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THE UNITED STATES COMMISSION ON CIVIL RIGHTS  
PENNSYLVANIA ADVISORY COMMITTEE

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TUESDAY, MARCH 18, 1980  
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The Committee met in the U. S. Social Security Building, 300 Spring Garden Street, Philadelphia, Pennsylvania at 9:20 a.m., Grace Alpern, Chairperson, presiding.

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PRESENT:

- Jean Becker
- Angelo Craig
- Elena Romero Morgan

ALSO PRESENT:

- Yvonne Schumacher
- Robert Owens
- Edward Rutledge
- Suzanne Crowell
- Christine Scarnecchia

CCR  
3  
Meet.  
166

HELEN KAPLAN  
REPORTING ASSOCIATES  
232 - 6600

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P R O C E E D I N G S

(9:30 o'clock a.m.)

1  
2  
3 CHAIRPERSON ALPERN: Good morning, Ladies and  
4 Gentlemen. This open meeting on affirmative action in  
5 employment, conducted by the Pennsylvania Advisory Committee  
6 to the United States Commission on Civil Rights, will  
7 please come to order.

8 I am Grace Alpern, Chairperson of the Pennsylvania  
9 Advisory Committee. Members of the Advisory Committee  
10 sitting on this fact-finding panel are Jean Becker of  
11 Harrisburg, Angelo Craig of Scranton, and Elena Romero  
12 Morgan of Harrisburg. A list of the entire committee is  
13 available on the literature table.

14 Staff of the United State Commission on Civil  
15 Rights sitting here to assist the panel are Yvonne Schu-  
16 macher, field representative to the Pennsylvania Advisory  
17 Committee and the staff person principally responsible for  
18 this meeting; and Robert Owens, attorney-advisor in the  
19 Mid-Atlantic Regional Office.

20 Other staff here to assist the Committee are  
21 Mid-Atlantic Regional Director, Edward Rutledge; Research-  
22 Writer, Suzanne Crowell; and, providing administrative  
23 assistance, Christine Scarnecchia.

24 This meeting is held pursuant to rules applicable  
25 to State advisory committees to Federal Agencies and

1 administrative policies established by the United State  
2 Commission on Civil Rights. The Commission is an inde-  
3 pendent, bipartisan, fact-finding agency established by  
4 Congress under the Civil Rights Act of 1957. The Commission  
5 has established state advisory committees in each state  
6 and the District of Columbia to assist in its fact-finding,  
7 investigative, and clearinghouse work.

8 The Pennsylvania Advisory Committee is composed  
9 of citizens who serve without compensation and who are  
10 familiar with local and state civil rights problems. Among  
11 its mandates, the Pennsylvania ~~ADVISORY~~ Committee is author-  
12 ized to study legal developments constituting a denial of  
13 equal protection of the laws under the constitution because  
14 of race, color, religion, sex, national origin, age, or  
15 disability, or in the administration of justice.

16 The United States Commission on Civil Rights has  
17 long been concerned with equal employment issues. This con-  
18 cern is represented in part by some of the publications on  
19 the literature table. All of these publications are free  
20 for you to take if you are interested.

21 The Commission's concern is further represented  
22 by this fact-finding meeting. It is one of eleven that is  
23 being conducted by advisory committees throughout the  
24 country this spring.

25 Today's meeting will elicit information on

1 official Federal programs and mechanisms that are designed  
2 to implement affirmative action policies.

3           During today's fact-finding meeting, we will  
4 hear from five panels representing community perspectives,  
5 concerns of private sector employers, strategies in  
6 Federal employment, state and local agency interaction with  
7 Federal affirmative action officials, and Federal perspectives  
8 in response.

9           Each of these panels includes persons who are  
10 knowledgeable on the subject. Where appropriate, we  
11 have sought a broad spectrum of views. Approximately  
12 22 persons have voluntarily agreed to assist this Advisory  
13 Committee in our fact-finding effort.

14           Several dozens more have been interviewed. We  
15 trust that the information we learn here today will provide  
16 us with a comprehensive picture of the process of imple-  
17 menting affirmative action as it is enforced and monitored  
18 by Federal agencies.

19           A similar fact-finding meeting will be conducted  
20 by this committee in Pittsburgh on April 16th to seek the  
21 views of Pennsylvanians in that part of the State.

22           I want to take a few minutes to describe very  
23 briefly the work of the three Federal agencies we are  
24 focusing on today.

25           The Office of Personnel Management, known as OPM,



1 replaced the United States Civil Service Commission in  
2 accordance with the 1978 Civil Service Reform Act. OPM's  
3 major program responsibility that concerns us here is the  
4 implementation of the Federal Equal Opportunity Recruitment  
5 Program.

6 This program has been instituted in response to  
7 what is known as the Garcia Amendment to the Civil Service  
8 ~~Report~~ <sup>Reform</sup> Act, and is designed to increase employment of  
9 minorities and women in the Federal Government. Each  
10 Federal Agency must develop a recruitment program, which  
11 becomes a part of the agency's affirmative action plan.

12 The second Federal agency we will hear about  
13 today is the Equal Employment Opportunity Commission.  
14 EEOC was set up pursuant to Title VII of the 1964 Civil  
15 Rights Act. It is responsible for enforcing equal oppor-  
16 tun ity in Federal employment, including approval of Federal  
17 agency affirmative action plans.

18 EEOC is responsible for handling charges of  
19 discrimination made by employees in the private sector and  
20 in the ~~state~~ state and local government as well, but its affirma-  
21 tive action activities regarding the private sector and  
22 state and local government bodies are limited to concilia-  
23 tion agreements and consent decrees arising from complaints  
24 of discrimination.

25 We will explore EEOC's method of processing

1 individual complaints as it relates to affirmative action  
2 activity, as such, in the private sector.

3 Finally, the Office of Federal Contract Compliance  
4 Programs, located in the United States Department of Labor,  
5 is charged by the President with enforcing Executive Order  
6 11246.

7 This executive order prohibits discrimination in  
8 employment among all Federal contractors. Prior to 1978,  
9 enforcement of this order was distributed among 11 other  
10 Federal agencies.

11 Regulations implementing 11246 that require contrac-  
12 tors to take affirmative action to eliminate discrimination  
13 make OFCCP the major government agency enforcing affirma-  
14 tive action.

15 I would like to emphasize at this time that this  
16 is <sup>an</sup> ~~in~~ informal hearing and not an adversary proceeding.  
17 Each person who will participate has voluntarily agreed to  
18 talk with this Advisory Committee. We are interested in  
19 obtaining as much information as possible regarding the  
20 matters under inquiry.

21 We are, however, concerned that no individual  
22 be the victim of slander or libelous statements. As a pre-  
23 caution against slander, persons making statements here  
24 today, or answering questions, have been interviewed prior  
25 to the meeting, to the extent possible.

1           In the event that a situation involving possible  
2           defamation should develop, I will call this to the atten-  
3           tion of the person making the statement and request that he  
4           or she desist in his or her statements.

5           However, if the statement of that person is of  
6           sufficient importance to this inquiry, it may be necessary  
7           for the Advisory Committee to hear the information in a  
8           closed session.

9           The person against whom the allegations are being  
10          made will have ample opportunity to make a statement in  
11          closed session before the Advisory Committee submits its  
12          report to the Commission.

13          After the scheduled participants, we will have  
14          an "open-mike" session. Should anyone not presently  
15          scheduled wish to speak later, please talk with Christine  
16          Scarnecchia and Suzanne Crowell of the Commission staff.  
17          They will be in the back of the room.

18          I must mention to you that the United States  
19          Commission on Civil Rights policy regarding tape recorders  
20          and cameras used by the media and others during this open  
21          meeting is: it may be necessary, in the event we have  
22          someone appearing before the Advisory Committee who does  
23          not wish to be recorded or photographed, to request that  
24          you not record the statement of that person, or photograph  
25          that person.



1 With these exceptions, these proceedings are open  
2 in full to the public and, of course, to the media.

3 Now, may we start with Panel I?

4 We have Dr. Charles Butler, Nate Smith, Colleen  
5 O'Connell and Carmel Sofronski, Harold Goodman, and  
6 Richard Berkman. If you would please step up here.

7 I want to make a correction. Harold Goodman  
8 will not be on the panel this morning.

9 (Persons listed above were seated on stage  
10 opposite Committee members.)

11 MR. OWENS: Thank you, Grace. I would at this  
12 time, for the record, ask that the members of the panel  
13 identify yourselves, beginning from your right to your  
14 left, stating your full name, the organization which you  
15 are representing, your title and the length of time which  
16 you have served in whatever capacity.

17 Mr. Smith, please.

18 MR. SMITH: My name is Nate Smith, Chairman of  
19 the Board of Operation DIG, an organization out of  
20 Pittsburgh, also affiliated with RTP Equipment Training  
21 out of New York City. I've been Chairman of Operation  
22 DIG for 12 years, affiliated with the Pittsburgh plan, and  
23 have been with RTP for about eight years.

24 MR. BERKMAN: I'm Richard Berkman. I have been  
25 Chairperson of the -- co-chairperson of the Committee on

1 Civil Liberties and Education, American Jewish Committee,  
2 Philadelphia for about two years and worked with that  
3 organization for about six years. And I'm a lawyer with  
4 Dechert, Price and Rhodes, but I'm really here representing  
5 the American Jewish Committee.

6 MS. SOFRONSKI: Good morning. My name is Carmel  
7 Sofronski and I am affiliated with WAJE. I'm an active  
8 member of the Women's Alliance for Job Equity and I have  
9 been in the organization since December and I am now lay  
10 advisor to women to help file complaints with the EEOC  
11 and have conferences.

12 MS. O'CONNELL: Good morning. My name is Colleen  
13 O'Connell. I'm also a member of the Inter-faith Women's  
14 Alliance for Job Equity. I've been on the board since  
15 its inception in September of '79.

16 DR. BUTLER: I'm Charles Butler, President of  
17 the Pennsylvania State Conference of NAACP branches. I've  
18 been president since 1973. Also, President of the Coates-  
19 ville Area Branch NAACP for the last 12 years.

20 MR. OWENS: Thank you.

21 To the panel: would each of you please define  
22 (1) Equal Employment Opportunity and (2) Affirmative  
23 Action, and indicate if, in your opinion, there is a  
24 difference between the two.

25 Mr. Nate Smith, please.

1 MR. SMITH: To me, "affirmative action" means  
2 "now" -- right now. Just get things going. All the other  
3 stuff is --

4 UNIDENTIFIED VOICE FROM AUDIENCE: Use your  
5 mike, please.

6 MR. SMITH: Oh, I'm sorry. To me, the second  
7 question -- I'll take that first. "Affirmative action", to  
8 me, means "right now". All the other stuff, you can put to  
9 bed. Right now. Let's get started. Let's don't look at  
10 the history, as far as I'm concerned.

11 Your second question was what?

12 MR. OWENS: Equal employment opportunity.

13 MR. SMITH: "Equal employment opportunity", to me,  
14 means "equal unemployment among white folks as there are  
15 black folks". That's "equal employment" to me.

16 I would like to see as many white people unem-  
17 ployed, equivalent to the black people unemployed. And  
18 that's equal employment as far as I'm concerned.

19 MR. OWENS: And, Mr. Smith, do you see any  
20 difference between those two definitions?

21 MR. SMITH: Well, the difference is: 1) if, in  
22 fact, you implement the affirmative action program, you  
23 don't have any discrimination that is against whomever  
24 because of the race, creed or color, male or female. As  
25 far as employment, you don't lay a person off because they

1 were the last-hired or the first-fired, because they were  
2 black or the color of their skin and that's the difference.  
3 One is working and one is not working. One is affirmative  
4 action and one is equal employment.

5 It's two different categories, but it will be the  
6 same thing. You're either working or you ain't working.  
7 If you're not working, then it's easy enough: you lay peo-  
8 ple off the way it's supposed to be or put everybody to  
9 work in an equal way.

10 MR. OWENS: Thank you.

11 Miss O'Connell, would you please respond to  
12 that question, please?

13 MS. O'CONNELL: Yes. "Equal employment  
14 opportunity" is sort of like a general type term, like we  
15 all want peace and love in the world and, you know, women  
16 are an oppressed class and should be <sup>helped</sup> held. It's something  
17 that's very general. It's almost like a catch-all phrase  
18 that's come out of -- that has just come out recently.  
19 "Affirmative action" is the means with which we can totally  
20 implement equal employment opportunity if, in fact, we --  
21 as a nation or group of individuals -- feel that that is  
22 what should be, we can bring about something that is  
23 general to something concrete by acting on the laws of  
24 affirmative action.

25 MR. OWENS: Thank you.

1 Mr. Berkman, please.

2 MR. BERKMAN: I think I share that last statement  
3 that in many ways that Equal Opportunity Employment is the  
4 objective. The legal standard that we strive toward and  
5 affirmative action is the means of implementing it. I'd like  
6 to go further though and say I think they are similar if not  
7 identical because the means to implement the end has to be  
8 as equal in its opportunity and in its evenhandedness as the  
9 end itself, and I think that sometimes we confuse the means  
10 and the end and affirmative action really is designed to  
11 implement equal opportunity and when it doesn't implement  
12 it because of its own inequality, then it's not really  
13 achieving the end that it's striving to achieve.

14 MR. OWENS: Thank you.

15 Dr. Butler, please, would you respond?

16 DR. BUTLER: Yes. Equal Employment Opportunity  
17 to me means that all people have the chance at a job  
18 whether they are black or white, green or purple, male or  
19 female. Affirmative action, on the other hand, should be  
20 designed so that those persons, who over the years have  
21 been abused in the employment market, have an opportunity  
22 to have this abuse corrected through programs that bring  
23 them up to the major population.

24 MR. OWENS: Ms. Sofronski.

25 MS. SOFRONSKI: Yes. I would have to agree. Equal

1 Employment Opportunity is that all people should be treated  
2 fairly, no matter what their age, race, creed. They should  
3 all be treated fairly, especially women and Affirmative  
4 Action, to me, is the Law and should be definitely enforced.

5 MR. OWENS: Okay, thank you.

6 Now, in order to implement its Affirmation Action  
7 requirements, the Office of Federal Contract Compliance  
8 issued a set of regulations commonly known as Revised Order  
9 No. 4.

10 These regulations require that a Federal Contractor  
11 conduct a Utilization Analysis of its work force to determine  
12 if there are fewer women or minorities employed in each  
13 job title then would be expected by their availability for  
14 the job.

15 If this analysis shows that women and minorities  
16 are underutilized in the contractors work force, the  
17 contractor then is required to develop numerical goals and  
18 timetables or measurable targets, which must be directed  
19 toward obtaining prompt and full utilization of minorities  
20 and women.

21 Now, would the Panel please state your views with  
22 regard to (a) the effectiveness of Revised Order No. 4 and  
23 (b) the weaknesses or strength as you see them.

24 Again, we are addressing the effectiveness of  
25 Revised Order No. 4 and its strength or weaknesses as you



1 see them.

2 Mr. Smith.

3 MR. SMITH: Define "contractor" to me. We have  
4 OFCC in Pittsburgh and no offense to Walter Ruggo who is  
5 Director of OFCC. They pick and choose.

6 When you say "contract" do you mean construction;  
7 do you mean Rockwell?

8 You know, company because we have been attacked  
9 in the construction industry but Rockwell hasn't been touched  
10 and you've got to define that, you know, exactly what you  
11 mean, to me.

12 MR. OWENS: We specifically mean both, generally.  
13 We mean any person who is given a federal contract who  
14 derived funds through a federal contract we interpret under  
15 the generic term "Contractor".

16 So, with that in mind, would you attempt to  
17 respond.

18 MR. SMITH: Well, in my experience with OFCC,  
19 which I have had for the past ten years, they have done a  
20 fairly decent job -- a much better job since Walter <sup>Rougeau</sup> Ruggo  
21 has been in office but they are not as effective as they  
22 can be. It seems to me there are too many people working  
23 looking for retirement and they don't want to rock the boat,  
24 they do their job and actually level on the people who are  
25 not living up to the Laws as far as whatever Code that is for

1 OFCC and I'm a little disturbed for that because they seem  
2 to pick on certain people and certain things -- not just in  
3 Pittsburgh but around the country. We have 96 offices around  
4 the country. RTP, Recruitment Training Program, and OFCC is  
5 not even in some cities, you know, and not that there should  
6 be, well, they should be in all cities. I don't think their  
7 stuff is that big but I'm just too satisfied with some of  
8 the things the OFCC do and I have personal insight of OFCC.

9 MR. OWENS: Ms. Sofronski, would you care to  
10 respond?

11 MS. SOFRONSKI: I'm going to let Colleen answer  
12 that question on behalf of the organization.

13 MS. O'CONNELL: The effectiveness of OFCC to us  
14 is very minimal for a number of reasons. The first one is  
15 in regard to Federal Contracts, compliance reviews, ahead  
16 of time, as a community organization, we are not automatically  
17 notified or become involved in the fact that they are these  
18 compliance reviews going on, okay. So one of the things  
19 that we would like to know is, if a contract is to be  
20 awarded, we would like to know at what point in time is a  
21 compliance review going to be handled?

22 As far as the weaknesses are concerned one fact  
23 came to light recently. The FMC Corporation which is under  
24 investigation by the OFCCP brought about by a complaint on  
25 behalf of our organization received a 98 million dollar

1 contract out of its National Office.

2 Now the National Office of FMC is in Chicago. Well,  
3 in Philadelphia they are under investigation because of just  
4 glaring discrepancies in affirmative action. Now, one of the  
5 obvious weaknesses here is Chicago doesn't communicate with  
6 Philadelphia and if those two don't communicate even though  
7 the grant is going to be disseminated, more than likely that  
8 98 million is going to be disseminated nationally, it still---  
9 they didn't contact a Philadelphia office that indeed was  
10 under attack. Okay.

11 As another effectiveness -- one of the ways we  
12 can measure effectiveness of any type of organization is  
13 something I guess I'll call "turn around time" and the Law  
14 says that cases through OFCCP should be investigated within  
15 90 days and we find that that is taking a little bit longer.

16 MR. OWENS: Okay. Mr. Berkman, please.

17 MR. BERKMAN: I have to confess I see OFCCP from  
18 the side of the employer who is being investigated and one  
19 of the things we can do or I find troubling as a question of  
20 effectiveness is a tendency to use utilization analysis as  
21 a <sup>5a</sup>defacto <sup>2</sup>quoto system and I don't think affirmative action --  
22 I know affirmative action laws do not sanction <sup>2</sup>quotos but  
23 there is a tendency on the part of Federal Agencies and other  
24 agencies sometimes to look for the simple solution which is  
25 sometimes a numerical standard that they could say you have

1 to achieve. And I think when they do that they are  
2 attempting to abuse affirmative action. Now, that's not  
3 to say that they shouldn't be actively enforcing and  
4 promoting legitimate affirmative action in the sense of  
5 requiring employers to reach out to disadvantaged groups  
6 that have not been recruited before, to give extra training  
7 and to make available new positions when possible and review  
8 their own testing standards but I think the emphasis of  
9 OFCCP and other agencies to look for the numerical solution  
10 to the problem is counter-productive in the sense of creating  
11 not only a hostility but creating a standard or principle  
12 that's in violation or a contradiction with the basic  
13 objective of Equal Opportunity based on merit.

14 MR. OWENS: Thank you, Mr. Berkman.

15 Dr. Butler, please.

16 DR. BUTLER: I'm going to take a diametrical  
17 opposite view to the last gentleman. One of the problems  
18 in Affirmative Action is that there is no way that I can see  
19 that you can measure whether a program is working unless  
20 you've set some goals.

21 Now, we've always had quotas -- always had  
22 quotas. And quotas for black people have been from zero  
23 per cent to one per cent; quotas for women one half to one per  
24 cent. Now, if we don't set some goals how do you measure  
25 whether or not a program is working.

1                   Now, what he read sounded very good on the paper,  
2 but that's the problem. Affirmative action is a "paper tiger"  
3 and that's all. It sounds good but it don't work and unless  
4 you have some way of saying at the end of X days that this  
5 program has done thus and so, then how do you say whether or  
6 not Affirmative Action is working. It's nice to hear all  
7 that on the paper -- it's nice but if you don't have a way of  
8 measuring what has been done -- "paper tiger".

9                   MR. OWENS: Thank you, Dr. Butler.

10                   At this time, I'll defer further questioning to  
11 Ms. Grace Alpern.

12                   CHAIRPERSON ALPERN: Dr. Butler, you have the  
13 basic understanding of the function and operation of the  
14 Pennsylvania Human Relations Commission, is that correct?

15                   MR. BUTLER: Yes, I do.

16                   CHAIRPERSON ALPERN: What is your understanding  
17 of its relationship with EEOC and OFCCP?

18                   DR. BUTLER: It is my understanding in talking with  
19 people from PHRC that it is their obligation when a case in  
20 Pennsylvania involving discrimination in jobs, housing,  
21 et cetera must first go to the Pennsylvania Human Relations  
22 Commission. They have the opportunity, if they wish, from  
23 my understanding, to waive dealing with the problem and send  
24 it on to the Federal Agency.

25                   It is my further understanding that if the

1 Pennsylvania Human Relations Commission does not deal with  
2 the problem within a specified period of time, then the  
3 Complainant can go on to the Federal Agency. Now, I'm not  
4 certain of what that time is.

5 CHAIRPERSON ALPERN: Well, if someone came to you  
6 with a complaint would you send him or her to <sup>E</sup>EOC or PHRC  
7 and why?

8 DR. BUTLER: I wouldn't send them to either one.  
9 I'd probably deal with the problem at NAACP.

10 (Laughter.)

11 DR. BUTLER: I'm serious because it takes them too  
12 long and often the problem is not resolved but if you look  
13 at the PHRC figures as far as how long it takes them to  
14 resolve a problem, it's somewhere in the neighborhood of  
15 six months to a year. So I wouldn't send the person to  
16 either one of those agencies unless we were just overwhelmed  
17 with work and we couldn't handle the problem.

18 CHAIRPERSON ALPERN: Then what you are saying is  
19 that you don't believe the PHRC is effective in processing  
20 its discrimination complaints?

21 DR. BUTLER: No, I didn't say that. We deal with  
22 the PHRC but it just takes too long. And people -- a lot of  
23 people by the time the PHRC has solved their problem are  
24 in California.

25 CHAIRPERSON: Well, in your view, how could PHRC



1 do a better job or operate more effectively?

2 DR. BUTLER: The only way that the Pennsylvania  
3 Human Relations Commission is going to operate effectively  
4 is to be funded adequately and have the adequate staff to  
5 deal with the many problems that they see every year. Each  
6 year the workload of the Pennsylvania Human Relations  
7 Commission is increasing but there is an effort on the State-  
8 level to undermine what they are doing through not funding  
9 them properly, through not seeing that they have adequate  
10 staff to deal with the many problems that occur in  
11 Pennsylvania so that's the only way that's going to happen  
12 and I don't see that the State Legislature funding them the  
13 way they ought to be -- I just don't see them doing it  
14 because there's been efforts by the State Legislature to  
15 abolish the Pennsylvania Human Relations Commission and  
16 there's Bills right now in the State Legislature to cut off  
17 some of the things that the PHRC is doing.

18 CHAIRPERSON ALPERN: You are saying then that you  
19 feel that PHRC can do an effective job given adequate funding  
20 and staffing?

21 DR. BUTLER: I believe that very much.

22 CHAIRPERSON ALPERN: Thank you very much.

23 Ms. O'Connell, your organization Women's Action  
24 for Job Equity recently conducted a study of Federal, State  
25 and Local Equal Opportunity Authority, did you not?

1 MS. O'CONNELL: Yes, we did.

2 CHAIRPERSON ALPERN: What agencies were involved?

3 MS. O'CONNELL: Well, we attempted to study the  
4 EEOC, the OFCCP and the Philadelphia Commission on Human  
5 Relations.

6 CHAIRPERSON ALPERN: Can you tell us what areas  
7 you studied?

8 MS. O'CONNELL: Basically, what we wanted to find  
9 out was (1) the relationship between all of the agencies and  
10 (2) exactly, your question, are they being effective. In  
11 your handout there was a preliminary finding we haven't  
12 completely finished yet. Would you like me to go into that  
13 question?

14 CHAIRPERSON ALPERN: Yes, we would like to know  
15 what findings you have.

16 MS. O'CONNELL: Okay. First of all on what we  
17 started out with was the Philadelphia Commission on Human  
18 Relations and we were interested in finding out exactly what  
19 they did with their money and so to do that we had to find  
20 out how much money they had. Okay, as you can see they  
21 receive quite a -- almost a million dollars a year from the  
22 City and the Federal Government in our tax money and since  
23 it is basically out tax money, we wanted to know exactly  
24 what they were doing with it. This handout is in the yellow  
25 folder if you'd like to look at it. As I said, it's a

1 preliminary fact sheet. Last year what our main concern was  
2 is that the Philadelphia Human Relations Commission only  
3 found 56 per cent of the cases that were brought before it  
4 as having any kind of "show cause" or having actually found  
5 discrimination. And we want to know if the EEOC gives  
6 money to the Philadelphia Human Relations Commission --  
7 okay, they give them \$177,000.00 a year, okay, to improve  
8 their Agency -- to improve the Philadelphia Agency and to  
9 handle discrimination in Philadelphia -- if that is the case,  
10 okay, the Philadelphia Agency ought to adopt the type of  
11 controls that the EEOC must and when in fact that they  
12 don't. The EEOC has a new procedure called "Rapid Charge  
13 Processing" which lets investigations go fast, smoother  
14 and they are trying to get their act together to handle  
15 internal methods.

16           They are giving money to the Philadelphia  
17 Commission but they don't have to go through this; they  
18 don't have to go through any type of training -- the  
19 training that the EEOC has to go through and yet cases are  
20 being deferred to these people so what's happening is you  
21 are getting a little circle, cases are deferred to the  
22 Philadelphia people; the Philadelphia people show no cause,  
23 then the case goes back to the EEOC. Okay.

24           So we get this, you know, it has to be some  
25 type of coordination between these two agencies. We don't

1 deal too much with the Pennsylvania Human Relations  
2 Commission mainly because being in Philadelphia all of the  
3 cases go directly to the City Agency primarily at the start.

4           What we plan to do is, we have been meeting with  
5 the new administration, particularly with Janice Holtz who  
6 is Assistant to Mayor Green and he is -- we gave them an  
7 extensive fact sheet that they are trying to fill out. We're  
8 going to round out our study with more figures on, for  
9 instance, the percentage of people in Philadelphia Human  
10 Relations Commission who are subservient employees as  
11 opposed to those who are not and the extent of training that  
12 is involved; the number of cases that go through there and  
13 exactly what they are doing with my tax money -- \$177,000.00  
14 a year.

15           CHAIRPERSON ALPERN: Now, based on these funds, do  
16 you have any preliminary recommendations that you wanted to  
17 make?

18           MS. O'CONNELL: For the Philadelphia Commission?

19           CHAIRPERSON ALPERN: (Nodding.)

20           MS. O'CONNELL: Well, our primary recommendation  
21 is a change of staff, okay -- a complete change of staff  
22 from the top down.

23           (Laughter.)

24           MS. O'CONNELL: What we find is the staff has  
25 been appointed by the Rizzo Administration. They have been

1 in office for quite a long time. Our organization has to deal  
2 with that Commission on a very elementary level. We go  
3 there to process complaints. The first time we did that they  
4 told us we couldn't, you know, which was wrong. We finally  
5 won the right to be recognized as a third party -- a  
6 community organization coming to file complaints. We tend  
7 to wonder at the competency<sup>g</sup> or the training of these  
8 individuals so our primary recommendation is to change the  
9 staff, okay.

10 Other recommendations are to institute the  
11 Rapid Processing Procedure of EEOC. You know, if guidelines  
12 are being established to facilitate processing, why can't it  
13 be put down to the level of the local level, okay, especially  
14 if money is going to that Agency from the EEOC. Those are our  
15 two recommendations for Pennsylvania.

16 CHAIRPERSON ALPERN: For verification, you said  
17 that all of the staff has been appointed by the Rizzo  
18 Administration?

19 MS. O'CONNELL: No, that is wrong.

20 CHAIRPERSON ALPERN: I think we need to make a  
21 correction there.

22 MS. O'CONNELL: That was wrong.

23 CHAIRPERSON ALPERN: Thank you.

24 We have a question here.

25 MS. MORGAN: I thought the PHRC had a Philadelphia...

1 Office, is that not correct?

2 DR. BUTLER: There is an office here in Philadelphia  
3 for the PHRC, yes, that's correct.

4 MS. MORGAN: But, Ms. O'Connell, you did not  
5 include PHRC in your study?

6 MS. O'CONNELL: No, we didn't.

7 MS. MORGAN: That was just on your suggestion?

8 MS. O'CONNELL: Mainly because most of the  
9 complaints rather than at the State level it is our under-  
10 standing -- the -- our organizations understanding that they  
11 handle complaints -- more of those complaints not within  
12 Philadelphia. The budget of the Philadelphia Human  
13 Relations Commission is so great that, you know, the complaints  
14 from the Philadelphia area would go to the city agencies  
15 first.

16 MR. OWENS: Ms. O'Connell ---

17 MS. MORGAN: People have the option of going to  
18 you, is that right?

19 MS. O'CONNELL: As an individual, yes.

20 MR. OWENS: Just one question. You suggested that  
21 with regard to recommendations you would recommend that the  
22 entire staff be replaced. Inherent in that recommendation,  
23 are you saying that, in your opinion, the basic structure  
24 of that organization is appropriate as it currently exists  
25 and that the only problem is the staff members?



1 MS. O'CONNELL: The basic structure of the  
2 organization being -- you mean being a mayoral appointee  
3 type of organization -- if the appointees were representative  
4 of the community including some grass roots type individuals  
5 that have input into that, yes, the structure is fine. What  
6 we are saying is that the individuals on the committee, okay,  
7 are not performing effectively. Now, what we want to know is  
8 whether it's at the level of the Commission itself or at the  
9 level of their employees -- is what, again, we are trying to  
10 find out because, you know, when we first came across the  
11 Commission, it was a level of going up to someone's desk and  
12 asking this person for information.

13 Now, we want to know who has trained that person  
14 who is giving out the information. Now, the only comment  
15 we can make on this staff is, for instance, the  
16 Pennsylvania Commission on Human Relations found that only  
17 eight per cent of its cases found "no cause". In the same  
18 time period that we looked at the Philadelphia Human  
19 Relations Commission -- and that was 56 per cent. Okay.  
20 So you know there has to be either more investigative type  
21 work that has to be done, you know, with the money that they  
22 are being given by the EEOC and our tax money to be able to  
23 look into these discrimination cases more.

24 I find it almost incomprehensible that that many  
25 cases that go that far because usually people give up before

1 it even gets to something called "no cause". As the Doctor  
2 had said there that it takes so long. There has to be  
3 something wrong with the process.

4 MR. OWENS: So would it be correct then to state  
5 that you do have some problems with the procedure in addition  
6 to the staffing?

7 MS. O'CONNELL: That's correct.

8 CHAIRPERSON ALPERN: Thank you.

9 Do any of the other Panel members have any  
10 observations that would either confirm or refute the findings  
11 that have been discussed?

12 MR. BERKMAN: Well, I would just like to make two  
13 brief comments. One is that I share Dr. Butler's view that  
14 sometimes it is easier to help somebody solve their  
15 problems than send them to the agencies, particularly since  
16 there are several agencies. But, as a Lawyer, I point out  
17 that sometimes to protect that person, you have to send  
18 them to the Agency anyway to start the process rolling  
19 because if they can't solve their problem with the help of the  
20 NAAPC or some other organization and they need to pursue it  
21 further. They don't want to waive their right to pursue it  
22 further by having failed to go to one of these agencies.

23 Now, in line with that, normally I would send  
24 somebody to the Pennsylvania Human Relations Commission as  
25 the first step although it is a city-related problem I might

1 also send them to the Philadelphia Human Relations  
2 Commission. Not because it is legally required but because  
3 sometimes it helps to have two people fighting for you or  
4 two organizations fighting for you.

5           The only other comment I have is, I'm always a  
6 little bit afraid of any statistics and the problem with  
7 statistics that shows one organization finds 56 per cent  
8 "no cause" and another finds eight is it doesn't really tell  
9 us what comes to them and it may be the reason that the  
10 Philadelphia Organization finds "no cause" on a much higher  
11 percentage is because there is a self-selective process  
12 going on that brings different kind of problems to them.

13           As I indicated, I would always send a Complainant  
14 to the Pennsylvania Human Relations Commission but not to  
15 the Philadelphia Human Relations Commission and it may well  
16 be that they are looking at a different range of problems  
17 and, therefore, finding a different percentage of cause.

18           CHAIRPERSON ALPERN: Ms. Becker.

19           MS. BECKER: Dr. Butler ---

20           DR. BUTLER: Yes.

21           MS. BECKER: -- earlier you addressed when Ms.  
22 Alpern asked you what your recommendations are to make PHRC  
23 operate more effectively, you talked about budgetary needs.  
24 Do you have any recommendations about the relationship of the  
25 Federal Agency, the EEOC and the PHRC regarding a more

1 effectual operation.

2 DR. BUTLER: I'm not too familiar with exactly  
3 what the two relationships are at this moment. All I know  
4 is that when we have a problem in the State of Pennsylvania,  
5 it is my understanding that first we must go to the PHRC.  
6 Now, what they can or cannot do or wish to do with the  
7 problem, I'm not certain of. It's my understanding in talking  
8 with Homer Floyd that in a lot of instances because of  
9 budgetary problems they move it on to the Federal Agency.  
10 That's my understanding.

11 Now, exactly how the Law reads in regards to this,  
12 I'm not certain but this is what Homer tells me that occurs.  
13 Now, they move it on because just too many cases that they  
14 can't handle and they know it.

15 CHAIRPERSON ALPERN: Ms. Morgan.

16 MS. MORGAN: I have a question for Mr. Berkman.  
17 You pointed out the fact that it may be better to have two  
18 people fighting for you instead of one and for that reason  
19 you would advise a client to file both with the Philadelphia  
20 and the PHRC.

21 I was just wondering just in terms of just the  
22 shrinking public dollar, do you see any inefficiency in this,  
23 you know, in this view. We're talking about agencies that  
24 are financially strapped for money. It seems to me, at  
25 least, that maybe there should be some kind of coordination.

1           MR. BERKMAN: Well, you are absolutely right. My  
2 comment was really made thinking in the context of the client.

3           MS. MORGAN: Sure.

4           MR. BERKMAN: Not in the context of the overall  
5 public use of funds because when I see it from the other side  
6 representing an employer and there are six agencies attacking  
7 you from all different directions and you've finally convinced  
8 five of them of a point and you have to start all over and  
9 convince the sixth, I'm asking why do we start all over and  
10 spend our public money that way.

11           MS. MORGAN: One question I have, too, is since  
12 you have to reconcile all of these views, are you saying  
13 that some of the requirements of the various agencies are  
14 conflicting or that the standards aren't uniform?

15           MR. BERKMAN: Well, I think the legal standards  
16 are probably uniform but the understanding and means of  
17 implementing them vary from agency to agency just, if for  
18 no other reason then they have different people reading  
19 the same laws and interpreting them with their own  
20 perspectives and resources and agendas, so the answer is,  
21 yes, they are inconsistent in how they implement things.  
22 And they are duplicative in many cases and probably from  
23 the public point of view it would be better to have one or  
24 two very effective well-funded agencies than a plethora of  
25 underfunded, ineffective agencies.

1 MS. MORGAN: I would just like to add what would be  
2 your reaction say if you had -- you know, I know that you are  
3 representing an employer. Can you speculate as to what kinds  
4 of confusion might be created if they were dealing -- if the  
5 Complainant was faced with all these different agencies --  
6 confusion. I mean at least the employer in your case has  
7 you to sort out all these conflicts.

8 MR. BERKMAN: There's no question that when an  
9 individual has a complaint they are at a loss to know where  
10 to turn even though they know there are a million places to  
11 turn but they are not sure where to begin. And it's only  
12 when they get to somebody like the NAACP or the American  
13 Jewish Committee or somebody who has gone through the process  
14 that can start them in the right direction -- and I think  
15 the multiplicity of agencies confuses that -- makes it more  
16 confusing and more difficult for them.

17 In fairness though I think I should say that  
18 Pennsylvania Human Relations Commission and the EEOC while  
19 they don't coordinate well in everything, coordinate fairly  
20 well in the grievance procedure because the EEOC won't hear  
21 the Complainant until they've gone to the PHRC. And if you  
22 think the place to go is the EEOC and you walk down to their  
23 office, they are supposed to, and at least on some occasions  
24 will tell you to go to the PHRC. Now, I'm sure that's not  
25 true all the time.



1 MS. O'CONNELL: No.

2 MR. BERKMAN: I see people nodding. You're probably  
3 right. And similarly, I think the PHRC will often advise them  
4 to go down to the EEOC at some point in time and say we can't  
5 handle this kind of problem or it's beyond our scope and  
6 responsibility but it is difficult for an individual to know  
7 where to turn and that's why they come to, I think, grass  
8 root groups first and hope they know how to get through the  
9 system.

10 CHAIRPERSON ALPERN: Thank you.

11 Ms. Sofronski, you are familiar, are you not, with  
12 the EEOC Rapid Charge Process for resolving complaints of  
13 discrimination?

14 MS. SOFRONSKI: Yes, I am.

15 CHAIRPERSON ALPERN: Would you describe for us  
16 your experience with that.

17 MS. SOFRONSKI: We think the new Rapid Charge  
18 System has the potential for speedier resolution. However,  
19 based on my experience, and WAJES would agree, if there is no  
20 settlement at the Fact Finding Conference, then a complaint  
21 should immediately go to continued investigation. A charge  
22 should not remain in Fact Finding after a conference is  
23 held.

24 WAJE and my experience with the EEOC I filed my  
25 charge on October 25th, 1979. On February 4th, 1980, I had

1 the Fact Finding Conference. The conference lasted from  
2 10:30 a.m. until 7:20 p.m. It was one of the longest and  
3 largest, I'm told, in the Philadelphia EEOC's history.  
4 Trying to make settlement with American Built Right who was  
5 the Respondent was impossible. The company was at ---

6 CHAIRPERSON ALPERN: Can we leave out the names  
7 of firms, please.

8 MS. SOFRONSKI: Okay. The company came to the  
9 conference with no intention of settling. They wanted to  
10 know what was done that was so serious as to have WAJE  
11 represent -- present as lay advisors.

12 At the conference the Respondent offered me two  
13 weeks' severance pay as settlement. I requested six thousand  
14 dollars (\$6,000.00) in back pay and my job back.

15 Four weeks later they offered me settlement of  
16 a thousand dollars (\$1,000.00) which I again refused. In  
17 calling a week later the Respondent doesn't even want to  
18 settle with me; doesn't want to offer me even a thousand  
19 dollars (\$1,000.00) now. They don't want to settle period.

20 I'm beginning to think the situation is sounding  
21 like a bargain basement auction. Next the Respondent will  
22 probably say, how about fifteen hundred dollars (\$1,500.00)  
23 or two thousand dollars (\$2,000.00) or one week vacation pay.

24 I called the Fact Finding Supervisor at least  
25 twice a week. Each time I called him I expect to hear new

1 findings with my Charge. Each time new testimony or new  
2 information gets added the Respondent's lawyer is called on  
3 the telephone and probably asked, is he willing to settle now  
4 or, we have new information or facts. This is very time  
5 consuming on my part. My Fact-Finding Conference was on  
6 February 4th of this year. As of Friday, March 14th, my  
7 Charge is still in Fact-Finding Unit. I think there should  
8 be a time limit in the fact-finding stage.

9           On February 4th I gave the Investigator a pile  
10 of photostatic copies as my evidence. Included were  
11 reference of my job performance, employee's names and job  
12 titles from the company where I was employed and the  
13 happenings leading to my charge plus much, much more. I  
14 can't understand how a good honest decision was not made  
15 after this lengthy fact-finding conference and all  
16 additional information given.

17           The company refusing to settle should not stand  
18 in the way of my Complaint being investigated. After the  
19 Fact-finding Conference my Complaint should have been --  
20 should have gone into EEOC's continued investigation unit.  
21 As it stands now, I'm in limbo and since my Fact-finding  
22 Conference was lengthier than most and had more evidence  
23 presented from both sides we figure that other women who  
24 were at shorter Fact-finding Conferences must face the same  
25 or worse situations.

1           These complaints like mine -- their complaints  
2 like mine probably linger on after fact-finding before a  
3 continued investigation begins.

4           Thank you.

5           CHAIRPERSON ALPERN: Do you have any questions  
6 on that?

7           MS. MORGAN: Yes.

8           What are the standards. Are you familiar with the  
9 standards that are used to move it from Fact-Finding to ---

10          MS. SOFRONSKI: Yes, I am.

11          MS. MORGAN: Could you elaborate a little on  
12 those standards.

13                I'm ~~really not~~ understanding -- I mean I see the  
14 process you are going through is very time consuming so I'm  
15 trying to figure out why would -- why was your case not  
16 referred to additional investigation?

17           MR. SMITH: She didn't apply the right type of  
18 pressure. You can cut through all that. I hear you  
19 talking about all the Laws. Apply some pressure. This is  
20 a pressure Country. That's all the Country understands.  
21 Everything I've ever gotten done since I've been in the  
22 Civil Rights Movement which was since about '65, you have  
23 to apply pressure directly on a person to make them  
24 responsible and that's what she didn't do. All that was  
25 fine but nothing came out of it. No ingredients came out

1 of what she just read and she's still looking for help. Not  
2 that I'm criticising what you read but, you know, you've got  
3 to apply pressure on somebody and that's how you get something  
4 done.

5 MS. SOFRONSKI: I'd like to answer that, if I may.

6 I have been calling the Fact-Finding Supervisor  
7 between two to three times a week.

8 MR. SMITH: Go to his house and set on his steps  
9 at night. Go to his house and set on his steps. Tell him  
10 you're going to go to lunch with him. You're going to settle  
11 this for me or I'm going to worry the shit out of you. You  
12 make somebody accountable and unfortunately that's the way  
13 it has to be.

14 (Laughter.)

15 CHAIRPERSON ALPERN: May I interject at this  
16 moment to explain that the purpose of our meeting is to find  
17 out how the system is working and what the problems are with  
18 the systems so if we can stick to the actual facts about  
19 how the Agency is or is not performing, that would be very  
20 helpful to us.

21 MR. SMITH: I'm sorry.

22 CHAIRPERSON ALPERN: No, that was perfectly all  
23 right.

24 MR. BERKMAN: I think his point is very important  
25 to this Commission which is, does it work by its procedures;

1 does it work by external pressure being applied?

2 MR. SMITH: Make it work.

3 MR. BERKMAN: And that's a very important  
4 question.

5 CHAIRPERSON ALPERN: I didn't mean the remarks were  
6 inappropriate. I'm still trying to get to the problems in the  
7 system and that's one of the problems apparently that you are  
8 pointing out.

9 Did you want to add something, Ms. Sofronski?

10 MS. SOFRONSKI: Yes. The EEOC monitoring of the  
11 PCHR's handling of discrimination complaints including the  
12 refusal by the EEOC to provide funding at three hundred and  
13 fifty dollars (\$350.00) per Charge to the PCHR -- unless this  
14 Agency shapes up although the EEOC pays the PCHR one hundred  
15 and seventy-seven thousand eight-hundred and fifty dollars  
16 (177,850.00) in 1980 to process and investigate discrimination  
17 complaints in the City of Philadelphia. The EEOC does not  
18 exercise any control over this Agency. This results in a  
19 waste of time when cases are later appealed to the EEOC and  
20 money. PCHR receives three hundred and fifty dollars  
21 (\$350.00) for every case it resolves regardless of the out-  
22 come encouraging incomplete or phony investigations.

23 MS. O'CONNELL: May I ---

24 CHAIRPERSON ALPERN: Yes, certainly.

25 MS. O'CONNELL: The question on the EEOC. What's

1 happening here is that you are going into something called a  
2 Fact-Finding Conference which, what they do is, they take  
3 both sides, okay. They take the Complainant and the  
4 Complainant's employer and then the Complainant's employer's  
5 lawyer and until just recently, the Complainant could only  
6 have a lawyer there. We've earned the right to have a WAJE  
7 there at this conference.

8 Now, what they try to do is get rid of the problem.  
9 They try to sit the people down and have some sort of rational  
10 discussion. As Carmel says it is a bargaining session.  
11 Okay.

12 Now, what we're saying is, you know, this  
13 bargaining session is lasting too long, you know. A bargain  
14 basement deal could last a couple of hours. It's really  
15 evident, especially in her case, that nothing is going to  
16 come from that. Why then don't they put it, you know, say the  
17 Fact-Finding Conference is over, let's start our Rapid Charge  
18 Processing where they start then at that point in time the  
19 case gets into their little statistics about how many cases  
20 come in; what we're doing here, you know, at this point in  
21 time. Then they can start going through and looking at the  
22 case and doing their investigative work, assigning a trained  
23 investigator to it and starting it into the internal  
24 procedure -- proceedings. What we're saying is that, you  
25 know, don't drag on this process here because what they want



1 to do obviously is, you know, settle the case but if it's  
2 evident that it is not going to happen, start it through the  
3 process.

4 CHAIRPERSON ALPERN: Mr. Craig, you wanted to ask  
5 a question?

6 MR. CRAIG: I'd like to ask Dr. Butler -- I think  
7 he has shared with some of the staff that the Legislators  
8 were somewhat unwilling to support agencies. I'd like you  
9 to share that information with us.

10 DR. BUTLER: Particularly in reference to the  
11 Pennsylvania Human Relations Commission within the last six  
12 years Bills have been introduced in the State Legislature to  
13 completely abolish the Pennsylvania Human Relation  
14 Commission. During the gubernatorial race two years ago,  
15 we in the NAACP talked with some of the men who were striving  
16 to be Governor and one of the fellows from Williamsport,  
17 Pennsylvania, when we mentioned the PHRC, he immediately  
18 got mad and said he didn't want them coming into his  
19 community telling people what they ought to do and what they  
20 ought not to do and that as far as he was concerned, we didn't  
21 need them. Of course, that ended his chances of being  
22 Governor as far as black people were concerned. But this is  
23 the attitude of the State Legislature.

24 Now, they have not been able to abolish it so  
25 what they do is weaken it by underfunding the agency. I don't

1 remember in the last six years that the requests made by the  
2 PHRC has ever been matched in the State Legislature. What-  
3 ever they ask for they always get less.

4 MR. CRAIG: And by the decrease of funding do you  
5 feel that this is sort of creating the inequity of the lack  
6 of implementation of their process?

7 DR. BUTLER: No question about it. You know, if  
8 you get three thousand cases presented to your agency and  
9 you only have enough people to deal with two, then you're  
10 going to come up short somewhere. And this is what happens,  
11 you know. They don't have enough people to investigate,  
12 they don't have enough people to have hearings, et cetera.

13 A lot of people and some of them in the NAACP  
14 really don't want to send their cases to PHRC because of  
15 that fact. It just takes too long. And Homer is one of the  
16 first persons to admit it because he knows he is understaffed  
17 but he keeps getting cases.

18 CHAIRPERSON ALPERN: I'm sorry, did you have  
19 another question?

20 MR. CRAIG: Yes.

21 In view of that fact, do you have any positive  
22 suggestions that would possibly help elevate that  
23 situation with the PHRC?

24 DR. BUTLER: It's going to take a coalition of  
25 people -- like the people who are here, to make certain

1 that State Legislators understand what we want as voters,  
2 that we need the PHRC because they investigate not only the  
3 complaints of racial discrimination but discrimination against  
4 women and disabled, et cetera, elderly. They broaden out  
5 into all these areas so they have cases involving all of  
6 these people, not only just racial discrimination cases.  
7 And the case load has gradually increased each year so it's  
8 going to take the political process to do it. It's going to  
9 take the political process.

10 CHAIRPERSON ALPERN: Mr. Berkman, what has been  
11 the experience of your organization with EEOC's enforcement  
12 efforts?

13 MR. BERKMAN: Well, when we get individuals who  
14 complain we often will help them contact the EEOC or the  
15 Pennsylvania Human Relations Commission and, unfortunately,  
16 because they are overloaded or because the nature of some of  
17 the complaints that we've had -- we've had some complaints  
18 in the area of reverse discrimination and the EEOC doesn't  
19 use that as an area that it really wants to pursue  
20 necessarily within its mandate of preventing discrimination  
21 so there has not been a lot of help in the sense of  
22 aggressive, of fact-finding or conciliation efforts on the  
23 part of the EEOC with regard to the kinds of complaints that  
24 we are receiving.

25 Does that answer your question?

1                   CHAIRPERSON ALPERN: Yes, thank you.

2                   What suggestions would you have with regard to  
3 implementation of affirmative action?

4                   MR. BERKMAN: Well, I personally think that the  
5 most difficult problem for affirmative action agencies and  
6 employers who are seeking to promote affirmative action is  
7 trying to define the line between legitimate and illegitimate  
8 affirmative action. I fear the people who are in favor of  
9 affirmative action don't want to address that problem because  
10 they're afraid if they draw the line ---

11                   CHAIRPERSON ALPERN: Can you explain what you mean  
12 by "legitimate" or "illegitimate"?

13                   MR. BERKMAN: Well, I can give my best definition  
14 but I don't pretend it's the ultimate definition. For me  
15 and for American Jewish Committee I think legitimate  
16 affirmative action includes all of the special efforts to  
17 recruit qualified people, to help potentially qualifiable  
18 people become qualified to review tests to make sure they  
19 are really job-related, to review jobs, to make sure that  
20 the pre-requisites are really necessary. To grant special  
21 consideration to those who have been discriminated against  
22 if, in fact, they're equally qualified and those special  
23 considerations may include everything from additional  
24 outreach or additional training to preference in job  
25 selection but you get very close to the line when you give

1 absolute preference based on a discriminatory criteria,  
2 for example, if you say, all Blacks, or all Jews or all  
3 disabled people deserve preference only for that reason  
4 without regard to qualification, I think you've crossed over  
5 the line of legitimate to illegitimate. If you say, this  
6 black person and this white person or this disabled person  
7 or this not handicapped person are equally qualified but  
8 one has been discriminated against, individually discriminated  
9 against, and therefore we choose to pick that person for that  
10 reason, that's not crossing over. That's still legitimate  
11 use of affirmative action.

12           The real difficulty is when you get into  
13 utilization analysis and into trying to measure your  
14 success by statistics. The tendency is to look at  
15 aggregate statistics, nationwide population statistics or  
16 SMSA statistics and to forget the individuals rights and  
17 disadvantages. And sometimes that works really to the  
18 disadvantage, in my opinion, of minorities because it tends  
19 to be an emphasis on statistics that push minorities into  
20 those few organizations that are pressured to use statistics  
21 whether it be a given set of employers. Our government is  
22 not big enough and our affirmative action programs aren't  
23 big enough to apply the pressure equally to everybody so it  
24 doesn't happen that way. It happens to this set of employers  
25 or to this group of government agencies and the tendency is

1 that those then become filled with disadvantaged or minority  
2 groups to their own disadvantage to the extent that they  
3 then become the next ghetto or the next segregated little  
4 pocket of employees who do not benefit by what is really  
5 equal opportunity, the chance to sell on their own merit  
6 without regard to their race or their color or their  
7 national origin or their disability. So, I guess if I had  
8 to draw bright line, the line between legitimate and  
9 illegitimate affirmative action, whenever I sense a use of  
10 quotas in principal or in practice -- it can either be  
11 legal quotas or de facto quotas, I consider that illegitimate  
12 use of affirmative action and counter-productive for reaching  
13 equal opportunity.

14 Now, there may be a rare exception when a Court  
15 says we have to hire X minorities over the next five years  
16 for a temporary basis to correct a finding of discrimination  
17 over the last five years by that organization against those  
18 individuals and then a quota while our organization still  
19 disapproves that a quota has a more immediate remedial  
20 effect but a quota across the board even on a de facto  
21 basis really is crossing over the line as I see it.

22 CHAIRPERSON ALPERN: Mr. Craig.

23 MR. CRAIG: Mr. Berkman, in terms of legitimate  
24 or illegitimate, are you referring to over the last three  
25 hundred years equity has been in progress?

1           MR. BERKMAN: No, not at all and that's a good  
2 point because one of my problems in explaining this is, I  
3 do not view affirmative action as solving the historical  
4 problem of three hundred years. Affirmative action and even  
5 Court findings are trying to correct discrimination against  
6 people today that is taking place today.

7           DR. BUTLER: No.

8           MR. BERKMAN: Let me give you my definition and  
9 what I think the Law says. If you try and use Affirmative  
10 action to correct three hundred years or two hundred and  
11 fifty years of discrimination then what you are going to do,  
12 in my opinion, is shift our constitutional rights from  
13 individual rights to group rights and as soon as we have  
14 established the principle that groups have rights, which  
15 should be enforced by Law not individuals, we will have,  
16 set up and we may already be there, by the way, but we  
17 will have set in motion the process of volcanising or  
18 segmenting the society into everybody trying to identify  
19 there rights, not by their merits, not by the right to  
20 excel as an individual by what group they identify with or  
21 are identified with, much against their will sometimes and  
22 that is, I think, a mistake in Affirmative action to say  
23 that groups -- because we all can define groups now. We say,  
24 disadvantaged today are the Blacks, the Orientals, the  
25 Indians, American Indians, the disabled but we do not include

1 the Polish Americans. Now, why don't we include them. We  
2 say they are part of the great white society but, in fact,  
3 they are seriously under-represented in employment practices  
4 in the State of Pennsylvania in proportion to their per-  
5 centages. But we don't want to pick up that group because  
6 when we do that we'll have to go to the Yugoslav-Americans.  
7 Now, why do we say Blacks -- and there are a lot of people --  
8 well, take the Spanish, that might be better or Orientals.  
9 Orientals have been discriminated against from World War II  
10 here clearly but that hasn't prevented them from excelling  
11 as individuals. Statistically today yet because of a  
12 historical failing -- historical discrimination the EEOC,  
13 the Affirmative Action groups have said that they should be  
14 identified as a disadvantaged minority and given preference  
15 not because an individual was, in fact, discriminated  
16 against but because they are a member of the American  
17 Oriental Community.

18 CHAIRPERSON ALPERN: Mr. Berkman, excuse me but  
19 I would like some of the others on the Panel to respond to  
20 what you are saying, if they would like to.

21 DR. BUTLER: Oh, I would like to very much.

22 (Laughter.)

23 DR. BUTLER: I think all he is saying is a bunch of  
24 hogwash. I'm going to be very frank with you.

25 (Applause.)



1 DR. BUTLER: There are people who readily admit  
2 that black folks have been discriminated against for a hundred  
3 years and call themselves our friends but then when it comes  
4 time to do something about it, they don't want to accept the  
5 problem and the way we want to settle it but they don't have  
6 any way of settling it themselves.

7 Now, don't sit here and tell me that all you are  
8 going to do is deal with the problems that exist today.  
9 You would think that Affirmative Action had turned this  
10 Country around and you would see black folks sitting on the  
11 Boards and the President of companies but that has not  
12 happened. Affirmative Action as we now see it has done very  
13 little to help black folks. We still have poor health  
14 delivery. We still have forty and fifty per cent juvenile  
15 and teenage unemployment, we still have only within the black  
16 community two per cent of professionals, that includes  
17 physicians, dentists, et cetera.

18 So don't you sit up here and say what Affirmative  
19 Action has done because it hasn't done a damn thing, nothing.  
20 It has not done that. We are still on the bottom of the pole.

21 Now, we still hear these words reverse  
22 discrimination. What is that. What is reverse discrimination.  
23 It's an emotional cold word to make people stir up in their  
24 minds hatred for black folks. Ain't no such thing as reverse  
25 discrimination. What are you talking about. That's why the

1 Pennsylvania Human Relations Commission don't deal with it  
2 because there is no such thing. Ain't no such thing as  
3 reverse discrimination. Quotas, cold words liked forced  
4 bussing -- what is forced bussing. Everybody that gets on  
5 the bus is forced to get on it to go to school but the only  
6 time they use the word "forced" is when white children are  
7 going to black schools or some place they don't want to go  
8 so don't listen to this -- don't listen to this. I'm sick  
9 and tired of hearing these kind of things and planting seeds  
10 in people's minds by using these code words. Affirmative  
11 Action as we see it has done very little to help black  
12 people.

13 Most Affirmative Action officers don't have that  
14 much power. We seen it on the State level and they sit in  
15 the State Agency in Pennsylvania and one time they had an  
16 Affirmative Action officer in each agency. He couldn't do  
17 one thing -- he couldn't move one piece of paper from one  
18 office to the next.

19 CHAIRPERSON ALPERN: Mr. Butler, I think the point  
20 that was being raised by Mr. Berkman was the philosophy  
21 behind the Affirmative Action Program as it has been set up.  
22 Has it been set up to rectify the wrongs that have been done  
23 over a period of three hundred years or is it -- has it been  
24 set up to deal with the problems as they exist today and that,  
25 I believe, is what Mr. Berkman was posing. Is there any other

1 member of the Panel who would like to respond to that?

2 MS. O'CONNELL: I would just like to say that there  
3 are whole college courses and studies on the theory of the  
4 quota system or equal opportunity or Affirmative Action and  
5 that theoretically, we are not going to be able to solve  
6 this today. I mean there is enough literature to paper the  
7 walls of this room. I think what we as an organization  
8 have to be concerned with and what I, as a woman am concerned  
9 with are the practical enforcement of the Law -- Affirmative  
10 Action is a lie. It should be enforced. You know, we have  
11 to -- we're worrying about whether the theories and the  
12 practice and we'll let the theoreticians and the  
13 academicians, you know, do this and over a period of time  
14 it might or might not justify it. I can't assume to do it  
15 myself but it has to be enforced and that's what we are  
16 looking for right now.

17 CHAIRPERSON ALPERN: Thank you.

18 Mr. Smith, we understand that you've had extensive  
19 experience in the field of Affirmative Action. Can you tell  
20 us something about your experiences in Pittsburgh in  
21 implementing Affirmative Action and how federal agencies  
22 were involved?

23 MR. SMITH: They were building a Bell Telephone  
24 Building on 6th Avenue in Pittsburgh, fifteen stories.  
25 They had no blacks on the job. I negotiated with the iron

1 workers who put on six black workers and they agreed to it.  
2 The day it was suppose to happen the six blacks showed up  
3 along with myself. The job was progressing. We went to the  
4 fifth floor at 8:00 in the morning and the superintendent  
5 said that he couldn't hire them -- that the National Office  
6 said they had to go through the process. I said, but you  
7 promised. One thing led to another. I grabbed him and held  
8 him over the five-story building and threatened to drop him  
9 and he hired five. He hired the five men and they finished  
10 the job. That's Affirmative Action.

11 (Laughter.)

12 CHAIRPERSON ALPERN: Do you have a question?

13 MS. MORGAN: Mr. Smith, earlier you -- you alluded  
14 to the fact that -- well, I don't know if it was a fact. We  
15 were talking about the OFCCP and you were saying that you  
16 had worked with construction trades and you implied that  
17 perhaps some other federal fund contractors are not subject  
18 to the same scrutiny. And that you had knowledge of working  
19 with the EEOC, and -- I mean, OFCCP, excuse me. What I'm  
20 wondering is whether that's true. You didn't say it and  
21 I'm wondering if you could elaborate. Does the OFCCP  
22 uniformly review all the contract orders?

23 MR. SMITH: You're wondering if what's true?

24 MS. MORGAN: Well, okay. You are familiar with  
25 construction trades -- with federal contractors who would

1 employ people who are in the construction trades?

2 MR. SMITH: Yes, right.

3 MS. MORGAN: Now, I'm just wondering. You had  
4 mentioned some large aircraft companies and you were saying  
5 construction ---

6 MR. SMITH: I mentioned Rockwell.

7 MS. MORGAN: Okay. Well, a company you know of  
8 has not been touched?

9 MR. SMITH: Yes.

10 MS. MORGAN: I'm just wondering why not. Do you  
11 have any idea?

12 MR. SMITH: I would like to tell you the truth. I  
13 don't know why. I really don't. I have set in many a  
14 complaint. In fact, we just had a meeting in Washington, D.C.  
15 two weeks ago with Weldon Rougeau about some problems that we  
16 were encountering with their Director in Pittsburgh and their  
17 Director was assigned to do ten per cent of the work in the  
18 construction area but they were actually doing ninety-five  
19 per cent of the work in the construction area and none in  
20 industry at all. And we can prove that. And those are the  
21 kind of complaints that we had. We couldn't figure out why  
22 they would attack the construction area which is doing a very  
23 good job in Pittsburgh in Western Pennsylvania and ---

24 MS. MORGAN: Did they give you any reason why?

25 MR. SMITH: No specific reason. They had an

1 investigator going to this company and that company and it  
2 took a long time. They were short of staff. They had that  
3 type of reasoning but it really wasn't the truth and I do  
4 know that.

5 CHAIRPERSON ALPERN: Thank you.

6 Now, to the members of the Panel, are there any  
7 other concerns that your organizations have with respect to  
8 EEOC and OFCCP other than the ones that have already been  
9 outlined?

10 MS. O'CONNELL: One of the things with OFCCP and  
11 also to comment on what you had just said is that we  
12 require as a community-active organization accessibility of  
13 information and what has come up is, we are locked into this  
14 kind of Catch 22 situation. Now, as an organization to know  
15 what is going on we require the Affirmative Action plans of  
16 companies, okay. That's the only way we're going to know  
17 if indeed they are living up to their commitment to Equal  
18 Opportunity Employment.

19 Now, what's happening is before OFCCP took over the  
20 enforcement of Affirmative Action, the plans were in the  
21 Treasury Department and at some point in time the plans are  
22 now to be at OFCCP. They are to get Affirmative Action  
23 plans when they do original compliance reviews and then  
24 any other time that they open up a case. Well, what's  
25 happened is, we have repeatedly asked for the Affirmative

1 Action plans. We are told (1) they are lost. Okay, now,  
2 they have them but they are lost. They know the facts in  
3 them, they know the companies were not reviewed for five  
4 years but they're lost. I want to know where they are and  
5 why can't they have them and why can't they give them to us  
6 because we are a community-active organization and that  
7 information should be available to us.

8           Secondly, not only are they lost but they tell us  
9 that once they start a review -- they get the plans when  
10 they start a review and once they start the review they  
11 can't release the plans so the effect is we never, ever  
12 see a plan. They have them all and they're keeping them and  
13 they're using the information.

14           Now, if the OFCCP is shorthanded, if they are  
15 understaffed whatever, we can be their legs. We can talk to  
16 employees for them, we know what's going on in Philadelphia  
17 as far as working women we can give them information but we're  
18 hindered because of accessibility. Not only that the working  
19 relationship between us and the OFCCP has deteriorated a bit  
20 because of some personality problems. I really want to thank  
21 this Commission.

22           We have been after a Compliance Manual from OFCCP  
23 for over a year and a half. We got it delivered this  
24 morning. I mean, you all did that. Thank's a lot. We have  
25 been after meetings, you know, accessibility to people and

1 all of a sudden everybody and his brother is coming out of the  
2 woodwork and calling us.

3           You know, we're getting regulations sent. We have  
4 never seen one regulation on anything on the Federal  
5 Register unless we want to sit down and read it ourselves.  
6 We're finally getting that from the OFCCP and I think it's  
7 because of, you know, the pressure of public light being on  
8 it so one of our key points on regard to the Department of  
9 Labor is accessability.

10           CHAIRPERSON ALPERN: Thank you. Any other member  
11 of the Panel want to address that question?

12           MR. BERKMAN: I agree that one problem with the  
13 EEOC and some of the others is that they do not make public  
14 their procedures, their standards. Sometimes they haven't  
15 formulated them well enough so that if different enforcement  
16 officers may implement them differently. And that is true  
17 not only for grass root organizations and individual  
18 Complainants. It can be true for the other side of the  
19 debate, too, sometimes -- an employer can't find out what  
20 the standards are -- the procedures are. And I think that  
21 is something that would benefit the system to be a little  
22 more forthcoming and regular in how they process complaints.

23           CHAIRPERSON ALPERN: Thank you.

24           Ms. Schumacher.

25           MS. SCHUMACHER: We are getting a little tight on



1 the time that's left for this Panel and before we end it I  
2 wanted to be sure to have the opportunity to put to each of  
3 you a more general question to get whatever suggestions from  
4 each of you that you might have to raise during this Forum  
5 as to what steps can be utilized in your mind to increase  
6 minority and female participation in employment aside from  
7 the few steps that you've already discussed. Regardless of  
8 whether or not you call it Affirmative Action. What steps  
9 do you feel should be taken on behalf of minorities and  
10 women in employment?

11 MS. O'CONNELL: Well, the key step here is on a  
12 general specific level, if you will, is that the agencies have  
13 to enforce the Affirmative Action Plan. Okay. Companies  
14 out there are saying they have Affirmative Action Plans and  
15 what they have is a 3 x 5 card that they place on the wall  
16 saying we are an Equal Opportunity Employer.

17 Now, what they need to have is, they need to have  
18 people review those. Now, what we're finding is our key  
19 investigation right now is the Banking industry and this is  
20 also what OFCCP is targeting. We found out there were  
21 Affirmative Action Plans out there for 1975 that had not been  
22 reviewed. The job market that they are using statistically  
23 to make up these plans has dramatically changed things then.  
24 Okay. What we want then is updated Affirmative Action Plans  
25 to be enforced by the agencies. Okay. This type of outright

1 enforcement of these plans will then, by very necessity,  
2 employ the -- have women and minorities more equal in their  
3 employment opportunities.

4 DR. BUTLER: I want to add to that. Affirmative  
5 Action is never going to work unless we have some goals,  
6 timetables, quotas, whatever you want to call them. It's  
7 never going to work unless there are some sanctions. You  
8 can talk about enforcement all you want but if there are not  
9 some sanctions when it is not done, why should a company  
10 worry. Why should they worry. Ain't nothing going to be  
11 done to them if they don't do it.

12 And everywhere you go now you see the sign, "I'm  
13 an Equal Opportunity Employer" and you see a half a black in  
14 the office.

15 (Laughter)

16 DR. BUTLER: So unless there are some goals,  
17 timetables and sanctions when a company says to their  
18 employee, you got to do this by the end of the week. You've  
19 got to put out so many of these and so many of these and if  
20 you don't do it you are moved out of that job -- fired. Now,  
21 until we get to the point where we say the same thing in  
22 Affirmative Action, if you don't do this and you don't do  
23 this then you're gone, we are never, ever going to see  
24 Affirmative Action.

25 We got a letter from the Federal -- one of the

1 Congressmen asking what we thought was the reason why  
2 participation in contracts didn't work for minority  
3 contractors. The reason is simple. The contractors say,  
4 yes, I'm going to hire so many minority people and then he  
5 doesn't do it but nothing is ever done to him because he  
6 doesn't. He still gets the contract for millions of dollars  
7 and until something is done to that contractor, nothing is  
8 going to change.

9 CHAIRPERSON ALPERN: Do any of you have any  
10 other suggestions for any changes in government procedures  
11 for enforcement that you would like to suggest?

12 (No response.)

13 CHAIRPERSON ALPERN: Well, we thank you very  
14 much for being so candid with us and spending so much of  
15 your time with us this morning. It has been very helpful  
16 to us in this Fact-Finding Meeting and the subsequent report  
17 which will be coming out of it.

18 If anything occurs to you which you have not  
19 already told us today, please don't hesitate to forward  
20 that information to the staff in Washington.

21 MR. SMITH: Could you see that we get that report?

22 CHAIRPERSON ALPERN: Yes, certainly. All the people  
23 who participated in this session will be receiving a copy of  
24 the report when it is issued.

25 MR. SMITH: You don't know when that will be?

1 CHAIRPERSON ALPERN: Right now we don't have a  
2 timetable because right now these Fact-Finding Hearings are  
3 going on all over the Country and so those facts have to be  
4 analyzed and a forthcoming report will be issued.

5 Thank you very much.

6 MR. OWENS: One thing before the Panelists leave,  
7 please. There may be additional questions which, because of  
8 time constraints we were not allowed to proffer to the  
9 Panelists. We would like to know if the Panelists would be  
10 willing to respond to those questions if submitted to you  
11 in writing subsequent to today's meeting.

12 (Affirmative response.)

13 CHAIRPERSON ALPERN: Thank you very much.

14 The next Panelists who are scheduled are Susan  
15 Warner and John Robinson.

16 (The Panelists were excused.)

17 (A short recess was taken.)

18 CHAIRPERSON ALPERN: All right, once again I'll  
19 call this meeting to order.

20 Because of pending legislation representatives  
21 from Lucan Steel who were to have been here on this Panel  
22 have declined to participate.

23 We have Susan Warner. Welcome to this meeting.

24 MR. OWENS: Good morning, Ms. Warner.

25 You are Susan Warner the Affirmative Action

1 Coordinator at Hahnemann Hospital of Philadelphia, is that  
2 correct?

3 MS. WARNER: Medical College and Hospital.

4 MR. OWENS: Ms. Warner, how long have you served  
5 in that capacity?

6 MS. WARNER: I've been Affirmative Action  
7 Coordinator for about a year and a half but I've been in  
8 Affirmative Action for about six years and I still function  
9 currently as a consultant in Affirmative Action in  
10 personal relations to the Financial Industry.

11 MR. OWENS: Let me ask your perception of this.

12 Do you feel, in general, there is a need for  
13 Affirmative Action Plan in employment?

14 MS. WARNER: Yes, I do. Unquestionably.

15 MR. OWENS: Would you expand upon that, please?

16 MS. WARNER: Well, okay.

17 In broad terms I think that it has taken this  
18 Country a couple of hundred years to arrive at the state  
19 that we are in now. I think -- although I have some  
20 negative feelings about statistics, I think that we can look  
21 around us in employment and education and very clearly see  
22 there are certain members of our Country who do belong to  
23 certain groups who are not represented in significant  
24 numbers in various areas. And I think that we need to do  
25 something about it. I'm not sure -- someone said earlier

1 that the structure of our current Affirmative Action Plans  
2 and Programs is the correct or the only way to achieve  
3 equality but I certainly think we need to do something to  
4 provide equality.

5 MR. OWENS: Do you feel that this representation  
6 which you see is lacking but which you articulated is needed,  
7 do you see that representation being provided in any manner  
8 other than through the use of Affirmative Action Plans?

9 MS. WARNER: Well, do you mean do I see it  
10 happening right now in any other ways?

11 MR. OWENS: Yes, do you see the potential is there  
12 for it to happen?

13 MS. WARNER: Oh, yes, I think the potential is  
14 there and I think a lot of methods -- and I have to not  
15 just address employment for a second to give you a broader  
16 view. My personal involvement is not just employment. It's  
17 community services as well and it's educational programs as  
18 well and I think if you look at the broader view you see  
19 the -- and there is no Affirmative Action in community  
20 services. You're talking about Title VI and in educational  
21 institutes you're talking about Title VIII and, again,  
22 Title VI and 504. That's not Affirmative Action but they are  
23 addressing equality in other ways besides Affirmative Action.

24 Bussing, for example, is coming under what -- VI,  
25 VII. It's Equal Opportunity not Affirmative Action and these

1 are other ways. So, yes, I think there's a lot of  
2 potential for achieving equality other than the current  
3 Affirmative Action method that we are dealing with. It  
4 doesn't mean I would negate the current.

5 MR. OWENS: Okay. Are you familiar with the EEOC  
6 guidelines on Affirmative Action?

7 MS. WARNER: Yes, I am.

8 MR. OWENS: Do you have a copy of those guidelines?

9 MS. WARNER: The recent guidelines?

10 MR. OWENS: Yes.

11 MS. WARNER: Yes.

12 MR. OWENS: How did you obtain your copy?

13 MS. WARNER: I read the Federal Register every  
14 day. It's the only way to keep up to date. And I agree I'd  
15 rather have somebody send me material. And I think that  
16 should be so but in order for me to keep on top of what is  
17 going on, I must read the Federal Register every day. It's  
18 that thick and sometimes that thick (indicating two inches  
19 or so).

20 MR. OWENS: Inasmuch as you do have a copy and you  
21 do utilize this regularly, do you think that the requirements  
22 are reasonable as they are presented in the EEOC guidelines?

23 MS. WARNER: Okay, let me backtrack a second to  
24 say I do have a copy -- do I use it regularly, no. I more  
25 regularly depend upon Revised Order No. 4, which is much

1 more explicit and that's part of the Executive Order 11246  
2 which is the Affirmative Action Plan. The value to me of  
3 the EEOC guidelines on Affirmative Action was the protection  
4 clause that they put there. Let me tell you, that's  
5 important and it is important from both sides because when  
6 you're in a management standpoint as an employer and you are  
7 trying to achieve equality and take positive steps, it is  
8 absolutely frightening to be faced, day after day, with  
9 inconsistencies and no support for some of the steps you  
10 are taking. So that the EEOC Affirmative Action Guidelines  
11 for me did exactly what -- at least on paper what I thought  
12 employers needed.

13 I think what you are seeing here (indicating  
14 vacant chairs) is a demonstration out of the fear that  
15 employers have about this whole situation. You know, they  
16 are afraid. They are afraid to say, here are our problems.  
17 Help us. Even employers who want to take affirmative steps,  
18 employers who want to see equality, they are scared to  
19 death and I think we need to do something about that.

20 MS. BECKER: Ms. Warner.

21 MS. WARNER: Yes.

22 MS. BECKER: Could you elaborate for us how you  
23 understand the protection clause?

24 MS. WARNER: Okay. I only read it first time  
25 around when it first came out and I made a note of it to



1 satisfy myself.

2           Essentially what it says here is that; if you are  
3 an Affirmative Action Contractor, for example, or you have  
4 an Affirmative Action Plan -- I'm sorry.

5           MS. BECKER: As you see it.

6           MS. WARNER: Okay. Essentially what it says is  
7 if you are an Affirmative Action Contractor and a Hearing  
8 to Revise No. 4, Executive No. 11246 and or you have  
9 voluntary Affirmative Action Plan and you review this Plan  
10 in context in the light of the new EEOC guidelines, which  
11 there doesn't seem to be a whole lot or anything significantly  
12 inconsistent in those guidelines. It's not as rigid. Then  
13 you can claim reliance upon the EEOC guidelines or that Plan  
14 as protection against, as we talked about before, a reverse  
15 discrimination suit..

16           MS. BECKER: Can we talk about the guidelines.

17           I'd like to ask you some questions.

18           How do you feel about technical assistance. Do  
19 you feel it's needed to develop or implement Affirmative  
20 Action Plans?

21           MS. WARNER: I think it's desperately needed and  
22 I'm sorry you didn't ask me the first question you asked the  
23 other Panel because I think it's tied in very much with it.

24           You asked the first Panel to differentiate and  
25 define between Equal Opportunity and Affirmative Action and

1 I think -- may I?

2 MS. BECKER: If you would like to define it now  
3 we would be pleased to have you do it.

4 MS. WARNER: In employment, I think, that we  
5 missed the whole boat when we try to achieve equality when  
6 we try to take Affirmative Action without recognizing that  
7 everything about Equal Opportunity Employment is based on  
8 sound personnel management principals.

9 And if you picked up a text book pre-1964 before  
10 the Civil Rights Movement on Personnel Management -- a  
11 Personnel Management text book, you would find the basis  
12 for the principals that Equal Opportunity is perpetuated  
13 upon. In other words, if you have good sound personnel  
14 practices and policies and procedures, you are then making  
15 the best use of your human resources and you will have  
16 Equal Opportunity. That to me is Equal Opportunity.

17 Now, we are in a situation where we talked about  
18 we haven't done that for two hundred and fifty years. First  
19 of all, those policies and procedures and that knowledge  
20 wasn't here two hundred and fifty years ago. So I think we  
21 have to recognize that we haven't made the best use of our  
22 human resources for two hundred and fifty years and Equal  
23 Opportunity says, do that, and Affirmative Action comes  
24 along and says, now, not only do we want you to do it but  
25 given a whole lot of reasons we won't go into that but we

1 want to take some positive steps to accomplish that. We  
2 want you to look at your company; we want you to see if you've  
3 been doing it and use some of these measurements and they  
4 give you some measurements to use and if you are not, then  
5 we want you to begin to implement these valid personnel  
6 policies and procedures, these recruitment procedures to  
7 make use of human resources and begin to take some positive  
8 steps there. They also throw in some things like, we want  
9 you to prove it to us. So document it. And there's some  
10 record keeping and some of that stuff creates problems but  
11 essentially I think that's the difference between Equal  
12 Opportunity and Affirmative Action. The loss to people,  
13 I think, when they look at just numbers and goals is that we  
14 are talking about personnel management and anybody who is  
15 dealing with that should talk -- should be talking about  
16 Personnel Management and human resource management and if  
17 you don't know Personnel Management, you shouldn't be dealing  
18 in it -- in employment.

19 MS. BECKER: Ms. Warner, you said that you  
20 thought technical assistance is needed.

21 MS. WARNER: Very much.

22 MS. BECKER: What are the areas you think it's  
23 most needed in?

24 MS. WARNER: I think it's most needed in Form 503  
25 and 504 but you're not dealing with that today.--handicapped.

1 MS. BECKER: I would like to say that 504 is  
2 included in the employment of the handicapped so if you have  
3 something you ---

4 MS. WARNER: You mean 503.

5 MS. BECKER: Yes, 503.

6 MS. WARNER: Thank you.

7 MS. BECKER: Have you ever sought technical  
8 assistance?

9 MS. WARNER: Many, many times.

10 MS. BECKER: In your company?

11 MS. WARNER: Many times. In terms of 503 or 504  
12 I have because that's the handicapped regulations. 503 is  
13 Affirmative Action, 504 is "Equal Opportunity". There's a  
14 very fine line there and I disagree with that differentiation  
15 there but, okay, in terms of 503 and 504. Yes, I have sought  
16 technical assistance. I have even been made aware of some  
17 technical assistance seminars that were supported by the,  
18 I believe, Federal Government. They contracted out to  
19 Consulting Firm who went around to giving some technical  
20 assistance seminars.

21 Unfortunately, the people they invited to those  
22 seminars were not EEO people; they were not Affirmative  
23 Action people, they were doctors in hospitals or didn't  
24 even know what Equal Opportunity was or regulations or got  
25 very upset because they were threatened and I discussed them

1 with -- I discussed this with them at the one seminar I went  
2 to.

3 Now, the technical assistance provided there was  
4 specifically in terms of technical standards and it was good.

5 MS. BECKER: Did you ever seek assistance --  
6 technical assistance from EEOC?

7 MS. WARNER: Let me say that over the last year and  
8 a half since I've been at Hahnemann I have, I feel, developed  
9 some very good reciprocal relationships with people in the  
10 Pennsylvania Human Relations Commission. Yes, even with  
11 people in the EEOC even if I have not had as much contact  
12 with them and with people at HEW. So I have felt, as an  
13 individual, comfortable in seeking technical assistance from  
14 them and I have sought it. They seek it from me more often  
15 than I seek it from them but I have sought it from them.  
16 However, I'd like to tell you that I'm the only person I  
17 know as an EEO Officer or representative of employment who  
18 does that. Everybody else is afraid to. I'm not afraid to  
19 because I believe that -- well, I know that I'm trying to  
20 achieve Equal Opportunity. I know that I've got that kind of  
21 commitment from Hahnemann so I'm really not afraid but every-  
22 body else is, I think.

23 MS. BECKER: Ms. Warner, do you ---

24 CHAIRPERSON ALPERN: Excuse me a moment.

25 MR. OWENS: Ms. Warner, inasmuch as you say you are

1 not afraid but you suspect that other employers are, why do  
2 you feel that other employers would be afraid where you are  
3 not if, in fact, your reason for not having any fear is that  
4 you are attempting to develop Affirmative Action Programs?

5 MS. WARNER: I'm also naive and an idealist,  
6 okay, and most of the people who are in Affirmative Action --  
7 someone pointed out earlier, Number 1, they are men, they are  
8 not as naive and they are not as idealistic. I'm teasing  
9 about that, okay.

10 I think, then, most of the people in Equal  
11 Opportunity and Affirmative Action are not personnel  
12 generalists. And I think that's the difference. They don't  
13 have the security that what they are doing is right. And I  
14 do because I'm a personnel generalist.

15 MR. OWENS: All right.

16 CHAIRPERSON ALPERN: Ms. Warner, could you  
17 elaborate -- you refer to the fact that you do have the  
18 backing of Hahnemann. Could you tell us something of what  
19 that means?

20 MS. WARNER: Yes. I'd be happy to. For example,  
21 I -- and Hahanemann as I pointed out earlier is a Medical  
22 College; we have three colleges, okay, and the hospital.  
23 It's a very large institution and it covers a lot of ground.  
24 We had an Internal Grievance Procedure when I came on the  
25 scene, okay, and as with most companies, the Committee was

1 made up of all white males. Now, they were good. They were  
2 Administrators, they were good. They tried to be objective  
3 but they were still all white males and as I began to analyze  
4 their program, I began to make contact with our minorities  
5 and our females and people who had reason to have some  
6 information about that Grievance Committee and what I found  
7 was these people just like we are talking about employers  
8 coming here today, were afraid to use that Committee and they  
9 were afraid because they felt there was no empathy, they felt  
10 that they would be raked over the coals; they didn't want to  
11 go -- a minority didn't want to go before three white males;  
12 a female didn't want to go before all white males so I went  
13 to the top management at Hahnemann.

14 I mean I gathered enough information so that I was  
15 convinced it wasn't some emotional female coming to him and  
16 I also pointed out to him statistically that in terms of non-  
17 union grievances, nobody used our procedure. We had one but  
18 nobody used it. If they weren't in the Union they were  
19 afraid to and I asked them to consider modifying the member-  
20 ship of that Committee and they were very receptive to it.  
21 Now, this is really a very huge step for them. It may not  
22 seem that to you but if you look around at your companies,  
23 you will see that those Grievance Committees, except under  
24 pressure as this gentleman pointed out earlier (indicating  
25 Mr. Smith), people don't change things like that unless they

1 have a knife at their back but Hahnemann did.

2           They said to me, write us up a criteria. What do  
3 you think the people need to be on this Committee. Make  
4 some recommendations; give us a procedure for training. And  
5 darn if they didn't implement the changes. There was no  
6 outside agency telling us to do it. None.

7           MS. BECKER: Mr. Craig has a question.

8           MR. CRAIG: Ms. Warner, do you feel as if every  
9 Agency should have that kind of commitment in order to have  
10 a positive Affirmative Action Program?

11           MS. WARNER: I sure do. You are talking about a  
12 commitment of -- the desire to see the equality as opposed  
13 to a method of achieving equality or the desire to achieve,  
14 yes, I do. I don't think it's going to happen if we don't  
15 start putting people in those places who believe in what  
16 they're doing.

17           MR. CRAIG: Let me ask you another question. Do  
18 you see any positive action occurring in agencies that may  
19 not have had that kind of management commitment from the  
20 very top?

21           MS. WARNER: I'm sorry. Run that by me again.

22           MR. CRAIG: Do you see or do you feel that an  
23 agency could have that kind of positive action without  
24 having the commitment from management at the very top in  
25 terms of Affirmative Action?



1 MS. WARNER: Now, are you talking about an agency  
2 as opposed to a company?

3 MR. CRAIG: A company -- either one.

4 MS. WARNER: Well, you see I would separate that  
5 answer. I think that an agency probably could. I don't  
6 have a whole lot of experience in government-type agency  
7 workings but I have intuitively, and I could be wrong, the  
8 feeling that agencies tend to just roll on for good or bad.  
9 You know, a company can't do that. A company is normally  
10 profit-making or even if it's a non-profit organization  
11 there are other objectives that they don't just move  
12 because they are in movement so that with a company I would  
13 answer to that, no. If you don't have the commitment from  
14 top management that you wouldn't achieve it.

15 But you see, there are different ways of obtaining  
16 that commitment. For example, with our management -- I mean,  
17 I didn't go to them and say, tomorrow the agents are going  
18 to come and slit your throats if you don't do it. We  
19 developed a very extensive brainwashing type philosophy to --  
20 we had an approach and the moral reasons for achieving  
21 equality -- the ethical reasons for achieving equality, the  
22 good management reasons for achieving equality and the  
23 economic reasons which would be sanctions you are talking  
24 about for achieving equality -- with academicians they don't  
25 care about the money. You'd have to give them some other

1 reason for wanting to or for preceiving that what you're  
2 doing is correct so the answer in terms of companies is,  
3 yes. I think they need commitment. I think there are all  
4 kinds of ways of getting that commitment.

5 MR. CRAIG: Well, this is probably why you feel  
6 so secure in creating affirmative matters in your program  
7 because you have the insurance of the -- the backing of your  
8 Administrators which in most events which you indicated  
9 earlier that other Affirmative Action Officers are not  
10 complying to the kind of things that you are so are you  
11 saying that your Agency may have something ---

12 MS. WARNER: Company.

13 MR. CRAIG: Your Company may have more input or  
14 support than maybe other agencies or companies do not have  
15 that kind of support?

16 MS. WARNER: No, sir. No, sir. I'm saying, how  
17 do you think I got it. It wasn't there when I came. We've  
18 been through four Affirmative Action Officers before me.  
19 But they weren't personnel generalists. They didn't really  
20 understand what to implement, how to implement, what was  
21 practical, what wasn't practical and how to bring these  
22 people around. That's what I'm trying to say -- that you  
23 need a certain amount of experience and education and  
24 training about certain areas before you can do Affirmative  
25 Action if you're going to get the top management support.

1                   Clearly, our gentleman over here I think was  
2 correct or over here. In most cases when you're talking  
3 about profit-making not a non-profit one like Hahnemann,  
4 the only thing that's going to make them at the start want  
5 to comply is money. The dollar or the pressure -- outside  
6 pressure so you have to find other ways so the answer to that  
7 is, no, it wasn't there when I came here. There was no, I  
8 would say at least comparatively speaking, there's been a  
9 90% turnaround in terms of support based on sufficiency and  
10 knowledge and dissemination of that knowledge and reduction  
11 of fear in terms of taking those steps. That was a key  
12 factor.

13                   MS. BECKER: Ms. Warner, what has been your  
14 experience with OFCCP in regards to technical assistance to  
15 help develop an Affirmative Action Plan?

16                   MS. WARNER: Okay. I have not had any direct  
17 experience with OFCCP. I understand that several years ago,  
18 my boss, who is the Vice-President of Personnel Relations  
19 did have some technical assistance and he spoke -- of course,  
20 that was maybe 1975 -- 1976. It was years ago. A lot of  
21 new Regs were not out then. He spoke very positively about  
22 the assistance.

23                   MS. BECKER: Have you ever sought assistance of a  
24 Consultant -- an outside Consultant to help you develop your  
25 Affirmative Action Plan?

1 MS. WARNER: As a Consultant have I sought  
2 technical assistance?

3 MS. BECKER: (Nodding.)

4 MS. WARNER: I think when I first became a  
5 Regional Manager for a Consulting Firm in this area, I did  
6 call the EEOC. Now, that was a few years back and I was  
7 highly concerned about the statistical basis and I was  
8 trying to get some information on the statistics from EEOC.  
9 I got the biggest run around you would want to get. I could  
10 not get any concrete information and I gave up. It was not --  
11 it was years before I ever again attempted to seek assistance  
12 from any of the agencies but I do do it now.

13 MS. BECKER: Do you ever seek assistance from  
14 private organizations to develop your Affirmative Action  
15 Plan?

16 MS. WARNER: Only in terms of broad principles  
17 or philosophies. I like to get input. That type of thing  
18 not in terms of technicality of developing a plan but  
19 rather perhaps in terms of the kinds of support programs  
20 and procedures and policies that are needed to carry out --  
21 whether they are needed to take the affirmative steps --  
22 what kinds of things are needed. That would be about the  
23 extent. In terms of recruitment, yes, of course.

24 One of the things I have found not just in  
25 Hahnemann but as a Consultant is, for example, there doesn't

1 seem to be a very large Hispanic source for us in terms of  
2 professionals and so I always try to make contact with  
3 organizations through other channels, and get some good  
4 sources for Hispanics, Blacks, things of that nature. But  
5 mostly that would be either in principle or in recruitment --  
6 not technical assistance.

7 MS. BECKER: How does your organization view  
8 Affirmative Action planning implementation as far as the  
9 financial impact?

10 MS. WARNER: Well, I hope I've convinced them  
11 it's simply good human resource management I'll answer that  
12 because no one has specifically said that to me. First of  
13 all, obviously, it's worth it to us. As a hospital and  
14 college we get a lot of money from the Federal Government  
15 so my cry always is, if you don't want Affirmative Action  
16 Plan then don't take any federal money. And, of course, we  
17 get much, too much federal money to not take any federal  
18 money and so that combined with the human resource management  
19 theory, I think, has reduced any serious question over is it  
20 economically practical. And it's not to say that some of the  
21 procedures aren't found as being impractical. Some of the  
22 paperwork but in terms of the total concept, the principles  
23 of it and in terms of getting real people in there, that  
24 I think has genuinely been accepted.

25 MS. BECKER: You said you found some of the paper-

1 work impractical. Can you tell us about some other areas  
2 that you found impractical?

3 MS. WARNER: Yes. I have a pet peeve, okay. For  
4 example -- and there's a lot of discussion about that --  
5 there was a lot of discussion about that earlier. The  
6 internal grievances in some of the regulations they are  
7 required, in others "strongly recommended" so you have a  
8 company who then sits back and really does their homework  
9 and developes internal grievance procedures, good due  
10 process procedures involved with a good composition racially  
11 and sexually on their committee and then it's worthless  
12 because you are working maybe halfway, three-quarters of the  
13 way, one-quarter of the way into your procedure and  
14 (knocking on desk) here comes three different agencies  
15 saying, we don't care what you are doing there, here's a  
16 three hundred questionnaire. Stop what you're doing and  
17 fill this out.

18 I'm teasing and I'm exaggerating but what is  
19 happening is, I don't think that the development and  
20 implementation of internal grievance procedures is being  
21 supported by the agency in general. And I want to clarify  
22 that in general. I'm not saying from my own specific  
23 experience right now at Hahnemann, but in general. There are  
24 many, many times when the companies who have done a lot of  
25 homework to establish these procedures to use them, to process

1 them and they are worthless or less than worthless. My  
2 recommendation here is that -- and I understand also what  
3 was said earlier is, so if someone is going through an  
4 internal procedure and it's taking a couple of months, they  
5 get scared because if they don't go out to an agency within  
6 a certain number of days, for example, one of them is a  
7 hundred and eighty days, then that's it. They can't go  
8 anywhere. They'll never be able to go outside so I think  
9 that there has to be some support system and coordination  
10 built into the regulations to take into account the internal  
11 grievance procedures which, on paper those regs say they  
12 want the companies to have and at the same time not lose --  
13 not forfeit the rights of the individuals to go an agency.

14           An example of that would be an agency has a one  
15 hundred and eighty day waiting period -- I mean timeframe  
16 within which a person should come. That timeframe shouldn't  
17 start to toll if a person has started internal procedures.  
18 Then you might make the date where the person started the  
19 internal proceedings or ended the internal proceedings but  
20 a hundred and eighty days from the time it happened. The  
21 person had to go, probably, through their internal proceedings  
22 within five days -- it's very possible that they'll not be  
23 able to go out to a agency if it stands the way it is right  
24 now. So I think they need to tie those things up and  
25 integrate them better. And, in fact, I think in general the

1 recommendations that are made in the regulations, they want  
2 the employer to do this, they want the employer to do that  
3 and I think I pointed out earlier -- and I think for a  
4 Personnel Manager I couldn't ask for more. It's great; it's  
5 beautiful.

6 MS. BECKER: Ms. Warner, you mentioned Revised  
7 Order No. 4 and you did tell us that you have not obtained  
8 technical assistance from OFCCP but can you tell us what  
9 your understanding is of the OFCCP standards on availability  
10 analysis and identification of under-utilization?

11 MS. WARNER: Okay. Let me say that I have obtained  
12 a copy of the OFCCP Manual. I didn't have that much trouble  
13 getting it but we subscribed to certain services and our  
14 other services -- it wasn't the Federal Government who sent  
15 it to us. And I've read the manual from cover to cover.

16 Now, Number 1 it's awfully technical and although  
17 it's fine for someone who is in Personnel, I would imagine  
18 it's pretty tough for the people I know who are in EEO  
19 Affirmative Action and I understand the EEOC also has a  
20 manual which is out. I haven't seen it and I don't use it  
21 but I think when an agency publishes something like that  
22 or even uses something -- if they use it they should publish  
23 it. If they publish it they should train people they expect  
24 to use it and I'm not just talking about the agency people.  
25 I'm saying, if you are going to hold -- and this is comparable,



1 it's in revised form, of course, if the Federal Government or  
2 the State Government or whatever is going to hold companies  
3 responsible for complying and adhering to a manual like that  
4 or to anything, then they ought to be out there training  
5 those people on how to comply with it.

6 Revised Order No. 4 says, when you issued your  
7 statement -- your equal opportunity statement and when you  
8 write your plan, you make sure you hold your people accountable  
9 and when I try to hold our people accountable at a company  
10 the first thing I tell top management is, we don't have the  
11 right to hold our managers and supervisors accountable for  
12 something that they don't understand, so we must first train  
13 them and then after they are trained they darn well will be  
14 held accountable and I don't think that the Federal Government  
15 does the same thing.

16 I think they should be spending some of their funds  
17 to do that. I think a lot of what you heard earlier would be  
18 eliminated -- both sides.

19 Did I answer that?

20 MS. BECKER: You said it was highly technical. Are  
21 you telling us that the availability analysis and the  
22 identification of under-utilization is -- how do you feel  
23 about that?

24 MS. WARNER: Okay.

25 MS. BECKER: The understanding of it -- to

1 implement?

2 MS. WARNER: Okay. First of all, I think we are  
 3 never going to achieve equality by concentrating on numbers,  
 4 okay. I believe in goals but -- let me back up. I think you  
 5 must have an availability analysis. You must. Now,  
 6 concurrent with that we've got to start getting our act  
 7 together from the country's side of it and get some  
 8 statistics together that people can begin to use. The  
 9 requisite skills statistics are just negligible. So, okay.  
 10 If we had good resources for requisite skill statistics,  
 11 then the availability analysis that appears in the OFCCP  
 12 Manual, I think, is -- I think it's good, I think it's  
 13 clear. It is technical. It's clear for someone who is  
 14 working in OFCCP naturally.

15 I think you get into problems with that job area  
 16 JAR. That's something new. I haven't seen it before but  
 17 there is a loss; there is a step missing once you examine and  
 18 do availability and you know where you're at and then you go  
 19 and you set a goal -- a number, a thing and essentially that's  
 20 where the concentration is and that's what I believe is wrong  
 21 because if that's all you do -- I'm going to tell you about,  
 22 to me, the pieces of the missing puzzle -- the missing missing  
 23 pieces of the puzzle. It that's essentially what you do, you  
 24 will always have -- Affirmative Action is supposed to be a  
 25 temporary thing to achieve a goal. You won't. You'll

1 perpetuate it. You're going to stick a number in there; it's  
2 going to be a token person like an Affirmative Action Officer  
3 who doesn't have any power, who doesn't have any authority,  
4 who doesn't have any knowledge because they are black or  
5 female or Hispanic. That's what you're going to get. And  
6 that's where our concentration has been and I think that's  
7 unfortunate.

8 I think when you move from the availability to the  
9 goal there is a whole block there of Personnel, good management  
10 policies and procedures and support systems and the  
11 concentration should be on the training and the education and  
12 the recruitment and the goal, the number that's out there,  
13 yes, I think you need it. It would be awfully hard to judge  
14 if you were moving anywhere but, for example, the OFCCP  
15 Manual says if you don't achieve 95 per cent of your goal --  
16 that's nonsense. There's eight factors, you know, the eight  
17 factors, the eight point factors. Number 1, there's no  
18 clear cut formula for using the 8-factor analysis so anybody  
19 can use it anyway they want. That's Number 1.

20 I'm not saying it should be dictated but some sort  
21 of formula was developed for that use of that 8-factor system.  
22 Again, I would guess that 50 per cent of the 8-factor system  
23 and I'd have to go back, if I remember their estimate. You  
24 know, there is so much estimating in statistics that if you  
25 hold people responsible for achieving 95 per cent of the goals

1 they set based on 50 per cent of the stuff that was just  
2 estimating ~~though~~ impractical. It's crazy. I'm not saying  
3 you shouldn't have goals. I believe in goals but there's  
4 something missing.

5 MS. BECKER: Do you feel there's sufficient data  
6 available for you, for your organization to make and develop  
7 Affirmative Action Plan and utilization analysis of  
8 availability?

9 MS. WARNER: Okay. I think -- first of all, we  
10 go by the higher education guidelines which are slightly  
11 different as a College -- you know, a higher education  
12 institution and we fill out EO-6 instead of EO-1 and we  
13 get a lot of help in terms of external resources statistically  
14 like the professional manpower statistics and things like  
15 that so we haven't had serious problems with it but it's not--  
16 I don't mean to say this derogatorily but no thanks to the  
17 Federal Government or to the SMSA -- or stuff like that  
18 and I think especially when you're talking about smaller  
19 companies and non-professional type companies they really  
20 need some help in terms of availability statistics.

21 Yes -- I mean, no. I don't think there's enough  
22 data around and as someone pointed out earlier, you know,  
23 the SMSA was still based on 1970 statistics when you're  
24 waiting for 1980 to come out.

25 MS. BECKER: Ms. Warner, how many agencies require

1 your organization to submit some plans or adhere to  
2 regulations.

3 How many different agencies?

4 MS. WARNER: If you took all toll -- all types of  
5 requirements like certifications which include ---

6 MS. BECKER: I would like to just limit it to  
7 equal employment.

8 MS. WARNER: Well, they include -- that's part of  
9 the problem -- they include Equal Employment Opportunity  
10 breakdown format plan but, okay, I'll put some of them  
11 aside.

12 You name the agency we require, HEW, OECCP --  
13 depending upon circumstances sometimes yes, sometimes no  
14 but all of these agencies at some point or another are likely  
15 to and have in the past and probably will in the future.  
16 Pennsylvania Human Relations Commission when they were  
17 investigating, Philadelphia Human Relations Commission when  
18 they are investigating.

19 An example of State. We get a lot of Research  
20 Grants and all kinds of, you know, different types of grants  
21 in a hospital and college and lately the State has taken to  
22 doing what they call a desk audit for virtually every single  
23 grant that we get. Well, we have hundreds of grants and a  
24 desk audit is -- it's a utilization analysis -- I mean all  
25 over again and it's a different format at a State level.

1 MS. BECKER: How about on the Federal Agency level  
2 are the requirements consistent among the Federal Agencies  
3 that you deal with?

4 MS. WARNER: For reporting?

5 MS. BECKER: Yes, and for Affirmative Action.

6 MS. WARNER: Okay, I think most of my experience  
7 with HEW, for instance, has been on Equal Opportunity as  
8 opposed to Affirmative Action employment, Title VI, Title  
9 VIII and Title IV.

10 But from a federal angle you get into like there's  
11 some inconsistencies between 504 and 503 and Title VI, for  
12 example, is -- I'm sorry 504, Title VIII example of  
13 inconsistencies and overlap and sex discrimination in  
14 educational programs. And for a long, long time they were  
15 dealing with employment in the college. Now, that has just  
16 been thrown out in the Courts but 504 and that's Equal  
17 Opportunity in programs receiving Federal financial assistance,  
18 504 also has a government approved, federally approved manual  
19 that has a whole big section on employment and that's over-  
20 lapping, it's redundant with 503 requirement and in some  
21 cases inconsistent which is Affirmative Action for handicapped  
22 employment.

23 I think, incidentally, the consolidation is a  
24 proposal to break down any consolidation of 503, 402 and  
25 11246 and if that turns out the way I think it will, I think

1 it's a major step in the right direction and I think we need  
2 to do that with all the Equal Opportunity Regs.

3 MS. BECKER: Did you have a question?

4 MS. MORGAN: I just have a question. It seems from  
5 our discussion in order to have an effective or to effectively  
6 develop a new Affirmative Action Plan, there should be  
7 commitment by top management and there should also be a  
8 person employed to develop that plan who is what you would  
9 call a personnel generalist. Now, I'm not trying to turn  
10 this into a pitch for Affirmative Action employment of  
11 personnel generalists but are there any other components  
12 that you would see that has led to the successful development  
13 of your kind of employment?

14 MS. WARNER: Well, first of all, let's get back  
15 on the first one. First you have to understand that  
16 development of Affirmative Action as opposed to Equal  
17 Opportunity or the development of the new program in  
18 Affirmative Action as opposed to maintenance of an old one  
19 there are a lot of things that need to be pulled together  
20 if you don't have the pieces of paper. You are talking  
21 about people who are good with statistics and have a good  
22 statistical background. You are talking about people who  
23 have some sociology background when you are talking about  
24 the primary resource of the Personnel Manager so I think  
25 you have a difficult combination there that you need to look

1 at. It isn't really just Personnel Manager or Personnel  
2 generally. I think that's maybe 75 per cent but you need  
3 the very definite resources of your statistics -- your  
4 statistical people in a company and personnel generalist  
5 normally is not a statistician, okay, and so you've got two  
6 very major areas there completely integrated and there aren't  
7 a whole lot of single persons -- you know, one person who  
8 has -- and I'm not pretending I do because I don't -- within  
9 your one person who have both of those specialties.

10 MS. MORGAN: Okay. Well you should have a  
11 Personnel Office with support services from wherever you  
12 need it in the organization.

13 My question is really, what other elements do  
14 you see, can you identify with that would lend to the  
15 successful -- the apparently successful plan that you have  
16 developed and implemented at Hahnemann?

17 MS. WARNER: Okay. I think one of the major things  
18 is the ability to present the philosophy of Affirmative  
19 Action in a positive way. You need to present it and to  
20 find a way to have the company or the institution concur with  
21 the objective and then you work out the inbetweens.

22 I think another major factor is to find a way to  
23 reduce the fear that a company has or an institution has --  
24 the fear of hiring unqualified people -- that they'll have to  
25 hire unqualified people to reduce the fear of dealing with



1 the agencies that can provide some sort of assistance with  
2 them. I think that's another major -- the reduction of  
3 fear on the part of the company.

4 MS. BECKER: Ms. Warner, could you tell us  
5 briefly because our time is limited how you see the  
6 government effort -- how the government itself in relation  
7 to you, do they view it as you see it as a cooperative effort  
8 in compliance, Affirmative Action compliance or as an  
9 adversary effort.

10 MS. WARNER: Okay. I again have to separate from  
11 a personal standpoint. In the last year and a half I've had  
12 some excellent relationships and I can honestly say that I  
13 think that the agencies I've dealt with recognized that we are  
14 truly trying to achieve what we are trying to achieve and  
15 have not taken an adversary -- that doesn't mean they always  
16 say we are right. They certainly haven't -- but they have  
17 dealt with us to the extent that they believe we are trying  
18 to accomplish something and we have a common goal and at least  
19 to some extent that they were assisting us in accomplishing  
20 that goal if we would call them.

21 That's just a generalization. However, I need to  
22 stipulate that most of my peers outside of Hahnemann and in  
23 the financial industry have not had that experience. They're  
24 very, very threatened and, yes, they do view everyone of the  
25 agencies as being an adversary position. There's a great deal

1 of fear there. They would be petrified to come up here and  
2 say anything.

3 MS. BECKER: Have you anything you can tell us in  
4 addition to the things you did tell us on how the federal  
5 government, the agencies of the federal government can better  
6 implement the Affirmative Action Programs?

7 MS. WARNER: Yes, I have a whole list here. Do  
8 you want me to read them to you?

9 MS. BECKER: No, but if you want to give it to us  
10 written, we'll be happy to take it and read it.

11 MS. WARNER: Yes.

12 MS. BECKER: It's just for time but we would like  
13 very much to have it.

14 MS. WARNER: Okay, very good.

15 MS. SCHUMACHER: I do have a couple of very fast  
16 questions. You have alluded to a need that you perceive  
17 or you said directly that you feel there is more of a need  
18 for the government to provide training to employers and  
19 what the government expects as far as compliance. You've  
20 also spoken about the fear of employers in dealing with  
21 government agencies. Do you think that fear might stand in  
22 the way; might be an impediment to their taking advantage  
23 of whatever help the government might offer?

24 MS. WARNER: I think it very definitely would be  
25 an impediment to their taking advantage of it and I think the

1 first step is to reduce the fear. Sure.

2 MS. SCHUMACHER: What's the government's role in  
3 doing that, in your eyes?

4 MS. WARNER: What's the government's role ---

5 MS. SCHUMACHER: In reducing that fear what role  
6 do you think they should play?

7 MS. WARNER: I think you need to begin with the  
8 premise that if a company is accepting a contract and say  
9 they are willing to be an Affirmative Action contractor and  
10 are willing to do the thing -- that you start with the  
11 premise of believing it. It's kind of like in Personnel  
12 Management there's an accident theory Y. Now in theory Y  
13 you really want to believe in Affirmative Action and theory  
14 Z they're just little children and don't know what to do and  
15 if you hire a company to be a government contractor you  
16 believe they want to do what it is they say they will do  
17 and you begin to help them to develop programs that they  
18 need to do it and it's really an atmosphere that needs to be  
19 developed. And I think I've seen some of that lately, where  
20 agencies in general -- and this is an intuitive type of thing  
21 again -- I think there has been in the writing of the OFCCP  
22 Manual, they rewrote it once, I think, to change the tone.

23 It's that kind of thing they need to begin to  
24 do and that's not to say that we ever want to -- you know,  
25 I'm a little worried that the people who were up here before

1 would -- I'm not saying I don't believe in Affirmative  
2 Action because I sure as heck do but I think we need to  
3 find ways to do it and fear is not the way to accomplish  
4 it. So I don't know -- I mean, I don't have all the  
5 answers but, yes, they have to eliminate the fear before  
6 anyone under any set of circumstances will use any resource.

7           If you're afraid -- the Committee -- so you have  
8 a Committee and they are not going to be used if people are  
9 afraid to use them so first you reduce the fear.

10           MS. MORGAN: One other very quick question. You  
11 also made reference you've used some assistance in the past  
12 in developing your Affirmative Action Plans, in some  
13 specific areas. How were you referred to those consultants?

14           MS. WARNER: Well, I read everything that crosses  
15 my desk and when you say consultant I mean more in terms  
16 of community organizations. I use those types of things  
17 as resources.

18           MS. MORGAN: I'm talking about professional  
19 consultants.

20           MS. WARNER: I never used a professional  
21 consultant. I have gone to seminars, oh, okay, that's  
22 another example. Next week I'm going to a seminar -- a  
23 couple of weeks. It's going to cost my employer six or  
24 seven hundred dollars for me to get an update on all of the  
25 new regs, okay. I think the government should be doing that.

1 I think the Federal Government should be running these update  
2 type -- Philadelphia Human Relations does occasionally  
3 incidentally run an update but I mean this is a two-day  
4 seminar. It's an update on the new OFCCP Manual and I  
5 need it. I need it to keep on top of the interpretations  
6 but I'd rather have the Federal Government. interpretations  
7 first.

8 In other words, I wouldn't -- someone said, well,  
9 what will you do about the outside consultant. I still use  
10 outside consultants but first I want to know how the Federal  
11 Government interprets their own regs and I think they should  
12 teach me and not charge my employer seven hundred dollars  
13 (\$700.00).

14 MS. MORGAN: But your employer is getting federal  
15 money, is he not and using that money to fund your salary?

16 MS. WARNER: Sure, but a perfect example of that  
17 is we happen to be a non-profit organization, an educational  
18 institution and a hospital service industry and the money we  
19 are getting has a budget and every penny of that is for a  
20 certain thing and the other side of that coin is, yeah, can  
21 we put in seven hundred dollars (\$700.00) a year in that  
22 budget when we request the money. No. If we could then it  
23 certainly -- but the money would still be coming from the  
24 Federal Government, yes.

25 MS. BECKER: Ms. Warner, we have one more -- just

1 one question and that's going to come from Mr. Craig.

2 MR. CRAIG: Very briefly. To recapture the term  
3 "fear" that you used a few seconds ago, I would like to ask  
4 you, do you feel that the companies that you may have  
5 knowledge of or companies that you may be affiliated with  
6 or in close contact with -- do you think they have the fear  
7 of hiring unqualified people on their Affirmative Action  
8 Program?

9 MS. WARNER: (Nodding.)

10 MR. CRAIG: And they have the right to do their  
11 own kind of recruitment?

12 MS. WARNER: I'm sorry, what was the second part?

13 MR. CRAIG: Does the company do their own kind of  
14 recruitment?

15 MS. WARNER: Does the company -- oh, okay, the  
16 answer to the first part of the question is a very definite  
17 yes. Most people that I know interpret Affirmative Action  
18 to mean you have to hire someone just because of their  
19 race even if they are unqualified -- or sex. You have to  
20 promote someone just because the numbers say so. That's what  
21 they think it means. I have to disagree with that definition.

22 MR. CRAIG: Is that mostly private companies you  
23 are referring to or State or Federal Agencies?

24 MS. WARNER: I'm talking about private companies,  
25 mostly profit-making companies. They're more concerned with

1 where their money is going and their payroll.

2 MR. CRAIG: Would they be companies that may be  
3 utilizing Federal funds or State funds?

4 MS. WARNER: Well, for example -- they are federal  
5 contractors but not necessarily federal funds.

6 MR. CRAIG: Okay, go ahead.

7 CHAIRPERSON ALPERN: Thank you, Ms. Warner. You've  
8 been extremely helpful and we would appreciate it if you  
9 would give us those written recommendations that you said  
10 you would and anything else that might occur to you we'll  
11 be happy to have and if we should have some additional  
12 questions, may we get in touch with you?

13 MS. WARNER: Absolutely.

14 CHAIRPERSON ALPERN: Thank you very much.

15 (The witness was excused.)

16 CHAIRPERSON ALPERN: Our next Panel members are  
17 R. Dean Short, Karen McKreesh, Morris Nosbreg and Felix  
18 Muniz.

19 MR. OWENS: Good afternoon. We would ask for the  
20 record that the members of the Panel identify themselves  
21 beginning from left to right indicating your name, title and  
22 length of time in which you have served in that capacity.

23 Would you begin.

24 MR. NOSBREG: My name is Morris Nosbreg. I'm  
25 an employee of the Bureau of Prisons and I'm an EEO

1 Coordinator for the Northeastern Region. I have been  
2 associated with EEO since 1974, served in the capacity of  
3 an EEO Committee Member, Investigator, Counselor and now  
4 am employed in the Philadelphia Region. I've been there  
5 one year.

6 MR. MUNIZ: My name is Felix Muniz. I'm with the  
7 U.S. Postal Service, I'm the Hispanic Employment Program  
8 Specialist for my agency. I'm also the Hispanic Program  
9 Counsel Chairman for the Delaware Valley Area. I've been  
10 with the EEO Programs since 1974. My main job is to --  
11 the recruitment and training of Hispanic applicants and  
12 other community Outreach Programs.

13 MS. MC KREESH: Good afternoon. My name is Karen  
14 McKreesh. I'm the Regional EEO Manager for the United States  
15 Department of Labor in Region 3. I've been Regional EEO  
16 Manager for DOL for the past four years. Prior to that I  
17 was a Personnel Analyst for the Department of Defense for  
18 some six years. And I see the role of both EEO and  
19 Personnel as very much personally inter-related.

20 MR. SHORT: I'm Dean Short. I'm the EEO Officer  
21 of the United States Mint. I've been there four and a half  
22 years. I've been the Equal Opportunity field for twenty-plus-  
23 years, I guess, previously having worked for the Redevelopment  
24 Authority Equal Opportunity employee and prior to that  
25 working with a Real Estate Firm in the suburbs of Philadelphia  
back in the late '50's and early '60's when minorities were



1 attempting to move into the suburbs and trying to keep down  
2 the contention situations.

3 MR. OWENS: We would at this time like to  
4 determine what progress Equal Opportunity Commission has made  
5 with regard to implementing its new procedures for the  
6 submission, review and approval of federal agencies internal  
7 Affirmative Action Plans.

8 Now, to the Panel, do you feel that your agency  
9 will in 1981 be ready for the change to multi-year  
10 Affirmative Action Plans and if not, why not.

11 Would you respond, Mr. Short?

12 MR. SHORT: I am more favorably impressed by the  
13 rules and guidelines that have come out under the EEOC  
14 Commission. We formally tried to operate under what was  
15 then known as Civil Service Commission. However, it is my  
16 personal opinion that we will not be prepared to comply  
17 with the rules and regulations as of October 1st, 1981 or  
18 whatever date they are talking about. For a couple of  
19 reasons.

20 (1) The statistics that they've used, even given  
21 for this interim period which some of us are required to  
22 develop an Affirmative Action Program and Recruitment  
23 Program based on those statistics, were horribly out of date  
24 as was mentioned here earlier. They've given us the 1977-  
25 1978 update on those statistics but, at best, those are not

1 necessarily correct and we know the terms of Hispanics and  
2 Blacks -- they are probably grossly under-represented in  
3 troubled areas. One of our biggest complaints, I guess, is  
4 the lack of adequate training for our staffs to do complaint  
5 procedures and so forth consistent with what EEOC presently  
6 is requiring or has trained their own staff to do. I'm not  
7 saying they can't or won't do that. I've had indications  
8 that they would be willing to. But if they are asking one  
9 of my EEO Counselors to investigate or look into -- they  
10 don't like the word "investigate" -- at least they didn't  
11 used to -- into an EEO Complaint and then have it turned  
12 around that it wasn't done the way they wanted it done or  
13 it wasn't totally adequate or this piece is missing or  
14 something like that, it's not very helpful to me to waste  
15 that time and the Counselor's time not to mention the  
16 Complainant's time in that process. And, therefore, I think  
17 if we're going to do a total job within the federal system  
18 I'm only dittoing what has been said here a number of times  
19 that there ought to be a consistent training of people in  
20 various areas that they are being held responsible for to  
21 do that piece of the action and this probably should be done  
22 by the EEOC Commission itself rather than to let OPM handle  
23 it.

24 OPM meaning that they have a lot to do to get  
25 their act together and I think a lot of us would say that

1 there is something yet desired to be able to come up to the  
2 point where we are expected at least to comply with whatever  
3 guidelines and programs they are asking us to do. I'm in  
4 favor of the program two hundred per cent.

5 MR. OWENS: Thank you, Mr. Short.

6 Mr. Nosbrey, would you explain, please?

7 MR. NOSBREY: Well, we had some problems beginning  
8 with these things because we kept getting different sets of  
9 Orders as to how these things were to be made up.

10 As soon as I got one group going relative to  
11 getting the program here comes another Order recind that  
12 so-and-so and so-and-so. Now, this put my people in a state  
13 of confusion.

14 Now, let me explain something here. I may be  
15 working a little different from the rest of you. I work in  
16 the Bureau of Prisons and we are constantly training our  
17 Counselors, our committees and so forth with these new  
18 programs. And the thing that really we got hung up on was  
19 this. The civilian labor force figure. And this is what  
20 came up in one of the meetings. This kid asked me -- let's  
21 say, for example, the civilian labor force figure is six per  
22 cent of the employable women in secretarial work are hired  
23 by civilian labor force in this particular community but  
24 maybe fifteen per cent possible that could employed. Is  
25 that a fair figure. And this was kicked around. Do you

1 understand where I'm coming from?

2 This was kicked around and consequently they  
3 weren't so sold on the program by the civilian labor force  
4 figure. Now, I have not yet been able to overcome that so  
5 this has caused not -- the program will be made out, you  
6 know what I mean but this is something I am not clear on  
7 and most of the people that are working on the committee  
8 with me are not clear on it.

9 MS. MORGAN: Could I ask you to explain in  
10 addition to civilian labor force statistics what other  
11 factors you think should be considered in that process?

12 MR. NOSBREY: The availability of, for example,  
13 one of the prisons that I audit twice a year is in  
14 Allenwood, Pennsylvania which is in out of space,  
15 practically. There are no Hispanics up there. What are  
16 they going to do about Hispanics. I have my Hispanic  
17 Coordinator here with me today but he can't find Hispanics  
18 up there so when it comes to the Hispanic figure, we hit  
19 zero practically. One institution I called up this morning,  
20 they have one Hispanic because they are not there.

21 The same thing would be true of Orientals and  
22 Indians and honestly in many instances we don't have  
23 minorities of any sort in some of these mountainous places.  
24 Lewisburg, Pennsylvania doesn't have too many minorities  
25 up there. And when you go west and mid-west, it's almost a

1 lost cause so we can't reflect exactly what we want to  
2 because the people are not there.

3 MR. OWENS: Are you saying, Mr. Norbrey, that you  
4 do expect to have the Plan ready for implementation but that  
5 you have some grave concerns with regard to whether it will  
6 comply?

7 MR. NORBREY: Right. Without having an addendum  
8 I'm going to add on explaining why some of these things  
9 can't be accomplished.

10 MR. OWENS: Fine. Mr. Muniz, would you care to  
11 respond to that, please?

12 MR. MUNIZ: I think by 1981 our Affirmative Action  
13 Program -- we will not be prepared by 1981. One of the  
14 reasons is that many people feel that this is the special  
15 interest programs responsibility; they feel this is the  
16 EEO's specialists responsibility or the EEO Office's  
17 responsibility when, in fact, this is management's  
18 responsibility. It's their programs but many times when  
19 managers give the Affirmative Action Program -- many times  
20 when they delegate authority underneath them what happens  
21 is the people underneath that he has delegated authority to  
22 starts working on the Affirmative Action Program. They bring  
23 it to him and they say, that's not what I want. By the time  
24 the people who prepare that Affirmative Action Program and  
25 the Manager has already rejected it about ten times and then

1 he tells you, this is not what I want, this is what I want  
2 when in the first place he should have prepared the  
3 Affirmative Action Program. And this happens throughout  
4 every agency, not just our agency. Every Federal Agency  
5 the same thing happens.

6 Another reason is that many of the guidelines that  
7 are sent from EEOC usually go to the agencies headquarters  
8 so by the time it is filtered to the local agency the whole  
9 concept is completely changed so how can we work with an  
10 Affirmative Action Program and say it is going to be  
11 effective by 1981 when we have our hands full with a Manager  
12 that tells you, this is my program and this is the way I  
13 want it. But before that he tells you, prepare my  
14 Affirmative Action Program.

15 MR. OWENS: All right, thank you, Mr. Muniz.

16 Ms. McKreesh.

17 MS. MCKREESH: Thank you. I think it is a moot  
18 point as to whether the Department of Labor will be ready  
19 by 1981 to begin doing Affirmative Action under the latest  
20 guidelines of EEOC. I think we are really talking cosmetics  
21 there. I don't think we've really gotten to the reality of  
22 EEO and I'll elaborate on my point in a moment.

23 I think some of the reasons that some federal  
24 agencies may have difficulty in getting operational and  
25 becoming effective, in being result oriented are as have

1 stated but just to reconfirm lack of training, first of all,  
2 for themselves and their staff, if they are lucky enough to  
3 have a staff. Regarding what the guidelines, in fact, say  
4 and what is expected so that they can then conduct training  
5 internally; so that their managers and supervisors know what  
6 is expected of them.

7           The problem with statistics is a continuing one.  
8 Hopefully the 1980 census and, perhaps, the five-year  
9 census, if they become a reality, will become some kind of a  
10 mediating factor in that regard but we cannot anticipate the  
11 '80 census for another year so we are certainly not going to  
12 have good statistics to go into '81 with.

13           Technical assistance by the monitoring agencies,  
14 OPM, EEOC is something that is an absolute must.--if you  
15 are then going to be about the business of monitoring what  
16 supposedly is in place. There's no sense to comment a year  
17 from now if nothing is in place. Technical assistance might  
18 prevent spending -- a lot of wheel-spinning time.

19           Again, right up there at the top five is the  
20 major problem. The guides that we have received regarding  
21 EEOC Regulations has been received by our national office  
22 and then transmitted to the ten regions. I have received  
23 nothing locally from the Philadelphia Region of the EEOC  
24 and yet I have responsibilities to thirty-five hundred  
25 employees in five states plus the District of Columbia.

1 Hand in glove with the lateness of the guidelines is what  
2 EEOC has stated as one of their primary concerns, development  
3 of internal monitoring mechanisms. I take that to be ADP  
4 procedures, et cetera and here some technical assistance at  
5 some level would certainly be, I think, a good thing. We  
6 have had an ADP system that is operated out of our national  
7 office since 1975 and the bugs are still not out of that yet  
8 let alone when we get into the new analysis criteria, so I  
9 think we are talking many different levels.

10           As the last speaker from the last Panel mentioned  
11 when you're talking EEO you are talking a number of skills.  
12 If the incumbent EEO person does not have those skills, they  
13 have to engender support from agency personnel. We are  
14 talking about having an EEO background, we are talking about  
15 having a personnel background, we are talking about having  
16 statistical knowledge, we are talking about having community  
17 PR kinds of facilities, so everyone of these things have to  
18 be operational before you can say you can have a program  
19 that's going to work.

20           Now, getting back to my leading statement which was  
21 the cosmetic change with the result of some surgery enacted  
22 in terms of monitoring responsibilities from OPM to EEOC, I  
23 feel that we haven't gotten to the reality of the situation  
24 yet and that is, who is, in fact, responsible for EEO at its  
25 base level in the agencies and who becomes the scapegoat for



1 for these realities not being achieved. What we have here is  
2 that management ostensibly is responsible for the achievement  
3 of EEO since EEO officers, managers, directors, whatever do  
4 not have the authority to hire and fire. We have basically  
5 a staff advocacy position with no authority. We have the  
6 constant pull of decentralization versus centralization,  
7 that is, where does the power lie, what little power there is  
8 in EEO. Is it Washington, is it headquarters at command  
9 level, is it military. In my case it's DC versus the field  
10 and then add to that the very real issue of, even if you had  
11 the authority where the bodies could do the job in EEO or  
12 it's not that we're going to be hiring the people but if we  
13 can't provide the places to go and the people to contact  
14 and sitting by that Manager's side and reminding him every  
15 day that Affirmative Action and EEO are a reality what's  
16 going to get done. So to me the two realities in EEO are,  
17 where is the staff for EEO and -- do we have a functional  
18 field to carry out.

19 MS. MORGAN: To elaborate on that a little, could  
20 you explain to us a little, within your agency in particular  
21 what is your staffing at the regional level. Has there been  
22 any change made to your agency in that staffing given the new  
23 requirements now imposed upon you and what is your experience  
24 with the division of responsibility among its staff, both  
25 within your region and the division between the region and

1 headquarters of your agency with respect to meeting all those  
2 requirements?

3 MS. MCKREESH: Department of Labor Region 3  
4 comprises the States of Pennsylvania, Delaware, Virginia,  
5 West Virginia, Maryland and, of course, the District of  
6 Columbia. There are some thirty-five hundred employees in  
7 that region.

8 I am a Regional EEO Manager, full-time position.  
9 I have a secretary and I have a program assistant which is  
10 a para-professional. And that is the full-time EEO staff  
11 to service thirty-five hundred employees and all applicants.

12 We have one part-time Federal Women's Program  
13 Manager position which is twenty-five per cent of an  
14 employees official duty time and we have one part-time  
15 Hispanic Employment Program which again is a collateral  
16 assignment, twenty-five per cent of an employees time from  
17 their official duties is devoted to the Hispanic program.  
18 So, basically, what we are talking about is two programs that  
19 have been on the books for federal agencies. The Federal  
20 Women's Program has been in existence for some fourteen  
21 years. Hispanic Employment Program at least eight and yet,  
22 per guidance, per OPM, CSC guidance, if you will, the only  
23 requirements for those programs are exactly what we have in  
24 the Department of Labor which is three in the field and that  
25 is part-time twenty-five per cent positions. That is to say,

1 OPM guidance indicates that for federal agencies there should  
2 be a full-time Hispanic and a full-time Federal Women's  
3 Coordinator position at headquarters level but for those  
4 agencies that are field agencies regardless of size,  
5 regardless of scope, regardless of geography at the DOL  
6 there are some one hundred forty-six locations I have  
7 responsibility for.

8           There is no measure of how many staff -- full-time  
9 staff an agency should have other than twenty-five per cent  
10 to Federal Women's, twenty-five per cent Hispanic employment--  
11 so we are in accord with those guidelines that has been given.  
12 There has been no change in our staffing picture in EEO since  
13 I came to the Department in '70 -- late '75-'76, other than  
14 the fact that there has been no EEO Officer position before  
15 that so perhaps there's one-hundred per cent increase if you  
16 will, and, also, we were successful in getting a secretarial  
17 position in Upward Mobility so we have grown but I don't  
18 think there has been any concomitancy with growth of our  
19 Region in terms of our employees. We went from one thousand  
20 to thirty-five hundred nor in terms of any impact in the  
21 change of Civil Service reform or transference of power  
22 from OPM to EEOC for power so there's been no impact. My  
23 agency is no different from the other agencies. There has  
24 been no impact at the field level, at the agency level, if  
25 you will, because of these changes. There have been requests

1 for additional staff. That's why I mentioned to you  
2 decentralization versus centralization. I think there's  
3 some kind of misconception out there somewhere that people  
4 at the top, perhaps, first of all are aware of all the  
5 problems that are experienced at the bottom and that technical  
6 assistance, perhaps, from another location is all that is  
7 needed instead of actual bodies out there, talking to the  
8 troops, finding out where the candidates are, sitting with  
9 managers constantly.

10           You know, there really are some managers that  
11 believe in Affirmative Action that want to do right by EEO  
12 but we have a tendency to kind of let them go their way so  
13 that we can spend time with those that could care less and  
14 try and change their heads and I think what we are really  
15 talking about is, how can that one committed person who  
16 eventually becomes the scapegoat when the plan doesn't work,  
17 do all those things that they are capable of doing. And  
18 there are a lot of skills that an EEO person has.

19           MR. OWENS: Thank you. And that brings us to the  
20 very next question. With regard to implementing or developing  
21 your internal Affirmative Action Plans, what technical  
22 assistance is available to you from the EEO headquarters as  
23 well as your local EEOC officials.

24           Mr. Muniz.

25           MR. MUNIZ: Most of the outlines technical assistance

1 that we get from Affirmative Action Programs come from the  
2 local regional officer here by our agency. We have a staff  
3 of technicians. We have EO Managers at the regional level.  
4 We have EEO Coordinators at the regional level that deal with  
5 any type of technical assistance that we may need in  
6 implementing or carrying out our Affirmative Action Programs

7 We have a full-time Women's Program Coordinator.  
8 We have a part-time Hispanic Regional Coordinator. All these  
9 people help us in preparing our Affirmative Action Program  
10 if we need any help but any help that we get from EEOC comes  
11 directly either to Headquarters or to the regional office  
12 not to the local offices.

13 MR. OWENS: Okay.

14 Mr. Norbrey.

15 MR. NORBREY: I think I'm a little more fortunate  
16 than this. My Director is EEO-gung-ho and what we did in  
17 the beginning was to form a sort of team. The Legal Officer,  
18 the Director and myself and also I have aid from the  
19 Chief of the EEO Section of the Bureau of Prisons, Dick Laos.  
20 I can call the Bureau of Prisons Legal Counsel anytime I want  
21 and I have no problem with technical assistance.

22 Also, there's another cat in that bag is I'm to  
23 provide technical assistance to the institutions there.

24 MR. OWENS: All right.

25 MS. MORGAN: Are you able to provide that assistance?

MR. NORBREY: Yes, I'll tell you what we do. We

1 kind of got out of date on this thing, as I told you because  
2 the plan kept changing, see.

3 Well, originally what we did was to call a meeting  
4 of EEO Committee Chairman in all the institutions in the  
5 northeast region. And we went through the Affirmative  
6 Action Plan with them and then we requested that they have a  
7 session that EEO Committee, the people who are going to  
8 draw up the plan and explain to them what we explained to  
9 them when they came to the conference.

10 Also for recruiting, we had a special Recruiters  
11 Conference for recruiters explaining to them their duties.  
12 And I had all the people from the various agencies in the  
13 Philadelphia area such as Hospital Administrators, Food  
14 Administrators and said for them to come in and explain to  
15 these recruiters exactly what to look for when they are  
16 recruiting. So you see when we got ready to draw up our  
17 plan, we had the resource of this information to work with.  
18 And I'll pass this onto the people in our community.

19 MS. MORGAN: I'm just wondering how were you able  
20 to get the resources to do that?

21 MR. NORBREY: Well, Dick Laos, who is the Chief  
22 of the EEO Section of the Bureau of Prisons arranged a  
23 meeting for us in Washington. All the EEO Coordinators. See,  
24 there's five of us in the five regions and he had people from  
25 OPM, from the Justice Department to come over to the meeting

1 and explain to us various facets of the plan.

2 MS. MORGAN: Okay, thank you.

3 MR. OWENS: Mr. Short, would you like to respond  
4 to that?

5 MR. SHORT: I'd like to make a couple of comments.  
6 I surely am not hesitant to call on OPM or EEOC for any help  
7 that I can get and so far they have been helpful to the  
8 extent that may be possible and I'm not so sure they know  
9 what they are doing either anymore than some of us do and  
10 I say that not half facetiously but somewhat true.

11 We had a meeting here a few months ago with the  
12 EEO person for Region 3 of OPM and it was explained to us  
13 particularly about FEORP, Federal Equality Opportunity  
14 Employment Program and about the kind of resources that OPM  
15 was going to be offering in terms of special, not necessarily  
16 behind the door illegal, heaven forbid that OPM should do  
17 that but that they would attempt to work with us to develop  
18 the sources of recruitment and so forth in a special way  
19 which would allow us to come up with these under-representative  
20 numbers and so forth that we've spoken.

21 More recently I have -- well, let me briefly state  
22 what has happened. In Philadelphia as you may be aware, we  
23 have had a lay-off of our Police and Fire Forces because of  
24 necessary budget cuts and so forth and I looked upon this  
25 particularly for those agencies around town, there are five or

1 six of us who use police-type individuals for security  
2 purposes and, therefore, I thought this would be a great  
3 opportunity to do some recruitment particularly since the  
4 people at the Academy who are continuing at the voluntary  
5 program on their part and maybe some more recent people who  
6 are on the Police Force particularly women and Hispanics  
7 didn't have much seniority might be interested in working  
8 for the Federal Government even though taking a loss in pay  
9 of some four or five thousand dollars as far as entry level.

10 To follow through with this, I checked over to  
11 OPM and asked could these people get on their register. No,  
12 sorry, the Register is closed. I wasn't satisfied with that  
13 answer. Therefore, I called the Assistant Director for the  
14 local Manpower Recruitment of OPM and was told, well, there  
15 might be a way. If there was enough interest it might be  
16 possible to open up the Register briefly, which I don't  
17 know what that means except maybe a euphuism for a day or two  
18 so they wouldn't have to deal with record numbers.

19 I understand their problems as far as processing  
20 applications go. That's understandable but in order to make  
21 the system work something has to be done. Well, now I have  
22 subsequently contacted Police Academy; explained the  
23 situation and the whole thing as candidly as I could about  
24 the problems and this person did talk with the volunteers,  
25 the recruitment people at the Academy right now some two



1 hundred of them and surprisingly a hundred of those people  
2 indicated they wanted to fill out the "green monster" --  
3 the 171 Form for Civil Service.

4 I have now delivered a hundred application forms  
5 to the Police Academy and I don't know what response I'm  
6 going to get. They're going to send it back to me. I in  
7 turn will take them over to the OPM and say now, open up  
8 the doors briefly. Take these applications along with  
9 whatever others you may have and process them to get them  
10 on the Register.

11 Now, the advantage, of course, in this situation  
12 if that happens. I'm not saying it won't, I'm just hoping  
13 it will is that we will at least have the names of those  
14 people who are interested. Our own personnel people will  
15 be able to have looked at these applications even before  
16 to know who some of these people are and to give a quick  
17 see as to who may be qualified or what. I have to assume  
18 that they've gone through this kind of training. They are  
19 at least qualified or highly qualified for our purposes and  
20 we can reach them by name and so forth, we can -- we might  
21 be able to get a hold of some of these people. But this  
22 is an instance where they initially, no, we can't do it, the  
23 Register is closed.

24 Now, I don't know how many times this has been  
25 repeated in terms of recruitment process. We know, those of

1 us who work for the establishment know all too well how long  
2 it takes to get people onboard through the normal procedures  
3 when a Register is available not to mention when you get  
4 turned down. This is an example where OPM particularly could  
5 be more open or more receptive in those areas where we are  
6 in terms of recruitment, trying to get these resources,  
7 namely, people available to us rather than say, oh, sorry,  
8 we can't do it. Or at least on an initial reaction.

9 MR. OWENS: Thank you.

10 Ms. McKreesh.

11 MS. MCKREESH: I'd just like to briefly say the  
12 same tools are available to our agency EEOC, OPM since I  
13 don't see much training that has been established and  
14 advertised up to this point. We also have the internal  
15 process within the Department that we undertake. We use  
16 external sources such as the community. We do have in  
17 place, in the Department, a very good EEOC Supervisor's  
18 Sixteen Hour Training Program that operates out of  
19 Washington. It's a team of consultants that come in and  
20 do training.

21 The problem there is not enough courses for our  
22 Managers. It's an excellent tool to make things known.

23 MS. BECKER: How many hours did you say?

24 MS. MCKREESH: Sixteen.

25 MS. BECKER: Sixteen.

1 MR. NORBREY: Excuse me, Mr. Short.

2 MR. SHORT: Yes?

3 MR. NORBREY: I'd like to inform you that the  
4 Correctional Officer Register for the Bureau of Prisons  
5 is open.

6 Now, there's a threatened freeze coming up.

7 MR. SHORT: Well, it's already a fact.

8 MR. NORBREY: But it is open as of this morning.

9 MR. SHORT: You didn't need to mention that but  
10 I'm just hoping quite frankly that even if there are freezes  
11 on them we might not be able to hire some of these people  
12 although I suspect security might get a priority over some  
13 other jobs in terms of hiring nevertheless OPM will be able,  
14 to process the application to determine whether or not they  
15 are rated high enough and so forth so that whenever the doors  
16 open and so forth, these will be available.

17 MR. OWENS: Okay. Now, to the extent that technical  
18 assistance is available, have you requested such assistance  
19 and if so, was it honored?

20 MR. NORBREY: Yes.

21 MR. OWENS: Mr. Norbrey.

22 MR. NORBREY: Yes, I've requested it and I've gotten  
23 it. No problems with that.

24 MR. OWENS: Mr. Muniz.

25 MR. MUNIZ: I've no problems.

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MR. OWENS: Ms. McKreesh.

MS. MCKREESH: Recently we've gotten some technical assistance feelers from OPM and we are in the process of requesting that for our personnel status, I might add that is regarding feelers. We believe very strongly that for recruitment employment targeted groups to work, it has to come through the staff and Personnel Office with advice and assistance from the EEO side of the house.

MR. OWENS: All right, Mr. Short.

MR. SHORT: I have no strong reservations -- I mean, I'm a skeptic at that point, through some past experiences but I'm quite willing to say that so far they haven't said no outright and where I've called EEOC it's a matter of maybe trying to have them provide either for my own local staff or our EO Counsels as opposed EO Officers the Federal Statutes here in Philadelphia. Some type of workshop or training program for a day or two to walk through with us, the plans and stuff that they are expecting to implement.

MR. OWENS: All right.

MS. MORGAN: I know that some of you have addressed the fact that EEO instructions regarding availability under utilization in setting goals and time- tables has not been completely clear and I was wondering if you would elaborate on that, Ms. McKreesh.

1 MS. MCKREESH: Well, one example I can give which  
2 might show a difficulty relates to the PATCO system,  
3 Professional Administrative Technical breakdown of your  
4 positions beyond the sex and race grouping so that you  
5 can then lump into a different fashion and I find that what  
6 we are providing to one higher authority does not satisfy  
7 the requirements of what we are being asked for in another  
8 respect so there is some series, some category of jobs in  
9 the Department we have categorized as professional and  
10 continue to.

11 They are bread and butter series. They go up to  
12 GS-12 level. When looked at under the PATCO system they  
13 become administrative or less than professional and I find  
14 that we are doing two sets of ---

15 MS. MORGAN: What two agencies -- you say that  
16 there are several agencies that require information --  
17 what agencies?

18 MS. MCKREESH: Well, EEOC and OPM and the  
19 Department has a third definition, if you will.

20 MS. MORGAN: Okay. And so you're saying these  
21 definitions are causing a lot of confusion because they are  
22 not completely compatible?

23 MS. MCKREESH: They are an example of the fact  
24 that some things have to be ironed out, yes.

25 MS. MORGAN: Okay. I was wondering, Mr. Short, if

1 you could likewise elaborate on some of the problems with  
2 identifying under-utilization, setting goals and timetables.  
3 Are there any inconsistencies between agencies that you have  
4 to work with?

5 MR. SHORT: Well, I don't know whether there's  
6 any inconsistencies say between OPM and EEOC as to either  
7 the figures and so forth. I called over to the Department  
8 of Labor directly to ask for their statistics and they  
9 essentially substantiated the same ones that were put out  
10 on a national basis located by cities under the SMSA.  
11 I was reminded very candidly by my Hispanic Program Manager  
12 that he was questioning the -- I think it was the .7 figure  
13 used for Hispanics in the Philadelphia area and so forth  
14 as to being valid.

15 I have no idea whether that is right or wrong  
16 and I don't know that he does. Most of us suspect that it  
17 is or should be somewhat higher in reality.

18 MS. MORGAN: Is there reason to believe that the  
19 other groups may likewise be under-represented?

20 MR. SHORT: I'm sure to the extent that, you know,  
21 we are never going to come out with a hundred per cent  
22 correct census figures. But the very areas, the very kinds  
23 of people, the people that we are talking about here in  
24 terms of their being correctly represented on any statistical  
25 basis in the job market whether they've given up looking for

1 a job. In terms of the reluctance of the heads of household  
2 other people who give accurate information of really who is  
3 living there and all this sort of stuff just leaves us a  
4 gap we don't know how wide it is in terms of what reality  
5 means and so forth and I suspect in that sense most of us  
6 ought to be shooting for much higher figures than what  
7 actually is.

8 In some ways I would be satisfied to settle with  
9 what is but nevertheless ---

10 MS. MORGAN: So you're saying the impact this has  
11 is that the goals is ultimately is set too low.

12 MR. SHORT: In many areas I suspect it is but in  
13 many areas the recruitment problem is very often unless the  
14 OPM is willing to bend its way to make it work then we are  
15 going to be looking, always going to be looking to CONSILIO,  
16 SUR, NOW or something like this in order to do our recruit-  
17 ment contacts which we will use but that might be -- you  
18 know, it's sixty-some agencies in the Philadelphia area  
19 all going down to the same place and it's got to be on a  
20 broader basis than that.

21 Perhaps we ought to have the opportunity if they  
22 really wanted to give us freedom to see what we'll do and  
23 work it in force EO types as well as personnel recruiting  
24 types, direct recruitment authority -- I'm not suggesting  
25 lowering standards in any form or fashion which is the concern

1 of the gentleman, I think, over there but we've been given  
2 the opportunity to do some recruitment in some of those  
3 under-represented areas why should we have to wait for EEOC  
4 and the Courts to come in and say, you are lousy here,  
5 therefore, we will require over the next two years or five  
6 years for you to be allowed legally to go ahead and do that.

7           The Federal Program is at the same point of  
8 walking the thin line as to even elected officials to make  
9 a decision should they hire blacks or a woman because they  
10 are what they are, Hispanic or so forth. It's a fine wire  
11 you're walking yourself sometimes.

12           MS. MORGAN: I'm just wondering, have any of you  
13 in the past relied on Consultants for technical assistance  
14 if you've had problems in developing your Affirmative Action  
15 Plan and we're kind of running out of time so if you'll just  
16 run down the line.

17           Mr. Short, have you used Consultants?

18           MR. SHORT: Not from bringing someone outside in.  
19 I have done the same thing Ms. Warner had done, namely to--  
20 I attend every opportunity I can -- sessions that provide  
21 these kinds of extra help and so forth. Either on a  
22 professional basis and or when the City Commission on Human  
23 Relations or some other resource is available and I go, if  
24 my time allows it.

25           MS. MORGAN: Okay, Ms. McKreesh.



1 MS. MCCREESH: I guess it's been a cross-  
2 fertilization process with myself. I have been solicited by  
3 some community organizations, by some local agencies to  
4 provide assistance to them and in turn have learned from some  
5 things that they do or do differently than us but have not  
6 in the sense of a professional group done that but have quite  
7 a bit of interaction with a lot of varied community and  
8 agencies and training or educational institutions who have  
9 picked these up and employed them.

10 MS. MORGAN: Mr. Muniz.

11 MR. MUNIZ: I've been involved with many community  
12 organizations here in the Delaware Valley where we have  
13 conducted workshops, seminars and many of the agencies have  
14 requested assistance in trying to set-up some type of skills  
15 bank where it would help the agency when we call upon them  
16 to supply applicants for certain specific jobs. I have  
17 been able to help them in that area in the sense that we  
18 have gone with the Assistant -- the old Hispanic Taskforce  
19 and now the Head Counsel where we have been doing -- getting  
20 applicants, getting names, what their qualifications are,  
21 what kind of work they would like to do and I've been  
22 furnishing the agency and many community organizations in  
23 that area.

24 At the present time, we are also involved in that--  
25 in getting a list of applicants and referring them to

1 different agencies for consideration for employment. But  
2 from what I have seen here, really, you know, getting away  
3 from this point, I see here this is just -- this is not  
4 really our objective. I mean I hate to sound a little bit  
5 more drastic but you people talk about Affirmative Action  
6 and what is Affirmative Action, you know, to all of us.

7           The speaker before us really gave a different  
8 issue but really Affirmative Action is when you and I get  
9 off of our seat and do something to help the community.  
10 Right now, here in the Philadelphia area, the Hispanic  
11 community is dying for jobs, the black community is dying  
12 for jobs, thousands of kids in the streets, no jobs, no  
13 training programs. Every agency they turn to is saying, no,  
14 you have to be on the Register. Every organization you go  
15 to -- oh, we bang every agency every day and there's no  
16 response.

17           I believe as a group the main purpose of this  
18 Hearing in here in the Philadelphia area should be not just  
19 to think about Affirmative Action when it comes to Upward  
20 Mobility Training but what about recruitment; what about  
21 getting these people ready for jobs that opened in the area.

22           You know, I heard people saying here about  
23 different kind of Laws, different types of items that says  
24 this, this says that, but what are we doing to help these  
25 people. What are we doing, what are you doing, what am I doing

1           Are we doing anything effective to tell the people  
2 we have a good Affirmative Action Program. Every place we  
3 go I coordinate a lot of programs with OPM in the recruitment  
4 and training. We tried to set-up a training program for  
5 the Pace Exam. We couldn't even get assistance from different  
6 agencies and this is what I'm getting at. This is why I'm  
7 fed up. I've listed everything here. I really am fed up.  
8 I don't think we are doing the job. That's just the way  
9 I feel.

10           MS. MORGAN: Mr. Norbrey, have you paid outside  
11 Consultants to help you develop your Affirmative Action  
12 Plan?

13           MR. NORBREY: Indirectly, yes. The Bureau of  
14 Prisons is constantly sponsoring seminars and they use  
15 private concerns to come in and discuss or explain various  
16 areas of Affirmative Action Plan to us. We also have the  
17 benefit of our own personal inter-change and inter-action  
18 relative to Affirmative Action.

19           For example, when it comes to recruiting, I've  
20 organized recruiting teams within the Northeast Region. One  
21 person doesn't go -- two or three from the same area -- and  
22 they bring back input from the areas which they traverse  
23 so you see we work not as a big happy family but more like  
24 an entire team and we use all the professional consultants  
25 we can possibly get a hold of but most of it comes from

1 these seminars and classes sponsored by the Bureau of  
2 Prisons.

3 Also, Civil Service uses that.

4 MS. MORGAN: Ms. McKreesh, I'm wondering if you  
5 would respond to this question. We understood in determining  
6 what the responsibility of OPM and of EEOC is with regard  
7 to FEORP and the overall Affirmative Action Plan and how  
8 do you see these agencies as providing conflicting  
9 requirements.

10 I know you've shared some of your views with us  
11 before. I wonder if there are any other areas?

12 MS. MCKREESH: Well, I think that FEORP actually  
13 comes under the responsibility of OPM. They are the lead  
14 agency on that but it is very much an integral part of the  
15 Affirmative Action Plan that EEOC must produce and therefore  
16 it is integral to EEOC to see that that is developed and  
17 carried out. I think at this point there is probably some  
18 difference one to the other between those two agencies in  
19 terms of getting those strategies.

20 MS. MORGAN: But overall, it hasn't presented a  
21 problem -- the two agencies getting their act together and  
22 conveying what they want to you?

23 MS. MCKREESH: I think when it's translated down,  
24 the problems as we mentioned in our opening statement -- the  
25 EEO types in federal agencies are willing to do the job if,

1 first of all, told what it is that needs to be done include  
2 terms in timely fashion and given the tools to work with  
3 that are appropriate and what we are saying is, we don't  
4 have the tools. They may or may not be factual at this  
5 point. We are getting guidance. Sometimes we are getting  
6 inconsistent interpretation of guidelines and we have to go  
7 to, you know, our Command to get that.

8           We are not seeing a lot of technical assistance  
9 that isn't asked for -- in other words, a lot of programs  
10 that are just being developed and not as a matter of  
11 course which, of course, should be done when you are  
12 instigating a new system. One would expect to be able to  
13 just -- just to give you an example: Within the EEOC  
14 requirements for Affirmative Action Plan, there was a plan  
15 for employment with goals for Hispanic, Blacks, Women,  
16 et cetera.

17           There is also another plan for handicapped and  
18 the Rehabilitation Act has been a Law since 1973 but if  
19 you translate that down to the federal agencies and even to  
20 EEO types, what in fact do you federal employees, managers,  
21 supervisors and EEO officials know about the rights of the  
22 handicapped -- whether they are mental or physically  
23 handicapped.

24           How can EEO Managers, Women's Coordinators,  
25 Counselors, Hispanic Coordinators provide advice and assistance

1 to those Supervisors and the Directors if they can't, in  
2 fact, understand the full parameter of the Law -- what does  
3 reasonable accommodation mean, what are artificial barriers  
4 to employment, what can we get GSA to do about changing the  
5 accessibility, how public transportation can be changed so  
6 that people can get to the door of the federal establishment  
7 that they can't open to get in.

8           It goes back to the core of, you know, have we  
9 spread the word, have we made our trainers, that is, our  
10 EEO people fully aware and versed so that they can then  
11 train others to know.

12           MS. MORGAN: Just to follow up on what you said  
13 about Section 4, wasn't your agency designated to appoint  
14 a Title IV Coordinator to develop a plan to show that your  
15 programs were, indeed, accessible by -- I think the date  
16 has passed?

17           MS. MCKREESH: Yes, I expect within the federal  
18 agencies there are different ways of accomplishing  
19 Affirmative Action translated EEOC requires an Affirmative  
20 Action Plan for the handicapped. In many federal agencies  
21 that plan is developed in the personnel side of the House  
22 but monitoring of that plan and acceptance of compliance  
23 against that handicapped plan are the responsibility of the  
24 EEO officials so that the responsibilities are in a  
25 different section and might come in there and in the past

1 have been there and in some agencies it is vested entirely  
2 in EEO. So there again is the staffing problem. How many  
3 people do you have to do, oh, the many things that you want  
4 them to do with respect to the different targeted groups,  
5 so in some cases you have smaller agencies where the  
6 Personnel Officer -- full-time Personnel Officer is  
7 designated as the Handicapped Coordinator for employment and  
8 also as the EEO Officer so, triple-hatting in some cases  
9 is not uncommon.

10 MS. MORGAN: Okay, before I ask a question that  
11 is common to all the Panel, I want to ask Mr. Muniz -- we  
12 have referred to this special emphasis programs and I'm  
13 just wondering if you would give us your recommendations  
14 on how you think the special emphasis programs and the  
15 Affirmative Action Programs can be improved?

16 MR. MUNIZ: On the Affirmative Action Program  
17 dealing with the Hispanic, I believe that one of the areas  
18 that should be concentrated for the Hispanic would be,  
19 Number 1, increased recruitment, increased training. Go out  
20 into the community and see where the applicant is at. What  
21 happens is that many agencies today they just go to community  
22 organizations or schools but they never volunteer to go to  
23 the streets where the applicants are at to -- where the  
24 people they are looking for jobs -- they beat the streets  
25 every day like a cop does.

1 Many times most of them do not do this. They  
 2 depend on a phone call that has personal contact to get the  
 3 people that they need. That has worked for me, personal  
 4 contact with the people instead of a phone call. I believe  
 5 in the Affirmative Action -- that should be increased, that  
 6 should be emphasised. Personal contact for recruitment,  
 7 training, Upward Mobility, for the in-service employees and  
 8 Hispanic and also for the Upward Mobility and once we bring  
 9 them in, we should also concentrate in a special emphasis  
 10 program on retention because many times an agency gets  
 11 Hispanic employees and two weeks later the employee leaves.  
 12 Why, you ask him, why. He says, well, I was there I was  
 13 placed at a desk and said, you have the job but they didn't  
 14 give me an explanation what my job was so I became  
 15 frustrated and I just left the job.

16 Maybe a little guideline from someone telling them,  
 17 well, look, this is your job; these are your duties. This is  
 18 the way to do it. That employee would have stayed in that  
 19 particular agency but the drop-out at the Hispanic applicants  
 20 that go into agencies are in great numbers because there are  
 21 no follow-ups either.

22 There should be follow-up on these special  
 23 emphasis programs, when applicants are brought in to the  
 24 Federal Agencies.

25 MS. BECKER: Do you look at the special emphasis  
 program as one level or more than one level as far as



1 recruitment -- that is low-level entry-level jobs or are you  
2 looking at it in a professional level also?

3 MR. MUNIZ: I'm looking at the professional level,  
4 the intermittent level -- like GS-2, 3 and 4 and so forth.

5 MS. BECKER: What would you recommend as far as  
6 strengthening the professional level recruitment program  
7 under the Hispanic emphasis program?

8 MR. MUNIZ: Well, one of the areas like I  
9 mentioned before is to visit schools where population of  
10 Hispanic students are in great numbers, Number 1.

11 And, Number 2, there is nothing wrong with  
12 contacting the community or organizations.

13 Number 3, there are a lot of let's say besides  
14 community organizations, there are a lot of applicants that  
15 are really in the streets. That's where I found the most  
16 qualified applicants for jobs, for example. I'll give you  
17 an example.

18 In Outreach we have postal inspectors which they  
19 start out at a salary of seventeen to nineteen thousand a  
20 year. I contacted community organizations and not one came  
21 up with an applicant. I went into the street and I went to  
22 the college campus among the students and I was able to find  
23 candidates qualified for this particular positions and the  
24 one that I did recommend that did not meet our standards I  
25 referred him to other agencies. That's another thing that

1 special emphasis programs in other agencies should also  
2 serve as a referral agent to other agencies. That could  
3 also be recommended.

4 MS. MORGAN: I'm just wondering if you can comment  
5 on the effectiveness of MH?

6 MR. MUNIZ: I don't know too much about MH.

7 MS. MORGAN: Okay, I would just like to run  
8 through the Panel right now and ask you to summarize what  
9 you think is the major problem in implementing Affirmative  
10 Action Plans and what recommendations you would recommend  
11 to resolve some of the problems.

12 We'll start with Mr. Short, please.

13 MR. SHORT: Well, there's a couple of areas that  
14 I didn't mention. One of them is Upward Mobility Program  
15 in general is still not a -- a fiasco. It hasn't gotten very  
16 far off the ground in most agencies. The federal government,  
17 I think, across the board and particularly in some areas has  
18 not seen fit to provide enough training monies basically for  
19 people who would want to shift from deadend positions and  
20 so forth.

21 I work at the Mint which is a factory and rather  
22 then provide too very many slots for on-the-job training, we  
23 have almost all the mechanical kind of skills that you can  
24 think of. They come in, they hire off the street rather  
25 then take an employee who is stuck here for some sort of

1 additional training to do that. And I'm sure we are not  
2 unique.

3           Sure the veterans' preference and that may be kind  
4 of a dead issue but I suggest veterans' preference gets in  
5 the way. As a former veteran myself I didn't go to war so  
6 my children or my daughter -- my black children which we've  
7 adopted could not find a job some day because of the patterns  
8 of discrimination. I think maybe a five per cent one time  
9 getting on the job preference might be utilized for veterans'  
10 but to have a life long tenure based upon that is a bit  
11 ridiculous.

12           One other area which I think we all suffer from  
13 and I don't want to sound like sour grapes is the great  
14 level of most EEO types is not at a peer level with those  
15 people whom they are expected to deal with and influence  
16 from time to time in terms of the -- we are still rated for  
17 the most part against GS-11 staffing-type people. Now, this  
18 is where we are. Some of us have 11, some are 12's and  
19 so forth and they try to -- they were fooling around thinking  
20 about hiring someone at the 7 level for the job I am now  
21 holding at the Mint and so forth.

22           It's just a question of trying to be influential  
23 enough to be listened to and hopefully something happens.  
24 I have no problem with talking to people at any level. I'm  
25 fairly well received but in some instances I'm sure it goes

1 in one ear and out the other as far as any result in action.  
2 And this is thing I think most EEO types will, if you will,  
3 suffer under in terms of the relationships and so forth to  
4 our -- we're not -- we don't have that kind of a staff. I'm  
5 a one-man operation with part-time people. Karen has one  
6 other person she supervises besides the part-time people so  
7 I can't justify my job for grade level on the basis of being  
8 a supervisor but what I'm expected to do in terms of the  
9 wide circumference and so forth I suggest is as technically  
10 involved and so forth as most professional types and maybe  
11 moreso then some professional types who have higher levels  
12 but because of the status -- and I blame this on Personnel  
13 in general -- as the relationships, the peer relationship  
14 problem, okay.

15 MS. MORGAN: Okay, Ms. McKreesh.

16 MS. MCKREESH: I think to reinforce what Dean,  
17 says verterans preference I see as a real problem. The  
18 formula that Dean recited is basically what was endorsed  
19 by the Greater Philadelphia EEO Officers Council some two  
20 years ago which I chaired at that time. That's an agency --  
21 an organization comprised of representatives of the sixty  
22 federal agencies in Philadelphia.

23 Again, to second Dean on the grade of EEO types,  
24 I would go further than that and say that as of yet I am  
25 not aware that there is a GS 160 standard that has been

1 published for what the requirements of filling the EEO  
2 Specialist and therefore EEO Manager might be -- I'm not  
3 aware that those have been published and if they were  
4 published those are some that the Panel might take issue  
5 with the contents of them as we did last year The Greater  
6 Philadelphia EEO Council just what is it that you're looking  
7 for.

8           We in the business have said what we think  
9 this girl should be. We've also said what we think the  
10 authority or the aura should be -- that space that is  
11 occupied by an EEO type. In other words, do you have the  
12 peer respectability, do you have the grade concomitant to  
13 that.

14           Do you have built-in specifications for the job.  
15 Do you have that which is going to be both satisfying to  
16 the person who is going to fill that job so that they will  
17 stay there or are we going to lose our people that are good in  
18 EEO to other career fields because they are not being paid  
19 commensurate with their skills.

20           MS. MORGAN: Could you possibly elaborate when  
21 you say peer relationship. Do you mean that you don't have  
22 access to the decision-maker who could make things run more  
23 efficiently?

24           MS. MCKREESH: Specifically what I'm saying in  
25 that regard is, yes, we have access to all levels of management

1 and they are usually much higher graded management. It kind  
2 of puts the EEO Program in its exact place and that is as a  
3 staff function to top management but on a much lower level  
4 then top management so that when you walk in the door you  
5 present those skills which you have, for which you've been  
6 selected for the position, which you're always operating  
7 from the standpoint that you are here as my advisor and  
8 certainly as a lower level advisor than the manager who  
9 you are speaking with and there is a great deal of importance  
10 in federal agencies that is placed upon, the authority if  
11 you will, of the position that they hold.

12 MS. MORGAN: Okay, Mr. Muniz.

13 MS. MCKREESH: Excuse me, may I say something.  
14 I just have one or two other points.

15 MS. MORGAN: Okay, I'm sorry.

16 MS. MCKREESH: I stated before that I feel that  
17 full-time staff persons are important in a special  
18 emphasis programs, Hispanic and Federal Women's and I would  
19 personally like to see guidance come out either from the  
20 EEOC or OPM or both regarding a reassessment of the  
21 of the scope of agency or numbers of employees that should  
22 warrant having full-time staff.

23 I think we are talking about the dark ages when  
24 we say that it is sufficient at the headquarters level to  
25 have a full-time person. We are dealing with programs that

1 again I have said have been in the books for fourteen and  
2 eight years respectively and again what do we have to show  
3 for it. What are the statistics to show that we have done  
4 anything. I think it would prove to the contrary that we  
5 haven't done much and I think again it is systemic and that  
6 is the persons are not there to do the job and therefore  
7 how can one do the job.

8           A comment I could make as a delegate to the  
9 National Women's Conference in 1977. A plan of action was  
10 drawn up by women on behalf of women and presented to  
11 President Carter in March of 1978. One of the twenty-six  
12 planks dealt with employment of federal agencies. I would  
13 like to see there be some follow-up on that or some  
14 attention at all addressed to that. I think we have -- we've  
15 had the Hearings. I think we've had the testimony. I think  
16 we've had the written word, comment from the Federal  
17 Register or whatever it may be, from people interested in  
18 Affirmative Action Plan.

19           And I would like some attention being taken now  
20 towards seeing that those mechanisms are put into place,  
21 technical assistance provided, monitoring occurs, mainly  
22 training in the forefront so that if you have people that  
23 want to do a job, they can do it.

24           I believe the commitment is there and enough people  
25 to get the job done if we train them and if we give them

1 enough hands to do it.

2 Thank you for your time.

3 MS. MORGAN: Thank you. Mr. Muniz.

4 MR. MUNIZ: One of the recommendations I would like  
5 to see for the improvement of the Affirmative Action Program  
6 is, Number 1, the handicapped rules and regulations of  
7 programs should be updated because every day we are turning  
8 the handicapped applicants -- we tell them we cannot employ  
9 you. There should be more stiff guidelines and regulations  
10 dealing with this program.

11 Number 2, on the special emphasis programs, we  
12 should utilize people that really care because sometimes the  
13 managers appoint a person just because they need somebody.  
14 Okay, you're Hispanic -- the Hispanic Program Coordinator  
15 or you're the Women's Program Coordinator. Use people that  
16 really care about the program, care about the condition, the  
17 economic condition of the community and really, in other  
18 words, give a damn of what's going on.

19 Number 3, I would like to see the Affirmative  
20 Action Program emphasized, the education of managers on the  
21 EEO Program itself Affirmative Action because many managers  
22 when you come to them, they say, here he comes again. What  
23 do you want now. That's what they tell you so I believe a  
24 manager should be educated in the Affirmative Action Program  
25 because in this Affirmative Action Program most of us do not



1 get the financial reward that we really deserve because a  
2 lot of us put time in of our own but we have to remember  
3 that we are all sales persons. We are selling a program to  
4 the people that many times don't care one way or the other.  
5 They are just doing the program because it's a Law. That's  
6 all they are doing it for but you and I that are concerned --  
7 our concern should try to either educate them or  
8 re-emphasize their obligations to the Affirmative Action  
9 Program.

10           And I believe that every agency should monitor  
11 their Registers. A lot of agencies, sometimes they have a  
12 Register with about fifty applicants for a particular job.  
13 And they come down the Register. This person is qualified  
14 because of this. Many times the special emphasis programs  
15 coordinators don't even know what's going on in their own  
16 Registers and they say, where are the Hispanic applicants,  
17 where are the women applicants. Oh, well, they're not on  
18 the Register. They were in the Register but many times  
19 they were bypassed because no one was there to monitor those  
20 Registers. And I believe that's what we should recommend  
21 that a person should be at all times monitoring the Registers.

22           MS. MORGAN: Thank you.

23           Mr. Norbrey;

24           MR. NORBREY: In the Bureau of Prisons the  
25 character of the Affirmative Action Plan is definitely

1 changed -- has definitely changed with the institutions.  
2 It goes back to what he just got through saying. How much  
3 emphasis the managers are going to put into the Affirmative  
4 Action Program but not only that but very often the managers  
5 pass off the responsibility of executing Affirmative Action  
6 Plan to mid-management and they even know less sometimes  
7 about Affirmative Action. They're management.

8           So, not only do you have to train management but  
9 you also have to train mid-management.

10           The second thing is the recruiting technique.  
11 Now, we had some people who said they couldn't find the  
12 minorities to fill jobs. Why. They were going to  
13 predominately white institutions looking for minorities.  
14 You're not going to find them there.

15           Also, another mistake that they were making which  
16 leads to another point is this. They made promises that  
17 they couldn't fulfill. Recruiters were doing this. Now,  
18 here's the pitch that they were using. You have a college  
19 degree. Look, man, if you got a college degree you can go  
20 up like that. You'll be a GS-12 in nothing flat but you and  
21 I know that it takes more than just a college degree to  
22 advance in Civil Service.

23           Now, after a year or two when those people don't  
24 get promoted, what do they do -- they quit. So that brings  
25 up about the retention plan that we need to develop. Some

1 overall retention plan to keep these minorities and women --  
2 and I don't want to get into the female thing because you  
3 know the big problems that women have. I think my Director  
4 put it on to us the other day. Unfamiliarity, I'll put it  
5 that way. That's becoming a big problem. But the point as  
6 I was saying, we're getting these people but we're losing  
7 them.

8           Now, there's a lot that could be said about that  
9 and there's one more thing about that and that is, very  
10 often the climate at the agency is not conducive to the  
11 retention of minorities and women. And you know there are  
12 a lot of people who don't believe that women should occupy  
13 certain jobs. And the same thing is true of minorities.  
14 You mean a woman's got the job. She doesn't have any  
15 business with that job. You just got some Angelo-Saxon  
16 Wasp out of a good job. I had a man tell me that. He  
17 said you're denying good white employees good jobs and  
18 giving them to somebody who doesn't deserve them.

19           Lucky enough I was able to convert him. But  
20 this is the thing. Also, there's one other item.  
21 Community reaction to minorities and women in specific jobs.

22           Now, in some of the mountainous areas and some  
23 other areas in certain parts of the Country which are still  
24 fighting the Civil War, they are not very friendly toward  
25 minorities and women in jobs that have old traditions and

1 worries that are afflicted with and have become crying.  
2 So, consequently, I think that a minority recruitment will  
3 be much better when we can form community agencies --  
4 community agency committees, organizations to help work on  
5 these programs in order to see that their minorities and  
6 their women are taking those positions.

7 CHAIRPERSON ALPERN: Thank you very much. You've  
8 all been very patient and we've appreciated your help in  
9 giving us the answers to some of the questions that have  
10 been really plaguing us.

11 We would like to know if you would be willing to  
12 send us any additional information that you have. We'd be  
13 happy to have it and if we should have any questions for you,  
14 would you be willing to have us contact you after these  
15 meetings are over?

16 (Affirmative response.)

17 CHAIRPERSON ALPERN: Thank you very much.  
18 We're going to be breaking for lunch now.

19 If there's anyone in the audience who has not  
20 signed the guest register, it's in the right in the back.  
21 We would appreciate you signing it before we break for  
22 lunch. We will be returning to this room at 2:00.

23 (Whereupon, at 12:50 p.m. , the hearing  
24 was recessed, to reconvene at 2:00 o'clock  
25 p.m. this same day, Tuesday March 18, 1980).

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A F T E R N O O N    S E S S I O N

(2:00 p.m.)

CHAIRPERSON ALPERN: Good afternoon, ladies and gentlemen. I want to welcome you to this afternoon portion of this open meeting on Affirmative Action and Employment conducted by the Pennsylvania Advisory Committee to the United States Commission on Civil Rights.

I'm Grace Alpern, Chairperson of the Pennsylvania Advisory Committee. Members of the Advisory Committee sitting on this Fact-Finding Panel are Jean Becker of Harrisburg, Angelo Craig of Scranton, and Elena Romero Morgan of Harrisburg. A list of the entire committee is available on the literature table.

Staff of the United States Commission on Civil Rights sitting here to assist the panel are Yvonne Schumacher, field representative to the Pennsylvania Advisory Committee and the staff person principally responsible for this meeting; and Robert Owens, attorney-advisor in the Mid-Atlantic Regional Office.

Other staff here to assist the Committee are Mid-Atlantic Regional Director, Edward Rutledge; Research-Writer, Suzanne Crowell; and, providing administrative assistance, Christine Scarnecchia.

I'm going to skip most of that information which we gave this morning but just call your attention to several rules of Order which will still prevail.

1 First of all, this is an informal hearing and not  
2 an adversary proceeding. Each person who participates  
3 has voluntarily agreed to talk with this Advisory  
4 Committee. We are interested in obtaining as much  
5 information as possible regarding the matters under  
6 inquiry.

7 We are, however, concerned that no individual  
8 be the victim of slander or libelous statements. As a pre-  
9 caution against slander, persons making statements here  
10 today, or answering questions, have been interviewed prior  
11 to the meeting, to the extent possible.

12 In the event that a situation involving possible  
13 defamation should develop, I will call this to the atten-  
14 tion of the person making the statement and request that he  
15 or she desist in his or her statements.

16 However, if the statement of that person is of  
17 sufficient importance to this inquiry, it may be necessary  
18 for the Advisory Committee to hear the information in a  
19 closed session.

20 The person against whom the allegations are being  
21 made will have ample opportunity to make a statement in  
22 closed session before the Advisory Committee submits its  
23 report to the Commission.

24 Now, at the end of the scheduled testimony or  
25 information that we will be receiving, after the scheduled

1 participation, we will have an "open-mike" session. If there  
2 is anyone here would like to participate in that "open-mike"  
3 session who has not already signed up, we would appreciate  
4 your seeing Suzanne Crowell at the back of the auditorium  
5 because you will have to be signed up if you wish to have  
6 an opportunity to speak this afternoon.

7 I must also mention to you that the United States  
8 Commission on Civil Rights has a policy regarding tape  
9 recorders and cameras used by the media and others during  
10 this open meeting. It may be necessary, in the event we  
11 have someone appearing before the Advisory Committee who  
12 does not wish to be recorded or photographed, to request  
13 that you not record the statement of that person, or  
14 photograph that person.

15 With these exceptions, these proceedings are  
16 open in full to the public and, of course, to the media.

17 And now, we can proceed with the first Panel.

18 May we call on Dr. Inocencio and Mr. Eisenberg,  
19 please.

20 MR. OWENS: Good afternoon, gentlemen. For the  
21 record, would you please identify yourself and your title  
22 and the length of time in which you have served in that  
23 capacity?

24 MR. EISENBERG: Theodoré Eisenberg, Deputy Director  
25 of the Philadelphia Commission on Human Relations. I've served

1 in this position since 1971.

2 DR. INOCENCIO: I am Xavier Inocencio, Deputy  
3 Director for Management of the Pennsylvania Human Relations  
4 Commission. I have been in this position since January 3  
5 of 1977.

6 MR. OWENS: Dr. Inocencio, would you explain,  
7 please, exactly what a 706 Agency is?

8 DR. INOCENCIO: It's the way EEOC refers to  
9 State and Local agencies that have been authorized by  
10 EEOC to handle the processing of employment cases within the  
11 jurisdiction of both agencies.

12 MR. OWENS: Okay. Mr. Eisenberg, could you  
13 expound on how the 706 agencies are intended to function?

14 MR. EISENBERG: Yes. Under Title VII, the 706  
15 agencies that have enforcement powers are required by that  
16 Statute of Federal Law to receive complaints of discrimination  
17 that would first be received by the Equal Employment  
18 Opportunity Commission and to investigate those complaints  
19 but the Statute gives them sixty days in which to  
20 investigate those complaints before EEOC can assume the  
21 jurisdiction and then investigate those cases themselves.

22 MR. OWENS: Would you address, please, the  
23 work sharing arrangement, Dr. Inocencio, that exists between  
24 the Pennsylvania Human Relations Commission and the EEOC?

25 DR. INOCENCIO: It's almost like a sub-contract



1 between two parties in the sense that there is some  
2 formally written arrangement whereby we perform certain  
3 things that are of common interest to the EEOC and us,  
4 namely the processing of employment complaints.

5           And if we fulfill certain requirements such as  
6 quality control specifications by them, they would then  
7 credit us with a certain amount of partial funding to help  
8 us carry on our work and which is a rather thick work-sharing  
9 agreement so it's kind of hard to give you all the details  
10 but I am sure I can obtain the Commission's permission to  
11 give you copies, if that is of any interest to you.

12           MR. OWENS: We would appreciate that very much at  
13 some later point.

14           DR. INOCENCIO: Okay.

15           MR. OWENS: Mr. Eisenberg, would you please explain  
16 your relationship between EEOC if it is any different from  
17 what Dr. Inocencio has stated?

18           MR. EISENBERG: No, it doesn't differ. I don't  
19 know what their work-sharing agreement is. I've never seen  
20 their work-sharing agreement and the work-sharing agreements  
21 are not all the same. They are worked out in negotiations  
22 by a State and Local deferral agency with the EEOC District  
23 Office. What the work-sharing agreement is -- it's an  
24 arrangement that spells out the procedure that will be  
25 employed in the deferral process and in our case, it also

1 provides for a referral process. In other words, under the  
2 work-sharing agreement we have agreed to receive deferrals  
3 from EEOC and on the other hand we have agreed to refer  
4 cases that first come to us to EEOC so that the federal  
5 rights of those individuals as well as their local rights  
6 under our ordinance will be protected.

7 So that agreement spells out the mechanics of  
8 the deferral process.

9 MR. OWENS: Dr. Incencio.

10 DR. INCENCIO: If I might add, one beautiful part  
11 of this work-sharing agreement is that both sides feel  
12 happy in the sense that the Federal Statutes are thereby  
13 honored to the letter as well as the spirit as well as the  
14 State Mandate of the agency and unless both sides are happy,  
15 we don't sign the work-sharing agreements.

16 MR. OWENS: Well, with regard to the Federal  
17 Statutes involved, do these Federal Statutes impose any  
18 specific terms upon which you undertake this work-sharing  
19 with the federal agencies?

20 DR. ICENCIO: Only in general and that's why Ted  
21 said it's subject to negotiations from agency to agency.

22 MR. OWENS: Could you paraphrase what your  
23 understanding is of those terms?

24 DR. ICENCIO: Well, for example, one of the terms  
25 we are still negotiating in the sense that we want to update

1 it to account for the 13.3% inflation is the funding side,  
2 for example.

3           Generally, the Feds have the upper hand in that  
4 they control the purse but we view it as a supplementary  
5 source of funding for us because, as you know, Propositions  
6 13 and its spirit has been sweeping the Country. And as a  
7 result, a lot of us in this area have become more and more  
8 dependent on these sources of funding and yet we realize  
9 that even if EEOC does not exist, the complaints will  
10 continued to come in anyway and so these are really  
11 Pennsylvania complaints and whether we are federally funded  
12 or not for as long as the agency exists, we are mandated to  
13 tackle the growing caseload and so the financial part of the  
14 work-sharing agreement is perhaps the key to the specifications  
15 of the work-sharing agreement.

16           MR. OWENS: All right. Aside from the relationship  
17 that exists as a result of your either receiving direct  
18 grants from EEOC or as a result of your acting as a referral  
19 or in other cases a deferral agency, is there any other  
20 relationship between your agency and the EEOC?

21           DR. INCENCIO: Yes, which I thought I would like  
22 to mention and go out of my way to emphasize because this  
23 is where EEOC and similar agencies have grown to such an  
24 extent that I must say they no longer fit very well the old  
25 stereotype, of bungling bureaucrats that exist in the popular

1 mind. That is no longer true especially with EEOC. And,  
2 present here, I want to go on record and acknowledge the  
3 fact that that is a development that we welcome very much.  
4 They are being characterized by growing results consciousness  
5 increasing number of competent and very highly professional  
6 people and, perhaps, most heartwarming to us is the  
7 willingness now to listen to our ideas and incorporate it  
8 in their own work.

9           They no longer consider themselves as the source--  
10 the monopolistic source of ideas in this area. And we are  
11 glad that they finally acknowledged that there is fullfledged  
12 partnership in this Civil Rights work.

13           MR. OWENS: Mr. Eisenberg, would you respond to  
14 that. In addition to the funding or the deferral aspect,  
15 is there any other relationship between your agency and the  
16 EEOC?

17           MR. EISENBERG: I would generally agree with what  
18 Dr. Incencio said regarding the relationships of State and  
19 Local Agencies with the EEOC. This has been a developing  
20 process. I think that it has been one of certainly on the  
21 plus side for some period of time now. I think that the  
22 United States Equal Opportunity Employment Commission has  
23 taken upon itself the task of trying to coordinate and  
24 establish standards for State and Local Agencies as well  
25 as for themselves and I think that they have always started

1 out developing these standards for their own agency and  
2 trying to utilize the same or similar standards, where  
3 practical and where proven, for the State and Local Agencies  
4 and I think at the same time they have considerably -- where  
5 they have funded State and Local Agencies to a certain  
6 extent and I think this is all very positive.

7 I think it's positive for Civil Rights and I think  
8 it's positive for Local and State Agencies as well as Equal  
9 Employment Opportunity Commission. And I think it's equally  
10 positive for the taxpayer who hopes to get some results for  
11 their money.

12 As far as any other relationships that we have  
13 with EEOC, I know that EEOC would hope, as they have in the  
14 past, to be able to find some special kind of programs that  
15 would very much fit the Affirmative Action designations.  
16 I would hope that this Committee would be able to carry a  
17 strong recommendation for this kind of activity so that  
18 Congress in its wisdom would see fit to benefit the Equal  
19 Employment Opportunity budget wherein they might very well  
20 designate certain kinds of programs and fund these programs  
21 by Local and State Agencies.

22 I would like to say that this is all very much tied  
23 together because at one point in time I don't think it was  
24 fair to expect the Congress of the United States to be able  
25 to make funds in an unaccountable fashion available indirectly

1 through Federal Agencies -- through local and state agencies  
2 but I think that that has for sometime been appropriate  
3 criticism that could be made. I think there is accountability.  
4 I think that an examination of the various standards employed  
5 by deferral agencies throughout the Country would indicate  
6 that there is this accountability and I think that the time  
7 is probably right now where a specific benefit could be  
8 obtained by the funding of special programs through the Local  
9 and State Agencies.

10 MR. OWENS: Thank you.

11 Dr. Inocencio.

12 DR. INOCENCIO: Yes.

13 MR. OWENS: Does the work-sharing arrangement that  
14 exists between your agency and EEOC substantially affect  
15 your priorities and resources with regard to allocations of  
16 staff and or methodology in resolving discrimination  
17 complaints?

18 DR. INOCENCIO: Yes, in the sense that they are  
19 able to help us -- actually pursue our own priorities much  
20 better than without the work-sharing agreement.

21 You see, roughly 70 to 75 per cent of all our  
22 employment complaints are dual filed with the EEOC such  
23 that if EEOC would not exist, we would have to solely fund  
24 ourselves to pursue all of those cases and with the  
25 shrinking complement that we have and I recall we lost ten

1 positions from our state budget last year and this year we  
 2 lost thirteen so we are shrinking in terms of state support  
 3 so we need this study and very competent support of EEOC.  
 4 So our priorities are affected to the extent that they  
 5 strengthen us in pursuing our priorities. They are not,  
 6 however, changing in any direction.

7 MR. OWENS: All right. So more narrowly then you  
 8 are not at all influenced in regard methodology which would--  
 9 which you would employ in settling a case because of the  
 10 relationship with EEOC?

11 DR. INOCENCIO: No. If anything we find that some  
 12 of the ideas that they have shared with us have been very  
 13 helpful to us.

14 MR. OWENS: All right.

15 DR. INOCENCIO: In many respects just as some of  
 16 our ideas they have found rather useful. In fact, including  
 17 some of our own people whom they hired away from us.

18 MR. OWENS: Now, with regard to the rapid charge  
 19 process for resolving complaints of discrimination, has your  
 20 Agency, Mr. Eisenberg, adopted that approach?

21 MR. EISENBERG: Yes, we have. We have most  
 22 recently adopted that approach.

23 MR. OWENS: And what does it entail?

24 MR. EISENBERG: Well, let me back up a minute, if  
 25 I might. As I understand it the rapid charge processing was

1 adopted by the Equal Employment Opportunity Commission  
2 primarily because there was considerable backlog in that  
3 agency and they were attempting to deal with that in a  
4 progressive way and resolve that backlog. This was an  
5 approach that they wished to try. Apparently it proved  
6 somewhat successful for the Equal Employment Opportunity  
7 Commission.

8           In the various contacts with the state and local  
9 agencies, and the various understandings that are obtained  
10 by local and state agencies of the EEOC, there was no  
11 imposition on rapid charge that it had to be done in the  
12 way that EEOC does it or that you had to have fact-finding,  
13 et cetera -- that they were looking for local and state  
14 agencies to be able to handle their workload in such a way  
15 so they, the local and state agencies, did not have that  
16 backlog.

17           Our agency for some many years has never had a  
18 backlog, which is surprising I would suppose but we've been  
19 relatively in good shape. I don't know how long that's  
20 going to last because we, like many other agencies, have  
21 suffered considerable staff cutbacks in the last year or  
22 year and a half. But in order to assure that we will not  
23 get into that kind of a situation, we recently have adopted  
24 rapid charge process. It is in the fact-finding stance and  
25 if you want me to go into fact-finding for you, Mr. Owens, I



1 will. Perhaps you don't.

2 MR. OWENS: Just prior to that -- you say recently  
3 you adopted this. How long ago?

4 MR. EISENBERG: It's been in operation, I would say,  
5 since about the beginning of the year.

6 MR. OWENS: Now, in addressing the fact-finding  
7 stage, would you explain the rapid charge system?

8 MR. EISENBERG: Yes. The fact-finding stage of  
9 the rapid charge system is that fact-finding is considered  
10 to be a part of the investigative process and takes place  
11 as a first step of the investigative process after a case  
12 goes -- a case is docketed. The parties are brought  
13 together -- that is the complainant and respondent in the  
14 offices of the Commission before a convener, who in  
15 preparation for the case has sent the respondent a series  
16 of interrogatories and who has obtained from the respondent  
17 some basic information that the convener would see fit as  
18 being relevant to the case -- to the investigation of the  
19 case and that the respondent may wish to provide.

20 The complainant is also given the opportunity to  
21 consult with the convener prior to the commencing of the  
22 fact-finding session but for the most part the fact-finding  
23 session is intended to be a new experience where the parties  
24 come together and the complainant sets forth on the record  
25 and the respondent sets forth on the record their respective

1 positions in regard to the complaint.

2           It's an informal proceeding. It's not adversary  
3 in nature in the sense that it is a trial. It's a fact-finding  
4 session and the main purpose of it is so that the parties  
5 can see and hear the respective positions of each other and  
6 possibly in that fashion a resolution can right at that  
7 meeting be obtained. And in that way a further investigation  
8 can be precluded and the matter can be resolved quickly.

9           MR. OWENS: Thank you.

10          Dr. Inocencio.

11          DR. INOCENCIO: I'd like to add a couple of things  
12 besides the fact that is informal, it is not required. In  
13 other words, both parties must agree entirely to go through  
14 it. No one is compelled to go through it at all and we  
15 find that the voluntary nature plus the informality nature  
16 of the process is really very helpful.

17                 In analyzing our experience which has been done  
18 we also find that it has some other functions that it  
19 serves that's entirely human in the sense that the  
20 complainant although convinced that he or she doesn't  
21 really have a case, uses it as an opportunity to air before  
22 another party some personal things and just for that purpose  
23 alone, it serves the complainant's purposes and after it  
24 is over they simply withdraw complainant's case. They just  
25 wanted to be able to tell off somebody and if only for that

1 for a lot of Pennsylvanians it serves a purpose. Those,  
2 however, occasions when the fact-finding does not result  
3 in a settlement, there is still one very good result.  
4 Namely, that we are able to advance the investigation from  
5 one phase to the next because at the end of that fact-finding  
6 session, we have additional information right on our desk  
7 which can then be pushed toward a resolution one way or the  
8 other.

9 MR. OWENS: All right. Now, it has been stated  
10 that utilization of the rapid charge process may adversely  
11 impact upon the agencies' abilities to provide affirmative  
12 relief from discrimination. Would you respond to that, Mr.  
13 Eisenberg?

14 MR. EISENBERG: Yes. I think that it has been an  
15 appropriate concern. We have had that concern. That concern  
16 has been one of the reasons why perhaps we have not moved  
17 along with the fact that we are a local agency -- our  
18 investigations are conducted in the City of Philadelphia.  
19 We don't have to send people to the far reaches of the  
20 State and, therefore, we can do prompt investigations.

21 But in addition to that, that is one of the  
22 concerns we have had why we haven't moved, perhaps, to  
23 fact-finding sooner in waiting for more feedback not only  
24 from the Equal Opportunity -- Equal Employment Opportunity  
25 Commission but from agencies who have adopted this form of

1 investigative process. What seems to be coming in is more  
2 and more that this is a satisfactory method of resolving  
3 cases and that people are not being, to any great degree --  
4 I don't how you could measure this but the subjective  
5 feeling of people in the field is that citizens having  
6 complaints of discrimination are not being short changed.

7 MS. MORGAN: Could I ask Dr. Inocencio a  
8 question?

9 MR. OWENS: Yes.

10 MS. MORGAN: I'm just wondering when you talked  
11 about the fact-finding and at the end of the fact-finding  
12 session the complainant dropping the charge. You say that  
13 a complainant might motivated simply by frustration rather  
14 than simply having a lot of problems with preceiving it as  
15 a need for someone to air a personal gripe. I also have  
16 a lot of concern about spending federal or state money --  
17 public money in general.

18 DR. INOCENCIO: True. We are concerned with that,  
19 too, but under Law someone who lodges a complaint within our  
20 jurisdiction we cannot turn them away and we must offer them  
21 the same thing that we offer others. We cannot prejudge the  
22 legitimacy of a complaint until we actually come face to  
23 face with it.

24 MS. MORGAN: I understand that but my point --  
25 I understand. I think they should be afforded an opportunity

1 but it ---

2 DR. INOCENCIO: We are bound by Law in that.

3 MS. MORGAN: It seems to me it's a generalization  
4 to say that complainant will drop a charge at the end of a  
5 fact-finding hearing simply because they have had an  
6 opportunity to vent their personal feelings. It seems to me  
7 that there might be any number of reasons why a complainant  
8 would decide to drop their case at the end of a hearing.

9 One might be that facts came out in that hearing  
10 where the complainant could see that their complaint has very  
11 little chance for success. Okay. That would be one  
12 legitimate reason.

13 Another legitimate reason would be that could  
14 foresee the fact that this is going to be a long drawn out  
15 process and they simply don't have the tolerance to go  
16 through a long bureaucratic process. And also there might  
17 be a category of people who simply are using this system to  
18 vent a personal grief. I just -- and you can respond to  
19 that.

20 DR. INOCENCIO: Sure.

21 MS. MORGAN: I would be very interested to know  
22 why people drop out in fact-finding.

23 DR. INOCENCIO: Your observations are quite on  
24 target. I did not make my statement as a generalization.  
25 I took it as an example for what could happen in fact-finding.

1 With a caseload of five thousand cases you can't make  
2 generalizations like that. I'm fully aware of that. In  
3 fact, we are loaded with a lot of possible research topics  
4 that I'm just dying to get into but have no time to do so.  
5 With declining personnel because of my research background  
6 I have some very strong desires to get into some of our  
7 data. For example, I was in front of the Governor during  
8 a budget session once when he asked me about comparative  
9 intake, meaning number of complaints by county or by city  
10 and I told him that Allegheny County alone accounted for  
11 roughly twenty-four to twenty-five per cent of our total  
12 intake.

13           And Allegheny is just one county and it is even  
14 smaller than Philadelphia County and Philadelphia is no more  
15 than nine or ten per cent of our intake. And he said, did  
16 you ever look at that question and I said, Governor, we have  
17 too much work to look into that sociological problem of why,  
18 the complaint is there and we've got to process it and I  
19 said, just now, we've got something like nearly two thousand  
20 backlog.

21           And as you know, unlike wine an old case does not  
22 get better with age.

23           CHAIRPERSON ALPERN: Mr. Craig.

24           MR. CRAIG: Dr. Inocencio, are you familiar with  
25 EEOC's systemic program?

1 DR. INOCENCIO: Yes, simply because we were ahead  
2 of them in that area. We have something called an  
3 affirmative enforcement program which is another name for  
4 systemic where we identify broad patterns of systemic  
5 discrimination and as early as 1972 we, I think, charged  
6 something like a hundred and ninety-two corporations in  
7 Pennsylvania which at that time I was not with the  
8 Commission, was considered the top discriminators of the  
9 State and unfortunately our enthusiasm for that kind of  
10 work I guess exceeded our resources and a lot of them right  
11 now have not been finished in the sense that we do not  
12 have the money to really go through with it.

13 For example, one case in Philadelphia has been on  
14 since 1972 and, since I'm in charge of Finance, I know the  
15 transcription cost alone is close to thirty thousand  
16 dollars (\$30,000.00) -- just transcription. And as we  
17 lose more and more people and as we pile up our cases, we  
18 wonder whether we really ought to spit out some of the  
19 things that we bite that we can't chew.

20 And that's the sort of rethinking that we have to  
21 do about our priorities. But I'm convinced that on a cost  
22 benefit analysis basis this is one of the most promising  
23 areas to work in and this is one area where we would like  
24 to convince EEOC that instead of doing it all by themselves  
25 they ought to share some of the funds because we have more

1 experience in this area than they have.

2 MR. OWENS: Does you agency have any ties with  
3 OFCCP, Mr. Eisenberg?

4 MR. EISENBERG: No, it does not and this is an  
5 area I think that should be explored. I know that this is  
6 a meeting dealing with affirmative action and employment  
7 but let me say that the three agencies of the Federal  
8 Government, I think, most involved with local and state  
9 Human Relations Commissions are, EEOC, HUD and OFCC.  
10 Now, we all know the relationship that EEOC has developed  
11 with local and state government. And HUD is in the process  
12 of doing a similar thing.

13 Congress has recently appropriated funds for HUD  
14 to fund complaint investigations by local and state agencies  
15 and also to fund other programs. And many state and local  
16 agencies are now being certified by HUD as substantial  
17 equivalency agencies and they in turn will then be in a  
18 position to enter into arrangements and agreements with  
19 HUD for funding various programs.

20 I think that the other agency, OFCC, should also  
21 explore the possibility of utilizing the resources of local  
22 and state agencies. Now, I know that Pennsylvania Human  
23 Relations Commission has a contract compliance program. We  
24 have a contract compliance program.

25 I would guess that their contract compliance program



1 could benefit from some additional funding. I know that  
2 ours could but apart from that it might be that some  
3 duplication of effort could be avoided just like attempts  
4 to do that are right on track with EEOC and are moving on  
5 track with HUD.

6 MR. CRAIG: Mr. Eisenberg, if you will, how was  
7 you agency funded?

8 MR. EISENBERG: How is our agency funded you  
9 say? -- Okay? Our agency is funded by an appropriation from  
10 the City of Philadelphia through the City Council. We  
11 also receive funds from the Equal Employment Opportunity  
12 Commission as do most referral agencies.

13 We also -- to answer the question honestly and  
14 completely, I think up until the end of this month we also  
15 received some funding from the Federal Comprehensive  
16 Employment Training Act but I think that's pretty much going  
17 to be leaving us at the end of this month.

18 MR. CRAIG: Dr. Inocencio, what proportion of  
19 agency funding is derived from the Pennsylvania State  
20 Legislature as opposed to EEOC's 706 funding or other  
21 sources?

22 DR. INOCENCIO: EEOC really accounts for less than  
23 nine per cent of our funding so it is not that significant  
24 and yet, as I said, because of the trend we sure like the  
25 idea that there's a little help that we can look forward to

1 from year to year from EEOC.

2 MR. CRAIG: Is the funding of EEOC based on  
3 number of cases?

4 DR. INOCENCIO: No, it's done on a per-case  
5 basis. Right now the rate is three hundred and fifty  
6 dollars (\$350.00) per case that they accept as having  
7 complied with all the requirements of their procedures and  
8 regulations.

9 MR. CRAIG: Is it possible that that particular  
10 method of funding may encourage quick settlement of cases  
11 or any settlement of cases?

12 DR. INOCENCIO: Since you said the word "possible"  
13 I would have to say, yes. That's why a lot depends on the  
14 professionalism of your investigators. And this is one of  
15 the key factors in the rapid change in fact-finding. It  
16 puts a lot of burden on the competency of the one running  
17 that fact-finding and so we put a lot of our effort into  
18 training, retraining, self monitoring of our performances.  
19 We have periodic meetings on problems we encounter with  
20 this process and so we are forever trying to make sure we  
21 don't slip but we know we are human so we have to put in  
22 all kinds of self monitoring systems to catch ourselves  
23 from making a big mistake.

24 MR. CRAIG: How many staff members involved in  
25 processing employment complaints are on your staff --agency

1 staff?

2 DR. INOCENCIO: Let's put it this way. Of our  
3 entire caseload, eighty-five per cent are employment.

4 MR. CRAIG: Eight-five per cent?

5 DR. INOCENCIO: Yes, of our total caseload.

6 CHAIRPERSON ALPERN: Dr. Inocencio, can I  
7 interrupt for a minute, please. Getting back to the question  
8 of a possible early settlement of cases because of the  
9 possible returns, are there any safeguards that exist to  
10 ensure that that does not happen?

11 DR. INOCENCIO: Yes. One, as we said, first of  
12 all it is not a formal thing and everything is voluntary.  
13 If, at any point, a Complainant feels that something is  
14 wrong, he or she can withdraw immediately. And right away  
15 can go into what is known as extended investigation. It  
16 makes the investigation longer because we have to do it now  
17 one-on-one in checking back with the parties to and from.  
18 And I like a one-on-one, face-to-face collection of facts  
19 and you just confront one with the other. Is this document  
20 authentic. Is this really your signature. That saves a  
21 lot of trouble for everybody. Travel costs alone, for  
22 example, is fabulous in terms of our expenses. And this is  
23 a big State.

24 MR. OWENS: Dr. Inocencio, I believe I understood  
25 you earlier to say that you handle approximately five thousand

1 cases per year, is that correct?

2 DR. INOCENCIO: Roughly, yes.

3 MR. OWENS: Out of that number of cases,  
4 approximately how many are resolved by way of conciliation?

5 DR. INOCENCIO: I'm still in the process because  
6 we just did our twelve months of experience -- and I think  
7 this week I will complete the results so I have no figures.

8 MR. OWENS: Can you give me the figures from  
9 last year?

10 DR. INOCENCIO: As I said, this is our first  
11 twelve months so we have none from last year.

12 CHAIRPERSON ALPERN: Can you provide those to us  
13 when you have them available?

14 DR. INOCENCIO: I'm sure I can get clearance from  
15 our people.

16 MR. OWENS: One question maybe you can answer  
17 even though it has only been four months. Have you noted  
18 a significant number of cases which have been resolved whether  
19 they are included in an Affirmative Action Plan?

20 DR. INOCENCIO: Well, let's look at it this way.  
21 Despite the loss of staff, we find out we are not adding  
22 significantly to our backlog. Now, that's a big step in  
23 itself.

24 MR. OWENS: By I believe my question had to do  
25 with the Affirmative Action.

1 DR. INOCENCIO: Well, Affirmative Action is  
2 voluntary from my point of view and we would rather do more  
3 of that because it is preventive and, therefore, takes less  
4 time and resources.

5 However, because we are a Law Enforcement Agency,  
6 the priorities are to handle the formal legal complaints  
7 first and then, secondly, when we have time, handle the  
8 preventive work and I don't like that kind of priority but  
9 I do not dictate the structure of the agency. The structure  
10 of the agency was created by a Statute.

11 MR. CRAIG: Mr. Eisenberg, what percentage of your  
12 staff is devoted to processing settlements of one-to-one  
13 cases?

14 MR. EISENBERG: You mean of the entire Commission  
15 staff or of the compliance staff or ---

16 MR. CRAIG: The compliance staff.

17 MR. EISENBERG: Well, we have under the compliance  
18 section, a compliance staff -- we have a compliance staff and  
19 we have Affirmative Action staff. The percentage is about  
20 one-third Affirmative Action, two-thirds complaint  
21 investigation.

22 MR. CRAIG: How does your agency determine if an  
23 employer is in compliance with local and state Affirmative  
24 Action requirements?

25 MR. EISENBERG: Well, we don't determine whether

1 they are in compliance with state and federal Affirmative  
2 Action requirements. We determine whether they are in  
3 compliance with our requirements. In other words, there are  
4 certain bidders with the City of Philadelphia as well as  
5 bidders with the City of Philadelphia we also monitor a  
6 contract compliance program for the School District and for  
7 the Philadelphia Gas Works so basically our program works  
8 like this.

9           We make mailings on periodic bases to all the  
10 people, it's a pre-bid process, who bid with the City of  
11 Philadelphia. They in turn complete the various paperwork  
12 that they -- that we expect them to complete and the paper-  
13 work is in the terms of a questionnaire that requires them  
14 to make -- to commit themselves to equal opportunity  
15 employment practices.

16           Based on the -- those who respond we then prepare  
17 a book. It's coded and it's colored and it indicates those  
18 bidders who have responded and those who haven't. This is  
19 a confidential document. It's not available to the public.  
20 It's only available to the people who are in Procurement in  
21 these three agencies and if people bid who are not in  
22 compliance or not in the proper colors -- the color zone of  
23 the book, then the agency will turn them down and will not  
24 permit them to bid until they come to our Commission and  
25 complete the appropriate paperwork. Now, that's the first

1 process.

2           Thereafter, we attempt to, based on statistical  
3 information that they are required to provide on a periodic  
4 basis, we attempt to examine and monitor and concede which  
5 companies may be under-utilizing minorities or women in  
6 their work forces. And then go on to examine their employ-  
7 ment practice operations in a very specific way.

8           Now, we have recently been involved in attempting  
9 to computerize this whole process because with three  
10 agencies involved, there are, I would say at various times,  
11 fifteen thousand or more bidders. And it's a very difficult  
12 kind of program to enforce with a very small staff and we  
13 have been trying to get this computerized and we are not  
14 quite -- haven't quite achieved the results.

15           MR. CRAIG: Mr. Eisenberg.

16           MR. EISENBERG: Yes.

17           MR. CRAIG: The certification of bidders -- first  
18 let me ask you this. Are these bidders only -- do you  
19 determine the eligibility only for the City and the School  
20 Board for the City of Philadelphia?

21           MR. EISENBERG: The City of Philadelphia, the  
22 School Board and Philadelphia Gas Works.

23           MR. CRAIG: Okay.

24           If, by any change, a certified bidder had been  
25 approved by the State Department, for conversations say,

1 say that they have been approved by the Department of  
2 Procurement of the State, would this certification be  
3 equivalent to allow this particular bidder to submit their  
4 bid without going through another process?

5 MR. EISENBERG: No, it wouldn't and this might be  
6 an approach that should and could be explored as well as  
7 similar type certification by the OFCC.

8 MR. CRAIG: Dr. Inocencio, does EEOC impose  
9 Affirmative Action requirements upon your agency as a  
10 condition of receiving 706 funding?

11 DR. INOCENCIO: Yes, although I must admit that,  
12 in the last two years they have sort of neglected to look  
13 at that but in the last conference just last month they have  
14 begun to make noises about visiting us and looking at our  
15 work force and so on and I said, just give me a call. I'm  
16 very much available because I'm in charge of that for the  
17 Agency.

18 CHAIRPERSON ALPERN: What is your understanding of  
19 the legal basis for the EEOC imposing such requirements?

20 DR. INOCENCIO: Well, since we are the recipient,  
21 in effect, of federal funds, we are obligated to comply with  
22 a non-discrimination clause. In fact, it is part of our  
23 work sharing agreement. And since we are supposed to enforce  
24 this kind of practice, we feel that we are a good example of  
25 Affirmative Action practitioners.



1 MS. MORGAN: May I ask if you are also subject to  
2 FOCCP?

3 DR. INOCENCIO: I have not explored that question  
4 but considerably we are although we do help the OFCC in  
5 doing their own work because we monitor a lot of state  
6 agencies who have contracts with the Feds so our contract  
7 division is very helpful to OFCC in that area.

8 MS. MORGAN: Well, do you perceive any possible  
9 inconsistencies or contradictions in terms between the  
10 requirements of EEOC's Affirmative Action Plan and OFCCP's  
11 jurisdiction?

12 DR. INOCENCIO: So far we have not detected any  
13 inconsistencies but if we do you can be sure that we will  
14 call it to their attention.

15 MS. BECKER: Dr. Inocencio, you say that you have  
16 Affirmative Action requirements from the EEOC?

17 DR. INOCENCIO: That's right.

18 MS. BECKER: Has your agency ever called upon the  
19 EEOC to give you technical assistance to develop your plans?

20 DR. INOCENCIO: No, because we feel we are quite  
21 competent to do it. In fact, relative to Mr. Owens'  
22 question, we do extend that kind of technical assistance to  
23 all kinds of organizations within the State of Pennsylvania  
24 and in that connection I have here the third draft of our  
25 Affirmative Action Guidelines, which is not ready for release

1 yet because we need approval of the Commission formally  
2 before we release it to the public but as soon as it is  
3 approved, we'd like to share it with you.

4 MS. BECKER: You mentioned that you do not have an  
5 agreement or a liaison with OFFCP. Do you have any kind of  
6 relationship with them; any kind of contact as far as  
7 contract compliance?

8 DR. INOCENCIO: I think I may have been misunder-  
9 stood. I say we help OFCC very much in their work because  
10 we have a contract compliance division that receives the  
11 computerized list of agencies within the State who are  
12 receiving federal money, who may be not in compliance,  
13 sometimes known as the "hit" list from OFCC and we help them  
14 by telling them what we know about specific organizations on  
15 that list because we receive individual complaints.  
16 Therefore, we are in a position to check whether the  
17 complaints we have match some of the names they have on the  
18 so-called "hit" list.

19 MS. MORGAN: Okay. But the relationship is  
20 informal. It's only if OFCCP wants to contact you about a  
21 particular bidder that they would do so?

22 DR. INOCENCIO: Well, since we get the list  
23 rather routinely, although there is as far as I know no formal  
24 agreement, it is a very good working relationship. They call  
25 us any time they need us and we call them when we need them.

1 Beyond that we don't like to kind of bind ourselves into any  
2 type of formal agreement especially since there is no funding  
3 that they'll give us. In other words, we don't like to do  
4 their work for them if we can avoid it.

5 MS. MORGAN: Okay.

6 MR. CRAIG: Question for both gentlemen. Mr.  
7 Eisenberg first. How do you define Equal Employment  
8 Opportunity, one, and also how do you define Affirmative  
9 Action in employment?

10 MR. EISENBERG: Well I would define Equal  
11 Employment Opportunity as an employer's system that does  
12 not impede or impact against any group or any individual  
13 within a group and provides the same opportunities for all  
14 persons whether they be Black, Hispanic, Asiatic, female  
15 or whatever.

16 As far as Affirmative Action, I think that that  
17 is a term that is undergoing some change. I think in view  
18 of the recent cases before the Supreme Court that I'm not  
19 sure that I would want to undertake at this moment to say  
20 exactly what Affirmative Action is. I think we all under-  
21 stood what Prior to the Webber Case -- what Affirmative  
22 Action was. I think the Webber Case has surely extended  
23 that. There are some cases on my desk that, when I get  
24 back to the office I think, go beyond Webber or at least  
25 tell us a little more of what the Supreme Court had in mind

1 when they passed the Webber -- or when it issued its  
2 decision in the Webber Case. Certainly what appears to be  
3 Affirmative Action now -- I would say it appears to be that  
4 any voluntary action by an employer even though it may be in  
5 the form of granting preference that is intended and does  
6 redress vestiges of past discriminatory practices would be  
7 in accordance of -- with the Law of the land. And that's  
8 what it appears to be. And I think the door is open fairly  
9 wide now in terms of Affirmative Action. And it's extremely  
10 broad and I think the key is, is it voluntary. Does it  
11 redress past discriminatory practices.

12 MR. CRAIG: Do you personally feel as if there is  
13 any major difference between the both?

14 MR. EISENBERG: Pardon?

15 MR. CRAIG: Do you personally feel as if there  
16 is any major differences between the both?

17 MR. EISENBERG: Oh, yes, I feel there's quite a  
18 difference between Equal Employment Opportunity and  
19 Affirmative Action, yes.

20 MR. CRAIG: Doctor.

21 DR. INOCENCIO: This is a subject close to my  
22 heart because as an American who came very much later than  
23 the Mayflower, this is one of the things that brought me to  
24 this Country. I assumed in my own naïve way before  
25 immigrating to this Country that anyone here who wants to

1 work will be given the chance to work and any set of  
2 circumstances, climate, set of Laws, incentives as well as  
3 these incentives that fosters an employment system where by  
4 the accent is on results and accomplishment is within that  
5 concept called equality of opportunity in employment or  
6 education or even housing,, if you wish.

7           So, it is rather a broad concept from my point of  
8 view.

9           While Affirmative Action is by definition a  
10 program -- it's got to be a program, otherwise it is almost  
11 meaningless-- a program is a set of activities with a specific  
12 schedule and measurable results over time, such that you can  
13 then measure your output versus your input and presumably  
14 the only reason you are going to put some input into that is  
15 because the benefits outweigh what you can put into that and  
16 the other part of Affirmative Action I like is the fact that  
17 it is voluntary in the sense that someone who for some reason  
18 or another wants to do something positive about problems of  
19 employment for minorities and women can do so without the  
20 stigma attached that he or she has been guilty of  
21 discrimination. And this no-fault approach to this program  
22 is another thing that attracts a lot of employers. Therefore,  
23 we are putting some emphasis on this because we would like to  
24 take advantage of many employers who would like to do this  
25 but are afraid that if they do so, first of all, they may do

1 it incorrectly and, secondly, they may be stigmatized as  
2 someone who is publically admitting, yes, we did  
3 discriminate before and now we are trying to atone for our  
4 sins.

5 I'd like to think of Affirmative Action beyond  
6 ethical, social or religious grounds. I would like to bring  
7 it into the economic grounds because this is where -- this  
8 is more my field. I feel that Affirmative Action, if done  
9 on a widespread basis becomes part of our social overhead  
10 capital in the sense that we, in effect, improve the total  
11 inventory of human resources in this Country.

12 MR. CRAIG: Dr. Eisenberg -- Mr. Eisenberg, what  
13 if anything does your agency do to inform the present  
14 community of Philadelphia about Affirmative Action?

15 MR. EISENBERG: Well, I'm pleased that you asked  
16 because we happen to have a seminar scheduled for April the  
17 15th and I was asked by the people who are in charge of  
18 setting this up if I wouldn't make a plug for it, so I'll  
19 take the opportunity now -- that's the Holiday Inn on  
20 City Line Avenue and it begins at -- registration begins  
21 at 8:45 in the morning and it concludes at 3:00 p.m.

22 The presenter for this seminar is Peter Robertson  
23 whom I think many of you are familiar with, who has worked  
24 many years with the Equal Employment Opportunity Commission  
25 and the purpose of the seminar is to update the community on

1 Law, on Affirmative Action, on anything that is of consequence  
2 in this field at the time. We conduct this seminar twice a  
3 year and we invite the business community to attend -- any-  
4 body who would wish to attend is free to do so whether they  
5 are employed by a large corporation or not. But our purpose  
6 is to keep the community informed of changes in the Law and  
7 in the field, including Affirmation Action developments.

8 MR. CRAIG: Is this an ongoing process?

9 MR. EISENBERG: Yes, it is. We've done it for  
10 about the last eight or ten years.

11 MR. CRAIG: A question for both gentlemen. What do  
12 you see as a major problem facing your agency and what  
13 recommendations would you make to resolve them?

14 DR. INOCENCIO: Go ahead, Ted.

15 MR. EISENBERG: Do you want to say it once again?

16 MR. CRAIG: What do you see as a major problem  
17 facing your agency and what recommendation would you like to  
18 make to resolve it?

19 MR. EISENBERG: Well, the major problem that we  
20 see facing our agency -- I think it's idemic to most  
21 agencies -- most local and state agencies and that is one of  
22 financing. I think that most agencies suffer as local and  
23 state budgets have been cut back. I think although there is  
24 no Proposition 13 in Philadelphia or Pennsylvania -- I think,  
25 nevertheless, because of the times there is a definite program

1 to reduce the cost of government and I think that,  
2 unfortunately, agencies like ours -- and I'm not saying we  
3 are the only agency in the City of Philadelphia that's cut  
4 back because that's obviously not true, but, nevertheless, we  
5 have seen that we have a major program. There was a major  
6 concern in this area and we think that help, support for  
7 our agency in terms of public support for what we're trying  
8 to do -- in terms of public support for financing of the  
9 agency. This is what we would hope for.

10 MR. CRAIG: Okay, Dr. Inocencio.

11 DR. INOCENCIO: We see a major problem in a trend  
12 that is somewhat of a paradox in the sense that just as the  
13 clammer for more and more and more social services is  
14 reaching a peak in this Country as well as in this State,  
15 that is also the same time that there is a growing clammer  
16 for less and less funding of governmental work. So we  
17 see a kind of contradiction of the times. All you have to  
18 do is look at the growing list of jurisdictions that the  
19 Pennsylvania Legislature keeps adding to our Statute without  
20 adding anything to our fiscal resources so we are, in  
21 effect, being asked to do more and more with less and less  
22 resources. So far we have managed with all kinds of  
23 efforts to do it but there will be a point where this kind of  
24 procedure where Legislature can simply legislate more  
25 responsibility without giving accompanying resources is, in



1 effect, dooming us to failure by intent. Somewhat you're  
2 sort of forced to conclude that someone is trying to do that  
3 to you. You might say that that is paranoia but as the  
4 sign in my office says, "Just because someone is out to get  
5 you doesn't mean you're not paranoid", and vice-versa. But  
6 you have to realize that there is an economic as well as a  
7 opportunity costs to every desirable social good and in this  
8 world of limited social good that we can all dream of, the  
9 taxpayer is the source of the funding for all of that so  
10 that priorities have to be redefined every year and as we  
11 shift priorities, I guess, the resources ought to be shifted  
12 too.

13           The trouble is, it is so much easier to shift the  
14 burden of Legislation from one agency to another but not as  
15 easy to give the supporting resources and so we have to be  
16 very nimble at getting all kinds of other sources of funding  
17 as well as getting more productivity from our declining staff.

18           MR. CRAIG: Doctor, do you feel as if your legal  
19 basis is strong enough to give you the arm to rectify some of  
20 the inequities that exist in the Affirmative Action and  
21 Equal Employment field?

22           DR. INOCENCIO: Our legal basis is made by the  
23 Legislature.

24           MR. CRAIG: The Legislature.

25           DR. INOCENCIO: So it is up to the lawyers, I guess,  
to make some assessment of the legal strength but we keep

1 recommending ways to improve our legal clout, as they say.  
2 You sometimes listen carefully to my English because my  
3 accent sometimes gets so thick but I think "clout" is the  
4 word I keep hearing but we have very little of that in terms  
5 of getting Legislators to change the Statute to conform to  
6 what they think we ought to be doing.

7 For example, I keep saying half in jest and half  
8 seriously to my boss that there ought to be a Law that  
9 prohibits Legislators from passing new jurisdictions and  
10 responsibilities to us without giving us some dollars to  
11 back it up.

12 CHAIRPERSON ALPERN: Mr. Owens.

13 MR. OWENS: Mr. Eisenberg, a question which was  
14 only proper to Dr. Inocencio with regard to the number of  
15 cases that you settled in a year, you say you currently  
16 have no backlog. How many cases, approximately, do you  
17 settle in a year's time?

18 MR. EISENBERG: Well, the figures that I would  
19 give you would be a "guesstimate", okay, because I don't  
20 really have them before me and I would say that all of these  
21 cases -- that the figures relate to a non-rapid-charge  
22 system, okay.

23 I would say between twenty-five per cent and  
24 thirty-three per cent.

25 MR. OWENS: And is Affirmative Action generally a

1 part of this settlement?

2 MR. EISENBERG: Affirmative Action -- it may or it  
3 may not be. I think that is dependent.

4 MR. OWENS: Explain, please.

5 MR. EISENBERG: I said, it may or it may not be;  
6 that's dependent and I'll try to explain it this way if I  
7 can.

8 Frequently, where a case is settled there is some  
9 quid pro quo that is coming forward to a complainant. Our  
10 position is that that is paramount and if it is an  
11 individual complaint as distinguished from a complaint  
12 lodged by the Commission, our goal is, in a proper case,  
13 to obtain relief for that individual who filed that complaint  
14 and most often in those kinds of cases there is no attempt to  
15 effect Affirmative Action because to do so would prevent the  
16 Complainant from obtaining speedy relief.

17 MR. OWENS: Thank you.

18 MS. MORGAN: Do you think that in any case that  
19 that would be the complete release if it is limited to the  
20 individual filing the complaint.

21 You would see that as complete in the instance  
22 where the complaining party accepts it?

23 MR. EISENBERG: Well, I think we are getting here  
24 into -- we're getting here into some philosophical approaches  
25 and I would just like to try and answer it this way, if I can.

1           Some years ago the Equal Employment Opportunity  
2 Commission had a policy in practice that, for each individual  
3 complaint that was filed, a pattern in practice investigation  
4 was required. Whether it would be indicative of -- in other  
5 words, whether there were indications that there was a  
6 systemic problem or not.

7           I think that the Commission has recently concluded  
8 and recognized that part of the problem for backlog --  
9 their backlog -- part of the reason for their backlog was this  
10 policy and that it takes so long to attempt to do a pattern  
11 practice investigation and for each individual complaint you  
12 have expanded and extended that into a pattern and practice  
13 investigation and you are going to end up with exactly what  
14 happened to the Equal Employment Opportunity Commission,  
15 which has a huge backlog of cases wherein the individual  
16 Complainant suffers and does not receive the opportunity  
17 or obtain the opportunity of receiving relief promptly.

18           In order to get Affirmative Action in an  
19 individual case you're either going to have to do a  
20 pattern in practice investigation to convince the employer  
21 that there is something wrong with the systems or her  
22 systems or his systems and some Affirmative Action effort  
23 is desirable, or that by nature it's going to have to be  
24 a pattern in practice complaint. In other words, there are  
25

1 complaints where individuals, although it's a one-on-one  
2 charge, it may, by nature, it may be a pattern practice  
3 charge. In those instances we do do patterns in practice  
4 investigation where it is suggested by the complaint of the  
5 individual.

6 In other cases we do not for the reasons that I  
7 stated.

8 CHAIRPERSON ALPERN: Thank you very much, Mr.  
9 Eisenberg and Dr. Inocencio. We are very grateful to you  
10 for spending this time with us and giving us this  
11 information. We hope that if you have any additional state-  
12 ments that you will feel free to send them to us to  
13 Washington to be included in our report and may we also be  
14 free to call upon you if we have additional questions after  
15 this meeting is over?

16 DR. INOCENCIO: Please, at any time.

17 MR. EISENBERG: Please, and we thank you for the  
18 opportunity of having us here.

19 CHAIRPERSON ALPERN: Thank you very much.

20 (The Panel was excused.)

21 CHAIRPERSON ALPERN: We will call the next Panel  
22 now. Irene Mee, Thomas Bush, Johnny Butler, Marie Tomasso,  
23 Sally Kennedy and William Kesselring.

24 (UNIDENTIFIED VOICE) Excuse me, I'd like to  
25 just take fifteen minutes of your time so that the Women's

1 Alliance for Job Equity can present some special gifts to  
2 Irene Mee, to Tom Bush and to Johnny Butler. We have these  
3 gifts with us now and we hope that they will better be able  
4 to see and recognize job discrimination with these gifts.  
5 Thank you. (Distributing eye glasses to above-named panelists.)

6 CHAIRPERSON ALPERN: I'm very sorry. I think we're  
7 going to have to wait until after this proceeding is over.

8 Is Dr. Fay in the audience. I'm sorry, I didn't  
9 call your name earlier.

10 MR. OWENS: For the record, please, would the  
11 Panelists please identify themselves beginning from your  
12 right to your left, Mr. Fay, indicating your full name,  
13 title and length of time you served in that capacity.

14 MR. PAY: I am Oscar Pay, with the Office of  
15 Contract Compliance Programs in the Philadelphia Region. I  
16 am the Director of Programs Operations for Region 3. I  
17 have served in that position since June 1979.

18 MR. BUSH: I am Thomas Bush, Area Office Director,  
19 OFCCP, Philadelphia. I have been in that position since  
20 June of 1979.

21 MS. MEE: I am Irene Mee, ARA, Philadelphia Region.  
22 I've been in that position since October of 1978.

23 MR. KESSERLRING: I am William Kesselring, Office  
24 of Personnel Management. I'm the Director of Agency  
25 Relations and Assistance Service. I've been in that position

1 since October of 1979.

2 MS. TOMASSO: I am Marie Tomasso. I'm the EEOC  
3 Supervisor Federal Investigations Unit and I have been in that  
4 position since September of 1979.

5 MS. KENNEDY: I'm Sally Kennedy and I'm the  
6 Regional Federal Affirmative Action Manager for the Mid-  
7 Atlantic Region at the Equal Employment Opportunity  
8 Commission and I've filled that position since October 29th,  
9 1979.

10 MR. BUTLER: My name is Johnny Butler. I'm the  
11 District Director for the Equal Employment Opportunity  
12 Commission. I've been such since April of 1979.

13 MR. OWENS: Thank you.

14 Mr. Butler, please, would you tell us how incoming  
15 complaint charges which allege discrimination against  
16 private sector employers are handled by your office -- what  
17 is the process?

18 MR. BUTLER: We of the EEOC have ten program  
19 units and these program units are identified functionally.

20 When a person wants to file an employment  
21 discrimination complaint, they would come into my office  
22 and be interviewed by one of our intake officers. That  
23 person would undergo an indepth interview that would range  
24 anywhere from two to four hours wherein there would be an  
25 attempt to develop as many facts as possible to make a

1 preliminary determination whether or not there is or is not  
2 a jurisdiction or a sound charge under Title VII. If a  
3 decision is made that there is a jurisdictionally sound  
4 charge under Title VII, a charge will actually be physically  
5 taken at which point it would go into our system.

6 MR. OWENS: All right, Mr. Butler, would you  
7 describe the early identification program and the systemic  
8 program within EEOC, both as they are envisioned and as they  
9 presently operate?

10 MR. BUTLER: All right. In EEOC, as I indicated,  
11 we have ten program units organized along functional lines.  
12 The systemic unit is one of those programs units. Another  
13 program unit is our continued investigation and concillation..  
14 In continued investigation and concillation they process  
15 two kinds of charges. One kind of charge is a charge that  
16 fails to be resolved in our rapid charge processing function.  
17 The other kind of charge is the ELI charge. The ELI charge  
18 or early litigation identification charge is a charge that  
19 we would earmark as one that we would want to go to Court  
20 with from the time it comes into the door.

21 The systemic program, on the other hand, is a broad-  
22 based the clients approach to litigation that the Commission  
23 initiates itself as opposed to our relying on an individual  
24 complainant to come in the door.

25 In terms of a definition of ELI, a definition of



1 systemic, ELI would simply be a charge that's virtually a  
2 class in nature. There are some issues by the very nature  
3 impact or affect large groups of people. That's what an  
4 ELI would be.

5 Systemic would have some of those very same  
6 characteristics. In terms of how we operate, we tend  
7 to view an employer with less than five hundred employees  
8 in the context of ELI. An employer with more than five  
9 hundred employees in the context of our systemic operation.

10 Systemic charges as I've indicated are initiated  
11 by one of our Commissioners. ELI charges are initiated by  
12 any Complainant.

13 MS. MORGAN: What are the criteria that the  
14 Agency uses to determine which charges to pursue as  
15 Commissioner charges, systemically?

16 MR. BUTLER: Well, as I indicated, one is the  
17 size of the employer. We tend not to look at an employer  
18 for systemic processing unless an employer has at least  
19 five hundred employees. Then we tend to look at issues  
20 that impact a substantial number of employees and or issues  
21 that because of the uniqueness that have broad range of  
22 impact.

23 MS. MORGAN: What proportion of your cases would  
24 you say are being processed under that system -- the  
25 Commissioner charge or systemic approach?

1 DR. BUTLER: The Commissioner -- you can't -- it's  
2 two different animals, if you will. Systemic is -- we  
3 probably will process in this fiscal year five, six  
4 systemic charges in the Philadelphia Region with the  
5 individual charges. It depends upon the people that come  
6 through the door. You know, that could very well be two  
7 thousand charges this year.

8 MS. MORGAN: Who makes the decision as to which  
9 charges to pursue on the ELI basis?

10 MR. BUTLER: Well, the decision is made by --  
11 based on the nature of the charge. We have what is called  
12 a Top Management Committee which is composed of various  
13 senior officials in the District and these officials will  
14 give some guidance as to what constitutes ELI and once  
15 having identified the intake officer or the Supervisor of  
16 a CIC Unit, having identified a charge as falling within  
17 those perimeters, it is processed accordingly.

18 MS. MORGAN: So that's not a decision that's made  
19 at the point of intake, in other words?

20 MR. BUTLER: No, the final decision an ELI  
21 processing is made by the Top Management Committee that  
22 consists of a District Director, a Deputy District Director  
23 and a Regional Attorney but the intake officers will look at  
24 a check sheet and decide if this fits into the process or if  
25 it doesn't. If they feel that it does fit into the guidelines

1 for ELI, they will process it as such, culminate it in a  
2 recommendation to the TMC.

3 CHAIRPERSON ALPERN: We've been informed that  
4 most newly received charges are resolved for the individual  
5 Complainant without an EEOC finding have -- having been  
6 made on the merits of the complaint or as to whether a  
7 violation of the Law has occurred.

8 Do you believe that's true?

9 MR. BUTLER: Do I believe what you just stated as  
10 true?

11 CHAIRPERSON ALPERN: This is what we are told and  
12 we are looking for confirmation or rebuttal of that.

13 MR. BUTLER: Well, let me tell you what -- we --  
14 you said a number of things. Let me tell you how I perceive  
15 the process to work. We have what is called a rapid charge  
16 processing. That is a process whereby we do a professionalized  
17 intake procedure covering two to four hours after which we  
18 will assign a two-hour fact-finding unit. In our fact-finding  
19 unit and investigatory process takes place. The charging  
20 party states his or her position, the Respondent states his  
21 or her position and if the parties want to resolve the matter  
22 among themselves, they can engage in what is called a no-  
23 fault settlement. The very nature of anything that's no-fault  
24 is a non admission of liability or a non-finding of liability.  
25 We have such a procedure.

1                   CHAIRPERSON ALPERN: Do you feel that EEOC's  
2 rapid charge system has effectively reduced the number of  
3 instances where EEOC seeks Affirmative Action remedies?

4                   MR. BUTLER: Well, I would think not. And I think  
5 you have to be very careful in the use of the words  
6 Affirmative Action remedy. Those are words of art. Some  
7 people tend to think in terms of Affirmative Action as  
8 something that has nothing to do with an actual violation.  
9 If you are talking about affirmative remedies as opposed to  
10 Affirmation Action, I do not think that there has been a  
11 reduction in the amount of affirmative remedies we seek.

12                   As you know, with the Title VII violation you  
13 are looking basically for two kinds of relief; you are  
14 looking back, which generally has back pay and possibly a  
15 reinstatement and you are looking affirmatively forward to  
16 probably some kind of hiring goal, some kind of promotion,  
17 some kind of additional pay and the like, so I don't think  
18 it would that adversely impact the affirmative remedies or  
19 relief we've sought.

20                   MR. OWENS: Will you respond with regard to  
21 Affirmative Action remedies?

22                   MR. BUTLER: Well, again, with respect to  
23 Affirmative Action remedies, Affirmative Action remedies  
24 generally do not surface in the context of an individual  
25 violation. What you might do is talk about some Affirmative

1 relief. For instance, if it is determined that women have  
2 been systematically excluded from management positions, if  
3 you will, as part of our remedy we would set up a hiring  
4 goal or a promotion goal or something of the sort for women  
5 in management jobs.

6 Now, that would be an affirmative remedy as  
7 opposed to an Affirmative Action Plan that most corporations  
8 or organizations are engaged in at this time.

9 CHAIRPERSON ALPERN: Does EEOC have any authority  
10 to require Affirmative Action of private employers?

11 MR. BUTLER: No, we do not.

12 CHAIRPERSON ALPERN: Under no circumstances?

13 MR. BUTLER: Affirmative Action is something that  
14 we cannot require. If there is a violation of the Law, an  
15 employer might be required to put forth an affirmative  
16 remedy. It is however in the best interest of the employers  
17 particularly in light of our new Affirmative Action Guide-  
18 lines for employers who feel that they probably are in a  
19 tenuous situation to engage in voluntary Affirmative Action  
20 Plans. I think, matter of fact, many corporations and the  
21 like or employers have actively pursued Affirmation Action  
22 in an attempt to avoid the sanctions of EEOC.

23 CHAIRPERSON ALPERN: What is the purpose of EEOC's  
24 guidelines on Affirmative Action?

25 MR. BUTLER: Well, to give an employer, to initiate

1 corrective action to initiate attempts to correct problems  
2 that could border on violation of Title VII or that might,  
3 in fact, be violative of Title VII.

4 CHAIRPERSON ALPERN: Are these guidelines consistent  
5 with Affirmative Action standards and requirements of other  
6 federal agencies such as OFCCP and OPM?

7 MR. BUTLER: Well, as you know, under the  
8 Reorganization Plan Number 1 of 1978, the EEOC required  
9 responsibility in the federal sector for coordinating all  
10 EEO enforcement activities so the question will probably not  
11 be whether EEOC is consistent with other federal agencies but  
12 whether other agencies are consistent with us and we are, in  
13 fact, in perfect scrutiny, in that regard. We have an  
14 office of Inter-agency Coordination that actually has  
15 coordinated with office of the Federal Contract Compliance  
16 Programs and other federal agencies and these guidelines  
17 apply to all.

18 MR. OWENS: Mr. Butler, I want to be clear on  
19 that response. Are you saying that Affirmative Action  
20 guidelines which are initiated by EEOC are mirrored by  
21 Affirmation Action guidelines of OFCCP and OPM?

22 MR. BUTLER: No, no. Let me explain to you. See,  
23 EEOC as under Reorganization Plan Number 1 of 1978 assume  
24 the coordinating authority that used to exist in -- I forget  
25 the name of the organization but EEOC has got to scrutinize

1 everything. The EEOC has issued what it perceived of as  
2 the definitive guidelines on Affirmative Action. The guide-  
3 lines that would exist in other agencies could not conflict.  
4 That's what I'm saying.

5 CHAIRPERSON ALPERN: Ms. Becker.

6 MS. BECKER: Mr. Butler, at what state in the  
7 EEO charge processing systems might Affirmative Action  
8 measures be sought?

9 MR. BUTLER: Well, it could be sought -- the first  
10 opportunity that we would talk with a Respondent about the  
11 resolution of a charge, if it's going to rapid charge  
12 processing route or if it's going into our fact-finding  
13 unit, it would be soon after the charge is assigned to  
14 fact-finding. If it's going to bypass fact-finding unit  
15 and go directly to our continued investigation unit, soon  
16 after it's assigned to that particular unit, that will be  
17 an opportunity for a Respondent to come in or to call and  
18 say, look, I got your charge of employment discrimination.  
19 I want to talk about a resolution and it would be at that  
20 point.

21 If the Respondent doesn't initiate it immediately  
22 after the receipt of the charge, at the time of the fact-  
23 finding conference or at the time of the first conference  
24 in CIC, we would talk about it.

25 MS. BECKER: What would you say is the primary

1 vehicle to which Affirmation Action remedies are implemented  
2 or proposed.

3           Would it be Courts or ---

4           MR. BUTLER: No, it wouldn't be Court. As a lot  
5 of you certainly are aware, very, very few things are settled  
6 in Court. Certainly very, very few things are settled after  
7 a full judicial proceeding.

8           As combatted as the society is, most things are  
9 settled before they reach such a formal stage which in many  
10 respects is the ultimate in a formal stage in our body of  
11 politics.

12           It would certainly be resolved at the administrative  
13 level, at an EEOC level during an investigatory process. Very  
14 few, I suspect, charges that are not resolved in  
15 administrative process have to wait on a full judicial  
16 proceeding. I would suspect that a substantial amount are  
17 resolved with us.

18           MS. BECKER: Can you give us an idea of what  
19 percentage?

20           MR. BUTLER: I would suspect that -- just rough:  
21 at least 75 per cent of matters are resolved with us.  
22 Probably even more.

23           CHAIRPERSON ALPERN: Ms. Mee, we would like to  
24 address some questions to you. We have some additional  
25 questions for you Mr. Butler. We'd like to come back to you



1 again.

2 MR. OWENS: Ms. Mee, what do you understand to be  
3 the role of the Office of Federal Contract Compliance  
4 Program with regards to enforcing federal Affirmative Action?

5 MS. MEE: Well, the Office of Federal Contract  
6 Compliance Programs under the Department of Labor is the  
7 sole agency that has the responsibility for enforcing the  
8 Executive Order.

9 MR. OWENS: Now, you are in charge of Region 3,  
10 is that correct?

11 MS. MEE: Yes, that's right.

12 MR. OWENS: Approximately how many federal  
13 contractors within this region are covered by Executive  
14 Order 11246?

15 MS. MEE: We don't have totally accurate figures  
16 on that but our estimates are that there are about 400,000.

17 MR. OWENS: This is 400,000 employers?

18 MS. MEE: Contractors.

19 MR. OWENS: This is 400,000 contractors. All  
20 right, and how many workers would be covered?

21 MS. MEE: I won't make a projection on that. I  
22 might further refine, however, the 400,000 figure.

23 MR. OWENS: Please do.

24 MS. MEE: Our best estimates based on the data that  
25 we have available would be that about 20,000 of that 400,000

1 contractors have fifty employees or more.

2 MR. OWENS: Now, would you explain, please, the  
3 data collection system that you use to keep track of these  
4 employers and whether they are in compliance with EEO  
5 standards or not?

6 MS. MEE: We have our AMIS System which is the  
7 Automatated Manpower Information System new with the  
8 Reorganization on October 8, 1978. The Automated Manpower  
9 Information System, although at this point in time not fully  
10 implemented -- when it is though, we will have the best data  
11 available on all of the federal contractors within this  
12 particular region. The way the information that currently  
13 is in the AMIS System was secured was from the data runs and  
14 from the statistics and the information available from the  
15 eleven agencies which were reorganized into the Department  
16 of Labor.

17 Since that time, however, there has been a great  
18 deal of contractor information that has been gathered by the  
19 Department of Labor and that, too, goes into the AMIS System.  
20 In the system itself we have the names of the contractors'  
21 size and a breakdown on the contractor work force.

22 MR. OWENS: All right, this AMIS system you say  
23 is not yet fully implemented?

24 MS. MEE: It is fully implemented as far as we  
25 are using it, not only as a source of contractors that are

1 in the region. We are using the AMIS System also as the  
2 system that monitors progress of the compliance review.  
3 When I say, not fully implemented, I am speaking now of the  
4 system as it is projected. At the present time, we have  
5 automation in this appliance service area and in complaints  
6 and are in the process now of automating our construction  
7 compliance review program. Construction contractors are not,  
8 at the present time, part of the AMIS file.

9 MR. OWENS: Now, AMIS, as I understand it, is a  
10 national data collection system. Are there visual systems  
11 separate and apart from the AMIS System?

12 MS. MEE: There is a national system. The AMIS is  
13 in use nationwide. There is a regional system in this region  
14 you might be interested in that the system itself, the  
15 computer and the hardware in the Philadelphia Region is  
16 located in the Defense Department, so we have our own  
17 computer system here that we can put our data in at the  
18 local level, at the regional level and that's from all of  
19 the area offices throughout Region 3.

20 MR. OWENS: All right, let me ask you this.

21 Of the 400,000 contractors within your Region,  
22 what number, approximately, of that group are required to  
23 develop Affirmative Action Plans, presently?

24 MS. MEE: Assuming that that is an accurate figure?

25 MR. OWENS: Yes.

1 MS. MEE: Then we would go to our best estimate of  
2 the 20,000 contractors who have 50 or more employees.  
3 Appliance Contractor -- Appliance Service Contractors who  
4 have 50 or more employees and a contract of \$50,000.00 would  
5 be required to develop the Affirmative Action Program.  
6 You'll notice I say, Appliance Service because we handle  
7 compliance under the Executive Order in construction under  
8 the different requirements and different regulations. We  
9 do not require the development of an Affirmative Action Plan  
10 per se in the construction district.

11 MR. OWENS: The figures which you have just stated,  
12 how was this information obtained?

13 MS. MEE: This information goes back to some of  
14 the original data that was used in setting up the regions  
15 under the reorganization. This was done by the Department  
16 of Labor prior to the time that the official reorganization  
17 took place. And the data for this region was further  
18 broken out into geographical areas and that information,  
19 then, was used to set up the six-area offices that are  
20 located in the Philadelphia Region.

21 MR. OWENS: Have there been many exemptions granted  
22 to employers or contractors rather within your region from  
23 compliance from Affirmative Action?

24 MS. MEE: This was a question that we discussed in  
25 our initial interview and that information has been researched.

1 There are two contractors in this region that have been  
2 exempt and it is my understanding for national security  
3 purposes.

4 MR. OWENS: Would you know offhand the approximate  
5 number of employers, employees affected?

6 MS. MEE: No, I don't know that information.

7 MR. OWENS: When your agency looks to compliance  
8 with Affirmative Action Programs, how do you ascertain which  
9 contractors will be subject to compliance reviews?

10 MS. MEE: We have under the present fiscal year a  
11 program plan that was designed and in use nationwide that  
12 targets certain certain industries. The information used to  
13 develop those particular industries was that gathered by the  
14 National Office looking at industries where there was the  
15 greatest opportunity for growth and where we also were aware  
16 that there were many opportunities for minorities and females.

17 Other criteria also taken into account was -- to  
18 target industries was the availability of certain types of  
19 industries throughout the country. In the current fiscal  
20 year, we have targeted the industries in Banking, Insurance,  
21 Coal and Oil and in this particular region we are targeting  
22 construction and we also are maintaining a heavy free award,  
23 both in the Philadelphia Region, but the primary targets for  
24 the Philadelphia Region in this five-state area are, Banks,  
25 Insurance Companies, Coal Mines and the construction.

1 MR. OWENS: And the decision as to which agency  
2 shall be targeted, is this a national decision or more of a  
3 regional decision?

4 MS. MEE: The targeting system that is in use is  
5 one that was designed by the National Office but the actual  
6 decisions, generally, are those of the regional and area  
7 office directors. From time to time we do have a national  
8 emphasis program where a decision will be made at the national  
9 level that one particular corporation would be targeted  
10 based on the performance of that corporation in Affirmative  
11 Action and EEO.

12 This, however, generally is only -- only one target  
13 per quarter is what we are planning at this time. The actual  
14 targeting of the particular companies is one based on, again,  
15 this -- these same factors, the growth and availability of  
16 positions, the opportunity of minorities and females, the  
17 problems that we know exist with any particular company.  
18 Also we would take into account the number of complaints  
19 that had been filed against the company. And all of these  
20 factors are weighed in making a decision as to what  
21 particular individual company would be reviewed.

22 MR. OWENS: As it presently stands, approximately  
23 what percentage of those persons targeted would you say are  
24 based upon the regional decision to target?

25 MS. MEE: At the beginning of the fiscal year, there

1 is a nationwide program that allocates across the regions  
 2 the way the resources of OFCCP will be expended. This, then,  
 3 by the Regional Directors, myself and the other nine  
 4 Regional Directors by looking at our regions, determining  
 5 the types of industries that we have within the regions and  
 6 then we take a percentage of that national program goal,  
 7 taking us down to the next level of area office and then  
 8 the region such as the Philadelphia Region, the area  
 9 directors; the six area directors in this region then  
 10 determine based on the geographic area in which their area  
 11 office is located, the types of industries there, the types  
 12 of problems that they know exist; they then determine the  
 13 expenditure of their resources in each of these industries  
 14 and, then, in getting down to your question of a particular  
 15 company, the companies then -- the projections are made by  
 16 the area director and forwarded to the region. Only a  
 17 projection. We don't set firm review schedules a quarter in  
 18 advance. We found that this is not workable to -- at this  
 19 point in time in the program so we made the Program Director--  
 20 the area director makes projections as to what corporations  
 21 he or she will be scheduling.

22 MR. OWENS: All right, now, I understand that you  
 23 will be going into a once per quarter projected goal for  
 24 compliance reviews as was stated?

25 MS. MEE: Yes. The program plan that is developed

1 actually is an annual program plan. I don't know if this is  
2 responsive to your question or not -- it's an annual program  
3 plan that is a decision on how our resources would be  
4 expended across all of the industries that we targeted.

5 CHAIRPERSON ALPERN: Ms. Schumacher.

6 MS. SCHUMACHER: Yes. While we are talking about  
7 OFCCP's targeting, I wanted to ask Mr. Butler whether there  
8 is any coordination with his agency in its either local or  
9 national discretion that it applies in selecting companies  
10 to pursue in a systemic kind of a way with the OFCCP's  
11 targeting system -- is there any ---

12 MR. BUTLER: Yes. As a matter of fact, the  
13 Director of our Office of Inter-Agency Coordination,  
14 Francisca Farmer and Mr. Welden Rongeau of the Office of  
15 Federal Contracting Appliance Program are in direct contact  
16 with each other in terms of the broader coordination and in  
17 terms of EEOC's sitting down with OFCCP and decide you take  
18 this one and we take the other. We don't operate as such  
19 but we are very much aware of what they're doing and very  
20 much aware of -- they are very much aware of what we are  
21 doing in terms of that.

22 I suspect at some point we may or may not actually  
23 get literally into some joint targeting or some joint approach  
24 to systemic targeting.

25 CHAIRPERSON ALPERN: Thank you. We'd like to move



1 now to Mr. Kesselring.

2 MS. BECKER: Mr. Kesselring, what exactly is the  
3 Federal Equal Opportunity Recruitment Program for FEORP?

4 MR. KESSELRING: One of the provisions for this  
5 Civil Service Format which was passed in October of 1978  
6 and it radically revised the Federal Personnel System and  
7 in addition reorganized the Civil Service Commission and the  
8 major portion of the U.S. Civil Service Commission, became  
9 the Office of Personnel Management for which I handle the  
10 Federal Equal Opportunity Recruitment Program comes out of  
11 that and it's an attempt to deal with under-representation  
12 of minorities in the federal work force.

13 It's an attempt to mandate a new targeted  
14 recruiting system that would deal with specific methods of  
15 under-representation. It's a new program. It's mandated by  
16 the Congress and you might say it's the first, really,  
17 Statute based statistical requirement for the measurement  
18 of Affirmative Action in federal service. It gives us a  
19 base upon which to work.

20 Now, what happens in the FEORP Program, each  
21 agency is required to measure its categories of employment,  
22 grade levels and occupations, find the representation of  
23 minorities in that category and compare them to the relevant  
24 civil labor force figures -- percentages. The comparison  
25 is made against either local figures or national figures which

1 ever are higher. It's an attempt, therefore, to have a  
2 statistical base for Affirmative Action and for recruiting.  
3 It is basically a recruiting program. EEOC has the  
4 responsibility to develop the guidelines with this program.  
5 The Office of Personnel Management has the responsibility  
6 for implementation.

7 MS. BECKER: Now, how many staff members are  
8 employed in your regional office who are working on this  
9 program?

10 MR. KESSELRING: We have an Affirmative  
11 Employment Office which has a staff of three professionals  
12 and one clerical.

13 MS. BECKER: Are these staff members trained in  
14 Affirmative Action?

15 MR. KESSELRING: Yes, we have our principal person,  
16 Grade 13, Thelma Hite Perry, who I think has worked with some  
17 members of your staff, has been in the Office of Personnel  
18 Management for about twelve years and has an excellent back-  
19 ground in personnel management. She has been heading our  
20 EEO Program prior to the reorganization and has detailed  
21 knowledge not only of federal requirements but also of  
22 agency program activities in the EEO. She has worked for the  
23 Internal Revenue Service so she knows something of programming  
24 for both our side as the guidance and assistance agency and  
25 also terms -- in terms of operational agencies.

1           John Carney, our Veteran's Federal Employment  
2 representative also handles our special placement programs.  
3 He's been with the agency almost thirty years and has  
4 extensive background in evaluating personnel systems and has  
5 been our Veteran's Federal Employment representative for the  
6 past four or five years, has worked in labor relations.

7           Carol Page Little, the other professional comes to  
8 us from the New Cumberland Army Depot with a background in  
9 operational equal opportunity.

10           MS. BECKER: Mr. Kesselring, you mentioned before  
11 that the division of responsibilities between OPM and EEOC--  
12 how is that executed -- by memorandum of understanding or  
13 is it unofficial or ---

14           MR. KESSELRING: Well, I believe up to this point  
15 we do not have a memorandum of understanding that has been  
16 formally approved. But we have since the reorganization of  
17 the federal EEO Program a long standing record of  
18 cooperation with EEOC. I think the transfer of responsibilities  
19 for the discrimination and complaint process to EEOC, the  
20 transfer of their leadership in the Affirmative Employment  
21 Process to EEOC was done through negotiations at the  
22 Washington level. And I think was done without great  
23 difficulty.

24           As far as FEORP is concerned, EEOC developed  
25 the guidelines for the program; they decided which categories

1 of minorities would be covered by the program. They decided  
2 the type of data comparisons that would be made to assess  
3 under-representation and the OPM, Office of Personnel  
4 Management, took it from there and developed a program for  
5 the federal service.

6 MS. SCHUMACHER: Can I back up for just one second.  
7 You spoke of the small staff size that is overseeing this  
8 operation in the region. Do you have any estimate as to how  
9 many federal employees, totally, are within the region that  
10 are subject to those requirements that that staff is, in the  
11 sense overseeing?

12 MR. KESSELRING: My guess would be 275,000 in  
13 more than four hundred installations in five states which  
14 would make you assume that our staff would probably be  
15 inadequate to that kind of an assignment. Let me explain.  
16 We have area offices in Pittsburgh, Baltimore, Norfolk. We  
17 have a small staff in Charleston, we have people in each of  
18 these offices -- staffs of thirty-five or forty people.  
19 They become involved in the FEORP program, in the Affirmative  
20 Employment Program. They are the representatives of the  
21 Regional Director out in the geographical locations where  
22 we have concentrations of federal employees. They work  
23 with our staff, the ADP staff, the Affirmative Employment  
24 staff in Philadelphia which provides leadership and  
25 guidance, direction and training and they serve as the eyes

1 and ears of that staff in terms of what's going on in the  
2 federal establishments in these communities around the  
3 region.

4           In addition, we have an evaluation staff of  
5 eighteen employees who go to agencies and spend two or three  
6 weeks with three or four people assessing personnel  
7 management programs and as a part of that assessment -- a  
8 major part of that assessment is always the assessment of  
9 EEO Affirmative Employment and in the future, of course, it  
10 will be an assessment of FEORP, so our staff in ADP or the  
11 leadership staff, they are supported by our field staff  
12 throughout the five state region.

13           MS. MORGAN: If you had more money, where would  
14 you put it -- what additional activities would you engage  
15 in?

16           MR. KESSELRING: We would greatly expand technical  
17 assistance that we provide the federal establishments in  
18 implementing the FEORP Program at this point.

19           MS. BECKER: Mr. Kesselring, you talk about going  
20 to the agencies. Do you have any procedures by which the  
21 agencies report back to OPM and FEORP?

22           MR. KESSELRING: One of the principles of the  
23 basic Civil Service Reform Act is that we are trying to  
24 turn over to the extent possible management and federal  
25 personnel systems in the direction of Human Resources to

1 federal agencies and federal managers. We are in the process  
2 of trying to build the authority and competence of federal  
3 managers in personnel management. We are decentralizing, we  
4 are deregulating.

5 Our agency has become more of an advice and  
6 assistance organization so that we aren't requiring reports.  
7 We aren't requiring clearances and approvals if they are not  
8 absolutely necessary. In fact, our basic philosophy is to  
9 look at everything we require in the way of a report or  
10 approval. Any of those constraints on individual managers'  
11 actions in the federal community and delete them if we can.  
12 We do not have any -- it's a long way to answer your question.  
13 We do not have approval or clearance on FEORP plans. We do  
14 have a process that which once a year these plans will be  
15 submitted on an agency-level basis, not an installation-  
16 level basis.

17 An agency-level basis to our Washington Office.  
18 They will analyze these with particular reference to progress  
19 in correcting under-representation and will report to both  
20 Houses of Congress.

21 During the year we will be looking at a sampling  
22 of FEORP plans, maybe five to ten per cent to get some  
23 assessment of how the agency -- the agencies are doing.  
24 That will be principally, however, in an assistance mode  
25 rather than a regulatory mode.

1 MS. BECKER: Mr. Kesselring, right now EEO reporting  
2 format for FEORP is limited to two targeted job categories.  
3 Does OPM plan to develop complete reporting format?

4 MR. KESSELRING: Something that would require  
5 reporting on every case of under-representation, for example?

6 MS. BECKER: Every job category representation.

7 MR. KESSELRING: I would think not. Given the  
8 nature of this program where we are trying to get agencies  
9 to deal with EEO and affirmative employment and in logical  
10 priority based way, really, the process of finding your most  
11 critical problems and dealing with them is really what this  
12 is allabout, to try and get them to identify every case of  
13 under-representation and to report on progress in dealing  
14 with every case would be, in effect, to deal with none. I  
15 think we've had that kind of fragmented management thinking  
16 in the past.

17 This program -- and I think the reason agencies  
18 are somewhat enthusiastic about this is a logical management  
19 oriented approach. Find the real problems, the most  
20 significant problems and deal with them.

21 MS. BECKER: Then you are not intending to, at  
22 this point, enlarge on the categories. You now have two  
23 of them?

24 MR. KESSELRING: The agencies, I think, as I  
25 understand the directions from EEOC, are to identify the six

1 most popular classes where there are instances -- with the  
2 most severe under-representation and some possibility of  
3 vacancies in the future. I think those are the things they  
4 are looking for. You put those three together and you have  
5 an opportunity to do something constructive. We are going to  
6 be looking at those decisions with the agencies. Did they  
7 make logical decisions about the under-representation, are  
8 they the most popular classes where there is an opportunity  
9 to take some constructive action.

10 Yes, we will be working with agencies to assess  
11 that decision-making. That would be part of our evaluation  
12 process at FEORP but I don't know that we would expand that  
13 to the total.

14 MS. MORGAN: Sir, is there any effort to try to  
15 emphasize under-representation in decision-making positions?

16 MR. KESSELRING: I don't know that there is --  
17 in decision-making decisions, are you talking about  
18 management positions?

19 MS. MORGAN: I'm talking about trying to -- I'm  
20 talking about the federal government trying to identify key  
21 places where it would be critical to have representation by  
22 minority groups or by women and -- well, in terms of my  
23 question, does FEORP have that kind of priority?

24 MR. KESSELRING: I'm not aware of it if it does.  
25 Each agency is left to its own decisions as to the priorities



1 but I think basically what we are looking for is the size  
2 of the group.

3 MS. MORGAN: Talk about the size.

4 MR. KESSELRING: The severity of the under-  
5 representations and the possibilities for filling vacancies.  
6 I think you present, perhaps, a new and somewhat sophisticated  
7 way of looking at it. Perhaps that's a possibility or are  
8 you thinking about ---

9 MS. MORGAN: The reason for my question is that  
10 earlier in the day we heard a lot of testimony or a lot of  
11 facts about the fact that it doesn't -- that if Affirmative  
12 Action or Equal Opportunity, however you want to categorize  
13 it, if anything would happen these fields where there was  
14 equitable representation of minorities and women, there has  
15 to be commitment at the high management level and it would  
16 seem to me that if the Federal Government was totally  
17 committed to Equal Opportunity or Affirmative Action that one  
18 of the goals should be to identify positions where there is  
19 a decision-making authority -- that kind of position -- and  
20 try to use Affirmative Action in that particular position.

21 That way you would impact on the system all the  
22 way down, it seems.

23 MR. KESSELRING: We have some other motivational  
24 forces at work. And I'd like to mention two of them. In the  
25 new Senior Executive Service, the top grades of the Federal

1 Service, the Law of Statute, the Civil Service Format requires  
2 that all senior executives be evaluated, among other things,  
3 on the basis of their effectiveness in the area of Equal  
4 Employment Opportunity. I believe that -- an organizational  
5 effectiveness were the only two specific requirements in the  
6 Law but that is one of them. All of the senior executives  
7 services.

8 Now, they are all on a merit pay basis at the  
9 senior executive level. Their base pay is determined on  
10 the quality of their performance. They have awards, they  
11 have grants. There are all sorts of new approaches to  
12 remunerations for the senior executive service. One of the  
13 basic requirements is success in review.

14 MS. MORGAN: Is that spelled out in the regulations  
15 when you tell us about some of the standards that will be  
16 used to evaluate a person?

17 MR. KESSELRING: Well, certainly FEORP and the  
18 effectiveness of the FEORP Program under the management of  
19 that particular senior executive would be one ready measure.

20 MS. BECKER: Mr. Kesselring, what kind of action  
21 can you take if an agency doesn't comply with the FEORP  
22 regulations?

23 MR. KESSELRING: Well, our standard practice in  
24 dealing with agencies that -- we work with installations  
25 principally and when they are ineffective or unresponsive,

1 then EEO -- our general approach is to report that to their  
2 senior headquarters. One of the other factors that we have  
3 going for us in addition to these senior executive service  
4 requirements for EEO's success these days is the fact that  
5 our middle level managers are now on a merit basis and many  
6 agencies have established success in EEO and Affirmative  
7 Employment as one of the basic responsibilities and one of  
8 the basic criteria for measuring merit pay decisions. So  
9 that the head of an installation, for example, in our region  
10 is unresponsive or ineffective with the FEORP program, my  
11 guess is that he would know that it would affect his pay.  
12 We would deal with it on that basis, reporting it to his  
13 higher headquarters and it would be dealt with on that basis.

14 We do not have the kinds of adversary kind of  
15 approaches that we might have used in the past.

16 MS. BECKER: What do you know of any of the  
17 agencies that you deal with in the Philadelphia Region that  
18 seek help from consultants in developing recruitment plans  
19 outside this office?

20 MR. KESSELRING: I do not know of any. I checked  
21 with our staff and they did not know of any.

22 MS. BECKER: Do you ever refer agencies to seek  
23 technical assistance to consultants?

24 MR. KESSELRING: No.

25 MS. BECKER: What kind of data does the OPM

1 maintain to provide assistance to the agencies to develop  
2 their plan?

3 MR. KESSELRING: Well, we have established with  
4 passage of the Civil Service Reform Act, teams from through-  
5 out our organization who specialize in special aspects of  
6 implementation of the Law. We have a team in our office that  
7 is responsible for working with agencies to implement FEORP.  
8 This is a team that is headed by Thelma Hite Perry who is  
9 the person responsible for our Affirmative Employment Program  
10 but it's made up of other people throughout the organization--  
11 throughout OPM. People from our evaluations component, or  
12 examining component and others. They are the basic cadre  
13 that is responsible for providing on-sight advice and  
14 assistance.

15 And at this point we have not had long term  
16 requirements for our assistance. We have not been out with  
17 agencies extended periods of time helping them finalize their  
18 plans and get them ready for implementation. We expect that  
19 to happen in the near future. We are preparing now to do  
20 that and given the shortage of our resources, one of the  
21 things you mentioned earlier, it's likely we're going to  
22 have to do that on a reimbursement basis. We have a  
23 tradition of doing this, it's not unusual for us to relate  
24 to federal agencies that way. We, in effect, will become  
25 a contractor to the federal establishments in our region

1 that would need, say, five or ten days of the assistance of  
2 the team in getting their FEORP Program effectively  
3 operational.

4 MS. BECKER: I have just one more question, Mr.  
5 Kesselring. What kind of data do you maintain for assessment  
6 or evaluation of the effectiveness for this particular  
7 section of the program -- no program in general?

8 MR. KESSELRING: We are currently taking a look  
9 at the FEORP plans in our five state region. As of Friday  
10 we have a deadline established for those installations with  
11 a plan to send us a copy. We try to make this as benign  
12 as possible. We don't want to impose reporting requirements  
13 unnecessarily. All we've asked them to do is tell us, had  
14 they gotten central office guidance and send us a copy of  
15 that; have they developed a plan, if so, send us a copy  
16 and who has been assigned responsibility for management of  
17 the plan.

18 Armed with that information, I think we'll be in a  
19 pretty good position to determine the quality of the guidance  
20 the installations have gotten from their headquarters and the  
21 quality of the plans that have been developed thus far. We  
22 have only three or four in at this point. Friday is our dead-  
23 line. We'll be in a much better position then to have a  
24 data base about the quality of the plan. The assessment of  
25 implementation comes later. That will be done by our

1 evaluation staff, that will be done by our area office staff  
2 throughout the five states and that will be done by the  
3 Affirmative Employment staff when when it can be looking  
4 at the sampling of the FEORP Plans.

5 CHAIRPERSON ALPERN: Some questions from Ms.  
6 Kennedy from Mr. Craig.

7 MR. CRAIG: Ms. Kennedy, would you describe for  
8 us the duties as a member of the Federal Affirmative Action  
9 team?

10 MS. KENNEDY: I'm the Regional Affirmative --  
11 Federal Affirmative Action Manager, which is a unit set up  
12 in the Philadelphia District Office. I'm on the same floor  
13 with John Butler. I report directly to the Director of the  
14 Federal Affirmative Action Unit in Washington, D.C., which  
15 is within the Office of Government Employment.

16 The duties at the moment are or have been since  
17 October 29th is to initiate this establishment of the office.  
18 I can't even say I initiated it. The hiring of me was  
19 initiating it but both Stephanie Garrett, my colleague who  
20 is out in the audience today and I came onboard the same  
21 day. There will be a difference, you will find, in the  
22 developments of our offices compared to some of the Regional  
23 Federal Affirmative Action Units that had carry-over from  
24 Civil Service Commission days so, initially, it has been  
25 setting up relationships with the agencies. We are in the

1 process at the moment of setting up contacts particularly  
2 with every installation of 500 or more employees, making  
3 ourselves available for technical assistance, bringing  
4 problems we encounter that need policy decision, to the  
5 headquarter office.

6 Now, one of the changes of emphasis from Civil  
7 Service Commission days now to the EEOC is very strong  
8 coordination through our headquarters rather than de-  
9 centralization authority -- of authority and policy making  
10 to the regional level.

11 MR. CRAIG: Okay, would you describe for us the  
12 training that you may have received on EEOC requirements for  
13 Federal Affirmative Action including the plans, the submission  
14 process and the process for reviewing improved agency  
15 plans?

16 MS. KENNEDY: All right. Let me go into my back-  
17 ground a little bit. On October 26th, I was working in  
18 Washington, Headquarters of HEW ~~speaking~~ heading pretty much  
19 their Affirmative Action Program and I've had Regional and  
20 Headquarters experience in Federal Affirmative Action,  
21 before coming to EEOC.

22 During that process in Headquarters I was very much  
23 involved with the agency interaction with EEOC developing of  
24 regulations and guidelines as well as the Office of Personnel  
25 Management Dissemination Opportunity for Review and  
Discussion of the FEORP guidelines.

1           And many of us have this kind of experience or  
2 have come out of Contract Compliance. Most of the offices --  
3 well, four of them had incumbents, the rest were opening up  
4 in October. We were brought to Washington on a couple of  
5 occasions in November and a full-fledged training session  
6 in December on the EEOC guidelines. The EEOC instructions  
7 came about considerably after the OPM FEORP guidelines and  
8 they were issued December 12th, from the week of the 10th we  
9 had training. I just returned from last week for further  
10 indoctrination on EEOC procedures.

11           Most of us were selected because of the managers --  
12 because of the experience we already brought to the program  
13 and we are very definitely involved, and well, participating  
14 in the development further so that's an opportunity for  
15 training while you are flushing out what is in the process.

16           MR. CRAIG: With the existence of prior knowledge,  
17 do you feel that the training you received in December was  
18 adequate insofar as, (1) coming aboard to be familiar with  
19 the EEOC policies?

20           MS. KENNEDY: I don't like making that kind of a  
21 judgement in terms of -- there is so much more to learn and  
22 I'm not ready to make a judgement on whether -- I have not  
23 yet received enough training. I am pleased with what I've  
24 gotten and I'm going to get more. You know, it's -- the  
25 comment I want to make, really, at this point is that I feel



1 it's just a little early to be able to judge the impact or the  
2 effect of the re-organization. Some of the questions you've  
3 been asking -- yes, we just did that yesterday. It's too  
4 soon to make a judgement yet but I'm very pleased with the  
5 process.

6 MR. CRAIG: Could you explain to us the Federal  
7 Affirmative Action planning process as you understand it?

8 MS. KENNEDY: Okay. There is a very strong  
9 coordination between the FEORP planning and the Affirmative  
10 Action planning. The FEORP planning is very heavy -- has  
11 a very heavy emphasis on increasing the minority and female  
12 representation in your applicant pools. The question that  
13 Jean Becker was asking earlier on targeting two occupations  
14 was really an Affirmative Action plan focus not a FEORP  
15 focus. This is just parenthetical because I was just dying  
16 to speak up then -- the targeting of two occupations at this  
17 time was a Phase 1 requirement out of the six populas  
18 series and breath of grade range is also one of the criteria  
19 for selecting the two so that you do get decision-making  
20 people.

21 The Phase 2 was to have you do two additional  
22 occupations. Now, this is just the transition year and the  
23 purpose of this is to re-educate agencies from the previous  
24 Affirmative Action processing. There's practically nothing  
25 new in the requirements for Affirmative Action but it is being

1 housed so differently it feels new to many people. And the  
2 emphasis now is on results oriented analysis of your work  
3 force and all of these other wonderful things that you were  
4 doing as end to themselves you are to do as a support to  
5 achieve your goals -- the upward mobility and training of  
6 people and skills utilization.

7 I think the repackaging makes a lot of sense to  
8 people and the EEO people have been tired of the  
9 dissolution -- with spinning wheels. I really can't  
10 disagree with Karen McKreesh had to say this morning.

11 Now, it's being focused. The FEORP planning  
12 is very exciting because it is making managers from an  
13 agency perspective. I just left HEW not too long ago and  
14 all of a sudden managers and personnel people come jumping  
15 over FEORP that were not committed or involved in their  
16 Affirmative Action Plan other than to question your English  
17 or something sometime if they happen to read the Plan and  
18 they signed it maybe but implementing it was not a major  
19 importance. Now, I really see a change of commitment in  
20 managers. Now, FEORP has a long-range and short-range  
21 goals. Since it's just started, you can't tell what is going  
22 to happen when you look at the long-range -- and we haven't  
23 developed our guidelines for multi-year planning yet but  
24 based on the experience this year, of looking at the two of--  
25 occupations and then the additional two and people learning

1 to look at results instead of what kind of little activities  
2 that they have had for a year that just, you know, is  
3 cosmetics. The decision this year was made in order to have  
4 the greatest impact so that you can take the most popular  
5 occupations. Next year they are going to require you to look  
6 at all. Now, where you set your goals, you know, this time  
7 and especially as more people get more sophisticated and talk  
8 about it, to set other criteria other than the most popular  
9 and certainly as a Regional Federal Affirmative Action Manager  
10 I will be spouting my opinion which I am, you know, quite  
11 ready to do about stressing some of those other target areas  
12 of decision-makers.

13 But I can see especially if you're just getting  
14 started that you want people to know you are there and have  
15 an impact. Now, I think I've lost the question you asked.

16 MR. CRAIG: It was, do you believe the requirement  
17 placed upon the federal employees with regard to developing  
18 and implementing Affirmative Action planning goes far enough?

19 MS. KENNEDY: Ask that question, again.

20 MR. CRAIG: Do you believe that the requirements  
21 placed upon federal employees with regard to developing and  
22 implementing Affirmative Action plans goes far enough?

23 MS. KENNEDY: You mean employers or employees?

24 MR. CRAIG: Employees -- employers, I'm sorry.

25 CHAIRPERSON ALPERN: Employers.

1 MS. KENNEDY: Oh, employers. All right.

2 Well, right now we are going through a re-education  
3 process and I say make sure they do these two targeted areas  
4 and, no, it doesn't go far enough but let's get the process  
5 right. This year we are committed to getting people to do  
6 something for real and then expand it next year. If you have  
7 to do it all at once with the limited resources, you can't.  
8 I mean, I have written 3 bullshit Affirmative Action Plans  
9 and they looked terrific. I never, never got near an  
10 installation of HEW to do any on-sight compliance. There  
11 were only two people in that office.

12 Now, the discussion of resources this morning is  
13 very pertinent. One of the things that EEOC is heavily focus-  
14 ing on is agency accountability. And what was under  
15 discussion last week and has not been fully flushed out yet  
16 is what we're going to be requiring from the agencies with  
17 regard to internal monitoring and evaluation and I feel that  
18 review and approval of plans is very important. Getting out  
19 there and monitoring it is what counts and, you know, it's  
20 only when you get the systems established and go in that you  
21 can start flushing out, saying, you should be doing more.  
22 You can't just do it all over night.

23 MS. SCHUMACHER: Do you feel that standards that  
24 are being asked of the federal employers by the Federal  
25 Government itself are comparable to those Federal Government

1 asks of private sector?

2 MS. KENNEDY: I don't have any experience,  
3 personally, in the private sector. I know that the focus is  
4 to make sure we are practicing what we preach and as in  
5 evidence of this, quite a few of the staff members hired in  
6 the ten Affirmative Action Units are out of contract  
7 compliance so they have that kind of experience to carry over  
8 and relate to. And beyond that I don't have an opinion yet.

9 MS. SCHUMACHER: Mr. Kesselring, do you have an  
10 opinion on that question. Do you think the Federal Government  
11 is asking enough of itself and do you think those standards  
12 are comparable to those imposed on the private sector?

13 MR. KESSELRING: My answer to you is we've always  
14 been far ahead in the federal service. I think the data  
15 would show that and even when you want to get into more  
16 refined examination of the data, I think you would see that  
17 long before Equal Opportunity -- Equal Employment Opportunity  
18 became particularly fashionable or acceptable in the private  
19 sector, the federal merit system was working. People with  
20 talent regardless of race, color could find a career in the  
21 federal service. I think that the standards are every bit  
22 as demanding on us and should be but I think that we have  
23 something going for us in the way of a tradition.

24 Integration of jobs, organization -- all sorts of  
25 things, I think, that give us a total environment that puts

1 us a leg up. I said it would be a biased response.

2 MS. SCHUMACHER: I'm curious to hear Ms. Mee's  
3 comment on that remark given her authority to the private  
4 sector.

5 MS. MEE: I was sitting here making that comparison  
6 and wishing that I had more knowledge about what the federal--  
7 all the federal requirements are for work in the Affirmative  
8 Action Plan. If the Federal Government had, over a period  
9 of years, the kind of requirements that we have for the  
10 development of an Affirmative Action Plan and a monitoring  
11 capability, I think that the federal system would be much  
12 further ahead than they are today.

13 MS. KENNEDY: The standards of the regulations  
14 aren't the problems. It's just enforcement and that is  
15 what EEOC's role has got to be and the monitoring of on-  
16 sight compliance. I think we are expecting to be a very  
17 important aspect.

18 MS. SCHUMACHER: I'd like to be real clear about  
19 that process. What sanctions are available to EEOC in the  
20 way of backing up its endorsement?

21 MS. KENNEDY: Sanctions is always the question  
22 that is asked and whatever sanctions are made available by  
23 Congress are the sanctions we've got and I believe Ms.  
24 Norton has been heard to say there are no real sanctions  
25 given to us. It also depends on how you define sanctions and

1 I think the discomfort of a manager being met with by the  
 2 EEOC top official is something to be avoided. I don't know  
 3 what kind of publicity could hit at some point and make an  
 4 agency uncomfortable. My hope is that we will evolve  
 5 something real out of the merit thing, withholding if you  
 6 don't perform on EEO, which is very hard to develop across  
 7 the board, fair, equitable criteria for evaluating which is  
 8 one thing that will make it slow.

9 One thing that is happening, I think there is  
 10 right now a government-wide Civil Rights assessment going  
 11 on by the Office of Management Budget and OMB seems to  
 12 be getting involved in a committed way. They have a new  
 13 EEO Director that I had a chance to meet last week that I'm  
 14 quite impressed with. And they are asking specific  
 15 questions of the federal agencies in their budget review  
 16 process or whatever survey is going out right now regarding  
 17 such, you know, their involvement in the Affirmative Action  
 18 process.

19 Have they completed their Phase 1 plan, for  
 20 example, which includes the FEORP.

21 And the agency has never been asked this by OMB  
 22 before so it's a very interesting new development. They  
 23 seem to jump when OMB wants something so maybe there will  
 24 be some repercussions -- I mean positive ones.

25 CHAIRPERSON ALPERN: Ms. Tomasso, would you please

1 describe your function with respect to federal sector  
2 jurisdiction?

3 MS. TOMASSO: Yes. I am Supervisor of the Federal  
4 Investigative Unit. We in Philadelphia are one of ten  
5 district offices that is performing the investigative  
6 functions of federal agencies. The federal agencies that  
7 are involved in the program have signed memorandums of  
8 understanding with the EEOC in Washington. I believe that  
9 presently we have seven agencies that have signed  
10 memorandums of understanding with EEOC. Basically, what  
11 happens is that after the Complainant completes the  
12 internal EEO requirements such as EEO counselling and filing  
13 the formal complaint, the agency accepts the complaint or  
14 rejects it.

15 If the agency accepts the complaint, that  
16 complaint is forwarded to the Philadelphia Office, if it  
17 falls within that particular jurisdiction.

18 Our unit conducts the investigation of the  
19 complaint and presently also we are conducting a hearing  
20 of the complaints at an earlier stage than what is required  
21 by the Procedural Regulations. The pilot program has had  
22 several changes since its inception in September but the  
23 big change that we have had is that presently, a hearing is  
24 held at the discretion of the Complaint Examiner based on  
25 the evidence of record. If a hearing is held, the Hearing



1 Officer recommends a disposition to the agency through our  
2 District Director. If no hearing is held, the investigator  
3 on a particular case will make the recommendation to the  
4 District Director who in turn will recommend to the agency  
5 a finding. The agency may accept, reject or accept in part  
6 whatever determination recommendations we make.

7 If an agency does not accept our recommendation  
8 within 30 days, then the recommended disposition of the  
9 Director becomes the agencies disposition of the case.

10 CHAIRPERSON ALPERN: What existing coordination is  
11 there between the Investigation Unit and the new Federal  
12 Affirmative Action Unit?

13 MS. TOMASSO: Presently, there is no coordination.  
14 As Sally indicated, both of us are just growing. They are  
15 getting their programs, their plans together and also we are  
16 getting our units together. However, any statistical data  
17 that they gather is available to me, depending on the  
18 particular agency that we may be investigating.

19 CHAIRPERSON ALPERN: Is there any procedure to  
20 assure that systemic elements of employee complaints are  
21 taken into account in reviewing agency Affirmative Action  
22 Plans?

23 MS. TOMASSO: No, there isn't.

24 CHAIRPERSON ALPERN: Well, I'm getting another  
25 signal.

1 MS. KENNEDY: We are in the process -- you are  
2 right about the plans in terms of on-sight compliance  
3 reviews and information that would be sought in relationship  
4 to doing a pre-compliance on on-sight compliance. We will  
5 be asking for summaries of their complaint situation for  
6 purposes of Affirmative Action assessment but we are still  
7 developing that aspect and as I know more about what I'm  
8 doing, I will be consulting and coordinating and, you know,  
9 Johnny Butler has been fostering this kind of approach  
10 already within the District. I have a regional responsibility  
11 and will be doing things with Philadelphia District and  
12 trying to develop similar -- but it's difficult long distance  
13 with the other district office.

14 CHAIRPERSON ALPERN: Will the same procedure be  
15 used with regards to providing technical assistance to  
16 agencies?

17 MS. KENNEDY: Say that again.

18 CHAIRPERSON ALPERN: The coordination, will that  
19 be ---

20 MS. KENNEDY: Between the Complaints Unit and  
21 myself?

22 CHAIRPERSON ALPERN: (Nodding.)

23 MS. KENNEDY: There probably won't be a great deal  
24 of coordination except for the information we pick up, of use  
25 to each other that we will pass on that is not picked up so

1 deliberately. The technical assistance that we would be  
2 giving would be just not very close to the complaints  
3 processing. We won't dabble in anything we're not fully  
4 trained to handle.

5 CHAIRPERSON ALPERN: We would like now to get back  
6 to Mr. Butler with some essential questions that we must get  
7 in before we close this session.

8 Ms. Schumacher, did you want to ask?

9 MS. SCHUMACHER: I wanted to back up a bit to the  
10 statistics on case processing and the scope and impact on  
11 the rapid charge process.

12 While you may not have figures at your finger-  
13 tips, I am interested in a general characterization of the  
14 caseload flow through your office.

15 In other words, of the charges received at intake  
16 in your office, approximately how many would you say are  
17 diverted to a systemic kind of approach -- a Commissioner  
18 charge kind of approach and ELI kind of approach as opposed  
19 to going to a one-on-one fact-finding kind of approach?

20 MR. BUTLER:: To reiterate we don't rely on  
21 individual charges for systemic processing so very, very  
22 few of the charges would be utilized for systemic processing.  
23 In terms of ELI I suspect a very small percent. Our  
24 primary focus is the resolution of the individual complaint  
25 of employment discrimination that is filed by a person

1 coming in the door. So I would suspect that probably as  
2 much as 90 per cent of our processing is related to  
3 individual instances of discrimination.

4 MS. SCHUMACHER: Okay, of that 90 per cent of  
5 your intake that goes to that kind of a processing approach,  
6 about how many would you say resolve themselves one way or  
7 another at that stage either through a settlement or a  
8 dismissal or withdrawal or whatever way might terminate the  
9 process?

10 MR. BUTLER: I suspect at least 50 per cent of  
11 the more resolved -- probably as much as 75 per cent comes  
12 to some kind of a resolution.

13 MS. SCHUMACHER: What proportion of those  
14 resolutions would have any form of affirmative action kinds  
15 of provisions in their settlement would you guess -- any  
16 kinds of class?

17 MR. BUTLER: About half.

18 MS. SCHUMACHER: My understanding though is in  
19 most instances the resolution would focus on the individual  
20 complainant?

21 MR. BUTLER: Yes. Now, again, using the words  
22 of Affirmative Action versus affirmative relief, over half  
23 of the charges would result in some kind of Affirmative  
24 Relief for a Complainant. In terms of Affirmative Action  
25 you really don't get into Affirmative Action kind of a

1 situation unless you are dealing with a systemic charge,  
2 unless you are dealing with a charge that goes through the  
3 ELI processing which is necessarily class. You know, one  
4 of the things that happened in the past with EEOC and the  
5 Commission really wanted to change was that every charge  
6 that came into the EEOC was automatically broad basely investi-  
7 gated and correspondly no charges got investigated. Nobody  
8 got relief in relative terms, of course. So the emphasis  
9 has shifted from taking every individual charge and doing  
10 a broad-based investigation to take the individual charge  
11 and trying to get relief for that individual and if that  
12 charge presented a good litigation vehicle, if that charge  
13 presented issues that were by the very nature class issues,  
14 then we would expand, take an expansive approach or we would  
15 take an Affirmative approach ourselves and do a Commissioner's  
16 charge.

17 MS. KENNEDY: A manager who has had his hand  
18 slapped sometimes takes his own Affirmative Action to stop  
19 behaving the way he behaved before. You can't measure those  
20 things except to say he didn't get caught again.

21 MS. SCHUMACHER: Do you think it's frequent or  
22 infrequent that that kind of effect happens to EEOC case  
23 processing, and, secondly, would you say that those  
24 volunteering kind of steps that are taken would be fairly  
25 limited in approach with respect to individual employees or

1 would they speak to employment systems?

2 MR. BUTLER: Well, it depends upon an employee.  
3 It depends upon a number of variables. One of the things  
4 that I think we must focus on in private sector is that  
5 the status of the Title VII in Law has changed drastically  
6 in the last five years. And Respondents have become very,  
7 very sophisticated. The Law is very much in their favor  
8 so it depends upon how much pressure you can place on a  
9 Respondent or it depends upon the goodness -- I mean the  
10 genuine concern that a Respondent has. More often than  
11 not it's a function of how much pressure are we able to  
12 capture with a smoking gun. It depends on how close you  
13 get to that, that will determine how much Affirmative  
14 or voluntary effort a Respondent will initiate.

15 MS. SCHUMACHER: We heard earlier on this morning's  
16 Panel from the Pennsylvania Human Relations Commission that  
17 their adoption of the rapid charge process has included  
18 their consideration of the fact-finding process, the  
19 face-to-face processes of voluntary stage of case processing  
20 and that if a charging party declines to have their complaint  
21 processed in that way, they will abide by that decision and  
22 move it to a more comprehensive kind of investigation. Is  
23 fact-finding voluntary for EEOC?

24 MR. BUTLER: Yes, it is. It's a part of the  
25 investigation and, as I indicated earlier, the charging

1 party state his or her position, the Respondents state  
2 its position and we make some kind of preliminary assessment  
3 of what the evidence reflects.

4 MS. SCHUMACHER: What happens if the charging  
5 party says for whatever reasons -- and I could conceive of  
6 several that they would rather not come face-to-face about  
7 that charge. Can EEOC -- will EEOC move that charge onto  
8 a continuing phase or what would they do with it?

9 MR. BUTLER: Not necessarily. If at the fact-  
10 finding conference the Respondent wants to offer a charging  
11 party full relief, if the charging party does not accept  
12 full relief we will dismiss that charge.

13 MS. SCHUMACHER: Well, that answer, though,  
14 presumes that a fact-finding meeting is, in fact, taking  
15 place. I'm saying that before a fact-finding meeting takes  
16 place if the charging party declines to be involved in it,  
17 then what happens?

18 MR. BUTLER: Well, if the charging party is trying  
19 to avoid a face-to-face consultation for some emotional  
20 reasons or whatever, we might be willing to accommodate but  
21 at some point in time that charging party is going to have  
22 to come face-to-face with the Respondent that is accused of  
23 a violation and that face-to-face might be through a  
24 representative or something but the way you resolve conflicts  
25 is, you generally sit people down at a table -- maybe not

1 literally sit them down at a table but have them at a table  
2 somewhere and someone else at a table somewhere else and you  
3 try to resolve a matter.

4 If you are talking about a physical face-to-face  
5 confrontation for legitimate reasons, we could probably  
6 accommodate but if there is an attempt on the part of some-  
7 one to file a charge and then to divorce him or herself  
8 from the processing of that charge, I would have serious  
9 problems with that.

10 MS. SCHUMACHER: You mentioned earlier that  
11 many respondents these days are very sophisticated in  
12 unemployment compensation law and I suppose they would  
13 bring their sophisticated legal talent with them to a fact-  
14 finding meeting to represent their interests. Does the  
15 charging party have the same kind of protection. Are they  
16 allowed to bring a representative?

17 MR. BUTLER: Yes.

18 MS. SCHUMACHER: We understood from an earlier  
19 Panelist that it was a very recent decision that the charging  
20 party could bring a representative other than legal counsel  
21 per se.

22 MR. BUTLER: Yes. It was not a recent decision.  
23 Individual offices can develop a procedure-like practice.  
24 I was confronted with this matter very recently and I made  
25 a decision that lay or regular legal counsel could appear and



1 represent.

2 MS. SCHUMACHER: This is up to local discretion  
3 within EEOC?

4 MR. BUTLER: To a great extent.

5 MS. SCHUMACHER: What kind of criteria do you use  
6 to decide who is appropriate a charging party?

7 MR. BUTLER: Well, in terms of my own individual  
8 interpretation of the situation, a charging party could  
9 have anyone that he or she would like to represent as long  
10 as that person can, in fact, represent in a technical sense  
11 of the word and is not there for some kind of disruptive  
12 reason or purpose.

13 MS. SCHUMACHER: Once a charge is settled and an  
14 agreement is put in writing with EEOC as a party to it, what  
15 steps does EEOC take to monitor compliance with that  
16 agreement?

17 MR. BUTLER: Well, the Respondent would have to  
18 give us a report of the compliance with the terms of that  
19 agreement and if the Respondent has not complied with that  
20 agreement, the EEOC could -- you know, could take action.  
21 It depends on whether an agreement was a formal conciliation  
22 agreement. If it was, we could, in fact, go into Federal  
23 Court and seek enforcement of the agreement.

24 MS. SCHUMACHER: How often has that happened in  
25 your experience?

1 MR. BUTLER: Oh, very rarely because very rarely  
2 are we informed of violations of the agreement. Most of  
3 the agreements are self-effectuating. That is, there is  
4 an agreement to give somebody a job, an agreement to give  
5 somebody some money or an agreement to give somebody a good  
6 reference or something like that.

7 MS. SCHUMACHER: Is that true, also, of agreements  
8 that include Affirmative Action types of provisions?

9 MR. BUTLER: Obviously not. Our Affirmative Action  
10 provisions would not be self-effectuated because it would  
11 take -- it could be one year, two years, three years, four  
12 years, five years. That would require some kind of monitoring,  
13 some kind of annual or semi-annual reporting that we would  
14 have to evaluate.

15 MS. SCHUMACHER: Is there any difference in the  
16 way EEOC monitors consent agreements and the way that it  
17 monitors conciliation agreements. Which staff monitors  
18 those two?

19 MR. BUTLER: The investigatory staff monitors  
20 conciliation agreements. The legal staff monitors consent  
21 agreements. The professional staff are consumated. They  
22 have the responsibility for monitoring.

23 MS. SCHUMACHER: So in the case of a consent  
24 decree are there attorneys on your staff?

25 MR. BUTLER: Yes.

1 MS. SCHUMACHER: They actually monitor compliances?

2 MR. BUTLER: Yes.

3 MS. SCHUMACHER: How often are you asked by  
4 employers to provide technical assistance to them with  
5 respect to any kinds of EEO concerns that they may have for  
6 the development of Affirmative Action Plans. Is that  
7 frequent?

8 MR. BUTLER: No, it is not.

9 MS. SCHUMACHER: Do you ever refer people asking  
10 for technical assistance to private consultants?

11 MR. BUTLER: Rarely.

12 MS. SCHUMACHER: I'd like to ask that same  
13 question of Ms. Mee.

14 Do you ask for technical assistance from the  
15 contractors that are within your jurisdiction?

16 MS. MEE: Oh; from time to time, yes.

17 MS. SCHUMACHER: Do you feel that their requests  
18 are -- that OFCCP is able to handle those requests  
19 effectively to their satisfaction as far as the technical  
20 means that they expressed?

21 MS. MEE: The requests we get for technical  
22 assistance are from contractors that have been notified  
23 that they are -- that their Affirmative Action Plan should  
24 be sent in. That they are going to review -- that they are  
25 going into a compliance review.

1 MS. SCHUMACHER: And they ask you for help?

2 MS. MEE: At times, yes. What will happen is,  
3 there is a period of time, they have thirty days in which  
4 to submit an Affirmative Action Plan and there will be --  
5 it's quite possible questions will be rendered to EOS  
6 that has been assigned to that particular case, Equal  
7 Opportunity Specialist or to the supervisor on any changes  
8 that might be taking place since the last review.

9 We also have when we are going into a new  
10 industry, when one of the industries we are going into have  
11 not had reviews of the type that are being conducted in the  
12 Bureau of OFCCP. We find the technical assistance requests  
13 so much greater right now than they have been in the past.  
14 Banks, for instance, are getting a different type of review  
15 under Labor than they had under Treasury so there is a  
16 request for technical assistance.

17 We also have seminars that are provided by the  
18 National Office, which is considered a form of technical  
19 assistance and some brochures and material that are  
20 provided.

21 MS. SCHUMACHER: Would you ever refer a contractor  
22 asking for technical assistance to a private consultant?

23 MS. MEE: No, I would not.

24 CHAIRPERSON ALPERN: I'm going to continue, Ms.  
25 Mee, with some other questions that we didn't get to earlier

1 that we really would like some information about.

2 Under the existing system, do you feel that your  
3 staff is handling the maximum amount of cases for review  
4 that it can handle at this time?

5 MS. MEE: At this time I would say, yes. I would  
6 like to expand upon that if I might. As you are aware from  
7 earlier meetings, we went through a reorganization about  
8 fifteen months ago. At that time the individuals coming  
9 into the Department of Labor brought with them a great deal  
10 of -- a great variety of skills, of all individuals who did  
11 not come in with the same level of skills. We had people  
12 who were trained only in construction. We had others who  
13 only used client's service and we had others who were  
14 handicapped veterans.

15 Then, too, all agencies that were operating the  
16 contract compliance program prior to the consolidation under  
17 the Department of Labor did not all operate under the same  
18 rules and regulations as the Department of Labor and now  
19 the compliance handbook that is the operating guide for  
20 every compliance specialist or equal opportunity specialist  
21 in the Country is something that was developed in final  
22 form in September of '79 so what we have been through during  
23 this fifteen month period is an effort, and -- first of all  
24 to get all of our people trained in the various program  
25 areas and I must say that is an ongoing effort because when

1 we moved into this region as the consolidation took place,  
2 when the vacancies were created. Those vacancies had to be  
3 filled with people to enrich the program and are still in  
4 training. The handbook was near. We provided training to  
5 all staff on the new compliance manual or handbook. We  
6 also have provided -- the Department of Labor has provided  
7 several training programs for our staff during this past  
8 fifteen months. A two-week training program in the compliance  
9 review itself, a training program in handicapped for veterans  
10 and in process right now is a training program in  
11 construction that will be provided sometime soon so in  
12 looking at this wide range of skills that we have, we have  
13 had -- the Department of Labor in Philadelphia -- the  
14 Philadelphia Region has had to work with people to develop  
15 their skills wherever their skill level might have been  
16 when they came into the organization and unquestionably  
17 this is meant to delay the number of reviews that have  
18 been completed on the number of people that were skilled  
19 to do every type of review that we had.

20 I am very optimistic about the direction this is  
21 taking. I've seen a great deal of growth in this fifteen  
22 month period. By no means are we at an optimum level and  
23 most assuredly you can get a great deal from a training  
24 program but in order to become a skilled compliance officer  
25 only experience will give us that kind of individual and

1 that experience can only be over a period of time.

2 CHAIRPERSON ALPERN: What criteria are applied  
3 to determine when to seek concillation agreements and when  
4 to settle for minor amendment of EEC?

5 MS. MEE: There are several criteria. And there  
6 are three ways, really, in which your review might be closed  
7 under the circumstances. It is possible, however, not too  
8 frequent, that a compliance program could be conducted.  
9 There would be no divisions, major or minor and that  
10 review could be closed with a letter putting the contractor  
11 in compliance for a twelve months period. Very rare. I  
12 hope -- we were asked -- I hope I wouldn't be asked to cite  
13 an instance where it happened because I would have difficulty  
14 doing it over the past several years and then the second type  
15 of closure on a review would be a review in which there  
16 were minor deficiencies and that review would be closed  
17 with a letter of commitment. Again, following the letter  
18 of commitment the contractor would be put into compliance  
19 for a twelve month period.

20 The concillation agreement is a device that is  
21 used to conclude a review in which there has been major  
22 deficiencies or in which there has been sanction actions  
23 which were taken as a result of review. To expand upon  
24 that, by major deficiencies if during the course of the  
25 review there are deficiencies which relate directly to the

1 goals and timetables, the bottom line without bringing to  
2 all the different types of deficiencies then a concillation  
3 agreement would be a requirement. If a show cause is issued  
4 during the course of a review, when a review has been -- and  
5 negotiations are completed a concillation agreement would  
6 be required -- well, basically, I'd like to take it a step  
7 further.

8           If we have a violation of a concillation agree-  
9 ment and we move to enforcement action, then at that point  
10 we will -- we would review -- the review is concluded to  
11 a consent decree.

12           CHAIRPERSON ALPERN: Would you say that most of  
13 your agreements are concillation agreements?

14           MS. MEE: In this region about -- and this is just  
15 an estimate -- somewhere between 70 and 80 per cent of our  
16 agreements are concillation agreements. We have a high  
17 number of violations.

18           CHAIRPERSON ALPERN: Can you tell us how many  
19 concillation agreements you attempted in 1979 and 1980 and  
20 how many would you consider to be successful?

21           MS. MEE: I would like to get that figure for  
22 you.

23           CHAIRPERSON ALPERN: All right.

24           MS. MEE: I'll provide you with that.

25           As far as the success of the concillation agree-



1 ment -- and I'm trying to get the perception -- the word  
2 success. To me a successful concillation agreement is one  
3 in which a contractor agrees to remedy all deficiencies and  
4 which we can go back and monitor at the end of every three  
5 month period, six months or the end of the year and find  
6 that he has maintained all of the Affirmative Action he  
7 has committed -- and I say, "he" because, unfortunately,  
8 most of the contractors are are still he. I should say  
9 he and she optomistically.

10 We like to think that we can go back then and  
11 for a successful concillation agreement find that the  
12 contractor is continuing rather than the goals, say the  
13 annual goals is meeting the percentage goals and we see  
14 the Affirmative Action goals outlined in the concillation  
15 agreement still being followed.

16 CHAIRPERSON ALPERN: If you can tell us now, or  
17 if not, can you provide us with the information as to what  
18 disposition was made of the unsuccessful concillation  
19 attempts?

20 MS. MEE: Well, we have regulations to cover  
21 that and if we have a situation where there is a require-  
22 ment for a concillation agreement and the contractor  
23 refuses to sign the concillation agreement, then we would  
24 move into our section depending on a particular review  
25 might issue either a show cause or administrative complaint

1 and then we would have to look at what the specifics are  
2 and then review it actually to find what the steps would  
3 be from that point in time.

4 MS. MORGAN: Has a contractor ever denied  
5 receiving another federal contract because of his performance  
6 under a concillation agreement?

7 MS. MEE: There have been, in this region --  
8 there have been eleven contractors barred since 1971. And  
9 I believe that eight of those departments are still in  
10 effect in the Philadelphia Region. That would be for a --  
11 now, the specific answer to your question on whether that  
12 was for refusal or violation of a concillation agreement,  
13 obviously, in that case, the contractor was unwilling to  
14 concillate with the government and correct deficiencies that  
15 existed so we can, in a very extreme case, and certainly in  
16 a very extreme case go clear through departments.

17 MS. MORGAN: Could you provide us at some later  
18 point -- could you provide us with the contents for those  
19 seven or eight departments -- just put them in the context  
20 of all the cases -- excuse me, of all the agreements that  
21 were handled?

22 MS. MEE: Yes.

23 CHAIRPERSON ALPERN: Mr. Bush, perhaps you can  
24 help us so that Ms. Mee can sit by for a while and tell us  
25 how is compliance with the letter of commitment concillation

1 agreement or consent decree monitored?

2 MR. BUSH: We have a process in the area office  
3 that requires that if there is a submission -- in the  
4 Philadelphia Office there is a process monitoring. I  
5 directed that to be at least one day a month -- a one-day  
6 established per month for reviewing whatever reports are  
7 engendered as a result of letters of commitment or  
8 concillation agreements. That is not the only day,  
9 necessarily, depending upon the individual workload or the  
10 time of the month of -- that the report comes in but one  
11 day a month, every year, take up all the reports that have  
12 been engendered by concillation agreements or those  
13 agreements to evaluate them and respond to the contract to  
14 see if they are acceptable to us.

15 CHAIRPERSON ALPERN: What technical assistance do  
16 you provide in developing and implementing Affirmative  
17 Action Plans?

18 MR. BUSH: I think Ms. Mee addressed the basic  
19 question of technical assistance as given. I think technical  
20 assistance is invariably a part of the process of reviewing  
21 particularly as Ms. Mee suggested when you contact the  
22 contractor and ask for a desk audit, we tend to call back  
23 within fifteen days after receipt of the letter by the  
24 contractor to ask if they do, in fact, understand the  
25 requirements of the letter and, if at that point there is any

1 assistance that can be given.

2 CHAIRPERSON ALPERN: Is this assistance offered  
3 only to employers?

4 MR. BUSH: To employers, yes.

5 CHAIRPERSON ALPERN: If this assistance is  
6 provided, in what way is it provided?

7 MR. BUSH: We've got situations where contractors  
8 who do, in fact, have problems of understanding -- they say  
9 the requirements or understanding the content of our letter  
10 then come into the office to meet with a EEOS who is  
11 assigned to the case for explanations. That process goes  
12 on even down to the day we go on-sight. The contractors are  
13 allowed to come in for explanations and then even after the  
14 on-sight review to the degree that we tend to tell the  
15 contractor we are not going to write the affirmative action  
16 program for you so you need not expect that kind of  
17 technical assistance but we do serve to explain the basic  
18 provisions of the regulations in our requirement goals.

19 MS. MORGAN: If you have a contractor who is  
20 having trouble either keeping up with the requirements of  
21 the concillation agreement or in developing the affirmative  
22 action plan, is there a system in place that would perhaps  
23 slow down the approval of, if that -- if not that contractor's  
24 award or contract -- we heard some testimony earlier that a  
25 particular contractor was out of compliance but that, you

1 know, very shortly the Complainant learned that that  
2 contractor was none the less, you know, receiving other  
3 federal grants whereas he was alleged that the contractor  
4 was exhibiting a lot of bad faith as far as dealing with  
5 the complaints that had been alleged against them. Is there  
6 any system of slowing down that ---

7 MR. BUSH: Yes, there is.

8 DR. FAY: Maybe I can speak to that. The OFCC  
9 official policy on withholding or attempting to withhold  
10 contracts never happens -- will not happen unless a contractor  
11 has been afforded a hearing. The hearing process must take  
12 place prior to any contractor being withheld from a  
13 government contract. The review process, of course, is  
14 slow when we have problems in the types of data or packages  
15 that are received. However, it does not prevent the area  
16 offices or specialists from processing that review to its  
17 completion, whatever that is. It could be a sanctioning of  
18 a show cause or it could be the initiation of a hearing  
19 package. However, if there is a contract award pending,  
20 there is a certain timeframe by which OFCCP is obligated to  
21 either provide clearance for that contractor if they are  
22 not able to make a determination of the compliance data,  
23 then that contract is not withheld.

24 A hearing must be held prior to its award.

25 Now, if there are some exceptional situations we are

1 not aware of it and it would be only held probably at the  
2 national level.

3 MS. MORGAN: Do you ever provide technical  
4 assistance to, for example, advocacy groups who are pursuing  
5 complaints of discrimination?

6 DR. BUSH: Yes.

7 CHAIRPERSON ALPERN: They come to you and ask  
8 for this kind of assistance?

9 MR. BUSH: We've had a couple of vehicles through  
10 which we carried out, I think, at least that portion of our  
11 job. We've been out, both myself and Ms. Mee to some  
12 community kinds of setting. I am in the process now of  
13 having meetings with various groups represented in the  
14 Philadelphia and Delaware area for purposes of technical  
15 assistance and enlightenment.

16 CHAIRPERSON ALPERN: We are under very strict  
17 time constraints here, but we have a question that we would  
18 like to ask of each of you and I don't want to say answer it  
19 in twenty-five words or less but I think you get the  
20 message.

21 If you can, would you very briefly tell us what  
22 your definition of Equal Employment Opportunity would be and  
23 your definition of Affirmative Action and do you see a  
24 difference between the two. Could we start with you, Mr.  
25 Fay.

1 MR. FAY: I'll try to do it quickly. Yes, of  
2 course. I heard the other two gentlemen prior to our  
3 coming on expound on that. I surely feel that Equal  
4 Opportunity is an opportunity for all persons to be exposed  
5 and to be employed or to be trained or to be promoted based  
6 on their ability to perform. All persons given an opportunity  
7 to perform based on their ability. To me that's Equal  
8 Opportunity.

9 Affirmative Action, on the other hand, as I see  
10 it is a set of specific action oriented results or  
11 procedures that will generate action or results to correct  
12 problem areas. If we have Equal Employment Opportunity and  
13 we still can do analysis in our work forces to find that we  
14 have problems on utilization, obviously Equal Opportunity is  
15 not going to correct. Equal Opportunity is what got us  
16 there so it suggests that in order to correct those problems  
17 that we identify in terms of under-utilization or other  
18 problems with respect to minorities and women, we would  
19 have to do something over and above business as usual and  
20 I would suggest that we do that when we're talking about  
21 Affirmative Action.

22 CHAIRPERSON ALPERN: Mr. Bush.

23 MR. BUSH: I think Affirmative Action is the  
24 sum total of all activities, all actions engaged in and  
25 somebody used the words, they voluntarily. I don't

1 necessarily subscribe to that. I think voluntarily or  
2 imposed kinds of actions that are done with the distinct  
3 intention of removing all kinds of barriers, whether they  
4 are real or not.

5 I think Equal Employment Opportunity is that  
6 environ that will exist once all the barriers are gone.

7 CHAIRPERSON ALPERN: Ms. Mee.

8 MS. MEE: I spent a great deal of time in  
9 addressing this in answering my questions to you, Ms.  
10 Schumacher and I can only say that I can think of nothing  
11 to expand on what Mr. Fay and Mr. Bush have said.

12 CHAIRPERSON ALPERN: Thank you. Mr. Kesselring.

13 MR. KESSELRING: I think I look upon EEO as an  
14 earlier concept. I think the words of Lyndon Johnson when  
15 he talked about, you can't just say to somebody who hasn't  
16 been in the race, come on, I'm going to let you run now and  
17 bring you up to the starting line and expect him to compete  
18 effectively. I think that was Lyndon Johnson's way of saying,  
19 Affirmative Action is, you got to do something a little more  
20 than people just getting into the race and I think that's  
21 the affirmative process -- Affirmative Action process, the  
22 use of your personnel system and all of its sub-systems,  
23 management systems, the motivation process in an organization  
24 to see to it that those who have been excluded in the past  
25 get the extra assistance necessary to get into it.



1 I might mention that with FEORP we have a new  
2 concept in the Federal Affirmative Action and that is  
3 representativeness. That did not exist before the passage  
4 of the Civil Service format. We now not only have to have  
5 EEO and Affirmative Action but we have a representative  
6 work force and I think that's a new concept you might want  
7 to ask about in the future.

8 CHAIRPERSON ALPERN: Thank you.

9 Ms. Tomasso.

10 MS. TOMASSO: Yes. Equal Employment to me means  
11 the opportunity of people of different races, colors,  
12 creeds, national origins to work in an atmosphere free of  
13 discrimination.

14 Affirmative Action means establishing some type  
15 of goals, timetables among other tools to rid oneself of  
16 the effect of discrimination.

17 CHAIRPERSON ALPERN: Thank you.

18 Ms. Kennedy.

19 MS. KENNEDY: Yes. Mine is brief. I feel that  
20 Equal Opportunity is a situation where if you've got what  
21 it takes you've got a fair chance to compete without  
22 discrimination for supercilious reasons and Affirmative  
23 Action, really, I feel is whatever kind of program it takes  
24 to include those that have been left out.

25 CHAIRPERSON ALPERN: All right. Mr. Butler.

1 MR. BUTLER: Yes, I feel that Equal Opportunity  
2 is basically what the term "connote", equal, fair chance  
3 to compete or whatever. I think that's an over-simplification  
4 with Affirmative Action. And it's deliberately an over-  
5 simplification of Equal Opportunity because it's just talking  
6 about a fair shake, a fair chance to compete, to do whatever  
7 it is you want to do.

8 With Affirmative Action I think it's a set of  
9 affirmative or positive steps in an attempt to remove, in the  
10 employment context, artificial barriers to people fully  
11 enjoying all of the benefits of the work place.

12 CHAIRPERSON ALPERN: Thank you.

13 We'd like to give you an opportunity to respond  
14 to any of the concerns that were expressed by earlier  
15 Panelists, if any of you wish to do so.

16 Remember we do have a time factor here.

17 MS. MEE: I would like to take this opportunity  
18 to respond to a couple of concerns that were expressed this  
19 morning -- one by Mr. Smith in Pittsburgh and the concern  
20 that we were expending according to the tape, 95 per cent  
21 of the resources in Pittsburgh in construction and that the  
22 actual number of reviews in construction in Pittsburgh has  
23 been ten since the re-organization. All of those reviews  
24 have been scheduled within the last three months. Ten  
25 reviews. All have been rescheduled within the last three

1 months and as a part of a targeting effort that we did there  
2 to spot check some of the compliance with larger contractors  
3 in Pittsburgh on a time plan and even though construction  
4 over-exceeds the ten per cent -- the national ten per cent  
5 in this region, most of that construction activity is  
6 concentrated in Philadelphia Area Office and in Washington,  
7 D.C.

8 I also wanted to move into another concern that  
9 was expressed and that is the lack of available data from  
10 OFCCP. And there have been a number of requests that have  
11 come into OFCCP under the Freedom of Information Act since  
12 the re-organization. Unfortunately, when the re-organization  
13 took place, of the eleven different agencies, all the  
14 materials and all of the Affirmative Action Plans that had  
15 been in the position of the former agencies were not  
16 transferred. Many different things -- there are stories  
17 about what happened to AAP and I might share with you one  
18 of particular in that related to some reviews that are  
19 AAP's that were to be shipped to this region by the  
20 Department of the Treasury. The staff left and the boxes  
21 didn't so having sought these bank reviews for many months,  
22 one of the staff was calling Department of Treasury, located  
23 an individual there who said, oh, I know what you are talking  
24 about and they're within one week of going to the shredder.  
25 We were able to locate the reviews but they did not belong

1 to Philadelphia Region so there are -- have been many  
2 instances where there have been requests made for  
3 information and it would seem strange that a government  
4 agency would not have that information or might be withholding  
5 it when, in fact, it's not there at all. Much of that  
6 resulted from the many, many different boxes of materials  
7 that were sent across the country in review. I wouldn't be  
8 surprised, knowing how mail gets delayed, that we might find  
9 some old Philadelphia reviews out in San Francisco.

10 We have, however, -- I have a responsibility as  
11 an official of the government and FYA Disclosure Officer  
12 in this region to disclose under anything that is not  
13 covered by exemption and there are very specific regulations  
14 and requirements that I must follow and I must follow them  
15 under Law, under fear of penalty. I did want to clarify  
16 that.

17 CHAIRPERSON ALPERN: Thank you. Does anyone else  
18 want to respond to any previous concern?

19 MS. KENNEDY: Yes. I was very sympathetic to  
20 especially Karen McKreesh -- well, Dean Short was reflecting  
21 all of them, I guess -- the problem of the field installations  
22 not getting any word or information. The plea I want to make  
23 is for some -- without appearing to want to drag my feet,  
24 that some recognition of the lead time necessary to turn  
25 a situation around. The headquarters agencies were informed

1 by EEOC of what things were coming down the pike. There  
2 was such a tradition of not doing anything until the deadline  
3 was on top of you or not believing anything until you got it  
4 in final with some validity. That information was not passed  
5 on to field installations. We got our instructions  
6 disseminated on the 12th of December not reproduced. Now,  
7 how fast do you get something printed in the Government  
8 Printing Office over the Christmas Holidays and that kind  
9 of stuff. I got my supply for dissemination last week.  
10 Meanwhile, I was xeroxing it and passing it out. That --  
11 the allocation of sufficient resources for things to be done  
12 in a timely fashion is very important both -- especially  
13 within the federal agencies, I believe EEOC's emphasis is  
14 going to be very much on holding agencies accountable but  
15 they don't have the staff to do it very often in their  
16 headquarter's building. HEW has a 150,000 employees and I  
17 was in an office of two which now has expanded to four, I  
18 think, and is going to do on-sight compliance. I hope so.  
19 The patience with the statistics problems -- we just can't  
20 do anything. We all have access to the same garbled  
21 inadequate statistics. It's not going to get any better until  
22 the census of '80 will hopefully improve an awful lot on this  
23 availability study and that kind of thing.

24           If the census -- and I believe they worked hard to  
25 improve it -- have improved enough to ask -- get the questions

1 asked when you do the census.

2 MS. MORGAN: But that census information isn't  
3 going to be available for two years, is it not?

4 MS. KENNEDY: Well, we're not talking about  
5 accomplishing anything overnight are we.

6 We can't do anything about it. I -- that's what  
7 I'm saying. The statistics aren't there until you do have  
8 the census completed and compiled and digested and spat out  
9 again. Meanwhile, we keep trying to do some Affirmative  
10 Action regardless. We can't use that as an excuse.

11 And the other thing is, the technical assistance  
12 asked for -- needed is much more sophisticated than is yet  
13 being provided. Those questions that Karen McKreesh asked  
14 about definition of reasonableness for overcoming -- you  
15 know, that is really, who has the answers but we have to  
16 focus more time and attention to bringing the answers to the  
17 board and the support and interest in the handicap  
18 affirmative action program has got to be brought up and  
19 equal with the minorities and women and not that they should  
20 be merged in the planning process. They are whole,  
21 separate different problems but they've got to be integrated  
22 in the implementation program.

23 And I guess that's all I have to say.

24 CHAIRPERSON ALPERN: Well, ladies and gentlemen,  
25 thank you very much. We're very appreciative of your

1 cooperation in providing us with all of this valuable  
2 information for our report. We're going to ask you if  
3 we may call upon you after this is over in case we have  
4 additional questions. By all means, feel free if there's  
5 something you'd like to pass along to us. Do so. Send it  
6 right along to Washington to the staff there.

7 We are very grateful to you. Thank you, again.

8 We must leave the building by 5:30 but we do  
9 have a brief period of time left for those in the audience  
10 who have indicated they wish to make a statement. Please  
11 remember that these statements must be limited to five  
12 minutes each and speak to the subject of this meeting,  
13 Affirmative Action as enforced by the Federal Government.  
14 That is the subject which we are dealing with today.

15 If we run out of time, you're welcome to submit  
16 statements for the record. You may not speak, however, with-  
17 out checking with our staff first so please see Susan  
18 Crowell if you have not yet signed up. That's in the back  
19 of the room.

20 Would those from WHAE, who have signed up please  
21 come forward.

22 I want to call first on Eileen Talaney.

23 MR. OWENS: : I thought if you all went up at  
24 once then they wouldn't lose five or six minutes changing  
25 seats.

MS. TALANEY: My name is Eileen Talaney. I would just like to express an opinion and offer a recommendation. This is from my own personal experience. I'm not a member nor a delegate but I support them emotionally and whatever volunteer efforts I can. I have no other affiliation. I did have a complaint regarding discrimination with the previous employer for which I worked for three and a half years. This employer was under investigation prior to the re-organization. His company has no Affirmative Action Plan, considers it a joke. It was a privately held corporation. They blatantly discriminate. They will do everything but openly admit it. They are not ashamed of it and they have no intentions of changing this. They are offering their employment to people making this perfectly clear to them and if these people have any complaints, they can look for employment elsewhere.

They have fired people who have made complaints to them on the spot. Most people -- I think it is important for you all to recognize most people do not feel secure enough in their employment positions to file complaints at the time they are being employed by companies like this. A lot of people and the vast majority of people, I'm sure it has been socially proven, don't feel secure enough in their positions to even leave a company that they feel is discriminating against them. People find jobs because they



1 are close to home, a lot of working women don't feel they  
2 can go into town if they are located in the suburbs and  
3 there are a lot of reasons for the government to implement  
4 Affirmative Action Plans for their contractors. The  
5 company I work for is a federal contractor.

6 At the time of the re-organization the  
7 investigation was discontinued and it was never continued  
8 again. I think it's a serious disservice for the people who  
9 work this -- for this corporation and I would like to  
10 suggest that, perhaps, an implementation could be effected  
11 in which a company would have to file an Affirmative Action  
12 Plan that they are presently implementing themselves with  
13 a central agency in the government and it could be put on  
14 file with that agency and then before any agency within the  
15 government can offer a contract to a company that would have  
16 to check in this file and see if they have an Affirmative  
17 Action Plan and if they don't, not even be considered for  
18 a contract. This company repeatedly gets several contracts  
19 every year and I think it's a disservice to citizens of this  
20 country who pay the taxes, who support EEO and all of the  
21 other organizations in the country that just obviously are  
22 not funded enough or staffed enough to handle this. I think  
23 it's a disservice to the citizens in general that this kind  
24 of poor quality, investigation ---

25 CHAIRPERSON ALPERN: I think you've made your point

1 clear, if you don't mind. I think we have your recommendation  
2 as well.

3 Thank you.

4 Colleen O'Connell.

5 MS. O'CONNELL: Sorry to take up your time again. I  
6 just have a brief statement here and I'll read it if you  
7 don't mind.

8 Since 9:00 we've listened to your questions and  
9 various responses over five panels and now we would like to  
10 ask you, the asker, something but first I would like to  
11 point out a very serious problem with this meeting. This  
12 fact-finding meeting was to gather facts about the  
13 effectiveness of EEOC, the OFCCP and other agencies.

14 CHAIRPERSON ALPERN: Can I interrupt you just to  
15 say the fact-finding meeting is not to gather facts about  
16 the effectiveness, it's to gather facts about the agency.

17 MS. O'CONNELL: Okay, I'm sorry.

18 CHAIRPERSON ALPERN: We are doing -- not doing  
19 an evaluation of the agency.

20 MS. O'CONNELL: Okay. What we are concerned with  
21 today is that 80 per cent of the time was spent with federal  
22 and local officials about their own affirmative action  
23 programs, and only 20 per cent of the time was spent in  
24 hearing about those of us who pay the salaries of these  
25 government officials, and who must constantly battle with

1 them to get anything done. As working women in non-  
2 management jobs we are the ones who face discrimination  
3 daily. We are the secretaries who do the bosses' work at  
4 one-third of his pay. We are the clerks who train men with  
5 less experience to become our supervisors and we are the  
6 women who cannot advance ourselves because our company has  
7 refused to provide training for advancement.

8 We are the ones who see discrimination everyday  
9 and must deal with the reality that Laws on the books are  
10 not enforced by the government agencies by pretending that  
11 there is a resource to handle discrimination and that this  
12 resource is a government agency -- it's naive and a dis-  
13 service to us all. The government agencies here today can  
14 be made to do their job but this requires extensive prodding.  
15 We the members of WAJE have sat here, we have been the only  
16 community organization in the audience, the government  
17 agency heads who are paid to testify about -- to observe  
18 these meetings have gone on about EEO requirements. This  
19 is their job. Okay.

20 Our tax money goes to support them. What we  
21 don't understand is how an advisory panel trying to find  
22 out more about agencies have not felt the need to hear from  
23 those of us who have to deal with them. And who work 9:00  
24 to 5:00.

25 What we'd like to say is, most of us who are here

1 today took off work to come here. The people that you see  
2 in the office just came here from work. We are sorry that  
3 they were late. They didn't have the opportunity to get  
4 here either. We would believe that you should have seen to  
5 it that the auditorium was packed with people. This could  
6 have been done very simply by holding the meeting after  
7 working hours at 5:00.

8 (Applause.)

9 MS. O'CONNELL: But we'd like to ask you if it  
10 would be possible that any future meetings dealing with  
11 agencies and input from agencies could be held at a time  
12 when those people dealing with those agencies on a local  
13 grass roots level could be made available.

14 CHAIRPERSON ALPERN: Just very quickly I will  
15 tell you that because of the fact that we did some careful  
16 planning in selecting Philadelphia and Pittsburgh as the two  
17 cities in which we're going to hold the sessions for this  
18 State and Philadelphia was very heavily government people,  
19 as you said, because this is the center for government  
20 agencies. The Pittsburgh fact-finding meeting will be in  
21 reverse proportion. We will be dealing very heavily there  
22 with the private sector and with the people you've been  
23 describing in your statement. As far as the time factor is  
24 concerned, we are limited to a government building which has  
25 a time constraint as I've already told you so that that was

1 not something that we had something that we could do something  
2 about. Possibly other alternatives could be looked into and  
3 we'll certainly discuss that in our future planning. Thank  
4 you.

5 Moving along very quickly because I'd like you  
6 all to have an opportunity before we have to close. I'm  
7 not sure of the handwriting here. Carmel Sofronski.

8 MS. SOFRONSKI: I feel Affirmative Action Plans  
9 should be submitted yearly. This should be made mandatory.  
10 The Law does not require companies to submit Affirmative  
11 Action Plans to the OFFCP unless they are being reviewed.  
12 Since these reviews rarely happen, companies do not have  
13 written Affirmative Action Plans. A lot of companies feel  
14 Affirmative Action or affirmative relief is one big joke.

15 The only solution is simple. Companies should be  
16 required to submit these plans to OFCCP yearly and these  
17 plans should be accessible to the public, which they are  
18 not.

19 The decision is Irene Mee and Welden Rongeau's  
20 decision. It's a deliberate attempt to prevent citizens'  
21 input into investigations of federal contracts. It affects  
22 WAJE as an organization, trying to get enforcements of  
23 Affirmative Action Regulations and other ways working with  
24 organizations like ourselves in Boston, Cleveland, Chicago  
25 and elsewhere.

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I would like to make another statement, also.

I'd like to know how long does it actually take for a charge to go through fact-finding and extended investigation in the Philadelphia Human Relations, EEOC and the State Human Relations Commissions through the new rapid charge system.

Many people get discouraged about the charge and I don't blame them.

Thank you.

CHAIRPERSON ALPERN: Regina Gladling.

MS. GLADLING: I want to pass because what I was going to say has already been said.

CHAIRPERSON ALPERN: Thank you. Robin Robininski.

MS. ROBININSKI: There was one concern that was put into a written statement which we provided which wasn't raised earlier. The Equal Opportunity Commission has instituted a pilot program to try and streamline some of the work of various agencies with heavy EEO workloads such as the Postal Service.

The pilot program would in operation investigate an individual charge of discrimination arising out of the Postal Service. In Philadelphia we've been fighting a sexual harassment case against the Post Office since April. The Philadelphia Post Office has been allowed to exclude themselves from this pilot program.

Regionally, in this area, Washington, Baltimore

1 and other post offices are part of this program so that any  
2 in-house investigations by the Postal Service don't happen.

3 In Philadelphia the EEOC and the Postal Service  
4 has some how arranged that the Philadelphia Post Office  
5 doesn't have to be looked at by an outside agency. The  
6 reason for this seems pretty obvious to us and that is, one  
7 of the reasons -- that there are only twelve women who are  
8 letter carriers in the City of Philadelphia out a work force  
9 of 2400, that the Philadelphia Post Office does not want  
10 their record with regard to women looked into and we think  
11 this is a very serious problem and there should not be an  
12 option of an agency excluding itself from a program.

13 The other thing gets back to the evening hearings.  
14 I think we would be glad to offer our services in locating  
15 a building where you have -- can have hearings at 5:30 and  
16 we'd be glad to cooperate with you in getting more citizen  
17 input into your process. I don't think that a reason to  
18 exclude participation in Philadelphia is because you are  
19 doing it in Pittsburgh. There are some very serious  
20 problems here and I think this warrants your attention  
21 before this report is finalized.

22 CHAIRPERSON ALPERN: Well, this report, you know--  
23 these fact-finding meetings are taking place in ten regions  
24 in the country and all the information will be fed into the  
25 final report so that there will be ample opportunity, and

1 as we've said, if you have any statements, feel free to send  
2 them -- any additional statements you'd like to make or  
3 anybody else that you feel has information they would like  
4 to include. We'd be happy to have that.

5 I'd like to thank you for your time. I'd like  
6 to thank all participants who've given so generously of  
7 their time to help us in this fact-finding meeting and those  
8 of you who have sat here patiently listening to all that has  
9 gone on.

10 I'd like to thank the Staff of the United States  
11 Commission on Civil Rights and particularly Yvonne  
12 Schumacher, who is the Project Coordinator and Robert  
13 Owen, who is the Regional Attorney. We want to thank the  
14 Social Security Administration for the use of these  
15 facilities.

16 I will remind you that we will be holding a  
17 similar meeting on April 16th in Pittsburgh. At that time,  
18 we intend to probe into greater depth the perception and  
19 experiences of the private sector as I just explained as  
20 well as the Affirmative Action efforts within State and  
21 Local Government as employers.

22 Thank you very much and these proceedings are  
23 over.

24 (Whereupon, at 5:30 p.m., the hearing was  
25 concluded.)



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This is to certify that the attached proceedings of the U.S. Civil Rights Commission, Pennsylvania Advisory Committee, held on March 18, 1980 in Philadelphia, Pennsylvania were had as herein appears and that this is the original transcript thereof.

  
HELEN L. KAPLAN

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