

COMPLAINANT REACTIONS TO THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

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This study examines the reactions of thirty complainants to the Massachusetts Commission Against Discrimination. Complainant class is found to be the single most important explanatory factor; sex and race are not generally important when class is controlled. Higher class correlates with more idealistic motives for filing complaints, greater participation in and higher expectations about the process, better case outcomes, and a more negative evaluation of the Commission. No complainant obtained all the relief sought, but lower class complainants were generally happy with any favorable settlement, while higher class complainants were not. Complainants who seek to vindicate a principle, and therefore are less willing to compromise, find themselves in conflict with the pragmatic approach of most private attorneys (whose own economic interests may also be inconsistent with those of their clients) and with that of the MCAD (which adopts a generally pragmatic stance and prefers to conciliate rather than adjudicate, partly because it is so difficult and time consuming to prove discrimination based on unequal rather than unreasonable treatment). Symbolic and emotional factors determine complainant reactions more than case outcome.

In April 1970, six other women and I filed complaints with the Massachusetts Commission Against Discrimination (hereafter MCAD) charging the Boston Redevelopment Authority (a city-state-federal agency)¹ with sex discrimination in employment. Thereafter, five other women complained against the same respondent. Four years later, in March 1974, while awaiting a public hearing, the respondent agreed to a settlement representing slightly over half of the back pay and damages requested.² In the interim, two complainants were fired; most of the others left their jobs voluntarily, though some were also reacting to pressure by the respondent; many complainants left the Boston area entirely. Commission procedures proved exceedingly slow, generally unresponsive, and often inept. In addition, we eventually found our-

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1. It is probably not inconsequential for the progress of our complaints that the respondent employed more than 550 persons and had its main offices in city hall. It was closely tied to the mayor's office; the director of the agency and the mayor were political allies with higher aspirations.
2. The ratio of back pay to damages in the original request was 54/46; thus the effect of the final, negotiated settlement was to give back pay but not damages, interest, or compensation for expenses incurred in litigation.

selves in litigation against our own attorney. By 1972, as the process dragged on without signs of any immediate settlement, the importance of group resources and support became increasingly evident. Without a group of complainants, most of the complaints would simply have become moot or been allowed to lapse into inactivity, for it took a great deal of energy to keep the complaints active. Furthermore, the education of the complainants was above the national average for women,³ and their salaries were above the average of women working for the respondent.⁴ As our cases failed to progress according to our expectations, we grew increasingly radicalized and determined to press our own complaints and fight discrimination in general. By 1972 I had passed through another job and returned to graduate school in social anthropology.⁵ A requirement for the graduate methodology and fieldwork courses was a small field study. I elected to interview complainants to the MCAD and to make observations at the MCAD offices. The purpose of this article is to report the reactions of complainants to the MCAD. In order to appreciate the complainants' situation, it will be necessary to sketch the procedures of the MCAD. Other aspects of the MCAD have already been reported (Mayhew, 1968; Armenti *et al.*, 1969; Jowell, 1975) and will not be discussed; however, some theoretically relevant research will be noted, to provide a context for the findings reported here.⁶

I. THE COMMISSION

The purpose of the MCAD is to hear complaints of discrimination on the grounds of race, color, religion, national origin, sex, age, or ancestry. During the time period considered by the present

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3. Seven of the eleven women had professional or graduate degrees; only one had not completed college at the time of filing her complaint.
 4. Their mean salary at the time of the interview (1971) (or at termination of employment with the respondent if that preceded the interview) was \$9,700; the mean for all women employees in December 1969 was \$6,800. Some, but by no means all, of this difference can be accounted for by raises granted to employees by the respondent during the intervening two years.
 5. At Northeastern. The return to graduate school and the change in fields from humanities to social science was prompted to some extent by my experiences with the MCAD and the social issues it raised.
 6. Although I tried hard to be fair to the Commission (which some informants did evaluate very positively), my own involvement in MCAD processes and issues certainly colored my decision to study the perceptions and reactions of complainants. I have pointed out theoretically relevant work in the American sociological literature. Under the circumstances, however, I think it best to leave extensive theoretical evaluations to others less involved in the issues. In this regard, it should be noted that those who dismiss the complainants' disillusionment as normal emotional letdown and the bureaucratic ineptitude of the MCAD as normal judicial/bureaucratic functioning may themselves be participating heavily—identifying primarily with the legal institutions in the same fashion that I identify more with the complainant than with either the respondent or legal personnel involved.

study, it was necessary to complain to the Commission before approaching other fora. A recent law allows one to litigate in state court 90 days after filing with the MCAD (or sooner with the permission of the Commission), but this has rarely been used (Ann. Laws of Mass., Chapter 151B, § 9, as amended by Chapter 478 of the Acts of 1974). Because state courts are more conservative and their dockets are more crowded, the MCAD remains the principal forum for virtually all persons seeking remedy for alleged acts of discrimination in Massachusetts. Until 1977, there was one full-time Commissioner, the Chairperson, and three part-time Commissioners. Its operating budget at the time of the study was over \$600,000 per year, and its staff about 70. Since 1975, the budget has been around \$900,000 and the staff about 80. The Commission currently has three full-time Commissioners (Ann. Laws of Mass. Chapter 6, § 56, as amended Oct. 22, 1976).

Initially, the complainant or a representative must contact the MCAD. Calls are routed to field investigators, one of whom is always on duty to talk with persons coming in without appointment. If the complaint falls within the jurisdiction of the MCAD and sounds plausible, the complaint is formally filed, and the field investigator contacts the respondent to make a preliminary evaluation. If the complaint seems well grounded, an investigative Commissioner holds an informal, private hearing and then issues recommended terms of conciliation. If probable cause is found for the complaint and the respondent fails to accept the proposed terms of conciliation, the case is certified for public hearing.⁷ At the time of the study, public hearings usually took place before several Commissioners; now they take place before two Commissioners.⁸ At these hearings, complainants, respondents, their legal

7. In theory, the complainant may also refuse to accept a Commissioner's finding that there is no evidence of discrimination. In practice, however, this almost never occurs, since the Commissioner employs a very lenient standard in determining whether there is probable cause for full investigation and hearing.

8. Prior to 1972 only one percent of the complaints filed ever reached a formal decision. Since hearings never had to be terminated formally by a Finding of Fact and Order, it is reasonable to assume that another one percent or so had one or more sessions of a public hearing but did not reach formal decisions. At that time Friday was the only hearing day, but hearings were not held every Friday. If hearings were held forty Fridays a year, on average, and formally terminated cases occupied twenty of them (a reasonable estimate from the cases studied) then twenty days would remain and presumably accommodate another one percent of complaints filed. I was told that part-time Commissioners spent about two days per week on MCAD work; this would be a total of eleven Commissioner days per week, as compared to fifteen days with three full-time Commissioners. Even if the new structure doubles the number of cases formally heard and decided, the percentage of complaints in this category will still be very low. Regarded in this light, the MCAD's emphasis on conciliation, that is, settlement without public hearing, is analogous to the court's emphasis on plea bargaining, which accounts for perhaps 90 percent of dispositions in criminal cases (Blumberg, 1967b:18). The respondents may often be motivated by the same

representatives, and their witnesses present versions of the facts of the case. Most complainants at this stage have private lawyers, and are also assisted by the field investigator and any other MCAD staff who may be involved in the case. If any judicial proceedings are necessary during this public hearing phase (for example, to subpoena information or to obtain an injunction against the firing of an employee who has filed a complaint while the case is pending), the MCAD acts through its own lawyer. Because it is a state agency, this lawyer is normally from the State Attorney General's office. After the Commission has heard a case in its entirety, the Commissioners issue a Finding of Fact and an Order; this may be appealed through the state court system, which also enforces MCAD orders, should the complainant fail to comply voluntarily.

II. SAMPLE AND METHOD

Because the complaint process was by policy confidential until certification for public hearing, the sample was drawn from persons with complaints that had been certified.⁹ As a result of the culling process within the MCAD, these complainants probably have stronger than average cases, better than average chances to obtain satisfaction of some sort, and higher than average social

concerns that lead defendants to cop pleas: fear of worse consequences if they insist on public hearing or trial, and the desire to avoid publicity and get things over with (see, e.g., Casper, 1972). The respondents in discrimination cases differ significantly from defendants in criminal cases, however. They are more likely to be of higher social class than the complainants, and to have more connections with the adjudicating institutions and its members; and they are quite likely to get off without penalty or with a ritual slap on the hands. According to Mayhew (1968:238), 55 percent of conciliated cases imposed no requirements on the respondent; 11 percent required only a promise to obey the law in the future; 10 percent made offers of housing or employment that were refused by the complainant; and only 15 percent made offers that were accepted by the complainant. All cases terminated by mutual agreement in accordance with recommendations of the MCAD or through private negotiations prior to a formal finding are here considered to have been conciliated. Mayhew also includes those where probable cause was not found. If one eliminates these cases, the proportions become: 5 percent imposed no terms on respondent, 23 percent required a promise to obey in the future, 39 percent made unaccepted offers, and 33 percent made offers accepted by the complainant (whether these offers satisfied the complaint or not).

9. I applied to the MCAD for permission to study cases at all levels in the complaint process. They refused on the grounds that I had a case before them myself and that it would be in neither their nor my best interests. Gaining access even to public information was something of a problem. There was apparently no standard procedure for obtaining transcripts and records of public hearings. The man who kept the records denied that they existed, presumably because they were not very accurate or up to date, because I might have made more work for him, and because his supervisor, the Executive Secretary, was obstructing my research—with good reason, since previous students of the Commission had already pointed out his incompetence. With that exception, I have no reason to suppose that the problem was deliberate or directed against me personally. In fact, since several persons who were unable to help me in getting public information gave me more sensitive information, I assume that the problem is essentially administrative and would affect the general public as well.

class. In other words, this select group of complainants might well be expected to have more positive experiences with, and hence more favorable reactions to, the MCAD than the majority of persons filing or attempting to file complaints with it.¹⁰

Since research was conducted in late 1971 and the first half of 1972, the sample universe was all persons having at least one session of a public hearing or obtaining a Finding of Fact (i.e., a formal decision) in 1971. There were 44 such complainants.¹¹ Of these, 30 or 68 percent were contacted.¹² They included the majority of those in each category of complaint as well as the majority of those with both favorable and unfavorable decisions.

Although the class¹³ of all complainants to the MCAD is not

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10. As mentioned earlier, the outcome of conciliated cases was quite unfavorable to the complainant (note 8, *supra*). Mayhew (1968) repeatedly remarks on the "weakness" of many of the complaints filed and notes that the entire burden of supplying relevant evidence generally falls on the complainant, since the MCAD lacks adequate staff to investigate complaints thoroughly, particularly those involving issues of equal treatment and requiring comparison with similarly qualified persons possessing different social characteristics, e.g., whites or men (see note 29, *infra*). Only one percent of even the more recent complaints accepted by the MCAD ever reach formal decision (Massachusetts Commission Against Discrimination, 1966-70). According to a research department report dated 8/16/71, 16 percent of all accepted complaints in 1970 had been closed for lack of probable cause by June 30, 1971; another 4 percent had been withdrawn; 12 percent had been conciliated; this leaves 68 percent that had not yet been resolved (Massachusetts Commission Against Discrimination, 1971). For all cases closed from 1946-1969, 34 percent were closed for lack of probable cause; 4.5 percent withdrawn or found outside the jurisdiction of the MCAD; 60 percent conciliated; and 1 percent formally terminated by a decision. Of those complainants who obtained a decision between 1966 and 1971, however, only 28 percent received unfavorable findings which compares favorably with other sorts of case disposition by the MCAD (see note 8, *supra*, and Mayhew, 1968: Chaps. 5, 8). In addition, complaints clearly not covered by the law are rejected by field investigators before formal filing and weak complaints are discouraged by many field investigators in practice, whether or not this is official policy. Finally, limited resources make it necessary to focus on those complaints that have the greatest promise.
11. The following complaints are excluded from this total: one against a defunct and untraceable corporation; two initiated by the MCAD; and one deceased complainant, who had filed the only age complaint.
12. This figure includes the author. Three persons responded to questionnaires and telephone calls; the remainder were interviewed personally.
13. The assignment of class to complainants was particularly vexing. In the abstract, class is determined by a variety of social traits, e.g., income, occupation, education, personal style, knowledge of social institutions and resources, and social contacts. Clearly not all of these can be tabulated even if they can be discovered. In addition, sex-employment complaints by women may reflect the discrepancy between the social status they occupy as individuals when they choose to work compared to the status they occupy as daughters and wives. Using earned personal income and job title, both of which were often being contested in any case, it would have been very difficult to draw distinctions within the middle class taken as a whole, particularly when comparing complainants of rather different ages, for older complainants might well earn more than younger ones without being otherwise of a higher social class. All things considered, it seemed that education would be the best single indicator of the social class of complainants. Ambiguous or anomalous cases are noted. *Upper Middle Class*: persons with college degrees. Most persons in fact had higher degrees. A young woman still in college and married to a professional was also considered upper middle class. *Middle Class*: persons who had completed high school but not

known, the class of the sample is certainly much higher than the class of persons being discriminated against.¹⁴ Projecting from circumstantial evidence, such as neighborhood and occupation, the majority of those persons in the sample universe who were not contacted were also at least middle class. There is a marked relationship between the class of the complainant and the type of case filed.¹⁵

TABLE 1
CLASS OF COMPLAINANTS CONTACTED BY GROUND AND
TYPE OF DISCRIMINATION ALLEGED

<i>Class of Complainant</i>	<i>Ground of Discrimination Alleged</i>		<i>Type of Discrimination Alleged</i>		
	Sex	Race	Employment	Housing	Public Accommodation
Upper Middle	12 (75%)	4 (29%)	13 (62%)	1 (20%)	2 (50%)
Middle	4 (25%)	5 (36%)	7 (33%)	2 (40%)	0 (0%)
Lower	0 (0%)	5 (36%)	1 (5%)	2 (40%)	2 (50%)
Total	16 (100%)	14 (101%)	21 (100%)	5 (100%)	4 (100%)

The number of employment, housing, and public accommodations cases reaching public hearing falls within the distribution that could occur by chance, though the last two categories occur slightly more often than would be predicted. Complaints of sex discrimination, however, constitute two and a half times as large a ratio of public hearings as they do of cases filed. Complainants are also of a much higher social class than those in other categories, and this may well account for their greater success in reaching the later stages of the Commission process (see Table 2).

On the whole, the complainants in the sample are young. The median age for all categories is 30, with the median age at filing being 28.5. The median for cases of sex discrimination is two years

college were considered middle class, unless they habitually received public assistance. *Lower Class*: persons who had not completed high school and those who habitually received public assistance were considered lower class. One woman who refused to report her education was classified as lower class because of her poor housing, her neighborhood, and other circumstantial evidence.

14. Mayhew (1968) also reported that the middle class was overrepresented in the cases he studied; this is even more pronounced in the present sample.
15. Using 3 for upper middle class, 2 for middle, and 1 for lower, the average class of complainants by case category was: sex 2.6, race 1.9, employment 2.4, housing 1.9, and public accommodation 2.0, or a total of 2.3. All sex cases were employment cases, and the high proportion of sex cases in the employment category accounts for the relatively high average class of this group.

lower, and for cases of racial discrimination two years higher. The range for both categories is 24-50, with the range at time of filing being 22-48.

Of those contacted, only one complainant and one complainant's spouse were not American citizens;¹⁶ they were not married to each other. Only one did not speak English as a first language.

III. FINDINGS

From the complainant's point of view, there are a number of problems with MCAD procedures, which increase its "costs."¹⁷ (1) *Out-of-pocket costs*. Seventy percent retained private lawyers, in addition to whatever assistance was provided by the MCAD, and over half of those employed lost pay, vacation time, or compensatory time while visiting the MCAD offices. (2) *Loss of time*. The majority reported spending ten or more hours preparing their cases, in addition to the hours spent in hearings. (3) *Dilatory procedures*. The median time from filing to closing for closed cases was nineteen months, and the median age of open cases (from filing to time of interview) was twenty-three months. (4) *Information and communication problems*. Unanswered inquiries, lack of information concerning MCAD operations, failure to notify the complainants of hearings, and the like, were reported by the majority of complainants. (5) *Loss of case material* was reported by the group in which the author was involved. (6) *Unsatisfactory terms of conciliation*. All but two of those with closed cases reported that the conciliation agreement proposed by the Commission was irrelevant to the complaint or failed to satisfy it. (7) *Disrespectful treatment*. Complainants often felt that the MCAD was disrespectful toward them and conciliatory toward the respondent. (8) *Respondent retaliation*. Almost every complainant who still had contact with the respondent reported retaliation. Although the law prohibits retaliation against complainants and those who assist MCAD investigations, retaliation is difficult to prove, and the MCAD did not appear eager to pursue such infractions as did exist, even where the evidence was rather clear, as in the case of two employees who were dismissed by the respondent after they had filed complaints and probable cause had been found although their personnel reports up to the time of filing had been

16. A complaint filed jointly by a couple counts as a single complaint for statistical purposes; however, where the personal characteristics of the spouses differ, both are indicated in the text by giving one cocomplainant's data under "spouse." It should be noted that this statistical method understates the percentages of middle and upper middle class complainants, since only they filed jointly.

17. Problems three through seven were also reported by Armenti *et al.* (1969).

exemplary. (9) *Institutional bungling or political subversion* was reported by the group of women of which I was a part. Two of our members were fired by the city-state-federal agency against which they had filed. The lawyer from the State Attorney General's office who represented the MCAD in court failed to have them reinstated pending determination of their complaints and committed other acts extremely beneficial to the respondent. For example, he subpoenaed information incorrectly and thus caused a long delay. Having finally obtained a court order for the subpoenaed papers, he then scheduled a hearing so that the MCAD, the complainants, and their representatives would not have time to look at them. When this was clearly explained and the date changed, he reset the date to the original day. The complainants' attorney had to contact a Commissioner to reschedule the hearing once again so that the papers could be examined. The complainants felt that this lawyer's behavior was politically motivated.¹⁸

Most of the conditions cited above are common knowledge within the legal profession, whose members are used to making the best of an inefficient system. The practical operation of legal institutions is new (and shocking) to most complainants. Furthermore, lawyers seek to maximize their own benefits. As Rosenthal (1974) points out, the best interests of attorney and client may be directly opposed: lengthy proceedings may increase return to the client but reduce the attorney's profit. In any case, complainants in discrimination cases (and presumably in many other sorts of cases as well) generally do not share the lawyer's pragmatic viewpoint; they file from motives of idealism combined with outrage, an emotional state not conducive to bargaining with the respondent. In other words, the goals of the complainant (justice, personal vindication, satisfaction) and those of the attorney and the MCAD personnel (best practical outcome, profit for the attorney, efficient use of own time) are usually at odds with each other from the beginning.¹⁹

18. The young attorney from the State Attorney General's office must continue to work with the mayor and other city and state officials; it would hardly advance his career to attack political allies and colleagues in city hall for actions that undoubtedly prevail throughout local, state, and federal governments. Blumberg (1967a, 1967b, 1970) describes the impact of institutional ties as a determinant of attorney behavior.

19. Cf. Rosenthal (1974), Blumberg (1967b, 1970), and Mayhew (1968). In this regard, the relationship between the group of women complainants and their lawyer is interesting. The original (oral) financial arrangement had been for expenses plus an honorarium, which was later increased. Then, at a time when change in counsel would have been most inconvenient, the lawyer unexpectedly presented a contingency contract (40 percent of the award if settled at MCAD, 50 percent of the award if appealed to state court). The lawyer had little time for the case, which was almost entirely prepared by the complainants. At one point another lawyer had to be retained to provide assistance. The less lucrative complaints were largely ignored. The growing disenchantment of the complainants cul-

When asked their main reasons for filing complaints, only 13 percent (three lower class Blacks and one middle class white woman) said that it was to correct the situation described in the complaint; 53 percent did not even mention that situation but spoke only about the principles that had been violated and their sense of indignation at this; of the 23 percent who expressed both motivations, only one put pragmatic remedies ahead of more symbolic or idealistic issues.²⁰ Complainants feel they have been affronted by the respondents. They want to regain their sense of self-worth. Their posture is thus strongly adversarial (indeed, that posture is itself part of the remedy sought), and is therefore antithetical to the conciliatory stance of the MCAD²¹ and most of the lawyers involved. Persons of higher class are motivated more by principle than by concrete complaints; the reverse is true of lower class complainants (see Table 2). Those motivated most strongly by a desire for abstract justice are least willing to compromise because the settlement is viewed symbolically rather than pragmatically. A lower class complainant who received a small cash award but none of the other relief requested in the complaint thus reported very positive feelings about the MCAD, while many persons of higher class who got substantially more expressed strongly negative feelings.

Indeed, social class was the most significant variable in explaining the behavioral, emotional, and evaluative responses of complainants to the MCAD process. The proportion of lower class complainants who evaluated the MCAD favorably reflected the proportion of those complainants who obtained a favorable outcome.²² This homology was less true of middle class complainants,

minated when the lawyer began secret negotiations with the respondent's attorney and threatened to quit if terms of their agreement were not accepted by the complainants. The complainants remained firm. Although only some complainants were directly involved in this exchange, and each had an individual contract, the lawyer threatened each complainant with legal action for summarily dismissing her. The attorney subsequently settled for half the contingent fee stipulated in the retainer.

20. Mayhew asked poor people in Detroit what characteristics they valued in the legal remedy they wanted for the problems they perceived. Those who perceived problems of discrimination sought justice more often (31 percent) than those with other sorts of problems: discrimination (31 percent), public organizations (9 percent), expensive purchases (4 percent), landlord-tenant (0 percent), and neighborhood (2 percent). Still, 31 percent is considerably lower than the 76 percent found in the present sample, which may say something about what motivates people to file complaints and actually pursue them to public hearing.
21. For discussion of the conciliatory attitude of the MCAD, see Mayhew (1968). Cf. Jowell (1975).
22. When designating the resolution of a case as favorable or unfavorable, the complainant's goals are not considered. For example, a complainant may want an apartment and get a small cash award instead; this is considered a favorable outcome. In fact, no complainant achieved everything desired, though most got favorable settlements in the sense that the respondent made concessions and/or paid them cash. (A typical cash award would be \$100-\$200.)

and the proportions were reversed among upper middle class complainants, who also had the highest rate of favorable outcomes.²³

Because of the high correlation between class and race, one might assume that race accounts for some of these differences, especially since I, as a white interviewer, could elicit a more open response from white than from black complainants. But this was not the case. If one controls for class, race (white/nonwhite) has no relationship to complainant evaluations of the MCAD. Similarly, if one controls for class, sex has no relationship to evaluation of the Commission (see Table 2).

In one case, I interviewed both a lower class complainant (not in the sample) and her upper middle class advisor. The complainant painted a fairly positive picture of the MCAD, whereas the advisor had only negative comments to make and sounded angry. Perhaps the complainant had lost interest because the specific conditions cited in the complaint had since become moot. Because the MCAD process is so slow, the specific grounds of the complaint generally dissolve before it is decided. Complainants get other places to live, find other jobs, move away, and so on. One usually has to seek broad social goals to pursue a case to the end. Except for one complainant who asserted that he had filed as a matter of principle (he was a high school graduate who lived in public housing), lower class complainants never raised larger themes during interviews; in contrast, middle and upper middle class complainants frequently expressed feelings about political-social questions and fundamental principles.²⁴ In support of the hypothesis that lower class complainants are relatively uncritical, it is noteworthy that the two upper middle class complainants (a white woman and a black man) who were unusually charitable in

23. OUTCOME OF COMPLAINT AND EVALUATION OF MCAD,
BY CLASS OF COMPLAINANT

<i>Outcome or Evaluation</i>	<i>Lower Class</i>		<i>Middle Class</i>		<i>Upper Middle Class</i>	
	Outcome	Evalu- ation	Outcome	Evalu- ation	Outcome	Evalu- ation
Favorable	75%	80%	60%	25%	87%	0%
Unfavorable	25	20	40	50	13	75
Indifferent	NA	0	NA	25	NA	25

At the time of the interview, of course, most complainants did not know how their cases would be resolved; however, where I maintained contact with the complainants in my own case after settlement became known, their general attitudes had not changed. Further, most complainants with open cases were fairly confident about the outcomes they anticipated.

24. Similarly, Steele (1975:1140) finds that demand for public remedy (one that will affect persons other than the complainant) rises significantly with complainant income among complainants to a consumer fraud bureau.

their evaluations of the Commission had lower class parents (as estimated from parental occupation).

Lower class complainants knew least about MCAD procedures and the progress of their own cases, asked fewest questions of MCAD personnel, and initiated the fewest contacts with the MCAD. All lower and some middle class complainants contacted the Commission only through the mediation of some higher class individual or an organized group. Middle class complainants were generally quick to criticize the MCAD but were usually less insistent in their complaints than those from the upper middle class, who knew the most about both the legal processes involved and their own cases, and were the most actively involved in their cases.

Douglas Rosenthal (1974) has found that the aggressiveness with which a personal injury plaintiff pursues a claim is directly related to the damages that plaintiff obtains. Since higher class in the present study correlates with complainant activity, the latter may partly account for the relative success of these complainants.²⁵ In the current sample of discrimination cases, however, activity appears to have been less important than class itself. Although upper middle class complainants spend more time on their cases than others, time spent (more or less than ten hours outside of hearings) has no relationship to case outcome. However, employment cases do take more time than those involving housing or public accommodations (see Table 2).

Upper middle class complainants were also more likely to have retained a private attorney (see Table 2). It may be that having an attorney helps the complainant obtain a public hearing²⁶ but the present study, which focuses only on those cases certified for public hearing, cannot test that notion. Indeed, there was a slightly negative (though not significant) relationship between having a lawyer and case outcome. Five complainants spent little or no time preparing their case, lacked legal counsel, and still obtained a favorable outcome, but their cases were fairly simple. When these cases are removed, the relationship between prepara-

25. Rosenthal was measuring the percentage of case worth received, however, and the panel assigning values to the cases knew the personal characteristics of the sample, so that worth may have been inflated by higher class. Cases worth more were less likely than others to receive full value. This may account for the null relationship that he found between class and success, as he measures it.

26. For one thing, MCAD public information stresses that all one has to do is report discrimination to them and the Commission will do the rest. MCAD staff do not advise complainants that they need or would benefit from a private attorney. Although I did not ask informants at what stage they had hired lawyers, I did ask how certain procedures had been handled. Of those reporting a private attorney, 86 percent mentioned legal representation of some sort prior to certification for public hearing. The remaining 14 percent may have had such assistance and failed to mention it.

tion time and favorable outcome becomes positive, but not significant. However, 69 percent of the upper middle class women had belonged to a group of complainants against the same respondent; they shared attorneys, costs, and preparation and provided each other with continual moral support and the stamina to persist in their complaints. Their collective activity was considerably greater than that of any other complainant.

It is also interesting to note that higher status complainants appear to have been treated more respectfully and courteously than those of lower status.²⁷ Where lower or middle class Blacks were involved, the Commissioners, all the lawyers, and the respondents exchanged congenial banter before, during, and after the hearings. Although most of the levity during the hearings was confined to displays of wit and cleverly orchestrated ritual ripostes related to the case being heard, one Commissioner did spend several minutes during a public hearing joking with the respondent's attorney about having worked together in the past and making comments about their common friends. Such asides were normally confined to pre- and post-hearing exchanges, though these were still generally audible. When complainants were white, upper middle class women, they participated more or less equally in the social exchanges and ritual parrying before, during, and after the hearings; but in such cases the demeanor of all participants was substantially more serious than when lower status Blacks were involved (with the exception of one session that had drawn a number of reporters). I had the distinct impression that the professionals, when dealing with complainants of lower social class, were actively dramatizing their own superior status.

In one case, I became so fascinated by the paralyzed withdrawal of the two complainants, who were charging racial discrimination in employment against a single employer, that I deliberately watched for motion. In nearly three hours, movement occurred only once, during testimony particularly hostile to one of the complainants. His breathing became rapid; he looked toward his friend and finally leaned over to whisper something to the friend, who leaned forward to hear him. He never consulted the attorney assigned by MCAD (who sat on the other side) or told *him* that the witness was lying or was confused or misrepresenting the circumstances. The lawyer never looked at the complainant; he was absorbed in his own world, the shared drama and intellectual

27. I observed parts of hearings for only sixteen complaints (against five respondents), the large majority of which were cases of sex discrimination brought by upper middle class women. The treatment of these complainants, nonetheless, contrasted sharply with the treatment of lower or lower middle class Blacks (two men and two women).

acrobatics of the other professionals, for whom he displayed his skills. From that perspective, though the complainant's attorney was not very well prepared, he put on a very good show, witty, interesting, and innovative; but the complainant did not, presumably could not, and was not expected to participate, although he was the subject of the drama and the only one seriously jeopardized by the outcome.²⁸

Although it is the respondents who are charged with wrongdoing before the MCAD, it is the complainants who feel they are being placed on the defensive. The burden of proving a specific, discrete act of discrimination can seem as unjust as the discrimination itself.²⁹ Complainants are often angry that respondents are permitted to "lie" and evade questions during hearings, particularly since a standard defense of respondents is to impugn the competence, character, and behavior of the complainant. When complainants are not subsequently vindicated, this additional calumny compounds the original injury. Furthermore, some complainants feel humiliated when they must admit that they suffered, and were hurt by discrimination. One upper middle class black complainant said that the most painful part of filing or testifying was having to admit being hurt. He felt that the act of discrimination itself should testify to the damage and suffering.³⁰

28. In my private conversations with this attorney, he appeared seriously committed to social reform and genuinely concerned with the issues of discrimination, which makes his performance all the more disturbing. Goffman notes the tendency of interest groups to stage events dramatizing their status and solidarity in a unique verbal and behavioral language not readily decipherable by outsiders participating in the event. Blumberg (1967b, 1970) discusses the collegiality of the legal profession as a means of exploiting the fee-paying client through the management of stage effects; opposing counsel are only illusory, ritual adversaries. In this case, there was no immediate financial incentive for the attorney's behavior, since he received no fee from the complainant. This suggests that his motivation was social rather than economic. In a legal system that is adversarial in structure, it may be personally and structurally essential for attorneys to separate clearly the roles of adversary and colleague. Professional ritual allows the attorney to establish collegial solidarity. The manner or style of expression varies with client class, presumably in reaction to client expectations and demands and in accordance with the value the attorney places on winning the client's approbation.

29. As Mayhew (1968) notes, cases may be decided on the basis of reasonable treatment or equal treatment. A respondent, charged with discrimination, will make allegations against the complainant that show the respondent's treatment to have been reasonable. If the complainant cannot refute them, the case is usually lost—unless the complainant can show that others with similar traits but from a different social category are treated differently. This is the standard of equal treatment. Such cases are very difficult to prove, since they require detailed knowledge of the respondent's treatment of others. Yet it is here that most cases must be fought, for few complainants (or people) are of such exemplary character and behavior that nothing can be said against them.

30. In many ways, the victims of discrimination resemble the victims of rape, about whom there is a growing literature (e.g., Medea and Thompson, 1974; *Newsweek*, 1972; Lear, 1972; Hendrix, 1975). Both crimes attack the fundamental identity of the victim; both humiliate and degrade; both are normally committed by persons occupying social statuses defined by

As the costs of the complaint process become evident and begin to aggregate, complainant attitudes toward MCAD deteriorate. Of those reporting a definite first impression of the MCAD (23 persons), all but one were favorable.³¹ These initial impressions generally lasted until shortly after the filing of a complaint. One complainant succinctly expressed the enthusiastic first reaction of many, "Eureka!" By the time of the interview, this same complainant found the field investigator "completely incompetent" and the lawyer assigned by MCAD "two-faced, secretly antagonistic, and political." Such a change of heart typifies about 40 percent of complainants.³² Most others underwent less drastic changes, but only 20 percent gave the MCAD a generally favorable rating by the time of the interview.³³ In short, for most complainants, the process is one of disillusionment and disappointment.³⁴

Of those who gave the MCAD a generally negative rating, 53 percent said that they would not and 35 percent that they probably would not file again; that is, 88 percent say that the legal mechanism for dealing with discrimination is probably not worth the effort. This is 50 percent of the sample and 54 percent of those

society as higher than that of the victim; in both there is an implicit assumption that the victim is somehow responsible for the crime, and that this nullifies the criminal content of the act in question; both are legally processed by institutions whose personnel resemble the attacker more than the victim. In each case, the defendant often responds by denigrating the victim in public. Even where such allegations are not ultimately supported by the final decision, the victim must relive the crime and must listen while the audience is told to believe that he or she possesses those unworthy qualities that would justify the crime. It is scarcely surprising that so few people report either discrimination or rape to legal authorities. Given this reluctance, those cases actually reported are presumably stronger, factually and legally, which makes the astonishingly low "conviction" rate per complaint all the more distressing.

31. Four persons no longer remembered how they had first reacted to the MCAD, which leads one to suspect that their impressions were neutral; three did not answer the question.
32. This includes both black and white, middle and upper middle class, employment and one housing discrimination complaints, but only one man. Perhaps men are less expressive in their disappointment, for there is no relationship between sex and evaluation if negative and emphatically negative evaluations are not distinguished.
33. It should be added, however, that complainants rarely challenged the intentions of the MCAD, but only its ability to function adequately.
34. Some field investigators and attorneys on the staff of the MCAD whom I interviewed informally also expressed frustration with the process. They said that only a very small proportion of cases have any chance of being heard and even fewer have any chance of rectifying the complaint. As a result they often feel that their efforts are futile and become demoralized. Other staff members complained that the complainants are themselves prejudiced and often refuse to deal with field investigators of particular ethnic backgrounds; this naturally makes the staff unsympathetic, damages the effectiveness of the Commission, and throws doubt on its mission. Mayhew (1968: Chapter 5 *et passim*) notes the frustrations of the Commissioners, trying to effect change with the inadequate sanctions and the limited financial and community support available to them. He also notes the tendency of complainants to lose interest and to drop complaints once the issues have become moot, a source of frustration to some staff.

answering the question. The higher the class of the complainant, the more likely the rejection of the legal process: 69 percent of the upper middle class are unlikely to file again; 58 percent of the middle; and 20 percent of the lower. In the middle class, this effect is identical in white and black complainants; in the upper middle class, it is more pronounced among whites (see Table 2).

It is interesting to note that twice as many complainants would or probably would file again (40 percent) as give the MCAD a generally favorable rating; thus, though most complainants are disappointed by the process, they do not reject the Commission altogether, if only because there is no alternative.

Of course, the effect of complainants' MCAD experience on subsequent behavior and attitudes cannot readily be distinguished from that of other influences, especially the general social conditions experienced by disadvantaged groups. Nevertheless, the fact that complainants volunteered their sense of general disillusionment (e.g., a desire to move to Africa) during the course of interviews narrowly focused on the MCAD process suggests that it is highly disturbing. Some certainly generalized the negative experience to other institutions, for example, the middle class noncitizen who said, "you have a lot of laws in this country, but they don't do anything," or the upper middle class Black who said that filing had simply confirmed that it did no good to try to work "through the system." Since discrimination law has been presented as a symbol of public probity³⁵ and receives a great deal of publicity, one would expect complainants to generalize.

Certainly contact with the Commission was emotionally important in the lives of most complainants. Women in particular tended to become more aware of themselves as members of a disadvantaged group. Some became more active in women's issues; for example, two obtained a research grant to study the position of women in municipal employment, and I conducted the present study. Several women reported feeling better about themselves because of the way they had handled the difficulties of

35. In his discussion of the use of public symbols to create social and political quiescence, Edelman states:

The most intensive dissemination of symbols commonly attends the enactment of legislation which is most meaningless in its effects upon resource allocation. In the legislative history of particular regulatory statutes the provisions least significant for resource allocation are most widely publicized and the most significant are least widely publicized. [1964:26]

Discrimination law is just this sort of highly publicized legislation, and the MCAD is the institutional embodiment of such laws in Massachusetts. From the public information available, which is widely distributed through the media as well as through MCAD publications, the complainant has every right to expect the discrimination laws and enforcement mechanisms to function effectively; the complainant learns, instead, that the MCAD falls considerably short of this in practice.

filing.³⁶ On the other hand, a lower class black woman refused to complete an interview saying, "I just want to forget the whole thing." A very angry middle class Black asserted that he would never again work for private enterprise and that the Commissioners were themselves prejudiced against Blacks. A majority of the complainants were less approving and more hostile toward the Commission after their experience.

TABLE 2

SUMMARY OF STATISTICAL CORRELATIONS (CHI SQUARE)

<i>Relationship</i>	<i>Level of Significance</i>
Social class of those who complained of sex discrimination is higher than that of those who complained of racial discrimination	close to .01
Complainants of sex discrimination more likely than complainants of racial discrimination to obtain a hearing	.01
Complainants of higher social class more likely to be motivated by idealism	.05
Complainants of higher social class evaluate the MCAD less favorably	.01
Complainants of higher social class obtain more favorable outcomes	more than .10
Relationship between sex or race of complainant and evaluation of the MCAD, when class is controlled	none
Complainants devote more time to employment discrimination cases	.05
Upper middle class complainants most likely to obtain legal representation	.05
Relationship between legal representation and favorable outcome	none
Relationship between time devoted to preparing case and favorable outcome	slight
Complainants are less likely to file again than not to file	.01
Relationship between race and willingness of middle class complainants to file again	none
Upper middle class white complainants less willing to file again than upper middle class black complainants	.01

36. This was, of course, a period of generally increasing "feminist consciousness"; however, if the direction of change can be partly explained by more societal changes in awareness, it was just these sorts of experiences that contributed to the latter trend.

IV. DISCUSSION

Several variables would seem to explain the reactions common to most complainants, as well as the variation along class lines. Many complainants come to the MCAD with high expectations, encouraged by the ideals expressed in the law, the symbolic importance of the MCAD as an official state institution, and by the initial enthusiasm of MCAD personnel. These expectations cannot possibly be met. If the bureaucratic routinization of justice is disillusioning to criminal defendants, it is all the more disillusioning to the victims of crime. Furthermore, the MCAD must fight widespread discrimination with limited resources in such a way as not to jeopardize future funding. It is little wonder that complainants and reformers find it inadequate.³⁷

Persons from a higher social class understand the law and expect to be able to make others observe it—because they believe in law and in the efficacy of enforcing institutions, because they believe in their own general competence to use available social institutions, and because they believe they deserve the maximum benefits and protection that society offers. Although they do better than others in the MCAD process, they also expect more, and fail to anticipate the costs. Used to perceiving themselves as socially competent, they become angry when they find themselves subject to bureaucratic dehumanization and indifference. Persons who are consistently treated badly by society are not nearly so upset; rather, they may be impressed by the energy MCAD expends in their behalf and evaluate the institution positively even though they do not get what they asked for. Thus, a lower class black woman said she “felt just terrible” about having to file: “Here I am black, and I have to go to court to get an apartment.” She never got the apartment, and she did not understand how the process had worked: “It just happened.” She did get a small cash award, however, and she repeatedly praised the MCAD staff’s efforts on her behalf. A higher class complainant in the same situation would probably have been quite indignant.

The measurement of costs and benefits clearly varies by class, because classes have different expectations and values. Those who expect disparagement are happy with a little (for them exceptional) concern; those who expect not only consideration but efficiency

37. It might be hypothesized that the failures of MCAD would increase or at least perpetuate discrimination by those respondents who suffered little or no penalty. Compare Sanders (1975) on the reactions of young, white drug offenders who learned, essentially, to be careful and to make the practice so widespread that nothing can be done about it.

may define similar displays of concern as inadequate. Higher class complainants are used to being actors in society, not passive observers, and they want to know what is happening during the process and to share control over it. They also consider their time valuable and expect not only responsiveness to their interests, which tend to be principled as well as pragmatic, but also reasonable speed. Higher class persons also make greater material investments in terms of legal costs and time, and thus need more to break even.

But however different complainants may weight them, the aggregate costs of filing are considerable: time, legal fees, lost pay, respondent retaliation, indifferent treatment, anxiety (exacerbated by lack of information throughout the process), and failed expectations. For many, a major cost of filing is the discovery that the legal system does not operate the way it is supposed to.

The divergent motives and expectations of complainants and attorneys imply that a built-in conflict may exist between many legal service organizations and their clientele, as well as between many private attorneys and clients.

V. CONCLUSION

Complainant reactions to the MCAD process are influenced by many variables: conditions in society that circumscribe the MCAD; attributes of the law, MCAD organization and personnel; qualities of the respondent; qualities that inhere in complainants; and events and outcomes in particular cases. Class is the most important variable in predicting complainant reactions; race and sex are not generally significant. Class affects reactions so strongly because classes have divergent perceptions of the social system and their positions in it, and thus measure the costs and benefits of their activities differently. The pattern of reactions in this sample suggests that the effects of litigation and the law on individuals or groups cannot be measured adequately by "objective" criteria such as size of settlement or decision, since these may be of secondary importance to the individuals involved. In the final analysis, complainant reactions to the MCAD are determined more by symbolic and emotional issues than by outcome.

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