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UNITED STATES COMMISSION ON CIVIL RIGHTS HEARING
FAIR EMPLOYMENT PRACTICES
MONTANA

EVENING SESSION

Saturday, April 14, 1973
Federal Building
Great Falls, Montana

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1 MR. CATE: Will the representatives of the
2 Equal Opportunity Commission come forward please?

3 MR. BIGS: Mr. Chairman, my name is Edward
4 Bigs, and I am representing Pedro Esquivel, the Regional
5 Director of the Equal Employment Opportunity Commission.

6 The District Office in Denver does serve the
7 geographical region which includes Montana and Idaho.
8 The Commission is an independent commission of the
9 government with five commissioners appointed by the
10 President. We are a compliance agency, we enforce one
11 statute, Title VII of the 1964 Civil Rights Act as amended
12 by the 1972 Equal Employment Opportunity Act. Our statute
13 is concerned with prohibiting discrimination in the
14 employment process. This includes employment agencies,
15 employers and labor unions. Discrimination on the basis
16 of race, color, sex, national origin or religion is
17 included under Title VII. We have had our jurisdiction
18 expanded in March of 1972 so that we now include government
19 agencies and political subdivisions with the exception of
20 the federal government. We have no jurisdiction of
21 complaints against the federal government, however, we
22 now do have over state governments, and political subdivisions.
23 Our agency work is investigative and the procedure is
24 when an individual files a complaint with our Commission,
25 this is his statutory right and the complaint may be filed

1 by writing to our agency, the Equal Employment Opportunity
2 Commission, 1726 Champa Street, Denver, Colorado. When
3 a person makes a complaint with our agency we are required
4 to refer the complaint to the appropriate agency for a
5 period of 60 days. If the complaint is resolved by the
6 state during that period to the satisfaction of the
7 charging party and the respondent and our agency, then
8 the case may be closed. If the state is not able to
9 resolve the complaint or has not been able to investigate
10 it, it is officially filed with us after a 60-day period.
11 The complaint is then investigated by our agency and at
12 the conclusion of the investigation a determination is
13 made as to whether or not there is reasonable cause that
14 a violation of Title VII has occurred. Since our
15 regulation is remedial, we are required by the statute
16 to attempt to resolve the complaint by conference,
17 conciliation, or persuasion. At the conclusion of the
18 investigation, a determination is made and an official
19 representative of our agency will contact the named
20 respondent, the employer or the employment agency and
21 try to work out a settlement. If this is successful,
22 then the case will be closed. If we are unable to achieve
23 conciliation, then the individual has the right to bring
24 his own private civil suit in federal court. In addition,
25 the changes made in 1972 provide that our Commission may

1 initiate court action against the respondent. In addition,
2 in certain cases, the Department of Justice may initiate
3 suit against the named respondent if we have been unable
4 to achieve conciliation.

5 MR. CATE: Mr. Bigs, is it your agency that
6 requires certain employers to submit affirmative action
7 programs?

8 MR. BIGS: No sir, that is covered by executive
9 order, a representative of the OFCC will be discussing
10 that, the Office of Federal Contract Compliance for the
11 Department of Labor. We are an independent, we have
12 investigated individuals and charges under Title VII.

13 MR. CATE: EEO-1 forms are handled through
14 the office of Federal Contract Compliance and not your
15 office?

16 MR. BIGS: The EEO-1 form is the result of
17 several agencies and the EEO-1 is submitted to the federal
18 government and is available to our agency as well as the
19 Office of Federal Contract Compliance.

20 MR. CATE: Who has the responsibility of seeing
21 that employers comply with the requirements of submitting
22 an EEO-1 form?

23 MR. BIGS: This action may be taken by our
24 agency or I believe by the Department of Labor also. The
25 instructions for the Form 100 provide for the filing of

1 the report and the action that may be taken if it is not
2 complied with.

3 MR. CATE: Now does your agency have anything
4 to do with requiring the affirmative action program to
5 be put into effect by various companies or institutions?

6 MR. BIGS: The affirmative action program as
7 most people are referring to was not required by our
8 agency. As a part of the conciliation process after an
9 investigation has taken place, as part of the conciliation
10 process there may be a built-in affirmative action remedy
11 but the affirmative action plan a company makes is filed
12 under 11246, that is not the responsibility of our agency,
13 sir.

14 MR. CATE: Is that the responsibility of HEW?

15 MR. BIGS: The OFCC representative I am sure
16 will be discussing this. The compliance activities are
17 spread out through various agencies of the government and
18 coordinated by OFCC. We do no compliance review but go
19 in on the basis of the complaint. The complaints are
20 confidential when they are filed with us and the results
21 of it and the information gained during the investigation
22 are confidential until the point at which legal action has
23 been instituted, of course the filings are available to
24 the attorneys of both sides.

25 MR. CATE: One thing that I noticed in one of

1 the reports I was reading which refers to your particular
2 agency was the number of complaints that you have had.
3 How many complaints you presently have pending with your
4 Commission?

5 MR. BIGS: These figures will be published but
6 in about another month, but for the previous fiscal year,
7 we are always behind, I could give you an estimate, sir,
8 for your region which is the six-state region, I would
9 estimate that there are well over a thousand active
10 complaints at this time.

11 MR. CATE: Are those complaints primarily
12 women or minority people at this time?

13 MR. BIGS: Certainly our chairman has indicated
14 in his addresses recently that the numbers of complaints
15 by women have increased considerably this year. I do
16 not have the percentage that I can give you though.

17 MR. CATE: What kind of staff do you have to
18 investigate these complaints? How many people do you
19 have in this region, for the six-state region, to assist
20 you in your efforts?

21 MR. BIGS: We have about 30 district offices
22 and the district offices have basically a 25 to 30 man
23 staff. We are just coming up to our full strength and
24 it has been anticipated that there will be a regional
25 office, that opened only a year ago, prior to that time all

1 work was done from the regional at San Francisco. Our
2 agency has approximately 1500 employees, sir.

3 MR. CATE: In our particular area, that is the
4 area we are concerned with certainly in Montana, you
5 indicated about 25 staff people, how many people are
6 investigators?

7 MR. BIGS: Approximately 10 investigators, sir.

8 MR. CATE: And approximately how many cases
9 can an investigator handle in a year, what's been your
10 experience there?

11 MR. BIGS: There are many variables on this and
12 I am trying to think of a figure that we have given on
13 complaints that have been investigated and closed at
14 various stages. There are such figures in our report,
15 annual report, and I cannot get them for you, sir, I am
16 sorry.

17 MR. SCHILTZ: You said, Mr. Bigs, that when a
18 complaint was made to your office you then refer it to
19 the appropriate state agency?

20 MR. BIGS: That is correct.

21 MR. SCHILTZ: Who is that in Montana?

22 MR. BIGS: At the present time in Montana I
23 believe that the copies of the complaints are sent to the
24 attorney general in MONTANA.

25 MR. SCHILTZ: If you have got to wear -- were you

1 here this afternoon?

2 MR. BIGS: Yes sir.

3 MR. SCHILTZ: If you had a complaint similar
4 to the one that Mr. McDonald was making, is that the sort
5 of complaint you might enter without judging the merits
6 of it because we didn't hear enough, but that would be
7 filed by an individual again and against for instance
8 the federal government, not against the Indian tribal
9 organization, it is basically a complaint against an
10 employer?

11 MR. BIGS: It may be filed on behalf of an
12 individual or it may be filed by an aggrieved individual.

13 MR. SCHILTZ: Is it necessary that the attorney
14 general of Montana have some authority to deal with
15 complaints such as this? You are talking about Montana
16 Attorney General, aren't you?

17 MR. BIGS: Right. I am not familiar with the
18 Montana Statute and what legislation there is. The state
19 agency, its Civil Rights Commission or Department of Labor
20 or what, who have compliance activities enter into
21 agreements with our Commission in Washington and under
22 the new statute they will be certified as federal agencies,
23 copies are sent to other agencies, information copies, if
24 they do not have full enforcement powers.

25 MR. CATE: At this time does Montana have a

1 Fair Employment Practices Commission as such that meets
2 with your approval for referral of these items?

3 MR. BIGS: Under -- no sir, under the new
4 statute, a state has to apply to be certified and then
5 would be certified as an accredited referral agency.

6 MR. CATE: Are you familiar with the statistics
7 as to how many states have fair employment practice
8 commissions that are qualified to receive complaints
9 or referrals from your agency?

10 MR. BIGS: No.

11 MR. MUSKRAT: 36.

12 MR. SMITH: 37. We do have a little conflict
13 here, I think Montana is not a referral state because our
14 law is a misdemeanor, we have not reached the qualification.
15 However, the Department of Labor has signed a 707 agreement,
16 if we could get it through the legislature, that would meet
17 the standards to qualify for it. The thing that has
18 bothered me is that we don't have a referral agreement.
19 People in Montana have complained considerably because
20 they had no place in Montana to shoot in a complaint.
21 They put them in to the attorney general's office and
22 some come to my office, the attorney general held them
23 for 60 days and passed them into us. If we get the new
24 bill and the 707 agreement, and hopefully some federal
25 funds, we would be able to straighten this out. I find that --

1 you mentioned how many cases -- I am certain quite a few
2 have not come to our attention because they didn't know
3 where to send them.

4 MR. BIGS: I am sure when your state has been
5 added to our region, our director will be meeting with
6 you and attempting to increase our communication with you.

7 MR. MUSKRAT: Mr. Bigs, you stated that you
8 did, your office did not require your agency does not
9 require an affirmative action plan, yet you further
10 stated that your agency does, as part of its conciliation
11 agreement with the firm, you use an affirmative action
12 plan, maybe a part of that agreement, is that correct, sir?

13 MR. BIGS: Correct.

14 MR. MUSKRAT: Now do you stand ready as an
15 agency to assist the employers in drafting an affirmative
16 action plan, before you receive a plan or something like
17 that? In other words what I am concerned about, it seems
18 to me so much government is concerned with taking the
19 pulse of a corporation and I would like to know if the
20 business could go to your agency for assistance?

21 MR. BIGS: We do have a voluntary program
22 officer in San Francisco, one officer there who is able
23 to give some assistance. We do not have someone in our
24 district yet to do this. This is a function which we
25 recognize the need for.

1 JUDGE BENNETT: Can you distinguish the
2 jurisdiction between your outfit and the Office of Federal
3 Contract Compliance?

4 MR. BIGS: Our jurisdiction is under Title VII,
5 sir, and not with the executive order and there is certainly
6 much confusion in the eyes of the public on this as you
7 are well aware.

8 JUDGE BENNETT: You have a new recruit today.
9 Aren't they doing essentially the same thing you are
10 doing?

11 MR. BIGS: They are doing compliance reviews,
12 we do not go out to a company absent a complaint, and
13 do any investigation, we have no on-going monitoring
14 of unequal employment. When a complaint is filed with
15 us, we then investigate it.

16 JUDGE BENNETT: They initiate investigations?

17 MR. BIGS: They have on-going investigations,
18 we only investigate on a complaint, sir.

19 JUDGE BENNETT: Okay, but there are different
20 routes, both of you get to investigate, but after you get
21 to investigating is there any distinction that can be
22 made between your functions?

23 MR. BIGS: I only can say that our function is
24 to attempt to resolve a complaint by conciliation and they
25 bring court action.

1 JUDGE BENNETT: Do they try to conciliate these
2 things?

3 MR. BIGS: I do not know, sir, I will let their
4 representative answer that. I have a hard time keeping
5 track of our agency and how it goes, sir. I did notice
6 our chairman made, in a speech in Detroit last month, that
7 our Commission has filed 28 suits nationally and approved
8 56 others under a new authority that went into effect a
9 year ago.

10 JUDGE BENNETT: You have your own legal staff?

11 MR. BIGS: Yes, there are litigation centers
12 throughout the country that bring legal action in selected
13 cases when conciliation has failed.

14 JUDGE BENNETT: Under what conditions do you
15 turn it over to the Department of Justice?

16 MR. BIGS: We have concurrent jurisdiction
17 for two years, sir, from March 24, 1972, to 1974, in
18 addition, the Department of Justice will bring the legal
19 action against states and political subdivisions, and
20 we will against others.

21 MR. CATE: Thank you, Mr. Bigs, for your
22 presentation, we appreciate you spending your day here
23 with us.

24 Will the representative of the United States
25 Civil Service Commission come forward please?

1 MISS PEROW: I am Carol Perow with the U. S.
2 Civil Service Commission in the Denver Region and I don't
3 know if you are going to get what you want exactly, I am
4 sort of pinch hitting for Betty Meyer, our area manager
5 from Helena. I don't exactly know what she intended to
6 present and she had a little problem, her husband had been
7 injured in an accident and she couldn't come.

8 My particular function in the Denver Region
9 which includes, of course, the Denver area and Colorado,
10 Utah, Montana, Wyoming, and North and South Dakota --
11 I am the EEO representative and our duty is to monitor
12 and approve or disapprove the EEO affirmative action
13 plans for all federal agencies within this jurisdiction.

14 MR. CATE: Just federal?

15 MR. PEROW: And this doesn't include all federal
16 agencies, it depends on the situation, this is determined
17 at the regional office level and the plans come to our
18 office and they are reviewed by our staff so that they
19 do meet the requirements of the EEO action law. We return
20 them to the agencies to be reviewed as we see fit, so
21 that they can meet the requirements, the legal requirements.
22 It is reviewed and so on, they are followed up if they do
23 not meet these requirements and we try to assist them
24 personally and go to the agencies so that we can help them
25 to make a meaningful affirmative action plan.

1 MR. CATE: Does your agency cover the BIA?

2 MISS PEROW: Yes, we do, we have two, two BIA
3 area offices in our region, one at Aberdeen, South Dakota,
4 and one in Billings.

5 MR. CATE: Has your office had an opportunity
6 to review an EEO affirmative action plan for the Billings
7 area?

8 MISS PEROW: Yes, we have.

9 MR. CATE: And has it been approved by your
10 agency?

11 MISS PEROW: It was approved after it had been
12 reviewed, yes.

13 MR. CATE: Do you have a copy of that?

14 MISS PEROW: I do not have a copy with me, no.

15 MR. CATE: Could you furnish us a copy of that
16 affirmative action plan?

17 MISS PEROW: I shall, yes I can.

18 MR. CATE: I will leave the record open for
19 that purpose.

20 MISS PEROW: Right.

21 MR. MUSKRAT: Miss Perow, you testified your
22 agency had some jurisdiction over some federal agencies
23 and that was determined by the Denver office, is that
24 correct?

25 MISS PEROW: Right, for instance, with the

1 Veterans Administration, the installation must be 700
2 employees or more. However, each federal agency is required
3 to develop and implement an EEO affirmative action plan
4 although they may not have to submit it to the Commission
5 for approval, it will be looked at on our periodic or
6 special investigation or evaluation as we call them.

7 MR. MUSKRAT: Miss Perow, what I am trying to
8 get at, if I am someone who wants to make a complaint with
9 Civil Service, who, do you know whether your agency covers
10 me or some other agency?

11 MISS PEROW: You'd have to start with your own
12 agency.

13 MR. MUSKRAT: I know that.

14 MISS PEROW: Right, but all federal agencies
15 eventually can appeal to the Civil Service Commission,
16 U. S. Civil Service Commission.

17 MR. MUSKRAT: What about the case of initial
18 hires, someone who is turned down on the initial hiring?

19 MISS PEROW: Well they can file a complaint.

20 MR. MUSKRAT: With your agency?

21 MISS PEROW: Right, they can start there, they
22 have to usually go to a counselor, go through the
23 counseling procedure of course. I personally am not a
24 case handler, we have our EEO counselor and each agency
25 must have an EEO counselor.

1 MR. MUSKRAT: I suppose my question is this.
2 Suppose you are advising Mr. McDonald who was turned
3 down for a job and he felt that it was because of dis-
4 crimination, would he file a complaint with your office?

5 MISS PEROW: I would imagine he would.

6 MR. MUSKRAT: And he could do so?

7 MISS PEROW: I think so.

8 MR. MUSKRAT: Could you give us your name and address
9 so we'll know how to file these complaints?

10 MISS PEROW: All right. It's U. S. Civil
11 Service Commission, Building 20, Denver Federal Center,
12 Denver, 80225.

13 MR. MUSKRAT: Miss Perow, when you look at an
14 affirmative action plan of an agency, what do you require
15 in an agency affirmative action plan?

16 MISS PEROW: All right. There are requirements
17 set forth in 1715-25 which is the FPM Bulletin. On
18 March 24, 1972, when he signed the Equal Employment,
19 the President signed the Equal Employment Opportunity
20 Act which gave new responsibility to the Civil Service
21 Commission for enforcement of the Act, there are things
22 that are required absolutely in the EEO action plan.
23 The first thing is a provision for the establishment of
24 training and education programs designed to provide
25 maximum opportunity for employees to advance and so as to

1 perform their highest potential. A description of the
2 qualifications in terms of training and experience relating
3 to the EEO for principal officials in the program, and
4 the allocation, the personnel resources proposed to carry
5 out the EEO program. There are 8 action areas and they
6 must be in there including an appendix which includes the
7 special programs for the handicapped and disadvantaged.

8 MR. MUSKRAT: Do you require any time tables?

9 MISS PEROW: Yes, goals and time tables,
10 reviewing the agency plans, sometimes it's a glaring
11 problem.

12 MR. MUSKRAT: Miss Perow, we intend to come
13 back to Montana if we find that they are not living up
14 to their affirmative action programs. If we complained
15 to you, could you do something about it?

16 MISS PEROW: We are the enforcement agency for
17 the federal agencies.

18 MR. MUSKRAT: In answer to my question, is that
19 yes, an affirmative or negative?

20 MISS PEROW: Affirmative.

21 MR. MUSKRAT: Thank you.

22 MISS PEROW: This is done with them by suggestions,
23 we give them suggestions on how they can improve this, if
24 they are not successful in doing so, they are given a time
25 limit for this and we go back, we have follow up. If they

1 have not done it, then of course we have to go to the
2 higher headquarters and then it comes back down again.

3 JUDGE BENNETT: If the agency has less than
4 700 employees?

5 MISS PEROW: This doesn't hold true for all,
6 I said the V.A. but we get plans from agencies that might
7 have as few as 25.

8 JUDGE BENNETT: Okay, for the V.A., where do
9 they -- they don't send their plans anywhere, is that
10 right?

11 MISS PEROW: They do have a plan and they are
12 approved by higher headquarters, all agencies.

13 JUDGE BENNETT: And the V.A.?

14 MISS PEROW: Pardon?

15 JUDGE BENNETT: Within the V.A.?

16 MISS PEROW: They go through their higher
17 headquarters if it's 700 or more, they would come to
18 the regional office.

19 MR. CATE: Thank you, Miss Perow, for an example
20 of the ability of women to compete and perform services
21 which in the past were quite commonly held by men.
22 Thank you very much. I would like to call the representative
23 of the Federal Contract Compliance.

24 MR. HERERA: My name is Joseph Herera, I am the
25 Acting Director of the Office of Federal Contract Compliance

1 out of the Denver Regional Office. My mailing address is
2 Room 246, New Customs House, Denver, Colorado, 80202,
3 Telephone No. --Area 303-837-4978.

4 MR. CATE: Would you describe for us the
5 enforcement powers of the OFCC as they relate to the
6 affirmative action program?

7 MR. HERERA: Well, our agency has the mandate
8 to enforce Executive Order 11246 which covers all
9 contractors dealing with federal monies or federally
10 assisted monies and covering 25 employees or more and
11 a minimum of \$10,000, these companies must develop an
12 affirmative action plan to encompass the geographical
13 area in which they have their establishment.

14 MR. CATE: You say 25 employees, I thought
15 that was amended down to 15?

16 MR. HERERA: Down to 15 now, right.

17 MR. CATE: We had some testimony this morning
18 from an individual from the Montana Power Company who
19 testified that their affirmative action plan was approved,
20 I believe by your agency, is that correct?

21 MR. HERERA: No, I would like to clarify that.
22 The Department of Labor, Office of Federal Contract
23 Compliance is with the Department of Labor, we have
24 delegated responsibilities to each of the other federal
25 agencies, HEW, Health, Education and Welfare, or Housing

1 and Urban Development, General Services Administration,
2 etc., Interior Department, Veterans Administration, and
3 so forth. They have the responsibility delegated to
4 them from the Office of Federal Contract Compliance and
5 we have a department, an agency that has the responsibility
6 of doing compliance reviews, and actually the correct
7 title for their agency is, Department of Contract
8 Compliance. We set the policy, the directives, and the
9 guidelines, we supervise all of the federal agencies with
10 regard to compliance reviews conducted, any reviews they
11 do conduct with regards to responsibility of their
12 particular contracting agency, they must submit a record
13 to the contract compliance office in Washington and we
14 may disagree on their review and we might direct that
15 agency to go back and to do a review.

16 JUDGE BENNETT: Who reviewed the power company?

17 MR. HERERA: General Services Administration.

18 JUDGE BENNETT: Why would the General Services
19 Administration do that?

20 MR. HERERA: Because they are the ones that
21 administer that portion of the federal dollars in regards
22 to services, services that are not contracted for by the
23 government such as for power or supplies.

24 JUDGE BENNETT: Thank you.

25 MR. HERERA: The telephone company was one of

1 the agencies that are under the responsibility of the
2 GSA and because of lack of information the responsibility
3 of carrying out the executive order that the agency was
4 taken away from the General Services Administration and
5 now is directly enforced out of our Washington office
6 by OFCC.

7 JUDGE BENNETT: For Ma Bell?

8 MR. HERERA: Across the country, that is correct.

9 MS. JONES: In the testimony we heard from
10 Mr. Donaldson earlier this morning, are you saying then
11 that when they made reference to the fact that they were
12 found to in compliance by OFCC, they really should have
13 said Department of Labor rather than the Office of Federal
14 Contract Compliance?

15 MR. HERERA: He should have said General
16 Services Administration Compliance Department found him
17 in compliance.

18 MS. JONES: Not the Office of Federal Contract
19 Compliance, is this correct?

20 MR. HERERA: I might add here that ultimately
21 the Office of Federal Contract Compliance in Washington
22 will receive that report and before it is accepted, it
23 has to be accepted by our Washington office before they
24 are on a -- given a clean bill of health, that is all I
25 can say.

1 JUDGE BENNETT: As of now, it is simply a clean
2 bill of health?

3 MR. HERERA: That's right. It has not been
4 reviewed to my knowledge by our office in Washington.

5 JUDGE BENNETT: What kind of time frame in this
6 particular case are you talking about now from the
7 submission to the General Services Administration in this
8 case of their proposed affirmative action plan and the
9 time that the Office of Federal Contract Compliance finally
10 reviews and approves of it? What kind of time are you
11 talking about?

12 MR. HERERA: 120 days normally. I might add
13 that we have several regulations that are in conformance
14 with the Executive Order such as review order No. 4 and
15 which deals with anything non-construction, suppliers of
16 \$10,000 or more are covered under, reviewed under
17 Order No. 4 and also it covers the sex discrimination.

18 MR. CATE: Mr. Herera, I don't want to dispute
19 your testimony, but the statement covering the Montana
20 Power Company, I am quoting from it, says, in March, 1972,
21 the Office of Federal Contract Compliance, now that is
22 your office, right?

23 MR. HERERA: That is correct.

24 MR. CATE: They conducted a compliance review
25 of the MONTANA Power Company to determine if any dis-

1 criminary policies were being practiced. The compliance
2 officer stated the Montana Power Company was in compliance
3 in regard to minorities but that a few technical things
4 were needed in an affirmative action plan statement and
5 these changes were made to the satisfaction of the
6 compliance officer of the Federal Contract Compliance
7 Division. In November, 1972, the Office of Federal
8 Contract Compliance conducted a review of the Missoula
9 and Billings operating divisions of our company aimed at
10 investigation of Indian hiring practices specifically.
11 After the review, the compliance officer told us that the
12 Montana Power Company was not discriminating against the
13 American Indian. The OFCC compliance officer discussed
14 with us the coming emphasis which would be placed on
15 women employees and so forth -- now is that statement of
16 the Power Company incorrect?

17 MR. HERERA: Yes, it is.

18 MR. CATE: It is?

19 MR. HERERA: My office has not done a review,
20 we only supervise and receive the reports from the
21 contract compliance agency that has the responsibility
22 for that particular facility and that is the General
23 Services Administration.

24 MR. CATE: Your agency did not, in March, 1972,
25 approve any affirmative action program of the Montana Power

1 Company?

2 MR. HERERA: That is correct, not to my knowledge.

3 MR. CATE: Your agency did not, in November,
4 1972, approve any additional compliance?

5 MR. HERERA: That is correct.

6 MR. CATE: Okay.

7 MS. JONES: The testimony we heard this morning,
8 I believe it was Mr. Bighorn asked who conducted the
9 compliance review and he gave the name Sawyer, do you
10 know Mr. Sawyer, do you know what office he is in?

11 MR. HERERA: Lawrence Sawyer is the Director
12 of the Civil Rights Contract Compliance Division for
13 General Services Administration.

14 MR. SMITH: Mr. Donaldson could straighten that
15 out for us, is he here? Is there any attempt going to
16 be made to bring all of these various facets of HEW,
17 Transportation, all of them into one place to have
18 responsibility in one place, why it would be fragmented --
19 checks and so forth, balances?

20 MR. HERERA: Well, I know what your question is,
21 this is of concern to the Federal Contract Compliance also,
22 there has been some statement made that they would like to
23 see OFCC separate like the Equal Employment Opportunity
24 Commission and be an independent agency and handle all
25 contract compliance responsibility just like the EEOC handles

1 individual complaints, I don't see it in the near future
2 and at this point I can't elaborate on it. I think for
3 the purposes of uniformity and continuity of compliance
4 procedures, it would be advantageous if this would come
5 about.

6 JUDGE BENNETT: Let me ask you another question.
7 It seems to me from the list of agencies that you have
8 named that you have farmed this function out, that you
9 don't have much left to do. The Defense Department is
10 one you left out?

11 MR. HERERA: The Defense Department has a
12 Contract Compliance Division.

13 JUDGE BENNETT: They do? I would like to restate
14 my question, what's left?

15 MR. HERERA: The supervision and approval of
16 all the reports coming into the regional office, either
17 accepting them or myself going out.

18 JUDGE BENNETT: From the other departments which
19 you have reiterated?

20 MR. HERERA: That is correct.

21 JUDGE BENNETT: Oh, I see.

22 MR. SCHILTZ: I was just going to ask, you
23 review say the GSA's approval?

24 MR. HERERA: Yes.

25 MR. SCHILTZ: Is that automatic?

1 MR. HERERA: No.

2 MR. SCHILTZ: That comes to you at some time
3 or does someone have to complain?

4 MR. HERERA: No, it automatically comes to our
5 office.

6 MR. SCHILTZ: You have another look at it?

7 MR. HERERA: We look at it before we accept
8 it as an affirmative action plan.

9 MR. SCHILTZ: Then when you put your stamp of
10 approval on it, it is a pretty sophisticated thing, is it?

11 MR. HERERA: That is correct.

12 JUDGE BENNETT: Just a minute. The Power Company
13 says that they got their compliance in 1972?

14 MR. CATE: Yes.

15 JUDGE BENNETT: You say it takes 120 days for the
16 whole process, it's more than 120 days since 1972?

17 MR. HERERA: I have not seen the compliance
18 review done by GSA with regards to the Montana Power Company.

19 JUDGE BENNETT: Your agency hasn't approved it?

20 MR. HERERA: Not to my knowledge.

21 JUDGE BENNETT: 120 days has gone by?

22 MR. HERERA: That is correct.

23 JUDGE BENNETT: This is either slipping or is
24 that normal?

25 MR. HERERA: Well normally it will go to their

1 headquarters office in Washington.

2 JUDGE BENNETT: To GSA?

3 MR. HERERA: Concurrently.

4 JUDGE BENNETT: Their headquarters office will
5 send it to you in Washington for concurrence on the review
6 on the affirmative action plan?

7 If I have a complaint about the way the
8 University of Montana is doing things, do I write to HEW
9 or do I write to you?

10 MR. HERERA: HEW.

11 JUDGE BENNETT: You have to be pretty knowledgeable
12 in this field, don't you?

13 MR. HERERA: You should know something about
14 affirmative action.

15 MR. MUSKRAT: May I ask a question?
16 You say the Montana Power affirmative action plan,
17 Montana Power and their past hiring practices will come
18 into your office for review?

19 MR. HERERA: That is correct.

20 MR. MUSKRAT: What will you be looking for when
21 you look at that affirmative action plan?

22 MR. HERERA: Goals and timetables in all job
23 classifications, the presence of minorities with regard
24 to population of the area where they have their facilities.

25 MR. MUSKRAT: Mr. Herera, I hand you a copy of

1 that which has been marked Exhibit E which is the
2 affirmative action program for Montana Power Company,
3 it's very short, it's double spaced, I believe it's on
4 2½ pages. Could you take a moment, Mr. Chairman, and
5 let him read that? We have heard testimony that that
6 plan has been approved by the GSA, given that affirmative
7 action plan, is that the type of affirmative action plan
8 that you would approve or disapprove and if so, why?

9 MR. HERERA: This particular plan would not
10 be approved by our office because it doesn't spell out
11 specific numbers or goals and the timetable that this
12 company would use to come into compliance with, the
13 Executive Order, this is not -- this is merely a statement,
14 it is not an affirmative action plan.

15 MR. MUSKRAT: I see.

16 JUDGE BENNETT: It has taken you approximately
17 four minutes to read that?

18 MR. HERERA: That's right.

19 JUDGE BENNETT: You have made a decision and
20 that has been before the GSA for one -- for more than a
21 year?

22 MR. HERERA: I don't know that it has.

23 JUDGE BENNETT: What kind of program are you
24 running?

25 MR. HERERA: I don't know that it has, you are

1 taking the statement of one individual that says it was
2 reviewed. I cannot dispute whether GSA has been in there
3 or not at this point. I will dispute, I will state that
4 this particular plan that was handed to me by Mr. Muskrat
5 would not suffice to meet the requirements of the Executive
6 Order for an affirmative action.

7 MR. MUSKRAT: Would you be willing to work with
8 Montana Power to get them developing an affirmative
9 action plan, does your office furnish this type of service?

10 MR. HERERA: Yes, very definitely.

11 MR. MUSKRAT: If I am a business man and want
12 an affirmative action plan, if I have a federal contract,
13 I could go to you and you would help me develop one.

14 MR. HERERA: Yes.

15 MR. CATE: If I wanted to complain about this
16 affirmative action plan of the Power company, if I was
17 an Indian in Butte, Montana, who would I go to to complain
18 about it? Would I go to HEW or GSA?

19 MR. HERERA: General Services Administration.

20 JUDGE BENNETT: How would he know that?

21 MR. HERERA: He could come directly to our
22 office.

23 JUDGE BENNETT: You said to go to GSA.

24 MR. HERERA: Right, I would forward the complaint
25 to my Washington office for reforwarding.

1 JUDGE BENNETT: Washington would send it to GSA?

2 MR. HERERA: Yes, but only for the purpose of
3 supervising the complaint and seeing that the complaint
4 process is followed and that it's investigated.

5 MR. SMITH: The Washington office would send it
6 back and follow up to see that they got an answer?

7 MR. HERERA: That is correct.

8 MR. MUSKRAT: Can you tell us who looks over
9 banks?

10 MR. HERERA: Excuse me?

11 MR. MUSKRAT: Banks, which are depositories of
12 federal funds such as savings bonds, etc.?

13 MR. HERERA: The U. S. Treasury Department.

14 MR. MUSKRAT: I see, thank you.

15 MR. CATE: What about Federal Deposit Insurance
16 Corporation, do they do anything like this?

17 MR. HERERA: That is the U. S. Treasury Department.

18 MR. CATE: How about the federal reserve
19 system, do they anything to do with the contract compliance?

20 MR. HERERA: Within the Treasury Department
21 they do have a compliance division. I want to clarify
22 one thing, the regional office of the Federal Contract
23 Compliance is primarily concentrating on the construction
24 industry in the development of home town or areawide or
25 statewide plans. Any construction or any non-construction

1 compliance activity is handled entirely out of Washington
2 for non-construction.

3 MR. MUSKRAT: How many people do you have in
4 the Washington office?

5 MR. HERERA: Roughly I would estimate about 200.

6 MR. MUSKRAT: How many companies throughout the
7 country are required to submit these plans, do you have
8 any idea?

9 MR. HERERA: Quite a few, I don't have an accurate
10 figure, it would be in the millions.

11 JUDGE BENNETT: How do I tell whether I go to
12 you or to Mr. EEO?

13 MR. HERERA: You can go to either, they have
14 jurisdiction, they will handle it; if they do not they will
15 refer you to our office.

16 JUDGE BENNETT: This is my question, who has
17 jurisdiction? As a lawyer that bothers me, do you both
18 have jurisdiction on a contractor, a private contractor
19 who has a contract with the federal government?

20 MR. HERERA: That complaint would come to our
21 office.

22 JUDGE BENNETT: And if I went to EEO, they would
23 send me to your office?

24 MR. HERERA: Yes.

25 JUDGE BENNETT: Why do they do that?

1 MR. HERERA: Because they have no jurisdiction
2 unless it's a complaint against the particular contractor.

3 JUDGE BENNETT: That is what I was talking about.

4 MR. HERERA: It would come to my office for
5 referral to the particular agency that has awarded the
6 grant with that particular company.

7 JUDGE BENNETT: What does he handle, what do
8 you handle?

9 MR. HERERA: Discrimination, on a companywide
10 or contractor basis, his is individual complaints.

11 MR. SMITH: Individual complaints against the
12 company, if your complaint is that the company is
13 discriminating as a company he would do it?

14 MR. HERERA: Right.

15 JUDGE BENNETT: Oh, that is for single people.
16 You complain as an individual to EEO?

17 MR. HERERA: To us, OFCC if it's against a
18 particular company.

19 MR. MUSKRAT: There is another company,
20 Intermountain Packing Company which gave evidence to the
21 investigators for this Committee that they too had been
22 reviewed by the Office of Federal Contract Compliance,
23 has that company been approved by you?

24 MR. HERERA: Not to my knowledge.

25 MR. MUSKRAT: Can I read these companies' names

1 and could you tell me to the best of your knowledge
2 whether or not they have been reviewed by you?

3 MR. HERERA: Surely.

4 MR. MUSKRAT: United Industries?

5 MR. HERERA: No.

6 MR. MUSKRAT: Security Trust and Savings Bank?

7 MR. HERERA: No.

8 MR. MUSKRAT: Cardinal Petroleum Company?

9 MR. HERERA: No.

10 MR. MUSKRAT: Hart-Albin Company?

11 MR. HERERA: No.

12 MR. MUSKRAT: Pierce Packing Company?

13 MR. HERERA: No.

14 MR. MUSKRAT: First National Bank of Great Falls?

15 MR. HERERA: No.

16 MR. MUSKRAT: Buttreys?

17 MR. HERERA: No.

18 MR. MUSKRAT: Pacific Hide and Fur Depot?

19 MR. HERERA: No.

20 MR. MUSKRAT: Montana Power Company you have
21 already answered. Plum Creek Lumber Company?

22 MR. HERERA: No.

23 MR. MUSKRAT: Thank you.

24 MR. SMITH: It is suppliers you are working on
25 mostly?

1 MR. HERERA: Construction, state planning,
2 home town plans, areawide.

3 MR. SMITH: What do you have besides Denver?

4 MR. HERERA: None.

5 MR. SMITH: Then there are many facets on which
6 you are checking and rechecking on the other contract
7 plans, I think what we are getting at is an awful lot of
8 gap between the federal agencies, they are taking their
9 affirmative action plans and getting them to you so you
10 don't seem to be having any follow-up on when they have
11 been approved or whether they have been approved in the
12 final state?

13 MR. HERERA: Yes.

14 MR. SMITH: I was wondering what is holding
15 that up, you are not getting these back very quickly,
16 you have many phases, the home town plans --

17 MR. HERERA: One in the region.

18 MR. SMITH: We have at least the Montana Power
19 questionable, I don't know, it seems to me there is something
20 somewhere, a lack of follow-up, surely when you saw this
21 plan, they sat here and they say they have approval after
22 more than a year.

23 MR. HERERA: Let me just say something here.
24 I have been into the other regions in Montana and un-
25 fortunately this is only my second time in here in the hope

1 of fully developing a statewide plan for Montana for
2 dealing with construction. I haven't gotten too far on
3 the development of the program but the other states which
4 I have been working in, I have been working with the
5 State of Wyoming and I have been dealing with the
6 concept of developing an areawide, a statewide plan for
7 the State of Wyoming. I do have some plans in the office,
8 one from Wyoming for heavy and highway, and there is a
9 lot of formalization that needs to be included before I
10 would approve the plan for the heavy and highway. In my
11 opinion these are just some of the things I have been
12 dealing with in the region.

13 MR. SMITH: Isn't the Department of Transportation
14 now taking care of the Wyoming heavy highway contracts?

15 MR. HERERA: Yes, they have the compliance
16 responsibility but I have the sole responsibility of
17 approving any plans for the state.

18 JUDGE BENNETT: How binding is the plan?

19 MR. HERERA: Very binding, they submit schedules
20 and timetables of recruitment and training of minorities
21 in the building trades with regards to that particular
22 industry.

23 JUDGE BENNETT: Statewide?

24 MR. HERERA: It could be statewide instead of
25 a home town plan. Philadelphia has an imposed plan and in

1 Philadelphia it's imposed because the contractors were
2 not bringing in minorities and the Philadelphia plan is
3 that they have to have 20% minorities on every job by
4 every classification, every trade on those jobs and that
5 is a heck of a lot harder than working it out on a
6 voluntary program. This is why we like to get a tri-party
7 home town plan developed in the region rather than impose
8 the federal plan. I have copies of the Executive Order
9 11246, 11375 and the Order No. 4, I will leave those for
10 anybody that might need them.

11 MR. CATE: Thank you for your testimony and we
12 appreciate your coming.

13 MR. HERERA: Thank you.

14 MR. CATE: We will call Joe Roberts to testify
15 please.

16 MR. ROBERTS: My name is Joe Roberts and I am
17 a representative from District 23, I reside in Libby,
18 Montana. I have been asked to discuss with you today
19 a piece of legislation introduced in the last legislature
20 entitled the Montana Indian Discrimination Act and that
21 bill was deferred until the next session, so there was no
22 action taken on it.

23 I hope that in the intervening months here until
24 the next legislative session we can create some public
25 discussion here in Montana on this matter and hopefully get

1 the bill passed in the next session. I think that a good
2 case has already been made for this bill and you have
3 heard from Mr. Bigs and certainly one feature of this,
4 which I will go into in more detail later, is establish a
5 referral agency in this state which can work with the
6 federal agencies in terms of identifying discriminatory
7 practices and providing remedies for valid complaints.

8 What I thought I would do is give you a brief
9 overview of what's provided in this legislation and
10 then finally discuss with you the way it would mesh with
11 the federal legislation in this area.

12 An overview of the bill shows three major areas.
13 First it provides the substantive law defining what
14 constitutes a discriminatory practice in this state.
15 Secondly, it establishes a human rights commission, and
16 thirdly, it sets out a quasi-judicial remedial process
17 which automatically goes into judicial review.

18 Now in the area of substantive law, we have
19 pretty much copied what you will find in the Civil Rights
20 Act of 1964 in terms of defining what constitutes a
21 discriminatory practice. It goes beyond the federal
22 legislation in one area, it deals with the discrimination
23 in regard to racial origin, sex, or national origin, the
24 federal legislation defines sex discrimination by reason
25 of sex only in employment practice and this law would extend

1 that to the various other areas of the law. Now the law
2 would cover employment, public accommodations, education
3 and real property transactions. Now I don't think I'll
4 go into a great bit of detail here, I won't give an
5 extensive lecture on substantive law or discrimination
6 in these areas, for instance, employment, it would extend
7 to employers, labor unions, and employment agencies. Any
8 attempt to exclude or expel or limit or segregate or
9 falsify on the basis of race, color, religion or national
10 origin is defined as a discriminatory practice. Also any
11 advertising to that effect would constitute discriminatory
12 practice. One exception deals with a plan to reduce an
13 imbalance where the discrimination is found, in other
14 words, an employer could affirmatively come in and request
15 a hiring plan to hire from say a racial minority or
16 whatever to bring himself into compliance and if this was
17 done with the approval of the Commission, that would not
18 constitute a discriminatory practice. I don't think
19 I'll go into the substance of public accommodations or
20 real property transactions, I will if someone would like
21 to.

22 The second area of the bill establishes a
23 human rights commission, a 7 member commission appointed
24 by the governor for a 6-year term. There was quite a bit
25 of discussion about the composition of the commission,

1 whether we should have, of these 7 members they provide
2 that 2 of them shall be American Indians or whether 4
3 out of the 7 ought to be women, and there was extensive
4 discussion about this and finally we decided that we
5 should take into consideration sex, and various racial,
6 cultural and social groups within the state. I am not
7 sure that I really addressed the problem but I think
8 there is a valid argument that can be made that we ought
9 to sort of provide where those will come from but perhaps
10 we can see how that will work out. The Commission is
11 empowered to do a variety of things, to conduct studies
12 and report to the legislature in regard to discriminatory
13 practices within the state, to create local advisory
14 commissions to deal on various local levels with dis-
15 criminatory practices, to promulgate results and
16 legislation to carry out the import of this legislation.

17 I think the major area of involvement that the
18 Commission is empowered to do is provided in Section 30
19 where it says, it is the authority of the Commission to
20 initiate, investigate, seek to conciliate, hold hearings
21 and pass upon complaints and alleged violations of the
22 Act and to approve or disapprove plans to eliminate or
23 reduce imbalance with respect to race, color, religion,
24 sex, or national origin. There is another bill introduced
25 in the legislature which defines two other areas of possible

1 discriminatory practices, those being age and physical
2 handicap. We didn't quite know how to work these into
3 this particular piece of legislation, so we instructed
4 the Commission as one of its first orders of business to
5 make a study of the discriminatory practices in regard
6 to age and physical handicaps.

7 Now the remedial process which is the third
8 major area of the bill, I think was somewhat covered by
9 Mr. Bigs, the type of thing provided in Title VII of
10 the Federal Civil Rights Act. The machinery is initiated
11 by a complaint, this doesn't have to be a legally drafted
12 complaint, in fact the idea of it is just to have someone
13 in a rough draft fashion as will happen to make the
14 Commission aware of what the individual conceives to be
15 a discriminatory practice. The Commission then will
16 investigate through its staff members the complaint,
17 talking with employers and if it finds that there is some
18 substance to the complaint, they will attempt to conciliate
19 with the employer and try to work things out. I think this
20 is the heart of the bill, that is really what we are
21 trying to do is to be able to sit down in a sort of non-
22 coercive setting and conciliate whatever differences
23 there may be. However, conciliation may not be successful
24 and the next stage is then a formal hearing that the
25 Commission would call. At this hearing testimony would be

1 transcribed and it would be under oath, and they would
2 take testimony from various parties to the complaint.
3 Now the complainant at this stage would be represented
4 or could be if he chose, would be represented by the
5 staff of the Commission who had investigated his complaint
6 and found that it had merit. I think this is a real
7 constructive feature of this bill, that is that the
8 individual is not going to have a hire legal counsel to
9 get his redress. Once the machinery goes into operation
10 the Commission itself will be representing them.

11 Now after the hearing an order is issued by
12 the Commission and this is, I think, a very attractive
13 feature of the bill because it gives a whole very broad
14 range of remedial devices, we have a Civil Rights Act,
15 now in the state, which isn't very thorough and one of
16 the big problems in working with this is that the sanction
17 for discrimination is just a misdemeanor, there is no
18 provision for say receiving back pay or requiring an
19 affirmative action program by the employer or any of these
20 types of remedial devices which I think would be very
21 useful. Also there can be a payment of damages which
22 might not be less than \$500 and also if that individual
23 had employed legal counsel, his own attorney fees could
24 be recovered as part of the recovery.

25 Now this order by the Commission is subject to

1 judicial review so it only has at that stage, after going
2 through conciliation, the hearing order, through the
3 Commission, that you would get into this say district court.
4 The standards to overturn the Commission hearing, there
5 would have to be a showing it was clearly erroneous which
6 I think is going to entitle the Commission findings to
7 a great deal of weight and also an appreciation for a
8 temporary restraining order which the Commission could
9 seek from a district court where the finding was that
10 there was a discriminatory practice.

11 Now that is just a quick and very general
12 overview of the bill and if I have rushed over some things
13 quickly, I am sure I have, I hope you will feel free to
14 question me about them and I can perhaps give you more
15 detail on it. I know it is getting late and I don't
16 really want to go into too much detail, the final thing
17 I want to say is just a little on how it would relate
18 to the federal legislation as we have seen it, Title VII
19 of the Civil Rights Act of 1964 and as amended in 1972.
20 It does provide for this 60-day referral where a state
21 agency can come into the picture, that is when a complaint
22 is initially made in the federal jurisdiction. I don't
23 know exactly the arrangement in Montana, but we haven't
24 really had a centralized type of agency to deal with this.
25 I believe Mr. Bigs said something about the attorney general,

1 and from there to the Department of Labor and certainly it
2 is an advantage to have one centralized authority.

3 Now in a lot of times the federal government
4 legislates in a particular area and you run into what's
5 called preemption and that is a state has no power to
6 act in this area whatsoever because the federal government
7 has already done so. This doesn't, that isn't the case
8 with legislation in this area, they have made it clear
9 in the enacting legislation that the federal legislation,
10 that they want states to act in this area and would have
11 concurrent jurisdiction so that a complainant could go
12 to -- there would be a place where he could go to the
13 state level or federal level and he would probably find
14 just as a practical advantage to go on the state level.
15 There is also provision for federal funding where there
16 is a certified state fair employment agency. There does
17 seem to be a real possibility of getting federal funds
18 to implement this legislation. Unfortunately in dealing
19 with the federal agency so far, we haven't been able to
20 get any firm commitment. I think if we knew how many
21 dollars we could get from the federal government we
22 could have got the bill enacted in this last legislature,
23 that is where it bogged through both houses of the
24 legislature and in the final days the Finance and Claims
25 Committee was trying to perhaps lengthen the budget and we

1 couldn't really give them a very clear picture of how
2 much money we'd be able to get from the federal government,
3 and so they finally decided to hold it over.

4 Well, I think I'll just close there.

5 MR. SCHILTZ: Mr. Roberts, I was going to ask
6 you, how much opposition did you run into in both houses?

7 MR. ROBERTS: Well, surprisingly little.

8 MR. CATE: Mr. Roberts, thank you very much,
9 I think your outline of that bill was very excellent
10 and very competent in presenting it to us, it's rather
11 intricate but you have hit the highlights of it. I think
12 the testimony that we have received today, especially some
13 of that testimony about where does the individual go who
14 has a complaint, really points out the need for this type
15 of legislation in Montana. This will give the party who
16 has a complaint about the violation of the civil rights,
17 a definite place to go where some action can be taken
18 without him having to incur a lot of individual expense.
19 I think that is probably the most important point of the
20 bill.

21 Ladies and gentlemen, the Open Meeting of the
22 Montana State Advisory Committee to the United States
23 Commission on Civil Rights is about to adjourn.

24 This morning, in my opening statement, I said
25 that we had come to Great Falls to see if the tools for

1 maintaining equal employment opportunities were running
2 smoothly.

3 Through testimonies from our witnesses, invited
4 guests and participating employers we have found that in
5 1973, some nine years since the passage of the 1964 Civil
6 Rights Act, employment discrimination still mocks our
7 heritage, threatens our social stability and limits our
8 economic potential. Through the testimonies we have
9 heard today, we have been reminded that in our State of
10 Montana many of the tools for maintaining equal employment
11 opportunities have not been running smoothly and that
12 the need to adopt meaningful affirmative action programs
13 by private, state and federal employers is a moral and
14 ethical responsibility to minorities and women who are
15 still waiting on the shores of our economic mainstream.
16 On behalf of the Montana State Advisory Committee and the
17 Regional Director of the U. S. Commission on Civil Rights,
18 Mr. Joseph C. Muskrat, I would like to thank all of those
19 who participated.

20 As a factfinding body of the Executive Branch
21 of the Federal Government we will make a written report
22 of the facts found here today for the President and the
23 Congress. The Montana State Advisory Committee will also
24 make recommendations which may subsequently be used as the
25 basis for legal or executive action.

1 The Open Meeting of the MONTANA State Advisory
2 Committee is now adjourned. We will go into a closed session
3 once the courtroom has been cleared. Thank you.

4 (Hearing Concluded.)
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