"What's the Alternative?": Attitudes of Discrimination Investigators Toward the Efficacy of Anti-Discrimination Law

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ABSTRACT
American discrimination law is a paradox: it attempts to eradicate discrimination – an inherently systemic problem impacting the most marginalized groups – using bureaucratic procedures. As a result, public servants tasked with investigating violations of discrimination law must pursue the fulfillment of such a sweeping goal through incremental means, adhering to laws that define discrimination narrowly. There is an extensive literature arguing that this misalignment between the law's driving goals and its methods of enforcement renders it ineffective; there is also considerable research on the public servant's unique position in this sense. Applying these literatures together to twelve discrimination investigators at three state-level commissions, it seems investigators are aware of the law's limitations, but are able to close the gap between the bureaucratic nature of their work and its driving goals by rationalizing these limitations, allowing them to remain idealistic about the efficacy of the law.

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INTRODUCTION

Discrimination is systemic and historical, omnipresent and pervasive, not isolated to a single institution. The effects of systemic discrimination often manifest themselves in the workplace, in housing practices, and in public spaces, but understanding systemic discrimination prompts us to recognize that discrimination is not *limited* to these spaces. The American legal response to discrimination, however, is not founded in this understanding. From the start, American anti-discrimination laws were constructed through a "rights framework," focusing on individual negative rights rather than collective socioeconomic rights (Merry 2014). In other words, the law is built upon an understanding of discrimination as isolated and individual, rather than systemic and having group-centered effects (Pedriana and Stryker 2017). Further, the law's power has been significantly limited by neoliberal reforms brought on in the 1980s (Leonard 1984; Smith and Welch 1984; Kalev and Dobbin 2006). Critics of the law argue that it leaves discriminatory systems and embedded practices unchallenged, reducing discrimination to a "bad apple" problem (Freeman 1978; Spade 2011; Merry 2014). Others argue that the law is effective because it deters discrimination, creates a culture of tolerance, and empowers individuals (Spade 2011; Merry 2014). Benefits aside, some argue that having the law constructed in this way is simply the easiest way to investigate and punish discrimination. By tasking individuals with the duty of reporting discrimination when it happens, the government itself need not look. The central question of this debate is whether anti-discrimination law is effective in combating systemic discrimination.

It is one thing to debate the efficacy of anti-discrimination law in academia; it is another to apply this debate to the law itself. While we may not be able to tangibly assess the efficacy of anti-discrimination law in combating systemic discrimination, we *can* look to those who carry out the law and are exposed to its results on the daily. Employees at state agencies that have partnerships with Housing and Urban Development (HUD) and the Equal Employment Opportunity Commission (EEOC), and enforce both state and federal discrimination laws, therefore may be able to help us understand the true impact of anti-discrimination law with respect to systemic discrimination. By situating the debate about the efficacy of the law within this context, discrimination investigators can offer an assessment of the efficacy of the law and an explanation of the perceived value of their work in the face of identified limitations.

The purpose of this study is to identify and explore discrimination investigators' attitudes towards the efficacy of anti-discrimination law in combating systemic discrimination more broadly, and to understand how investigators reconcile any differences between the mission of their work and their perceptions of its true impact. I interviewed twelve investigators at the Massachusetts Commission Against Discrimination (MCAD), the Connecticut Commission on Human Rights and Opportunities (CHRO), and the Rhode Island Commission for Human Rights (RICHR) about how effective they felt their work was, and about why they still found the work to be valuable even with the knowledge of its limitations in combating systemic discrimination. The goal was not to assess the efficacy of anti-discrimination law objectively, but to evaluate it through the lens of those who investigate instances of discrimination under the law. Investigators' assessments of the law's efficacy and their feelings of idealism or cynicism toward their work raise important questions about the bureaucratic pursuit of progressive goals aimed toward the public good. Do investigators feel this is the most effective way to approach

discrimination? If not, how do they continue to find value in their work? How do they reconcile their knowledge of the law's limitations with their idealism and belief in the agencies' missions?

I will argue that while investigators were willing to criticize the law's limitations, they were generally able to remain idealistic about their work. They reconciled their critical perspectives of the law with their idealism by relying on three major arguments: first, that the slow, incremental progress the law made was still valuable; second, that the law's limitations were not problematic flaws, rather just essential functions of the law needing supplements from other agencies and organizations; lastly, that it was better to have anti-discrimination law than not to. In other words, participants were able to mitigate any cynicism that may have risen out of their criticisms of the law by re-framing their understanding of their work and its driving mission in order to align the two more closely.

LEGAL BACKGROUND

HISTORY OF AMERICAN EMPLOYMENT DISCRIMINATION LAW

While discrimination laws can vary by state – covering different protected classes, having different statutes of limitation, and more – state agencies enforce the same federal laws: Title VII and Title VII of the Civil Rights Act of 1964, which prohibit employment and housing discrimination respectively, the Americans with Disabilities Act, which prohibits discrimination against disabled individuals in employment, housing, and public accommodations, and the Age Discrimination in Employment Act, which prohibits employment discrimination against individuals over forty years of age. Because state agencies partner with the federal Equal Employment Opportunity Commission (EEOC) and Housing and Urban Development (HUD) to enforce these laws, applicable complaints are dual-filed with the corresponding federal agency. To reiterate, discrimination in employment is the most common complaint handled by these three agencies; therefore, my discussion of anti-discrimination law's origins and efficacy will focus primarily on Title VII of the Civil Rights Act.

Though Title VII outlawed discrimination in the workplace, the legislation itself did not define discrimination, nor did it describe how discrimination should be prevented and eradicated. As a result, employers were largely left to decide how to accomplish this goal. Because the National Labor Relations Act had established personnel departments and internal mechanisms for the purpose of preventing discrimination against union members in 1935, personnel managers used these pre-existing tools to create a framework for preventing discrimination based on race, sex, color, national origin, and religion. Devices like internal grievance procedures, Equal Opportunity mission statements, and Human Resources departments were expanded for this purpose and approved *ad hoc* by the courts. Consequently, employers adopted these policies on a widespread scale in order to avoid costly litigation: having these mechanisms in place would indicate a good-faith effort to comply with the law, while neglecting to use these mechanisms would leave employers vulnerable to litigation. Simply put, it was more cost-effective for employers to implement these devices (Dobbin 2009).

Because the text of Title VII did not include a definition of discrimination or a specific remedy to the issue, the courts welcomed the expertise of personnel managers in creating a framework themselves. The mechanisms put in place by the National Labor Relations Act (NLRA) had proven effective, thus, the courts had little reason to question their expansion and use for

discrimination based on sex, race, color, national origin, and religion. With the judicial seal of approval, employers adopted these mechanisms with the understanding that they were the official means to preventing discrimination and avoiding costly litigation (Dobbin 2009).

LIMITATIONS OF THE LAW

The Rights Framework

Merry explains the "rights framework," or the way that the American legal system approaches solutions to inequality and injustice, emphasizes civil rights more so than collective economic and social rights; negative rights more so than positive. In a neoliberal America, the rights framework is the most logical approach to inequality and injustice: individual rights can be expanded easily within existing structures, while expanding collective social and economic rights requires large-scale re-structuring. Centering the individual's negative rights is also well-suited to a neoliberal society that emphasizes personal responsibility and the freedom *from* government interference, rather than the government guaranteeing a standard of wellbeing (Merry 2014).

Because American employment discrimination law is built on the rights framework, it was not built to tackle discriminatory socioeconomic arrangements or embedded practices on a large scale. Instead, the law works best when there is a clear perpetrator and victim, and when the victim complains about the discrimination. Merry criticizes this element of the law as well, arguing that relying on an individual victim to report discrimination leaves any unreported discrimination unchallenged. As a contrasting example, the Voting Rights Act was highly effective because it used an automatic statistical trigger to detect violations, rather than relying on individual would-be voters to report violations (Pedriana and Stryker 2017). While Title VII does allow for disparate impact cases that may affect more than one individual, the onus is still placed on the victim(s) to report the discrimination.

A major criticism of anti-discrimination law being structured in this way is that it neglects to address larger forms of systemic discrimination. When the law relies on the "perpetrator perspective," discrimination is viewed not as a system of disadvantage but as a single action committed by a perpetrator. This allows society to identify the perpetrator as a bad person isolate them from any history or context (Freeman 1978: 1053). This is not an accurate representation of how discrimination works in America. While it is wrong that one's employer may call one a racial slur, that slur is not an isolated incident; rather, it is rooted in a history of oppression and a system of disenfranchisement of people of color (Merry 2014). When discrimination is reduced to an incident between victim and perpetrator, these histories and contexts are neglected, and thereby affirmed as nondiscriminatory or fair (Spade 2011).

There are, of course, arguments in favor of anti-discrimination law because of its benefits; these arguments center not on a denial of its flaws but on a recognition that it is better to have these laws than not, and that focusing on the individual can be empowering and important. Without Title VII, Title VIII, ADA, and ADEA, employers and landlords would have free reign to let their own implicit biases against protected groups dictate individuals' access to employment, housing, and public accommodations. Merry concedes that while the law may not target systemic discrimination, it can serve as a signal to the public that certain groups of people have been oppressed and are deserving of protection from further oppression (2014). Therefore, codification can also serve as a deterrent to future discriminators (Spade 2011: 82). Dobbin

explained that employers quickly found it beneficial to implement anti-discrimination mechanisms to avoid costly litigation (2009). Codification can also be affirming and empowering for marginalized groups who have felt historically persecuted by society. The transition from state-sanctioned oppression to formal, federal recognition of rights is a momentous one (Spade 2011).

The Group-Centered Effects Test

While I sought not to objectively assess the efficacy of the law but the perceptions of the law's efficacy by those who enforce it, the *ad hoc* path to anti-discrimination law based on existing NLRA institutions, combined with the construction of the law based on the rights framework, has important implications for the efficacy of the law. One might question, for example, whether the tools designed for the protection of labor unions can effectively translate and be used for protecting groups of people that have been marginalized for centuries. There is also reason to wonder whether, in implementing pre-existing practices to remedy a different problem, more effective methods were not explored. Several studies have attempted to answer the question of whether anti-discrimination law is truly effective in eradicating discrimination in the workplace, but such efficacy is difficult to measure because improvement in employment conditions is also aided by a number of external factors, rather than anti-discrimination law alone. Still, some studies have found that early Title VII policies were effective in producing positive employment effects for women and blacks, but only until the 1980s, regulatory agencies were cut back, leading to a heavier reliance on individual litigation (Kalev and Dobbin 2006; Leonard 1984; Smith and Welch 1984). In other words, Title VII is not as effective now as they were early on; the positive effects have slowed (Leonard 1984).

Pedriana and Stryker offer an explanation for this trend. They assessed the comparative effects of Title VII, Title VII, and the Voting Rights Act, and explain why some legislation was more effective in accomplishing its goals than others. They argue that civil rights laws vary in effectiveness depending on to what extent they embody the "group-centered effects" (GCE) framework. The GCE framework is based on four principles: discrimination is systematic rather than isolated or individualized, discrimination is established by effect rather than intent, efforts to improve minority representation are more valuable than grievance procedures and monetary settlements, and class action lawsuits are more conducive to the eradication of discrimination than individual suits (2017: 100).

They argue that Title VIII of the Civil Rights Act has been largely ineffective because it embodies GCE the least, while the Voting Rights Act has been most effective because it embodies GCE the most, and that Title VII falls in between these two poles. Specifically, the Voting Rights Act included an effects-based statistical trigger, such that voting districts failing to meet certain voter turnout measures were automatically considered to be violating the law and placed under supervision by the Attorney General. The Attorney General would then need to "pre-clear" any further changes in voting requirements in that district (103). This format embodies GCE because it identifies discrimination by effect rather than intent: it did not necessarily matter if a voting district did not *intend* to discriminate as long as there was a demonstrated discriminatory impact. Additionally, violations of the Voting Rights Act did not rely on individual complainants and did not use individual compensation to remedy the issue; instead, violation detection was based on a statistical trigger, and the remedy involved changing

a district's voting requirements in order to create a more equitable outcome. Conversely, Title VII and Title VII were written in the language of individual discrimination. Even in disparate impact cases, where practices that appear neutral on their face but have a discriminatory effect violate the law, there is no statistical trigger or group-centered remedy. Cases must be brought forth by individuals, and are resolved with those individuals.

Pedriana and Stryker show that the Voting Rights Act was extremely effective: two years after its implementation, the black-white voter registration gap diminished from 44.1 percent to 27.4 percent. At the end of the Voting Rights Act's first year, black voter registration had increased by 50 percent (107). Their findings with respect to the efficacy of Title VII align with those of Kalev, Dobbin, Smith, Welch and Leonard in that the greatest benefit for blacks occurred between 1965 and 1975, when the EEOC was operating more in line with GCE. Later periods saw little to no progress (114).

The purpose of this study is to understand the attitudes of discrimination investigators towards the law and to illustrate the ways by which investigators reconcile their knowledge of reality with their sense of idealism. Dobbin's account of the origins of Title VII gives rise to concerns about the law's ability to prevent discrimination using tools that were originally designed for a different problem (2009), and Pedriana and Stryker find that Title VII is ineffective because it does not embody a group-centered approach to discrimination (2017). Studies have shown that Title VII was highly effective in its early years, but that its successes have dwindled significantly since that time (Kalev and Dobbin 2006; Leonard 1984; Smith and Welch 1984). I seek to understand whether discrimination investigators believe these findings to be true and how this affects them in their line of work. While many have attempted to objectively determine whether anti-discrimination law is effective, it seems none have sought to evaluate the levels of idealism or cynicism amongst those who enforce what is argued to be an ineffective law. If research has found Title VII to be declining in its success, do discrimination investigators feel these effects? How does it impact them in their work?

IDEALISM AND CYNICISM IN BUREAUCRATIC SETTINGS

The work of public servants is often driven by an overarching mission or ideal; in the case of discrimination investigators, their mission is to fulfill the purpose of Title VII, Title VII, ADA, and ADEA to eradicate discrimination. I sought to assess the extent to which these ideals mitigated cynicism in the face of knowledge about the law's limitations, or, conversely, the extent to which this knowledge produced cynicism with respect to the fulfillment of these ideals. Further, because discrimination investigators perform bureaucratic work to achieve a progressive ideal, I also asked investigators if the bureaucratic nature of their work hindered any feelings of idealism about their ability to combat discrimination.

There is significant debate regarding the fate of idealism in bureaucracy. Frederickson and Hart (1985) argue that there *is* a place for idealism in bureaucratic public service because public servants, by nature, perform work that carries out American ideals and values. There is a sense that public servants are entrusted with delivering important services to the public that have been recognized by the state as fundamental, and that such a responsibility produces idealism in itself. Frederickson and Hart refer to this driving obligation as "the patriotism of benevolence," or "an extensive love of all people within our political boundaries and the imperative that they must be

protected in all of the basic rights granted to them by the enabling documents." (1985: 549) For discrimination investigators, the patriotism of benevolence might manifest itself in the belief that discrimination is federally recognized as immoral and illegal, and that they are protecting the public from discrimination by performing this work. In other words, discrimination investigators may see themselves as guarantors of fundamental human rights (Frederickson and Hart 1985: 551). If a bureaucrat is driven by these greater responsibilities and further believes that their work is beneficial to society, they are likely to feel idealistic about their work (Goldner et al. 1977). Therefore, it seems possible that public servants would remain idealistic about their work in spite of the limitations inherent to its bureaucratic nature.

The existence of these driving missions alone is not the only thing that may instill a sense of idealism in public servants. In a study of idealism in police officers, researchers measured the extent to which professionalism fostered idealism in the work, using five dimensions of professionalism: use of the professional organization as a referent, belief in public service, belief in autonomy, belief in self-regulation, and a sense of calling to the field. The findings showed that a sense of calling to the field had the strongest impact in mitigating cynicism (Poole et al. 1978). While police officers and discrimination investigators perform very different daily tasks, both occupations fall under the branch of law enforcement; police officers enforce criminal laws, while discrimination investigators and their state agencies enforce federal discrimination laws. Therefore, both police officers and discrimination investigators are in unique positions as people whose work is driven by the larger missions of enforcing laws, guaranteeing rights, and keeping people safe.

Though the existence of a driving mission and a sense of calling to the field may foster idealism, it is also possible that bureaucrats lose hope in these ideals over time as they are forced to reconcile the technical limitations of their work with the bold, progressive nature of the mission. In other words, while public servants may still find these larger ideals valuable, over time they may find that the bureaucratic nature of the work severely limits their ability to fulfill this ideal. Therefore, they may become more cynical about their work. In a study of idealism and cynicism among medical students, Becker and Greer found that medical students became more cynical as they progressed through medical school. Medical students start school with a high degree of idealism, feeling that they are ready to commit to helping people, but quickly become cynical about elements of their education. For instance, the knowledge that students will not come in contact with real patients in their first year is a major factor leading to cynicism. Over time, medical students focus less on the ideal of "helping people" and more on the technical elements of clinical experience, showing less concern for patients as human beings and more concern for their own ability to diagnose correctly or have an interesting case. However, even after becoming less idealistic about their work, medical students' early idealism can still be brought up when asked; though their everyday motivations may be different, students still alluded to the greater purpose of helping others when discussing the reasons for their work (Becker and Greer 1958).

Further, while Frederickson and Hart argue that the driving missions and responsibilities of public service tend to foster idealism in bureaucrats, Lipsky argues that it is fairly easy for this idealism to be bogged down by bureaucratic rules and conflicting goals. By Lipsky's analysis, these idealistic goals that drive public service do not inspire idealism; instead, they foster cynicism because they are misaligned with the bureaucratic nature of the work. Public servants

may struggle to understand how their day-to-day work fulfills these lofty goals, and are likely to feel cynical about the efficacy of their work with respect to these goals when forced to reconcile the two. Lipsky argues that public servants may feel cynical about their work because they feel a tension between the ideal of helping people and the reality of mass processing and organizational norms. He writes that

> On the one hand, service is delivered by people to people, invoking a model of human interaction, caring, and responsibility. On the other hand, service is delivered through a bureaucracy, invoking a model of detachment and equal treatment under conditions of resource limitations and constraints, making care and responsibility conditional. (1980: 71)

As a result of this tension, public servants face an inherent dilemma of providing individual responses on a mass basis. The overarching mission of their work compels them to treat each case with care, but the bureaucratic reality of the work compels them to meet deadlines and quotas and to treat cases equally. Lipsky argues that as a result, public servants will either become cynical about the efficacy of their work or attempt to remain idealistic by rationalizing these limitations instead of problematizing them (144).

METHODS AND DATA

DATA

I interviewed twelve investigators from three different state agencies for this project: the Massachusetts Commission Against Discrimination (MCAD), the Connecticut Commission on Human Rights and Opportunities (CHRO), and the Rhode Island Commission for Human Rights (RICHR). I interviewed six investigators from the MCAD, four from the CHRO, and two from the RICHR. The sample is 42% white, 33% Hispanic, 17% Black, and 8% Asian/Pacific Islander. As being an attorney is not required of investigators, seven out of twelve participants are licensed attorneys. Seven out of twelve participants identify as female, with the remaining five identifying as male. The majority of participants were under age 50 (75%), with 42% of participants being between ages 30 to 40, 25% being under age 30, and 8% being between ages 41 to 45.

AGENCY BACKGROUND

The MCAD, CHRO, and RICHR are state agencies tasked with enforcing both state and federal anti-discrimination law. Members of the public can file legal complaints of discrimination to be investigated by these agencies, given that the complaint meets *prima facie* requirements. To meet *prima facie* requirements, a complaint must be within the agency's jurisdiction, have occurred within the state's statute of limitations, and fulfill legal definitions of discrimination. For example, if a complainant wished to complain of failure to accommodate disability, they must prove that the employer denied a reasonable accommodation or that they failed to engage in an interactive dialogue about an appropriate accommodation. Each state agency is "neutral" in that it does not represent the complainant; rather, these are fact-finding agencies designed to determine objectively if the law was violated. Each state agency enforces federal laws as well as their respective state laws, including Title VII and VIII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. While the procedures and requirements of these agencies are similar, they differ in some respects.

Massachusetts

The MCAD investigates discrimination in employment, housing, public accommodation, education, credit, and lending. The agency enforces both state and federal laws, and therefore partners with the Equal Employment Opportunity Commission and the Department of Housing and Urban Development. In addition to investigations, the agency also conducts education and outreach: the MCAD offers training sessions for organizations, which can be preventative or included as settlement for a case. All MCAD services are free to the public, and complainants are not required to have an attorney. It is important to note that, as a matter of policy, an individual who feels they have experienced discrimination *must* file with the MCAD and wait at least 90 days before removing the case to court, if they so choose. This is because complainants must exhaust the administrative resources available to them before charging a respondent in court. Additionally, the parties may decide to mediate the case at any time during the investigation. Investigations typically take about 12-16 months.

In fiscal year 2019, 79% of the MCAD's complaints were employment related, 12% of complaints were housing related, and 8% were related to public accommodations. Education, credit, and lending make up a very small portion of the MCAD's investigations. Also in fiscal year 2019, 86% of cases were issued lack of probable cause findings. The most common form of discrimination investigated by the MCAD is disability discrimination, followed by race and sex (Massachusetts Commission Against Discrimination 2019).

At the MCAD, a person who wishes to file a complaint must come to one of the agency's four state offices for an intake session. The investigator or intern performing the intake must determine whether the complaint meets the *prima facie* requirements and compose the legal complaint. If the complaint does not meet these requirements, complainants may be referred to other agencies or offices. If there is uncertainty about the complaint's ability to fulfill these requirements, the complaint will be sent to review and authorization, where attorney advisors will determine if the MCAD will investigate the case. At this time, the case is assigned to an investigator. The complaint is served to the respondent party, which responds to the allegations in the complaint. The complainant has an opportunity at this point to submit a rebuttal, but this is not required. The investigator will then submit requests for information to both parties, which often include things like personnel records, demographic information, and documentation of relevant communication. In most cases, the investigator will hold an investigative conference wherein both parties answer additional questions. Once the investigator feels they have collected enough evidence, they will recommend either a probable cause or lack of probable cause finding to the Commissioner.

If the investigator recommends lack of probable cause, the case is effectively closed with the MCAD, but the complainant is free to remove the case to court. Of the MCAD's 3,364 new complaints in fiscal year 2019, 343 were removed to court at some point during the investigation (Massachusetts Commission Against Discrimination 2019). Complainants may also appeal this finding if there has been an error of law. If the investigator recommends probable cause, both parties will be required to attend a mediation at the MCAD; settlement can consist of money, training, or other arrangements. Should the parties fail to reach a settlement agreement, a public hearing is held wherein the Commissioner will hear the case and issue a final determination.

Connecticut

The CHRO investigates discrimination in employment, housing, public accommodations, and credit. Like the MCAD, the agency investigates both state and federal laws. The CHRO also conducts education and outreach in addition to its investigations. As with the MCAD, the investigative services of the CHRO are free to the public and do not require an attorney.

In fiscal year 2019, 77% of the CHRO's complaints were employment related. About 14% of cases were related to discrimination in public accommodations, and about 8% of cases were housing-related. The most common form of discrimination in these complaints was race discrimination, followed by sex and disability. The CHRO closed 2,640 cases in fiscal year 2019, 14% of which were issued "no reasonable cause" findings. About 21% of closed cases were dismissed administratively or during case assessment review. The remaining cases were closed through pre-determination conciliation, public hearing, court closure, or withdrawal by the complainant. 95 cases were issued "reasonable cause" findings (Commission on Human Rights and Opportunities 2019).

Once a complaint with the CHRO is filed, the agency must conduct a complaint assessment within 60 days. This process is similar to the MCAD's review and authorization process; if the agency finds a complaint to be implausible on its face or out of its jurisdiction, it will be dismissed at this point. If the complaint is retained, the case goes to mandatory mediation in an attempt to resolve the issue before an investigation or hearing. If the parties do not settle, the Commission will determine if an investigation or early legal intervention is the best option. Early legal intervention entails the case being sent to the legal department to determine whether there is enough evidence to go directly to public hearing, whether the case should be dismissed, or whether an investigation should proceed.

At the close of an investigation, the investigator recommends either a reasonable cause or lack of reasonable cause finding. If lack of reasonable cause is recommended, the case is dismissed with the agency, but can be removed to court or appealed. If reasonable cause is recommended, both parties must attend conciliation, similar to the MCAD's mediation process. If the parties fail to reach a settlement agreement, a public hearing is held wherein the Commission, the complainant, and the respondent present the evidence to a "human rights referee," an independent, governor-appointed referee who issues a final decision within 90 days (Commission on Human Rights and Opportunities 2019).

Rhode Island

Like the MCAD and CHRO, the RICHR enforces both state and federal law, and conducts education and outreach in addition to investigations. The agency investigates discrimination in employment, housing, public accommodations, and credit. Like the MCAD and CHRO, all investigative services at the RICHR are free to the public and do not require an attorney.

In fiscal year 2018, 77.6% of the RICHR's complaints were employment related. About 13% of cases were related to housing, and 2.6% of cases were related to public accommodations. The most common form of discrimination was disability discrimination, followed by sex and race. 11.9% of cases were issued probable cause findings, while 29.5% were issued no probable cause

findings. The remaining cases were settled before a finding was issued, withdrawn by the complainant, or closed administratively (Rhode Island Commission for Human Rights 2018).

Once a complaint is filed with the RICHR, investigators must collect and evaluate evidence and attempt to resolve the case. If a resolution is not reached, the investigator must recommend a finding of either probable cause or no probable cause to the Preliminary Investigating Commissioner, who will issue a final determination. If no probable cause is found, the case is dismissed with the agency, but can be taken to court if the complainant so chooses. If probable cause is found, the case enters conciliation. If the parties fail to reach a settlement agreement, an administrative hearing is held wherein a Commissioner issues a final determination (Rhode Island Commission for Human Rights 2018).

RECRUITMENT

Initially, I recruited participants at the MCAD by obtaining permission from the Director of Training to invite a maximum of six investigators to participate. I served as an Intake Intern with the MCAD for approximately three months and was able to approach investigators personally to invite them to participate. I prepared a rough script for both in-person and e-mail recruitment, both of which included a brief explanation of the project.

To expand my sample size, I e-mailed six additional state agencies explaining the project and asking whether investigators would like to participate. I received responses from all six agencies, and was given permission to interview investigators by phone at the RICHR and CHRO. My point of contact at the RICHR directed me to a list of six investigators; I e-mailed all six investigators using a recruitment script and later interviewed two investigators by phone. My point of contact with the CHRO personally invited investigators to participate and provided me with a list of five investigators who were interested. I e-mailed these investigators using a recruitment script and later interviewed four investigators by phone. I used the same interview guide for each interview, totaling about twelve questions. Interviews lasted between thirty to fifty minutes.

Most agencies that declined to participate did not offer a reason, though some expressed that I would only be allowed to conduct research at their agencies as an intern. Because of the busy nature of the work of an investigator, participation largely depended on individual availability. With that said, most investigators I contacted were willing to be interviewed and expressed interest in the project's results. Because most interviews were conducted over lunch, I largely avoided having to interrupt investigators' work.

ANALYTIC STRATEGY

To assess investigators' levels of idealism and cynicism in their work, I first asked participants to assess the merits of arguments that anti-discrimination law is flawed and ineffective in some way. These questions would allow participants to offer their own assessments of the law's efficacy, which would in turn allow me to understand how these assessments of the law are reconciled with feelings of idealism. These arguments centered primarily on the idea of the "rights framework." (Merry 2014) I asked participants about their opinions of the efficacy of anti-discrimination law, which included both direct questions about their beliefs ("Do you feel like the work you do helps to target systemic discrimination?") and questions asking them to

assess the merits of arguments about anti-discrimination law. I used these questions to gauge whether investigators felt their work was effective in targeting systemic discrimination, why or why not, and how.

I also asked them questions about how their assessments of the law's efficacy affected their feelings toward their own work, such as "Why do you do this work?" and "In light of the limitations of the law we've discussed, do you ever feel frustrated in your work?" I used these questions to gauge an investigator's relative feelings of idealism or cynicism in their work. If a participant was highly critical of the law's ability to target systemic discrimination, but remained optimistic about its effects, this generally indicated idealism. Responses that overcame feelings of cynicism or reflected a strong commitment to the overarching goal of the work – the eradication of discrimination – were also coded as idealism. Conversely, responses that were critical of the law and generally pessimistic or unhopeful with respect to the impact of the work were coded as cynicism.

I started by asking more open-ended questions, like "What role do you think anti-discrimination law plays in combating discrimination?" and "How effective do you think anti-discrimination law is in combating systemic or structural discrimination?" I then shifted to questions that were more directly tied to these arguments. For example, I asked them to assess the merits of the following quote, which argued that anti-discrimination law isolated and individualized instances of discrimination: "Meanwhile, all the daily disparities in life chances that shape our world along lines of race, class, indigeneity, disability, national origin, sex, and gender remain untouchable and affirmed as non-discriminatory or even as fair." (Spade 2011: 85)

My goal was to establish an understanding of the investigators' attitudes towards the efficacy of the law before assessing how these perceptions may affect their levels of idealism or cynicism in their work. If investigators emphasized the limits of anti-discrimination law, would they feel more cynical towards their work? How would investigators idealize their work when asked to assess arguments criticizing the law? If investigators are critical of the law but remain idealistic about their work, how do they maintain this idealism, and why?

Coding

I manually transcribed each interview and wrote research memos summarizing the main takeaways from each interview. I uploaded each transcript to Dedoose and used Burawoy's extended case method to code the data. The extended case method is rooted in reflexive science and emphasizes researchers' engagement with subjects of study rather than objective detachment. It seeks to embed dialogue between observer and participant within larger social dialogues and social theory (Burawoy 1998). For this, I explored the literature on anti-discrimination law and professional idealism/cynicism to extract general themes and arguments, and used these to code the data. I used this method of analysis because it allowed me to evaluate the data as a whole; by interpreting the data through pre-identified themes and arguments, I was able to identify common trends and easily apply them to existing theory and literature. The extended case method also accommodated my inherent embeddedness in the environment I studied as an intern with the MCAD.

After coding the data, I identified the most common codes and sorted them out into four major categories and several sub-themes. Because I sought to evaluate investigators' attitudes towards the efficacy of anti-discrimination law, and further evaluate investigators' levels of idealism or cynicism toward their work in relation to their attitudes towards the law, the four major categories correspond to the nature of this question: benefits of the law, limitations of the law, idealism, and cynicism. I then identified the most common arguments within each category, producing the following list of themes:

Benefits of the law	Limitations of the law
1. Preventative/deterrent 2. Educational 3. Incrementalism 4. Culture of tolerance 5. Individually empowering 6. "Ripple effect"	1. Does not target systemic discrimination 2. Reactionary 3. Law only changes outward practice 4. "Wish we could do more"

Idealism	Cynicism
1. Eradicating discrimination is possible 2. Working for a "good cause"	1. Eradication is impossible

I then observed which participants discussed these themes the most in order to keep track of which participants gave a more critical assessment of the law and which participants spoke of the law in more favorable tones. I used these assessment profiles to understand patterns of idealism and cynicism among participants; specifically, I identified the arguments that most often fostered idealism, those that fostered cynicism, and those that helped participants reconcile their perceived realities of the law with their idealism. These results are discussed below. The names of all participants have been changed.

RESULTS

LIMITATIONS OF THE LAW

10 out of 12 participants spoke about the limitations of the law to some degree; however, some participants spent more time talking about the law's limitations than others. Figure 1 illustrates that participants spent 57% more time championing the law's benefits than addressing its limitations. Thus, the sample was far less critical than complimentary in its assessment of the law's efficacy.

Many arguments praising the law were rooted in recognitions of the law's limitations; likewise, many arguments criticizing the law were supplemented by the argument that it was better to have the law than not to. By viewing the law as an "all or nothing" debate, its limitations are minimized; such a perspective enables participants to place more weight on the law's benefits by arguing that while the law is flawed, things are certainly better for having it. Essentially, arguments praising the law served as positive spins on unfavorable realities, and arguments addressing these unfavorable realities as criticisms of the law were portrayed as realities that must be accepted in the law's pursuit of justice.

The most common arguments used to criticize the law were coded as: does not target systemic discrimination, reactionary, law only changes outward practice, and "wish we could do more."

Law does not target systemic discrimination

Nine participants argued that the law did not target discrimination. These participants focused on the law's individualized nature as its main flaw, arguing that a law designed to process individual cases of discrimination is unable to target discriminatory institutions and systems more broadly. This argument is common in the literature: several authors argued that the nature of the law prohibits it from effectively combating systemic discrimination (Freeman 1978; Spade 2011; Merry 2014; Pedriana and Stryker 2017). These participants also took issue with the standard of discrimination inherent to the law; they argued that the threshold for what was considered discrimination often seemed too high, and that such standards forced the experience of discrimination into a small, individualized box. For example, Adam argued that "hate doesn't really have its limits. You know, it doesn't really fit neatly in a box. It can't always be articulated and explained." He believed that discrimination manifested itself in myriad ways but that the law was effective only with respect to the most explicit forms perpetrated by one individual against another, adding that "discrimination law, I think, has a higher threshold...I think discrimination law doesn't account for anything from micro-aggressions to something that's just below blatant, 'I'm telling you that I'm discriminating against you.'" By this logic, the law mischaracterizes the nature of discrimination, boiling it down to a perpetrator-victim dyad in select settings (employment, housing, and public accommodations). Participants felt that this did not reflect the systemic nature of discrimination.

Reactionary

Related to the argument that the law does not target systemic discrimination, two participants added that the law was too reactionary to affect widespread, systemic change. Interestingly, this argument was not reflected in the literature. These participants took issue with the fact that anti-discrimination law relies on an individual to come forward and complain for the law to be enforced: "If we're going to file a charge, we're reacting to something that is brought to us. We're not actively looking to see what's going on…so a lack of proactivity - not a lack of proactivity, a lack of ability to be proactive, is probably the biggest downfall." (Brian) According to these participants, this structure leaves a great deal of discrimination unaddressed. This argument rested on the belief that the best way to combat systemic discrimination was to take a proactive approach. For example, Anna argued that "being proactive about things is probably the most effective way that this can happen. Because if we're just a bandage solution for most of it, then it comes down to you know, do we have enough resources and money to create the deterrent that will actually stop people from doing things?" The labeling of anti-discrimination law as a "bandage solution," combined with a sense of frustration over enforcement agencies' lack of resources, reinforces the idea that the law was intentionally built not to be proactive, and therefore designed not to target systemic discrimination.

Law only changes outward practice

Three participants argued that the law did not actually challenge and transform the beliefs of potential discriminators; rather, it only changed the outward practices of employers, landlords, and business owners. In other words, these participants criticized the law because it meant people could continue to hold internal biases about protected classes, and act on them, as long as it was

not reflected in employment or housing decisions. This argument was not reflected in the literature, perhaps because of the unique experience of discrimination investigators as they work with respondents directly. Caleb, for example, believed that the law operated on the false assumption that as long as employers complied with the law, discrimination was not occurring: "A lot of times, especially when you're dealing with human resources, I think there's more an attitude of just making sure we're in compliance and like, checking certain boxes." Anna further argued that the law was not designed to educate people as to the morality behind nondiscrimination, and that the law encouraged compliance only by the threat of costly litigation:

> So they're just seeing 'this is what's not allowed,' and there's no real educational potential in the law, it's just a set of guidelines. If there's really going to be a transformation I think in how - in making people want to follow along not just because it exists in the law, that's not something that's going to come from [the law]…

These participants therefore believed that the law could not truly eradicate discrimination; if anything, it might eradicate the outward expressions of it in employment, housing, and public accommodations. They generally expressed the sentiment that complying with antidiscrimination law for the sake of avoiding investigation and costly settlements was disingenuous and not conducive to the eradication of discrimination.

"Wish we could do more"

Five participants expressed a general feeling that they wished they could do more. In that sense, this argument was a combination of all arguments criticizing the law's limitations, but with an explicit expression that these limitations were frustrating in their line of work. Participants who expressed this sentiment often stated that it was difficult to work with complainants for whom quality of life would not drastically improve by "winning" a case; they recognized that resolving a complaint could not remedy the problems people faced as a result of systemic and institutional discrimination. This fact caused participants some stress, as they wanted to do more, but could not due to the law's specific scope. Katie, for example, expressed frustration over the law's inability to target systems of discrimination that affect a person beyond a series of discriminatory incidents at work:

> So you're meeting someone who's saying they just lost their job, and tied to that job is their medical insurance, their housing security, their ability to provide for their family, and while I'm really glad that there are processes in place that hopefully can provide them some relief and some recourse, that recourse only does come down the line. There's a long process. So I'm meeting this person, and unfortunately I can't go like, 'Okay, you're going to be alright, we can guarantee and take that weight off your shoulders that you're going to be able to make rent next month or continue your medical treatments,' or something like that. We can't. I know there are other agencies that provide various forms of assistance, but I can also definitely see their own frustration knowing 'Okay well, the Commission is one place I went to and this is going to take a while, and now I have to go to 15 other places just to make sure I can survive right now.'

This is similar to Caleb's sentiment that "even if the Commission, even if me as the attorney who's working on the case or my colleagues who are the investigators, even if we're doing everything possible in our power to have an expeditious resolution, that often times is not enough." These participants recognized that filing a complaint or winning a case would not significantly improve a complainant's life because there were so many other systemic forms of discrimination that the law could not address.

BENEFITS OF THE LAW

All participants spoke of some benefits to anti-discrimination law to some degree; however, some participants championed the law's efficacy more so than others. Generally speaking, participants spoke more about the benefits of the law than they did its limitations: on average, participants' assessments of the law's efficacy were 57% more positive than critical. Figure 1 illustrates each participant's ratio of praise to criticism in their assessments of the law's efficacy.

It is important to note that many arguments in defense of the law's efficacy were rooted in its criticisms; only one participant indicated that they believed the law was flawless. Arguments used in defense of the law often directly acknowledged its limitations. In other words, most of the arguments in defense of the law were not to claim that the law *did* effectively target systemic discrimination, but that that law had important benefits in spite of this fact.

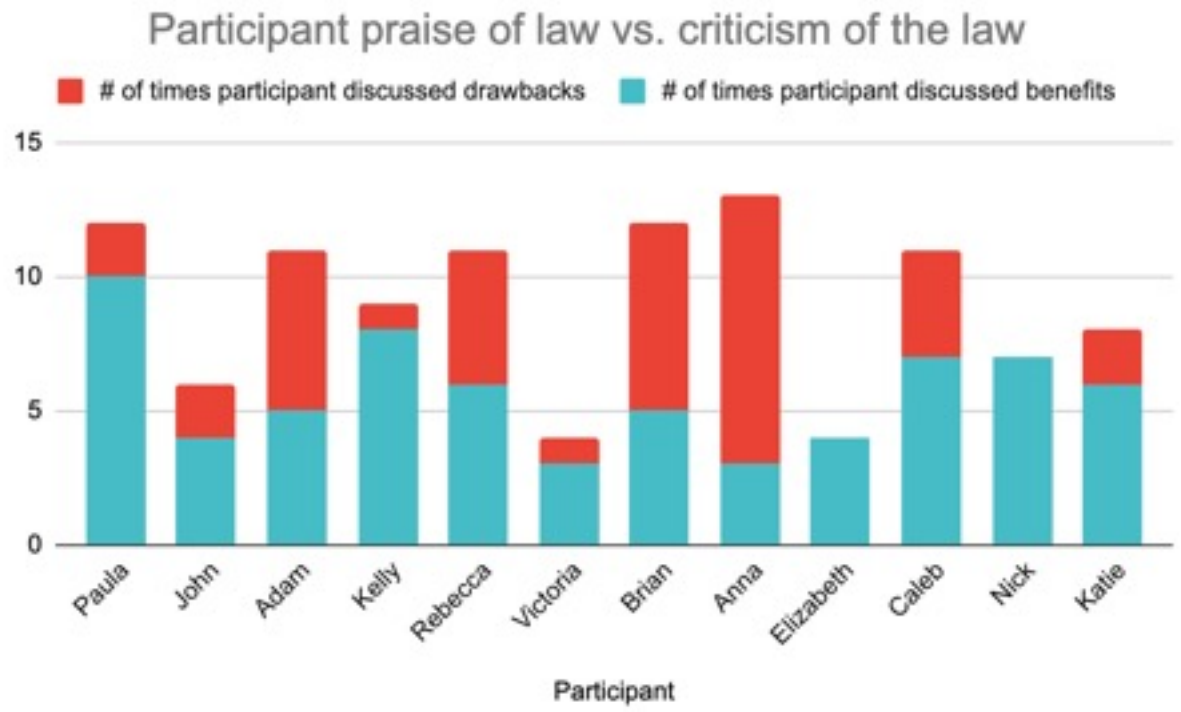

Fig. 1 – Ratios of praise versus criticism in each participant's assessment of the law's efficacy.

The most common arguments used in defense of anti-discrimination law's efficacy were coded as: educational, incrementalism, individually empowering, preventative/deterrent, culture of tolerance, and "ripple effect."

Educational

Nine participants argued that anti-discrimination was valuable in part because of its educational role. This argument is two pronged: first, the law is educational because the enforcement agencies in question typically also engage in community outreach and education. Secondly, the law is educational because regardless of the outcome of a given case, both parties come away having learned more about the law. For complainants, participants argued, this might look like educating their friends, family, or communities about their rights; for employers or landlords, it may mean increased training or improved policies. For example, Rebecca stated that

> Regardless of what the outcome is for the complainant, even if the outcome is the case is dismissed, it gets employers – hopefully – thinking about how they could do better next time so that this doesn't happen again, and even if it was dismissed and found in favor of the respondent, I think that also, again, maybe it gets them to review their policies to make sure they're doing everything they can to prevent this from happening, to prevent an employee from feeling like they're discriminated [against].

Participants who praised the law's educational benefit in this sense recognized that the law may not be effective in combating systemic discrimination itself, but that its existence served to educate the broader community and thus expand the law's reach beyond the scope of a single complainant or respondent. In that sense, even if a complainant does not "win" a case, there is still a net positive.

Incrementalism

Like the argument in favor of the law's educational benefit, the argument in support of the law's incremental nature relied on a recognition that the law did not target systemic discrimination effectively. Nine participants argued that while the law may be unable to enact sweeping change, it was not useless because of this limitation; incremental progress was still important progress. Adam, for example, argued that one of the major flaws of the law was its slow progress and individualized focus, as he felt this prevented the law from being effective on a larger, systemic scale. Still, he did not believe the work to be futile, arguing that small-scale, incremental progress was still valuable progress nonetheless: "the work of trying to eliminate discrimination isn't pointless, having said that. I still think it's a very worthy cause to continue to fight for. Because if nothing, it's going to move the dial even just a few inches from here to there."

Several participants who used this argument quoted Dr. Martin Luther King, Jr. to make the point that their work was valuable because it pursued justice as an overall goal. Many also made comparisons to the nature of discrimination in the past to illustrate that anti-discrimination law has made discrimination less severe and pervasive overall. Expressions like "Without anti-discrimination laws, where would we be? Think about what it was like before these things were created. It wasn't pleasant," (Victoria) were common among participants who championed the value of incrementalism. The argument in support of incrementalism is based on the belief that having anti-discrimination is better than not having it; though it is flawed, it is still necessary.

Individually empowering

Eight participants argued that while the law did not effectively target systemic forms of discrimination, it was still meaningful that the law was individually empowering. In other words, these participants recognized the argument that anti-discrimination law isolates and individualizes instances of discrimination, but argued that this was a benefit as well as a flaw. This duality of championing the law's benefits in spite of its limitations is especially evident in Anna's interview. She stated that

> We kind of joke that our line of work is it's one of those, we're always overworked and underpaid…but we all do it because even if it's sometimes frustrating that our efforts don't seem to be reflected with as large of a reach as we would want it to have, interacting with individuals who come in with these problems, sometimes for a complainant, you can tell just talking to us brings them at least some sort of peace, just knowing that there is someone who will listen to them, and that regardless of how an investigation eventually goes, someone that stands up against the kind of targeting that people feel all the time but are often entirely powerless to.

This quote in particular reflects the nature of the arguments commonly used in defense of the law: rarely did participants discuss the law's perceived benefits without first recognizing its limitations. Many participants acknowledged that the law did not target systemic discrimination and expressed frustration over this point, but were able to identify value in their work on an individual level. This sentiment is also illustrated by Katie's expression that

> I wish the wins were a little more frequent, but when they happen, when you have the opportunity to secure some relief for somebody, or help them feel like they found a piece of justice in what otherwise a terrible experience for them, that's a really rewarding thing to be a part of.

It seems that for many participants, the value of the individual benefit of the law outweighed the frustrations rooted in the law's drawbacks.

Culture of tolerance

This argument again relied on an understanding that the law does not effectively target systemic discrimination, but that it was still valuable because it served as a signal to the general public that discrimination was intolerable. By this logic, the law is both practical and symbolic, and its symbolic message is an important tool in shifting the culture toward one of tolerance rather than discrimination. Katie demonstrates this point clearly, arguing that:

> I think there's a message inherent. There's a message inherent that states, if there are existing laws that state 'This is a behavior that has recourse,' we're stating that we don't tolerate that….What we're doing is strengthening our resolve to the public at large, saying 'This group matters equally to every other group. And marginalizing them simply will not be tolerated.'

The five participants who defended the law because of its ability to create a broader culture of tolerance believed that this cultural shift would supplement the law's inability to target systemic discrimination in practice. Specifically, Anna felt that the law's reliance on a high threshold of discrimination for probable cause to be found meant many forms of discrimination were left unaddressed, but that the existence of such standards was meaningful:

> I don't think any sort of legal line can ever necessarily coordinate exactly to the experience of a person…to quantify, something in any way and be like 'This is a line where something is bad or good.' It's just never going to be able to capture experience and suffering, but having some line is definitely better than nothing, and it's good to have a very strong statement and act that at least, even if it's just in words, there's a commitment to recognizing that people should not be discriminated against for specific facets of their identity.

The belief that "having some line is better than nothing" in the context of fostering a broader culture of tolerance is similar to the belief that the law's individualized focus was still valuable. While the law may use a strict definition of discrimination that is not entirely reflective of the *experience* of discrimination, its existence signals to the public that discrimination – in any form – against certain protected classes is culturally unacceptable.

Preventative/deterrent

Six participants argued that the law was valuable because its existence served as a deterrent to future discrimination. In a sense, this argument is an amalgamation of the education and culture of tolerance arguments. By educating communities and companies about the law, and by signaling to the general public that discrimination is unacceptable, the law serves to deter employers and landlords from discriminating in the future. Adam's point illustrates this combination of arguments in favor of the law's educational value and its potential for creating a culture of tolerance: "I think that the mere existence of this kind of agency and the mere existence of a wing that's specifically prosecuting these kinds of cases does create a larger deterrent." It should be noted that the participants who argued this point generally did not state whether they believed this deterrent came from the threat of consequences for violating the law or from an internal, attitudinal change caused by a cultural shift.

"Ripple effect"

This is perhaps the only argument made in defense of the law that did not simultaneously recognize the law's inability to effectively combat systemic discrimination. Rather, the four participants who cited this argument believed that anti-discrimination law *did* effectively combat systemic discrimination because of the "ripple effect." These participants argued that the law does not just apply to a complainant and respondent in a given case – it impacts friends, family, communities, companies, etc. Some argued that while a given case may focus on the experience of one individual, they serve as a symbolic representative of their protected class, the members of which have likely had similar experiences: "You're dealing with a protected class of people. So it is a broader level because you're not dealing with just an individual person, you're dealing with a protected class of people." (Victoria) Therefore, the complaint starts at an individual level, but "scales up." Those who made this point generally argued that they believed the law's ripple effect enabled it to target more systemic forms of discrimination.

CYNICISM

Just as participants were willing to be both critical and complimentary of the law, participants generally displayed both idealism and cynicism. That being said, the sample was 57% more idealistic than cynical, on average. Only one participant was more cynical than idealistic. Figure 2 shows participants' measures of idealism and cynicism.

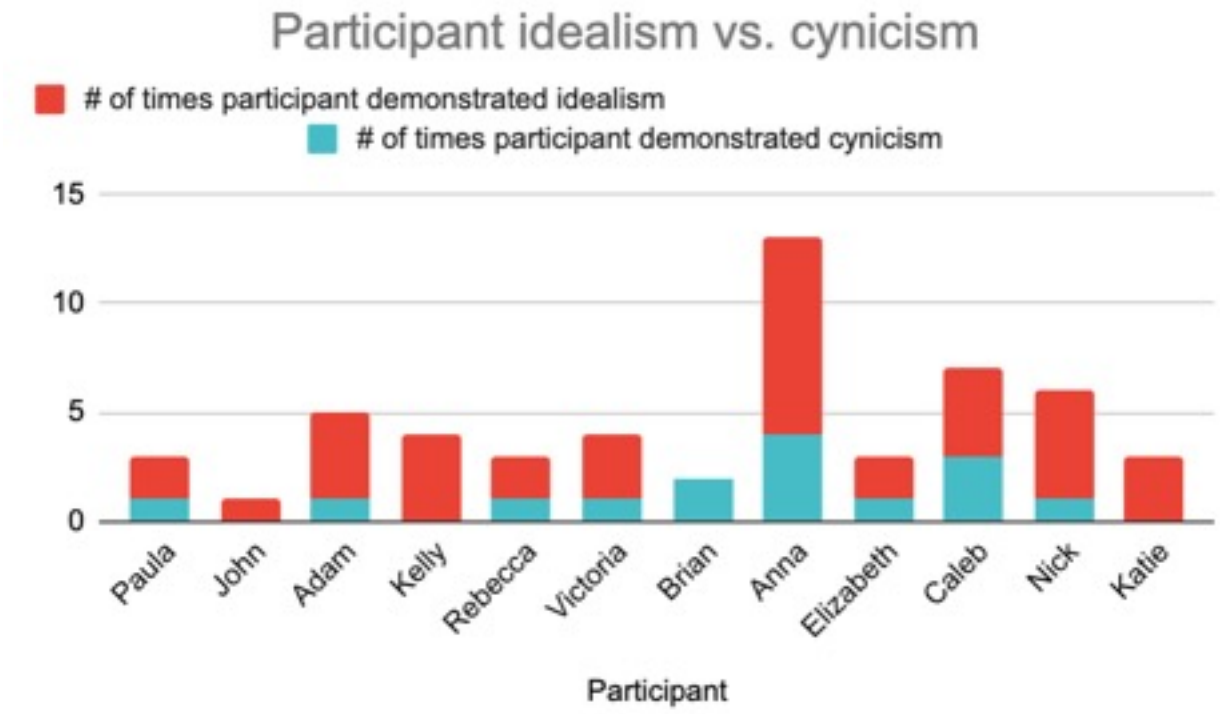

Fig. 2 – Rates of participants' demonstrated idealism and cynicism.

Several varieties of sentiments and arguments were coded as cynicism. Many participants, while discussing the limitations of the law, expressed that they felt the agency was not doing enough or that the law severely limited their ability to fulfill the agency ideal of eradicating discrimination. This is consistent with Becker and Greer's findings that medical students' idealism dwindles as they focus on the more technical, bureaucratic elements of medicine (1958); it also illustrates Lipsky's point that public servants may feel cynical about their work because they feel its bureaucratic nature is misaligned with its driving goals (1980). Many others argued that they did not feel anti-discrimination law was the most effective way to combat discrimination, stating that in the fight for justice, anti-discrimination enforcement agencies were not the primary drivers. For example, Brian stated that

> The deterrent effect of the law is really about how scary you can be. It's about how scary you can be for a certain type of organization and since…we're not out there actively, we're not like certain private organizations, or non-profits like the ACLU that are out there pursuing litigation. So I don't know how much of a bite we have, and when that's one of our main tools, that's where I think the pessimism can come from.

In this case, Brian recognized the value of education and outreach in combating systemic discrimination, but expressed frustration over the fact that the agency's primary tool for combating discrimination is the law itself. In other words, he believed that education and outreach were more effective tools in combating discrimination, which ultimately produced feelings of cynicism because the work he felt was most valuable was not the primary work of the agency, or himself.

Others expressed feelings of frustration tied to the bureaucratic nature of the work, stating that they felt pressure to process many cases quickly, and that this pressure often fostered a mindset that views cases as numbers rather than as important moments of peoples' lives. Elizabeth compared this feeling to being a hamster in a wheel, constantly under pressure:

> There is a significant amount of pressure with the deadlines that are being imposed on all of us to process our cases in a more timely manner. It's just like you're in this, you're like a hamster in the wheel. And they keep saying 'faster, faster, faster, faster. You're not doing it fast enough.' And you know, we're human beings and we're dealing with very sensitive cases, peoples' livelihoods, these cases are very, very emotionally involved for both sides. So you don't want to give the impression to them that you're just trying to rush through the process or that this case is just another number, just another case.

This sentiment is reflective of Lipsky's argument, discussed earlier, that bureaucratic public service creates an inherent tension between "human interaction, caring, and responsibility," and "equal treatment under conditions of resource limitations and constraints." (1980:71) Elizabeth explicitly mentions that she finds it difficult to balance the sensitive nature of her cases with the necessity of accomplishing as much as possible. Expanding Lipsky's argument, she expresses that this tension not only causes her stress, but could also cause stress for complainants if they feel as though they are "just another number, just another case."

These sentiments were coded as cynicism because they represented frustrations or feelings of disappointment directly related to the mission of the work; they represented a tension between an idealistic mission and a harsh reality, wherein the tension instilled feelings of hopelessness and doubt about the efficacy of the work.

Given that the mission of these agencies is to eradicate discrimination, I also asked each participant whether they felt it was possible to eradicate discrimination. Nine participants stated that they did not feel it was possible to eradicate discrimination. This was coded as cynicism because, given the nature of the goals of these agencies and anti-discrimination law more broadly, believing that the eradication of discrimination is unattainable represents a sense of futility toward the overarching mission of this work. With that said, many participants did state that while it was impossible to eradicate discrimination, the pursuit of that goal was not devoid of value. For example, Rebecca stated that she felt it was not possible to eradicate discrimination, but that "we play our part in making sure there's some shift somewhere." Similarly, Elizabeth agreed that discrimination could not be eradicated, but argued that the pursuit of such a goal was still important: "we have definitely made a lot of strides towards equal rights and human rights

and civil rights, and all we can do is our best to continue to educate one another, try to embrace one another, love one another, get along with one another, and protect one another. That's the best we can do."

IDEALISM

As discussed earlier, the sample was far more idealistic than cynical, with 11 participants demonstrating idealism, and only one participant being more cynical than idealistic.

Arguments and sentiments were coded as idealistic if they prioritized the law's benefits over its limitations, or over feelings of cynicism. That is, arguments that recognized the law's limits, but then argued that the law was still valuable and the work was still meaningful, were coded as idealistic. References to the mission of the agency, and allusions to justice, equality, or the eradication of discrimination as driving goals, were also coded as idealism. For instance, Anna recognized that she had been critical of the law's limitations, but believed that the work was still important despite its flaws: "My frustrations come from just the existing limits of this system, and the law, and what we can do. But the ideology behind it is something that I completely agree with." Similarly, Nick demonstrated idealism in the face of his knowledge of the law's limitations, stating that

> It's inevitable that you're going to feel those frustrations, but what's the alternative? To turn your back and walk away? It seems like a cop-out. The work we do is really vital. It saves lives in really important ways…just the opportunities that this bureaucracy – for all of its flaws – can provide, can be really uplifting, spiritually saving.

These kinds of sentiments are reflective of Frederickson and Hart's argument that public servants may feel idealistic about their work because they are being entrusted to deliver services that the government – and general society, by association – believes to be extremely valuable (1985). In this sense, discrimination investigators serve as guarantors of rights that are fundamental to American society. This "patriotism of benevolence," or the belief that all people within our political boundaries deserve to have protected rights, fosters strong feelings of idealism toward the agency's mission as a result, demonstrated by participants like Anna and Nick.

Additionally, statements demonstrating a sense of fulfillment resulting from the work were coded as idealism. This included expressions such as Katie's: "You know that even on the frustrating days, what you get to be a part of is in a lot of ways, being on the front lines of pushing forward and expanding civil rights. And that's a fantastic thing to keep in the back of your mind, especially if the days are feeling a bit frustrating." Adam also expressed this sentiment, stating that "I wanted to be part of something good…I wanted to make a difference in people's lives." These sentiments illustrate the findings that a sense of calling to the field is a strong factor in producing idealism (Poole et al. 1978). For many participants, a commitment to the overarching mission of the law was a major source of idealism, even in the face of their own criticisms of the law.

When asked whether it was possible to eradicate discrimination, 3 participants believed this was an attainable goal. This was coded as idealism because of its direct applicability to the

overarching mission of these agencies; belief that discrimination could be eradicated indicated alignment with this ideal. Such a belief is rooted in the possibility for a better future, even in the context of a reality wherein discrimination is a pervasive issue.

RECONCILING ASSESSMENTS OF REALITY WITH IDEALISM

Central to my question are the ways in which investigators reconcile their assessments of the efficacy of the law with their beliefs in the value of the work. The sample was markedly more idealistic than cynical; while this may be the simple result of the sample also being significantly more complimentary of the law than critical, it is important to reiterate that virtually all participants were both complimentary *and* critical of the law. Even participants who were more critical than complimentary of the law demonstrated higher rates of idealism than cynicism. For example, Adam and Anna were some of the most critical participants, but both demonstrated higher rates of idealism than cynicism. These findings raise important questions about how investigators reconcile their knowledge of the reality – that the law is limited in its ability to effectively target systemic discrimination – with their idealism. What enables one who is critical of the law's inability to fulfill its overarching goal to feel idealistic about their work pertaining to the law? How do investigators prevent reality from causing them to feel cynical about their work?

Lipsky offers an argument suggesting that public servants may be critical of the law but generally uninhibited by these criticisms in terms of their levels of idealism (1980). While he argued that public servants were likely to be cynical because of the tension inherent in pursuing a progressive goal through bureaucratic means, he adds a qualification: public servants may avoid this cynicism if they rationalize the limitations of their work. This, he argues, helps public servants reconcile differences between aspirations and actual capabilities (144). While my sample was generally more complimentary of the law than critical, recall that many of the arguments championing the laws benefits also included recognitions of the law's flaws. Lipsky's point may explain why my participants were able to remain idealistic in spite of their own criticisms of the law: they were able to rationalize these limitations and reconcile their criticisms with their idealism.

I found that, generally speaking, participants relied on three main arguments to rationalize and reconcile their knowledge of the law's limitations with their idealism. I categorized participants based on the arguments they used:

1. The incrementalists
2. The "add more wheels" group
3. The better-than-nothing group

Participants generally used a combination of these arguments; there is overlap in the participants that used each argument to reconcile their criticisms of the law with their idealism. Still, incrementalism was the most common argument used for this purpose, followed by the "add more wheels" argument, with the better-than-nothing argument being the least common.

The Incrementalists

Nine participants relied on the argument that the law's inability to affect sweeping change was not necessarily a flaw because incremental progress was still valuable progress nonetheless. Of the three major arguments used to reconcile knowledge of the law's limitations with idealism, this was the most common. While this was an argument used to champion the law's benefits generally, it was also commonly used to reconcile the reality of a flawed law with feelings of idealism. Even participants who criticized the law for being too individualized and too slow later argued that an individual-level difference and an incremental pace was still meaningful. This is demonstrated by Adam's argument, discussed earlier, that

> I don't think that the work of trying to eliminate discrimination is pointless, having said that. I still think it's a very worthy cause to continue to fight for. Um, you know, because if nothing, it's going to move um, the dial even just a few inches from here to there.

By perceiving the eradication of discrimination as a long-term goal to be attained in small increments, participants were able to bridge the gap between their day-to-day, bureaucratic work with individual cases and the overarching goal of eradicating discrimination. In other words, championing incremental change allowed participants to feel as though the nature of their work aligned more closely with the nature of this goal. Katie, for example, explicitly recognized her frustration tied to the individualized, incremental nature of the work, but found a sense of fulfillment by perceiving the eradication of discrimination as an incremental goal:

> It's also a really fulfilling larger-picture effort to be a part of. You know that even on the frustrating days, what you get to be a part of is in a lot of ways, being on the front lines of pushing forward and expanding civil rights. And that's a fantastic thing to keep in the back of your mind, especially if the days are feeling a bit frustrating.

This quote illustrates the important point that participants were not idealistic because they remained mostly complimentary of the law; they were able to remain idealistic because they relied on arguments that allowed them to overcome cynicism that may have resulted from their criticisms of the law, as Lipsky suggests. Katie's statement clearly demonstrates participants' use of the incrementalist argument to overcome these feelings of cynicism or frustration. While one might expect the misalignment between such an ambitious goal and such bureaucratic work to produce cynicism, participants reconciled this misalignment via the incrementalist argument, allowing them to remain idealistic.

Participants who used this argument also made references to discrimination in the past to illustrate the value of incremental progress, arguing that discrimination is much less severe and pervasive now than in the 1950s, largely due to the implementation of anti-discrimination law. For example, Caleb stated that

> I feel like I'm seeing an impact and that overall, to borrow from Martin Luther King and the ubiquitous metaphor, I think overall, the arc of the work that we do

> bends towards justice, and I feel that very, you know viscerally in the day-to-day work that I do.

Here, Caleb draws an explicit parallel between the overarching goals of the law and his day-to-day work, illustrating participants' ability to find value in inherently incremental work by perceiving driving goals as incremental as well. This cognitive trick expands Frederickson and Hart's argument that public servants experience idealism as a result of their commitment to the overarching goal of their work (1985): when there is a misalignment between this driving goal and the bureaucratic nature of the work, participants may preserve their idealism by re-framing the driving goal in more bureaucratic-friendly terms. While participants felt that incremental, bureaucratic work does not effectively contribute to the mission of eradicating discrimination, they rationalized this gap by perceiving this goal as inherently incremental. Thus, bureaucratic work seems more suited to the driving goal. Re-framing the law's goals in this way allows participants to find value and meaning in their work, even if it only affects gradual change. Their idealism was rooted in the fact that they perceived themselves to be a part of this kind of gradual but meaningful change.

The tendency to perceive the eradication of discrimination as an incremental goal in order to overcome cynicism produced by the recognition of the law's limitations is also evidenced by John, who argued that "systematic oppression is something that you can only chip away at." This statement clearly demonstrates the re-calibration of the goal of eradicating discrimination as an inherently incremental one, rather than an urgent goal requiring sweeping, system-level change. By arguing that systemic discrimination can only be eradicated incrementally, John was able to establish a clear connection between the incremental nature of his work and the overarching goal of his work. This connection allowed him to feel as though his work *was*, in fact, contributing to the eradication of discrimination, which produced feelings of idealism.

The "add more wheels" group

The next most common argument is named after Victoria's statement that "I think there's always room for improvement but right now we need a supplement. I don't think we should reinvent the wheel, I think more wheels need to be added. Right?" In other words, six participants reconciled their idealism with their critical assessments of the law by arguing that the law needed to be supplemented rather than reformed. This argument relied on a belief that the law's limitations were not flaws needing correction, but inherent features of the law. These participants therefore did not find it problematic that the law did not target systemic discrimination because they felt it was *not meant to*. This is perhaps the clearest illustration of Lipsky's argument that public servants can avoid cynicism by rationalizing the limitations of the law (1980). Holding this belief allowed participants to argue that instead of reforming the law, we should supplement it with other agencies, organizations, etc. in order to effectively combat systemic discrimination by filling gaps the law was not designed to fill. This allowed participants to remain idealistic even after criticizing the law because through this lens, the law is not *failing* at anything; its role is not to target systemic discrimination, so it cannot be flawed for not doing so.

Interestingly, the argument that the law should be supplemented inherently rests on a recognition that the law itself does not effectively combat discrimination. One might therefore expect such a belief to instill feelings of cynicism, but this is not the case. It is not just that the participants

viewed the law as needing supplements, but that they viewed the law's limitations as inherent to the law and therefore acceptable. They believed that the law was not intended target systemic discrimination, and that it therefore could not be deemed "ineffective" for not doing so. This belief is evidenced by Elizabeth's statement that

> I think that the laws that we enforce are definitely part of a very important engine, if you will. You need various parts in the engine to work, I don't think it's any one specific thing that makes the engine run, I think you have to have sort of all pieces working properly.

Many participants echoed this sentiment, arguing that the agencies' education and outreach roles provided a more proactive supplement to an inherently retroactive law. Others recognized that filing a discrimination complaint for a specific incident did not necessarily target all aspects of one's life affected by systemic discrimination; therefore, other organizations or agencies that provided housing, mental health care, and employment were essential in this respect. The law, in other words, was designed only to investigate claims, not to provide resources for complainants in order to improve their life chances that may have been affected by systemic discrimination. Victoria makes this clear: "It would require a lot more than [this agency] to get to the systemic issue."

Thus, this cognitive trick required participants to re-calibrate the overarching goal of their work, but in ways that deviate from those of the "Incrementalists." While the Incrementalists re-framed the lofty goal of eradicating discrimination as inherently incremental, allowing them to see a clearer, more fulfilling connection between their day-to-day work and the goal of the Commissions, the "add more wheels" group re-framed the driving goal by shifting the responsibility for its fulfillment onto others. It is clear that this line of thinking serves as a rationalization of the law's limitations, in line with Lipsky's argument (1980); these participants rationalized the law's limitations by understanding them as normal features rather than flaws. The deviation from, or avoidance of, the Commission's driving goals, is more unique. By shifting the responsibility for the eradication of discrimination onto others – despite this being an explicit mission of both the law and the Commissions – participants were once again able to re-align their day-to-day work with their driving goals, allowing them to avoid feeling cynical.

Arguing that the law needed to be supplemented rather than reformed allowed participants to remain idealistic because such a belief rests on the premise that the law is fulfilling its intended role. One does not fault a car for being unable to travel across an ocean like an airplane; similarly, one does not fault a law designed to target individual-level discrimination for failing to target systemic discrimination. These participants were therefore able to overcome feelings of cynicism that may have resulted from their critical assessments of the law by declining to problematize the law's design.

The "better than nothing" group

Another common way participants reconciled their idealism with their critical assessments of reality was by arguing that it was better to have anti-discrimination law than not to. In other words, these participants re-framed my questions asking them to weigh the benefits and limitations of the law to assess its overall efficacy into a question of whether or not anti-

discrimination law should exist. For example, after discussing the law's limitations, Victoria argued that "To say that because it doesn't destroy the entire problem it's not worth having, no." These kinds of arguments allowed participants to minimize their criticisms of and frustrations toward the law by arguing that while the law may not be entirely effective, it was not entirely useless; by comparing life with anti-discrimination law to life without anti-discrimination law, participants were able to argue with ease that the law was more effective than not.

It may be useful to also describe these participants as the "yes, buts." Participants who argued that it was better to have the law than not to typically recognized the law's limitations ("yes"), then argued that these limitations were not *so* significant that they entirely disqualified the need for the law's existence ("but"). The "yes, but…" argument is exhibited clearly by Nick, who acknowledged his frustration associated with the limitations of his work, but stated that

> Yeah, I think I've been here many years, and it's inevitable that you're going to feel those frustrations, but what's the alternative? To turn your back and walk away? It seems like a cop-out.

This statement reflects Nick's conversion of the debate about the law's efficacy into an all-or-nothing debate. He has presented himself with two options: either pursue the goal of eradicating discrimination through the law, regardless of how limited the law may be, or give up on this goal entirely. Utilizing this argument allowed participants to argue that the law's limitations were irrelevant to an extent, because even if the law was less effective than one would hope, *something* was certainly better than nothing.

For instance, Kelly expressed that she felt the law was limited because its threshold of discrimination is high, which meant only the most explicit, severe cases were remedied. However, she was quick to argue that having a threshold, however limited, was necessary: "if we didn't have any agency at all then there would be no standards and there would be no way of even obtaining that goal of eradicating discrimination." Here, Kelly has re-framed the question, such that it is not a debate of whether anti-discrimination law is effective, but one of whether it should exist at all. Re-framing the question in this way allowed participants to remain idealistic by simplifying the debate: it would be hard for anyone passionate about eradicating discrimination to argue that antidiscrimination should not exist. Re-framing the question gives participants two options: believe that anti-discrimination law is necessary in spite of its flaws, which fosters idealism, or believe that anti-discrimination law is useless, which would certainly foster cynicism. For civil servants in this line of work, the former is the clear choice.

This form of rationalization is unique because, unlike the other forms of rationalization, it does not necessarily involve a re-framing of the overarching goal of the work; if anything, it is the one form of rationalization that maintains belief in the driving goal in its entirety. The "Incrementalists" aligned with the goal of eradicating discrimination only after re-framing it as an incremental goal, and the "add more wheels" group re-framed the goal by shifting the responsibility for its fulfillment onto others. The "better than nothing" group, however, still seem to believe that their work contributes to the eradication of discrimination, albeit gradually. In this sense, this group of participants most closely reflected Frederickson and Hart's findings that public servants are able to remain idealistic through their commitment to their driving goals

(1985). Perhaps it is less accurate to call this logic a rationalization by Lipsky's terms, then, and more accurate to label it a more genuine form of idealism that does not require one to rationalize the law's limitations. Rather, this logic relies on genuine hope for the future, rooted in knowledge of the past, which is not generally discussed in the literature about idealism among public servants.

CONCLUSION

American anti-discrimination law embodies a paradox: it is driven by a sweeping, progressive goal, but implemented through bureaucratic procedures inherently characterized by incrementalism and mass-processing. The result of this is that the law is not as effective in achieving its goal of eradicating discrimination as it could be if it were more proactive and focused on collective rights (Leonard 1984; Smith and Welch 1984; Kalev and Dobbin 2006; Pedriana and Stryker 2017). This paradox, in turn, puts discrimination investigators in a unique position. On one hand, we might expect investigators to feel idealistic about the effects of their work through a strong commitment to its driving goal (Lipsky 1980; Frederickson and Hart 1985); on the other hand, it is possible that investigators might become cynical because of a perceived misalignment between the limited nature of their work and the overarching goals of the law (Becker and Greer 1958; Lipsky 1980).

Interestingly, the twelve investigators I interviewed did not fall cleanly into either category. The sample's noticeable idealism is not solely a result of its tendency to be more complimentary of the law than critical, because even arguments in favor of the law recognized its drawbacks. Rather, investigators were able to maintain a sense of idealism in spite of these recognitions through the reliance on three arguments that served to reconcile their knowledge of reality with their faith in their work: that incremental progress was still valuable progress, that the law was not inherently flawed but instead in need of supplements, and that it was better to have the law than not to. For these investigators, idealism is not simply a matter of commitment to the law's overarching goals; this commitment is complicated by their own criticisms of the law's efficacy. Therefore, investigators are very much aware of the law's limitations, but are able to overcome potential cynicism by rationalizing these limitations or re-framing the driving goals of the law. Whatever misalignment is felt is adjusted in this sense.

There are limitations to these findings. The sample is comprised only of those agencies/commissions who granted access to their investigators, resulting in a concentration of small-state, northeastern commissions; it is possible that investigators in larger states are more likely to feel cynicism resulting from the number of cases requiring attention. Similarly, the twelve investigators interviewed in this study represent only a tiny fraction of the population of discrimination investigators across the country, and their responses are not generalizable as a result. Additionally, within each commission, I interviewed only those investigators who volunteered to participate. Individuals who are already willing to be interviewed about their work are perhaps intrinsically more idealistic about their work than those who did not wish to be interviewed. Participants also may have feared the stigma of sounding too cynical, prompting them to maintain an outward idealism to avoid giving the impression that they did not believe in their work.

These results also have implications for discrimination law in the future, and for understanding professionalization and morale amongst public servants. Given Title VII's weaknesses as a result of its basis in the rights framework and its consequential focus on individual negative rights (Merry 2014; Pedriana and Stryker 2017), as well as its *ad hoc* development and subsequent constriction by neoliberal regulations (Kalev and Dobbin 2006; Dobbin 2009), it is important that future policies are shaped differently so that they may have better capacity to achieve their goals. Doing so would also ensure that public servants need not overcome a misalignment between the nature of their work and its driving goals. In the meantime, understanding the difficulties that public servants face in conducting bureaucratic work for the fulfillment of a sweeping goal, and the ways in which they reconcile this misalignment, prompts important discussions about potential methods for mitigating bureaucratic cynicism. It is valuable to pursue a discrimination law that is effective in combating discrimination such that as a result, discrimination investigators are able to feel genuinely idealistic about their work without having to rationalize a misalignment with its goals.

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Appendix A
Interview Guide

Do you feel that the work you do (or the work that the Commission does more broadly) contributes to the mission of eradicating discrimination?

What role do you believe anti-discrimination law/anti-discrimination legal work plays in eradicating discrimination more broadly?

What role do you think **you** play in the mission of eradicating discrimination as an investigator with the MCAD/CHRO/RICHR?

What role do you think the MCAD/CHRO/RICHR plays in eradicating discrimination as a neutral organization?

In other words, how effective do you think anti-discrimination law (as you work with it at MCAD/CHRO/RICHR) is in combating systemic or structural discrimination?

I'd like to read you a quote from one of the articles I've found during my research. Here, the author states that anti-discrimination law isolates instances of discrimination, "Meanwhile, all the daily disparities in life chances that shape our world along lines of race, class, indigeneity, disability, national origin, sex, and gender remain untouchable and affirmed as non-discriminatory or even as fair." What do you think about this? Is there any truth to this, in your opinion?

What do you feel are the most important benefits of anti-discrimination law and the work you do with respect to discrimination more broadly? (for example, does it deter discrimination? Is it individually empowering? Etc.)

Some say the process of litigation can be empowering, and that it can lay the foundation for social change. In your opinion, do you think this is true? Why or why not? Are there any other benefits you think are important?

What are the biggest drawbacks of anti-discrimination law? Do you feel that anti-discrimination law is in need of reform in any way? If so, what would the ideal reform look like, in your opinion? If not, why?

We've talked a lot about the limitations of anti-discrimination law in combating more widespread or systemic discrimination. I could understand if these limitations led to frustration or pessimism in your line of work. Do you feel that's the case? Why or why not?

Given the limitations we've discussed: why do you do the work you do? What makes you motivated to keep doing this work?

Circling back to the mission to eradicate discrimination: do you think it's possible to eradicate discrimination? Why or why not?