT: Thank you very much. Pleased to have you.

Now that the Government has spoken with such

Curran?

MR. CURRAN: No thank you, your Honor.

THE COURT: It is a pleasure to have you here, as always.

I really would like to hear from the Defendants.

In the hockey case I had about thirty or forty lawyers in court, and I said, well, who is lead counsel? And twenty lawyers stood up. So, whoever is lead counsel, please speak.

Mr. Vought?

MR. VOUGHT: If your Honor please, my name is Mr. Vought, Schnader, Harrison, Segal & Lewis. I am arrogating upon myself the title of lead counsel, which I am not, your Honor. We are local counsel for AT&T and, our firm, but the laboring oar and all of the work and the negotiations that went into the culmination of this agreement and the proposed Consent Decree were handled by others than our office, and I therefore bow to Mr. Powers of Steptoe and Johnson, and Mr. Ashley from AT&T.

THE COURT: Very well. I will hear from either of you gentlemen, or both of you.

MR. POWERS: Your Honor, we certainly would echo all that was said about the extent to which this matter has been the subject of very serious and hard-fought pro-

ceedings before the Federal Communications Commission and

then the subject of very extensive negotiations.

As is true in any agreement of this kind, we believe that this is an adequate, appropriate settlement. I believe the companies feel that this gives them the basis to go forward and further demonstrate the commitment that they have to provide equal opportunity to women and the minorities.

THE COURT: And men, I gather, as I read through the Decree, that men also have rights which you should not forget.

MR. POWERS: Yes, that's correct.

THE COURT: But I mean I am serious. As I read through the Decree I have the impression that this would totally be options under which men may be able to make claims. Am I correct on that?

MR. POWERS: Certainly the plan will provide increased attention on the opportunities for men to move into what have been traditionally female jobs. There will be opportunities for them to transfer on a more favorable basis than they have been able to transfer in the past in terms of pay.

I just wanted to concur in what the Government attorneys said about the fact that private rights of action are preserved under Title VII. The action does not deal with 42 U.S. Code 1981 or 1983. It is true that to the

extent this is an action under the Equal Pay Act the fact that this action is brought by the Secretary of Labor will terminate private rights in that regard, but that is a matter mandated by statute.

Also to the extent that people do take advantage of the opportunities provided here and receive back pay, they would execute the normal releases of their claims in consideration for the payment they received. We believe that the terms are ones which should commend themselves to those who are considering settling like cases as to the issues covered in this Decree.

Do you have anything else to say?

MR. ASHLEY: I would only say it is the declared intention of the Bell Companies to advance the cause of equal opportunity. As your Honor well knows, this is a very rapidly developing field of law and just what are the responsibilities of businesses in some of these areas is not clearly defined. As a result of that we have had these very extensive and intensive negotiations, and have arrived at what we believe will be a very equitable settlement of our responsibilities, and we are anxious to advance the cause of equal opportunity through our affirmative action programs, and we believe this settlement will do that.

THE COURT: Thank you very much.

MR. VOUGHT: Thank you, your Honor.

THE COURT: Is there anyone who represents any of the parties in this suit who has been precluded from the opportunity of speaking?

Is there anyone who represents a party in this suit who would like to speak?

Now, for the record, because this case came to me because I have the related case in an action in this District, and I see counsel for that, Mr. Kuby and Mr. Cox, I have advised them that when this matter was filed that they would be notified.

I would like just for the record to be clear that they have been notified. I am not asking them to take any position. They may if they desire, but I would like for the record to be clear on that.

Mr. Kuby, Mr. Cox.

MR. KUBY: If your Honor please, my name is Benjamin Kuby. With me today is Michael Cox of the lawyers committee for civil rights. That committee is of counsel to the attorneys, Mr. Cummins and myself, who are representing the individual plaintiffs on a matter of Harris, et al., against the Bell Telephone of Pennsylvania, which is before your Honor.

That matter, your Honor, as you will recall, is a class action suit. The determination of the class has not

the Harris case is concerned.

I would just like to make a couple comments.

While sitting back there and listening to the gentlemen talk about an agreement, a consent decree and a memorandum, of course we have not had the opportunity to review it, and while I realize also -- I can say this for the record, that Mr. Brown spoke to Edwin Wolf, who is the director of the lawyers committee here in Philadelphia and did tell him about this, we still have not seen those documents.

The statements were made concerning, for instance, Paragraph II A. concerns me. That I think your Honor referred to in questioning counsel as to the individual litigants, and your Honor's questions were to the protection of the cases of the individual litigants.

The case that was filed in this district by Mrs. Harris and the others on behalf of the clients, and I heard no reference to the effect of this agreement to the potential class actions which grow out of the individual cases that have been filed. On the contrary, it seems to me that the statement made by counsel for Bell Telephone would seem to eliminate back pay for potentially an entire class that might be covered within the ambit of this understanding and consent. While we in no way want to decry

an accord in this matter, and I think what they have done is very admirable and points well to the future, the past has raised some problems. The amount of the lawsuit potentially in this District is \$2.5 million. I have heard very little as far as figures for the entire country, but it seems to me I heard one figure which talked about \$4 million for back pay, and I'm still not sure because it jumped back and forth.

Now, if we are talking about an entire country as opposed to a \$2.5 million claim for the Bell Telephone system in this locale, there is some questioning I would have.

THE COURT: Well, it is my understanding that the \$4 million refers to one specific type of claim and one specific category, and that there is a potention of \$12 million to \$15 million in back pay. I use the words "back pay" and an adjustment in the future which would amount to about \$23 million.

I would probably have had the right, Mr. Kuby, to have this hearing ex parte.

MR. KUBY: I understand that, sir, and I very much appreciate your Honor's notifying us and allowing us to be present. I don't want to be a strident voice in this proceeding, but I think at least for our future purposes, because we do have -- and I received yesterday from Mr. Vought's office a mammoth document on the various classes

to, I have some questions as to whether or not there is an effect on the potentiality of the class actions by virtue of this.

If your Honor's ruling is that there is no effect --

THE COURT: My ruling is that your lawsuit has not been dismissed. Any individual litigant you represent, they have an absolute right to pursue their claim and they are not affected so far as 1981, 1983, and Title VII.

As to the people in this undefined class in the Pennsylvania litigation, any individuals who knowing that they have this option decide to take this, they are precluded from your potential class.

Now, as to what will be the composition of your potential class, or what will be the composition of your future litigation as to individuals, I do not know. But everyone whose name is on the complaint whom you represent, they are totally protected, and we really are in a unique philosophical and legal position in the corridors of litigation these days when we deal with class litigation.

Presumably, and I really believe this is true of EEOC as I have seen them operate in the last four years that they represent a class, and they represent the consumer to the extent of those individuals who claim they have been deprived of their rights. So that I think they have done

what they should do. I think that the case will proceed in your case with more than deliberate speed. I will certainly permit any individual litigant who wants to join your claim to join it. There will be no limitation on that, and I think when we get to the point of the class, defining a class in your case in Pennsylvania, there is no reason why there cannot be adequate notice to the individuals, and I will require adequate notice to the individuals that if they accept the money which is in this consent decree they are precluded from pursuing any individual action.

I understand your questions, but I just think that we are at clashing positions, just like under the Antitrust Act, where the United States Department of Justice will prosecute on a Section 7 or a Section 1, Section 2, Sherman Act, and private litigants may have a very different theory.

So that I think you do have at some times maybe some differences of opinion, but I want to thank you for appearing and I wanted you to be fully apprised of it.

Would you like to say anything, counsel?

MR. COX: Your Honor, I would like to add one thing.

THE COURT: Sure.

MR. COX: The representative from the Department of Labor stated that equal pay claims that are mentioned in

this agreement will have the effect of barring equal pay claims that have accrued, for example, in Harris versus the Commonwealth of Pennsylvania.

MS. CLAUSS: No.

THE COURT: That isn't the way I understood her statement.

MS. CLAUSS: If you like --

THE COURT: I understand this will have the effect of barring equal pay claimants from this day forward, am I correct?

MS. CLAUSS: No, your Honor, there is no right under the Equal Pay Act for a class action. The Act is very specific in 216 USC that there can be no class action, so there can be no members of your class who are suing under the Equal Pay Act until they so inform the judge that they are bringing their own claim. So the equal pay payments here, as is provided in Section 17, which is our authority, does have the effect of terminating any rights that individuals would have to bring individual suits, on a class action which is not permitted, under Section 16(b), but since no such suit is filed and since this agreement provides full restitution for a two-year period from January 1, which is the statutory period, we can't possibly be cutting anybody off, and what we will do when the payments are made -- this

than they may at particularly male jobs, we would file with the Court a list of all of the women who are being compensated and as indicated by the Court that would amount to quite a substantial sum.

MR. COX: I understand.

THE COURT: Any further questions?

Any further comments, Mr. Kuby?

MR. KUBY: I probably would have many other questions and many other comments if I had a chance to read the agreement and the decree, but unfortunately I didn't and don't want to burden the court record at this point.

THE COURT: I will have the decree made available to you, and I will follow the Harris case just as I told you on it.

MR. KUBY: Thank you, sir.

THE COURT: I have one other matter. I guess that is the only advantage of speedreading. I would like someone to sign for the Department of Labor.

MS. CLAUSS: I realized, your Honor, that we had not signed.

THE COURT: Ladies and gentlemen, I want to thank you for your co-operation.

I would really like to commend the parties for

journey of a thousand miles you have to take the first step."

I want to commend all of the lawyers for what appears to have been Herculean efforts to reach a rational agreement on a difficult problem with an assurance that the past errors of deprivations will be eradicated. Particularly to those lawyers and similar employees in the government service, I know that when accepting the choice of working in the public sector they sometimes forego the more lucrative financial options available in the private sector. From personal observation I also know that the life of a government lawyer in the human rights field often is not one of total joy and occasionally consists of substantial grief because of frustration in reaching these goals with promptness and substance. Yet, you must know that your concern for improving the quality of life in our society for all, where the variables of race, religion, national origin or sex will not be a deterrent, constitutes an important mission.

I commend Chairman William H. Brown III, and all of his associates and those other persons of the public sector as well as the parties in the private sector for any efforts which they have made here and will make elsewhere to see that the lofty dreams of equal opportunities for all become an immediate reality.

Thank you very much.

The Order has been signed and will be docketed.

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(Concluded at 5:28 p.m.)

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Reported by: Paul T. Buttery

I Certify that the foregoing is a correct
transcript from the record of proceedings
in the above - entitled matter.

Date

Paul T. Buttery

Official Court Reporter