

COLORADO ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS

Factfinding Meeting on  
Affirmative Action in Employment

March 14, 1980

TRANSCRIPT OF PROCEEDINGS

*Corrected  
copy  
J.B.*

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CCR  
3  
Meet.  
179

- pg.4, line 19 - delete the word quote; and add quotation mark before many;  
capitalize the word Many
- pg.4, line 23 - add period and quotation mark after discrimination.;  
delete the word unquote
- pg.5, line 20 - capitalize State Advisory Committees
- pg.5, line 23 - capitalize Commission on Civil Rights
- pg.6, line 7 - capitalize Commission
- pg.6, line 13 - capitalize Commission and State Advisory
- pg.6, line 14 - capitalize Committees
- pg.6, line 15 - capitalize Commission
- pg.6, line 16 - capitalize Committee; delete period after Committee;  
substitute comma; lowercase and
- pg.6, line 17 - capitalize Commission
- pg.6, line 19 - capitalize Advisory Committee
- pg.6, line 22 - capitalize State Committees
- pg.6, line 24 - capitalize Commission and State
- pg.7, line 1 - capitalize Advisory Committee; delete period after proceeding;  
lowercase as
- pg.7, line 6 - capitalize Committee
- pg.8, line 3 - capitalize Advisory Committee
- pg.8, line 8 - capitalize Advisory Committee and Commission
- pg.8, line 9 - delete period and substitute comma after member;; lowercase  
preferably; add period after Muldrow.; capitalize Would
- pg.8, line 11 - no new paragraph
- pg.11, line 21- capitalize State (two places)
- pg.11, line 24- capitalize State
- pg.12, line 1 - capitalize State
- pg.12, line 8 - begin sentence with the word With; lowercase the
- pg.12, line 10- change has to have; capitalize Department of Labor
- pg.12, line 11- capitalize State

- pg.13, line 5 - capitalize Department of Labor
- pg.13, line 8 - capitalize Department of Labor
- pg.14, line 25- delete period after area; lowercase which
- pg.15, line 4 - capitalize Association
- pg.15, line 6 - capitalize State
- pg.15, line 20- capitalize Justice Department's
- pg.15, line 21- capitalize Schools
- pg.15, line 25- delete. period after requirements; lowercase unlike
- pg.16, line 9 - capitalize Justice Department
- pg.16, line 23- capitalize Department of Justice
- pg.17, line 11- change metropolitcan to metropolitan
- pg.17, line 17- capitalize Justice
- pg.17, line 18- capitalize Department
- pg.17, line 20- capitalize Justice Department
- pg.18, line 2 - capitalize Justice Department
- pg.18, line 5 - add period after nationally.
- pg.18, line 6 - capitalize However
- pg.18, line 12- capitalize Justice
- pg.19, line 2 - capitalize Justice
- pg.19, line 3 - capitalize Department; delete question mark and substitute a colon after investigation:
- pg.19, line 4 - add period after selection.; capitalize Again; add comma after Again,
- pg.19, line 5 - add period after complaints.; capitalize And
- pg.19, line 18- capitalize Office for Civil Rights
- pg.19, line 21- capitalize Office for Civil Rights
- pg.20, line 10- capitalize Office for Civil Rights
- pg.20, line 12- capitalize Office for Civil Rights

- pg.20, line 15- capitalize Office for Civil
- pg.20, line 16- capitalize Rights
- pg.21, line 8 - capitalize Office for Civil Rights
- pg.21, line 12- capitalize Education and Welfare
- pg.21, line 21- capitalize Director
- pg.21, line 25- capitalize Director
- pg.22, line 8 - capitalize Affirmative Action, and Higher Education
- pg.22, line 10- capitalize Director
- pg.22, line 11- change and to on; capitalize Affirmative Action
- pg.22, line 12- change and to in; capitalize Higher Education Institutions
- pg.24, line 23- delete this -- some out of it; delete a (after CCHE)
- pg.26, line 5 - capitalize In
- pg.26, line 8 - change by to against (first word)
- pg.27, line 8 - delete period after annually; lowercase based
- pg.27, line 17- capitalize Commission
- pg.27, line 20- capitalize Executive
- pg.27, line 21- capitalize Director
- pg.28, line 1 - change program to programs
- pg.28, line 7 - change league to League's
- pg.29, line 7 - delete the word quote; add quotation mark before "equality
- pg.29, line 8 - delete comma and add period and quotation mark after result."; delete the words close quotes
- pg.31, line 6 - change paritying to parity
- pg.35, line 18- capitalize Commission
- pg.44, line 8 - change Jen to Jennie
- pg.44, line 9 - delete period and substitute comma after Commission,
- pg.44, line 10- add comma after Division,
- pg.44, line 16- change NOAA to National Oceanic and Atmospheric Administration

pg.45, line 5 - add the word opportunity before recruitment (first word);  
change PR to FEORP; add comma after FEORP,

pg.46, line 25- delete period after the word thing; lowercase which

pg.47, line 8 - capitalize Sugarman

pg.48, line 6 - add comma after the word public,

pg.49, line 2 - capitalize PRO; delete period after PRO

pg.49, line 5 - capitalize PRO; delete period after PRO

pg.49, line 24- change regional to region

pg.49, line 25- capitalize Principal Regional Official

pg.51, line 19- change understood to undertook

pg.51, line 25- capitalize Department

pg.52, line 1 - capitalize Office

pg.52, line 2 - capitalize Secretary

pg.53, line 1 - change as to of (second word)

pg.53, line 15- capitalize Office of Personnel Management

pg.54, line 23- delete colon substitute parentheses after the word Hamory

pg.55, line 12- capitalize National

pg.56, line 12- capitalize Upward Mobility Program

pg.56, line 13- change coop to Co-op

pg.56, line 14- capitalize Student Program

pg.56, line 15- change coop to Co-op; capitalize Student Program

pg.57, line 2 - change coop to Co-op

pg.58, line 3 - delete comma and substitute apostrophe after the word  
Laboratories' (first word)

pg.59, line 1 - change coop to Co-op; capitalize Student Program and Upward

pg.59, line 2 - capitalize Mobility Program

pg.60, line 9 - change coop to Co-op

pg.66, line 11- capitalize Office of Personnel

pg.69, line 11- capitalize Federal Executive Board

pg.69, line 12- capitalize Council

pg.71, line 2 - change in to and (last word)

pg.71, line 12- delete period and substitute colon after the word points:

pg.72, line 21- capitalize Department of Labor

pg.72, line 23- add hyphen between self-identification

pg.75, line 1 - add comma after the word plan; lowercase sit

pg.75, line 2 - add comma after the word then,

pg.77, line 6 - delete dashes after the word put

pg.78, line 1 - capitalize Merit System Protection Board

pg.78, line 18- capitalize Office of Personnel Management

pg.79, line 12- capitalize Commission

pg.80, line 14- change he's to he'd

pg.84, line 13- capitalize Office

pg.84, line 14- change personal to Personnel; capitalize Personnel Management

pg.84, line 19- delete comma after the word wonderful; add the word a between its and wonderful

pg.84, line 22- add dashes after the word end--; add period after the word point.; capitalize Because

pg.86, line 19- change that to the (sixth word)

pg.86, line 20- delete comma after the word year; change their to the (last word)

pg.86, line 21- delete comma after the word progress

pg.87, line 14- delete period after the word December; lowercase and (second word)

pg.90, line 23- capitalize Office of Federal Contract Compliance

pg.91, line 22- capitalize Office of Federal Contract Compliance Department

pg.91, line 23- capitalize Labor

pg.95, line 19- capitalize Commission

pg.98, line line 19- change OMP to OMB

- pg.99, line 6 - add the word The before the word beginning; lowercase beginning
- pg.99, line 8 - delete comma and substitute period after the word plans.;  
capitalize As; delete period and substitute comma after  
the word requirements,; lowercase however
- pg.99, line 10- add comma after the word plan,
- pg.100, line 16- change cange to change
- pg.102, line 2 - capitalize Secretary of Trans-
- pg.103, line 12- change or to at
- pg.104, line 7 - delete the word job
- pg.104, line 13- change insensi- to incen-
- pg.104, line 14- change insensitization to incentivization
- pg.104, line 18- change insensitization to incentivization
- pg.105, line 3 - change insensitization to incentivization
- pg.111, line 2 - delete period and substitute a comma after the word Colorado,;  
lowercase the word a
- pg.111, line 5 - delete the word or
- pg.111, line 7 - delete the word the
- pg.111, line 8 - change DOUGHERTY to DAUGHERTY
- pg.111, line 10- capitalize Programs; change Standard to Standards
- pg.111, line 11- add comma after the word Administration,
- pg.112, line 1 - change recipient to recipients
- pg.112, line 9 - change function to functions.
- pg.112, line 10- capitalize The (first word)
- pg.113, line 7 - delete the word the (last word)
- pg.113, line 8 - change XLI to 41; capitalize Code of Federal Regulations
- pg.113, line 11- change XLI to 41
- pg.113, line 17- capitalize Revised Order Number
- pg.114, line 14- delete comma after the word conducting
- pg.115, line 4 - delete comma after the word reviews

- pg.115, line 15- add the word to after the word plans (last word)
- pg.115, line 18- add the word With before the word no (first word);  
lowercase no
- pg.117, line 15- delete comma substitute period after the word obviously.;  
capitalize The (seventh word)
- pg.118, line 12- change You to To (first word)
- pg.118, line 22- delete the word is
- pg.118, line 23- add the dollar sign before 150,000
- pg.119, line 13- delete the word but; (first word) delete period and substitute  
comma after the word fourth; delete the word And
- pg.119, line 16- change one to ones
- pg.120, line 25- change to to too; delete period after the word qualification
- pg.121, line 1 - add the word is between think and the
- pg.122, line 19- add period after 1971.
- pg.122, line 22- capitalize Executive Order
- pg.123, line 3 - delete period after '70's; lowercase and
- pg.125, line 19- change manager to managers
- pg.128, line 22- capitalize Department of Labor
- pg.129, line 22- capitalize Office of Civil
- pg.129, line 23- capitalize Rights, Department
- pg.131, line 1 - delete the word he'll
- pg.131, line 18- capitalize Department
- pg.137, line 5 - capitalize Health
- pg.137, line 6 - capitalize Education and Welfare
- pg.137, line 7 - capitalize Department
- pg.137, line 8 - capitalize Health, the Department of Education
- pg.141, line 20- add period after the word panel.; capitalize There (last word)
- pg.145, line 22- change went to wet
- pg.147, line 4 - change I deal to Ideal



pg.148, line 8 - change is to has

pg.150, line 7 - change of to at (first word); capitalize Building Trades Council

pg.155, line 10- change that to about

pg.156, line 5 - capitalize Civil Rights Commission

pg.171, line 12- add period after the word comply.; capitalize Better

pg.171, line 15- add comma after the word with; add comma after the word companies  
capitalize Revised; add the word Orders after the word Revised;  
capitalize Four

pg.171, line 16- capitalize Executive Orders

pg.171, line 17- delete comma substitute with period after the word said.

pg.171, line 20- capitalize Department of Labor

pg.172, line 9 - capitalize Revised Orders

pg.173, line 6 - lowercase decision

pg.173, line 13- change or to as

pg.173, line 16- capitalize Executive Orders; delete comma after the word Order

pg.179, line 10- add comma after the word agencies,

pg.179, line 11- add comma after the word officers,

pg.179, line 18- add the word is between panel and on

pg.179, line 19- delete comma substitute period after the word compliance.;  
capitalize Would

pg.179, line 20- change Kutrz to Kurtz

pg.180, line 2 - change Johhy to Johnny

pg.180, line 13- change committees to committee

pg.180, line 21- change Kutrz to Kurtz

pg.181, line 22- change is to it's

pg.185, line 13- delete comma substitute period after the word basis.

pg.185, line 15- change of to if (first word)

pg.185, line 16- delete period substitute comma after the word institutions.

pg.185, line 17- no new paragraph; lowercase in (first word)

pg.185, line 25- delete period substitute comma after the word institutions;  
lowercase not

pg.186, line 25- change Kutrz to Kurtz

pg.187, line 3 - change KUTRZ to KURTZ

pg.187, line 5 - change Kutrz to Kurtz. (two places)

pg.187, line 9 - capitalize Authority, Career Authority

pg.187, line 11- capitalize Career Authority

pg.188, line 5 - add comma after the word passed.

pg.189, line 13- add period after the word School.; capitalize Nobody

pg.189, line 16- add period after the word these.; capitalize So

pg.189, line 21- capitalize Labor

pg.189, line 25- delete comma after the word is; add the word they between  
is and expect

pg.190, line 6 - capitalize Revised Order

pg.190, line 7 - capitalize Number

pg.190, line 11- capitalize Civil Service Commission

pg.190, line 14- capitalize Revised Order Number

pg.191, line 16- capitalize Department of Social Services

pg.191, line 17- capitalize Department

pg.192, line 2 - capitalize Depart-

pg.192, line 3 - capitalize Social Services

pg.192, line 6 - capitalize State Department of Personnel

pg.192, line 7 - capitalize Career Authority

pg.194, line 3 - change Kutrz to Kurtz

pg.194, line 16- capitalize Office

pg.194, line 17- capitalize Personnel Management

pg.194, line 20- capitalize Career Service Authority

pg.194, line 21- add the word with between board and fixed

- pg.194, line 24- capitalize Civil Service Commission
- pg.194, line 25- capitalize Civil Service Commission; add comma after the word appointed,
- pg.186, line 8 - capitalize Office of Per-
- pg.196, line 9 - capitalize Management
- pg.196, line 11- capitalize Office, -- Equal Employment Opportunity Commission; add comma after the word Commission,
- pg.196, line 12- delete comma substitute period after the word value.
- pg.196, line 13- add the word it before was (first word); change term to turn
- pg.197, line 2 - delete period after the word programs
- pg.197, line 3 - no new paragraph; lowercase and
- pg.199, line 1 - change Dial to Doyle; delete the word Phonetic
- pg.199, line 2 - capitalize Orders
- pg.199, line 7 - change Dial's to Doyle's
- pg.199, line 10- change Dial's to Doyle's
- pg.199, line 13- delete comma substitute period after the word poor.;  
capitalize We
- pg.199, line 15- delete comma substitute period after the word administrators.;  
capitalize We
- pg.200, line 2 - capitalize Office of Civil Rights
- pg.200, line 23- delete comma substitute period after the word organization.
- pg.200, line 24- capitalize The
- pg.201, line 6 - capitalize Office of Civil Rights
- pg.201, line 12- delete comma substitute period after the word support.;  
capitalize We
- pg.201, line 13- delete comma substitute period after the word support.;  
capitalize We
- pg.201, line 23- capitalize Civil Rights
- pg.202, line 9 - delete comma substitute period after the word (Phonetic).;  
capitalize We
- pg.202, line 18- capitalize Office of Civil

- pg.202, line 19- capitalize Rights
- pg.202, line 25- delete comma substitute period after the word it.;  
capitalize They
- pg.203, line 4 - capitalize Office of Civil Rights
- pg.204, line 14- capitalize Office of Civil Rights
- pg.205, line 5 - change Galledos to Gallegos; delete the word (Phonetic)?
- pg.205, line 6 - change Galledos to Gallegos; capitalize Department of Employee
- pg.205, line 7 - capitalize Relations
- pg.206, line 10- capitalize Office of Civil Rights
- pg.206, line 12- capitalize Office
- pg.206, line 13- capitalize Civil Rights
- pg.206, line 18- change Dial's to Doyle's
- pg.207, line 3 - capitalize Board of Education
- pg.209, line 2 - change IV to VI
- pg.209, line 7 - delete period substitute colon after the word action:
- pg.209, line 8 - no new paragraph; lowercase the
- pg.210, line 2 - change 77 to 70
- pg.210, line 4 - change automechanics to auto mechanics
- pg.210, line 6 - delete comma substitute period after the word education.;  
capitalize And
- pg.211, line 6 - capitalize State Department of Education
- pg.211, line 13- capitalize State
- pg.211, line 14- capitalize Department of Education
- pg.211, line 18- add comma after the word department,
- pg.211, line 19- add comma after the word Colorado,
- pg.212, line 20- capitalize Executive Orders
- pg.213, line 2 - capitalize Office
- pg.213, line 3 - capitalize Civil Rights and Justice Department

pg.213, line 12- change council to counsel

pg.213, line 25- change council to counsel

pg.214, line 21- delete comma substitute period after the word effort.

pg.214, line 22- capitalize It (two places); delete comma substitute period after the word that.

pg.215, line 11- capitalize Executive Orders

pg.215, line 17- capitalize Executive Order (two places)

pg.215, line 21- capitalize Office for Civil Rights

pg.215, line 22- capitalize Justice Department

pg.217, line 18- change commenting to comments

pg.217, line 21- capitalize State Personnel Office

pg.218, line 5 - capitalize Office of Personnel Management

pg.218, line 16- capitalize State Personnel Board

pg.218, line 17- capitalize State Con-

pg.218, line 21- capitalize Executive Order

pg.218, line 22- capitalize Governor

pg.218, line 25- capitalize Executive Order

pg.219, line 1 - capitalize Department of Personnel

pg.220, line 19- capitalize State Constitution

pg.220, line 20- capitalize Personnel; add the word the before the word Personnel.

pg.220, line 21- capitalize Board

pg.221, line 1 - capitalize Constitution

pg.221, line 7 - capitalize State Per-

pg.221, line 8 - capitalize Board

pg.222, line 2- delete period after the word stat

pg.222, line 12- capitalize State

pg.223, line 8 - capitalize State

pg.223, line 9 - capitalize Personnel Board

- pg.223, line 11- capitalize Board
- pg.223, line 13- capitalize Board
- pg.224, line 4 - capitalize Board
- pg.224, line 9 - capitalize Department of Personnel
- pg.224, line 11- capitalize State
- pg.224, line 21- capitalize Civil Service Commission
- pg.225, line 10- change Kutrz to Kurtz
- pg.225, line 13- delete comma substitute period after the word midst.;  
capitalize She
- pg.226, line 8 - add the word subcommittee after the word service
- pg.226, line 18- capitalize Canons of Ethics
- pg.226, line 22- capitalize Congressman
- pg.227, line 8 - add comma after the word House,
- pg.227, line 7 - add comma after the word party,
- pg.227, line 9 - delete the word us; add the words the House between of and wish
- pg.227, line 12- delete comma substitute period after the word room.;  
capitalize The (third word); delete comma substitute period  
after the word now.; capitalize The (twelfth word)
- pg.228, line 11- add period after '79.
- pg.228, line 12- change people left, to people in.; capitalize We
- pg.229, line 20- capitalize State Department
- pg.230, line 9 - capitalize State Department
- pg.230, line 20- delete the question mark after the word anybody; lowercase that's
- pg.230, line 22- delete comma substitute period after the word preference.;  
capitalize We
- pg.230, line 25- delete comma substitute period after the word it.;  
capitalize We; delete comma substitute period after the word  
real.
- pg.231, line 1 - capitalize We(first word)
- pg.231, line 10- change hear to here

- pg.232, line 5 - delete comma substitute period after the word had.;  
capitalize We
- pg.233, line 7 - delete comma substitute period after 8A.; capitalize They  
(eighth word)
- pg.233, line 18- delete comma substitute period after the word destructive.
- pg.233, line 19- capitalize This
- pg.233, line 20- delete comma substitute period after the word ago.;  
capitalize In
- pg.234, line 3 - add the word not before the word going (first word);  
delete comma substitute period after the word left.;  
capitalize They
- pg.234, line 4 - delete comma substitute period after the word burned.;  
capitalize Every
- pg.238, line 2 - capitalize State
- pg.238, line 3 - capitalize Personnel Board
- pg.240, line 25- delete comma substitute period after the word reports.;  
capitalize For
- pg.241, line 23- change carificaiton to clarification
- pg.242, line 16- capitalize Department of Education
- pg.244, line 20- capitalize Office of Personnel Management
- pg.246, line 19- capitalize Office of State Planning and Budgeting
- pg.247, line 4 - change of to for
- pg.247, line 19- change of to for; capitalize Office for Civil Rights
- pg.247, line 20- change of to for (third word)
- pg.248, line 20- capitalize Office of Federal
- pg.248, line 21- capitalize Contract Compliance, Equal Employment Opportunity
- pg.248, line 22- capitalize Commission, Office for Civil Rights
- pg.250, line 3 - capitalize Equal Employment Opportunity
- pg.250, line 4 - capitalize Commission
- pg.250, line 7 - change of to for; capitalize Office for Civil Rights
- pg.250, line 10- delete comma after the word that; change and to in

- pg.252, line 12- change of to for; capitalize Office for Civil Rights;  
delete comma after the word Rights; change address to addressed
- pg.254, line 4 - capitalize Office of Federal
- pg.254, line 5 - capitalize Contract Compliance
- pg.260, line 15- capitalize Commission; add comma after the word Commission,
- pg.260, line 18- capitalize Commission
- pg.261, line 11- delete the words Does the Intergovernmental Personnel Act;  
capitalize Under
- pg.261, line 12- change Personnal to Personnel
- pg.264, line 6 - change moresoe to moreso
- pg.265, line 2 - change rights to Service (first word)
- pg.267, line 8 - add period after the word sanctions.; delete the words  
and you said as to
- pg.267, line 9 - delete the words the area of sanctions; capitalize What
- pg.267, line 15- delete the words conformance or a compliance --
- pg.270, line 24- capitalize Equal Employment Opportunity Commission
- pg.270, line 25- add the word to after the word relative
- pg.271, line 17- capitalize Equal Employment Opportunity Commission
- pg.272, line 12- delete comma substitute period after the word capability.;  
capitalize In
- pg.272, line 13- capitalize Equal Employment Opportunity Commission
- pg.272, line 15- add comma after the word whole,
- pg.272, line 16- delete comma substitute period after the word employment.;  
capitalize Equal
- pg.272, line 21- capitalize Office; add the word of after the word Office
- pg.272, line 22- capitalize Personnel Management and Civil Service Commission
- pg.272, line 25- delete comma substitute period after the word programs.;  
capitalize They
- pg.273, line 1 - capitalize Office of Personnel Management
- pg.273, line 2 - add the word a after the word reorganization



pg.273, line 3 - delete comma substitute period after the word reviews.;  
capitalize No

pg.273, line 14- delete the question mark after the word hiring; lowercase in

pg.273, line 21- capitalize Equal Employment Opportunity Commission

pg.274, line 11- capitalize Equal Employment

pg.274, line 12- capitalize Opportunity Commission

pg.275, line 15- change negotiate? to negotiation?

pg.275, line 22- change are to do

pg.276, line 22- delete the words Are the advised?

pg.277, line 11- capitalize Equal Employment

pg.277, line 12- capitalize Opportunity Commission

pg.277, line 17- capitalize Equal Employment Opportunity Commission

pg.277, line 18- delete comma substitute period after the word enterprise.

pg.277, line 19- capitalize We

pg.277, line 20- capitalize Department of Justice

pg.277, line 23- delete comma substitute period after the word districts.;  
capitalize We

pg.277, line 24- capitalize Department of Justice

pg.278, line 18- add period after the word defined.; capitalize We (tenth word)

pg.279, line 3 - delete period after the word compliance

pg.279, line 4 - lowercase if

pg.279, line 23- capitalize Department of Justice

pg.279, line 25- change plan to plans

pg.281, line 12- delete comma substitute period after the word conciliation.;  
capitalize This

pg.284, line 25- delete period substitute comma after the word thereafter,;  
lowercase bringing

pg.286, line 3 - capitalize Commission

pg.287, line 2 - delete comma substitute period after the word person.;  
capitalize They're

- pg.287, line 4 - add comma after the word it,
- pg.289, line 7 - delete period after the word records
- pg.289, line 8 - no new paragraph; lowercase if
- pg.291, line 19- capitalize Commission
- pg.293, line 2 - capitalize Department of Justice
- pg.295, line 16- capitalize Executive Order
- pg.296, line 4 - delete the words of OFB and or (tenth word); add the word of between from and OFCCP
- pg.296, line 12- capitalize Revised Order Number
- pg.296, line 20- capitalize Revised
- pg.296, line 21- capitalize Order Number Revised Order Number
- pg.297, line 22- capitalize State Employment
- pg.297, line 23- capitalize Services and Department of Labor
- pg.298, line 7 - change realization to utilization
- pg.298, line 13- capitalize Revised
- pg.298, line 14- capitalize Order Number
- pg.298, line 15- change does to did
- pg.298, line 16- delete the question mark after the word review; add the word in after the word review
- pg.300, line 5 - capitalize Federal Contract Compliance Manual
- pg.301, line 4 - add period after the word answered.; delete the word to after the word answered; capitalize We
- pg.301, line 5 - delete comma substitute period after the word completing.; capitalize When
- pg.301, line 6 - add comma after the word finish,
- pg.303, line 10- change devourment to debarment
- pg.303, line 11- add the word a after the word in
- pg.303, line 15- change with to at
- pg.305, line 15- capitalize Revised Order Number

- pg.306, line 1 - change of to under; capitalize Reorganization
- pg.306, line 2 - capitalize Plan Number; delete comma after the word Plan;  
add the word been between was made
- pg.306, line 7 - delete comma substitute period after the word word.;  
capitalize We
- pg.306, line 8 - capitalize Office of Federal Contract Compliance
- pg.306, line 13- delete comma substitute period after the word information.
- pg.306, line 14- delete comma substitute period after the word cases.;  
capitalize In
- pg.309, line 15- capitalize Commission
- pg.309, line 21- delete comma substitute period after the word opportunity.
- pg.309, line 24- capitalize Department of Transportation
- pg.310, line 14- capitalize Department of Labor
- pg.310, line 15- capitalize Department
- pg.310, line 18- change VOICE to (By John Binkley); capitalize Has
- pg.314, line 15- capitalize Commission
- pg.317, line 2 - change Bingly (Phonetic) to Binkley

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<u>SPEAKER</u> Ms. Mary Espinoza Mr. Jay Swearingen Ms. Judy Garcia Carder Mr. Allan Eytan Mr. Lawrence Borom Mr. Ross Hamory Ms. Suzanne Elder Dr. Wilmot N. Hess Dr. Beauregard Stubblefield Mr. Robert Dunn Ms. Jennie F. Marillo Mr. Leslie Berkowitz Mr. Bennie Daugherty Mr. Ingo Antonitsch Mr. James C. Hudson Mr. Kent Warner Mr. John J. Donlon Mr. P.J. Kronenberger Ms. Norma L. Bullock Mr. Robert Planansky Ms. Narieda Bottoms Ms. Maxine Kutrz Mr. Robert Pena	I N D E X	<u>PAGE</u> 10 14 21 28 35 45 48 55 60 70 83 111 112 118 121 142 148 158 162 168 181 187 198
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I N D E X  
(Continued)

	<u>SPEAKER</u>	<u>PAGE</u>
1		
2		
3		
4	Dr. Martha Fair	207
5	Mr. John Woods	217
6	Hon. Patricia Schroeder	226
7	Mr. Rudy Livingston	237
8	Dr. Gilbert Roman	247
9	Mr. Robert J. Dunn	255
10	Mr. James Stone	270
11	Mr. Bennie Daugherty	294
12	Mr. Gary J. Archuleta	307
13	Mr. Bevan Wu	311
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1  
2  
3  
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COLORADO ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS

Factfinding Meeting on  
Affirmative Action in Employment

March 14, 1980

THE ABOVE ENTITLED meeting was held in Room 239,  
Federal Building, 1961 Stout Street, Denver, Colorado, on  
the 14th day of March, 1980, commencing at the hour of  
8:30 a.m. on said day, and the following proceedings were  
had, to wit:

## PROCEEDINGS

1  
2  
3 MR. ALAN BUCHOLTZ: I'd like to call this factfinding  
4 meeting to order. I'm Alan Bucholtz, I'm filling in for  
5 Minrou Yasui, who is the Chair of the Colorado Advisory  
6 Committee to the U.S. Commission on Civil Rights.

7 The advisory committees to the U.S. Commission on  
8 Civil Rights this year are sponsoring throughout the nation  
9 a series of meetings such as this, which will serve as a  
10 basis for an assessment of federal law and enforcement  
11 efforts in affirmative action in employment. These fact-  
12 finding meetings are designed to provide the commission  
13 the description of the process through which affirmative  
14 action plans for the employment of minorities and women are  
15 required or voluntarily developed by employers throughout  
16 the country.

17 They will look at the legal basis for requiring affir-  
18 mative action and describe the process through which these  
19 requirements are enforced by federal agencies. The views  
20 and opinions of federal and other governmental officials,  
21 private employers, union officials, civil rights leaders,  
22 and interested citizens on how federal agencies carry out  
23 enforcement mandates will be central to the series of  
24 meetings.

25 The end products will be first, a publication on

1 affirmative action in employment contrasting myth and  
2 fact concerning the issue and second, a statement describing  
3 the findings of the project and recommendations to the  
4 President and Congress evaluating the federal enforcement  
5 effort and the law that underlies it.

6 Women, minorities and handicapped in the United  
7 States as a result of past and present employment discrimina-  
8 tion are ~~underrepresented~~ in the work force compared to  
9 their representation in the population. They often can not  
10 gain employment or work at jobs that fail to utilize their  
11 full -- or work at jobs that fail to utilize their full  
12 potential.

13 Federal, state and local legislation and Presidential  
14 Executive Orders thus require employers now to go beyond  
15 the Title VII prescriptions of discrimination and actively  
16 seek out or promote qualified women, minority and handicapped  
17 workers.

18 According to the U.S. Equal Employment Opportunity  
19 Commission, ~~quote~~, "Many discriminatory practices of the past  
20 remain so deeply imbedded in basic institutions of society  
21 that these practices continue to have extremely unequal  
22 effect on certain groups in our population, even when the  
23 employer has no conscious intent to discriminate," ~~unquote~~.  
24 Hence there remains a continuous need to encourage employers  
25 to act decisively towards both equal employment opportunity



1 and affirmative action.

2           Effective affirmative action programs must serve  
3 as a means for increasing opportunities for persons  
4 long overlooked, screened out or underutilized.

5           Our meeting here today will focus on affirmative  
6 action in employment as it is perceived, implemented and  
7 enforced by federal and state agencies, employers in the  
8 private sector, and those it is intended to benefit.

9           Donna Lucero, Vice Chair of the Colorado Advisory  
10 Committee, will detail the commission rules and procedures  
11 for today's meeting. Donna?

12           MS. DONNA L. LUCERO: First I'd like to call this  
13 meeting to order. Alan forgot to do that. And I would  
14 like to make one agenda adjustment to remind you that  
15 Representative Pat Schroeder will present her remarks at  
16 3:45, rather than this morning.

17           This is a statement of U.S. Commission on Civil  
18 Rights rules and regulations for this factfinding meeting  
19 on affirmative action. This meeting is being held pursuant  
20 to rules applicable to State Advisory Committees and other  
21 requirements promulgated by the U.S. Commission on Civil  
22 Rights.

23           The Commission on Civil Rights is an independent,  
24 bipartisan agency of the federal government, established by  
25 Congress in 1957 and authorized to collect and study

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information concerning legal developments, constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin, or in the administration of justice.

We keep adding to our mandate.

The Commission also appraises federal laws and policies with respect to discrimination or denials of equal protection of the laws, and serves as a national clearinghouse for civil rights information, including but not limited to the fields of voting, education, housing and employment.

The Commission has constituted 51 State Advisory Committees like our Colorado Advisory Committee, to advise the Commission of relevant information concerning matters within the jurisdiction of the Committee, and matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.

The Advisory Committee may also receive reports, suggestions and recommendations from individuals, public and private organizations and public officials upon matters pertinent to inquiries conducted by the State Committees, and may attend as observers any open hearings or conferences which the Commission may hold within the State.

The session today is a factfinding meeting of an

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Advisory Committee and not an adversary proceeding ~~As~~ one would expect to find in a court of law. Individuals have been invited to share with the committee information about the affirmative action process in private and public employment. Each person who will participate has voluntarily agreed to meet with the Committee. Much effort has been made to invite persons who are knowledgeable about the problems and progress in the area which is to be dealt with here today.

Since this is a public meeting, the press, radio and television stations as well as individuals are welcome. However, no person will be televised, filmed or photographed during the meeting nor will statements be recorded for broadcasting if a participant objects.

We are concerned that we bring out all information relating to the matters under inquiry. We are also concerned, however, that no individual be a victim of slander or libelous statements. As a precaution against this happening, each person making a statement here today or answering questions has been interviewed prior to this meeting.

However, in the unlikely event that such a situation should develop, it will be necessary to call this to the attention of the person making the statement and requesting that he or she desist in such action.

1           Any persons wishing to submit documents into the  
2 record of this open meeting or provide additional information  
3 to the Advisory Committee may do so within the next 30  
4 days. Any person here in the audience today who wishes  
5 to participate in this open meeting but who has not been  
6 previously invited to do so may speak under the following  
7 conditions: First, such persons must be interviewed by  
8 a member of the Advisory Committee or a Commission staff  
9 member, ~~Preferably~~ Bill Muldrow. Would you stand up, please,  
10 Bill? If you would like to speak, please contact Bill Muldrow.  
11 ← You need to inform him of the nature of the comments  
12 you wish to make and second, provided that your comments do  
13 not defame or degrade individuals.

14           You'll be given a total of five minutes in which to  
15 make your statement at the close of the regularly scheduled  
16 panel discussions.

17           Now I would like to call the first panel, which is on  
18 community perspectives, would the panel please come up?  
19 Lawrence Borom, Mary Espinoza, Jay Swearingen, Judy Garcia  
20 Carder and Allan Eytan, would you please come forward and  
21 take your places?

22           I'd like to introduce the Colorado Advisory Committee  
23 members on this panel, Adolfo Gomez, would you please come  
24 up and chair this? Maria Mendoza-Hall and Alan Bucholtz.

25           The staff on this panel is Dr. Cynthia Valentine and

1 from the Washington staff, Office of Federal Civil Rights  
2 Enforcement, Mr. Don Dickerson.

3  
4 (The following was chaired by Mr. Adolfo Gomez)

5  
6 THE CHAIR: I wonder if I can ask the panel members  
7 to start in with Mr. Eytan to introduce themselves, give a  
8 little bit of background about themselves and who they  
9 represent.

10 MR. ALLAN EYTAN: My name is Allan Eytan, I'm the  
11 Assistant Director of the Mountain States Regional Office  
12 of the Anti-Defamation League of B'nai B'rith, which is  
13 headquartered here in Denver, Colorado.

14 MS. CARDER: I'm Judy Garcia Carder, with the Colorado  
15 Commission on Women, I'm from Pueblo.

16 MR. SWEARINGEN: My name is Jay Swearingen, I'm an  
17 attorney and I'm an attorney for the Colorado Association of  
18 School Boards.

19 MS. ESPINOZA: I'm Mary Espinoza, I am the information  
20 and referral specialist for the Latin American Research and  
21 Service Entity.

22 THE CHAIR: Thank you, now we will proceed.

23 MR. BUCHOLTZ: Ms. Espinoza, if we may begin with  
24 you, would you briefly describe your involvement and knowledge  
25 of affirmative action.

1 MS. MARY ESPINOZA

2 A (By Ms. Espinoza) Generally, affirmative action is  
3 to insure that equal opportunity is secured for dignified  
4 work and working conditions. And since this is the right of  
5 every American citizen no matter of their birth right or  
6 physical aptitude, the administrative entity had to be  
7 created to review, advocate for and insure the equal rights  
8 of every person.

9 Since these laws are in effect, my job in referring  
10 clients to job sites must be followed up in the questioning  
11 of the process of application that the client had to go  
12 through. If there is any sense -- if there is any sense a  
13 process that I felt had discriminated against a client, I  
14 have the responsibility of referring the client to the local  
15 civil rights office, the EEO office, or any other agency  
16 set up to review discrimination cases.

17 Knowing that certain administrations take care of  
18 certain cases it is important that my referrals are  
19 initiated for the sake of the client.

20 Q (By Mr. Bucholtz) Could you outline for us your under-  
21 standing of affirmative action in employment?

22 A My understanding of affirmative action?

23 Q Yes. What you feel that means in the context of what  
24 you do?

25 A Well, that every one of my clients is -- that I send

1 out for different jobs in different companies with state,  
2 federal governments, is treated equally for what their  
3 qualifications are rather than their race, religion or dis-  
4 ability.

5 Q As chair for the Coalition of Chicanos in the Airlines,  
6 what success have you had in finding employment for Hispanics  
7 with the airlines?

8 A Well, we have been able to come up with a job bank  
9 of qualified applicants where the airline will call into the  
10 agency and let you know of any openings that might arise.

11 We're still really far from where we want to be be-  
12 cause we have -- with the percentage of Hispanics and Native  
13 Americans here in the Denver, Colorado, area, they are not  
14 equally represented in the airline industry. But we have been  
15 able to meet with different airlines and have had some success  
16 in placing people in entry level positions with the airline  
17 industry.

18 Q Have you had similar success or would you describe  
19 what success you have had in terms of placing people with  
20 state and federal governmental agencies?

21 A Well, with the State, with the State we've had  
22 absolutely no luck unless they're being hired for janitors  
23 or clerk-typists. When we call or we meet with anybody with  
24 the State, they tell us that the Chicanos do not appeal when  
25 they get rejection notices. Most people that have gone to

1 look for professional positions with the State have been --  
2 had received rejection notices, several times, some eight  
3 and 12 rejection notices, and no, they do not appeal because  
4 they feel that they want to just keep going and finding a  
5 job or somebody's going to hire them for their abilities  
6 or their qualifications rather than take a lot of time  
7 appealing.

8 <sup>with</sup> The federal government we've had no success. Not  
9 even with janitors. Two federal offices that have helped  
10 us quite a bit <sup>have</sup> ~~has~~ been the FAA and ~~D~~ Department of Labor,  
11 but with the State and the federal we have very bad luck  
12 with them.

13 Q Do you think that affirmative action laws and enforce-  
14 ment efforts are essential to insure equal employment oppor-  
15 tunities?

16 A Yes, I really do. That has been the only thing that  
17 has helped us with the airlines is that they have to comply  
18 with the affirmative action laws that are -- that they set  
19 up. If we did not have affirmative action I doubt that they  
20 would hire very many Chicanos, Hispanics or Native Americans.

21 Q What federal agencies have you worked with in this  
22 area, and would you evaluate the effectiveness of their  
23 efforts to help in your kind of work?

24 A The FAA, when we started our efforts with the airline  
25 industry it was in 1972, they were -- they tried to help us



1 but they were restricted on the things that they could do.

2 So, about all they can do is meet with us and try and  
3 see if the airline industry in good faith would work with  
4 them.

5 Last year the Department of Labor took over that re-  
6 sponsibility and we've had quite a bit of success in the  
7 last year. In 1979 I think was one of our better years in  
8 hiring because the Department of Labor did go in and do  
9 compliance reviews and just knowing that somebody was going  
10 to watch to see what they were doing, it helped us con-  
11 siderably.

12 Q Do you find now that you're getting requests for  
13 Hispanics to apply for jobs with firms seeking to improve  
14 their affirmative action image?

15 A Quite a few. We run into a problem with Hispanics  
16 or Chicanos because a lot of the airlines are -- affirmative  
17 action officers have told us that a lot of Chicanos,  
18 Hispanics, are hard to notice. They blend in, they could  
19 be mistaken for Italian, Anglo, whatever.

20 So this is one of the reasons why they have said  
21 that, you know, we've had a problem. But yes, I think it  
22 does help.

23 Q Do you have any recommendations to federal agencies  
24 which would help improve the enforcement of affirmative  
25 action?

1       A     Well, I think that a lot of -- I think they really  
2 have to keep checking on a lot of places, the federal  
3 agencies, state agencies that have very low percentage of  
4 different minorities. I don't know what -- I think that they  
5 do the best they can, most of them, I don't know if they could  
6 do any more.

7           MR. BUCHOLTZ: Thank you very much.

8       Q     (By Ms. Mendoza-Hall) Mr. Swearingen, could you  
9 briefly explain your professional involvement with affirmative  
10 action requirements?  
11

12                                   MR. JAY SWEARINGEN,

13       A     (By Mr. Swearingen) Yes. I've been the, was the in-  
14 house counsel for the Colorado Association of School Boards  
15 from, well, for about four and a half years starting about  
16 1974. And it was my responsibility in that regard to not  
17 only advise member school districts, there are 181 school  
18 districts in the state and approximately 165, let's say,  
19 are members of the state school board association, it's a  
20 voluntary membership organization, dues-paying.

21       In that regard, it is my job to advise not only  
22 school districts, their boards and their administrators, but  
23 also to advise their attorneys, also to, on occasion, meet  
24 with various federal agencies and state agencies which would  
25 be working in this area. Which would have some enforcement

1 authority or review authority of school boards.

2           Since I left the association as in-house counsel for  
3 the last year and a half I've been in a law partnership  
4 which still represents the ~~A~~ association as retained counsel,  
5 and our law firm would represent, on a fairly regular basis,  
6 say 30 of the 181 school districts in the ~~S~~State, and because  
7 of our continuing association, probably the other -- maybe  
8 another 60 at other times during a year, perhaps.

9           Q     Would you give us your definition of affirmative action  
10 in employment?

11           A     My definition of affirmative action is -- would be to  
12 distinguish it from nondiscrimination. I see affirmative  
13 action as requiring a movement to do something rather than  
14 as a movement, if you will, not to do something.

15                 In other words, a requirement of affirmatively seeking  
16 applicants for a job based upon a particular ethnic status,  
17 race, religion or sex, rather than insuring that no dis-  
18 crimination occurred as a result of those factors.

19           Q     Previously you have told our staff that you believe  
20 the ~~J~~Justice ~~D~~Department's involvement with the Jefferson  
21 County ~~S~~Schools is a good example of what is wrong with the  
22 federal affirmative action process. Would you explain?

23           A     Surely. Let me explain first that school districts  
24 in general are not covered by any affirmative action  
25 requirements. ~~U~~Unlike certain other agencies, unlike certain

1 private companies.

2 This is generally true. There are exceptions in  
3 certain cases where there might be a contract involved or  
4 there might be specific federal monies available for a project  
5 that a contractor would be working on, but generally there  
6 are no affirmative action requirements for school districts.  
7 There are obviously numerous nondiscrimination requirements.

8 What occurred in Jefferson County very simply was  
9 the Justice Department conducting a statistical computer  
10 review of the 100 largest school districts in the United  
11 States to determine the ethnic balance of the staff of the  
12 school district in comparison to the surrounding metropolitan  
13 area.

14 Now, the first problem with that is that it's picking  
15 on a school district basically on an arbitrary basis, not  
16 because there are complaints, not because they're the worst,  
17 but simply identifying them as one of the largest school  
18 districts and then conducting the investigation on that basis.

19 Again, it's one way to do it, that's the way they  
20 chose.

21 The second problem is that the standards for what  
22 constitute, if you will, a threshold level of -- that would  
23 require investigation by the Department of Justice or what  
24 their standards are are unknown to school districts.

25 They are not made known, they're not aware of it,

1 therefore there's no way that a school district, prior to this  
2 time, could say I'm in trouble or I'm not in trouble, I'm  
3 doing what I should be doing or not doing what I should be  
4 doing. Or I'm not gathering evidence to support the way I've  
5 been doing things in the past because the standard is not  
6 known.

7 And this is true in many areas. So that was the first  
8 problem.

9 The other thing I would say is that Jefferson County,  
10 in my experience, probably has worked harder and longer  
11 than any metropolitan school district in working for  
12 affirmative action in various areas, particularly including  
13 women administrators in schools. And the district has also  
14 been considering not just a nondiscrimination policy but  
15 an affirmative action policy of its own for some period of  
16 time.

17 During the course of investigation by the Justice  
18 Department and as of today the district has adopted, on  
19 its own initiative, which was considered well before the  
20 Justice Department investigation began, an affirmative action  
21 program with goals and quotas for various minorities and  
22 including women administrators and that area.

23 One of the problems they now face is the problem that  
24 I believe the last panelist spoke to. One of the problems  
25 you have in recruiting minority applicants is the perception

1 of the school district as an employer. When you are tagged  
2 as being a discriminatory employer by the Justice Department,  
3 particularly based upon solely a statistical review, that  
4 information does become known in educational circles.

5 The Jefferson County School Board recruits nationally.  
6 However, these incidents are made aware nationally.

7 At any rate, it is far more difficult to attract  
8 qualified personnel to an employer who's been tagged as  
9 having a discriminatory nature rather than to an employer  
10 who seeks voluntarily and willingly because it believes it's  
11 the thing to do, minority applicants.

12 That's one of the consequences of the Justice action  
13 is actually to make it less -- more difficult to attract  
14 qualified personnel.

15 The other thing that faces Jefferson County and  
16 faces some other schools in dealing with this area, is the  
17 problem that Jefferson County is, as I think most of the people  
18 in this room are aware, does not have the largest minority  
19 population base that you might find in school districts  
20 elsewhere in the state.

21 This has been found by other school districts, I  
22 suspect it is being found by Jefferson County, but it often  
23 becomes difficult to attract minority individuals from out-  
24 side the state, nationally, to an area which does not have  
25 a substantial minority population base of the person being

1 recruited. This is simply another problem.

2 Again going back to what's wrong with the Justice  
3 Department investigation. The lack of a threshold standard,  
4 the really arbitrary nature of the selection. Again, it was  
5 not based upon any complaints. And the stigma that this  
6 attaches to the district in trying to achieve its own volun-  
7 tary affirmative action plan.

8 Q Beside those concerns you've addressed, do you have  
9 any other specific concerns with the way in which federal  
10 agencies impose affirmative action requirements?

11 A Most of my other dealings with federal agencies  
12 regarding affirmative action come about as investigations  
13 of discrimination against students when an agency will  
14 look at the hiring practices of minority students in re-  
15 lation -- of minority employees in relationship to the number  
16 of minority students in the school.

17 And specifically here, we deal with one agency, that's  
18 the Office for Civil Rights. There is, whether real or not,  
19 there is definitely a perceived bias on behalf of, I will  
20 say at least most school districts, in dealing with the  
21 Office for Civil Rights in this state. And I think that  
22 perceived bias makes it far less likely that a school  
23 district dealing with that federal agency to achieve kinds  
24 of things that they would like to see the school district  
25 do will work willingly with that agency.

1           There is a belief, whether true or not, that the  
2 agency comes in to, if you will, get the district, that they  
3 do not come in to investigate a complaint, they  
4 solicit the complaints against the school district first  
5 through organizations associated with the -- who may have  
6 contacts with the office for civil rights, and then come in  
7 and try to make a case. Not investigate a complaint.

8           I know that's a relatively harsh charge, but I would  
9 say that that tends to be the perception of school districts  
10 regarding the Office for Civil Rights.

11           And there are incidents which have occurred in the  
12 history of the Office for Civil Rights' dealings with school  
13 districts which I believe in part substantiate those kinds  
14 of fears.

15           One of the big problems with the Office for Civil  
16 Rights and other federal agencies is the lack of uniform  
17 standards nationwide. And the lack of published standards.  
18 What is a requirement or what the office guidelines for  
19 enforcement may be in one jurisdiction, Colorado, may not  
20 be the same in Indiana. And these agencies often do not  
21 clearly publish these guidelines.

22           This is one of the problems.

23           Q     Do you have any suggestions or recommendations which  
24 you would make to these government agencies which you feel  
25 would improve the effectiveness of federal enforcement



1 efforts and assist school districts in particular in  
2 complying with federal affirmative action requirements?

3 A Yes. Publish uniform standards nationwide which are  
4 clear and understandable. Also, to begin again to work in  
5 a sense of voluntary -- a spirit of cooperation, if you will,  
6 with the district in achieving goals rather than a spirit  
7 of condemnation or adversary positions.

8 Q You referred earlier to the Office of Civil Rights?

9 A Yes.

10 Q Would you clarify which larger agency that is a  
11 part of?

12 A Health, Education and Welfare.

13 MS. MENDOZA-HALL: Okay, thank you.

14 Q (By the Chair) Ms. Carder, would you state your  
15 name, address and occupation, please?

16

17 MS. JUDY GARCIA CARDER,

18

19 A (By Ms. Carder) Judy Garcia Carder, I'm from Pueblo,  
20 and my occupation, you mean my -- where I make my livelihood,  
21 right? I'm the Director of Cooperative Education at the  
22 University of Southern Colorado. However, I'm here through  
23 the Colorado Commission on Women.

24 Q Okay. Based on that, now that we're aware that you're  
25 a Director of the Commission on Women --

1 A I am not the director.

2 Q You're not a director of?

3 A The Colorado Commission, I'm a commissioner with the  
4 Colorado Commission on Women.

5 Q One of the directors?

6 A All right.

7 Q We understand that the Colorado Commission on Women's  
8 study on ~~A~~ffirmative ~~A~~ction, Colorado ~~H~~igher ~~E~~ducation in --  
9 that -- let me start all over again.

10 We understand that you were the ~~D~~irector of the  
11 Colorado Commission on Women's study ~~and~~ ~~A~~ffirmative ~~A~~ction  
12 ~~and~~ Colorado ~~H~~igher ~~E~~ducation ~~I~~nstitutions, is that  
13 correct?

14 A No, I was the chair of the committee.

15 Q The chair of the committee?

16 A That did the study, yes.

17 Q Would you summarize some of the major findings in  
18 that particular study?

19 A Yes. The survey that we conducted was one of three  
20 over the past six years. And the findings show that women  
21 in higher educational careers are losing ground. Women  
22 faculty when represented were concentrated at the instructor  
23 level, governing boards of public institutions had a higher  
24 percentage of women, 30%, than any other level of academic  
25 administration.

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This seems to indicate more direct access for women to higher education administrative positions through election or appointment rather than through promotion. No concerted state effort or policy to provide affirmative action support systems and services was found. Child care is still not available at 50% of the responding public institutions.

Womens's resource centers were still not available at 43% of the responding public institutions. Of the 14 respondents, three have no designated affirmative action officer; 11 have an affirmative action officer but four, or 36%, have only part time responsibilities.

The survey indicated a recurrent theme, the greater the responsibility, status and benefits of faculty or administrative positions, the fewer the women.

In addition, the survey cites that several average professional women's salaries is only 73% of the average of the professional man's.

The survey showed a lesser gap between men and women in nonprofessional occupations where women earn 90% of the average earned by men.

The report showed that while full professors increased statewide by 24% and deans increased by 12%, women as professors decreased by 5% and women deans decreased by 2%.

There were two new sections that were added to the survey as compared to other surveys that we've conducted, one

1 on minority women and one on women in athletics. Minority  
2 women were underrepresented as students, faculty and staff  
3 at a zero to 3% representation. Parity is not a reality  
4 for minority women in even one single category.

5 As in the past, this population continues to stay  
6 invisible. Women's athletic programs were not available at  
7 43% of the responding institutions. Athletic budget and  
8 scholarships for women were smaller and fewer than for men.

9 Other findings of this report includes an increasing  
10 overrepresentation of women in part time positions. Although  
11 women represent 52% of the student population, they account  
12 for only 24% of all faculty. Those were the findings.

13 Q Thank you. What would you say are some of the problems  
14 or barriers to affirmative action efforts specifically those  
15 that relate to federal affirmative action requirements?

16 A One of the problems I see are the countless studies  
17 that tell us how bad the problems are, such as the CCHE study  
18 on minority enrollments. The study indicated a decided  
19 decline in numbers of minorities enrolled in Colorado  
20 institutions of higher education. The results were returned  
21 to the individual institutions for their records.

22 The only thing that I can see that's come out of the  
23 CCHE ~~some out of it~~ is the CCHE minority task force. This  
24 task force has a representative from every public institution  
25 of higher education in Colorado.

1 I wonder what this task force will accomplish?

2 Another study?

3 Q Just for clarification, would you tell us what  
4 CCHE stand for? . . .

5 A Colorado Commission on Higher Education.

6 Q As you have stated, you discovered that no federal  
7 or state agency is monitoring educational institutions  
8 in affirmative action. Could you explain this further and  
9 why this is the situation?

10 A Well, for the State of Colorado, they do not have a  
11 comprehensive statewide affirmative action plan or program  
12 in higher education.

13 A uniform or standardized plan that requires routine  
14 reporting should be implemented in order to monitor and enforce  
15 affirmative action.

16 And it stands now, what we have is nothing more than  
17 window dressing. Tax dollars are allocated and expended  
18 for affirmative action offices, salary, operating costs,  
19 advisory boards, nice printed statements of affirmative  
20 action policies on applications and vacancy announcements.

21 How do we know that these operations are cost effec-  
22 tive? And if they are, as compared to what or whom?

23 As it stands right now, if institutions are effective  
24 in their affirmative action efforts, how is that measured?  
25 What are the other institutions doing by comparison?

1 Which is why the Colorado Commission on Women's  
2 study made recommendations to correct the present situation.

3 I might add that these recommendations were not very  
4 well received and I wonder why.

5 *I*n terms of the federal system, the discrimination  
6 complaint, and I speak now not as a commissioner, but someone  
7 who was part of a discrimination complaint that was filed  
8 ~~by~~ <sup>against</sup> the University of Southern Colorado with the U.S.  
9 Office of Civil Rights in 1974, proved to be an exercise in  
10 frustration.

11 The investigation team spent five days at USC,  
12 one year later we received the findings and recommendations.  
13 USC was found to be in noncompliance and a timetable to correct  
14 that was mutually agreed to in 1976.

15 We have not heard from OCR since.

16 The final phase of that timetable was to have been  
17 implemented this year.

18 Q The Colorado Commission on Women has made a number of  
19 specific recommendations to the state legislature on  
20 affirmative action because of the study. Could you discuss  
21 these recommendations?

22 A Yes. First of all, we didn't get the results we  
23 expected given the Colorado Equal Rights Amendment and the  
24 Colorado Governor's Executive Order on equal opportunity  
25 and affirmative action in 1975.

1           The Commission on Women report recommended that the  
2 Colorado Commission on Higher Education be given the  
3 authority and funds to monitor and enforce higher education  
4 affirmative action as well as develop a statewide affirmative  
5 action plan.

6           We further recommended that CCHE, Colorado Commission  
7 on Higher Education, make specific funding proposals to the  
8 joint budget committee annually. <sup>Based on each public insti-</sup>  
9 tution's affirmative action performance.

10          Further study should require affirmative action offices  
11 to routinely report and show efforts of correcting discrimina-  
12 tory practices. To date, it would appear that the affirmative  
13 action offices are offering no more than window dressing.

14          The Commission on Women has gone as far as it can  
15 by drawing attention to affirmative action in higher  
16 education as mandated by our statute.

17          Q     So, how successful has the Commission been in getting  
18 these recommendations implemented and what still need to be  
19 done? What are your feelings about that?

20          A     We have received a phone call from the Executive  
21 Director of the Colorado Commission on Higher Education asking  
22 to sit down and discuss our recommendations. That hasn't  
23 been done yet. And that's as far as we've gotten.

24               THE CHAIR: Thank you.

25               MS. MENDOZA-HALL: Mr. Eytan, as you know, federal

1 affirmative action programs and regulations frequently  
2 use labor availability figures as goals to be attained by  
3 private industry, local and federal government. The  
4 Anti-Defamation League is on record as opposing all use of  
5 quota systems. Do you consider present federal requirements  
6 using availability statistics to be a quota system, and  
7 what is the League's view of these practices?  
8

9 MR. ALLAN EYTAN,

10  
11 A (By Mr. Eytan) In order for me to directly respond  
12 to your question, let me provide a brief statement on the  
13 ADL's policy on discrimination and affirmative action.

14 The establishment of the quality of opportunity and  
15 the elimination of discrimination based on race, religion,  
16 color, national origin and sex, is a cardinal goal of the  
17 Anti-Defamation League of B'nai B'rith. We were among the  
18 first to advocate and support legislative and administrative  
19 actions by government to prohibit discrimination in  
20 employment, education, housing, and other areas of American  
21 life and we played a significant role in helping to bring  
22 about such laws and regulations.

23 For a number of years we called for more effective  
24 civil rights enforcement, pointing out that reliance on the  
25 case by case, color blind approach to enforcement was



1 inadequate to overcome the consequences of past discrimination  
2 or to bring about the equality of opportunity the laws and  
3 orders were designed to achieve.

4           Accordingly, we called upon both government and the  
5 private sector to take affirmative actions in order, using  
6 former President Lyndon Johnson's phrase, to move from,  
7 ~~quote~~ "equality of opportunity as a theory, and right to  
8 equality of opportunity as a fact and result," ~~close quotes~~.

9           The increasing acceptance of the principle of affirma-  
10 tive action is, in some part, a result of our prodding. In  
11 some instances, unfortunately, the means employed in the  
12 implementation of that principle appear to be inconsistent  
13 both with the concept of nondiscrimination and the goals  
14 of equal opportunity.

15           In the past we, along with many other national human  
16 relations and civil rights agencies, organizations, have  
17 voiced our commitment to the principle of individual rights  
18 and individual merit and our opposition to quotas, preferential  
19 treatment, proportional representation, and the use of race  
20 as an absolute qualification for any post. As inconsistent  
21 with the principle of equality of opportunity.

22           We reaffirm these judgments as our commitment to  
23 social justice.

24           Now, in regard to the present federal requirement using  
25 labor availability statistics as goals to be obtained in

1 affirmative action programs, we believe that these statistics  
2 in reality are hardly ever practiced or practically used.

3 More often than not, these statistics are actually  
4 just population guesses or raw population statistics which  
5 have no reference whatsoever to occupational skills or  
6 labor availability.

7 For example, frequently school systems are urged by  
8 the federal government to have faculties in racial proportion  
9 to their student bodies. Present federal requirements are  
10 in fact enforced as if they were a quota system, because if  
11 there were a failure to meet a goal, the employer must produce  
12 evidence that he used good faith effort.

13 On the other hand, if the goal is fulfilled, there is  
14 never an inquiry as to whether or not quota techniques were  
15 used to achieve it. In theory, it is easy to make a neat  
16 distinction between goals and quotas, but in the reality  
17 of the market place, the distinction disappears.

18 The affirmative action guidelines of the United  
19 States Equal Employment Opportunity Commission foster  
20 quotas by denying victims of quotas the right to protection  
21 against discrimination. The various names for quotas such  
22 as ratio hiring, which the U.S. Commission on Civil Rights  
23 has promulgated, ignore all aspects of reality. They ignore  
24 the differences among groups that exist because of the  
25 many differences within groups such as age levels.

1           For example, the median age of the Jewish population  
2 of the United States is one decade older than that of the  
3 Black population, and two decades older than the Hispanic  
4 population. Such differences must of necessity have an  
5 impact upon occupational patterns. The usage of the concept  
6 of ratio hiring or population parity~~ing~~<sup>ing</sup> is predicated upon  
7 the assumption that in a nondiscriminatory society, every  
8 group would have an equitable share of everything.

9           Now, this is just blatant statistical nonsense. The  
10 only society in which such a distribution of people could  
11 take place would be that of an absolute dictatorship.

12           What is an issue today is whether this nation will  
13 continue to honor the merit system, the merit principle,  
14 with all of its imperfections, or whether we will establish  
15 new categories of privilege and preference.

16           Affirmative action programs that employ a racial  
17 quota or a quota of any other name, are destructive of  
18 equal opportunity. Given the limited number of places to be  
19 filled, quotas diminish the opportunity to compete of  
20 those who do not belong to the preferred -- preferred group.  
21 Whether rationalized as a remedy for past inequities or  
22 for present underrepresentation, the quota approach can only  
23 be sustained if the Constitution of the United States is  
24 construed as affording Whites less protection against dis-  
25 crimination than racial minorities.

1           In effect, those for whom equality was demanded would  
2 be made more equal than others.

3           We believe the stakes are far too high for a society  
4 trying to rid itself of racial discrimination to accept, on  
5 faith, the claim that the only way to achieve equality  
6 of opportunity is by practicing still more racial dis-  
7 crimination.

8           Q       (By Ms. Mendoza-Hall) What would you suggest the  
9 federal government enforcement agencies use instead of  
10 quotas or goals that would promote affirmative action?

11          A       The Anti-Defamation League has long maintained that  
12 a just society has an obligation to help undo the evils  
13 flowing from past discrimination by affording its victims  
14 every opportunity which would hasten their productivity --  
15 their productive participation in the society at their  
16 optimum level of capacity. Federal enforcement agencies  
17 should first train their staffs in the laws that they are  
18 supposed to be administering, so as to reduce the common  
19 practice of their staffs' implementing their own personal  
20 version of the perfect society.

21           There is nothing wrong with equitable, even handed,  
22 fair minded, objective law enforcement. However, an improved  
23 understanding of the industry or educational system that  
24 federal enforcement agencies are attempting to monitor would  
25 also be enormously helpful.

1           In other words, a sound management approach can  
2 produce effective results. The present approach, however,  
3 which is the approach advocated by the U.S. Commission on  
4 Civil Rights, makes promises to minority groups which are  
5 not fulfilled, and only serves to increase the frustration  
6 of everyone affected by the program. The Anti-Defamation  
7 League of B'nai B'rith will continue as a matter of policy  
8 to advocate and support the provision of special compensatory  
9 education, training, retraining, apprenticeship, job  
10 counseling and placement, welfare assistance and other forms  
11 of help to the deprived and disadvantaged to enable them as  
12 speedily as possible to realize their potential capabilities  
13 for participation in the mainstream of American life.

14           We will continue to advocate and support affirmative  
15 action programs including good faith recruitment efforts  
16 and special provisions for in-service training or other  
17 qualifying experience at the same time. Insisting that : :  
18 recruitment not be limited explicitly or exclusively to  
19 specified groups, and that there be no quotas or preferences  
20 for members of specified groups.

21           Redress, to identify identifiable qualified individuals  
22 who have been the victims of discrimination shall not be  
23 deemed a preference within the meaning of this policy  
24 statement. We will continue to demand that conformity to  
25 affirmative action guidelines be evaluated in terms of good

1 faith efforts and not as rigid requirements.

2 And we shall be alert to abuses of the foregoing  
3 standards in affirmative action programs and vigorously  
4 protest them. We shall continue our efforts to assure that  
5 surveys or enumerations of work forces, faculties,  
6 student bodies, etcetera, conducted as bases for evaluating  
7 compliance with nondiscrimination policies, are not misused  
8 to implement quotas for other discriminatory practices.

9 And that questions as to race, color, ethnicity,  
10 nationality or religion, do not appear on application forms.  
11 We shall continue our efforts to assure that no person's  
12 right of privacy is invaded by his being required to  
13 identify himself as to race, color, ethnicity, nationality  
14 or religion, except anonymously.

15 We believe that these foregoing principles should  
16 serve as a guide in developing programs for the rapid  
17 absorption of hitherto deprived minorities into the social  
18 and economic life of our nation.

19 The burden of disadvantages by those minorities in  
20 consequence of a long history of discrimination and our  
21 commitment to the fostering of an integrated American society.

22 MS. MENDOZA-HALL: Thank you.

23 MR. BUCHOLTZ: Mr. Borom, would you introduce yourself,  
24 please, and give us a little bit of your background?

25

1 MR. LAWRENCE BOROM

2  
3 A (By Mr. Borom) First I want to apologize to the panel  
4 for being a little late.

5 I'm Lawrence Borom, President of the Urban League  
6 of Metropolitan Denver. I have worked in the urban league  
7 for 27 years and Denver, St. Paul, Minnesota, New York  
8 City. My primary interest and experience has been with  
9 employment, economic development programs for the urban  
10 league. I've been in Denver for four years and in Denver the  
11 urban league operates an extensive manpower service program  
12 that last year served over 5,000 Black and other minority  
13 workers in terms of trying to help them find jobs, solve  
14 discrimination problems, work with them in terms of training  
15 needs, etcetera.

16 Q (By Mr. Bucholtz) Thank you.

17 Mr. Borom, I believe you have previously explained  
18 to the Commission staff that you're a strong advocate of  
19 affirmative action laws and programs. Would you discuss  
20 why you feel these laws are important, and what -- and why  
21 efforts to implement them should continue?

22 A Okay. As you indicate, I have expressed my strong  
23 support for even stronger affirmative action plans than we  
24 currently have, operating and for stronger efforts on the  
25 part of the federal, state and local government to pursue

1 effective affirmative action on the part of private industry  
2 as well as those agencies themselves, as well as the federal,  
3 state and local governments.

4 And I believe that this is a necessary effort because  
5 of the experience that we have trying to place Black and  
6 other minority workers in jobs in the Denver area as an  
7 example, specifically today.

8 Some of the problems that we find in placing people  
9 in jobs in the area who are qualified for those jobs, and  
10 I think that those who would propose that there are not  
11 qualified minority workers available for many of the positions  
12 that are currently not filled by minority workers are those  
13 who would not look objectively, those who would not look  
14 realistically at the kinds of strengths, qualifications  
15 that people are bringing to jobs.

16 What we find in Denver as an example, and I must say  
17 that Denver has extreme problems in the area of job dis-  
18 crimination, is that many of the people who are coming to  
19 Denver who are minority group workers with high levels of  
20 education are having a very difficult time in finding jobs  
21 for which they are qualified and even though those jobs  
22 or jobs that would seem to fit their qualifications are  
23 available and advertised. That individuals coming to  
24 Denver find themselves sometimes making three to six-month  
25 searches for jobs that they should easily qualify for.



1           Our effort is to refer people to jobs for which  
2 they qualify. And that in many cases we are finding people  
3 after the three to six-month search, unsuccessful in finding  
4 jobs and thereby making the decision to leave Denver.

5           It is almost as though there were a conspiracy among  
6 employers in Denver that Black workers as an example, would  
7 only work at a certain level, or that if they look for jobs  
8 above a certain level, would not be able to find those jobs  
9 and would therefore have to leave Denver in order to find  
10 employment at their level.

11           We are finding, for instance, that it is especially  
12 difficult for a highly qualified Black woman to find employ-  
13 ment in Denver, and I would propose to you that the MBA, that  
14 the Ph.D., that the otherwise highly qualified Black woman  
15 has a very significant problem with discrimination that's  
16 faced among employers or that's faced as they approach  
17 employers in Denver.

18           And of course, that relates also to other -- other  
19 Black workers. We have a, now, we have a number of examples  
20 of Viet Nameese veterans who are Black as an example again  
21 with high sets of qualifications, college degrees, etcetera,  
22 who, over five, four, six months can not find employment  
23 for which they are qualified in Denver.

24           I think that the continuation of affirmative action  
25 programs and a stronger effort has to be made because if

1 we look at the industries in Denver, we can find a number  
2 of them that show marked lacks, lacking of Black and other  
3 minority workers in their work force. I would suggest to  
4 you as an example, that the broadcast industry in Denver  
5 has a marked lack of Black and Brown and other minority  
6 workers at management levels and in terms of top, middle  
7 or top management.

8 I would suggest to you that the banking industry in  
9 Denver has extreme apparent lack of minorities at middle,  
10 lower, middle and top management levels. And that the energy  
11 industry in Denver and in the Rocky Mountain region has an  
12 extreme lack of Black and other minority workers at lower,  
13 middle and top management.

14 Now, this is not to indicate to you that there are  
15 not people available to take such jobs. We find that many  
16 of the practices of employers in fact mitigate against the  
17 prospects for work for Black and other minority professionals  
18 and other workers. An example would be in a corporation  
19 that takes six to eight weeks to process an application  
20 from such a worker, even if that worker's applying for a  
21 specified job and has specified qualifications to meet that  
22 -- to meet that job's requirements.

23 Just a couple of other notes in terms of affirmative  
24 action. One of the groups who are under explicit affirmative  
25 action responsibilities are the contractors of government

1 agencies. We have found and have reported a number of  
2 cases in which government contractors do not in fact meet  
3 affirmative action requirements by any stretch of the  
4 imagination. And yet those contractors continue to receive  
5 government funds, thereby in fact causing the victims of  
6 discrimination to pay for the salaries and for the operation  
7 of organizations which refuse to hire them.

8           The last point that I would make in terms of the need  
9 for affirmative action is the extreme appearance of inter-  
10 group conflict on the job for Black and other minority workers  
11 who find their peers conspiring, it appears in Denver to a  
12 higher degree than in other places that I have worked, to  
13 make it difficult for them to be successful workers and/or  
14 to receive promotional opportunities.

15           I think these items that I have discussed are good  
16 examples of the need for a strong enforcement program that  
17 looks industry by industry at what is happening in terms of  
18 qualified workers and what is happening in terms of the type  
19 of work force opportunities and the work place conditions  
20 that minority workers face.

21           And it seems to me that without increased affirmative  
22 action enforcement by all the agencies that have re-  
23 sponsibility to be involved in this activity, that we'll  
24 continue to find in Denver, and in other places in the  
25 country, a work force that is segregated on the basis of

1 level by the racial or ethnic identity of the worker.

2 Q Would you explain for us your definition or conception  
3 of affirmative action, and perhaps in that context, respond  
4 to the Anti-Defamation League position on the use or nonuse  
5 of quotas?

6 A I think that the Anti-Defamation League's position is  
7 to say that they wish to see crops without tilling the soil.  
8 I think you have to bite the bullet if you want -- if you  
9 want progress. And it seems to me that a good affirmative  
10 action program, first of all, starts with recognizing the  
11 lack of opportunity that has been extended to the public  
12 at large to minority groups specifically, and to the  
13 handicapped and I think that that's an area that I'm very  
14 concerned about.

15 Beyond that, I think that it's important to set goals  
16 for remediating the lack of minority participation in  
17 work forces.

18 Among the various employers, contractors, etcetera.

19 It would seem to me that having set those kinds of  
20 goals that it's very important that individuals who have  
21 responsibility to see that the goals are met are appointed,  
22 named and given the kind of authority, the kind of position  
23 within an organization that will allow them to effectively  
24 pursue the achievement of goals in that organization.

25 A good affirmative action program should have as a

1 minimum a requirement that the organization have extensive  
2 contacts with the various service organizations that provide,  
3 intervene for minority workers so that they can get into  
4 job and employment opportunities.

5           It would seem to me that a good affirmative action  
6 program would have a responsibility to do extensive contact  
7 with the various means -- media that are used by minority  
8 workers to find information about jobs, to find out, you  
9 know, where employment opportunities exist. It would seem  
10 to me that a good affirmative action program, then, beyond  
11 that, would have an appropriate type of monitoring and  
12 evaluation system, that it would be reviewed, a good program  
13 would be reviewed on a regular and consistent basis, and  
14 that individuals who have strong interests, involvement,  
15 contacts with minority workers would have an opportunity  
16 to participate in that evaluation so that we got not a self-  
17 serving evaluation which is often the case currently, but  
18 in fact a -- some involvement by people who are concerned  
19 about the opportunities for minority workers with the company  
20 or the organization that was employing to hopefully achieve  
21 good results.

22       Q     In terms of federally authored affirmative action  
23 requirements and federal enforcement of those requirements,  
24 do you perceive any specific weaknesses? And if so, what  
25 are they?

1       A.     To be objective, I would think that the weaknesses  
2     are that there are not enough individuals employed in the  
3     pursuit of enforcement of affirmative action programs, that  
4     in many cases the people who are in the pursuit of affirmative  
5     action programs or who are responsible to enforce them are  
6     ill trained or ill committed or uncommitted to the pursuit  
7     of such good affirmative action results, that there is a  
8     considerable amount of disorganization in the whole apparatus,  
9     that is determined to, or responsible for seeing in fact that  
10    affirmative action programs are developed and met and that  
11    in many cases, the notions of -- or the procedural approach  
12    to the effort to seek affirmative action on the part of  
13    government contractors and on the people who are covered,  
14    other organizations who are covered by affirmative action  
15    requirements, lack the type of insight that might be given  
16    were they to be more closely involved again with organizations  
17    that are involved in trying to see to it that affirmative  
18    action does in fact take place.

19           I'm talking about community based organizations,  
20    national organizations that have civil rights, that have  
21    civil right responsibilities and mandates, etcetera.

22       Q.     There are a number of improvement suggestions, I  
23    think, in your last comment. Are there any other specific  
24    recommendations that you would make toward improving federal  
25    enforcement of affirmative action programs?

1           A       I would propose to you that initial, that another  
2 initial effort that needs to be made is that those agencies  
3 that have affirmative action responsibilities, responsi-  
4 bilities to enforcement, need to become more visible and  
5 available to organizations within the community or to  
6 individuals within the community that have problems. I  
7 think, and again recognizing the lack of resources that are  
8 employed in this whole endeavor, that still the kind of  
9 visibility or the type of visibility that could be achieved  
10 as an example if we were to move out of our government  
11 towers and to have regular workshops, regular contacts with  
12 community groups who are concerned about these kinds of  
13 problems, would be an advantageous type of move on the part  
14 of agencies that have enforcement responsibilities.

15           MR. BUCHOLTZ: Thank you.

16           THE CHAIR: This concludes our questioning of the  
17 panel, I'd like to thank the panelists for having taken the  
18 time to come and share this good information with us.

19           DR. CYNTHIA VALENTINE: At this point in time we'll  
20 start the next panel at 10:00 o'clock and this is panel II,  
21 strategies in federal employment, and I would like to ask the  
22 panelists participating on panel II to come forward. That you  
23 are Mr. Hamory, Ms. Elder, Dr. Hess, Dr. Stubblefield, Mr.  
24 Dunn and Ms. Marillo.

25           So if they could come forward and get seated by

1 10:00 o'clock, we'll start the next panel. Thank you.

2  
3 (The following is chaired by Dr. Cynthia Valentine)

4  
5 THE CHAIR: Can we call panel II to order, please?

6 Would panel II please give their names, occupations,  
7 titles and agency for the record?

8 MS. MARILLO: My name is <sup>Jennie</sup> ~~Jen~~ Marillo, I'm with the  
9 Equal Employment Opportunity Commission, Federal Affirmative  
10 Action Division, here in Denver.

11 MR. DUNN: My name is Robert Dunn, I'm the Regional  
12 Director for the Rocky Mountain Region, U.S. Office of  
13 Personnel Management.

14 DR. STUBBLEFIELD: My name is Beauregard Stubblefield,  
15 I'm a mathematician and the EEO manager for the Environmental  
16 Research Laboratories at Boulder, <sup>National Oceanic and Atmospheric</sup> NOAA, Department of <sup>Adminis-</sup>  
17 Commerce. <sup>tration</sup>

18 DR. HESS: I'm Bill Hess, the Director of the Environ-  
19 mental Research Laboratories of NOAA, headquartered in  
20 Boulder.

21 MS. ELDER: Suzanne Huss Elder, I'm the EEO manager  
22 for HEW, region 8.

23 MR. HAMORY: Ross Hamory, I'm Chief of Employment  
24 for the Federal Aviation Administration, Rocky Mountain  
25 Region.



1 THE CHAIR: Thank you. Let's start with Mr. Hamory,  
2 if we may, please, and we'll start with a series of questions  
3 and then move to, with all the other panels.

4 Mr. Hamory, did you write the federal equal employment  
5 <sup>opportunity</sup> recruitment plan or the <sup>FEORP</sup> ~~AA~~ and the affirmative action plan  
6 for your regional office?

7  
8 MR. ROSS HAMORY

9  
10 A. (By Mr. Hamory) I wrote the FEORP. I participated in  
11 the affirmative action plan but did not actually write it.

12 Q. Did you request technical assistance for OPM and EEOC?

13 A. We did not make any direct requests. We did receive  
14 some technical assistance from OPM in a seminar situation.

15 Q. According to which EEOC instructions did you submit  
16 your plan?

17 A. The AAP? I believe you're talking about the two  
18 different sets that were issued? Our organization is pretty  
19 highly centralized as far as its authorities are delegated  
20 out from our headquarters. We submitted our affirmative  
21 action plan based directly on instructions we received from  
22 our headquarters in consonance with their meetings with  
23 EEOC on the national level and I guess the short answer is  
24 the second, the final set.

25 Q. Do you understand EEOC's plan submission process?

Harvey

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A I have a rudimentary understanding of it. To be candid, it's -- it's been so new to our organization that what we have been doing is responding to our Washington headquarter's request to submit in to EEOC.

Q What kind of technical assistance would you have found useful?

A I think most likely the -- we bogged down initially quite a bit in determining representative data, specially in the FEORP and so forth, that took us quite a while to get that data together and figure it out.

Also a little bit more guidance or understanding of when we could waive use of national population data or what they call SMSA, standard metropolitan area data. We have not really received much clarification on that.

You know, for determining underrepresentation.

Q Do you see OPM and EEOC as providing conflicting requirements in this area?

A Well, in the -- do you mean in the area of support or conflicting requirements in the area of affirmative action?

Q In the area of affirmative action?

A Well, I guess the best way I can put it are although the goals of the two organizations are the same, the primary function traditionally of the OPM has been the protection of the merit system, merit system principles, competitive examining process, and this type of thing. Which the

Answers

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regulations that we now have on the books do not really lend themselves to reaching down into the underrepresented populations and giving more of a special emphasis to those individuals.

The authorities that we have available we can use to the maximum extent but they still, we are so far underrepresented in many of those areas that we can not really make special provisions, the OPM, the Sugarman plan, certain of these things have been recommended, have not really borne fruit or come into play.

Q What would you say are your views on EEOC's instructions for determining availability for professional categories in setting goals and timetables?

A Well, I have some difficulties with the kinds of data we're using to determine our categories of what we should have in categories of professional employees and so forth. The census figures that we've been using and the data that's been available up to this date, is a mass of data, it's not broken down that you can accurately say this is -- this is what's on the outside, this is where we should be mirroring in the federal government.

Also in trying to stay within the bounds of the question, but it's difficult, it goes from agency to agency. I think that there are many people don't realize that there are distinct differences between federal agencies. In the

1 way their career progression paths are, in the recruitment,  
2 in the way we develop our management people. In the way  
3 we develop our professional ranks depending what the mission  
4 of the agency is.

5 In our agency, 50% of our agency is air traffic  
6 controllers. No private, public, in the state population or  
7 anywhere, any other employer employs air traffic controllers.  
8 Therefore, we have a training device or training program  
9 that we bring these people in at entry level and bring them  
10 up. We can not compare, you know, that discipline, that pro-  
11 fession to the outside.

12 Same thing goes with several of our other disciplines.  
13 I think probably the biggest problem I have with EEOC  
14 guidelines is the data right now is not available for us  
15 to make a prudent application of the professional ranks  
16 or anything else.

17 THE CHAIR: Thank you.

18 Q (By Mr. Bucholtz) Ms. Elder, did you write or parti-  
19 cipate in the writing of the FEORP and the affirmative  
20 action plans for your agency?

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22

MS. SUZANNE ELDER

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A (By Ms. Elder) Yes, I did.

25

Q How many different offices and how many persons

Elan

(Keller's  
test)

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does your agency encompass in region 8?

A. Okay, I work for the office of the ~~pre~~ <sup>PRO</sup> who has an immediate, an immediate staff of approximately 100 people, and in some instances a staff of 200, depending on the function that the ~~pre~~ <sup>PRO</sup> is serving at the time.

Overall we have, in HEW, approximately 2,100 employees.

Q Did you find EEOC's submission plan workable?

A No, I didn't. For several reasons.

Q Would you explain it, please?

A Okay. Well, initially I think that the EEOC instructions must have been written for private industry where, and there's a chair -- there's a chairman of the board and a president, a number of vice presidents, all of whom have staffs underneath them that answer directly to them and that's not the case in the federal government.

We are very fragmented system, we have, as my colleague mentioned, that I believe EEOC does not understand how different the federal sector is.

An example. As I mentioned earlier, that in HEW we have in this region about 2,000 employees, a little over that. But we have six principal operating components within HEW. Those principal operating components are extremely autonomous, they do not answer directly to the regional, <sup>e</sup> Principal Regional Official. Therefore, each of these

1 principal operating components are doing their thing in  
2 affirmative action. They are using the instructions as a  
3 basis, but they are each, issuing instructions to the regions  
4 and many oftentimes they are not consistent with one another.

5 So that right next door, their affirmative action  
6 plan looks different than mine does, okay? And there is  
7 no requirement that we have a regional approach to affirmative  
8 action, and that we indeed blend our programs with one  
9 another and actually put it together for either recruitment  
10 or hiring.

11 Another problem I have with them is that it would  
12 appear that we're talking about large numbers of employees  
13 as well as large numbers of vacancies. With these particular  
14 instructions when you compute out in the regional offices  
15 just how we're going to approach affirmative action, you'll  
16 find that in the case where there might be three vacancies  
17 projected for the coming year, in a given occupational series,  
18 that Native Americans compute to .00 of it, okay? Because  
19 of the very small numbers of Native Americans in the work  
20 force and that's what we're forced to do.

21 In other words, there wouldn't be in any regional  
22 office, including this one, a goal set for Native American  
23 Indians, because they always compute out to .00. So I  
24 don't see it as even being appropriate for our region.  
25 Because we do have a very, very significant Native American

1 population, it so happens it's true they're not in the work  
2 force but that's the problem.

3 But we're asked then to make our goals, to compute  
4 out the number of vacancies we'll have times their avail-  
5 ability in the work force. Okay? And so we're missing the  
6 whole point is that folks are not employed and we want to  
7 employ them and yet you'll find we do not have a goal for  
8 Native American Indians and each instance will have the  
9 only group who will literally come out ahead in this process,  
10 will be non-minority women. Because their advantage is that  
11 they are the greatest number in the work force other than  
12 non-minority men.

13 Q. Well, part of the problem, I gather, is that the  
14 government doesn't know how the government works?

15 A. You're putting me on the spot, but I do think that  
16 it has -- it's a good model for private industry, I don't  
17 think it has much application to regional federal agencies.

18 Q. Was there a specific EEOC instruction which you  
19 understood to use as a guideline in your affirmative action  
20 plan?

21 A. I've seen so many instructions that I've been in-  
22 structed to death. We received these instructions in  
23 January, my office, EEOC instructions. We were asked to  
24 put our program together by February 1st. Okay? I also  
25 received instructions from the Department of HEW and subsequent

1 to that, I received instructions from the Office of the  
2 Secretary which is one of the principal operating components  
3 within HEW. And then I made up some of my own in order  
4 to get it done.

5 Q Other than the things you enumerated, are there any  
6 other problems with EEOC's methods for determining availability  
7 and setting goals and timetables?

8 A Well, as I mentioned to you earlier, I think that's  
9 one of the major problems as it affects a small region like  
10 our own, keeping in mind that we are divided up in HEW into  
11 six components, so each of those components, most of us  
12 don't have over one to 200 employees. So that these  
13 statistical computations are meaningless for us.

14 It's only when you have large number of vacancies  
15 that it will be beneficial.

16 Q Do you think that the affirmative action plan coming  
17 out of your agency will produce any realistic changes?

18 A Well, I'm hoping that it will. God knows we've  
19 worked hard enough on it. I think that one advantage of  
20 having EEOC take over the system, not talking about the  
21 instructions, is I sense from managers in my everyday working  
22 that they believe EEOC is serious about implementing affirma-  
23 tive action.

24 Now, we've seen no -- I've seen no demonstration of  
25 that yet, but it seems as though EEOC does have the



1 reputation <sup>of</sup> getting serious, and doing some work in the  
2 private sector. So I feel good about that because I  
3 think managers take it a little more seriously.

4 That's about the only thing I can respond to.

5 Q Have you found the need to request technical assistance  
6 from OPM or EEOC? And if so, what have you found helpful  
7 or what would you find helpful if you had a need for that  
8 kind of assistance?

9 A Well, now, we had a seminar that many of the people  
10 in this room were attending that was sponsored by EEOC and  
11 it was very embarrassing because when they put it together  
12 they didn't even have the instructions and we were supposed  
13 to have learned from that seminar how to do it. It was  
14 not a very productive meeting.

15 The Office of Personnel Management on the other  
16 hand, has had seminars on FEORP, but they did not get  
17 into specifics. When you're starting to deal with a  
18 statistical computations and an evaluation of models it  
19 would have helped me had I had a little bit more technical  
20 experience rather than having a philosophical or conceptual  
21 kind of orientation to the program.

22 Q Could you outline for us your understanding of the  
23 kind of technical assistance that OPM and EEOC ought to  
24 be providing?

25 A Well, I'm hoping that we don't, we're not talking

1 in the future about using this model, okay? Because I  
2 find it -- it wouldn't matter what kind of technical  
3 expertise was available to me at this point, if we use this  
4 model it will not be effective with the small numbers that  
5 we're talking about.

6 But I would think that if this model is changed to  
7 include a regional approach for agencies, rather than the  
8 national approach, that I would need help in training managers  
9 who are ultimately responsible for FEORP's success or affirma-  
10 tive action's success. How do we gain new insights into  
11 recruitment methods we never used before? Where do we go?  
12 How do you deal with employees that you finally have in the  
13 work force that you never dealt with before?

14 So I see it as being not only technical for myself  
15 in preparation but how we can implement this with managers  
16 being involved in that technical workshop type of thing.

17 MR. BUCHOLTZ: Thank you.

18 MS. JOANNE BIRGE: Excuse me.

19 THE CHAIR: Mr. Hamory, I noticed that you were more  
20 or less trying to get a comment in and we thought we'd give  
21 you option before we move on, or -- if you have no comments  
22 then we will move on.

23 A (By Mr. Hamory) Right, I was more or less indicating  
24 concurrence with my colleague's remarks.

25 THE CHAIR: Okay, we weren't sure if you were trying

1 to get a comment in and we'd like to provide you the  
2 opportunity.

3 A Thank you for the opportunity.

4 MS. LUCERO: Let's move on then, to Mr. Hess.

5 According to the information that you gave staff,  
6 your agency has increased its minority representation  
7 approximately 6% in the last five years, is that true?  
8

9 DR. WILMOT N. HESS  
10

11 A (By Dr. Hess) That's about right.

12 Q Can you tell us briefly the ways in which the National  
13 Oceanic and Atmospheric Administration has achieved this  
14 increase?

15 A Let me start by saying that given some of the road  
16 blocks that you have in federal agencies, you have to be a  
17 little bit imaginative and not maybe go the standard routes.

18 The major road block is personnel ceilings. Given  
19 personnel ceilings and drawdowns on personnel ceilings of  
20 the last few years, the kinds of routes that we have chosen  
21 have been to make use of programs which are not ones which  
22 use ceilings in the orderly manner. That's problem number 1,  
23 is celings.

24 Problem number 2 is that in our agency, we hire more  
25 than half professional scientists, of all people that we

1 hire. And so we're dealing with a relatively special segment  
2 of the economy. The ways that we have found productive are  
3 to grow our own scientists.

4 In looking for Ph.D. oceanographers who are minorities  
5 or women, you're dealing with a very small group. In  
6 looking for a Ph.D. meteorologist you're dealing with very  
7 small groups. Our approach, then, failing to find available  
8 to us minorities or women in those categories, have been to  
9 grow our own.

10 The two programs which we have found most useful  
11 are one of moving our people upward inside our own agency,  
12 the ~~Upward Mobility~~ <sup>P</sup> Program, and the second one which we have  
13 more strongly emphasized here in Boulder, is the ~~Coop~~ <sup>P</sup>  
14 Student Program.

15 Now, especially the ~~coop~~ <sup>Co-op</sup> Student Program has been  
16 very useful to us, maybe I should take a moment to explain  
17 that for some people who don't know it.

18 Q Please do.

19 A Under this program, we make agreements with a number  
20 of schools who are training students in the specialties that  
21 we're interested in, we have about 30 or 40 schools so  
22 involved. And we recruit from those schools students to  
23 come and work with us part time, starting either their  
24 sophomore year or their junior year, junior year more usually.

25 They will spend two periods of time working with us,

1 a semester or a summer and they have to complete at least  
2 two periods in order to satisfy the ~~coop~~<sup>Co-Op</sup> program. That  
3 means that their graduation is delayed a little bit but  
4 it gives them work experience and we found in general  
5 more motivation because they've had the work experience.

6 The -- we now have over a 100 students in that  
7 program, and all of the -- the program is just about half  
8 women and minorities and half males. White males. The  
9 goal is to make it rather more, maybe 60, 70% women and  
10 minorities. All of the students graduating from that  
11 program are offered a job, either in our laboratories or  
12 in partner or parts of NOAA, whether service or other parts  
13 of NOAA.

14 The job may or may not be an FTP job but every  
15 student coming out of it gets a job.

16 Now, that gives us a source of meteorologists,  
17 oceanographers, chemists, physicists that we have found not  
18 available to us.

19 Now -- and those people then come in generally at the  
20 BS level. The programs available to us will allow us to  
21 grow some of them over a moderate period of time to the  
22 Ph.D. level where we have substantial requirements too.

23 Those problems have been relatively -- programs have  
24 been relatively successful.

25 Q Thank you. Let me go on to another phase. In terms

1 of agency organization, what kind of affirmative action  
2 coordination exists between the Environmental Research  
3 Laboratories, EEO manager, the personnel services chief,  
4 the special programs coordinators and yourself as director?

5 A Dr. Stubblefield, who is the EEO manager who I guess  
6 you'll hear from in just a minute, is sort of the lead of  
7 the team that does this work for us. We have, besides  
8 Dr. Stubblefield, the manager of the program, a full time  
9 specialist in a woman's program and in Spanish speaking  
10 program.

11 The coordination between these groups and our personnel  
12 office are done in those areas of work where coordination is  
13 necessary, in writing the AAP coordination exists. In  
14 hiring, almost all new recruitment actions at the professional  
15 level go through the offices, the EEO offices for action, to  
16 see if they can come up with candidates to fill these jobs  
17 for us.

18 There isn't any across the board coordination at --  
19 in all personnel actions but I think in most actions where  
20 the possibility of recruitment might happen it does occur.

21 Q What kind of programs does ERL or NOAA have implementing  
22 its affirmative action goals and what changes do you see  
23 as necessary to enable successful implementation of these  
24 goals?

25 A I already told you about one of the programs, the

1 ~~Co-ops~~ <sup>Co-ops</sup> Student Program which is very successful. The <sup>U</sup> Upward  
2 <sup>M</sup> Mobility Program is used very broadly in NOAA, the parent  
3 organization, not so much in our research laboratories.

4 NOAA has a program of having a 100 people at any one  
5 time in an upward mobility program where they are getting  
6 some form of training which enables them to then step up  
7 into a larger job.

8 That program was laid on about four years ago  
9 specifically to try to give opportunities to people inside  
10 the organization where a number of people are dead ended  
11 and want some opportunity to move up.

12 Now let me turn to the problem area being specifically  
13 in that program, there is a problem because at the end of the  
14 training period in upward mobility you're required to have a  
15 position available to the person who finishes the training.  
16 Now, that says one year ahead of time you have to be able  
17 to have a vacant position. Now, in our organization that's  
18 extremely difficult. Ceiling appointments are the most  
19 valuable commodity that we have and with the drawdown  
20 on personnel that's occurred in our agency and others,  
21 for the last few years, it's very difficult for us to say  
22 that we are going to have a vacancy in a specific skill  
23 category inside one of our laboratories.

24 In a larger organization that has a larger number of  
25 jobs in a particular category, it's been more successful.

1 For instance, the weather service. Which have a 1,000  
2 electronic technicians. If they can train somebody to go  
3 into electronic technician it works a lot easier because  
4 they, through attrition, will always have a few vacancies  
5 in that skill category.

6 The largest problem for us has been in the ceiling  
7 commitments that one has to make in doing this kind of work,  
8 and we frankly find that we have to do things that are some-  
9 what imaginative to avoid those problems, like the ~~Coop.~~ <sup>Co-op</sup>

10 MS. LUCERO: Thank you.

11 THE CHAIR: Dr. Stubblefield, did you write the  
12 FEORP and the affirmative action plan for NOAA Environmental  
13 Research Laboratories?

14  
15 DR. BEAUREGARD STUBBLEFIELD

16  
17 A (By Dr. Stubblefield) My office, our office is re-  
18 sponsible for the writing of the FEORP, although we have  
19 assistance from the personnel office, from the EEO committee  
20 and the EEO managers of the various laboratories, not only  
21 in Boulder but outside of Boulder.

22 We have approximately 17 or 18 laboratories and pro-  
23 grams in ERL.

24 Q (By the Chair) Which of the EEO instructions did  
25 you follow and what do you think the EEOC method of determining



1 availability and setting of goals and timetables?

2 A Fortunately our office has not had the problem as  
3 many offices as we have heard about with reference to the  
4 writing of the FEORP program. However, around May of last  
5 year we were called to Washington to actually get instructions  
6 from people from the EEOC and OPM regarding the action  
7 plan for FY80. We found that EEOC and OPM had not gotten  
8 their acts together, act together, and so we had to go  
9 about writing a plan according to the original of the plans,  
10 the way that we had written in the past.

11 Then, on October 15th of this year, we did have  
12 approved by ERL our temporary plan as outlined by -- in  
13 these programs, and this, this plan was approved according  
14 to the most populous GS ratings, GS in both full time  
15 permanent and other than full time permanent and we have to  
16 keep these two categories separate because we have approxi-  
17 mately 1,000 full time permanent employees in the ERL and  
18 approximately 500 other than full time, and we have various  
19 supervisors and managers using the various categories,  
20 so we have to actually separate the two and deal with them  
21 the most, the five most populous areas in the full time  
22 permanent and the five most populous areas in the other than  
23 full time permanent.

24 Then, when the final instructions or when I say the  
25 final, the semifinal instructions have come out from OPM

*St. Hubert*

1 and EEOC we have followed the goals and in fact we have  
2 attended various sessions here in Denver, for example, in  
3 which they put on a special session where we had people from  
4 the EEOC and the OPM, and we have actually we have been  
5 sneaking out looking for information because NOAA headquarters  
6 has refused at certain times to send us information, we've  
7 told them we know why, they think we're just too stupid to  
8 understand the new changes that are coming out and the changes  
9 that are being made from time to time.

10 But we have been following the instructions as they  
11 have been coming out in the various pamphlets and we have  
12 done, accordingly, although the -- the writing of a FEORP  
13 that we have done for ERL is a little different from our  
14 headquarters in Washington, NOAA itself.

15 Mainly because NOAA has taken its most populous areas  
16 for all of NOAA and it turned out that when they limited  
17 it to, say a certain number, that number fell down just one  
18 category, one series in ERL so we had to make the adjustment  
19 and really go and lower our number for the ERL and we'll  
20 probably have to do the same thing for our various independent  
21 laboratories in ERL because they are small, they run from  
22 maybe 20 people in a laboratory to 70, 80, 90 in a laboratory.

23 Q Did the EEO submission plan work for NOAA? By that  
24 I mean did you encounter problems with Environmental  
25 Research Laboratory data conforming to NOAA's format?

1       A     Well, we encountered some difficulties but they didn't  
2     bother us too much.  In other words, what EE -- what NOAA  
3     did was to determine the projection of filling in vacancies  
4     by past performances and this ERL can not go along with  
5     because we just can't go from one year to the next determining  
6     our anticipated vacancies from the previous year or the  
7     previous two or three years.

8             What we had to do is to go out to the laboratories and  
9     ask each laboratory the projected vacancies in each  
10    category, not only the categories that would be called --  
11    covered by FEORP because we weren't sure of the changes  
12    that might be forthcoming so we would ask for all anticipated  
13    vacancies both in full time permanent and other than full  
14    time permanent, and ask the laboratories how they plan to  
15    fill these vacancies and then incorporated these as in-  
16    structions in our FEORP program.

17       Q     What kind of technical assistance did you receive from  
18    OPM or EEOC?

19       A     Our original assistance was given on May the 31st and  
20    June the 1st, Friday and Saturday of last year, -- Thursday  
21    and Friday of last year, in Washington, D.C., at the Office  
22    for Civil Rights in NOAA.  In other words, NOAA called us  
23    in to -- for a two-day session and we listened to various  
24    people from EEOC and OPM as well as from members from the  
25    office of civil rights, in addition to that we have been

1 attending sessions provided by various organizations as I  
2 mentioned ~~image~~ here, the GI forum in Detroit, the OPM gave  
3 the session there and we ~~have been~~ just looking forward and  
4 -- for information of that sort and attending sessions of  
5 that type. So that's how we got our recommendation.

6 Q What other kind of assistance would have been helpful?

7 A Well --

8 Q From OPM or EEOC?

9 A We haven't had the problems -- our problems are  
10 more or less internally with reference to barriers to  
11 affirmative action or barriers to our equal employment  
12 opportunity within our agency.

13 I think moreso than -- because we actually are,  
14 right away to find out what EEOC means, we read the documents,  
15 I mean everybody in our office read the document, including  
16 the secretary to become aware of the information that's  
17 given. So we haven't had that type of problem.

18 Q Were the technical assistance sections you did have  
19 helpful?

20 A Oh, yes. We were very much impressed with the various  
21 reports from the EEOC people and OPM people at the various  
22 sessions.

23 The only problem I have or we have is whether or not  
24 they are as one member of the panel has already asked, if  
25 they're really serious in the undertaking that they have

1 claimed. In other words, we have taken them seriously, we  
2 have -- we believe and we actually go to our EEO managers  
3 and tell them that EEOC is serious in this matter, OPM is  
4 serious and yet we go out into the community, when I say  
5 community we go out into the Black community or Hispanic  
6 community and they almost laugh at us and say this has  
7 never happened in the past and why would you expect it to  
8 happen at this time?

9 And that's one question I want to ask of the panel  
10 members here with the reference to the OPM and EEOC, are  
11 you really serious about this? Am I just beating a dead  
12 horse in talking to EEO managers and telling them that this  
13 is a serious undertaking?

14 Q What would you describe as your agency's structure as  
15 regards implementation of FEORP in the affirmative action  
16 plan?

17 A If you talk about the agency ERL, we work through our  
18 various laboratories and programs, in our various laboratories  
19 and programs through the EEO manager and in recent years,  
20 recent months we have included administrative offices.

21 In other words, we always attend the administrative  
22 council meeting, we attend the directors meetings, and we  
23 explain the EEO program to the directors which might happen  
24 once or twice a year, to the EEO managers three or four times  
25 a year by telephone conversation because many of our laboratory's

1 programs are not in Boulder but are away as far as Miami,  
2 Seattle and whatnot.

3 Q Is there conflict or problems in coordination between  
4 the EEO officer, personnel office and the director's  
5 office?

6 A We have, we have much support financially from the --  
7 from Bill Hess. We do run into our own problems with our  
8 director, we have differences of opinion on approaches to  
9 be taken and we sit down and try to iron these out and also  
10 with reference to personnel. We get together in brain  
11 storming sessions with the Office of Personnel when we're  
12 getting ready to write our affirmative action plan, also we  
13 bring in the EEO committee and deal with problems that we  
14 think must be dealt with.

15 Q Do you see current OPM and EEOC requirements for  
16 FEORP and affirmative action bringing about substantial  
17 reductions in minority and female underrepresentations in  
18 the federal government?

19 A We think that maybe the -- we look at OPM and EEOC  
20 regulations from two points of view, first our recruitment  
21 goals and then our hiring goals. We think that they are  
22 totally different things. Our recruitment goals are, with  
23 reference to the OPM regulations, in other words, we  
24 determined that other representation which is no problem with  
25 our office, we determine according to the rules and the

1 formulas with various categories, that is with reference  
2 to the national labor force, with reference to the regional  
3 labor force and our hiring goals which we haven't really  
4 determined as yet, and I think that would be the most  
5 difficult part, and it is mostly based on, well, they are  
6 determined, they're based on the advice of the various  
7 laboratories as to anticipated vacancies.

8 And I -- I guess the biggest problem we have is the  
9 problem with ERL is whether or not they realize the serious-  
10 ness of the business and whether they really expect to fulfill  
11 these goals.

12 I give you one example the type of difficulty we have.  
13 I call this the barrier, one of the barriers and we've  
14 already listed this in a letter to the director and I  
15 don't think he's received it yet. But we have to report to  
16 him as to what we consider barriers to EEO, every quarter.

17 This is required by our office. And one of the  
18 barriers that I really am concerned about and particularly  
19 is the fact that well, as Bill has stated, we have -- we  
20 get every -- we get a certificate of every new hire from  
21 GS5 and above. We make a -- our office makes a detailed  
22 evaluation as to the selection process and -- or the non-  
23 selection process on each of these certificates.

24 We turn these back to the selecting official and we  
25 expect some kind of reaction from them. We just don't get

1 reactions in general.

2 We must say that in two specific instances we've  
3 had directors of laboratories to either reverse the action  
4 by making a selection of a minority or woman in certain  
5 instances, and in one case, and another director we've had  
6 them to indicate that they will not accept a certificate  
7 that has not been approved by the EEO office.

8 Now, this is not saying that we want any kind of  
9 power but we want them to actually look at our critique  
10 as far as their selection. And the reason why we are giving  
11 such selection, we've also asked the director and I guess  
12 he's just getting that letter, to ask -- asking him to not  
13 only look at the GS13's and above which he looks at anyway,  
14 but to look at any of those action items that are not --  
15 that are -- where selections are made and that we have dif-  
16 ficulty with, that is our office has not really concurred  
17 with the selection and really ~~review~~ those for all those  
18 that are -- in which there's a difference of opinion between  
19 the EEO office and the office of personnel.

20 But this is one of the problems that we are concerned  
21 with.

22 Q In addition to that, what kind of monitoring do you  
23 see as necessary by OPM an EEOC in order to insure that  
24 affirmative action and equal opportunity recruitment are more  
25 than a paper reality?



1       A       I'm very glad to hear you ask that question because  
2 I'm concerned about EEOC's responsibility and OPM's responsi-  
3 bility. I want to know, when I asked the question is EEOC  
4 serious about this, is OPM serious about the regulations  
5 that are stated? Will they oversee these things?

6               For example, the certificates that I've just mentioned,  
7 will they at least inspect from time to time the reasons  
8 that we've given, inspect the reasons or why other, others  
9 have not making selections and try to fulfill the goals  
10 of the FEORP.

11       Q       At a recent meeting of the Federal Executive Board,  
12 EEO Council, several federal EEO officers maintained that  
13 minorities and women with advanced degrees in the physical  
14 sciences were not readily available and thus low goals  
15 established by EEOC instructions did not matter. Could  
16 you comment on that?

17       A       Yes. This is a position that's been taken by  
18 many of the people in ERL, when I say many, the selecting  
19 officials in ERL. We see this statement all the time. Our  
20 office does not subscribe to this in totality. In fact, at  
21 one of the EEO committee meetings in Washington, D.C. one  
22 of our -- the head of the EEO committee at that time re-  
23 ported to Mr. Frank, who is the head of NOAA, that this  
24 -- this is not the case in general. I mean in total. The  
25 reason is because when I first took over in 1977, as the

1 EEO manager, this statement was -- I mean it was stated that  
2 we did not have, you could not find minorities and women,  
3 qualified minorities and woman.

4 So I started immediately recruiting trips and on  
5 these trips we brought in lists and made reports to the  
6 associate director of ERL biweekly, and -- but nothing ever  
7 happened to these. We'd bring in Ph.D.'s that, they said  
8 were not available, and we even had the officer of personnel  
9 to write letters to the various possible candidates for  
10 certain positions in NOAA, and -- but we -- we were able to  
11 get some of these people hired in NOAA headquarters rather  
12 than in ERL, so we do feel that there are people available  
13 or they could be made available by some of our programs,  
14 especially the graduate scientist program of NOAA, which  
15 we have been trying to push.

16 THE CHAIR: Thank you.

17 MS. LUCERO: Mr. Dunn, if we can move on to questions  
18 directed to you.

19 Would you explain for us, please, OPM's duties in the  
20 federal equal opportunity program?

21

22

MR. ROBERT DUNN

23

24 A (By Mr. Dunn) At the present time?

25 Q (By Ms. Lucero) Yes.

1           A     Well, let me just make reference to the specific  
2 language of the -- under the Civil Service Reform Act <sup>and</sup> ~~in~~  
3 the Reorganization Act Number 1, the essential former  
4 responsibilities of the U.S. Civil Service Commission for  
5 affirmative action and discrimination complaints,  
6 those were through the Reorganization Act specifically re-  
7 assigned or transferred to EEOC. As a result of the  
8 Reform Act, we were given an additional responsibility which  
9 we've been discussing here which is essentially FEORP.

10           The act itself directs the OPM to implement a  
11 minority recruitment program which shall provide, to the  
12 maximum extent practical, two main points: One, that each  
13 executive agency conduct a continuing program for the re-  
14 cruitment of members of minorities for positions in the  
15 agency in a manner designed to eliminate underrepresentation  
16 of minorities in the federal service with special  
17 emphasis directed at recruiting in minority communities in  
18 educational institutions, and from other sources where  
19 minorities can be recruited.

20           The second responsibility of OPM is to conduct a  
21 continuing program of assistance to agencies in carrying  
22 out these programs, and two, evaluation and oversight of such  
23 recruitment programs to determine their effectiveness in  
24 eliminating minority underrepresentation.

25           So, that's essentially our charter.

1 Q Now, what kind of specific data and technical  
2 assistance have you provided to federal managers as to  
3 work force figures and FEORP?

4 A Work force data and instructions on the process to  
5 determine representation or underrepresentation, were issued  
6 through standard federal personnel manual issuance system  
7 by our headquarters to all agencies and departments.

8 Q All right. Do you think that these present systems  
9 are adequate for the purposes with which your agency is  
10 charged?

11 A Well, I don't think there's any data base that any  
12 of us are dealing with that is perfect. There was not,  
13 to my knowledge, an existing data base which very neatly  
14 fit either in terms of the civilian labor market or federal  
15 work force, that neatly fit into the requirements of FEORP.

16 Q Well, do you plan to take any steps to improve the  
17 kind of information that is available?

18 A There are several things underway, some of which  
19 belong to OPM, some belong to other departments and agencies.  
20 Obviously we are not responsible for census data or labor  
21 statistics data that the Department of Labor collects.

22 We are on the OPM side, however, proceeding with data  
23 collection system where we will ask for self-identification  
24 of applicants who voluntarily should provide us the in-  
25 formation about their own ethnic or racial background.

1           This data will be used to better assist the ethnic  
2 makeup or representation of our applicant pools. And so  
3 it should help further somewhat at least the knowns that  
4 we're dealing with and also let us know when we don't  
5 have that kind of representation in those applicant pools.

6           Q     Are there any conflicts between the FEORP require-  
7 ments and the Civil Service Reform Act and other federal  
8 personnel related requirements such as merit standards  
9 and so on?

10          A     Well, we have two statutes, we have a merit system  
11 statute which requires a merit system of employment. We  
12 have FEORP which requires an effort to attain representation.  
13 They're both equal laws, I'm not sure -- I would say  
14 they're at conflict. They may both be difficult to administer  
15 at times, but they are both the law.

16          Q     Well, how do you resolve any potential conflicts  
17 between the two?

18          A     I don't know if the question is answerable. I think  
19 if you have some specific instance or situation as an  
20 illustration, I can't just -- just think of any at the moment.

21          Q     Okay. Well, what is your agency's responsibility  
22 for reviewing and approving agency FEORP?

23          A     I have to speak from a regional standpoint. The  
24 FEORP reviews are essentially a departmental agency head  
25 level process, on OPM's part. At this stage we have not got

1 actively into evaluation or review, however that will be  
2 part of our responsibility.

3 As we visit agencies in the process of evaluating  
4 their personnel programs, the FEORP plan will be made  
5 available and we will make such review and analysis and  
6 evaluation of those plans.

7 Q Going back to my prior question for a moment, by way  
8 of an example, is what's been referred to as the three plus  
9 three rule in Colorado which apparently ran into some OPM  
10 objections. Would you be in a position to comment on that?

11 A I'd be glad to discuss it this afternoon when you  
12 talk about the state and local situation. I don't see  
13 where it's pertinent to the federal system.

14 Q Okay, why don't we defer it until then.

15 Will agencies' FEORP submissions be reviewed at the  
16 regional level or at OPM headquarters?

17 A Well, at both. The total agency plan will be re-  
18 viewed at the Washington headquarters level. We have not  
19 specifically asked for the submission of FEORP plans from  
20 regional agencies as we did in the case of, previously with  
21 affirmative action plans.

22 We will, however, as I indicated, when on site, either  
23 specifically for that purpose or as part of a broader  
24 purpose, review those plans. We also review them from the  
25 standpoint of agencies who are seeking assistance and

1 advice regarding their plan, sit down and go over it with  
2 them, and try to offer suggestions for improvement.

3 Q Have there been any specific criteria set for what  
4 constitutes acceptability of this plan?

5 A There are certain specific provisions that should  
6 be in the FEORP plan, I'm afraid personally from a technical  
7 standpoint I'm not that -- that familiar with what those  
8 specific requirements might be. But they are spelled out in  
9 the agency or the guidance OPM issued to the agencies  
10 as to what a plan should consist of.

11 Q Has there been coordination between your agency and  
12 the EEOC with regard to these plans?

13 A Again I think in fairness to all concerned, at this  
14 stage most of the development has been a Washington level  
15 activity for both of our agencies. Locally our efforts have  
16 been in coordinating with the local office of EEOC, the  
17 briefings for agencies, the technical assistance efforts,  
18 we have discussed with the local office the possibility of  
19 joint evaluations of agency FEORP activities, and so it's  
20 been on a more or less, a personal coordination relationship  
21 between my staff and the staff of the EEOC office here in  
22 Denver.

23 Q Have there been any training programs or in-service  
24 programs to prepare OPM personnel to give the kind of  
25 technical assistance that agencies may require in preparing

1 their plans?

2 A Those individuals who are assigned the responsibility  
3 to work with the agencies are knowledgeable as to what those  
4 requirements are, and should be in a position to impart that  
5 knowledge.

6 Q How have they acquired this knowledge?

7 A Well, first of all we were provided the basic  
8 guidance that the agencies were issued, those persons  
9 familiar with the staffing process in the federal service  
10 could certainly readily acquaint that process and the FEORP  
11 requirements.

12 I'm not sure that it added a significant need for  
13 new knowledge in terms of our personnel on the staff. So  
14 it was not a great step forward in terms of the knowledge  
15 required.

16 The application of that assistance and knowledge I  
17 think is -- is not always an easy process but one that at  
18 least to my knowledge we've generally been able to cope with.

19 In fairness, I think we're learning some of this as  
20 well as the agencies who are implementing these programs.  
21 It was legislated a year and a half ago and certain aspects  
22 of it are new to all of us.

23 Q Are there any presently established timetables for  
24 review and approval of various agency plans?

25 A I'm just not personally able to answer that question



1 at this point.

2 Q What plans exist as to followup or monitoring to  
3 determine that an agency is actually implementing an equal  
4 opportunity recruitment process once the plan is reviewed  
5 and approved?

6 A The FEORP -- let me put <sup>2</sup> the FEORP into the  
7 context of our total agency responsibilities as a central  
8 personnel agency. That is a part of that personnel  
9 operation. All of which is part of our responsibility or  
10 our central responsibility. We have, and will continue  
11 to evaluate agency personnel management programs, all  
12 aspects, and FEORP will be included as one element of those  
13 evaluations.

14 We physically go on site in an agency, spend some  
15 time on site and evaluate all aspects of their personnel  
16 program. This will be included in that process.

17 Q Does this portion of your total responsibility have  
18 any priority ranking in terms of what you do?

19 A Evaluation is one of our top priorities and certainly  
20 FEORP as a new law is -- is very much on the top of that  
21 list of priorities.

22 Q Are there any sanctions which can be taken by your  
23 agency against an agency or a manager failing to implement  
24 their plans?

25 A The authority to sanction agencies at this point lies

1 with the Merit System Protection Board and the, specifically  
2 the special counsel and the EEOC. Any sanctions we could  
3 offer would be in terms of again, an indirect sort of  
4 approach, through the personnel management process.

5 We could identify, for example, in an evaluation, an  
6 organization or individuals in an organization who are  
7 failing to meet the FEORP expectations, report those findings  
8 to the responsible agency officials in the expectation that  
9 some action would be taken. It's the same way -- it's the  
10 same process we would follow with any other deficiencies in  
11 the personnel system.

12 Q Okay, let me address a question to Mr. Hamory and  
13 Ms. Elder, one or both of you.

14 Do you have any comment with regard to the issue of  
15 statistical support coming from OPM at this point?

16 A (By Ms. Elder) I can respond to that a little... I  
17 was not aware that there was current data on the work force  
18 in the Office of Personnel Management that I could utilize  
19 for either FEORP or the affirmative action program. It  
20 was necessary for me to go through a lot of layers of folks  
21 in Washington to get that data and then, when I actually  
22 got it it was -- it was not as current as I'd like to have  
23 had it.

24 But I was not aware that we could get up-to-date  
25 information from OPM.

1 THE CHAIR: Mr. Hamory, do you have any comment in that  
2 area?

3 A (By Mr. Hamory) As far as the statistics go we didn't  
4 have any problem. Our internal groups, we're all computerized  
5 in our personnel program and they had transmitted the  
6 statistics to us that way.

7 Q (By the Chair) Mr. Dunn, would you have any response  
8 to those comments?

9 A (By Mr. Dunn) Well, there are -- there are many  
10 sources of data, just for clarification, let me just touch  
11 on some of those.

12 For years the Commission and now OPM has accumulated  
13 racial data on its work force. Now, this data is generated  
14 by the agencies themselves who are hiring individuals, and  
15 so, consequently, our data source is one central mass of  
16 data, however it, as I said, comes from each of the  
17 individual agencies.

18 I would say that in the past most agencies with a  
19 viable affirmative action program have maintained their  
20 own statistical profiles of their work force for that  
21 purpose. And are generally in a pretty good position to  
22 know what their own work force is made up of.

23 Our data is centralized, it is not always date --  
24 useful from a date standpoint, it's time consuming to extract  
25 some of the data that's sometimes needed, and it may be out

1 of -- somewhat old when you get it, but this file is retained  
2 in a, what's referred to as a central personnel data file  
3 which is a central personnel record, computer record on all  
4 federal employees.

5 It's tied to that file but maintained separately  
6 for security reasons so that none of that data on any given  
7 individual is ever connected with the individual.

8 So yes, there is that data source, we use it, and I'm  
9 a little bit surprised, I guess, at the comments made because  
10 it's not unusual other agencies are utilizing that data also.  
11 If they don't have their own data base.

12 Q (By Ms. Joanne Birge) I'd like to go back to the  
13 question on the possible conflicts between what Mr. Dunn  
14 calls two equal laws. And I think he indicated he'd be  
15 happy to talk about that in terms of specific examples.

16 Could either Ms. Elder or Mr. Hamory provide a  
17 specific example?

18 A (By Mr. Hamory) Well, I guess -- probably the con-  
19 flict would be that in certain instances -- well, such as  
20 in the OPM instructions that were transmitted for us to  
21 develop a FEORP, we were instructed to use, I believe the  
22 term was creative staffing strategies to develop and implement  
23 a FEORP.

24 One of the things that I think concerns -- it concerns  
25 me personally, and I think it probably concerns a lot of other

1 employment types and other people, that how far within the  
2 framework of the merit system we may go in using creative  
3 staffing strategies.

4 Right now within our internal merit promotion programs,  
5 we are under OPM instructions and also agency implementing  
6 documents to -- for those instructions to certify only the  
7 best qualified for promotion. We, in the past, ~~through~~ whatever  
8 problems we've had internally to all federal agencies, we're  
9 not talking -- you have to remember we're not talking  
10 about basically qualified or qualified for a position, we're  
11 talking about best qualified in the merit system.

12 Certain barriers are built in to the merit system,  
13 both internal to the agency and internal to the OPM regu-  
14 lations. You know, that won't allow us to reach down into  
15 the pools of qualified minorities, women, handicapped and  
16 so forth, and, you know, bring those people up right away.  
17 So we're talking basically about a much more long term  
18 process, and be highly creative without trying to be  
19 illegal under the other law.

20 So, as far as I'm concerned, there's some -- like  
21 Bob said, there are two laws, and they're not necessarily  
22 complimentary, I guess is the whole point. And what  
23 scares me as an individual is, you know, how -- am I going  
24 to get burned, are we going to get burned both ways for not  
25 being able to fulfill the full intent of one law or for

1 having to subvert the full intent of another law to meet the  
2 requirements of the first?

3 Q (By the Chair) Dr. Stubblefield, or did you want to  
4 respond?

5 A (By Mr. Dunn) I just wanted to add something. FEORP  
6 is a recruitment program, in no way did FEORP legislation  
7 alter any of the selection requirements or merit system  
8 requirements on the selection side.

9 In other words, we will do everything possible to  
10 bring into the applicant pool individuals that may not have  
11 been reached before for the purpose of the pool from which  
12 you make the selections.

13 However, it did not replace or negate any of the  
14 statutes that exist in terms of the rule of three, veterans  
15 preference or any of the other selection requirements that  
16 are -- have been on the books and still are. And I think  
17 it needs to be, FEORP needs to be looked at in that context  
18 as a recruitment program which in no way alters the  
19 selection process itself.

20 Q Dr. Stubblefield, do you think OPM will be able to  
21 determine the quality of your agency's recruitment process?

22 A (By Dr. Stubblefield) On request, I think the OPM  
23 will be able to determine the quality, if OPM investigates.  
24 But it has to make a serious investigation, that is a check  
25 from time to time periodically. And we feel as though we can

1 do it and we feel as we can -- we feel that if we can do it  
2 then OPM can too.

3 Q Mr. Dunn, do you have any comment on that?

4 A (By Mr. Dunn) On whether we're serious?

5 Q No, on -- no, not on the seriousness of it, but on  
6 the quality, being able to determine the quality of the  
7 recruitment plan?

8 A I think we should be able to. That's our business,  
9 and recruitment has been very much a part of our total  
10 personnel package, although agencies themselves have also  
11 been very much in the recruitment business for a long time.  
12 But I feel fully confident of being able to evaluate that  
13 effort.

14 MS. LUCERO: Let's turn now to Ms. Marillo, you are  
15 next, do you have something to say before we start?

16

17 MS. JENNIE F. MARILLO

18

19 A (By Ms. Marillo) Yes, I wanted some interchange  
20 specially from agency's point of view as to the effect  
21 veterans preference has as to getting people on, because  
22 you can go out there and recruit, but if you can't get your  
23 people off the registers because of veterans preference or  
24 the rule of three, you're really not doing anything. And  
25 you don't have that much leeway to go into your special

1 emphasis program.

2 So I'd like to hear a little discussion on that  
3 because that's particularly of interest to minorities and  
4 women because they are very definitely affected by that,  
5 especially in federal government.

6 A (By Dr. Hess) In going to registers looking for  
7 meteorologists we find very frequently ~~meteorologists~~ regis-  
8 ters in different parts of the country have only veterans  
9 at the top. And we don't have access to people that we  
10 might want to have access to.

11 A (By Ms. Elder) I think another example that is very  
12 dear to my heart is a recent attempt I made or through the  
13 agency to request a mini delegation from the Office of  
14 ~~Personnel~~ Management so that we could set up our own register  
15 for an equal opportunity specialist job, and therefore  
16 allowing people who had never had status to apply as well  
17 as those persons who do have status.

18 It was a terrific idea, it's brought about by the  
19 civil service format and it's <sup>^</sup>wonderful <sup>^</sup>approach. But  
20 then as I'm reading the requirements, when I finally obtained  
21 the permission to go ahead with this, is that very out-  
22 standing comment at the end <sup>-</sup> that ten point, <sup>-</sup> Because this  
23 is a nonprofessional job then I would be required to take the  
24 ten point veteran and then the five point veterans who did  
25 indeed have a great advantage, and it kind of, with my



1 background in EO, I suspect that we would have had a number  
2 of veterans apply for this position. And so I'm a, not  
3 against veterans at all, but I just know that the principles  
4 I saw, this mini delegation in bringing about, and bringing  
5 external candidates into the system was not going to  
6 actually do that for me, if indeed the persons were given  
7 ten points or five points would lock women from the register  
8 and it's still very much with us.

9 MS. LUCERO: Would anybody else like to comment on  
10 veterans preference before we go on?

11 This will come up again in other panels.

12 A (By Mr. Hamory) I'd just like to mirror what the  
13 other agency types have said, that in our agency the biggest  
14 recruitment is done off the air traffic control register  
15 which is maintained by the OPM and of course according to  
16 the laws and regulations that are on the books now veterans  
17 preference must be administered.

18 And I think the thing that has to be remembered is  
19 traditionally women have not gone into the military, at  
20 least over a large -- you know, over the past, since we've  
21 been a country. And our biggest problem is women, and  
22 also in the occupations that we hire very few minorities  
23 traditionally have been the -- the service has not been  
24 putting minorities into those occupations so veterans  
25 preference really has hurt us as far as going out, recruiting

1 in the community, getting someone interested, getting them  
2 on the register, because if they're a non-vet. or not a  
3 veteran they oftentimes have a very difficult time competing  
4 with veterans.

5 MS. LUCERO: Thank you.

6 Does the staff have any questions here before we  
7 get back? Okay, Ms. Marillo, let's go on with your state-  
8 ment here. Could you please describe for us your activities  
9 within EEOC and your understanding of the federal affirmative  
10 action process?

11 A. (By Ms. Marillo) Okay, my duties in my job description  
12 say that I am supposed to review, monitor and analyze federal  
13 agency affirmative action programs dealing with minorities  
14 and women and handicapped individuals including disabled  
15 veterans.

16 At the same time, too, we are supposed to be providing  
17 technical assistance to the federal agencies any time they  
18 request it in any form. Federal affirmative action division's  
19 meaning to me is saying <sup>the</sup> ~~that~~ basic thing is that at the end  
20 of each year, <sup>e</sup> each agency will be ranked as to their ~~e~~  
21 progress, <sup>g</sup> they have made in eliminating discrimination within  
22 their own agency.

23 This ranking will be published annually and  
24 a copy will be forwarded to the President and Congress.  
25 That is the main emphasis that I get as to the meaning of

1 federal affirmative action division.

2 Q (By Ms. Lucero) Okay. What is your geographical  
3 jurisdiction in the Denver unit?

4 A It's the six-state area, Colorado, Utah, Montana,  
5 Wyoming, North and South Dakota.

6 Q Do you work directly for the headquarters in Washington  
7 and not for the EEOC regional director?

8 A Right.

9 Q What training or guidance have you received, and when,  
10 as to the federal affirmative action requirements, the plan  
11 submission process and the review process?

12 A Okay, training. My specific training has been mostly  
13 on the job. We had one week session in Washington, D.C., in  
14 December. ~~And~~ And at that time we received a copy of the final  
15 guidelines dealing with the affirmative action program  
16 requirements. As to --

17 Q Plan submission process?

18 A --the plan submission process, that was discussed  
19 at that time at that particular meeting. Also during that  
20 time period between them, we've had teleconferences, we've  
21 had individual conferences with our director in Washington,  
22 and comparing other regions as to what -- what is the plan  
23 submission process as such.

24 Q How about the review process?

25 A The review process, what happened in Washington is that

1 we had a brain storming session and it dealt with the review  
2 process. We were asked as individuals to get into groups  
3 and put down what you feel should be part of the compliance  
4 review of the federal government agency.

5 Okay, that was good because we had inputs from the  
6 fields which actually does the work in all cases.

7 Okay. In January, I should say in early February,  
8 we received two copies or two examples of the review process  
9 in the form of the evaluation critique, two separate examples  
10 and we were given our opportunity to put our input as to  
11 comments and we did that.

12 As of today, we haven't heard anything as to the final  
13 review process as such.

14 Q Is your guidance on how to perform your duties in  
15 writing?

16 A It's in writing and it's also verbal. When I first  
17 came on board I was given an orientation package which  
18 gave me a headquarters and field management plan which spelled  
19 out what we were supposed to be doing at a specific period  
20 of time and what specifically that would require.

21 Okay. Like in example, November, December it said  
22 phase 1 you should be giving out briefings and it was  
23 so on phase 2 should be done in such and such a period  
24 of time.

25 Okay, because of that, the lateness of getting out

1 these final guidelines that all had to be pushed back and it  
2 has had variable changes to it. As to other written  
3 guidance, we've been getting guidance from, in the form of  
4 memos from our headquarters office, explaining what we  
5 should be doing, what we should be doing in the field, con-  
6 tacting the agencies and such, and then also we get the  
7 verbal contacting over the phone and so on like that.

8 Q Have you been providing technical assistance and  
9 training to federal managers? And was this at your -- at  
10 their request or your own initiative?

11 A Okay, back in November we were told from our head-  
12 quarters unit go out there and conduct briefings. We  
13 didn't have the final guidelines but we were told to do it  
14 anyway so we did that and that's what Ms. Elder was referring  
15 to. That was a briefing where we didn't know what we were  
16 really dealing with because we didn't have the final guide-  
17 lines.

18 After we went to Washington in December we got the  
19 final guidelines and we were given further instructions go  
20 out and brief the agencies.

21 So we came back and we did have briefings in the six-  
22 state region, and I might say that it was very bad turnout,  
23 especially in Denver. We sent out letters to all the  
24 agency EEO personnel people inviting them. Telling them  
25 specifically what we were dealing with and we were talking

1 about the final guidelines, and the turnout was very poor.

2 As to after that we've had a couple of requests for  
3 technical assistance by agencies, but that's been very  
4 few and I mean like it's maybe two, three at the most,  
5 and those have been dealt with as they've come up.

6 We've also had the occasion to participate in training  
7 sessions and workshops where we have been asked to give  
8 like a briefing as to what our role is and what we plan to  
9 do and so on.

10 Q So, much of your technical assistance has been at  
11 the agency initiative and not necessarily at the request  
12 of any managers?

13 A No, not at the request of either one. We've only  
14 gotten -- it's more or less been through our headquarters  
15 unit, that's why we give the briefings but we haven't gotten  
16 any further input as to from federal agencies asking us to  
17 come out.

18 Q Do you believe available statistical data to be  
19 adequate for federal managers' needs and who should be re-  
20 sponsible for data?

21 A The guidelines stipulate that you will use civilian  
22 labor force data. This is set up on the basis that this  
23 is what is used in the Office of Federal Contract Compliance  
24 in regard to private industry. Using the census data is  
25 good in one way, it gives you a representation or a picture

1 of what representation is in a specific area like an SMSA.

2 The bad things about census data is that it is so  
3 old, we're using 1970 census data, which had a severe under-  
4 count of minorities and didn't show a lot of women where  
5 they should have been like in nontraditional areas for 1980  
6 goals, which is ten years old.

7 So that's the minimum base. It's bad in that way.  
8 I don't -- I don't feel that there's any other source that  
9 we could use, but we should be able to update it at least  
10 on a five-year plan or something, because it is too old,  
11 but it is the best that we have.

12 Q What are your views on EEOC's method for calculating  
13 availability of professionals?

14 A EEOC is consulting with OFCCP and that's where they're  
15 getting the idea of using the breakdown as to specific  
16 occupation versus what's available in civilian labor force  
17 versus what's available in your agency, comparing your  
18 underrepresentation and so on in determining your goals.

19 Q Excuse me, would you spell out those initials?

20 A Which ones?

21 Q OFCCP?

22 A OFCCP, Office of Federal Contract Compliance, Department  
23 of Labor, deals with requirements for government  
24 contractors and subcontractors.

25 Q Thank you.

See 65  
in  
modification  
of  
policy

1       A     Okay? That's what they're leaning towards. Basically  
2 because that's what they're doing at that point in time.  
3 That's what EEOC feels. What I feel is that it's not  
4 adequate.

5           Okay, what you're doing is that you're using civilian  
6 labor force data broken down by occupations which the  
7 census bureau has further broken down because they've only  
8 selected a few types of occupations like teachers and  
9 scientists and engineers and maybe the rest fall in all  
10 other. And what those census figures show is that because  
11 there has been discrimination, this many amount or this  
12 number of minorities and women have been allowed to progress  
13 to this particular profession.

14           For example, your professional occupation for, let's  
15 say Denver SMSA may show women, 6%, minority total 10%.  
16 What it's saying is because of discrimination only 6% of  
17 the professional occupation is female, 10% is minority.

18           Using this, you're further perpetuating the effect  
19 of past discrimination. I feel what you should be using  
20 as a basis is the total civilian labor force data for that  
21 particular SMSA if you fall in it.

22           Example, Denver, if Denver had a 41% total civilian  
23 labor force availability for women, and total minority  
24 was 15%, that should be your representation in each of your  
25 separate categories. I'm talking about administrative,



1 professional, technical, clerical and on down the line.

2 Q What are your views on the method in EEOC's in-  
3 structions to federal managers for setting goals and time-  
4 tables?

5 A The goals are set up again by using the civilian  
6 labor force data. What I do like about **those**-- the EEOC  
7 directive is that they come out and say, if in this particular  
8 instance you are severely underrepresented in this particular  
9 area, you will double the civilian labor force data you  
10 are using and therefore doubling your goal for that particular  
11 underrepresented group, that's a good aspect.

12 It is also saying in the directive that if in fact  
13 you do not have the number of projections that you -- number  
14 of vacancy projection that you have at the end of the year,  
15 what you will use is, as the annual rate of hiring, civilian  
16 labor force insisted that you use, which is good. Again  
17 when we're dealing with small numbers it's not going to  
18 work that great, but that's all we have.

19 Q Do you believe the requirements demand enough of  
20 federal employers?

21 A First of all they don't demand anything. All they're  
22 doing is asking. They're saying on paper, you as a federal  
23 agency will be required to do this, but it's not demanding  
24 that you do it.

25 Okay, I have not yet, as of yet reviewed an affirmative

*see EEOC  
re: Not  
goals*

1 action program for federal agencies, so I really don't know  
2 how that pertains to it.

3 What I do get back as feedback is that it's too  
4 much paper work. It's -- we can't do it. You're asking us  
5 to do all of this. And what I'm thinking is that you had  
6 the same type of requirements under OPM, you were required  
7 to have an affirmative action program, you were required  
8 to get all the statistics before and I can't see the problem.

9 The problem is also that we can't get these -- the  
10 numbers from our computers. Okay, then that should be  
11 something that should be worked on within the agency.

12 If you can't get it through a computer, then you  
13 better be doing it manually, because it should have been  
14 part of your personnel management plan all along all this  
15 time and it shouldn't be something new.

16 Q Do you feel that the agencies want to cooperate or  
17 comply?

18 A Okay, we're saying -- what you're asking is are they  
19 paying attention to us, do they think we're serious. I  
20 don't know. When we look at the amount of submissions that  
21 were made as of March 4, 1980, we had a total in head-  
22 quarters of 70 submissions. But there should have been 400.  
23 So it makes you wonder, are they really appearing to  
24 cooperate?

25 Then we also find out that the agencies, at the

1 headquarters level, are taking the EEOC management  
2 directives and rewriting them for their own agency and  
3 passing them down the pipe.

4 When they're rewriting them, they're inserting  
5 different submission dates and different requirements,  
6 so we're talking again of taking the guidelines that were  
7 sent out by EEOC and being rewritten to their own use.

8 Q (By Mr. Bucholtz) Ms. Elder, I wonder if you could  
9 respond to the same prior question, do you believe that the  
10 requirements are sufficiently demanding on federal employers?

11 A (By Ms. Elder) No, I don't. I don't think they're  
12 demanding enough in that very much what Jennie's talked  
13 about, that with small -- if there's no basic tool in the  
14 regulations themselves, in the instructions, that, where  
15 there will be something done with the agency who has not  
16 taken the instructions seriously, then I don't think it will  
17 be taken seriously.

18 We certainly haven't had, in the past, through the  
19 Commission, or through our own internal, I mean we're not  
20 all laying blames on external people, we have not taken  
21 affirmative action very seriously or we wouldn't be having  
22 this hearing. I think that until we do have a sanction in  
23 the instructions with an agency that means business, we will  
24 not be taking it as seriously as we'd like to.

25 Q Well, are you in a position to perhaps contrast what's

1 happening with the requirements as to federal agencies with  
2 requirements to various segments of private industry?

3 A I've had so little experience in private but I do  
4 know that going back to some comments made earlier, that  
5 most private industries who hire large numbers of folks  
6 are pretty sensitive to an EEOC review, because they have  
7 seen where AT&T and a number of other organizations have been  
8 found in noncompliance and have had to pay through the nose  
9 because of that.

10 And ~~back pay~~ awards of thousands and actually millions  
11 of dollars.

12 Now, that's good, because the private sector, I think,  
13 is very serious when EEOC comes to visit them. Now, what  
14 do we do in the federal government when Jennie's office  
15 comes to my office and ~~she~~ and I -- and I share with her  
16 what we've done or have not done? Will EEOC also be able  
17 to sanction the federal sector? In much the ~~same~~ way as they  
18 have done the private sector?

19 MR. BUCHOLTZ: Thank you.

20 Q (By Ms. Lucero) Let me get back to Ms. Marillo for  
21 a few more questions. How do you plan to review and approve  
22 federal affirmative action plans?

23 A And do you believe the plan submission process is  
24 workable?

25 A (By Ms. Marillo) The plan of review. Right now my

1 supervisor is in a training session in Washington and that  
2 was supposed to be one of the topics. At this point in  
3 time, we had a review plan as such, but that has fallen  
4 by the wayside because of the time period and the lateness  
5 of getting out the final guidelines.

6 The submission process as I've expressed before,  
7 has not worked, and evidently will not work. By the demon-  
8 stration of the submissions on February 1, 1980 requirement  
9 date.

10 Q Is the field unit or headquarters responsible  
11 for reviewing plans?

12 A My understanding is it works both ways. The head-  
13 quarters unit will be looking at the agency on a nationwide  
14 scope, whereas here in the field we'll be looking at the  
15 individual components of an agency. And providing input  
16 to our headquarters office which they can use.

17 Q Are there timetables set?

18 A There were, and supposedly that's what they're  
19 working on now, and that's all I know about that.

20 Q Do you know how your unit's review might differ  
21 from headquarter's review of an agency's plan?

22 A Again the headquarters would look at the whole  
23 agency, and I don't think it would have a chance to really  
24 look at it to the details, whereas here in the field  
25 since we're dealing with a specific component we have the

1 opportunity to go in and look at everything and we're  
2 talking about the complaints filed on the agency down to the  
3 personnel actions and the standard form 50's and so on.

4 Q As Ms. Elder mentioned, what sanctions can be applied  
5 against agencies or agency heads that fail to comply with  
6 EEOC instructions?

7 A What happened is that OPM had the responsibility  
8 and they took it away from them and they gave it to EEOC.  
9 When OPM had the responsibility, they were telling OPM you  
10 go out there and you monitor these affirmative action pro-  
11 grams. But when it comes to sanctions, you can't do any-  
12 thing.

13 They've done the same thing with EEOC. They've given  
14 us the game, we're the referee, but we have our hands tied.  
15 If an agency commits a foul, such as not submitting an  
16 affirmative action program, we have no sanctions.

17 Q Who would you go to to get sanctions?

18 A Federal agency, you're dealing with, with government  
19 monies. I'd say go to <sup>OMB</sup>~~OPM~~ or whoever distributes the money  
20 and start there, because it should be set up so that in  
21 the region, if you find a component of an agency is out of  
22 compliance with the EEOC directive, it should then follow  
23 that the whole agency nationwide is out of compliance until  
24 that one component is in compliance.

25 This way it affects the whole agency, not just one

1 little component, the whole agency and this way you'll get  
2 some results.

3 Q Are there any sanctions that can be applied against  
4 agencies or agency heads that fail to meet affirmative  
5 action goals and timetables set out in their own plans?

6 A <sup>The</sup> Beginning of the EEOC management directive says that  
7 the agency heads are responsible for the affirmative action  
8 program plans, ~~As~~ to the requirements, ~~However~~, if they  
9 do not meet the goals and timetables and so on in the  
10 affirmative action program plan, there are no sanctions.

11 Particularly in this transition year the emphasis  
12 has been to give the agencies technical assistance. I don't  
13 know why. The federal agencies have had to have affirmative  
14 action programs in the past, there shouldn't be any problem  
15 with it now.

16 But the problem is now to ease them into accepting  
17 EEOC as the responsible agency. It's also been -- it's  
18 also been shown that there are just no sanctions as such,  
19 if an agency does not meet the goals and timetables we  
20 in fact are just going to go back and ask them, will you  
21 please do it? And that's about all that will happen.

22 MS. LUCERO: Thank you.

23 THE CHAIR: Mr. Hamory, may I please ask you a couple  
24 more questions too? What conflicts do you see between the  
25 EEOC what EEOC wants you to accomplish and what OPM considers

1 within the merit system hiring?

2 A (By Mr. Hamory) Well, I'd say generally just what  
3 we had -- some of the things that I'd spoken to in the past.  
4 It's an undertaking that we are trying to figure out right  
5 now in implementing our FEORP, our recruitment plan, as to  
6 how we're going to find, identify qualified women, minorities,  
7 handicaps, you know, create a pool of these people, not  
8 while -- not discriminating against any other non-minority  
9 or non-women applicants, how we're going to feed these ~~so~~  
10 people into competitive civil service registers that don't  
11 have veterans preference, that don't have the qualifications  
12 that we asked OPM for in the past or that we've set forth  
13 in the past as being highly qualified because they haven't  
14 had the opportunity to get military training.

15 How we're going to identify -- how we're going to  
16 ~~change~~ <sup>change</sup> our internal regulations, our merit promotion plan and  
17 so forth, to still meet the competitive merit system  
18 guidelines and regulations and at the same time not hinder  
19 the progress of women, minorities and others up the -- up  
20 into the management, top management range.

21 There are two laws, you know, the OPM will be  
22 evaluating us, to determine if we're operating in good  
23 faith with their regulations and guidelines, the EEOC will  
24 be evaluating us to determine if we're operating hopefully  
25 in good faith in meeting our affirmative action plan, and



1 the two aren't always in conformance with one another.

2 Q (By the Chair) What do you see are the sanctions that  
3 exist either from EEOC or OPM?

4 A Well, I'm kind of glad you asked that because I  
5 think that there's a third sanction we should discuss. And  
6 that's an internal agency sanction.

7 I, myself, am under merit pay now, and many of,  
8 probably just about -- most likely all the people at this  
9 table are under merit pay. One of the requirements now in  
10 the performance standard of every supervisor and manager  
11 that's a GS13 and above under the merit pay system in the  
12 federal service will be their meeting of affirmative action  
13 goals and objectives and equal employment opportunity.

14 I view that as probably the biggest sanction that I  
15 see as far as the OPM or the, Jennie's group coming in to us.  
16 Because if OPM comes in and says, FAA northwest region's  
17 FEORP is a fiasco, they're not following what they said  
18 they would do, they're falling flat on their face, there's  
19 no management commitment and the same thing that would  
20 happen with the EEOC, I would most likely be removed from  
21 my position under merit pay performance appraisal and my  
22 boss would most likely be -- lose his and up the line.

23 But what's required of this is top agency management,  
24 top departmental management being committed to the program,  
25 and that filtering all the way down the line.

1           In our department and agency we just received a  
2 letter from our department head, the Secretary of Trans-  
3 portation which told us in very simple terms that our pay  
4 and our job tenure was based upon our meeting affirmative  
5 action goals, and unless we didn't do it we were going to  
6 be sanctioned that way.

7           So I think that's probably the biggest clout that  
8 is within an agency.

9           Q     In view of that, what kind of reporting to or  
10 monitoring by OPM and EEOC do you expect?

11          A     I expect it pretty much like Bob Dunn said, that  
12 they would pick us up on their evaluation schedule and view  
13 our -- look at our FEORP about the same -- put us in an  
14 evaluation cycle. I have asked people within our agency  
15 because I've never really dealt with EEOC before, I think  
16 that what our agency, I've been told, some of the individuals  
17 in our agency expect is probably more emphasis on -- site  
18 inspections from the EEOC, coming out and actually touring  
19 our major installations or our headquarters in the field.

20           I think less emphasis, it's the feeling that there  
21 may be less emphasis on reviewing reports that we submit,  
22 more emphasis again on actually coming out and seeing what  
23 we're doing and what we've accomplished, and hopefully more  
24 likely than not, a results-oriented evaluation, and the  
25 same with OPM, like where have we gone, what have we done?

1           And hopefully, within the context of a good faith  
2 effort.

3           There's one other comment I'd like to make, if I can.  
4 I think one of the inherent problems to a FEORP or an  
5 affirmative action plan is that when they're developed  
6 they're developed in a good faith, hopefully a good  
7 faith effort that that's what we want to accomplish.

8           In view of the guilt that we're living in at the  
9 time. They don't take into account employment freezes. Such  
10 as they were talking about ceiling reductions. I don't  
11 know if HEW is under -- you're under one?

12         A.     (By Ms. Elder) We're expecting it <sup>at</sup> ~~or~~ two.

13         A.     (By Mr. Hamory: So are we. They don't take into  
14 account promotion freezes, they don't take into account that  
15 we get a lot of positions but that we don't get the funding  
16 for the positions.

17           You know, a large variety of things which change  
18 during the budget cycle from, you know, on all these  
19 external constraints, so what I am hoping for is that  
20 when we are evaluated by OPM, by EEOC, they'll look at  
21 where we set our goals and then they'll look at  
22 what attempts we made to actually meet those goals and  
23 whether that was a good faith effort and we went out and  
24 did all we could to get there.

25           Because we have external things that we have no

1 control over, and that's just the way it is.

2 Q Maybe Mr. Hess or Mr. Hamory would like to answer  
3 this one. Have you ever used or do you plan to use the  
4 services of a consultant in preparing your FEORP plans and  
5 are you aware of other agencies that do?

6 A (By Dr. Hess) I don't think we've ever used con-  
7 sultants. We have our own in-house consultant <sup>g</sup> job and  
8 I think they do the job pretty well. Let me pick up a  
9 little bit on the conversation we were having just a minute  
10 ago.

11 If the government really were serious about wanting  
12 to have EEO work, there is a very easy way for making it much  
13 easier for managers to allow it to work, to try to ~~insensi-~~ <sup>inten-</sup>  
14 tivate it. The ~~insensitization~~ <sup>incentivization</sup> process could be something  
15 in the ceiling appointment area which would liberalize the  
16 availability of ceiling appointments for specific programs  
17 identified as ones that you want to enhance.

18 Now, there is no such ~~insensitization~~ <sup>incentivization</sup> now and  
19 as a manager facing problems where new responsibilities  
20 are put at us, with no money to do those new responsibilities,  
21 and no new people, it becomes very frustrating to try to  
22 do it.

23 Now, I'm sure that there are ways that could be done  
24 by OPM and OMB working together that this could be liberalized.  
25 If there were OFTP selling points made available, specifically

1 for -- to enhance minority employment and minority program  
2 success, the program would turn around dramatically.

3 That lack of such <sup>incentives</sup> ~~insensitization~~ means it is very  
4 difficult for you to do the things we want to do. But the  
5 federal government behaves rather differently than the  
6 private sector in the constraints that they put on their  
7 managers.

8 In the private sector a manager is given a certain  
9 amount of money and a job and told to go do it and he'll  
10 be graded a year or so later about how well he accomplished  
11 it. In the federal sector a man is given money and job and  
12 additional constraints, he's given constraints on how many  
13 people he can have, on how much travel he can have, on how  
14 much EDP he can have and it really is very frustrating to  
15 work inside those additional constraints.

16 Now, those constraints are imposed by the government  
17 and they can be removed by the government. At the OPM  
18 level, the question really is, are they serious about doing  
19 this?

20 Q Mr. Dunn?

21 A (By Mr. Dunn) Just to clear the record, I would  
22 agree with everything that's being said except that the  
23 credit is in the wrong place. OPM has absolutely nothing to  
24 do with ceiling appointments, ceiling allocations or anything  
25 else on that side of the shop which belongs to OMB. Otherwise

1 I agree with the assessment.

2 A (By Dr. Hess) Apologies, OMB.

3 Q One last question in regard to that, Mr. Hess. Do  
4 you see any sanctions for federal agencies or managers  
5 not accomplishing the goals or the time lines that they  
6 set out in their own plans?

7 A Sanctions, no. And given the constraints, I don't  
8 think sanctions are appropriate. It seems to me that one of  
9 the problems we have to face is to put together a realistic  
10 program that we as managers can try to live up to. And given  
11 the constraints we have, I think that it's much, a much  
12 more realistic approach to the problem to try to remove  
13 some of the constraints and to try to say live inside all  
14 those constraints and add a whip in back somewhere to make  
15 you live with them.

16 Q Are there any other comments from other members of  
17 the panel on that?

18 A (By Mr. Dunn) Going back to the earlier points made  
19 about, if you want the encouragement, to managers to do  
20 what's being required and also in answer to Beau's earlier  
21 question, we are serious.

22 But I don't think it should take OPM and EEOC being  
23 serious before you get agency action. Because I don't read  
24 anything in the legislation that gives us the unique  
25 responsibility to make sure that these things happen. Every

1 executive in every agency shares that responsibility. He  
2 not only shares it in terms of the FEORP legislation or other  
3 EEO requirements, but in the CSRA is a very specific mandatory  
4 element in the executive's performance appraisal, similar to  
5 what Ross was mentioning in merit pay.

6 It's built into the law that he is accountable and  
7 measurable on his EEO accomplishments or lack thereof as  
8 part of his pay determination. And his basic performance.  
9 And it seems to me that that kind of an incentive has to be  
10 an improvement over perhaps what incentives we've had facing  
11 us in the past, when you get down to a personal level of  
12 impacting on an executive's pay and his job retention,  
13 I think he'll listen more seriously and he shouldn't have to  
14 listen to just OPM and EEOC.

15 Q Let me ask one final question of anyone on the panel  
16 or all members of the panel.

17 Do you believe less is being required of the federal  
18 employers than in the private sector?

19 A. (By Dr. Stubblefield) Well, I do. I think less is  
20 being required in the federal sector, I mean than in the  
21 private sector. Because I mean I look at all the civil  
22 rights papers and I read them and I see what's happening  
23 in the private sector. And I don't see that happening, and  
24 that's the reason why I say I was very much impressed here  
25 in Denver when somebody from the EEOC said this would happen

1 in the federal sector and I'm not sure that that has come  
2 about yet.

3 Q Anyone else want to comment on that?  
4 Jennie?

5 A (By Ms. Marillo) I'll have to agree with that.  
6 Private sector, they do it because they've been into the  
7 program as to affirmative action for a number of years.  
8 Federal government says they're just getting into it now  
9 because it's under EEOC.

10 Private industry has the sanctions specially if they're  
11 a federal government contractor. So they -- and here when  
12 you're talking to money, federal agencies don't. They don't  
13 have sanctions. They've never had them before and they  
14 don't have them now. So they're not being asked any --  
15 they're not being asked as compared to private industry,  
16 they're being asked less.

17 Q Okay. Are there any other comments by the panel?

18 Q (By Mr. Bucholtz) One other question perhaps for Mr.  
19 Dunn.

20 When these reviews of the FEORPs take place, at  
21 that point in time will there be any technical assistance  
22 provided to the agencies to better perfect the plans that  
23 have been proposed?

24 A (By Mr. Dunn) Our whole evaluation process for the  
25 total E -- personnel management system is always advice and



1 assistance oriented in an effort -- the whole purpose is to  
2 improve that process. And so we're always looking at it  
3 from that standpoint.

4 Q And in that context, is there a formal visitation  
5 scheduled for each agency that's planned or is this done on  
6 a rotating basis? How is that handled?

7 A It's a combination of effort. At the national level  
8 certain departments and agencies, based on either the time  
9 frame since the last evaluation or because of particular  
10 problems in that department, are tagged for review on a  
11 sampling basis across the country.

12 In addition to that, we are also alert locally and  
13 within the region to agencies perhaps having problems or  
14 again, a place we've not been for a while.

15 Any number of things can trigger that evaluation,  
16 so it's both on a cyclic, somewhat cyclic basis, but it's  
17 more likely aimed at -- at the need to go.

18 Q In other words, there might be some agencies that will  
19 escape an on-site visit for a considerable period of time?

20 A It's possible, others might be visited frequently  
21 but it would be based on the best judgment as to where do we  
22 need to go within the resources that we have.

23 Q Again you're constrained by some of the same regulational  
24 constraints that the other agencies have?

25 A Financial resources, yes.

1 THE CHAIR: If there are no other comments we would  
2 like to thank the panel for their participation and their  
3 comments and we'll adjourn then until after lunch.

4 MS. BIRGE: The next panel is at 12:00.

5

6 (Noon recess)

7

8 (The following was chaired by Mr. Alan Bucholtz)

9

10 THE CHAIR: This is the third panel session of the  
11 day's program concerning obligations to veterans and the  
12 disabled.

13 I wonder if each of our panel members would intro-  
14 duce themselves and give a little bit of their background  
15 beginning with Mr. Berkowitz, please.

16 MR. LESLIE BERKOWITZ: My name is Leslie Berkowitz,  
17 I'm an attorney practicing law in the City of Denver. I  
18 also have a consulting company called the Seminar People  
19 which does consulting and training and seminars in the areas  
20 related to the handicapped.

21 MR. INGO ANTONITSCH: My name is Ingo Antonitsch and  
22 I'm Executive Director of the Commission on the Disabled,  
23 which is a city agency and deals with, in general terms,  
24 problems of disabled.

25 MR. JAMES HUDSON: I'm James Hudson, I'm a program

1 analyst with the Disabled American Veterans, Department of  
2 Colorado, ~~A~~ group that has about 10,000 disabled veteran  
3 members in this state, and one of my functions is to assist  
4 individuals who are veterans, whether disabled or not,  
5 whether service connected ~~or~~ disabled or not, to secure  
6 their rights under the Rehabilitation Act of 1973 as well  
7 as under ~~the~~ section 402.

8 MR. BENNIE DAUGHERTY: My name is Bennie Daugherty,  
9 I'm the Assistant Regional Administrator for the Office of  
10 Federal Contract Compliance Programs, Employment Standards  
11 Administration, for Region 8.

12 THE CHAIR: Thank you.

13 Q (By Ms. Mendoza-Hall) Mr. Berkowitz, will you please  
14 outline for us the Title V Rehabilitation Act provisions  
15 for handicapped workers, and tell us what employers must  
16 comply.

17  
18 MR. LESLIE BERKOWITZ

19  
20 A (By Mr. Berkowitz) Well, there are primarily two  
21 sections which would apply. There's 501 which relates to  
22 federal agencies, and of course the employer there would be  
23 the federal government. There's 502 which relates to govern-  
24 ment contractors which would be private sector employers  
25 primarily in the profits sector of the private sector.

1 Then there's 504 which applies to recipients<sup>v</sup> of  
2 federal financial assistance. There we're talking about  
3 government grantees, and there we're talking primarily  
4 about either state and local government or the nonprofit  
5 portion of the private sector.

6 Q Who are the handicapped?

7 A Under the regulations that have been promulgated, the  
8 handicapped are those who have a mental or physical impairment  
9 which significantly limits one or more major life functions.  
10 The regulations go on to describe what is a major life function,  
11 and then the regulations go on to set forth two more groups.

12 The first group as I said, are those who have such  
13 impairments, the second group are those who have a record  
14 of having such impairments, and the third group are those  
15 who are regarded as having such impairments.

16 Q Mr. Daugherty, would you tell us what your office  
17 does in the Title V area?

18  
19 MR. BENNIE DAUGHERTY

20  
21 A (By Mr. Daugherty) Thank you. I think first that I  
22 would like to make a few remarks to put into proper per-  
23 spective the role of the Office of Federal Contract Com-  
24 pliance Programs in terms of its obligations under section  
25 503 and section 402.

1           Our obligations in terms of handicapped, disabled  
2 veterans and veterans of the Viet Nam era are really contained  
3 in both of those acts.

4           And the regulations implementing section 503 were  
5 first published on June the 11th, 1974. After the December  
6 4, 1974 amendments, we proposed revisions in August of '74  
7 and those revisions became final in April of '76 under ~~the~~  
8 Title ~~XII~~<sup>41</sup> Code of ~~F~~ederal ~~R~~egulations, chapter 60-741.  
9 Section 402 regulations were published as proposals in 1975  
10 with final rule making in June of 1976 and here again under  
11 Title ~~XII~~<sup>41</sup>, chapter 60-250.

12           Our regulations require that all federal contracts of  
13 \$2,500.00 or more are covered under affirmative action  
14 obligations in terms of handicapped workers. And with those  
15 regulations and obligations we attempted to define what  
16 constituted a handicapping condition to make those  
17 regulations consistent with ~~Revised~~ Order Number 4 in the  
18 fact that the contractors with 50 or more people and  
19 a federal contract of \$50,000.00 or more were required to  
20 develop a written affirmative action program.

21           Hopefully, we required that medical standards for  
22 jobs be job-related, and we provided a procedure for  
23 voluntary identification by handicapped individuals who wished  
24 to be covered under the program.

25           Section 503 differs from section 402 in that contracts

1 of \$10,000.00 or more are covered for disabled veterans  
2 and veterans of the Viet Nam era.

3 A disabled veteran, according to our regulations,  
4 being one who is rated at 30% or more disability by the  
5 Veterans Administration, who was released from active duty  
6 because of a disability incurred or aggravated in the service,  
7 and a Viet Nam era veteran, one who served 180 days or more  
8 during the period August the 5th, 1964, and May the 7th,  
9 1975.

10 Now, OFCCP originally started out conducting complaint  
11 investigations on all complaints received under either  
12 program. In an effort to determine the extent to which  
13 contractors were complying with their affirmative action  
14 obligations we started conducting, <sup>and</sup> directed compliance reviews  
15 of 300 contractors across the country.

16 Those were 30 reviews for each region and they were  
17 conducted between May and September of 1978.

18 After consolidation on October the 8th of 1978, the  
19 handicapped and veterans procedures have been incorporated  
20 into our total contract compliance program. We conduct combined  
21 compliance reviews which include the Executive Order 11246  
22 program, section 503 and section 402 programs.

23 Contractors are found in compliance only if they have  
24 met the affirmative action obligations of all three of those  
25 programs. If they are not in compliance with any one portion,

1 then they are not in compliance at all.

2 One of the things that we have done in attempting to  
3 increase the level of productivity, where we conduct com-  
4 pliance reviews, and we have a complaint investigation under  
5 any program, we attempt to resolve that complaint during  
6 the compliance review. If the contractor is not willing to  
7 resolve that particular complaint, they are not found in  
8 compliance in terms of the whole compliance review process.

9 Let me say finally that during fiscal year '79, we  
10 completed 26 complaints under section 503 and three complaints  
11 under section 402, having two individuals that we awarded  
12 back pay of \$2,642.00 to one person and \$1,800.00 to another.

13 Q Okay, thank you.

14 Mr. Berkowitz, does the law provide any goals or  
15 timetables for employers writing affirmative action plans <sup>to</sup><sub>n</sub>  
16 include handicapped workers?

17 A (By Mr. Berkowitz) No.

18 Q <sup>With</sup><sub>A</sub> No goals or timetables in Title V, how does an employer  
19 know that he has or has not met his legal obligation of  
20 affirmative action for disabled?

21 A Well, I suppose obviously that it's impossible  
22 to know exactly when they have. There's a problem with  
23 goals and timetables overall, and perhaps it gets to the  
24 heart of why there's so much difficulty in achieving overall  
25 compliance. I suppose that really the thrust of all equal

1 opportunity laws is that instead of making determinations  
2 based on routine kinds of criteria, that instead we sub-  
3 stitute true decision making, that we look at the individual  
4 whether we're talking about racial discrimination or sex  
5 discrimination or discrimination on the basis of handicap.

6 The whole thrust of the law is to get people to look  
7 at the individual abilities of each person. Goals and  
8 timetables instead substitute one kind of routine for another.

9 In other words, part of the -- part of the problem as  
10 I see it, is that employers, under the EEO laws, can no  
11 longer categorize people and choose to employ or not  
12 employ based on those arbitrary categories.

13 Being forced to make individual decisions every time  
14 causes trauma, okay? Decision making is a traumatic event  
15 for most bureaucracy, whether it be a business or a federal  
16 or state agency or whatever, decision making causes trauma.

17 The more you can relegate to routine, the easier  
18 the flow of work. Goals and timetables ~~eases that problem.~~  
19 They convert old routines into new routines but at least  
20 structurally within the bureaucracy they keep the routine  
21 flowing. However, I'm not sure that that gets at the heart  
22 of discrimination. Because again you're not -- you know,  
23 people are merely substituting new routines for old routines.  
24 They're not really looking at the individual abilities of each  
25 person. So, although there are no goals and timetables,



1 and certainly employers wouldn't know exactly when they've  
2 complied and not complied, again there's that ambiguity in  
3 decision making, that creates the trauma.

4 I don't think that should overall have a significant  
5 detrimental effect on implementation, if we can get again to  
6 the heart of what we're doing and that is not -- not numbers  
7 or categories, but individualized determinations.

8 Q What happens when an employer invites applicants and  
9 employees to declare their disabilities and few want to?

10 A And few -- I'm sorry? Can you read that again?

11 Q Okay. What happens when an employer invites applicants  
12 and employees to declare their disabilities and few want to?

13 A I guess I'm not sure what you're asking when you  
14 say what happens. I -- I suppose that there are difficulties  
15 which arise for the employer obviously. The employer can't  
16 make accommodations unless he knows that those accommodations  
17 are necessary. Nor do I think the laws really require  
18 accommodations if the employer is unaware that accommodations  
19 are necessary. The difficulty might be greater if there  
20 were specific goals and timetables and you couldn't identify  
21 people, and when you're talking about handicaps, there's --  
22 there's a difference between that protected class and perhaps  
23 some of the other protected classes, because many handicaps  
24 are hidden, and non-obvious, and can't be discerned by  
25 observation.

1           Diabetes, epilepsy, so on. So they might not come  
2 to the attention of the employer at all, if undisclosed.

3           Q     (By Ms. Cynthia Kent) Mr. Antonitsch, do you counsel  
4 disabled people on a regular basis? And how do you advise  
5 them as to declaring a disability?

6  
7                                   MR. INGO ANTONITSCH

8  
9           A     (By Mr. Antonitsch) Yes, I do counsel on a regular  
10 basis and especially with this question, I ask them to dis-  
11 close their disability.

12           Q     <sup>To</sup>~~You~~ disclose their disability?

13           A     Yes.

14           Q     How do you do -- how do you advise them?

15           A     Of filling the -- your job application correctly out  
16 and mention on the job application that you are disabled,  
17 and the disability.

18           Q     Thank you.

19                               What can employers do to recruit disabled workers?  
20 How much outreach should be required of contractors?

21           A     I guess the outreach in itself is required by the  
22 section 503 if the contract <sup>e</sup>is with the federal government  
23 is ~~is~~ 150,000 and he employs more than 15 employees.

24                               Now, outreach is done and in general, procedures to  
25 notify organizations which deal with disabled individuals'

1 employment, that there is a job opening, and these organizations  
2 will try to fill this position. And they hope to succeed  
3 with filling the positions.

4 Q Would you please address the question of goals and  
5 time lines?

6 A As Mr. Berkowitz mentioned, there are no goals and  
7 timetables for disabled according to the law, and I agree  
8 with the explanation which Berkowitz has given.

9 I do not believe in goals and timetables like he  
10 does not. For the same reasons, and I have other reasons.

11 We approach, I'm speaking now specifically about dis-  
12 abled and not the whole range of affirmative action corps,  
13 ~~but~~ minorities, women, and so forth, ~~and~~ I'm only speaking  
14 about disabled. And legislation and general attitude  
15 reflects, in its affirmative action and in other actions,  
16 the negative aspects of disability, not the positive ones.

17 We speak that the person can not do that or that.  
18 We never speak he can do that. And so goals and timetables  
19 would again reflect the same way of thinking, that we  
20 force an employer in a certain time frame to employ a  
21 certain number of handicapped people.

22 Our ideal goal would be that disabled are hired  
23 according to their qualifications to do the job. And we  
24 do not advocate, when we are advocates of disabled,  
25 especially preferred treatment but an equal opportunity to

1 apply to any job opening for the qualified disabled person.

2 MS. KENT: Thank you.

3 Q (By Ms. Birge): Could you give us some indication  
4 of how you would advise an employer who was attempting to  
5 implement an affirmative action plan, how to measure how  
6 he's doing without goals and timetables? I agree that  
7 employers like to see that, at least it's a measure that  
8 they're accomplishing or not accomplishing. In this area  
9 without goals how do you tell an employer you're doing  
10 enough or you're not doing enough and how do you measure  
11 that?

12 A May I simply use an example, a negative example. I  
13 would not do it like the television station here in Denver  
14 does, having disabled person on the reception desk and  
15 the rest of the building is inaccessible, can not be --  
16 no handicapped person could possibly be employed. That is  
17 not to comply with any affirmative action or there is not  
18 even an attempt made to accomodate disabled in their attempt  
19 to find work.

20 I would simply advise him to find the right qualified  
21 person for the job he has open and hopefully we can provide  
22 him with -- I mean the organizations dealing with disabled  
23 can provide him with the qualified person.

24 THE CHAIR: Thank you.

25 A But I, again I would like to add <sup>to</sup> that qualification

1 I think <sup>is</sup> the first requirement in filling a position, dis-  
2 ability is the second -- is for us the second one. But  
3 qualification is the first.

4 THE CHAIR: Thank you.

5 Mr. Hudson, could you outline for us, please what  
6 section 402 of the Viet Nam Era Readjustment Act provides  
7 and who it's intended to benefit?

8

9 MR. JAMES C. HUDSON

10

11 A (By Mr. Hudson) Yes. It's intended to benefit two  
12 groups, Viet Nam era veterans, that is those who served  
13 between the dates that Mr. Daugherty described, the period  
14 of the Viet Nam War, who, by the way, also must be within  
15 the four-year period following their discharge at the time  
16 that they apply for the job.

17 In other words, a veteran who was discharged in  
18 1974 who served during that period would not be qualified,  
19 would not meet the eligibility requirements.

20 The other group is disabled veterans and I think  
21 Mr. Daugherty did describe that definition. The important  
22 point is that you must be at least 30% or more disabled,  
23 and there are about two and a half million disabled veterans  
24 in this country, out of the total of 30 million veterans,  
25 and about one million of that group would be covered.

1           The Viet Nam era population is about nine million,  
2 and of course a large proportion of that group would not be  
3 covered because of the 48-month requirement. Most of us  
4 were discharged more than four years ago and therefore that  
5 law does not provide us with a benefit, unless we also  
6 meet the disabled veteran definition.

7           The law provides that an employer who has a federal  
8 contract with the government of more than \$10,000.00 must  
9 provide affirmative action and may not discriminate against  
10 those two groups. And the affirmative action provisions  
11 apply to such practices as hiring, upgrading, demotion,  
12 transfer, recruitment, advertising, layoff, termination,  
13 rates of pay, other forms of compensation, selection for  
14 training, job assignments, assessibility and working  
15 conditions.

16           The law provides that the employer must list his --  
17 all of his suitable jobs with very few exceptions, with  
18 the job service in his state. And that's a major provision  
19 and that, actually was required as far back as 1971.  
20 President Nixon required mandatory listing of such jobs  
21 by federal contractors with the job service through an  
22 Executive Order in that year.

23           Q       (By the Chair) What kind of enforcement of section  
24 402 have you been able to observe?

25           A       Well, I think Mr. Daugherty explained that initially

1 it was a complaint oriented process. And very few veterans  
2 availed themselves of the process. Most of them were not  
3 aware of it during the mid '70's. ~~And~~ therefore did not use  
4 it.

5 Those who did use it, however, at that time, found  
6 it a very cumbersome process in the Office of Federal  
7 Contract Compliance Programs, and many of the complaints  
8 were more than one year and up to two years in the process  
9 of being investigated, conciliated, etcetera. So, very  
10 few complaints were filed and very few were successful.

11 Q Are there any enforcement processes which would be  
12 helpful at the present time?

13 A Well, let me finish the answer to that second question  
14 because I'm not leaving a very fair impression.

15 After that, that early, the early years of the law,  
16 '44 -- or '74, '75, '76, OFCCP realized that there might be  
17 a better way of doing, handling this law and they began the  
18 directed compliance reviews that he described.

19 There was a sampling, a nationwide sampling of 300  
20 employers, 30 in this region, to determine whether or not  
21 they meet the requirements of the law. I believe more than  
22 90% of them were found to be in noncompliance with one or  
23 more provisions of the law.

24 More recently, the Office of Federal Contract Compliance  
25 Programs has tried to wrap this program, the compliance review

1 of this program with other civil rights reviews, and I'm  
2 not certain at this point what the success has been. But  
3 we have to keep in mind that now we're, at least for the  
4 largest group that was intended to benefit from the law,  
5 Viet Nam era veterans, we're really running out of  
6 eligible persons. And now repeat that other question and  
7 I'll try and answer that.

8 Q Well, in the context of the total answer and I  
9 apologize for interrupting the total answer, are there any  
10 additional or supplemental enforcement approaches which  
11 might be helpful?

12 A Well, I could certainly talk about the obvious  
13 one and that would be to simply staff the Office of  
14 Federal Contract Compliance adequately, and in all my  
15 dealings with that agency they have had not more than one  
16 person, one full time equivalency working in that area, and  
17 more frequently it has been less than a full time FTE.

18 And I'll be quite frank with you, we do not depend,  
19 the disabled veterans organization does not depend upon  
20 this law. We tend to focus more attention on the Reha-  
21 bilitation Act and its provisions because we feel that it's  
22 a stronger law, and it -- it's much more likely to result  
23 in a successful resolution of the complaint.

24 In terms of Viet Nam era veterans, probably the most  
25 important thing that could be done at this point practically



1 speaking, would be to force the employers to list their jobs  
2 with the employment service, the complaint process is obviously  
3 not one that has met with any success.

4 Mr. Daugherty explained that last year they had  
5 three complaints by veterans. And regardless of how much  
6 attention is focused on that we just don't think it's  
7 realistic to think that's going to be a major, have a major  
8 impact on employment of veterans, so if we can get employers  
9 to list their job openings with the job service, it will  
10 mean that veterans, the covered veterans who often turn  
11 to the job service for help will have access to those jobs.

12 And of course, at the same time, anyone else who may  
13 be a non-veteran, for example, who comes to the job service,  
14 will potentially have access to that job if a qualified  
15 veteran is not referred and hired.

16 Q In the course of your working with veterans in the  
17 context of employment complaints, could you describe for  
18 us what your experiences have been with federal enforcement  
19 agencies, federal EEO managers and private sector personnel  
20 officers?

21 A Yes. I'll give you some examples. We have assisted  
22 many disabled veterans in filing complaints or in handling  
23 problems related to their disability. And in many cases  
24 we don't file a complaint because very frankly once you've  
25 gone to that extent, once you've actually made it clear to

1 your employer that you're going to file a complaint, you're  
2 in grave danger of losing your job. That is because the  
3 enforcement of the Rehabilitation Act's provisions is very  
4 lax, very cumbersome, very -- it takes a long time just  
5 to get through the various steps of investigations, attempted  
6 conciliation, and to actually get a hearing before the EEOC  
7 and perhaps finally to get into a courtroom.

8 And during that period, many of these veterans would,  
9 and in fact, in some cases have been, terminated and they're  
10 simply out of work. So it's a dangerous process to use.

11 And many, many people are not aware of that and that's  
12 one of the first things we do, we explain that, you know,  
13 short of filing a complaint perhaps we better do some other  
14 things, and those other things range from the use of the  
15 congressional delegates in the state to the DAV simply  
16 trying to talk to the employer and seeing if we can help  
17 the person find a reasonable accomodation.

18 But to answer your question more specifically, the  
19 postal service EEO system, for example, a director of a  
20 major EEO office in this district of the postal service,  
21 when I first tried to assist a disabled veteran in  
22 filing what probably was the first discrimination on the  
23 basis of disability case in this area, in 1978, that  
24 director, I requested a copy of the regulations so that we  
25 could file the complaint. And he asked me, well, he

1 indicated that he would give me a copy if I would promise  
2 not to disclose who gave it to me.

3 And I still have a copy of those regulations at  
4 home with the -- the name of one of his staff people whited  
5 out at the top. And -- but of course it was sent in a  
6 blind envelope.

7 The -- a GS, a personnel specialist just this week  
8 and I were -- we were discussing a disabled veteran who has  
9 a 100% service connected disability, and he has hypertension.  
10 She indicated that the contract specialist position that he  
11 was applying for required negotiations skills and she was very  
12 concerned that he would not be able to handle the stress  
13 because of his hypertension.

14 And I explained that, that there really may not be  
15 a relationship between hypertension or high blood pressure  
16 and stress on the job and that I -- I would urge her not to  
17 use that as the basis for, you know, favorably considering  
18 his application.

19 This personnel specialist indicated that she understood  
20 now, what I was saying, but that I should know, between you  
21 and me, she said, that the supervisor who will conduct  
22 the interview will probably weigh this as a factor against  
23 the disabled person. Simply stating that hypertension would  
24 in fact affect this person's selection for that job.

25 The personnel specialist didn't offer to go to that

1 supervisor and explain to him that this was not something  
2 that should be weighed.

3 The Mountain Bell .....affirmative action officer  
4 for that company indicated to me last year, when I was  
5 trying to help a severely disabled veteran who is in a  
6 wheelchair for life, get a job, indicated that he really  
7 did not have a person, not even one person on the staff  
8 who -- whose responsibility it was to take a severely  
9 disabled person and try to mold a job that would -- that  
10 would provide a reasonable accomodation and allow that person  
11 to work within Mountain Bell.

12 Of course there are some exceptions. They have created  
13 some few jobs for severely disabled people, but they really  
14 don't have a program to do that. And he said-frankly  
15 we're not going to be able to help this guy until we get one.

16 It's been more than a year since that veteran applied  
17 at Mountain Bell initially.

18 I've got one other group here that I want to talk  
19 about and then I'll get off the individual cases and talk  
20 more about the question of the process.

21 The Denver Employment and Training Administration  
22 receives funds from the Department of Labor. It's the Com-  
23 prehensive Employment and Training Act that they administer.  
24 We filed a complaint against them recently because they  
25 are not accessible to persons in wheelchairs, at several of

1 their offices, and their subcontractors' offices, and we also  
2 filed a complaint because they were not administering  
3 or providing services to disabled veterans as required by  
4 that CETA Act.

5 They have installed a buzzer and they are planning to  
6 study the feasibility of installing a ramp that would be  
7 safe and would be a permanent ramp at their -- their major  
8 administrative office which also has a large intake center  
9 in it.

10 So, you know, there are serious problems in that  
11 respect. And I guess I'm really kind of stating the obvious  
12 but these are the ways any organization becomes involved  
13 in helping veterans.

14 Finally, a success story, the Metropolitan State  
15 College had a veterans affairs office which was not  
16 accessible, it was located in the historical building  
17 on Ninth Street, and no curb cuts in the handicapped parking  
18 area, parking spaces which were not wide enough for the  
19 handicapped or wheelchair person to get out safely and  
20 get out in the road so that they could wheel to the sidewalk  
21 and several other problems with guardrails, etcetera.

22 That complaint was handled by the Office of Civil  
23 Rights, Department of HEW, and was successfully handled  
24 and they have made the modifications that we required. Or  
25 requested.

1           But to get back to the basic issue of the process,  
2 the complaint process or securing your affirmative action  
3 rights, first I would say in all of these cases the complain-  
4 ant has never been provided with a copy of the affirmative  
5 action plan of any of the agencies, it's just not something  
6 that they offer.

7           The complainant's representative is not offered  
8 that during the discussions, you know, that's not something  
9 that you would ordinarily be offered. And so I don't think  
10 employees know what their rights are. Unless they have  
11 access to a group that perhaps can explain more, or an  
12 attorney, but more importantly, I don't think the personnel  
13 offices and the EEO offices themselves know what the  
14 provisions of the law are.

15           And that's very bright.

16           An EEO counselor in the district office of the postal  
17 service here indicated that the post office was not imple-  
18 menting the Rehabilitation Act because there were court  
19 cases pending and until those court cases had been finalized,  
20 they would not know what the definition of a handicapped  
21 person was and they would not know what they would be  
22 required to do in the way of reasonable accommodations.

23           That EEO counselor also began to describe what the  
24 postal service would be able to do for what he termed,  
25 quote, mental retards, end quote, and deafs, so obviously

1 the EEO staff in many cases, he'll at least in that case and  
2 it's my impression in many cases, they're not sensitive to  
3 the needs of disabled people, the potentials of disabled  
4 people, and they don't know the regulations or the law.

5 So, I think one area that certainly needs improvement  
6 is simply making sure that the people that administer these  
7 laws, specially those that actually enforce them, know what  
8 they are.

9 Q. What has your experience been in helping disabled  
10 veterans find employment with the federal government as  
11 opposed to perhaps state government and the private sector  
12 employers?

13 A. It's -- it's quite similar. I'll provide another  
14 example and I'm really not trying to find the worse  
15 examples believe me, I'll provide two, one good one and  
16 one bad one.

17 Well, first of all a severely disabled veteran met  
18 with a selected placement coordinator of the Department of  
19 HEW in 1978, and I went with him to the interview, and we  
20 made it clear that he was applying for a job under an  
21 exempted appointment because of his severely handicapped  
22 status, and the selected placement coordinator, whose sole  
23 job it is to make sure that every effort is made to  
24 create such a job, if possible, was very polite, spent ten  
25 or 15 minutes explaining the constraints that he was operating

1 under, but said that he would actively work in trying to  
2 find such an opportunity. At least so that this man could  
3 interview for the job.

4 And six months, more than six months later neither  
5 I nor the applicant had heard from that representative.  
6 When we contacted HEW they indicated there was no federal  
7 employment application on file, even though we had hand-  
8 carried it to that gentleman.

9 Last week the Federal Aviation Administration at  
10 Longmont, contacted me and they had a position for a  
11 telephone operator, a GS2 position, and they were very  
12 anxious to try to find a disabled veteran to apply for  
13 that job. In fulfilling their affirmative action requirements.  
14 And so we were able to get them a couple of referrals for  
15 that job. But I guess even in that case, one has to wonder  
16 why it was a GS2 position that we were called on, called  
17 to provide a referral on rather than a higher level  
18 position.

19 And I should point out that the FAA as a whole has  
20 been -- has been very successful in putting disabled  
21 veterans and other handicapped people to work. In some  
22 jobs that you would not expect them to be able to do without  
23 some real hard work in order to make the accomodation.

24 It's been a mixed bag, I guess is what I'm saying,  
25 and usually at the lower end of the scale, the job scale, the



1 entry level positions, and often positions that don't have  
2 much future in terms of advancement.

3 THE CHAIR: Thank you.

4 Q (By Ms. Kent) Mr. Antonitsch, how would you rate  
5 the federal government's record in hiring handicapped  
6 workers?

7 A (By Mr. Antonitsch) Not too good. Not only in  
8 hiring, not too good, I have heard the comparison from a  
9 spokesman of the federal government, the federal government  
10 handicapped people compared to private business in a  
11 ratio of five to one, which speaks automatically against the  
12 federal government. But please let me elaborate on that a  
13 little bit.

14 And that comes, I start first out with the philosophy,  
15 I believe very strongly that the federal government has a  
16 responsibility to be an example in employing of not only  
17 disabled but of difficult to employ individuals in general.

18 Which includes naturally the disabled.

19 The federal government is very great in setting  
20 federal lines, making programs, to meet for others, not for  
21 the federal government. If I think on the enforcement of  
22 the section 501 which is labeled as the employing of dis-  
23 abled within the federal service, then it is a bad case,  
24 a private employer, if not employing with 503, is going to --  
25 can be penalized, can be brought to court, the federal

1 government obviously can not.

2           It was an experience, believe me, today to see this  
3 panel, which were on before us here now to elaborate on  
4 a program which is, I guess, part of the Civil Rights Act  
5 from '64. And still today, we have eight different --  
6 about 16 years later they're still talking about rules,  
7 regulations, guidelines, goals, objectives and we -- we  
8 have had workshops without any guidelines what we should  
9 talk about, when are -- if I take that as an indication  
10 how long it will take to employ adequate numbers of dis-  
11 abled persons in the federal service, when are they going  
12 to be employed?

13           I mean long time, I'm sure. And there's a second  
14 thing, that I miss in the federal government, or in the  
15 departments and services of the federal government, a complete  
16 lack of understanding of disabilities. Completely.

17           I will quote a -- or I will tell, I will give you  
18 one example, a few weeks ago we were invited to a workshop-  
19 meeting, held by members of the GSA staff to promote, in  
20 their own ranks, in GSA and region 8, the employing of 12 --  
21 they have opened up 12 positions for handicapped. They  
22 have invited about 40 organizations which deal with handi-  
23 capped in order to fill those 12 positions.

24           They only had to call my office and we would have  
25 filled them today. So there is no big deal.

1           Then, when we make a big deal of 12 positions in  
2 region 8, that comes to two positions in one state. That  
3 indicates the effectiveness of the employing of disabled  
4 within the federal government.

5           It is needless to say that these 12 positions made  
6 available for handicapped were clerks. So I'll -- I  
7 think I have answered your question, how I feel about the  
8 federal government and employing of disabled people.

9           Q     In that regard, how do you rate the State of Colorado's  
10 record?

11          A     Well, if you ask me, you ask me such questions.

12           In 19 -- in January, 1977, new rules and regulations  
13 in the state personnel policy were put into effect in the  
14 State of Colorado. The handicapped are not included in the  
15 protected classes of employees. That's one answer.

16           The second answer is that the State of Colorado, as  
17 such, doesn't have what the -- some departments have an  
18 affirmative action plan, some departments have not.

19           The state as a whole does not have an affirmative action  
20 plan. I feel that there is a great deal of, or much room  
21 for improvement of employing disabled people in the State  
22 of Colorado.

23          Q     Sir, you're saying that the State of Colorado doesn't  
24 have an affirmative action?

25          A     Not as a state, no. There are some departments which

1 have an affirmative action plan and some have not.

2 Q Then do you feel that they should be required to have  
3 a handicapped --

4 A Absolutely.

5 Q Okay.

6 Q (By Ms. Birge) Do you know if the State of Colorado  
7 is a federal contractor?

8 A I can hardly imagine that the State of Colorado  
9 is not a federal contractor. But they were having diffi-  
10 culties in the legal interpretation, not only what con-  
11 stitutes a contractor but who -- what is the legal entity,  
12 according to 504, the legal entity is the state or a sub-  
13 division of a state.

14 What is a subdivision of a state? A department.  
15 So the department is really the entity which can be sued  
16 and not the state. I would assume I am correct, I don't  
17 know.

18 A (By Mr. Berkowitz) Maybe able to go beyond that. I  
19 don't think there's -- there's not a court decision deciding  
20 that.

21 A (By Mr. Antonitsch) Yes, so we have difficulties  
22 in determining that, and the City of Denver has simply  
23 decided on its own that the city itself is the legal entity,  
24 which has to comply with section 504, with 503, and not  
25 individual departments, so which has automatically led that

1 the city as a rule tries to be in compliance with both  
2 sections of the Rehabilitation Act.

3 Q Saying that there isn't a plan, what federal agency  
4 would you suppose would be the person to enforce a requirement?

5 A Well, I would think on the first obvious one ~~H~~ Health,  
6 Education and ~~W~~ Welfare, the social service department of the  
7 state receives -- had that occasion welfare money, ~~D~~ Department  
8 of ~~H~~ Health, the ~~D~~ Department of ~~E~~ Education, they all would be --  
9 would be required to live up to the implementation guide-  
10 lines of the federal department of health, education and  
11 welfare.

12 MS. KENT: Thank you.

13 Q (By the Chair) Mr. Daugherty, does your office do any  
14 monitoring of state and local governments or institutions with  
15 regard to the problems we're addressing?

16 A (By Mr. Daugherty) My answer would be yes and no, and  
17 I think part of it hinges upon what Mr. Antonitsch indicated.  
18 There is a distinction between federal contracts and federal  
19 grants. Under section 503, and also section 402, we only  
20 have a responsibility for federal contracts. And most  
21 state and political subdivisions, most of their money are in  
22 federal grants. In that particular instance we would not have  
23 jurisdiction.

24 Q All right. Do you have any information available to  
25 you as to how many states within this region have on file,

1 as a state, an affirmative action plan for the handicapped?

2 A. No, we do not.

3 Q. Would it be possible for you to obtain that information  
4 and provide it to us within the next 30 days?

5 A. I'll be happy to.

6 Q. Thank you. How would you determine when a contractor  
7 has complied with its obligations to hire the handicapped?  
8 Are there any established, readily available guidelines at  
9 the present time?

10 A. Our basic guidelines, of course, are the implementing  
11 regulations for section 503 and section 402. We require  
12 federal contractors to take affirmative action and I think  
13 I should indicate whether or not the contractor meets the  
14 requirement for an affirmative action program as long as they  
15 meet the minimum floor for coverage, they are required to  
16 take affirmative actions. That includes the outreach actions  
17 in terms of all of the advocacy groups and other community  
18 groups that would be able to refer qualified persons either  
19 those who are handicapped or disabled veterans, and in  
20 terms of our compliance review, we would determine whether  
21 or not that contractor has taken affirmative action, what  
22 positive steps they've taken, if they have not, then of  
23 course we would find them in noncompliance.

24 Q. When your agency conducts an on site review or  
25 investigates a complaint, do you have any guidelines or

1 definitions of reasonable accommodations as they would apply  
2 to a handicap?

3 A Only what's in the regulations. The other part of  
4 that, it really depends on the specific complaints, the  
5 type of disabilities, we also are concerned with the  
6 dollar value of the contract and what accommodations we feel  
7 that company needs to make in terms of making their personnel  
8 office accessible to the handicapped.

9 If it were an instance where someone could or was  
10 qualified to do the job, and all it took was the contractor  
11 to move one department from an upper floor to a lower  
12 floor, we would consider that as reasonable accommodation.

13 I think I would have to indicate we would not consider  
14 it necessarily reasonable for a contractor with, let's  
15 say a \$100,000.00 contract, to make accommodations that would  
16 cost 50 to \$60,000.00. It's a judgment decision.

17 Q (By Ms. Mendoza-Hall) Mr. Berkowitz, what are the  
18 principal types of complaints you deal with under 503 or 504,  
19 and how are they resolved?

20 A (By Mr. Berkowitz) Well, first of all, I should say  
21 that although I'm an attorney, my law practice is not in this  
22 area at all. I primarily work in real estate and securities  
23 and corporate matters. And so I really have not acted in  
24 the capacity of an attorney in this area.

25 Most of my work in this area has been in the area of

1 consulting with organizations and agencies and so forth.  
2 The kinds of complaints that I've run across are the same  
3 ones that have been discussed by everybody else, resulting  
4 from failure to hire, failure to promote, you know, the  
5 whole range of complaints.

6 I think, if I can digress a little bit and touch  
7 on some of the things that are really related to your question,  
8 but have been asked of some of the others, related to the  
9 effectiveness of some of -- well, some of the efforts on  
10 the part of the federal government, I think that it's clear  
11 that the federal government has not been very effective.

12 One example is -- well, which is an unfortunate one  
13 but perhaps emphasizes the problem and that is the lack of  
14 understanding of the very agencies that are supposed to be  
15 enforcing.

16 For example, the Denver EEOC office is being sued or  
17 perhaps this is somewhat dated because I'm not current  
18 with the case, but a suit was filed against the EEOC office  
19 for discrimination in failing to hire a blind attorney,  
20 and their response to that attorney was simply that -- that  
21 they just couldn't see how a blind person could handle  
22 the requirements of being an attorney.

23 Obviously, obviously that's an absurd position and  
24 we have -- we have in Denver a blind judge, there are a  
25 number of blind attorneys throughout the country.



1           How many disabled people do you have as United  
2 States Civil Rights Commissioners? I don't think very  
3 many. Do you have any? I don't know. But I don't think  
4 so. And you could go through example after example. The  
5 range of complaints is varied.

6           THE CHAIR: Thank you all very, very much for joining  
7 us and participating in the panel.

8           We'd like to ask the participants of the fourth panel  
9 of the day to come forward and take their places now. Kent  
10 Warner, John Donlon, P.J. Kronenberger, Norma Bullock and  
11 Robert Planansky.

12  
13           (The following was chaired by Ms. Donna Lucero)

14  
15           THE CHAIR: Thank you. Before we begin this panel  
16 I would like to state again for the audience that if there  
17 are people who wish to speak, please indicate to Bill Muldrow,  
18 one of the staff -- Bill, would you please stand up and  
19 identify yourself -- please let this gentleman know and  
20 you will be given time at the end of the last panel. There  
21 is an open session and you may have five minutes to speak,  
22 after discussing it with Mr. Muldrow.

23           The record also will be open for 30 days if any  
24 panel members, any people in the audience or your agencies  
25 would like to submit material for the record, you are welcome

1 to do so.

2 Let's begin with Mr. Warner, please. Would you state  
3 your name, address and occupation?

4

5

MR. KENT WARNER

6

7 A (By Mr. Warner) My name's Kent Warner, I'm the  
8 Employment Manager for Ideal Basic Industries, 950 17th Street,  
9 Denver.

10 Q (By the Chair) What is your involvement in Affirmative  
11 Action matters and would you define for us your understanding  
12 of affirmative action?

13 A Well, I'm actually the -- I have to stop and figure  
14 out my organizational chart. I'm the doer as far as our  
15 affirmative action and EEO commitments are concerned, reporting  
16 to my superior, who was delegated from top management as the  
17 EEO coordinator for the corporate structure.

18 The second question, that's quite a question, and it  
19 -- it can be answered in many ways and at some length,  
20 actually.

21 What you're asking me is my understanding of affirmative  
22 Action?

23 Q Yes, how would you define it?

24 A Well, affirmative action is, according to my definition,  
25 is more than complying to the numerous federal regulations.

1 Affirmative action is good faith on the employer's part to  
2 hire, promote and treat your employees equally and without  
3 prejudice.

4 There's many definitions, of course, to that question.  
5 There's pre-civil rights legislation definitions and there's  
6 post-definitions. But the definition is -- can not be  
7 confined strictly to the legal regulations if you're going  
8 to have a good affirmative action commitment.

9 Q Is your company a federal contractor?

10 A We do not deal directly with the federal government.  
11 However, we do attempt to comply to OFCC regulations,  
12 assuming that whether you're a contractor or not, you're --  
13 if they trace the line of your product or subcontracting  
14 commitments, you know, you could be a second or third tier  
15 contractor, so with that in mind, we do comply to the  
16 OFCC regulations.

17 Q Has OFCCP ever reviewed your affirmative action plan?

18 A OFCC has not reviewed our double-A-P, but other  
19 agencies have. In fact, I believe they've all been in at  
20 one time or another to visit us.

21 Q Have you ever engaged in factfinding meetings with  
22 EEOC in an effort to resolve discrimination complaints?

23 A Numerous, numerous sessions, yes.

24 Q Were the complaints resolved through cash settlements  
25 or by an agreement to undertake affirmative action?

1       A.     Well, I know of two that were resolved by a cash  
2 settlement which I've got a real problem about. In most  
3 of the factfinding hearings I've attended, at the beginning  
4 of the session if I was willing to settle and pay out X  
5 number of dollars that would have been fine and we wouldn't  
6 have had to spend the rest of the day in the hearing.

7             That upsets me because that, to me, is not the intent  
8 of the hearing. Money is not going to solve the alleged  
9 discriminatory act.

10            What I'm saying is if in fact there was a discrimina-  
11 tory act, there's other ways to resolve the problem. Money  
12 is not going to stop somebody from being discriminatory.  
13 I've got to find out if in fact there was, who was the super-  
14 visor, what are the facts, how was it handled, so you know,  
15 to me the money thing, I get very upset with.

16            Because an apology is, in my mind an apology from  
17 whoever is responsible is appropriate. A back to work order  
18 in the event the facts show that the persons was terminated  
19 unjustly, that's a solution. A change of working position  
20 or reassignment to a different department is another way  
21 of solving the issue.

22            But in the hearings that I've attended the pressure  
23 is there to financially come up with a settlement, and that  
24 -- that's not the solution.

25        Q.     You said that you have had various times when you've

1 met with EEOC and mentioned there were two cash settlements.  
2 Were there any agreements to undertake affirmative action  
3 as a result of these complaints?

4 A Well, the letter of understanding signed in these --  
5 in these specific two cases --

6 Q No, I'm sorry, I mean not only those but any of the  
7 -- any other complaints that you have had?

8 A Well, I'm -- I'm trying to think about the cases.  
9 Basically we go in to a hearing with the philosophy that we  
10 have committed to affirmative action, and because there was  
11 a discriminatory charge we're not willing to say that, you  
12 know, we did not act according to our commitment. We go in  
13 with the understanding that if in fact the case is such  
14 where we see we are in the wrong, we're going to correct  
15 that problem. But we have never given up the commitment  
16 to equal employment or the other affirmative action  
17 commitments.

18 Q Has there been ever a formal agreement to undertake  
19 affirmative action, as a result of a lawsuit or a complaint?

20 A No, not to my knowledge, because that commitment is  
21 in our affirmative action program and it's like our product,  
22 it's -- it's, you know, cement, you <sup>use</sup> ~~went~~ it down, you've  
23 got concrete and that's a concrete commitment basically,  
24 because it's the law of the land.

25 We've never had to reaffirm or sign a statement

1 saying that we will act in an affirmative action process.  
2 Now, I have signed a letter of understanding stating that,  
3 in this particular case, should further discriminatory actions  
4 occur, the company will investigate it.

5 Q Let's go on. Have you found that compliance  
6 officers interpret the regulations consistently?

7 A No. And that's understandable. But I can't really  
8 fault the compliance officer. Because, you know, we all  
9 can interpret the regulations more or less the way we want  
10 to.

11 Now, I've had -- not had a real problem or disagreement  
12 with a compliance officer on a specific regulation. Basically  
13 what we look at is, the nature of the charge, the facts,  
14 and if in fact there was discriminatory action, what will  
15 be the corrective action.

16 Q This is what I was alluding to earlier but let's  
17 get this on the record, your answer to this question. Has  
18 EEOC ever imposed affirmative action requirements on your  
19 company through a conciliation agreement or consent decree?

20 A Not to my knowledge. However, -- we don't have any  
21 document stating this, but it is in our affirmative action  
22 program, so in my mind there is a commitment to the law  
23 through the double-A-P. So that's as binding as anything  
24 else I'm aware of.

25 Q Have you ever developed an affirmative action plan or

1 program voluntarily? If so, did you rely on EEOC guidelines,  
2 did you request technical assistance from EEOC, or assistance  
3 from a consultant?

4 A Yes, we did. Well, ~~I deal~~<sup>Since</sup> has had affirmative action  
5 plans either formally or informally for quite some time.  
6 The first official double-A-P was a voluntary commitment on  
7 the part of the company. Through hearings, through charges,  
8 through consulting with some of the management consulting  
9 firms here in Denver, we have added to the double-A-P but  
10 the fine points of the double-A-P really have occurred because  
11 of an audit or a predetermination hearing. So --

12 Q Conducted by whom?

13 A Well, either the federal agencies or the Colorado  
14 agencies. See, we're all over the United States, so, you  
15 know, we're in 13 states, so we've had a lot of various state  
16 agencies come in and either audit us or investigate, plus  
17 the -- we had an audit last year, I believe it was the  
18 handicapped and veterans organization come in. And so  
19 we've -- we've had visits from almost everybody but OFCC, I  
20 believe.

21 Q So you use management consultants?

22 A Yes.

23 Q You mentioned?

24 A Yes, we have.

25 Q How about EEOC people?

1           A.     Yes, I've been known to pick the phone up and call  
2 someone at EEOC.

3           Q.     Have you been able to obtain prompt and timely  
4 settlements of charges from EEOC?

5           A.     On the hearings that I've had, yes. The ones that  
6 concern me are the charges filed and then shelved and  
7 collect dust. I've got some that are four years old.  
8 Nothing is, ever, resulted from the charge but as far as I'm  
9 concerned it's still active, and it's, you know, it's of  
10 a concern.

11                     But the charges that have been brought to a hearing  
12 have been dispersed and settled between both parties very,  
13 very promptly and satisfactorily, I might add.

14                     So that's the best thing I feel that's happened is the  
15 predetermination hearings.

16           THE CHAIR:   Okay.

17           Q.     (By Mr. Frank Black Elk) Mr. Donlon, would you  
18 please state your name, address and occupation?

19  
20                                 MR. JOHN J. DONLON

21  
22           A.     (By Mr. Donlon) Yes, my name is Joe Donlon, I'm the  
23 Business Manager of the Colorado Building and Construction  
24 Trades Council, 1540 Emerson, Denver, Colorado.

25           Q.     Mr. Donlon, you have previously said to our staff



1 that the construction trades developed an industrywide  
2 affirmative action plan in 1976. Would you briefly describe  
3 this plan and whether or not you feel it's been effective  
4 in accomplishing its goals?

5 A Yes, I think some -- just a little bit of background  
6 to that. There are, since before I took office in '73,  
7 of the Building Trades Council, we had developed a, what  
8 we call an affirmative action plan for the southern part  
9 of the state. At that time there was a Denver plan in the  
10 area.

11 In 1976 it was obvious, because of the unique nature  
12 of the industry that it would be better to have a statewide  
13 plan which would cover the total construction industry.  
14 The plan is a little bit unique in the United States in  
15 that it recognizes goals and timetables. And also recog-  
16 nizes the end product as what was to be conceived at the  
17 start as to what was the desire at the end.

18 I think that the plan has done well. I would not sit  
19 here and tell you that the plan is perfect or has done  
20 perfect. But I think it has done well.

21 It has shown well in the programs that we run. As  
22 you know, we run industrywide apprenticeship programs, and  
23 we are finding now that since the inception of that affirmative  
24 action plan, that approximately the same number of people,  
25 if not more, are walking in off the street to make applications

1 as come through our contractors for referral.

2 I think this says good things about the plan.

3 I think that most of the local unions throughout the  
4 State of Colorado have, in fact, dealt very seriously with  
5 affirmative action. And are still doing so. We look at the  
6 government as a reluctant dragon, and I think with a good  
7 purpose to that.

8 The government in fact says that you must do these  
9 things, and has penalties for us if we do not do these  
10 things. That's fine. They have said go out and involve  
11 yourself in bringing minorities and women into the con-  
12 struction industry, and that's fine too. Although there  
13 is something to be said about the provision of the government  
14 saying that we will become a colorblind society, I think  
15 that also in all fairness it must be said that if you are  
16 going to do these things and try to accomplish what is  
17 set down in the provisions of the Federal Register and our  
18 own affirmative action program, then the government must also  
19 say when it comes time to let the projects, that those who  
20 are accomplishing what we set out for them to do must  
21 indeed be rewarded.

22 The government is fearful of doing that. And in  
23 more cases than one, they have insisted on their other  
24 regulations to make sure that in fact ~~what we were~~ trying  
25 to accomplish was not accomplished, and that's why we call

1           them the reluctant dragon.

2           Q       In addition, Mr. Donlon, you discussed with our  
3           staff some specific problem areas with OFCC procedures which  
4           lead to unrealistic goals or differential enforcement of  
5           legal requirements.  Would you describe some of these  
6           problems?

7           A       Well, I think there is an unrealistic goal, and it's  
8           not minorities, because we have found, regardless what  
9           anybody thinks, we have found the capabilities of ~~reaching~~  
10          what I think is an end to parity of -- into the building  
11          trades and construction trades.

12          The new goal that's been set down for women we're  
13          having a great amount of difficulty with it, and I wouldn't  
14          want you or anyone else here to think that we have  
15          reached a conclusion or had a conclusion that women weren't  
16          capable of performing the tasks that are out there on the  
17          job, that's not true.

18          It just appears that that goal is very difficult to  
19          reach, and again the reluctant dragon has said to us that  
20          you should do this and we have reached out for funds to  
21          accomplish that, and more or less have been told we don't  
22          have any funds that can be used for that.

23          That doesn't relieve our position of going out and  
24          trying for it.

25          The Office of Federal Contract Compliance in my

1 estimation has a job to do which I don't disagree with.  
2 And I don't disagree with the position that OFCC should  
3 reach out and strive to reach those people who have refused  
4 to take part in our plan or any other, or abide by the  
5 Federal Register, that's not my problem. My problem is and  
6 has been for a number of years, and I think quite openly  
7 stated, that we are easy to identify, a great amount of time  
8 is used because we are easy to identify, and we are the  
9 people, regardless of what anybody says, that are in fact had  
10 come up with a program and are working on that program.

11 Now, if the program's wrong, let's redesign the  
12 program and try to make it more workable, but you can not,  
13 not recognize the uniqueness of a particular type of industry  
14 and make a blanket type of operation for all segments of the  
15 society.

16 As I said before, although we may in fact someday,  
17 which I hope happens, become a very colorblind society, it  
18 isn't going to change the effect of the accomplishments of  
19 the tasks set forth to do. And that also has something to  
20 do with who is capable of performing the task. So that has  
21 to be taken in consideration. And although we have set  
22 ourselves to go out and search and seize, I guess you would  
23 say, those people who have seemed to have an interest in  
24 our industry, we have not been successful. And our program  
25 to at least do a hands-on type of operation with women has

1     been cancelled, and we hope to put that back together,  
2     because we found that it is a good program. But of the  
3     eight women who were in that particular program for one par-  
4     ticular craft who showed a great desire to reach that par-  
5     ticular point of apprenticeship which was open to them,  
6     only one finally ended up making application. So it  
7     means that we're going to have to go out and reach a great  
8     number.

9             OFCCP I think in fact sometimes chases shadows. And  
10     in fact should look at the overall accomplishment and the  
11     end result rather than the necessary technical aspects of  
12     the particular document that was handed down by those who,  
13     with great wisdom, have -- sit in Washington and have de-  
14     cided that this is what should be done.

15             It doesn't matter to me, now, whether you dotted the  
16     I or crossed the T, as to whether in fact you really  
17     accomplished what the overall picture was set out to do.  
18     I think that's what we're saying. If we're trying to do it  
19     and we're misguided or we have misjudged or we have  
20     failed, then let us sit down together and correct what that  
21     is and see if we can get on with the task.

22             But to answer a complaint of 20 pages which deals  
23     with whether you told this person that this or whether  
24     you told that person this, or maybe it was through a third  
25     party that you told him, seems kind of superfluous to me.

1 I think that you should look at the end result and  
2 if that's what's being done and there's a good faith effort  
3 to accomplish that that's what's necessary. If it was  
4 easy, if it was easy so to speak, the task of the federal  
5 government would then be very, very easy. Because you could  
6 say that there are so many positions, and there are so many  
7 people, and we'll divide the people and divide the task  
8 and we'll continue on with the task at hand.

9 It isn't that simple.

10 Q How do you feel ~~that~~ the job OFCCP is doing to  
11 monitor affirmative action requirements for the construction  
12 industry?

13 A I have a great like for the people who serve in  
14 OFCCP. I don't have the -- I'm not in an adverse position  
15 with them. We have continually been able to sit down and  
16 deal with what we anticipated were the problems. I think  
17 sometimes, though, that the compliance officers may be over  
18 enthusiastic with the technical aspects of the law, and at  
19 some -- in some easing of that situation could be done  
20 by looking at the end result and the people that they  
21 were dealing with.

22 Our complaint is and quite obviously it's our com-  
23 plaint, that we receive a lot of attention. We're very  
24 visible. And we think that in some cases those people that  
25 receive the so-called blessing of the government to perform

1 tasks for the government are not under the same requirements  
2 that we're under. And that makes a tremendous difference  
3 in the cost and the ability to perform the work.

4 I think that more direction should be given, not only  
5 by the Civil Rights Commission, by the federal government,  
6 by OFCCP, as to the protection of the workers. To me that's  
7 very important.

8 To draw a conclusion as to the termination of unemploy-  
9 ment I think is unfair and unrealistic. To put the person  
10 that I have said we have successfully terminated in unemploy-  
11 ment into a task that is below poverty level I think is a  
12 great disregard to human resources that could be corrected  
13 and more attention paid to.

14 It isn't always the ability to put a person in a  
15 position that is meaningful, and in our estimation, and  
16 I make no bones about that, that there are great forces  
17 and -- in Colorado that are out to destroy that.

18 We believe that the person regardless of race,  
19 color, creed or sex, has a right to an adequate living,  
20 and you knew that I had that bias when I came here, and I --  
21 I think in a great many cases that the programs that are  
22 promulgated and directed and enforced by the government,  
23 quite frankly, do nothing but to lead people down to  
24 total disaster of involving themselves into a position that  
25 they can no longer meet any kind of a standard at all and

1 I think that's a gross error.

2 Q What recommendation or suggestions would you make  
3 to OFCCP to improve affirmative action enforcement efforts?

4 A I think there has to be a basic record. I think  
5 OFCCP does a good job. I think it's needed. I think  
6 that their direction in our industry as well as others is  
7 needed. I don't like to hear some of the things that  
8 are told to me coming back either from what we consider some  
9 of the finest contractors in the United States or from our  
10 people who are the number 1 people in the United States,  
11 we don't like to hear some of those things.

12 But if in fact that it's a known factor that there is  
13 no cooperation, there is no intent of any cooperation, that  
14 it is actually put down that there isn't any cooperative  
15 effort, then that's where I think OFCCP should direct them-  
16 selves.

17 I think they should direct themselves more on federal  
18 contracts. We know that it's not necessarily true that  
19 because there is a minority contractor that you also have  
20 minorities. Okay? It's an also known factor that just  
21 because you're the low bidder that you're going to follow  
22 all the requirements of the federal regulations. We know  
23 that. I think in our estimation that communications and a  
24 closer work, working ability with OFCCP leads to a better  
25 understanding and a better capability to do what they want



1 to do.

2 In fact, we think, I think personally, that we help  
3 relieve them of some of their duties and I think that's the  
4 way it should be. If we can continue to do that with Mr.  
5 Daugherty, who I've had the great admiration for and a  
6 relationship with, that is, I think, very, very good, I  
7 think if we can continue to do that through communications,  
8 I think that's what we want.

9 I don't think it's necessary for any office, including  
10 the Office of Federal Contract Compliance, to exert their  
11 ability or their congressional authority of force when it  
12 can be accomplished with an understanding and ability.

13 Now, I don't say remove the force, that's all I'm  
14 saying. I think that has to remain there. But I think  
15 that if you can accomplish the task with the cooperation  
16 of the people that you're dealing with it's a much, much  
17 better world.

18 Q Thank you.

19 Mr. Kronenberger, would you please state your name,  
20 address and occupation?

21

22 MR. P.J. KRONENBERGER

23

24 A (By Mr. Kronenberger) My name is Phil Kronenberger,  
25 I'm Manager of Employment, Equal Employment Opportunity

1 Officer for Public Service Company of Colorado.

2 Q What is your relationship to the affirmative action  
3 process, and do you have any government contracts?

4 A We do have government contracts. I am responsible  
5 for the affirmative action program.

6 Q Could you give a brief history of the Public Service  
7 Company's efforts in affirmative action?

8 A Well, I imagine our first entry into affirmative  
9 action was the result of a commissioner's charge some ten,  
10 12 years ago from the EEOC, at which time we entered into  
11 a three-year agreement that involved many things. One of  
12 which was a good faith effort to hire certain percentages  
13 of minorities, and these percentages were different based on  
14 what counties or towns we were talking about.

15 That worked out so good that although the agreement  
16 was for only three years I have kept those goals intact and  
17 we have used them and they've worked very well for us  
18 since that time. I'm sorry I can't tell you whether that  
19 was 1968 or nine or '70.

20 Also I've had many dealings with OFCCP.

21 Q Have you found any areas of difficulty in applying  
22 affirmative action guidelines?

23 A Yes. As far as goals and timetables are concerned,

24 The guidelines themselves, no. Is that what you're  
25 talking about?

1 Q Yes. Have you requested technical assistance from  
2 EEOC?

3 A No, I have not.

4 Q Have you ever used the services of a consultant in  
5 developing your affirmative action plan or meeting certain  
6 federal requirements?

7 A No, I have not.

8 Q What were your problems with the goals and guidelines?

9 A Well, the only problems that I'm having in that  
10 area is in the area of the handicapped and the area of  
11 females in nontraditional jobs. It's difficult, it's very  
12 difficult in the area of nontraditional jobs and females to  
13 find those individuals who want to do that type of work.

14 Yes, we do have some, but not as many as I'd like  
15 to have. And I don't think we'll ever have as many as  
16 I'd like to have.

17 In other jobs, professional type, the female, we  
18 have no problem recruiting and putting them in those jobs.  
19 Over a year ago I wrote an affirmative action program for  
20 the handicapped, at that time I sent a letter to each one  
21 of the employees with a form to sign if they felt they were  
22 handicapped and wanted to come under the affirmative action  
23 program.

24 The return on that was very small, and I full well knew  
25 at the time that under the definitions of handicapped that

1 in our company I would guess that we would have a minimum  
2 of 20% qualified, and I mean 20%. A minimum. An example,  
3 another example are folks that you hire.

4 In the last 30 days I have hired a man that was deaf,  
5 a woman with one eye, a woman with one arm, and not one  
6 of the cases would they sign a form that they were handicapped  
7 and wanted to be considered under the affirmative action  
8 program. This is difficult.

9 Q I'd like to ask you what your views are towards those  
10 that claim the guidelines for affirmative action are unclear  
11 and confusing?

12 A I have never had any problem with the guidelines.  
13 I've had a great deal of help, especially from OFCCP and I  
14 hate to say that, because one time they sent me a show cause  
15 letter, but actually I have had a great deal of help,  
16 probably more from OFCCP than anything.

17 Q How would you characterise your contacts with EEOC  
18 and OFCCP?

19 A No great problems. Of course any time you have a  
20 contact with anyone that's going to bring a charge of dis-  
21 crimination against you, it's not the greatest thing in the  
22 world to happen, but I have no great problems with either  
23 one of the organizations. Or the agencies.

24 THE CHAIR: Let's go to Ms. Bullock, would you please  
25 state your name, address, occupation and employer?

1 MS. NORMA L. BULLOCK

2  
3 A. (By Ms. Bullock) My name is Norma Bullock, I work  
4 for Arapahoe Chemicals, Incorporated, in Boulder, Colorado,  
5 and we are a subsidiary of Syntex (Phonetic) Corporation  
6 out of Palo Alto, California, and I am the Employment and  
7 Benefits Administrator.

8 Q. (By the Chair) Is your employer a government con-  
9 tractor?

10 A. Our parent corporation is, Syntex is.

11 Q. Would you give us your perceptions of what affirmative  
12 action means and tell us how your job position relates to it?

13 A. My definition of affirmative action would be those  
14 programs which an organization devises which helps minorities,  
15 females, handicapped, to go above and beyond what their  
16 normal opportunities would be, whether it is training  
17 programs, management development programs, even going so  
18 far as help with adjustment to new jobs.

19 But they are those things which are over and above,  
20 beyond trying to reach parity, that's my definition of  
21 affirmative action. And my responsibility is EEO and  
22 affirmative action at this company.

23 I have total responsibility, although the named  
24 EEO affirmative action officer is my supervisor who is a  
25 vice president of the company.

1 Q Does your corporation have any particular problems  
2 with regard to affirmative action programs?

3 A Are you saying my parent corporation or my -- the  
4 company I work for?

5 Q I hope that we can stick to the one that is located  
6 in Colorado.

7 A Okay. Okay. Then that's -- that's the company that  
8 I work for. I have several areas that are problems with  
9 affirmative action. One of the greatest probably being the  
10 area, total area of statistics, because first of all I  
11 feel that the statistics which are furnished to employers  
12 are terribly lacking and that's probably being complimentary  
13 toward them. I think that gathering statistics for affirmative  
14 action purposes through a census doesn't make sense at all.

15 I think that in addition to that, the guidelines that  
16 we have, by that I really mean the procedures that we have  
17 for gathering statistics, I'm well aware of. I know I'm  
18 supposed to put together certain resources and do a weighting  
19 and come up with statistics which are relevant to our organi-  
20 zation.

21 I also feel that I have very little in the way of  
22 assurance that what I come up with really is going to be  
23 valid, if OFCCP decides to audit I may have to defend some-  
24 thing that I've tried my best to come up with which may not  
25 be at all what they really view as appropriate statistics.

1           So I feel that in that area statistics are -- we  
2 really need help and the thing that the federal government  
3 needs to do a much better job than what they've done in  
4 furnishing that.

5           I also feel that for a small organization, which is  
6 primarily what I'd like to say I'm speaking for, the impact  
7 of statistics in terms of the small numbers that we work  
8 with is just, you know, sometimes it borders on ridiculous.

9           If we have a -- we have right now a sales force of  
10 three people consisting of three White males. We don't  
11 get very many openings. I would like to have a minority,  
12 a female, a handicapped person there. I'm not going to get  
13 much of an opportunity to do that, so I'm continually  
14 looking. I would like to have the opportunity, but on record  
15 it looks as though we don't have any representation in  
16 our sales force.

17           In kind also, if I hire in a minority, we don't have  
18 the career ladders, the career paths that a larger organization  
19 has. And I have to tell a person, that I hire in, that very  
20 honestly. And if they want to leave in two years because  
21 they've gotten what they can from us, and going on is going  
22 to -- staying with us would be a detriment to their career,  
23 then I have to welcome them out the door and that's some-  
24 times sad to do, specially if it's one or two means we have  
25 now reached parity and one or two leave and now we're back

1 out of parity, it's a frustrating back and forth flop,  
2 you know, one year we've reached parity with one job  
3 group, the next year we may not.

4 So, in terms of consistency and on-going, that  
5 exaggeration, the impact on our statistics is very difficult.

6 Q Do you see those as the main problems that you have  
7 with affirmative action?

8 A Well, I would add that in terms of resources available  
9 to employers, for help, I think that it -- I would like to  
10 have something similar to what OSHA has furnished in  
11 terms of consultants where we can call and know that they  
12 will have no -- there will be no actions taken against us.

13 If I want someone to come in and audit my affirmative  
14 action plan, then I would like to be able to have that. I  
15 have hesitation with calling, I have not done it, I really  
16 would first call in the Mountain States Employers' Council  
17 and Mr. Planansky has helped most of the small employers in  
18 the area and a lot of the larger ones, that is my resource.

19 I would hesitate in contacting what I would consider  
20 a government agency, a police agency.

21 Q Let me ask you what federal agencies have imposed  
22 these affirmative action requirements, OFCCP, EEOC or both?

23 A OFCCP, through, again, our parent corporation, that's  
24 most of the contact that we have had.

25 Q Because of the federal contracts that are --



1 A Right.

2 Q -- received?

3 A Yes.

4 Q Does the fact that you have a small work force cause  
5 difficulties? I think you've addressed that already.

6 A Yes.

7 Q Is there anything else you'd like to add there?

8 A No, except to say, you know, what some of the other  
9 speakers have said that it's very difficult. The work force  
10 that I primarily, work force that I'm working with now is  
11 a male oriented job, it's a chemical operator and to try to  
12 find females for that is a tremendous job. They work a  
13 12-hour shift schedule, they can not leave the plant site  
14 so if you're talking about females with a family responsi-  
15 bility and children it is very, very difficult.

16 Q I won't say what I might suggest on that. Maybe  
17 I can talk to you afterwards.

18 Do you feel a need for technical assistance on affirma-  
19 tive action? And if so, please be constructive and say in  
20 what areas and who could provide this for you besides  
21 Mountain States?

22 A You mean besides what I've already stated?

23 Q Yes.

24 A Not in addition to what I've stated. You know, I  
25 really feel that I would like to have a neutral party or a

1 neutral group, say within OFCCP that I could call up and  
2 come and give me some help, some advice, audit my affirmative  
3 action plan. But beyond that, no.

4 Q Have you attempted to obtain any assistance from  
5 OFCCP and EEOC?

6 A Only through our parent corporation in California,  
7 not directly here in Denver.

8 Q Okay. Have you received that assistance?

9 A Yes.

10 Q Thank you. Let me see, I have one more question.

11 Do you have any suggestions as to how to improve the  
12 situation? With affirmative action in your company?

13 A I guess I would like -- I could use something better  
14 defined with the procedures for setting up and following  
15 affirmative action plans a little bit more help and support  
16 there.

17 That again relates to, you know, having a represen-  
18 tative group within OFCCP, but I'm going beyond that, the  
19 way I learned how to do an affirmative action plan was at  
20 Mountain States Employers' Council and it was certainly  
21 adequate, but I think that there need to be other resources  
22 available. I have found that for instance in the Boulder  
23 community not everyone belongs to the council, and I have,  
24 by virtue of the fact that I am on a lot of public groups  
25 in Boulder, people know that I do affirmative action, I

1 have for several years, so I find people who don't have the  
2 resources I do coming to me and asking me if I will help  
3 them, asking me if I will answer questions.

4 I had this morning in a meeting, a woman from  
5 Boulder County from an agency there hand me their affirmative  
6 action plan and say I'd like you to look at this before I  
7 turn it in. Other people need resources even beyond what  
8 I have. There are a lot of very small employers out there  
9 trying very hard to do the best they can, we don't have the  
10 resources, we don't have the availability of time within  
11 our own organizations, and we certainly don't have the  
12 additional time it would take to go out and search those  
13 resources, although they may be available.

14 Q One final question, in the range of your experience,  
15 do medium and small companies have affirmative action  
16 as a rule?

17 A Yes. Even on a voluntary basis the organization I was  
18 with before was on a voluntary basis, again another small  
19 manufacturing company.

20 THE CHAIR: Thank you.

21 Q (By Mr. Black Elk) Mr. Planansky, would you please  
22 state your name, address and occupation?  
23

24 MR. ROBERT PLANANSKY

25 A (By Mr. Planansky) I'm Bob Planansky, I'm on the

1 governmental regulation staff at Mountain States Employers'  
2 Council, 1790 Logan Street here in Denver.

3 Q Would you give us your definition of affirmative  
4 action and describing your relationship to affirmative  
5 action matters?

6 A I'll reverse the order of that, if that's acceptable.  
7 I serve in the capacity as a consultant to -- on various  
8 levels and at various degrees, some 760 employers in the  
9 state. Primarily in the areas of civil rights generally,  
10 affirmative action specifically.

11 My own personal definition of affirmative action is  
12 to relate it with regard to Title VII, Title VII, in my  
13 view, removes the barriers which lead one to failure.  
14 Affirmative action provides the procedures to lead one of  
15 protected status to success, and I -- that can take a whole  
16 range of different problematic approaches but I think  
17 affirmative action means it's an inclusionary tool and not  
18 an exclusionary tool or even a prohibition of exclusions.

19 Q What percentage of those firms that you mentioned  
20 your employer assists have affirmative action plans?

21 A Most of our employers are -- range in size from  
22 companies with ten employees to companies the size of  
23 Martin-Marietta. Of those that are jurisdictionally covered,  
24 although I think there are some huge problems with who's  
25 covered, that I might want to address momentarily, as a rough

1 estimate, I would guess affirmative actions at some degree  
2 and relative levels of sophistication, may be between '70  
3 and 75%.

4 Q How many of those have been reviewed by OFCCP?

5 A More than I have time to participate in. Not many.  
6 And obviously I think that's due to their own personal  
7 staffing constraints. There are many industries which have  
8 been hit to a much greater degree and to the total exclusion  
9 of other industries which I think are just as ripe for  
10 review, classic example I think they're a target industry  
11 this year but I think the financial industry in this state  
12 has been reviewed to the point where OFCCP can feel fairly  
13 comfortable their trickle-down effect is going to have major  
14 impact.

15 There are other industries where there's been no --  
16 manufacturing has been reviewed quite heavily. We don't  
17 deal with construction trades, Mr. Donlon does, nor the  
18 public sector, strictly private sector.

19 And I would say, by the way, the bulk of those  
20 reviews have occurred in the last two years.

21 Q What do you find employers have the most difficulty  
22 with in trying to live up to affirmative action guidelines?

23 A My encouragement, because of the innocuousness of  
24 the regulations in terms of coverage, I will encourage any  
25 employer that asks me, if they don't ask me I don't much

1 care, but any employer that asks me a question about whether  
2 they're jurisdictionally covered, again I will tend to  
3 put myself in the position of the department of labor, and  
4 say you are -- your safest approach is to assume that you're  
5 covered and again because there is a dearth of litigation  
6 on the jurisdictional issue.

7 And I think Mr. Daugherty will agree, certainly Jay  
8 Sauls (P) used to agree with me, that his personal  
9 opinion was anyone who could conceivably get covered would  
10 get covered and if they want to debate the issue we'll do it later.

11 So, my essential approach is if there's any chance  
12 you're covered, let's comply. Better on your timetable than  
13 someone else's.

14 The primary problem, however, and again all the plans  
15 that I've worked with, companies, we use the Revised <sup>Orders</sup> Four and  
16 14 and Executive Orders as guidelines, and I don't want to  
17 repeat what's already been said. I think those guidelines  
18 are written by design in a most innocuous fashion, not with  
19 regard to specific technical items, but with regard to things  
20 like statistical development, the Department of Labor has  
21 changed their own approach on that particular issue, two  
22 and three times over the last four and five years.

23 It's -- at a point where an employer who does an  
24 affirmative action plan, even a voluntary affirmative action  
25 plan if they're not jurisdictionally covered, in my view, has

1 the right to have regulations which are obviously not going  
2 to tie him into a corner in terms of being so strong, but  
3 on a counterbalance which provides him with enough guidance.  
4 that if they take the time and effort to devise the program,  
5 that they ought to be able to rely on a certainty from those  
6 regulations that what they've done comes reasonably close to  
7 complying and I don't think the regulations provide that.

8 Q Do you interpret government regulations such as  
9 ~~Revised~~ Order 4 and the EEOC affirmative action guidelines  
10 for companies?

11 A I didn't get -- catch the question, I'm sorry.

12 Q Let me move on.

13 Do you believe there are discrepancies between OFCCP  
14 and EEOC regulations, and would you explain?

15 A Is Bennie still here?

16 Yes, I do, and I think it's going to be a problem  
17 that's going to be the source of very major litigation in  
18 the future. We have had cases, although again keep in mind  
19 that the theories that both agencies are involved with, while  
20 the thrust is different they are essentially the same, both  
21 agencies are interested in the same kind of issues with  
22 regard to maternity leaves, with regard to promotional  
23 barriers, all those kinds of things, their interests are the  
24 same.

25 OFCCP does not feel bound and has indicated on

1 occasion by any Title VII pronouncements coming out of the  
2 court system.

3           Again, that places the employer in an incredible  
4 position and I can give you a classic example. When we  
5 were in the whole developmental stage of the maternity  
6 leave process when we had the Gilbert ~~Decision~~, which  
7 essentially removed pregnancy from ~~mandatory~~ coverage of  
8 sick leave programs and short term disability plans, we had  
9 a year interim before Title VIII was amended to provide  
10 for that gap.

11           During that time, of course, EEOC felt bound by  
12 those provisions and the employer would operate under what  
13 he conceived <sup>as</sup> of the current status of the law. The OFCCP  
14 approach, in some cases, and by some compliance officers,  
15 was we are not an agency charged with enforcing Title VII,  
16 we're under an Executive Order, contractual procurement  
17 program and we do not feel constrained by judicial decisions  
18 under Title VII.

19           Again, whether either side is right or wrong, it  
20 places the employer in a situation of not knowing what the  
21 status of the law is when he's got two agencies with almost  
22 equal power in terms of effect on the agency. -- on the  
23 company itself.

24           Q     Do you actually interpret the regulations for  
25 companies?



1           A     From a practical standpoint, yes. It's an interpre-  
2     tation that involves an implementation, how to take a regu-  
3     lation and try to place it in language that's meaningful for  
4     the company, that their managers who enforce the affirmative  
5     action plan and who are involved in the process can  
6     understand.

7           Q     Have you ever asked the EEOC or the OFFCP for  
8     technical assistance?

9           A     I have asked the EEOC for technical assistance on a  
10    couple, three occasions and been given an answer that if you  
11    don't tell anyone I said this we'll discuss it.

12                   Obviously the EEOC and the area of the law is the  
13    kind of area of the law where they don't want to get them-  
14    selves locked into a position, I understand that perfectly.  
15    Those have been more on precise kinds of questions.

16                   If you're talking about developmental kinds of  
17    assistance and affirmative action process, I -- we've had  
18    a very good relationship with the OFCCP, in terms of resolving  
19    particular issues. I will say in criticism that the pro-  
20    grams that the OFCCP has put on to train, particularly  
21    people who are new to the affirmative action area, or com-  
22    panies who are new to coverage, under the affirmative action  
23    area, are woefully inadequate in terms of practical  
24    assistance.

25                   The typical program involves four or five compliance

1 officers standing up reading the regulations and that is --  
2 my -- I say in almost every employer I've talked to has  
3 viewed that two-day program or three-day program as a  
4 complete waste of time in terms of practical assistance.

5 And I hate to see that three days go wasted when I  
6 think the OFCCP has the capability to reduce those seemingly  
7 complex regulations into meaningful terminology for the  
8 employer.

9 Q Could you tell us what kind of assistance you believe  
10 private firms should get from OFCCP and EEOC?

11 A Well, I don't think the private employer needs to  
12 use or should use either one of those agencies as a copout  
13 for their own inabilities, but I'm going to now back away  
14 from that stand and I think the clearest area is in --  
15 is the lady from Arapahoe Chemical indicated and the one  
16 that's the most frustrating is regard to statistical  
17 development.

18 The OFCCP regulations provide for the consideration  
19 of eight factors, until last year there was absolutely  
20 no mechanism whatsoever that was consistent which allowed  
21 an employer any kind of comfort level with how those eight  
22 factors were to be consolidated into one meaningful  
23 factor for each job group.

24 The statistics that the employers must rely on in  
25 even compiling those eight statistical factors are terribly

1 inadequate, although I think Colorado's Division of  
2 Employment does as good a job as any state in the Rocky  
3 Mountain area in terms of breakouts of availability by  
4 specific job groups.

5 But it is still not adequate and I hope, if the  
6 census is going to provide the background for that requisite  
7 skill kind of information in terms of people who are  
8 currently employed by skills or unemployed by their last  
9 occupations, the breakouts have simply got to be more  
10 specific.

11 It's very -- I'll give you a classic example. A  
12 typical affirmative action plan in an official manager  
13 category will break out into job families, a company of  
14 200 or 250 will maybe end up with four job families from  
15 senior management to first line supervision and yet if you  
16 go to the statistics to find out who are the people currently  
17 employed and mind you, it's only one factor, but who are the  
18 people currently employed with those skills, first of all  
19 you're lucky if you can get any industry connection at all.

20 And once you found that there's absolutely no  
21 breakout by level of management, so you end up using the  
22 same comparative base for first line supervisors that you  
23 do for senior managers.

24 Again, and the employer is put in the position of  
25 simply having to use what's available as bad as it is.

1           So I think statistical development is the one area  
2 where, and maybe because of the OFCCP is the enforcement  
3 agency, they're not the appropriate agency to provide that  
4 data but there needs to be some governmental assistance in  
5 providing good, adequate data that an employer has a high  
6 comfort level with.

7           Q     Do you believe it would be useful if OFCCP and  
8 EEOC met and conferred with private consultants to discuss  
9 affirmative action concepts?

10          A     From my perspective, very, and I would be delighted.

11          Q     One last question. Do employers find that inconsistencies  
12 exist between court rulings and OFCCP policies?

13          A     Yes, I think I commented on that briefly a moment  
14 ago and I, although it hasn't been a major problem, it's  
15 been enough -- it's had enough visibility that again, the  
16 employer doesn't really know where they feel they are.

17                 Another classic example of a developing issue as  
18 we're all aware of, is the whole concept for equal pay for  
19 work of equal value, which the EEOC will be holding hearings  
20 on in the latter part of April. The chair of the EEOC has  
21 already indicated that no matter what this agency decides  
22 to do with it, and by that she means no matter how we interpret  
23 that principle as either falling under the jurisdiction  
24 of Title VII or without, regardless of our approach on it,  
25 we're going to encourage the OFCCP to include it.

1           Again it just places the employer in a situation of  
2 not knowing what the status of the law is. I would like to  
3 see the two agencies get together and at least provide us  
4 with enough guidance so that we don't have those kinds of  
5 discrepancies.

6           And mind you, those are not major regular, reoccurrent  
7 problems, there are occasional incidents where that occurs.

8           Q     Could you tell us, in the last part of that question,  
9 to what operational difficulties does this have for  
10 employers?

11          A     Well, the inconsistencies? Again I would just relate  
12 that specifically to, like what I think an employer, no  
13 matter what his obligations are under the affirmative action  
14 process, under Title VII, an employer has the right to have  
15 a reasonable comfort level with what the thrust of the law  
16 is and I'm the first to concede that since I graduated from  
17 law school I haven't experienced an area of the law that is  
18 less clear than the whole area of civil rights, it obviously  
19 changes from day to day and I think anybody who didn't  
20 recognize that would be not terribly realistic.

21                But balance that with what I think your -- the govern-  
22 ment is placing some very hefty responsibilities on employers,  
23 and essentially the Congress has already indicated that the  
24 reason this burden for changing these cultural patterns  
25 is falling on the employer whether they like it or not, is

1 because Congress has recognized that the employer is the  
2 one true institution that has the capability of effectuating  
3 some change.

4 If that's the case, and if those kinds of obligations  
5 are going to be placed on employers, the employer has the  
6 right to insist that it know precisely what its requirements  
7 are and obligations are and what kinds of specific expect-  
8 tations are placed on it, and I'm not sure of the status  
9 of the law in terms of some inconsistencies with enforcement  
10 agencies, in terms of inconsistencies within OFCCP itself,  
11 in terms of different compliance officers, and I just don't  
12 think that's where we are today and I think that's an  
13 unfortunate additional burden to place on an employer, who  
14 may be otherwise very willing to comply with the law.

15 MR. BLACK ELK: Thank you very much.

16 THE CHAIR: I'd like to thank each of the panel  
17 members for your answers which are on the record.

18 The next panel<sup>is</sup> on problems in state and local  
19 compliance. ~~Would~~ the panel members please come up, Narieda  
20 Bottoms, Maxine Kutrz, Robert Pena, Martha Fair and  
21 John Woods.

22  
23 (The following was chaired by Mr. Minoru Yasui)

24  
25 THE CHAIR: Although we are a couple of minutes early,

1 since I came in by plane at noon from Los Angeles, I'm a  
2 ~~Jenny~~<sup>Johnny</sup> come-lately, however, I think this session should  
3 start.

4 This is the panel on state and local compliance.  
5 As I understand, I need to introduce the staff and I'll do  
6 it the easiest way because I don't know who all is here.  
7 I'll introduce Dr. Valentine, who will make the necessary  
8 introductions.

9 DR. CYNTHIA VALENTINE: Okay. Don's been sitting on  
10 all the panels, this is Don Dickerson. He's from our  
11 Washington area office. And Adolfo Gomez, on the other  
12 side of Minoru Yasui and Cynthia Kent are on our state advisory  
13 committees.

14 THE CHAIR: Well, these people I knew, the introduction  
15 of the panel is also made by me?

16 DR. VALENTINE: Yes.

17 THE CHAIR: All right, let me see if I can identify  
18 these individuals, as I understand we have five panelists,  
19 Narieda Bottoms, is that correct, Ms. Bottoms? Narieda  
20 Bottoms, who's with the University of Colorado at Denver.  
21 The next individual, an old friend, Maxine ~~Kurtz~~<sup>Kurtz</sup>, from  
22 the Career Service Authority, the City and County of Denver.  
23 Robert Pena from CHE, the Congress of Hispanic Educators.

24 The next person is Dr. Martha Fair, for the Colorado  
25 Department of Education, and the next individual is Mr.

1 John Woods, who is the Affirmative Action Officer for the  
2 state personnel department.

3 We will conduct the hearing in regard to problems in  
4 state and local compliance and I guess I lead off by  
5 asking Ms. Bottoms, would you please state your name, your  
6 address, occupation and employer for the record?  
7

8 MS. NARIEDA BOTTOMS  
9

10 A (By Ms. Bottoms) Narieda Luna Bottoms, I'm the  
11 Affirmative Action Director from the University of Colorado,  
12 Denver Campus, the address is 1100 14th Street, Denver,  
13 80202.

14 Q (By the Chair) Is the university a government  
15 contractor?

16 A Yes, it is.

17 Q And the university receives federal money in the  
18 form of federal grants?

19 A Yes, it does.

20 Q Could you give us some idea of what the scope is,  
21 dollars, number of grants or whatever?

22 A At the Denver campus <sup>is</sup> about four million dollars,  
23 but it is a much larger figure, of course, throughout  
24 the universitywide system.

25 Q Do you have any idea how many grants that -- you know,



1 number of grants?

2 A Usually it's anywhere between, I would say ten to 30.

3 Q And you're the affirmative action officer that has to  
4 ride herd on all of these?

5 A That has to, excuse me?

6 Q That has to make sure that there is compliance with  
7 the federal regulations?

8 A I am the affirmative action officer that has to make  
9 sure that we have an affirmative action program that is in  
10 compliance with the federal regulations, yes, I am.

11 Q In connection with this work what federal agencies have  
12 you contacted or have contacted you in regard to the  
13 affirmative action program of UCD?

14 A In the past, we have had contacts with HEW, OCR,  
15 OFCCP, and at times with EEOC.

16 Q And your relationship, so far as your work is con-  
17 cerned, has been productive, constructive, otherwise, negative,  
18 affirmative?

19 A With those particular agencies?

20 Q Yes.

21 A It's been acceptable.

22 Q I believe you stated in the previous interviews, that  
23 you had some problems in regard to the current affirmative  
24 action enforcement practices in higher education. One of  
25 these concerns, and I think I share with you, is the request

1 for an extensive amount of data, a tremendous amount of  
2 paper work. Would you comment in regard to these require-  
3 ments?

4 A Yes. Now, I -- and I need to preface my comments be-  
5 cause my campus has not had a compliance review, therefore  
6 we have not had to provide extensive data in a long time.  
7 That may be a problem in and of itself. But I am simply,  
8 my comments in the terms of problems with compilation of  
9 data and data requirements comes out of my close contact with  
10 other campuses and other agencies that have to comply with  
11 the federal government in terms of affirmative action.

12 Often data is required that goes back to, say 1972,  
13 and in and of itself that may not be bad. I think that  
14 part of the problem arises often there's not a clear vision  
15 of the need for that data or a communications between the  
16 agencies. Either the institutions or the federal government  
17 asks for the request and the need for that request.

18 So, in general terms, those are concerns. Institutional  
19 concerns. The large volumes of data that are required,  
20 why are they required? How are they going to be used? What  
21 will be the outcome of that data? What type of analyses  
22 are going to be done and what will the results be?

23 Q How large a staff do you have?

24 A At the Denver campus we have full time faculty -- well,  
25 we have about 600 all together.

1 Q As far as the Denver campus and I was concerned about  
2 your particular personal staff that has to do all of this  
3 affirmative action monitoring for --

4 A Myself. Which is another concern.

5 Q Yes, I was going to suggest with 600 employees and  
6 four million dollars in programs, 30 or 40 programs, that's  
7 going to be quite an extensive job.

8 You indicated that you did not have a review but is  
9 there any followup monitoring on behalf of the federal  
10 agencies in regard to the technical data that they require?  
11 Does the federal government monitor your work? Do they  
12 assist you? Do they help you?

13 A Not since I have been the affirmative action director  
14 and I've been the director for four years.

15 Q The last four years. Let me then indicate that if  
16 nothing has been done in this regard for the past four years,  
17 obviously, unless somebody's watching over your shoulders  
18 you know, you get a tendency to be a little lax. How do  
19 the college administrators react to this lack or failure of  
20 compliance review?

21 A Well, I think there is perhaps a general attitude  
22 that the feds are not coming to begin with. That they  
23 never get there even if they say they're coming. And therefore,  
24 whatever is done in the area of affirmative action is done  
25 more out of internal commitment than necessary compliance.

1 Q Kind of a dismal picture you're painting. What  
2 recommendations would you make?

3 A Mandatory affirmative action reviews once -- once or  
4 yearly.

5 Q Any other suggestions that you would have in regard  
6 to what needs to be done? I understand in the last four  
7 years no one's come to review so the administrators become  
8 a little lax, so therefore, you're suggesting once a year.

9 Do you have any further suggestions how to make  
10 really affirmative action effective at the higher education  
11 level? You have a 1,000 suggestions?

12 A In addition to what I mentioned earlier, mandatory  
13 reviews on a yearly basis, I think it would be in the best  
14 interests of the federal government and the institutions  
15 if there was an extensive communication line established  
16 between the compliance agencies and the institutions,  
17 ← In terms of public relations, in terms of technical  
18 assistance, in terms of visibility. That would help. It  
19 would also help in terms of setting priorities within the  
20 institutions if the dialogue -- if it's not feasible or  
21 possible to have such type of activities undergoing on a  
22 continuous basis, if there could be some periodical con-  
23 tacts between the regional directors of the different  
24 compliance agencies and the chief executives of the  
25 institutions, Not necessarily in defensive, adversary

1 capacity but more in the spirit of communicating and sharing  
2 each other's problems.

3 Q Would it be also helpful to suggest that perhaps  
4 the institution itself or the state provide more assistance  
5 for you to beef up the affirmative action office within  
6 UCD? Would this be helpful?

7 A Definitely. Yes. It's a selfdefeating proposition  
8 to expect to have such limited staff.

9 Q Would you have any further comments in regard to the  
10 field of affirmative action?

11 A Yes. In terms of higher education, I think higher  
12 education is a different animal altogether from business,  
13 and I think that needs to be recognized.

14 I'm not certain that that has been thoroughly addressed,  
15 and I don't think it's in anyone's best interests not to  
16 address the fact that higher education is a different --  
17 is a different setting and a different type of institution.

18 In terms of monitoring compliances, in terms of hiring  
19 practices, in terms of promotions, when you're dealing with  
20 faculty that is a total, completely different realm than when  
21 you're dealing with private enterprises or public, say, or  
22 business type of activities.

23 THE CHAIR: I believe that's all.

24 Mr. Gomez, would you proceed?

25 ✓ MR. ADOLFO GOMEZ: Ms. Kutrz, please state your name,

1 address, occupation, employer, please?

2

3

MS. MAXINE KUTRZ

4

5

A (By Ms. Kutrz) My name is Maxine Kutrz, I'm the  
6 Personnel Research Officer for the Career Service Authority  
7 of the City and County of Denver.

8

9

Q (By Mr. Gomez) Could you briefly describe the Career  
Authority, Career Authority and how many employees are  
10 covered under it?

11

12

A The Career Authority is one of the personnel systems  
12 of the City and County of Denver. We have jurisdiction over  
13 about 8,000 of roughly 11,000 municipal employees.

14

15

Q To what federal agency does the agency have affirma-  
15 tive action commitments?

16

17

18

19

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21

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24

25

A Well, as a matter of fact, sir, I have a file drawer  
17 and a half of federal -- of guidelines that we must comply  
18 with. The City and County of Denver is what is commonly  
19 called a multiindustry employer, so that the law enforcement,  
20 LEAA, is -- the Bureau of Outdoor Recreation, the Office of  
21 Contract Compliance, of course, and EEOC, the endorsement  
22 division of the Office of Personnel Management, I could go  
23 on and on, but in any event, I have a long, long list of  
24 agencies with all of whose regulations we must conform  
25 because either they regulate us or we contract with them.

1 Q Are these commitments coordinated in any way by the  
2 federal agencies?

3 A Not perceptably. I would -- let me just make this  
4 one observation. An effort was made by the Intergovernmental  
5 Personnel Act; when that was passed, to put under the  
6 Office of Personnel Management, at least for administration,  
7 the requirements of CETA and a variety of HEW programs and  
8 the Office of Emergency Preparedness. Everybody else is:  
9 on their own as far as I can determine with their own  
10 regulations.

11 Q Based on that, do you feel that there are conflicting  
12 requirements imposed upon you?

13 A Not -- not philosophically, but certainly there is in-  
14 consistent requirements from the standpoint of reporting and  
15 from the standpoint of relative emphasis.

16 For instance, the LEAA now requires, for usually  
17 very small grants, I might say in passing, requires material  
18 that we don't even have to provide when we're in court on  
19 an EEOC charge. Which we've never lost any of. But they  
20 -- they require the most incredible amounts of statistics.

21 Another example that I could give you is the effort  
22 to try and comply with the Rehabilitation Act on the one  
23 hand and with OSHA on the other. I think it's absolutely  
24 impossible.

25 I was concerned about this, we were doing some

1 demonstration projects in this area of job analysis, so I  
2 met with the Office of Federal Contract Compliance Programs  
3 and with OCR of HEW, one day, for about two or three hours  
4 to try and figure out what ~~it~~ was that they were requiring  
5 of us when they said that all of our jobs or our classes  
6 must be analyzed from the standpoint of the physical,  
7 economic -- physical, emotional and mental demands of the  
8 people to be recruited for those jobs.

9 And we'd already figured out the physical side of  
10 things, because we work well with our hospital and so forth.

11 I went to an elaborate consultation process with  
12 all kinds of people from Denver General and from Colorado,  
13 University of Colorado Medical School, Nobody could figure  
14 out what those physical and mental -- what those mental and  
15 emotional demands were or how you figure out what it is  
16 on that job that comprises these. So I then met with all the  
17 enforcement people and the only recommendation they could  
18 give me at the end of a two-hour discussion where they had  
19 all previously gone up their hierarchies to find out answers  
20 was, well, try and get the two secretaries of HEW with  
21 Labor and the director of OSHA to put on a demonstration  
22 project so somebody could figure out what it was they thought  
23 they were supposed to be complying with.

24 Now, I don't mind complying with things but it's  
25 kind of nice to know what it is <sup>then</sup> expect us to do. And this



1 is just a typical example.

2 Q Does the career authority have an affirmative action  
3 plan?

4 A Yes, we do, yes, we do.

5 Q If the answer is yes, what guidelines did you --

6 A Well, the first time I did it I used Revised Order  
7 Number 4 of the Federal Contract Compliance Programs. That  
8 is a terribly redundant outline as a matter of fact, I mean  
9 I followed it just exactly the way it was laid out so I  
10 then got together with the office of -- well, at that  
11 time was Civil Service Commission, and we simply condensed  
12 the layout without removing any of the substantive material,  
13 and that's what we use.

14 It's a modification of Revised Order Number 4.

15 Q Do you feel comfortable with it?

16 A It's as good as anything, I don't -- it's -- I'm not  
17 ecstatic about it. We've -- we've added a number of things  
18 including affirmative action for the handicapped and other  
19 groups.

20 I might add just in passing, that we -- if you be-  
21 come sufficiently diversified, I was able to tabulate in  
22 excess of 20 groups, all of whom we were supposed to give  
23 first priority to in terms of affirmative action and that  
24 got a little complicated.

25 Q Have you had the opportunity to need technical

1 assistance from the federal agencies about your affirmative  
2 action requirements?

3 A No, we have been doing our work in-house.

4 Q Have city agencies found it necessary to retain  
5 private consultants to help interpret or comply with the  
6 federal affirmative action requirements?

7 A No. By and large we found that the consultants know  
8 considerably less than we do. So we just -- we provide the  
9 consultant's service to the federal agency -- to the agencies.

10 Now, I have to admit there are a few we can't work  
11 out. But neither could anybody else. Let me give you an  
12 example, again using LEAA, this just happens to be on my  
13 desk at the moment so I decided to get it.

14 Now, the proposal is to have an adolescent crisis  
15 intervention program which is essentially a -- going to  
16 sit in our Department of Social Services. The first thing  
17 that happened was that the Department said, hey, we're  
18 already approved by the -- our affirmative action program is  
19 already approved by HEW, can't we do this -- can't we use  
20 that approval for LEAA?

21 I have the correspondence with me which I can leave  
22 with you, it went to the state, the state went back to  
23 general counsel of LEAA and he said of course not. You have  
24 to have our affirmative action plan. We can't accept  
25 what HEW does. That was the first -- first round on it.

1           So then we got together to try to figure out how  
2 to produce an affirmative action program. Now, our Depart-  
3 ment of Social Services is served by two different personnel  
4 systems. The majority of the several hundred employees in  
5 that agency are under the state merit system which is a  
6 division of the State Department of Personnel.

7           The balance of them are under the Career Authority.  
8 I guess about a dozen of us got together in my office and the  
9 people from this merit system council said, well, it's  
10 entirely -- it's a county function, it's entirely up to the  
11 local people to come up with an affirmative action plan.

12           We just -- we just carry out the recruitment  
13 and selection process. We have nothing to do with appoint-  
14 ments and assignments of work products. The people in the  
15 personnel department of the welfare department or the social  
16 services department said, we haven't got any control over  
17 who comes, we can't appoint people because we don't -- we  
18 don't do the selection process.

19           The -- part of the people were under career service  
20 which were covered by us, the anticrime council, which is  
21 the actual applicant on all this is under us, so we had two  
22 personnel systems and two departments and we were never  
23 able to get it done and I said, well, how have you done this  
24 in the past?

25           And they said, well, we gave the LEAA your affirmative

1 action program and it was so complete that they never  
2 asked any more questions about it. And so I guess --  
3 I mean we got the funds, but it's certainly a triumph of  
4 something or other to have such elaborate procedures that  
5 it's not possible to carry out the purpose for which the  
6 grant program was established.

7 And I just can't really believe LEAA requirements,  
8 for instance they want to know every person on every shift  
9 if you have a 2,000 program to train some new deputy  
10 sheriff cadets, you've got to provide to them the name,  
11 ethnicity and so forth and shift and date of hire and so on  
12 and on and on and on for every single sheriff that we have  
13 in every single jail and court in the City and County of  
14 Denver.

15 There's no proportion to this sort of thing and  
16 there's no evidence of a comprehension on their part, that  
17 we might not be guilty of discrimination.

18 Q Are you aware as to whether or not other local  
19 governments have had to seek assistance from --

20 A They usually come to us. We've -- we've adopted a  
21 kind of mentor role for other jurisdictions and have pro-  
22 vided whatever technical assistance and advice we can  
23 provide, plus the state has also provided some technical  
24 assistance and advice as well.

25 Q But to your knowledge, you don't know if they've

1 gone out to hire private consultants?

2 A I'm not aware of any that have.

3 Q Previously, Ms. <sup>Kurtz</sup> ~~Kurtz~~, you told our staff one of the  
4 major problems local government has faced is that federal  
5 agencies assume a centralized authority and responsibility  
6 for personnel that does not exist?

7 A That's correct.

8 Q Could you explain why this is a problem?

9 A Well, back under a couple of administrations ago,  
10 national administrations ago, the idea was to strengthen the  
11 authority of elected officials, and so the decision was  
12 made and it carried down through the years that it's up to  
13 the mayor or the governor to guarantee compliance with the  
14 standards of the jurisdiction.

15 Well, it flies simply into the face of the real  
16 world. For instance, let's say that it's the Office of  
17 ~~P~~ersonnel ~~M~~anagement is going to give us a grant and they  
18 ask the mayor to sign an assurance that the merit system  
19 standards will be complied with.

20 Now, to begin with the Career Service ~~A~~uthority is  
21 under an independent board <sup>with</sup> fixed overlapping terms and  
22 the usual business of a completely independent personnel  
23 system. That takes care of 8,000 employees. The --  
24 another 2,000 employees are under the Civil Service Commission.  
25 Now, the Civil Service Commission is appointed, one member by

1 the mayor, again for fixed overlapping terms, one member  
2 by the city council, one member by the judges, I've forgotten  
3 just which judge but anyway -- now they're asking the mayor  
4 to guarantee what is going to happen with these actions on  
5 the part of these independent boards and commissions.

6 Of all the other groups I think the mayor, that are  
7 independent, I think the mayor might have control over his  
8 personal staff of about a half a dozen or so. And every-  
9 body else is totally independent of the -- of the mayor.

10 And yet the mayor is certifying the compliance by the  
11 jurisdiction as though he ~~actually~~ had the power to do some-  
12 thing. And this is common. This is something that you find  
13 in almost every major municipality in the country.

14 Q In addition to this problem, you discussed with  
15 our staff some other key problem areas with federal  
16 requirements for affirmative action. Would you please describe  
17 some of those difficulties and whenever possible, give us  
18 some specific examples?

19 A Well, I mentioned a couple of them with the problem  
20 -- with the handicapped, OSHA versus the Rehabilitation Act.  
21 And the LEAA problems, essentially. I think I've already  
22 essentially covered the problems.

23 Q What recommendations and changes would you like to  
24 see in federal enforcement efforts?

25 A Well, one thing I think we would like very much is if

1 EEOC could do something about its backlog of cases in a  
2 reasonable length of time. Every so often we give them a  
3 whole long list of cases and say when are you going to do  
4 something about all this? And it -- the backlog is excessive.  
5 I mean it's in years.

6 I think a second thing I would like to see is more  
7 of the approach that's taken by the Intergovernmental Per-  
8 sonnel Act, when it consolidated under the Office of Per-  
9 sonnel Management the enforcement of affirmative action  
10 requirements. I -- I'm perturbed about the proposals of  
11 the Office -- the Equal Employment Opportunity Commission,  
12 to get into this matter of jobs of comparable value. I think  
13 <sup>it</sup> was their <sup>turn</sup> ~~turn~~, partly because it's an effort by an adminis-  
14 trative body to overcome a whole series of court cases.

15 And secondly, because it's -- it's a certain pro-  
16 pensity on the part of that agency as far as I can observe,  
17 and that's a very personal observation, I'm not speaking  
18 for the city and county at the moment, certain propensity  
19 of that organization to tell us to do things without having  
20 any very clear idea of how anybody could go about complying.

21 And this is a -- this is one of the best examples  
22 I've seen in a while. So that I think that it would be  
23 very, very helpful if the regulatory agencies would get  
24 out of their -- out from behind their mahogany desks with  
25 their flags and their pictures of the President and such and

1 come out to where the rest of us troops are trying to carry  
2 out our programs.

3 And find out before they hand out these edicts  
4 what all is involved in our very sincere efforts to comply.  
5 And let me just say, and I -- for the record, that at this  
6 point, Denver is running about anywhere from 200 to about  
7 600% of the participation of minorities and women above  
8 what the labor force data indicates, so that we have to be  
9 doing the affirmative action since 1966 and we -- we no  
10 longer use goals, numerical goals because we'd have to lay  
11 off minorities and women to do so.

12 Q What do you base that statistic on in terms of the  
13 population?

14 A Well, the only decent figures we have, and I'm not --  
15 I'm not ecstatic about them by a long ways, is the census.  
16 The methodology of the other two studies that have been  
17 made, one a sampling study and the other one a projection  
18 of the population, are -- the methodology is so poor that  
19 it's -- it's even worse than old census figures.

20 I guess I would have to say one other point, inci-  
21 dentally, on the recommendations to somehow to get the  
22 President to allow and the Congress to allow that 1985  
23 census to take place, because ten years is too long, I  
24 mean there's been a total revolution in the characteristics  
25 of the labor force since 1970, and yet we have nothing that



1 is hard, and the more specific you have to become the less  
2 the figures are useable to determine what is going on.

3 For instance, if you just ask the question, well,  
4 what's the proportion of women in the labor force in the  
5 Denver metropolitan area, certainly 1970 isn't a  
6 criterion of anything. And the other estimates aren't all  
7 that great either, they don't come down to small enough  
8 units to do anything with.

9 Nationally they can probably run a pretty good  
10 estimate, the smaller the unit the worse the figures.

11 Q I just have one final comment and that is maybe you  
12 should get a job over here so you can go out and make sure  
13 that these individuals get out.

14 Thank you very much.

15 Mr. Pena, could you please state your full name, your  
16 employer, and your professional affiliations?

17

18 MR. ROBERT PENA

19

20 A (By Mr. Pena) Robert Pena, Denver Public Schools,  
21 school social worker, 900 Grant. I'm representing the  
22 Congress of Hispanic Educators.

23 Q Thank you. Are the Denver Public Schools under  
24 court order desegregation that includes an affirmative  
25 action plan for faculty?

1           A.       That's my understanding, that Judge <sup>Doyle</sup>~~Dial~~ (Phonetic)  
2       in '74 and '75, I believe, did pass an Order saying that he  
3       did want an increase of minority teachers and promotion of  
4       administrators for Blacks and Chicanos only. DPS did go  
5       ahead and pass a plan in May of '75, and they added, I  
6       think it was a four-page memorandum in connection with  
7       Judge <sup>Doyle's</sup>~~Dial's~~ statements or concerns.

8           Q       Can you tell us your role in formulating that  
9       affirmative action plan?

10          A.       In reference to the 1975 plan and to Judge <sup>Doyle's</sup>~~Dial's~~ plan,  
11       we were part of the plaintiffs in the Keyes case.

12                 We then, when they did pass the plan, we felt that  
13       the plan was very poor, <sup>we</sup> felt that there was more concerns  
14       than just promotions for Chicanos and Blacks in the area  
15       of teachers and administrators, <sup>we</sup> gave, during the time  
16       that they were developing the plan, their '75 plan, we  
17       expressed much concern over the participation of how they --  
18       of how they did it and who participated in it. We also  
19       expressed much concern over their attempt to make it labor  
20       pool ratio and our concern as to the student population ratio.

21                 We felt that throughout the nation most affirmative  
22       actions involving public schools had been student population  
23       ratios and so we went into a disagreement on that. We were  
24       very unhappy with the plan.

25                 The Congress decided to develop their own plan. We

1 went and tried to find assistance and we went to the  
2 Office of Civil Rights, I happen to have a personal friend  
3 there, Alex Aguilar, who did help us, who gave us a draft  
4 of a guideline for development of an acceptable AA program,  
5 and this draft that they had there literally became our  
6 bible.

7 We also, and I don't know where we got them, but we  
8 had two AA plans from some public schools in California.

9 Q To clarify when you talk about plaintiff, are you  
10 indicating Congress of Hispanic Educators?

11 A Yes.

12 Q When you were working and -- you, yourself, or a  
13 group, when you were working on the affirmative action plan,  
14 other than these things, what were some other major diffi-  
15 culties that came about doing the plan?

16 A Well, I think the thing that Alex gave us was, our  
17 feeling was it was very much geared for higher education  
18 and some of the things that were in there were very hard  
19 for us to, I guess, the lack of knowledge of affirmative  
20 action, the lack of other people having done it in the public  
21 schools, there were certain things in there that we felt  
22 was not applicable to us because of our public schools  
23 and our relationship with our professional organization  
24 The Denver classroom teachers had negotiations and agree-  
25 ments and we were unable to -- we had a very difficult time

1 seeking or understanding it. I think the very -- the most  
2 important thing was lack, lack of knowledge, ignorance  
3 as to how to really develop a plan.

4 Q And where did you say you went for technical  
5 assistance?

6 A The Office of Civil Rights, Alex Aguilar and this  
7 was done very informally, by the way, it was not done any  
8 official kind of way, it was done in friendship and more in  
9 that direction is what we went.

10 I might also point out that as we attempted to develop  
11 our program, our plan, we did go to the Black educators  
12 to get their assistance and their support. We also went  
13 to DCTA in an attempt to get a broader support. We also went  
14 to the school board indirectly to try to get them to help  
15 us, and like I said, the Black educators did become involved  
16 and supported us throughout.

17 DCTA had some fears and really didn't participate.

18 Q Did you go to EEOC for technical assistance?

19 A No.

20 Q Could you answer why?

21 A Ignorance.

22 Q Where were you able to find, you said that you went  
23 to Civil Rights, and is that where you find a model that  
24 could help you on this affirmative action plan?

25 A Right. That was -- that was our -- that was our

1 effort and that's where we met some success with Alex.

2 Q What are some other barriers that you see to affirmative  
3 action plans in public schools?

4 A Well, our situation is somewhat complicated because  
5 we're under a court order. And so everything has to be tied  
6 into that. I wanted to go one step further, I want to go  
7 back up a little bit.

8 In '77 we were able to get it with the new superin-  
9 tendent of schools, Dr. Brazinski (Phonetic). ~~We~~ We did sit  
10 down with him and we did point out some weaknesses of the  
11 '75 plan, and Dr. Brazinski agreed to work with us on up-  
12 dating the '75 plan.

13 And he did assign the executive director of personnel  
14 and the assistant superintendent responsible for the  
15 affirmative action of the DPS and they included a committee  
16 of Chicano educators and some Black educators and we did  
17 rewrite the plan, and using that rough draft that we had,  
18 our draft, and the guidelines from the Office of Civil  
19 Rights, we did develop a new plan.

20 And it was approved in December of '78. And at that  
21 time there was much improvement, you know, it was an im-  
22 provement, but it still needs more improvement.

23 They left some things out, I might point out that  
24 the community education council, the watchdog from the  
25 district court, critiqued it. They had some people from

1 affirmative action personnel from, I think there was one  
2 gentleman from the FAA office, who was an affirmative  
3 action officer, with -- and then I think there was a  
4 gentleman also from the Office of Civil Rights.

5 They critiqued it and they pointed out several weak-  
6 nesses of our plan. And I think in summary I could, you  
7 know, point out these weaknesses that they saw. And  
8 that we are in agreement with. And that we

9 One of them was utilization analysis, the specific  
10 utilization analysis, we apparently can't get that in there and  
11 I think they ended up putting one little paragraph saying  
12 something about utilization analysis. There was a lack of  
13 time frames or deadlines, that have not been established,  
14 and again we agree, recruitment and employment, there's not  
15 an applicant flow, it's not in detail enough to clearly  
16 delineate where we're weak or where we're strong or what's  
17 happening.

18 In the area of training, again it was just one small  
19 paragraph saying we'll do it to upgrade and not in detail.  
20 The promotion aspect of it. The goals and timetables which  
21 tied into utilization analysis and job group. The  
22 auditing and reporting system, we had a couple of -- three  
23 other concerns that weren't stated but we're very concerned  
24 about and that's the time spent by the affirmative action  
25 program -- on the affirmative action program by our administrator.

1           They left out responsibility of principals and  
2 supervisors, and as was pointed out from the lady from  
3 CU, the increase in staff.

4           We have even, I think, a larger staff than what  
5 CU has and we just have a gentleman that handles that, and  
6 one secretary. And that's a major concern on our part.

7           Q     If someone asked you on recommendations if a public  
8 school wanted to go into an affirmative action program, what  
9 would be some of the things that you would suggest that they  
10 would do so that they don't get into binds?

11          A     Well, I think one of the most important things is the  
12 support of the system. If you couldn't have the support  
13 of the system I think they always find any stumbling blocks.  
14 I think the Office of Civil Rights, I think, is well equipped  
15 to give assistance, but again if the system does not want  
16 to accept that help then it makes it quite difficult.

17                I also think now as a person can think back and see  
18 some of the mistakes, I think NEA, the National Education  
19 Association, which does have a good plan and my understanding  
20 does have good personnel that can help could also give  
21 assistance in that area.

22                MR. GOMEZ: Thank you.

23           Q     (By the Chair) May I inquire, you mentioned affirmative  
24 action officer. I'm not too much concerned about the  
25 individuals's name but what position is it?

1 A He's an assistant superintendent.

2 Q And the title is assistant superintendent for  
3 personnel?

4 A I'm not too sure, sir, maybe see --

5 Q Is it Ed <sup>Galleas</sup> ~~Calleas~~ (Phonetic)?

6 A Yes, Ed <sup>Galleas</sup> ~~Calleas~~, he's the <sup>D</sup> Department of <sup>E</sup> Employee  
7 Relations.

8 Q And what kind of staff does he have to see affirmative  
9 action programs are carried out?

10 A Him?

11 Q One person?

12 A Just one person.

13 Q What is the personnel strength in the Denver Public  
14 Schools, tenured and I guess administrative and so on,  
15 do you have any idea?

16 A I believe we're around the 5,000 range, including  
17 classified and certificated personnel.

18 Q Distinguish what is a certificated and classified?

19 A Certificated is a professional person.

20 Q Teacher?

21 A Yes, he's got, usually a BA degree or more. And the  
22 classified are the people that work from custodians, employees  
23 in that area.

24 Q Mr. Pena, you noted a number of criticisms. Whose  
25 responsibility is it to carry these particular affirmative



1 action programs into actual implementation and operation?  
2 Who should do it, in your opinion?

3 A I think the affirmative action officers, we call him  
4 administrator, should carry it out with -- starting, you  
5 have to start with the school board, to the superintendent,  
6 to the assistant superintendent. I mean --

7 Q Who puts the burden or the pressure on the school  
8 board or the superintendent or the assistant superintendent?  
9 I guess my question is what's the responsibility of the  
10 Office of Civil Rights, HEW, to see that these things are  
11 carried out, in your opinion?

12 A Well, obviously nobody has done it from the Office  
13 of Civil Rights, nor has the court, and I think the court,  
14 since we are under a court order and I believe sometimes the  
15 feds play games with us by saying we can not touch it be-  
16 cause it's under federal jurisdiction.

17 So they -- they play that game, you know, they can play  
18 it that way. Judge <sup>Doyle's</sup> ~~Dial's~~ court situation, I think we only  
19 have to report twice a year. And that's a minimal report.

20 Q However, you mentioned there is a community education  
21 council that's also charged with the responsibility of  
22 seeing that the court order is carried out?

23 A And I think they've done a very good job in attempting  
24 to work with DPS in dealing with this, they made a very  
25 good report and they critiqued it and very clearly pointed

1 out our weaknesses after the '78 --

2 Q What's the responsibility of the plaintiffs in the  
3 case of Keyes versus Board of Education?

4 A Well, I think our attempt has been to continue to  
5 monitor it and to push with Dr. Brazinski. We have set up  
6 another meeting and we're now -- now he has agreed to work  
7 with us in updating it even more.

8 Q Would CHE have the right to go into court, the U.S.  
9 District Court, in this particular case, to insist upon  
10 certain remedies or request or petition for remedies?

11 A I think we would use the CEC people to do it for us  
12 and we work closely with them.

13 THE CHAIR: Thank you.

14 Let me then call, I believe it's Dr. Martha Fair.  
15 For the record again, would you please state your name,  
16 occupation, and present employer?

17

18 DR. MARTHA FAIR

19

20 A (By Dr. Fair) I'm Dr. Martha Fair, I'm employed at  
21 the Colorado Department of Education, and I'm sex:desegre-  
22 gation project director.

23 Q (By the Chair) Would you explain it?

24 A Well, do you like sex equity better? The term simply  
25 means it is the opposite of race desegregation.

1           My responsibility is to assure that in all 181  
2 school districts and 17 boards of cooperative educational  
3 services, that both males and females are treated equitably  
4 in all programs practices and activites on the basis of the  
5 rules and regulations under Title IX of the 1972 education  
6 amendments.

7           Q     You've had considerable experience, I know, in affirma-  
8 tive action. Would you describe your past and current  
9 involvement so far as affirmative action is concerned relating  
10 to educational employment?

11          A     The project that I supervise and administer is a  
12 \$400,000.00 project, based on ten objectives, two of which  
13 are specifically related to affirmative action and we allocate  
14 approximately \$50,000.00 to the conduct of those two objec-  
15 tives.

16           The two objectives indicate that the staff of six  
17 persons on site at the Colorado Department of Education and  
18 eight staff persons who operate in satellite offices around  
19 the state will provide technical assistance and services  
20 for the 181 school districts to help them do something  
21 about underrepresentation of women and minorities in  
22 educational administrative positions.

23          Q     Do you use the EEOC guidelines? Equal Employment  
24 Opportunity Commission guidelines? You say you give  
25 technical assistance. What guidelines do you use?

1       A     The enabling legislation for our funding is --  
2 comes to us from Title <sup>VI</sup>~~IV~~ of the Civil Rights Act, and  
3 relates most specifically to Title IX of the education  
4 amendments. Those guidelines did include employment con-  
5 siderations until very recently. And in that regard, we  
6 did provide technical assistance and services related to  
7 affirmative action.)

8           The development of affirmative action plans, the  
9 development of work force analysis charts, the compilation  
10 of data based on school employees both certified and non-  
11 certified, the development of male-female population  
12 figures for schools who wish to have their affirmative  
13 action plans reflect the student population rather than  
14 the work force.

15       Q     Then you do make determinations as to whether or not  
16 a particular district is in compliance or not in compliance?

17       A     We are often asked to interpret EEOC regulations and  
18 other -- as well as other regulations with regard to  
19 compliance.

20       Q     I believe you reported to our staff that you're in-  
21 volved in collection of data and you're mentioning it now  
22 and you also indicated the federal agencies will likewise  
23 collect data at two different times, two different places.

24           Do you have comments in this regard?

25       A     Yes. We -- we find a major weakness, my colleagues

1 have also noted that weakness, in that the data is, as  
2 Maxine indicated, not current, <sup>70</sup>~~77~~ census figures do not  
3 help us with regard to, for instance, the number of girls  
4 who are now taking welding or auto~~m~~echanics or those kinds  
5 of things when we're trying to talk about vocational  
6 education, ~~And~~ I may seem off the point here but in the  
7 area of vocational education, most specifically, we must  
8 follow students through to placement and employment, and I  
9 see a connection with affirmative action in that regard  
10 because we are then talking about marketable skills at the  
11 high school level, at the completion of the high school  
12 program.

13 We also find that in the Colorado Department of  
14 Education, our school data services tend to be -- have a  
15 smaller staff than I have, and they are, of course, re-  
16 sponsible for collection of data whether it be for equity  
17 issues or finance, school finance issues or programmatic  
18 issues for developmental services, other delivery of ser-  
19 vices, and so the collection and compilation of that data  
20 sometimes is just that, with no analysis, no accompanying  
21 analysis of any kind.

22 Many times data is collected without breakdowns,  
23 breakdowns with regard to ethnicity or gender, sex or gender.

24 Q Now, do the feds also collect the same data, different  
25 times? Do they cooperate, coordinate?

1           A.    No, no, there is no cooperation, there is no  
2 coordination, and as well, we find that the -- even the  
3 format for the data collection is completely and totally  
4 different.

5           Q     Moving to another kind of topic now, does your  
6 agency, the ~~S~~State ~~D~~Department of ~~E~~Education, actually review  
7 the affirmative action programs of the various school  
8 districts in Colorado?

9           A.    Yes, the program that I supervise is often called upon  
10 to do just that. The difficulty that I have in answering this  
11 question is that the agency that I work for does not have an  
12 affirmative action plan, that --

13           Q     And you're referring specifically to what, the ~~S~~State  
14 ~~D~~Department of ~~E~~Education?

15           A.    That's exactly correct. That -- let me qualify it  
16 quickly. A plan -- it does not have a plan that has been  
17 reviewed, updated, monitored or evaluated since 1974. It  
18 is the only part -- department, in state government in  
19 Colorado, that does not -- is not a part of the state  
20 personnel system, and so there is no state, local or federal  
21 requirement for us to have a plan.

22           Let me just add that we -- we participate in federal  
23 financial assistance as -- in that we accept grants, awards  
24 and contracts, and I might just add that 70% of the agency's  
25 funding is based on those federal grants, contracts and

1 awards. But there is no one who insists that we have an  
2 affirmative action plan. The difficulty that I have in  
3 answering your question is that very often when I'm out  
4 in a school district and I'm saying to someone very  
5 vigorously and enthusiastically that these are the components  
6 in a plan, you must have goals and timetables, you must do  
7 an analysis of your work force, the available work force,  
8 and they often turn to me and say, let us see yours.

9 I'm very often stymied in my efforts.

10 Q As I understand this, as you said, 180 districts?

11 A One hundred eight-one plus.

12 Q How many districts have affirmative action programs,  
13 all of them?

14 A I am aware of four.

15 Q There's no way to require this under state or  
16 federal regulation?

17 A In the State of Colorado they are given -- the dis-  
18 tricts are given local autonomy and can do anything that  
19 they want to do unless some outside agency make such a  
20 requirement based on either the Executive Orders or some  
21 other legislation.

22 Q Let me pursue that a little bit. What is the trigger,  
23 what causes the federal agency to initiate a requirement  
24 for an affirmative action program? I keep thinking Jefferson  
25 County or --

1 A Yes, it has been my experience that employees,  
2 teachers or students complain to an agency like the Office  
3 for Civil Rights or the Justice Department. That agency  
4 comes in to investigate and the first question that is  
5 asked is, where is your affirmative action plan? In the  
6 absence of that affirmative action plan, that is one of  
7 the first mandates or first requirements that the federal  
8 agency will make. And that is that you get about the --  
9 you, the district, local education agency get about the  
10 business of developing a plan and set forth some goals and  
11 timetables.

12 Q As I understand the <sup>counsel</sup> ~~council~~ for the Denver Public  
13 Schools System was talking about the failure, either the  
14 nondiscrimination policy or the fact that there is no  
15 affirmative discrimination being practiced. I'm not too  
16 well aware of the testimony that went on this morning. But  
17 I understand that he's talking about nondiscrimination rather  
18 than actively going after affirmative action.

19 Now, what is your interpretation in regard to the  
20 statement that was made in regard to nondiscrimination as  
21 opposed to active affirmative action? Do you have a  
22 position on this?

23 A I'm not sure that --

24 Q All right, let me try to explain. As I understand  
25 the <sup>counsel</sup> ~~council~~ for the Denver Public Schools was talking about,



1 as long as a district doesn't discriminate, it's a passive,  
2 almost a negative kind of attitude, we're not discriminating  
3 so leave us alone. As opposed to the requirement as  
4 perhaps I see it, of actively engaging upon affirmative action  
5 to make sure that there's adequate representation of  
6 minorities, women and the rest.

7 What is your particular viewpoint on this, I'd like  
8 that in the record?

9 A It has been my experience that -- let me talk about  
10 this from two viewpoints, not two viewpoints but from  
11 two experiences, as, in my responsibility as sex desegregation  
12 project director I -- we require and collect a 639A assurance  
13 form. All 181 school districts have handed in that assurance  
14 form to my office.

15 I retain the copies and send copies of that assurance  
16 form on to HEW. So that when they apply for other grants,  
17 contracts or awards that requires such an assurance form,  
18 there is on record in HEW that the district says it will never  
19 discriminate against anyone on the basis of sex.

20 On the other hand, my actual practical experience  
21 shows me that this is simply a paper compliance effort,  
22 ~~it~~ it goes no place beyond that. ~~It~~ in no way assures protected  
23 classes of any kind that any attention will be paid, and  
24 from the outside there is no enforcement of the legal,  
25 binding contract within that assurance form.

1           There is no systematic compliance review that says  
2 you signed this in 1965, what have you done? There is no --  
3 there are no sanctions, if someone signs it and then pro-  
4 ceeds to do something that they said they would not do.

5           Q     What other suggestions would you make for beefing  
6 up enforcement on the part of the federal agencies to make  
7 sure that there is compliance? You've mentioned periodic  
8 review, imposition of sanctions. Would you suggest anything  
9 further?

10          A     I know that the changing of statutes is -- the  
11 amending of ~~Executive~~ Orders and that kind of thing are  
12 almost unheard of. But I'd like to see 11 -- the Executive  
13 Order 11246 also require affirmative action plans for  
14 grants and awards. It only requires affirmative action plans  
15 for contracts.

16                I would like to see that requirement extended either  
17 -- by amending that ~~Executive~~ Order or a new ~~Executive~~ Order  
18 that also requires affirmative action plans for anyone  
19 who accepts grants and contracts.

20                I'd also like to have a binding agreement between  
21 enforcement agencies like the ~~Office~~ for ~~Civil~~ Rights,  
22 the ~~Justice~~ Department, EEOC, even the Colorado Civil  
23 Rights Commission, between those enforcement agencies  
24 and technical assistance agencies like the state  
25 education agency. So that they can require, they, the

1 enforcement agency, can require that a district, who has a  
2 complaint, must call in the services of Montini (Phonetic)  
3 for technical assistance and services. As it stands, a  
4 district may have several complaints and may never gain  
5 technical assistance from anyone but spend all of their  
6 time defending themselves against one body of statistics  
7 or another body of statistics or a finding of probable  
8 cause or so on. And I say that because of the level of  
9 funding that we've reached in Colorado and the level of our  
10 staff's participation, and the possibility for expanding the  
11 office into even, an even greater staff.

12 Q Fine. Would you have any general comments in regard  
13 to this total matter?

14 A I wish sometimes that I could tell someone about  
15 more than four school districts who had affirmative action  
16 plans, and about more state, local and -- and local govern-  
17 mental agencies who had plans and who evaluated them and  
18 monitored them and addressed those plans as if they were  
19 a part of the -- the organizational structure in some way.

20 But in the absence of being able to tell you that,  
21 with regard to my work in Colorado, I wish that the enforce-  
22 ment agencies would put -- place a freeze on all hiring  
23 in an agency until someone is doing something to approach  
24 some goals and timetables.

25 I would like to see in the absence of taking away or

1 withholding funds, a total freeze on all hiring, on all  
2 positions, on all promotions, until someone is proving that  
3 they are in fact approaching the accomplishment of their  
4 goals and timetables and their affirmative action plans.

5 THE CHAIR: I would suggest that certainly would get  
6 somebody's attention, that's for sure.

7 Thank you very much, Dr. Fair.

8 MR. GOMEZ: Mr. Wood, would you please state your  
9 full name and your occupation?

10  
11 MR. JOHN WOODS

12  
13 A (By Mr. Woods) John Erwin Woods, I'm the state  
14 affirmative action supervisor, and I'm employed by the State  
15 personnel system for the State of Colorado, and I'm at  
16 1313 Sherman, Denver, Colorado, 80203.

17 Q (By Mr. Gomez) Thank you.

18 You've heard in this panel and earlier ones, <sup>comments</sup> ~~commenting~~  
19 criticizing lack of affirmative action in state institutions.  
20 Would you explain your jurisdiction as to these matters  
21 and the role of the State Personnel Office?

22 A Okay. My concerns are with the classified employees  
23 in the state personnel system. There are approximately  
24 28,000 classified employees in the state personnel system,  
25 and I have a staff of one. Namely me.

1 Q What federal agencies do you work with?

2 A I've been in this position for about the last, let's  
3 see, 15 months. During the last 15 months I have had  
4 contact with one federal agency, that contact was initiated  
5 by me, and it was the Office of Personnel Management out  
6 at the Denver Federal Center.

7 I've had other contacts with the Office of Federal  
8 Contract Compliance, but that was purely for information  
9 purposes, and that contact was also initiated by me.

10 Q How can affirmative action in Colorado employment be  
11 approved?

12 A How much time have I got? Let me try to give you  
13 kind of a quick sketch of the employment within which we  
14 have to operate. Okay, first of all the personnel system  
15 for the State of Colorado is a constitutional system. The  
16 State Personnel Board, which establishes the rules for the  
17 operation of that system, is mentioned in the State Con-  
18 stitution.

19 Okay. So you've got a constitutional system on one  
20 hand that states that you must hire from the top three  
21 eligibles, okay? Then we have an Executive Order that was  
22 signed by the Governor in April of 1975, that in effect  
23 establishes a commitment of his administration to equal  
24 employment opportunity.

25 That Executive Order states that the executive director

1 of the Department of Personnel will assume, quote, a leader-  
2 ship role, unquote. I am unaware of any legal base at  
3 the state level that specifically assigns the authority  
4 and the responsibility to any one particular agency to  
5 make affirmative action and equal employment opportunity  
6 work in the State of Colorado.

7 So, okay, my sense of it is that effective affirmative  
8 action is a function of commitment, resources, opportunities,  
9 efforts, and results.

10 Given little or no commitment, the chances are  
11 pretty small that you're going to get adequate resources.  
12 Given minimal or no resources, the probability is great that  
13 you are not going to be able to take advantage of your  
14 opportunities. If you are unable to take advantage of your  
15 opportunities, the probability is great that you are going  
16 to put forth little or no effort.

17 Putting forth little or no effort yields less than  
18 optimum results. So, given that particular climate, the only  
19 entity that I see that's left to plug the gap is the federal  
20 government, and I've heard a lot of talk, I've heard a  
21 lot of buzz words, but talk and buzz words don't get it  
22 done.

23 Q You're talking about the government, which federal  
24 agency do you see is most appropriate to enforce federal law  
25 in this area, and why is active federal enforcement needed?

1           A.     Because what appears obvious to me is that there is,  
2 for lack of a better term, I will say a conflict between state  
3 personnel boards and state legislature, as to which is the  
4 proper forum to establish public policy with respect to  
5 affirmative action in the state personnel system.

6           Okay. The resources that are needed to get this  
7 effort off the ground, comes from the state legislature.  
8 If their perceptions are that there is no problem, you don't  
9 get the resources and without the resources, you don't  
10 get the job done.

11           THE CHAIR: ~~Let me then thank the members of the panel~~  
12 panel --

13           DR. CYNTHIA VALENTINE: I'd like to ask a few questions  
14 from Mr. Woods before --

15           THE CHAIR: Sure.

16           Q     (By Dr. Valentine) A couple of these are clarifica-  
17 tion.

18           A     (By Mr. Woods) Okay.

19           Q     You were talking about the State Constitution, and  
20 the fact that it specifically gives authority to <sup>the</sup> personnel  
21 ~~board~~ board. You also mentioned that you were responsible for  
22 classified employees. I wonder if you could further  
23 point out why that is the case in the sense that no other  
24 state employees are covered under affirmative action? Could  
25 you expand on that a little bit?

✓ 1 A. Yes. The Constitution establishes what kinds of  
2 positions in what kinds of agencies are exempt from the  
3 state personnel system. And educational institutions,  
4 heads of educational institutions, their principal staffs  
5 that are directly related to the instructional function,  
6 those people are specifically exempt from the state per-  
7 sonnel system. Being exempt, then, the rules of State Per-  
8 sonnel Board have no force or effect with respect to people  
9 in those kinds of positions.

10 Q. So what you're saying is no state enforcement agency  
11 in effect, or your agency as the affirmative action agency  
12 has no authority over any of these organizations?

13 A. I will go so far as to say I don't really have any  
14 clout or authority over those people that are in the state  
15 personnel system. I've taken, I think, more than what I  
16 have a legal base for. I think that people have cooperated  
17 with me because they know me and they know my boss. But as  
18 far as having any clout, I don't have any.

19 I can't force an agency to put together an affirmative  
20 action plan. I've gathered a lot of statistics. Yes, and  
21 these stats I use as an indicator too.

22 Okay, as an example I know that as of the 30th of  
23 June of last year, that White males made up 42% of the  
24 employees in the state personnel systems and they held 85%  
25 of the positions at middle management levels and above.



1           Okay. That, to me, is an indicator. But I don't --  
2 I don't have the staff to probe that particular stat<sup>e</sup>, okay,  
3 further, and say hey, what does this really mean? I know  
4 that three years ago there was an 18% spread between the  
5 median grade of White males the Hispanic females. I know  
6 that now, there is a 17 grade spread.

7           Okay, so the spread has been narrowed by one grade,  
8 but I don't know if that came about because of positive  
9 affirmative action efforts or if it came about as a result  
10 of the annual salary survey. I don't have the staff to  
11 probe that stat further.

12       Q     So, what you're suggesting is, since the State has  
13 such a situation that there is no way that they're ever  
14 going to monitor any of these types of programs, for any  
15 state institutions, is the only hope, then, is the federal  
16 agencies to do this?

17       A     That's what comes through loud and clear to me.

18           And I would hope that it would come through loud and  
19 clear to the feds.

20       Q     Let me ask another question that you related to our  
21 staff earlier that I think is an interesting issue that  
22 you've raised and I think I'd like to have you discuss it  
23 further.

24           This is in relationship to what the state personnel  
25 system considered to be an innovative selection program'

1 commonly known in this area as three plus three. And I  
2 understand from discussing with you previously, that this  
3 particular program did run into some difficulties with  
4 federal agencies.

5           Would you like to explain some of that issue and some  
6 of the problems that you had in that regard?

7           A. Very briefly and very carefully. Okay. Number 1,  
8 back about 1975, I believe it was, '75 or '76, the State  
9 Personnel Board conducted a series of what they considered  
10 as factfinding hearings. And as a result of those hearings,  
11 the Board concluded that the state personnel system had  
12 operated in a fashion that did discriminate against ethnic  
13 minorities and women. The Board passed a rule that, in  
14 effect, said that if you are underutilized, that in addition  
15 to getting the top three names on the eligible lists, that  
16 you could ask for the top three protected class members.

17           There was nothing in the rule that said that you had  
18 to ask for the top three protected class members, there  
19 was nothing in the rule that said that you had to hire, it  
20 said that you can take a look at them. And if you con-  
21 clude that you want to hire a protected class member, who  
22 was not in the top three, then you could.

23           So all three plus three was was a tool, the use of  
24 three plus three from July of '77 through the 30th of  
25 June, '79, resulted in 495 protected class members' hired.

1           Now, granted, that doesn't set the word on fire. But  
2 I say that that's 495 hires of protected class members that  
3 we would not have gotten if it were not for three plus  
4 three. Okay? When the word became public that the Board  
5 was going to pass a three plus three rule, it was a federal  
6 agency that, in effect, indicated that we might lose our  
7 federal IPA grant if we went ahead with it. I believe that  
8 the compromise was that because the federal IPA grant comes  
9 to the Department of Personnel, that we could not use three  
10 plus three to fill any of our positions, but all the rest  
11 of the agencies in the State could.

12           So, we have been trying to get a feel from other  
13 agencies as to why don't you use three plus three more often?  
14 And of course they are able to say, why are you asking us  
15 this when the feds won't even let you use it?

16           But at any rate, that's the story.

17           Q     Would you be more specific and state which specific  
18 federal agency it was that did not want to use the three  
19 plus three?

20           A     Those days it was the regional office of the federal  
21 Civil Service Commission, now it's known as, I think OPM.

22           Q     Thank you.

23           Let me ask you another question that's somewhat  
24 related to that. Did OPM at this time or any later time  
25 offer any assistance at all to the state personnel system,

1 and do you receive IPA grants from OPM?

2 A. Yes, we get an IPA grant and I think it's somewhere  
3 in the neighborhood of a quarter of a million dollars.

4 Q I see. And did you get any assistance from OPM?

5 A. To my knowledge, no. Because shortly after all of  
6 this came about, I went on a leave of absence and I did  
7 some, you know, consulting work for the last couple of years.

8 DR. VALENTINE: Okay, thank you.

9 THE CHAIR: Thank you. I do thank the members of the  
10 panel, Ms. Bottoms, Ms. ~~Kutrz~~<sup>Kurtz</sup>, Mr. Pena, Dr. Fair, Mr. John  
11 Woods. However, before I recess this particular session,  
12 we're certainly honored to have the Honorable Patricia  
13 Schroeder, Congresswoman from Colorado in our midst. <sup>S</sup>She has,  
14 of course, been very vitally concerned with the problems  
15 of fair employment, minorities, affirmative action, these  
16 kinds of things, and I might say off the record, I happened  
17 to meet her down at Duffy's Tavern at noon and we were  
18 drinking green beer and we said well, Pat, is an appropriate  
19 kind of a name.

20 May I call the Honorable Patricia Schroeder forward  
21 to extend a few words?

22

23 (Applause)

24

25

1 HON. PATRICIA SCHROEDER

2  
3 A. (By Ms. Schroeder): Do you think we look Irish?

4 Well, thank you, and I've enjoyed -- not enjoyed,  
5 let me say it sounds like what I hear every day sitting here  
6 listening to you.

7 As you probably know, I chair the civil service  
8 part of post office and civil service, <sup>subcommittee</sup> and so as all of you  
9 say, why isn't the federal government doing more?

10 Let me just put a bit of a perspective on it because  
11 I think it will tell you where we have to go, those of us  
12 who care so much about civil rights and making sure everybody  
13 has equal employment opportunities in this country.

14 Number 1, I come from a body which is really like the  
15 last plantation. The U.S. House of Representatives has yet  
16 to give any remedies for the rights that we enacted a long  
17 time ago. They've yet to enact any remedies. So while we  
18 have in our Canons of Ethics that we can not discriminate  
19 and so forth and so on, there's no remedy.

20 And there was a very famous case that went up last  
21 year to the Supreme Court on Otto Passman (Phonetic), that  
22 wonderful Congressman from Louisiana, who had a woman in  
23 his office, she had worked her way up, he promoted her to  
24 administrative assistant, then he sent her a letter saying  
25 I've decided I really want a man after all and fired her.

1           And she's really been blackballed everywhere and it's  
2           been very tough.

3           The Supreme Court says she has the right to sue, now  
4           she's back down trying to sue and the question is whether  
5           she can ever get any damages and what happens. There's  
6           about a 100 of us in the House, kind of the skunks at the  
7           garden party, that have put ourselves under those kind of  
8           remedies and set up a board, given remedies and so forth.

9           But the rest of ~~us~~ <sup>the House</sup> ~~wish~~ we would all drop dead, they  
10          won't give our little in-house affirmative action group even  
11          a phone, and in Washington it's not that hard to get a phone  
12          or a room. ~~The~~ Blue Collar Caucus has a room, now. ~~The~~ ele-  
13          phant stompers that meet on Wednesday afternoon have a room  
14          but there is no room for the House Fair Employment Practices  
15          Committee.

16          So, first of all, you get some idea as to the commit-  
17          ment at the legislative level. We are not under EEOC or any-  
18          thing else, because of the separation of powers. Obviously  
19          the executive branch can't come level on the legislative  
20          branch nor the judicial branch and they have some problems  
21          over in the Supreme Court themselves.

22          They're not exactly an open fair employer.

23          But -- so you start with that mind set and you figure  
24          those are the guys making the rules. So they're making  
25          them for the federal government, but their commitment is

1 not such that they're funding these agencies to do their  
2 job.

3 I, as Chair of the Civil Service Committee, have  
4 been going around trying desperately to find out what we're  
5 doing in different agencies. And it really is appalling.  
6 Part of the problem has been, I think another group took  
7 over this debate and started calling it reverse discrimina-  
8 tion and all those awful words that were floating around.

9 And we did not have an adequate counterattack. I'm  
10 thinking of probably one of the more startling hearings that  
11 I've ever had in Washington was in '79. I had the foreign  
12 service people <sup>in</sup> ~~left~~. We just finished rewriting the entire  
13 Foreign Service Personnel Act, which was a nightmare.

14 We had them all up and I said you know, it is  
15 amazing to me that you don't have in your upper echelons  
16 any Asian-Americans, Black Americans, Hispanic Americans,  
17 female Americans, southern Americans, even White, you  
18 know, why? And the guy said with a straight face, which  
19 I just about never recovered from, those people don't  
20 like to travel very much.

21 We got much more involved in what was going on in  
22 foreign service and found out that their test, they have  
23 one of the most incredible tests that I have come up  
24 with tests that literally discriminates against southern  
25 White males, western White males, Blacks, Asians, females,

1 Hispanics, I mean they, I don't know how they ever got it  
2 together. It literally lets through people from about four  
3 schools.

4 And if you try and change the test they scream  
5 you're lowering the standard and all this sort of thing  
6 and that's where we blew it.

7 We should have gone forward and said what does knowing  
8 who won the film -- ~~the Cannes~~ Film Festival in 1959 have to  
9 do with foreign affairs? And you certainly couldn't mess up  
10 our foreign affairs any more.

11 In other words, we should have come forward and said,  
12 that I certainly think that a lot of our Native American  
13 -- Americans would have had a lot more feeling for some of  
14 the developing nations and what colonial powers had done to  
15 them than people from Princeton, Harvard and Yale.

16 Some of the Black Americans certainly would have  
17 much more feeling about Africa than some of the people  
18 that we've put in, and -- in other words, this is a country  
19 that had the most phenomenal resource that you could ever  
20 have to run the State Department. We should have tapped in  
21 to the fact that we're a stew and we have people that con-  
22 tribute from all over and that could really have done a job  
23 for us, and instead we devised the test that shut them all  
24 out, and we've had a lousy foreign policy as a result.

25 Now, you can see that with all sorts of programs and



1 that going on. We've tried to open it up, people are  
2 screaming at us, you've lowered the standard, yeah, yeah,  
3 yeah, yeah, yeah, but difficult thing is do those standards  
4 relate at all to whether or not you know how to administer  
5 foreign policy?

6 And I would say that based upon past performance,  
7 no.

8 I can't believe it -- that we really have the most  
9 efficient State Department that the country has ever seen.  
10 But when you see that in the Congress you see what is happen-  
11 ing at the federal level, you have a tremendous problem.  
12 We've gone around and rhetoric, rhetoric, rhetoric, we have  
13 thrown rhetoric and affirmative action until we're purple  
14 and I hate to tell you but the federal government has worse  
15 statistics than the private sector and the private sectors  
16 pretty mad about that.

17 They took it seriously. They thought we meant some-  
18 thing, they went out and did something then, someone came  
19 back and looked at us and said, hey, how come you guys  
20 aren't hiring anybody? That's female, Black, Hispanic,  
21 Asian, you know, Native American? And we said, well, they  
22 didn't pass the test or we had veterans preference, We have  
23 15 different reasons as to why it didn't happen or they  
24 didn't come on at a certain time and you know, really, basically  
25 what it is is we haven't enforced it, We haven't made it real.

1 ~~We~~ haven't given it any powers. And all we've done is allowed  
2 them to go around and have a couple conferences a year if  
3 they can get money to do that to bring everybody in and say  
4 you know, this is going to be Hispanic Week or Black Week  
5 or something and we'll bring some speakers in. And they  
6 do it.

7           And now what it is, you get a cookie and some punch  
8 and somebody comes over and talks to you about it but  
9 nothing happens. And when you build everybody's expectations  
10 up to <sup>here</sup> ~~hear~~ and nothing happens, you have a tremendous  
11 morale problem and all sorts of things.

12           And then the private sector says, hey, what is this  
13 you guys are pushing cookies and you come over here and  
14 come after us, if we don't do something. We end up in the  
15 EEOC.

16           Well, hopefully under civil service reform with  
17 the EEOC having much more direct access to our cases we'll  
18 be able to shake them out. But at this point, again we're  
19 finding legal roadblocks being thrown in front of people,  
20 it gets very technical and so forth.

21           And we just finished doing, maybe you read about  
22 them in the paper, a whole week of hearings on whistle blowing.

23           And it's the same kind of thing. Well, part of the  
24 whistle blowing cases have to do with racial discrimination.  
25 in the federal marshal's case. Shocking what happened,

AV

1 even under Civil Service Reform Act. And their whole  
2 thing was, well, you know, those young men didn't know how  
3 to present their case. They were supposed to present it  
4 like they were in a court of appeals, I guess, and that  
5 was not the intent that the Congress had. ~~We~~ weren't trying  
6 to teach everyone in the federal service to become a lawyer  
7 and file the right kind of brief.

8 The question was were they or were they not dis-  
9 criminated against for blowing the whistle on racial dis-  
10 crimination within the federal marshal's area down in the  
11 south? That was the issue. But somehow they said, well,  
12 the question is that was inside whistle blowing and the  
13 Congress only meant outside whistle blowing, and they didn't  
14 write the brief right and you know, 18 other things.

15 Now, that word gets out through the whole federal  
16 sector and let me tell you, no one's going to come forward  
17 again real soon unless they didn't read and didn't under-  
18 stand what's going on.

19 So I don't know what we do. I don't think we can --  
20 and I see this all the time. People say, well, the city  
21 isn't going to be interested in hiring minority contractors  
22 and if the feds come in and are heavy and shut off contracts  
23 because they haven't been complying with section 8A, then  
24 everybody gets mad at you and says, how can you take that  
25 money away from your city? And yet, if they don't come in

1 and shut it off, why is the city going to pay any attention  
2 to section 8A? And we're on that merry-go-round.

3 And legislators tend to cough and say, well, next  
4 time do better.

5 Oh, yes, we'll do better next time and next time  
6 they don't do it again because they know that so what?  
7 They can thumb their nose at 8A. They can thumb their nose  
8 at any of those things, and when the feds come in to shut  
9 them off, the mayor or the governor or whoever happens to  
10 be impacted, county officials call and say, you can't let  
11 this happen to us.

12 And you know, it means jobs, it means this, it means  
13 that. So until you put teeth in them, it's nothing but  
14 words. And that's exactly where we are.

15 So, it is really getting together and demanding  
16 legislators do something other than talk. It's very hard,  
17 they're genetically programmed to talk, but you've got  
18 to do something other than talk. I think it's very destructive.  
19 This is the society that really should have broken through  
20 those things long, long ago. In fact, the man I sat next  
21 to on the airplane as I flew out here today said, I was  
22 talking to him and he said, oh, are you finally doing some-  
23 thing about the Foreign Service Personnel Act?

24 We were trying to do that back in 1963, and that,  
25 that really is true, as I hear you're talking about state

1 personnel board stuff, I remember going through those cases  
2 back before I went to Congress. So the federal government's  
3 <sup>not</sup> going to be cutting money right and left. They aren't  
4 going to come around, they've gotten burned. Every time  
5 they touch a state or local government they scream inter-  
6 ference, get out of here, leave us alone, local autonomy.

7 And I think we're going to have to build our base bottom  
8 bottom up. I mean we're going to have to make it so that  
9 council people, county officials and everyone else really  
10 have to start having some accountability. Because there is,  
11 I hate to bring you the bad news, but anybody that thinks  
12 that the government, the federal government is going to whip  
13 in here on golden wing and do all these things in the next  
14 couple of years, must believe in the tooth fairy.

15 And the bad news is they aren't going to and there is  
16 no such thing as a tooth fairy. So that is not particularly  
17 good news. I will continue to work very, very hard at the  
18 federal level and we're going to push every one of these  
19 things just as hard as we can push it to try and get  
20 real commitment and get them opened up and get them moving.  
21 But it is -- I can not tell you how hard it is because  
22 the rhetoric is all the other way.

23 We probably ought to shut the door and come up with  
24 new answers to reverse discrimination and all that sort of  
25 thing. Because that seems to be winning the day at the moment

1 out in the debates that are around. So let everybody think  
2 about that a bit and let's not just sit by quietly and allow  
3 it to slide.

4 We've let it slide too long, and they're just not  
5 funding it enough so that it can possibly be enforced.

6 At any level, whether you're talking about Title IX  
7 for education, whether you're talking about bilingual educa-  
8 tion, whether you're talking about anything, we're just not  
9 funding any of it to even come close to it.

10 I want you to know that this federal government has  
11 still refused to print the Constitution of the United  
12 States of America in Spanish. Now, I mean that is just  
13 really a disgrace. What about the people in Puerto Rico?  
14 Well, if they want to read their Constitution they better  
15 learn English, that's the attitude.

16 We print everything, you know, I mean have you ever  
17 seen them get sensitive about we can't print any more, we're  
18 just printing too much? I mean we print all sorts of  
19 garbage and yet they continue to refuse, when someone writes  
20 me and wants the Constitution in Spanish, I have to go  
21 over to the Panamerican Union, now that doesn't make any  
22 sense.

23 So, a lot of these things just show that that sensi-  
24 tivity has not come to Washington yet, and we're going to  
25 have to build it back all over again from the grass roots up,

1 because anything else with the budget the way it is, with  
2 the times the way they are, with the rhetoric going the way  
3 it is, we got a lot of work to do.

4 So, I wish I could come and say we'd solved it,  
5 but I guess what we probably should do is go back and  
6 celebrate St. Patrick's Day, that may be more cheerful than  
7 this, but anyway, thank you very much for coming and I'm  
8 really delighted that you're doing all this. Thank you.

9

10 (Applause)

11

12 THE CHAIR: Thank you very much, Representative  
13 Schroeder.

14 I will declare a ten-minute recess, our session  
15 number 6 will begin in ten minutes.

16

17 (Short recess)

18 (The following was chaired by Mr. Minoru Yasui)

19

20 THE CHAIR: If I may call the sixth panel to order.

21 Again we certainly appreciate the fact that the  
22 panelists are here, I believe we're still missing one but  
23 I think I'm correct in saying it's Rudy Livingston, Robert  
24 Dunn, Dr. Gilbert Roman, and I think Mr. Casteel is missing,  
25 is he not? And you are Jim Stone?

1 MR. STONE: Right.

2 THE CHAIR: And Bennie Daugherty.

3 Of course the members of the panel here are Donna  
4 Lucero, Cynthia Kent, and myself, for the Colorado State  
5 Advisory Committee.

6 We do have staff member Joanne Birge and the  
7 Washington staff, Mr. Don Dickerson.

8 This particular session, as I understand, is getting  
9 into the matter of the state and federal response. I would  
10 like to first call upon Mr. Rudy Livingston, and for the  
11 record, Mr. Livingston, would you please state your name,  
12 and your position?

13

14 MR. RUDY LIVINGSTON

15

16 A (By Mr. Livingston) I'm Rudy Livingston, the Executive  
17 Director of the Colorado State Department of Personnel.

18 Q (By the Chair) Would you define in your own words  
19 how you would classify or define affirmative action?

20 A To me affirmative action is a positive approach to  
21 the resolution of a social problem. It is an added dimension  
22 in my mind to the total personnel function. And it should  
23 be given as much weight and as much concern as we do  
24 questions such as, whether the person meets the minimum  
25 qualifications for a classification of work.



1 Q Would you describe what your authority is so far as  
2 the state personnel system is and the role of the State  
3 Personnel Board?

4 A I am the administrator of the state personnel system  
5 which Mr. Woods described to you, I have the responsibility  
6 for approximately 28,000 employees. This is approximately  
7 one-half of the total state work force.

8 The legislative branch, the governor's office, faculty,  
9 administrative positions in educational institutions are  
10 exempt from the system. The Colorado Personnel Board is  
11 a policy and rule promulgating and quasi judicial body.

12 I administer the rules as promulgated by the board.

13 Q What do you think the image -- how do you think the  
14 State of Colorado looks as the employer of women, minorities  
15 and the disabled, and how would you account for this, what  
16 appears to be, good, bad, indifferent?

17 A I think it would, to respond to that question, I have  
18 to deal with, you know, what part of the body are you looking  
19 at? As we look at the numbers of protected class employees  
20 we're probably in pretty good shape. As we look at where  
21 they are, we're in bad shape.

22 As we look at some of the other aspects, as we look  
23 at affirmative action, I think Mr. Woods explained to you  
24 that he is the sole individual in our department who is  
25 responsible for attempting to administer an affirmative

1 action program of a magnitude involving 28,000 employees  
2 and 20 departments of state government.

3 So, as you look at that part of the body again we  
4 look bad.

5 Q Overall, how would you characterize it?

6 A I would just say that I am not satisfied with the  
7 picture that I see. And I'm amazed at how important it is  
8 that you pay close attention to what's going on. Because  
9 if you turn your head for a moment, you're going to lose  
10 ground.

11 Q What federal agencies do you work with and what is  
12 the basis of your relationship with these particular agencies?

13 A I work primarily with the office of personnel  
14 management, our relationships are good in that sense. And  
15 we are involved in a lot of common activities such as the  
16 Intergovernmental Personnel Act, which has been referred  
17 to before.

18 Q Is this a grant, a contract?

19 A Yes.

20 Q Do you have many such grants, contracts?

21 A The department itself does not. I am, as the head  
22 of the personnel department, am the governor's designee to  
23 handle the IPA program. And we do a lot of subgranting  
24 through that program.

25 Q Other agencies in the state, of course, get a number

1 of grants too, I'm sure?

2 A Yes, they do.

3 Q Do the federal agencies, you indicated the OPM works  
4 very closely with you. Do they provide technical  
5 assistance in regard to affirmative action?

6 A That is available to us. We have taken the position,  
7 I think there are two fairly sophisticated personnel systems  
8 in the state, and that is the City and County of Denver  
9 and the State of Colorado. And because of that degree of  
10 sophistication that we have, we feel it much more important  
11 and have adopted the philosophy that the technical assis-  
12 tance should go to the smaller jurisdictions and those  
13 who need that kind of assistance, perhaps more than we do.

14 Q Now, does the Colorado Personnel System follow the  
15 EEOC guidelines as far as affirmative action in employment  
16 is concerned?

17 A Yes, we do.

18 Q Do you or Mr. Woods file reports with the EEOC?

19 A Yes, we do.

20 Q I notice that in some of the reports there's the  
21 problem of, you know, gathering all the data and the hundreds  
22 of reports that are required. Do you find this a problem?

23 A Yes, that is a problem. That is, of course, I think  
24 that's a universal problem. I recall attempts to get  
25 coordination between reports. For example we work with some

1 employees in colleges and universities in which those  
2 universities have to file what is known as an EEO6, we file  
3 an EEO4, we've had problems in coordinating the various  
4 classifications, etcetera and so forth, this has always been  
5 a problem, and hopefully it's a lessening problem. But it  
6 is a constant problem.

7 Q Were you here when Mr. Woods was discussing the  
8 possible conflict between the federal agencies and the  
9 state personnel system in regard to the three plus three?

10 A Yes, I was.

11 Q Would you elaborate further or clarify that?

12 A Well, I've just been shown a letter which was sent  
13 to us, and it's been indicated that Mr. Woods' comments were  
14 not exactly accurate in that the letter indicated that, or  
15 we were told that we were not told that we could not use  
16 three plus three. But that we were told that we should  
17 consult with the agency if we wished to use it.

18 I would have to say that that's a fresh interpretation  
19 of that letter to me. Because I have been laboring under  
20 the impression, perhaps based upon oral discussions, that  
21 we could not use it. And perhaps this is a part of the  
22 problem.

23 Q Well, that would be a clarification.

24 A All right. I could use as an example, the response  
25 to the three plus three question. We have never received

1 official federal approval of that approach.

2 The language that is used there is that we choose not  
3 to take exception to this approach at this time. So,  
4 perhaps --

5 Q. They ain't objecting?

6 A. Yes.

7 Q. Would you agree or disagree with some of the earlier  
8 characterizations of poor affirmative action records in  
9 the Colorado institutions of higher education? I understand  
10 there's been some people saying they've got an awfully poor  
11 record as far as affirmative action is concerned. Would  
12 you agree or disagree? If so, would you elaborate?

13 A. Again as we talk about those positions under the  
14 personnel system, we have the statistics as to exactly  
15 how those various agencies are performing. I do know that  
16 the Department of Education in which Dr. Fair is employed  
17 has what I would consider to be a poor record. But I,  
18 without having the data in front of me, I would not like to  
19 comment upon them individually.

20 I would hazard a guess that in the system, which I  
21 administer, even though it's voluntary, that we probably  
22 have a better record than the remainder of the system.

23 Q. If you characterize the record as certainly not  
24 good, what federal agencies could reach this problem or  
25 attack this particular problem, in your opinion?

1       A     Well, again those agencies that are responsible for  
2 the granting of funds, etcetera. I think that this seems  
3 to be the only thing that gets attention, many times, par-  
4 ticularly with our state legislature, and today I'm not  
5 even sure that it would get their attention. I've heard  
6 comments as the legislature has this session a bill which  
7 is moving very rapidly which will wipe out all of the  
8 affirmative action rules, which the personnel board passed.  
9 And it was pointed out to them, because of a disclaimer  
10 clause in the rules which said essentially that the per-  
11 sonnel system would adjust to federal requirements, I have  
12 had state legislators say to me, after having pointed out  
13 to them, that as much as 532 million dollars worth of federal  
14 money may be impacted by that decision.

15           I've had them say to me, so what? So -- I'm not  
16 sure that that threat is a viable threat with this legis-  
17 lature.

18       Q     What, beside the legislature, should or could the  
19 State of Colorado be doing in regard to institutions of  
20 higher learning and affirmative action, in your opinion?

21       A     I think the total system, as Mr. Woods indicated,  
22 you first of all, you need the commitment, you need the  
23 concern, and you need the resources. We've had one affirmative  
24 action position over the past ten years or so.

25           I can think of no year in which, in my budget request,

1 I did not ask for additional resources in the area of  
2 affirmative action. And I've been told that it's not a  
3 problem, that they're not needed, two years ago I got it  
4 through -- got a position approved by the joint budget  
5 committee which presumably is the toughest hurdle to  
6 cross, and I lost it in the Republican Caucus, so that even  
7 if you win the tough battles you're still subject to losing.

8 And we still only have one individual. We asked  
9 for one this year, and it's our impression and the feedback  
10 that we get is that that position will not be funded this  
11 year.

12 Q Going back to these contracts and grants, do you have  
13 any idea as to the number of Colorado departments and  
14 institutions that have federal contracts so as to come under  
15 the jurisdiction of the OFFCP?

16 A I would say that probably every department has a  
17 grant. We've -- I've heard testimony, for example 60% of  
18 the income at Colorado State University is from research  
19 grants, etcetera. A large portion of which are federal  
20 money. I did contact the Office of Personnel Management  
21 in regards to testimony before the committee on the  
22 ~~recission~~ of the state personnel rules and asked for a dollar  
23 amount. As to what would be impacted, should those --  
24 should we not be able to conform with the federal requirements  
25 and they gave me the figure of 532 million dollars for

1 agencies, that maybe we're not doing enough so far as  
2 outreach, so far as advertising in minority papers and some  
3 of these things, and my response to that is, we do that.  
4 And that is not enough. And that if that is all that we  
5 have, we will be here in the year 2000 still talking  
6 about affirmative action and how to resolve the problem.

7 So we have to have something more dramatic than the  
8 normal approaches to the solutions -- for these kinds of  
9 problems.

10 THE CHAIR: I believe regional counsel has a question.

11 Q (By Ms. Birge) I just wanted you to clarify when  
12 you're talking about federal money and federal grants, is  
13 there any federal money coming in to Colorado that would  
14 be called a contract so as to come under Executive Order  
15 11246?

16 A I am sure there is. I could not speak directly to  
17 that issue because that would not necessarily come under my  
18 jurisdiction. The contract, affirmative action program is  
19 administered out of the Office of State Planning and Budgeting  
20 and they could probably more clearly answer that question.

21 THE CHAIR: Were there further questions? Donna?

22 Q (By Ms. Lucero) I'd like to ask Dr. Roman some  
23 questions, would you please state your name, occupation  
24 and title?  
25



1 fiscal year 1978.

2 Q Would you have any further general comments in  
3 regard to the personnel system of Colorado affirmative  
4 action, any philosophical improvements that might be  
5 engendered?

6 A Yes. I used to make an analogy, and I've gotten  
7 a lot of questions as a personnel ~~director~~ who is  
8 supposed to be certainly supportive of the merit system  
9 concept. And I've been asked how I can push affirmative  
10 action and such things as three plus three. And it's been  
11 my position that essentially affirmative action and merit  
12 system principles can live together but they can't get  
13 married. I think that the merit system approach is a  
14 solution primarily to a political problem. I believe that  
15 affirmative action is a solution to a social problem.

16 And I think the solutions are different. Now, we've  
17 had three plus three in effect for over two years, we have  
18 not had a reverse discrimination case. We have not really  
19 had a serious discrimination case because of the way that  
20 we operate the system. I think that we operate a very  
21 open system, that is subject to question at every stage of  
22 every action that we take, and I believe that the majority  
23 of the people are convinced that this system is as fair as  
24 we can make it.

25 We have been advised by the legislature, by federal

1 DR. GILBERT ROMAN

2

3 A (By Dr. Roman) I'm Gilbert D. Roman, I'm the Regional  
4 Director for the Office <sup>for</sup> of Civil Rights for what used to  
5 be the United States Department of Health, Education and  
6 Welfare. I am soon to be split off.

7 Q Can you tell us how you define affirmative action?

8 A How I define it? Affirmative action is a management  
9 tool which, if used properly, can harness resources that  
10 are there, regardless of race, color, national origin, sex  
11 and handicap. It's a good management tool which unfortunately  
12 is more misused, abused and maligned than it's used properly.

13 It's probably a way in which the system has now found,  
14 to which they can use a document or documents or a set of  
15 methods that are in place called affirmative action to bypass  
16 the system. To bring on whoever they want to bring on in the  
17 first place, without regard to merit promotion.

18 Q Would you briefly describe the jurisdiction of the  
19 Office <sup>for</sup> of Civil Rights in affirmative action in employment?

20 A The Office <sup>for</sup> of Civil Rights of the U.S. Department of  
21 Health, Education and Welfare is charged with Title VI of  
22 the 1964 Civil Rights Act, Title IX of the 1972 Education  
23 Amendments, 504 of the Handicap Act, and soon to be the  
24 Age Discrimination Act.

25 Q (By Ms. Birge) Could you clarify for us, please, your

1 role in affirmative action in employment? What jurisdiction  
2 do you have in that specific area?

3 A. We only have jurisdiction in the affirmative action  
4 when we find a school district, for example, to have been  
5 found in noncompliance. And that is only when they're in  
6 noncompliance in the areas of employment, and then we  
7 write in a program for them to have an affirmative action  
8 type program to rectify the ills that they have caused by  
9 not employing minorities, national origin, women, so forth.

10 Q. So, as a part of a review for other purposes, you  
11 could get into affirmative action in employment and that's  
12 the only time that you do, is that --

13 A. Only when we find cause.

14 Q. (By Ms. Lucero) Which agency has the appropriate ex-  
15 pertise to enforce federal affirmative action and employment  
16 law in educational institutions?

17 A. You're still asking me? Which agency has the expertise?

18 Q. Yes, to enforce federal affirmative action in educational  
19 institutions?

20 A. Well, with all due regard to the Office of Federal  
21 Contract Compliance and the Equal Employment Opportunity  
22 Commission, I think the Office for Civil Rights does. I  
23 think that we have the -- we have had and have been charged  
24 with, over the past ten years, before October of '78 at  
25 least, to enforce affirmative action programs, and we have

1 hired skilled people in the areas of elementary, secondary  
2 education and higher education.

3 That is not to say that EEOC, you know, since they  
4 do not have those people, is to say that we've been in the  
5 business a little longer than ECOPE has at this time. EEOC,  
6 of course, has a lot of other responsibilities as well.

7 Q What special problems do you see, if any, with  
8 respect to affirmative action in elementary and secondary  
9 school staffing and what agency can best reach this area?

10 A The kinds of problems I see are that, in the school  
11 districts that we -- you're talking about school districts  
12 or higher education?

13 Q School districts?

14 A In the districts that we've been involved with, we  
15 find that there's not really a good faith effort made to  
16 recruit or to use the tool called affirmative action. It's  
17 more -- sometimes it's done on oldboy method, or cronyism  
18 or someone has a friend that needs a job or someone that has  
19 a daughter that has a friend that has a daughter that needs  
20 a job or whatever it might be. It doesn't necessarily follow  
21 into a pattern of going out and recruiting people because  
22 they happen to be reflective of the profile in that par-  
23 ticular area, the mix of Spanish people or Blacks or whatever  
24 it might be.

25 Q What agency can best reach this problem?

1       A     At this point in time, a concerted effort on the --  
2 with new jurisdiction, which would involve affirmative  
3 action. I think that the Equal Employment Opportunity  
4 Commission, if they weren't so bogged down, they have a  
5 lot of responsibilities. Now, they have a new responsibility  
6 too as you know, could do a good job.

7             But I think that again the Office <sup>for</sup> of Civil Rights  
8 has had the expertise to go in and do that, if they were  
9 given the charge. We have never really been given the  
10 charge to do that, <sup>and</sup> elementary, secondary education.

11       Q     Mr. Swearingen said this morning --

12       A     Who?

13       Q     Mr. Swearingen.

14       A     I don't know, who's Mr. Swearingen?

15             THE CHAIR: Attorney for the Denver Public Schools.

16       A     Corporate attorney for the Denver Public Schools?

17       Q     (By Ms. Lucero) I think so. He commented there are  
18 no guidelines or criteria for affirmative action in school  
19 districts. Is that the same thing that you just said?

20       A     That there are no guidelines or criteria?

21       Q     No guidelines, yes.

22       A     In Denver Public Schools?

23       Q     In public schools? School districts?

24       A     I think that's essentially correct. The only thing  
25 that it calls for is a voluntary affirmative action,

1 unless they are found to be in noncompliance.

2 Q Do you think it's true that federal enforcement  
3 agencies enter into a district investigation, then, with  
4 a presumption of guilt?

5 A No, I do not. Can you give me specifics on what that  
6 charge might have come from?

7 Q If you can't go in there until you find that they  
8 don't have voluntary, then are you going in assuming that  
9 they are guilty?

10 A No. No more so than when the corporate attorneys  
11 think that their school districts are not guilty.

12 Q Do you believe reliance on policies of nondiscrimina-  
13 tion as Mr. Swearingen suggested, and that affirmative  
14 action requirements in this area are misplaced?

15 A I'm sorry, I don't understand the question.

16 Q Mr. Swearingen said this morning that there should  
17 be a reliance on policies of nondiscrimination. There  
18 shouldn't be affirmative action requirements as such.

19 A I think that if Mr. Swearingen looks at history,  
20 that historically the reason that we have affirmative action  
21 programs or a reason for having affirmative action programs  
22 is because school districts have not taken affirmative  
23 stances, have not taken, made good faith efforts to hire  
24 minorities and women, and that's exactly why they are  
25 being required when they are found to have been cause.

1 I'm not sure how to answer the second part of the  
2 question.

3 Q Well, you did, you addressed that. And yet you're  
4 saying that until there is cause to go in, that you really  
5 don't have jurisdiction?

6 A That's correct.

7 Q Over them.

8 A That's correct.

9 Q Once OCR has reached an agreement with a school  
10 district or an institution of higher education, who monitors  
11 that agreement and what records are kept?

12 A The ~~Office of~~ <sup>to</sup> Civil Rights, <sup>ed</sup> who address the problem  
13 and negotiated the affirmative action plan is charged with  
14 monitoring that school district.

15 Q When noncompliance is found, what kinds of enforcement  
16 action are taken and by whom?

17 A When noncompliance is found in a school district?

18 Q Yes.

19 A Well, when noncompliance is found we of course notify  
20 the school district that they are in noncompliance in  
21 certain areas that we have found and we ask them to address  
22 those areas and provide remedy or remedial action in whatever  
23 areas that we might have found.

24 Q What kind of remedies?

25 A Well, what kinds of noncompliance?

1 Q No, what kind of enforcement action can you impose  
2 on a school district or higher education institution?

3 A Well, ultimately of course we can enforce sanctions,  
4 sanctions on federal funds. There's a process of finding  
5 a district in noncompliance. The district has appeal rights.  
6 They have -- we have a show cause hearing process. It can  
7 go through the -- what -- through the HEW all the way up  
8 to the secretary of HEW, the appeal process. There's also  
9 a secondary process which can be put in place and that  
10 would be to refer the matter to the department of justice,  
11 civil rights for enforcement.

12 Q How many times during fiscal '79 did you find non-  
13 compliance in a school district or higher education inst-  
14 tution?

15 A Probably 50 to 60 times.

16 Q How many times were the funding sanctions imposed?

17 A We had a -- we had enforcement action on -- now you're  
18 not talking about ESAA monies, you're talking strictly about  
19 our finding of noncompliance or Title VI or IX or 504?

20 Q Anything under your jurisdiction.

21 A Fine. We actually had enforcement action going on  
22 one school district in Colorado, and we had the threat of  
23 enforcement action on about two. We did in fact find six or  
24 seven school districts to be not eligible for ESAA funds.

25 Q And they lost that funding then?



1           A.     Three appealed, two were given funds and the rest  
2 were not.

3           Q.     What criteria exists for an acceptable AA plan?

4           A.     We use the guidelines that the Office of Federal  
5 Contract Compliance to the Executive Order as 1175 has.

6           Q.     Where are the records kept on -- what records are  
7 kept on monitoring?

8           A.     Those records are kept in with the case file in our  
9 office.

10          Q.     What kind of records?

11          A.     Well --

12          Q.     Do you keep?

13          A.     Well, what we've done in the past is we have gone  
14 back out in a quarterly period of time for one year up to  
15 three years to insure that the -- that the terms of the  
16 affirmative action plan that we imposed were actually being  
17 complied with.

18                MS. LUCERO: I have no further questions at this time.

19                THE CHAIR: Let the record reflect that I indicated  
20 Mr. Swearingen was attorney for the DPS, as I learned, J.  
21 W. Swearingen is actually attorney for the Colorado  
22 Association of School Boards, so that needs to be corrected  
23 in the record.

24                Is Mr. Casteel here? Is he in the audience at all?

25                Noting that Mr. Casteel is not here, I would assume

1 that we would then skip to Mr. Dunn?

2 Q. (By Ms. Lucero) Mr. Dunn, thank you for continuing  
3 to be here.

4

5

MR. ROBERT J. DUNN,

6

7 A. (By Mr. Dunn) It seems like all day.

8 Q. Me too.

9 Would you please state your name and position?

10 A. Robert Dunn, Regional Director, Rocky Mountain  
11 Region, U.S. Office of Personnel Management.

12 Q. Would you tell us how you define affirmative action?

13 A. Well, I've heard a lot of definitions today, I guess  
14 I could be repetitive. Seems to me it's a myriad of  
15 positive action oriented kinds of things that an employer  
16 can do above and beyond just simply opening the door for  
17 people to walk in and find employment.

18 I think we see it reflected certainly in the federal  
19 system of actively going out seeking sources of under-  
20 represented classes, and encouraging in whatever fashion to  
21 bring them into the door.

22 Once inside there's a, I think an equal responsibility  
23 to develop and grow your staff and not just let everyone sort  
24 of find their own way through accident. Through the combina-  
25 tion of bringing in individuals you might not otherwise reach

1 and making an extra effort for those who are on the rolls,  
2 I think it's a total package, certainly represents what I  
3 see the affirmative action to be all about.

4 Q Would you please tell us the basis of OPM's  
5 authority to impose affirmative action requirements under  
6 merit standards in IPA grant programs.

7 A Well --

8 Q The authority tied into the --

9 A In the -- if I may just a second. I was looking  
10 for the -- there are six principles stated in the IPA  
11 legislation, which form the basis for the -- a merit system,  
12 if I can find them.

13 I'd rather not quote it or try to give you the  
14 specific language.

15 Q If you can't find it now could you provide it for  
16 the record?

17 A Yes, we will. There is a specific fair principle  
18 equity principle in the six which does provide the basis  
19 for affirmative action under the IPA.

20 Q How about under the merit standards?

21 A It's part of the merit standards which, there is  
22 a separate, separate package here. The standards are the  
23 requirements that apply to grant in aid programs. The  
24 merit principles apply to the total IPA, including IPA  
25 grants, so there is, there is some distinction there.

1 Q There also seems to be quite a bit of confusion over  
2 affirmative action requirements and merit standards not  
3 always fitting together. Could you address that?

4 A Could you be more specific?

5 Q There are times when the merit standard as we've  
6 heard earlier today, make it very difficult to meet EEO  
7 standards, and there seems to be a conflict such as Mr.  
8 Livingston, I believe, said, they -- that they can --  
9 they shouldn't be married, they can be friends but not  
10 married?

11 A Well --

12 Q Do you feel that way?

13 A I'm not -- no, I think the affirmative action re-  
14 quirements are consistent with the merit system. In fact,  
15 if you carried a merit system to its ultimate it might not  
16 be necessary to have additional action requirements.

17 But in any case, I think part of the confusion  
18 reflected today is some communication confusion just between  
19 the two organizations involved, as to what was said or not  
20 said.

21 If I might elaborate on that point, we did not  
22 initially feel that a system which provided certification  
23 on the basis of a person's simply being a member of a pro-  
24 tected class was consonant with the merit principles.

25 Q You're talking about the three plus three?

1           A.     Three plus three. On the other hand, we recognized  
2     that a lot of new efforts, new steps, new initiatives need  
3     to be taken and tried and -- in an effort to improve the  
4     overall EEO posture. In reacting to the three plus three  
5     proposal, I think it would be helpful to indicate exactly  
6     what our reaction was to that proposal. And it was not  
7     quite the same as characterized earlier.

8                     Recognizing that there might be some possibility to  
9     it, at the same time being not comfortable with it fitting  
10    merit principles, the position or policy that we communi-  
11    cated to the state personnel board consisted of essentially  
12    four points, and if I might read those. Determination of  
13    underutilization would be based on a comparison of the work  
14    force with the relevant labor market.

15                    Proof of underutilization just be given before  
16    three plus three certification could be requested.

17                    State personnel department will continue efforts to  
18    produce valid job related selection procedures.

19                    Three plus three certification would not be used for  
20    classes where underutilization has been corrected or where  
21    valid selection devices have been developed.

22                    And four, we are withholding findings of noncompliance  
23    pending revision of federal standards and national policy of  
24    three plus three procedures.

25                    Essentially what we were saying was that we were not

1 convinced that all of the efforts that would normally  
2 be taken within the standards as normally interpreted had  
3 been taken, and that there were perhaps ways of getting  
4 at the problem without going to such an extreme measure  
5 as we viewed it at that time.

6 Q Okay.

7 A As three plus three --

8 Q Let me interrupt here and ask Mr. Livingston, what  
9 was the year, the approximate date in which the three plus  
10 rule was promulgated by the personnel board?

11 A (By Mr. Livingston) That rule was promulgated  
12 December of 1976, I believe.

13 Q Thank you.

14 Mr. Dunn, was -- what is the date of the letter or  
15 communication from you outlining these four concerns?

16 A (By Mr. Dunn) First of all this was not communicated  
17 from me, it was from my predecessor.

18 Q Yes, this is before your time.

19 A December 17, 1976.

20 Q Are you aware of when -- were you or OPM aware that  
21 this was not understood the way you now understand it  
22 by the personnel office?

23 A At least I had no way, no one seemed to have had any  
24 way of knowing until we were discussing it today.

25 Q You mean OPM from 1976 until now was not aware that

1 the personnel office was not implementing the three plus  
2 three, at least within their own agency?

3 A No. We were aware they were not, but let me add  
4 another -- another aspect of this that was communicated  
5 separately to the governor and this is basically the document  
6 that Rudy and I and my staff were using earlier today.

7 And this had to do with grant authorization under  
8 the IPA grant program.

9 Q Right.

10 A To the department. And in reference to that, and  
11 the fair treatment principle, we stated, the grantee shall  
12 take action to assure that state policies and practices  
13 including the new affirmative action rules, are in accord  
14 with the fair treatment principle of the IPA. The state  
15 has requested to consult with the Commission, now OPM, if  
16 the use of the rules is contemplated in the administering  
17 agency, being the department of personnel.

18 The Commission will evaluate the use of the new  
19 affirmative action rules to determine whether their use  
20 in staffing the IPA administering agency is in accord with  
21 the fair treatment principle, and that gets to the point I  
22 mentioned earlier about not simply saying no, but not saying  
23 yes, we simply asked that we be consulted if in fact the  
24 department felt it necessary to use three plus three.

25 Q Thank you. What is the date of that communication?

1 A This was December 20, 1976.

2 Q It might be helpful if both of those were submitted  
3 into the record.

4 A Okay.

5 Q Let's get back to the basis of our questions. Does  
6 OPM have any other involvement with affirmative action in  
7 employment?

8 A OPM has responsibilities at the federal level.

9 Q With federal agencies only?

10 A Yes.

11 Q ~~Does the Intergovernmental Personnel Act~~ Under the  
12 Intergovernmental Personnel Act, does OPM require state  
13 and local government agencies to have and submit affirmative  
14 action plans?

15 A Yes. They're not submitted, they are required and  
16 they are part of our evaluation activity.

17 Q They don't submit them to you but if you ask for  
18 them, you can see them?

19 A This was built into the rules some several years  
20 ago, the additional requirements that they do in fact have  
21 an EEO, affirmative action plan under the -- under the  
22 standards requirement.

23 Q Which state and local agencies does OPM work with  
24 in Colorado?

25 A There are, I believe some 22 program areas that



1 fall under the grant in aid merit system standards require-  
2 ments. We deal principally in the employment security, health  
3 and welfare, areas.

4 Q You heard Mr. Livingston testify earlier that almost  
5 all agencies have federal grants of some kind. Do you  
6 monitor those agencies?

7 A Only those subject, where there is federal legis-  
8 lation subjecting them to the merit system standards.

9 That would not be all of the programs.

10 Q What guidelines does OPM follow in evaluating  
11 affirmative action plans?

12 A There is criteria built into the standards, total  
13 standards evaluation process as to the minimum requirements,  
14 perhaps I -- I'm not sure that I have those specifically  
15 down here, but they are the normal kind of requirements you  
16 would expect to see in an affirmative action plan.

17 Dealing with recruiting, hiring practices, promotion  
18 policies, separation, appeals and so forth. We do also make  
19 that available for the record if you'd like.

20 Q Yes, please. Does OPM conduct compliance reviews?

21 A Essentially that is our evaluation, ~~qualitative~~  
22 evaluation of the agency.

23 Q About how often do you review any particular agency?

24 A Well, I believe the standard is to hit the major  
25 agencies at least once every four years.

1 Q How is the schedule of reviews determined?

2 A Oh, I'm not sure it's very scientific.

3 Q Is that the squeaky wheel gets the grease?

4 A Quite often, and then again it's an -- it's a  
5 matter of trying to, if at all possible, unless there is  
6 a squeaky wheel, trying to at least keep them in some  
7 rotation so that we do get back into each of those at  
8 some reasonably -- reasonable period of time. That coupled  
9 with the available resources that you have.

10 Q Do you feel you have adequate staff to conduct  
11 compliance reviews?

12 A I don't think any federal manager would say very  
13 simply that there are adequate resources for all of the  
14 various requirements of their position.

15 Q Does OPM provide technical assistance to state and  
16 local governments?

17 A To a very high degree.

18 Q How is this provided?

19 A A variety of ways, first of all we have the grant  
20 program in which we are awarding grants directly to state  
21 and local jurisdictions for the purpose of improving their  
22 personnel management programs.

23 We also provide a wide array of specific personnel  
24 technical oriented kinds of assistance through two means,  
25 one if we can afford it directly without any reimbursement,

1 if the activity has a significant need and it's a little  
2 more than we can handle, we can work out a reimbursible  
3 basis with the jurisdiction and provide the assistance.

4 Q. Is assistance provided during compliance reviews?

5 A. That's the whole purpose of the compliance review  
6 really, much moreso~~e~~ than -- than an enforcement posture.  
7 It's all intended to lead to the same objective, that being  
8 an improved personnel system.

9 Q. Does OPM perform any affirmative action compliance  
10 as an agent of federal agencies with grant in aid programs?

11 I think you alluded to this, would you give us more detail?

12 A. If we do an evaluation independently we would give the  
13 grantor agency involved a report of that evaluation and  
14 also share with them any recommendations for improvement  
15 that would seem in order, as well as working with the juris-  
16 diction directly on those recommendations to try to get im-  
17 provement.

18 On the other hand, we might join with the grantor  
19 agency and jointly do an evaluation.

20 Q. Do agencies with grant in aid programs establish  
21 their own affirmative action requirements for grant  
22 recipients?

23 A. I'm not sure I'm catching this but let me respond and  
24 see if this answers the question. In the past all of the  
25 grant data requirements came through as individual standards

1 requirements in the particular legislation for the par-  
2 ticular program in the amendments to the Civil ~~Rights~~ <sup>Suzuki</sup>  
3 Reform Act, those individual standards were abolished,  
4 and agencies wanting to continue our grant coverage in the  
5 way of personnel requirements is to come under the merit  
6 system standard, so there is more uniformity and only a  
7 single standard requirement.

8 Q Are all federal grant in aid programs also subject  
9 to the merit standards?

10 A I'm not sure it would -- I probably should consult  
11 with staff. I don't believe it's total, it would be only ~~one~~  
12 where the legislation, the enabling legislation specifically  
13 tied it to merit system standards, quote, unquote.

14 There could be separate requirements built into the  
15 legislation. Our grant, I think we cover roughly 17% of  
16 the state and local employees who would be covered by the  
17 grant in aid program that we're responsible for.

18 Q Does OPM have specific affirmative action requirements  
19 based on the merit standards? And if so, are these ~~and~~ grant  
20 in aid agency requirements consistent?

21 A Well, I think I indicated earlier, ours are built  
22 into the standards as a part of those requirements, but  
23 what was the rest of it?

24 Q Are the merit standards consistent with the grant in  
25 aid agency requirements?

1           A.     Well, of course now if they're covered by the standards  
2 then we're talking about one and the same.

3           Q.     If they have additional requirements?

4           A.     I am simply not aware of -- I can't answer that  
5 question.

6           Q.     What powers does OPM have to correct affirmative  
7 action deficiencies of state and local grant in aid  
8 recipients?

9           A.     It would be the same as any other personnel require-  
10 ments covered by the standards, we would make every effort  
11 to encourage, persuade the jurisdiction to make the im-  
12 provements that we were suggesting, we might use the leverage  
13 of the grantor agency itself, in the final analysis we have  
14 the responsibility to make the judgment as to whether the  
15 system is in substantial conformity.

16                     We do not have the authority to withhold the funds.  
17 That's the grantor agency.

18           Q.     Are there sanctions that you could impose if it came  
19 down to that? I understand you would prefer not to impose  
20 sanctions.

21           A.     The farthest we could go is to simply say it was not  
22 in substantial conformity.

23           Q.     And would you recommend, then, to the agency funding  
24 it --

25           A.     Then it would be up to the grantor agency to either

1 accept that recommendation and withhold the funds or not.

2 Q (By Ms. Birge) What happens when OPM is the grantor  
3 agency?

4 A When we are the grantor agency? The IPA grants  
5 are not subject to the -- to the standards, they are  
6 subject to the fair treatment principle, and so there is an  
7 affirmative EEO requirement.

8 Q You were talking about sanctions, ~~and you said as to~~  
9 ~~the area of sanctions~~ What happens if it is your grant and  
10 you go and find the --

11 A We're not into the question of the standard.

12 Q -- and if you find noncompliance, then what happens?

13 A No, if I understand what you're asking, if the  
14 grants are not subject to the standards, then there isn't  
15 a ~~conformance or a compliance~~ conformity issue or  
16 question. We monitor the grants the same as any other  
17 agency would monitor the -- their grants in terms of fiscal  
18 responsibility, auditing, etcetera, we have a fair treatment  
19 requirement, EEO requirement, which is done on a post-award  
20 basis.

21 Q And that EEO requirement, that isn't any specific  
22 criteria that could be noncompliance, it's just, it's  
23 general?

24 A We have a checklist criteria that we would look for  
25 in the jurisdiction to assure that there is an employment

1 and a responsibility for EEO.

2 Q I guess my question is, then, what happens under  
3 that EEO criteria, if you don't find it, if you don't  
4 find EEO?

5 A I don't know. We'll have to respond to your ques-  
6 tion at a later point.

7 Q Maybe I'm just confusing the issue.

8 A Yes, I'm not sure I'm not totally confused at this  
9 point.

10 Q (By Ms. Lucero) I just have two more questions.  
11 What does -- how does OPM resolve conflicts which  
12 may occur between its requirements and requirements imposed  
13 upon state and local governments by state law, court  
14 orders, consent decrees or conciliation agreements?

15 A That's a broad question.

16 Q Have instances come up where the requirements that  
17 you --

18 A I guess that would be my response, I'm not aware of  
19 any instances where we've come in conflict in that way.

20 Q Where a court decree would not fit together with  
21 your requirements?

22 A No. I'm not personally aware of any situation.

23 Q You are welcome to submit further information to the  
24 record within 30 days if you would like to expand on any  
25 of these questions.

1           We have talked about, Mr. Livingston has talked  
2 about the three plus three and you have talked about the  
3 three plus three, is there anything else about Mr. Livingston's  
4 statements that you would like to respond to? And I will  
5 give him the same --

6           A.    No, I think between the two, I would hope the record  
7 would be accurate. And the only thing I can think of to  
8 add is that we, in an effort to assist the state in some  
9 of the more, if I can put it in this term, more conventional  
10 approaches to affirmative action, in conjunction or about  
11 the same point in time that we were involved in the other  
12 actions we discussed earlier in terms of the three plus  
13 three, we did provide a fund to the department for a  
14 special project involving EEO and outreach efforts, and I  
15 think that's consistent with what it was that we were  
16 trying to do at that time in exhausting as much as we could  
17 the more commonly accepted approaches to affirmative action.

18           Q    Thank you. Mr. Livingston, you have an equal  
19 opportunity to respond?

20           A.    (By Mr. Livingston) Well, in this circumstance I hope  
21 that -- I have not left the wrong impression. I think that  
22 at the time of those negotiations and discussions, it was  
23 clear to me and clear to my staff that the interpretation  
24 that he had was that we could not. And I think I said to  
25 them in the hall, if the letter says that we shall consult



1 with you, on this issue, consider yourself as having been  
2 consulted today. And we'll see what happens tomorrow.

3 THE CHAIR: Thank you. I'd like to next call Mr.  
4 James Stone, as I understand, Mr. James Stone is replacing  
5 Mr. Waldon Silva, is this correct?

6 MR. STONE: Correct.

7 Q (By the Chair) Would you, for the record, Mr. Stone,  
8 state your name, your occupation and your position?

9

10

MR. JAMES STONE

11

12 A (By Mr. Stone) I'm James G. Stone, I am Compliance  
13 Manager of the Denver District Office, Equal Employment  
14 Opportunity Commission.

15 Q That's the regional office?

16 A Yes, sir.

17 Q You've heard other definitions and perhaps it's a  
18 little repetitive but would you define affirmative action  
19 in your words?

20 A It's extremely difficult to define because it means  
21 different things to different people. I would first like  
22 to define it in the direction I believe our commission  
23 would define it.

24 The Equal Employment Opportunity Commission does not  
25 have any enforcement authority relative to affirmative action

1 programs. We have issued a set of regulations, we call them  
2 guidelines, on affirmative action, they are in 29CFR, part  
3 1600. Within those we pretty well define affirmative action  
4 from our viewpoint as remedy for past or present discrimina-  
5 tion that may come about as a result of either systemic dis-  
6 crimination within the employment situation of the immediate  
7 employer, or maybe a result of discrimination that has  
8 occurred in the social culture in which this employment  
9 situation is located.

10 We believe that affirmative action should come about  
11 only if there has been reasonable analysis, reasonable  
12 basis for making some conclusion, and a reasonable action.

13 Those three criteria constitute what we would recog-  
14 nize as affirmative action. For other people, we recognize  
15 that affirmative action may sometimes mean preventive  
16 medicine, an attempt to try to avoid a complaint that might  
17 be filed, before Equal Employment Opportunity Commission, or  
18 we sometimes believe possibly people believe affirmative  
19 action is a way to give preferential treatment.

20 We do not accept either of the last two.

21 Q Thank you.

22 Before I go further, as I understand, there is a  
23 question that might be asked and I'd like to call upon our  
24 Washington staff member and ask Don Dickerson to ask the  
25 questions?

1 Q (By Mr. Don Dickerson) Representative Schroeder has  
2 stated that the federal government is requiring less of  
3 itself than it has required of private industry in the area  
4 of affirmative action. Would you care to comment on that  
5 statement?

6 A I believe I heard her statement and I believe she  
7 made reference primarily to the congressional side of the  
8 federal government as opposed to the executive branch. Though  
9 no doubt some part of that statement would apply to the  
10 executive branch.

11 We do not, as I've already indicated, have any  
12 affirmative action capability. In the reorganization that  
13 has taken place the Equal Employment Opportunity Commission  
14 does become the policy setter for the federal government  
15 as a whole, all agencies that are in any way involved in  
16 employment. Equal employment programs must pass their  
17 regulations, procedures, policies, before us, we have oppor-  
18 tunity for input.

19 Hopefully within a short few years, we will have  
20 some considerable amount of input in the area of affirmative  
21 action. It's our basic position, though, that the Office of  
22 Personnel Management, the old Civil Service Commission,  
23 has done at least a reasonable effort in the area of  
24 affirmative action. All agencies do have affirmative action  
25 programs. They are reviewed by, and have been in the past,

1 rather, reviewed by the Office of Personnel Management.

2 Under the reorganization, <sup>a</sup> a small office within EEOC  
3 is now being established for those reviews. <sup>N</sup> No reviews have  
4 been made yet, reviews will be made sometime in the next  
5 fiscal year.

6 I can not say at this point what true enforcement  
7 policy we will have relative to those affirmative action  
8 plans.

9 Q We've had comments on the record earlier today about  
10 the procedure EEOC is using to compute availability,  
11 especially in the professional levels. Will EEOC affirmative  
12 action guidelines, meaning instructions, given the current  
13 method used to compute these availability statistics, have  
14 a positive effect on minority hiring? <sup>I</sup> In the federal  
15 government?

16 A I am not aware of what the criteria will be or is,  
17 so I really can't adequately answer your question.

18 To my knowledge, at this point in time, there is not,  
19 and I wasn't here for the question that came up earlier  
20 this morning, to my knowledge there is ~~not any set of~~  
21 criteria for the Equal Employment Opportunity Commission  
22 relative state, political subdivisions or private; that  
23 tell us what the availability criteria must be. There may  
24 be in the federal sector and I'm not aware of that. There  
25 are not any to my knowledge.

1 Q Well, just to clear that up, we were talking about  
2 the EEOC affirmative action instructions to federal agencies,  
3 and in that document there is a procedure that is used to  
4 compute the availability of the protected class. We've had  
5 some statements in the record today indicating that this  
6 method will not sufficiently cause an increase or a sub-  
7 stantive increase in the hiring of the protected class  
8 members. But you've already commented that you were not --

9 A Yes, sir, I'm not aware of that particular criteria.  
10 Certainly as it was stated just now, something I think would  
11 not be quite right, I don't believe the Equal Employment  
12 Opportunity Commission uses the term protected class.

13 MR. DICKERSON: All right.

14 Q (By the Chair) Continuing, Mr. Stone, as I under-  
15 stand EEOC can certainly impose affirmative action requirements  
16 on both state and local government as far as employment is  
17 concerned. Now, under what authority is that imposition of  
18 requirement made? Is that under a statute or is it under  
19 executive order?

20 Well, get back to the first question. You do have  
21 the right to impose affirmative action requirements on  
22 state and local governments?

23 A No, sir, we do not.

24 Q You do not?

25 A The only thing that can come close to that that I'm

1 aware of, we accept and process complaints of discrimination.

2 In the investigation and resolution of a complaint of  
3 discrimination, if it became apparent that a remedy to  
4 that situation might mean an affirmative action program,  
5 it would be suggested as one of the possible ways of  
6 correcting this particular situation.

7 It would be, though, a part of a conciliation agree-  
8 ment or a part of a consent decree, either of which  
9 would be voluntary.

10 Q Well, let me see if I understand this correctly.  
11 EEOC can not impose requirements for affirmative action  
12 on state or local government, is that what you're saying?

13 A Yes, sir.

14 Q But you are saying in the event there is a complaint  
15 you can enter into a conciliation agreement or a negotiate<sup>tion</sup>?

16 A That may have an affirmative action program within it.

17 Q I see, and under what authority, is this statutory?

18 A That's statutory, Title VII of the Civil Rights Act  
19 of 1964 as amended.

20 Q And you're a regional office here?

21 A Yes, sir.

22 Q And what states <sup>do</sup> ~~are~~ you cover?

23 A District office but it is the same as a regional  
24 office, we cover North Dakota, South Dakota, Nebraska, Wyoming,  
25 Montana and Colorado, six states.

1 Q Would you have any rough figure as to the number of  
2 employees that would come under the jurisdiction of EEOC in  
3 these five, six states?

4 A I am sorry, I do not have that number. I could answer  
5 it in a different direction.

6 Q All right.

7 A Everyone who is not employed by the United States  
8 Government and is employed by an employer that has 15  
9 employees or more would be under our jurisdiction. Those  
10 who are employed by the federal government would be under  
11 our jurisdiction as far as an appellate type situation.

12 Federal employees can seek to file a complaint of dis-  
13 crimination, have it processed through the administrative  
14 procedures of their individual agency if it is not satis-  
15 factory to them at that point, they can choose to appeal  
16 either to us or to the court.

17 Q In other words, everybody within the six-state  
18 region --

19 A Except the small employers.

20 Q I see. Now, so far as the employers are concerned,  
21 how are they advised in regard to affirmative action  
22 requirements? ~~Are they advised?~~

23 A Let's understand your situation again, we are not  
24 talking about affirmative action requirements. Let me  
25 digress for a moment to explain the three laws that we're

1 involved in enforcing.

2 We enforce Title VII of the Civil Rights Act, 1964,  
3 as amended, that law prohibits discrimination in employment  
4 because of race, color, national origin, religion or  
5 sex. We're also called upon to enforce as of July 1st of  
6 last year, the Age Discrimination Act, which prohibits  
7 discrimination in employment, people between the ages of  
8 40 and 70.

9 We are also called upon, as of July 1, 1979, to  
10 enforce the Equal Pay Act. Between the Equal Pay Act,  
11 the Age Discrimination Act and the ~~Equal Employment~~  
12 ~~Opportunity Commission~~ enforcing Title VII, we have only  
13 authority to receive complaints of discrimination, process  
14 them through conciliation, make an attempt for voluntary  
15 settlement, if we fail the matter would be enforced through  
16 the courts.

17 The ~~Equal Employment Opportunity Commission~~ has  
18 authority to go into the court against private enterprise.  
19 ~~We~~ do not have authority to go against state and local  
20 governments, only the ~~Department of Justice~~ does.

21 A moment ago EEOC was identified as one of the  
22 agencies that could best do something about local schools,  
23 school districts, ~~We~~ would not be able to go into court  
24 against a school district, only the ~~Department of Justice~~  
25 has that authority. Because we're enforcing laws that deal



1 with complaints of discrimination, we are not involved in  
2 placing requirements of affirmative action.

3 I may not have answered your question.

4 Q Well, it does, this whole line of questioning  
5 related to the affirmative action plans and so on, and  
6 what I understand you saying in short, EEOC does not require  
7 affirmative action plans per se?

8 A That's right, sir.

9 Q Well, that throws out a whole line of questioning  
10 here. But let me then ask the other, then you would  
11 not be concerned about compliance of an employer with an  
12 affirmative action plan that is registered wherever?

13 A Only in two minor ways. The first one would be  
14 when the affirmative action plan becomes a defense  
15 against a complaint of discrimination filed against that  
16 employer. Quite often I've heard a word used here today  
17 several times called reverse discrimination. Under the  
18 laws that we enforce that word is not defined, ~~we~~ we don't  
19 know what it means, but we assume that what people are  
20 talking about is if a, let's say a White male, White Anglo  
21 male has been discriminated against, he believes because  
22 ~~they~~ they wanted to hire someone to meet an affirmative action  
23 plan, he has a right to file a complaint with us.

24 When we investigate, we would, at that point, look  
25 to see if they do have an affirmative action plan. If it

1 meets out criteria of reasonable analysis, reasonable basis,  
2 reasonable action, and if the compliance agency that requires  
3 that affirmative action plan has agreed they are in compliance  
4 ~~if~~ they are, then we find no reasonable cause on the  
5 complaint.

6 Q Do you make any findings in regard to compliance with  
7 such a plan or do you rely upon some other agency to make that  
8 finding?

9 A If no other agency has made that finding we will  
10 make it all on our own. If another agency has made it, we  
11 will review their finding and may adopt.

12 Q Let me assume that you are the agency that will make  
13 the finding of noncompliance. What kind of sanctions can you  
14 impose?

15 A That's the difficult part, we have no true enforce-  
16 ment policy or, I'm sorry, enforcement power because the  
17 only thing we could do would be to go to court? If the  
18 private party that raised the issue to start with wishes  
19 to take a private suit into court, we might be in a position  
20 to intervene or to appeal. If it's a private employer we  
21 may go to court ourselves, if it's a state or political  
22 subdivision we would be dependent upon convincing the  
23 Department of Justice to take the case.

24 Q That leads me to a further question. Now, in these  
25 compliance or noncompliance and affirmative action plan<sup>S</sup>, do

1 you give technical assistance so far as EEOC is concerned?

2 A. Yes, sir, we do.

3 Q. And do you refer to other firms or agencies?

4 A. Yes, sir, we do.

5 Q. To what extent has this been done in the last, say  
6 fiscal year?

7 A. Quite a bit. A considerable amount of my time, I have  
8 been -- my position, because of reorganization, has changed  
9 its title, for the last six years I was the deputy  
10 director, I am now the compliance manager. In both cases  
11 it's identically the same job. Same pay. And my position  
12 is primarily the one that gets the initial call of request  
13 for such technical guidance. I spend a considerable amount  
14 of my time and a considerable amount of the time of my  
15 staff in this area.

16 Q. Let me now get into an entirely different area and  
17 you're going to have to help me because I'm not too sure  
18 of what the specific technical wording is.

19 They're talking about the EEO charge processing  
20 procedure.

21 A. Yes, sir.

22 Q. Explain that? I'm not too familiar with it. What  
23 is it?

24 A. I'm not sure that I can explain it. What I think  
25 they're talking about there, we have just recently reorganized

1 and we have what we call a rapid charge processing system.  
2 All charges coming in our door are now processed immediately  
3 through one of two possible means, one is called factfinding  
4 conference in which the employer and the employee set in the  
5 same room with us as the mediator in an attempt to make an  
6 early resolution on a voluntary basis. We attempt in every  
7 way that we can to gain what we call no fault settlement.

8 If we're unable to do so we gather as much facts  
9 as we can from the people within that room, hoping to be in  
10 a position to make a decision about the case.

11 The other part of the process is what we call CIC,  
12 continued investigation conciliation. This is a much more  
13 elaborate investigation, may require on site, certainly  
14 would require the examination of records, witnesses, etcetera.

15 Q There's also something called early litigation iden-  
16 tification?

17 A ELI program, early litigation identification. The  
18 ELI program is where we recognize a complaint coming in our  
19 door as being one which would affect a large number of people,  
20 have considerable impact in the community, might be worth,  
21 because it appears to have some amount of merit, might be  
22 worth additional resources, we would anticipate going to  
23 court on that case were we unable to settle it.

24 Q Now, both these systems you're talking about, the  
25 ELI system, the rapid, whatever it is, rapid charge processing

1 system has this had a salutary effect, a broad effect, a  
2 narrow effect? Of course you just started that, as I under-  
3 stand.

4 A. Yes, sir, it's just started.

5 Q. How long ago?

6 A. We officially started in Denver office January 27, 1979,  
7 we're about --

8 Q. About a month and a half, six weeks?

9 A. No, about a year.

10 Q. Oh, last year.

11 A. Started a year ago. We're just now analyzing exactly  
12 what happened during that year, obviously a lot of things  
13 are tied in to the additional staff.

14 Our office moved from approximately 40 people to  
15 approximately 101 people. The training of this staff,  
16 the learning of a new system, all kinds of things, were  
17 involved. What we have been able to do is to assure every  
18 person who came in our door, since that date, some immediate  
19 action on their case.

20 Whereas prior to that time, with the huge backlog  
21 that we had, we could tell a person it might be three to  
22 four years before we can get to your case.

23 Q. Getting to the matter of the conciliation agreements  
24 and the negotiated compromises and so on, your no fault  
25 type of thing, how many of these cases, approximately in

1 round figures, have you had in the past fiscal year and  
2 the year before that, do you have any idea?

3 A. We receive approximately 3,000 total charges within  
4 our six-state area.

5 Q. One fiscal year?

6 A. Right, sir. The charges are almost evenly split  
7 between ourselves and the state agencies that are our  
8 compadres or coworkers.

9 There are in all six of the states, at least one  
10 agency, maybe more, which have similar laws, similar powers  
11 as ours. We consider a charge filed with us and filed  
12 with the state at the same time.

13 By the statute, the state has exclusive jurisdiction  
14 the first 60 days. However, we have worked out an arrange-  
15 ment with the states for a waiver of that exclusion if  
16 jurisdiction and between us have work sharing agreements  
17 whereby generally we agree on who's going to work on the  
18 case, so that we're not doing dual work.

19 And approximately half of the cases, half that 3,000  
20 are processed by the state agencies, about half by us.

21 Q. Is that that, it has nothing to do with that so-  
22 called deferral --

23 A. Very similar, yes, sir.

24 Q. But it is not specifically, you're talking about almost  
25 concurrent?

1           A.     Well, the deferral is the 60-day period that we're  
2 talking about, we are required by law to defer to the state  
3 for 60 days.  Someone in their infinite wisdom in Washington  
4 originally decided the state should be able to resolve  
5 the thing in 60 days.  Sometimes that's true, sometimes not.  
6 We have worked out work sharing agreements with the states,  
7 if we desire to move on a case and they're not ready to  
8 move, they waive the jurisdiction and we move first, even  
9 though the 60 days might not have passed.

10           On the other hand, if they have started a case and  
11 haven't completed it in the 60 days, we generally allow  
12 them to complete the case.

13           Q.     Getting back again to the personnel, how much and  
14 what kind of training or written guidance does EEOC provide  
15 to the investigators and attorneys so far as, well, speci-  
16 fically in your particular agency, and to other agencies,  
17 do you provide this kind of technical assistance, training?

18           A.     We're doing a little of it.  It's not as much as  
19 we'd like because of budget restraints.  We do have a  
20 system whereby all of the training for our own employees  
21 in a formal classroom style must be done in Washington,  
22 our headquarters.

23           This constitutes at the moment a two-week basic  
24 course in Washington at the beginning of their career, and  
25 then usually about one week per year thereafter, bringing

1       them up to date.

2               We have manuals that are put together by our training  
3 people in headquarters for on the job training that is done  
4 by the supervisors in the field after they return back  
5 to the field. We are in a position at the moment to provide  
6 training to a limited number of the state agencies in  
7 Washington. We made a commitment a couple of years ago  
8 to provide them identically the same training that we provide  
9 our own employees.

10               We have not been able to live true to that because  
11 of budget cuts. Hopefully someday we will.

12       Q       Do you have any capabilities at the regional level  
13 or local level at all?

14       A       At the local level we conduct all kinds of what we  
15 call, because the mandate within our agency is that the  
16 training is handled by headquarters, we do all kinds of  
17 support to that training, we don't call it training. But  
18 it's technical guidance or whathaveyou.

19               We have three people who are called deferral  
20 coordinators who work with those state agencies, they're  
21 very level people, and they spend a considerable amount of  
22 time in actual training situations, on the job-type thing.

23       Q       We were getting into this rapid charge processing  
24 system and obviously this is generally speaking an individual  
25 case, is it not?



1 A. Yes, sir.

2 Q. Do you get into classes, aggrieved classes?

3 A. When the Commission reorganized in the January 27, 1979  
4 exercise, we were told by Washington to allocate a certain  
5 portion of our staff to what we call systemic discrimination.

6 In the Denver office at the moment it amounts to a  
7 staff of four senior investigators, one supervisor. The  
8 four people are responsible for what we call a targeting  
9 exercise in which we target various employers, employment  
10 situations, to look at in terms of whether we would like to  
11 get a commissioner's charge in that area.

12 Once we have put together a presentation, presented  
13 it to the commissioners in Washington and a commissioner  
14 has in fact signed a commissioner's charge, then a full  
15 scale, very broad investigation is underway, ~~we, at the~~  
16 present time, have two such investigations underway, we  
17 are in the process of targeting others.

18 Q. Getting to the matter of negotiated conciliations  
19 or negotiated settlements what kind of monitoring or  
20 followup is done by your office? Do you follow them up  
21 to see that they are carried out?

22 A. Yes, sir, if we enter into an affirmative action plan  
23 as a result of a conciliation agreement, or a consent degree,  
24 a person will be named as the person responsible to monitor.

25 Q. That's your office?

1       A.     Right. All reports that are required in that agree-  
2     ment will be sent to that person. They're monitored as  
3     they come in, whenever there is a discrepancy in the reports  
4     that merits it, an on site investigation may occur.

5       Q.     Let me ask some very specific questions. Now, could  
6     you advise whether your district office maintains data or  
7     records that would answer the following questions, and if  
8     so, the length of time these records are kept.

9             Number 1, the number of conciliation agreements,  
10    consent decrees containing affirmative action requirements  
11    by year? Does your office keep such records?

12       A.     We do have such records on a case by case basis.  
13     They are kept until the exhaustion of the time period for  
14     that conciliation or consent decree, there's usually a  
15     time period designated in the contract. And then for, I  
16     believe it's a five-year period in the archives thereafter.  
17     Five years after the termination of the decree it would be  
18     destroyed.

19       Q.     Does your office keep records of the number of  
20     conciliation agreements that are -- or consent decrees that  
21     are reviewed year by year?

22       A.     Yes, sir.

23       Q.     And the number that is carried over from year to year?

24       A.     Yes, sir.

25       Q.     And then the answer, of course, is that as long as the

1 decree is in force or the agreement is in force you keep  
2 it here, thereafter it is kept in the archives for a certain  
3 number of years?

4 A That's right.

5 Q Does your office keep records of the number of in-  
6 stances where the ~~employers~~ were found to be in noncompliance  
7 with any agreement or consent decree?

8 A Yes, sir.

9 Q Does your office keep records of the number of in-  
10 stances of noncompliance in the EEOC sought enforcement by  
11 the courts? In other words, what I'm saying is if EEOC seeks  
12 enforcement in the courts, do you keep a record of these  
13 kinds of cases?

14 A I think -- yes, sir.

15 Q And the final question here is, does your office keep  
16 the number of charges filed that resulted in a review of  
17 any particular employer's affirmative action plan?

18 A We would have that. It would be a little more dif-  
19 ficult to obtain, because it wouldn't be kept just in that  
20 way. The individual case filings are kept, it would be a  
21 matter of going through them to find it.

22 Q I think I've led you through a lot of questions that  
23 -- concerning which I do not have any technical expertise.

24 Are there any further comments that you'd care to make  
25 in regard to your office function here so far as the region

1 is concerned?

2 A. One thing I'd like to suggest about your last series  
3 of questions, the question about whether we keep the records,  
4 I would want to make it clear that while we may have those  
5 records, at least those records dealing with conciliation  
6 agreements are extremely confidential, and there might be  
7 a considerable problem in obtaining those records.

8 *off* If a member of the public wished to do so.

9 One other thing I would like to comment on, there  
10 was an earlier statement, I believe it was a question of  
11 Mr. Livingston, that implied EEOC has heavy reporting  
12 requirements from the state relative affirmative action.  
13 The only thing that I am aware of that is a required reporting  
14 activity to EEOC, and it's really not just to EEOC, would  
15 be the EE04 or EE06, that is to a joint reporting committee,  
16 which EEOC is only one tiny portion of and it is only a  
17 four-page annual report. It is not very significant.

18 There may be confusion in the area that there is  
19 a considerable amount of paper work flowing to us from  
20 any large employer on the basis of individual complaints  
21 of discrimination.

22 Q I'd like to follow that EE04 report. Is it not  
23 correct that all agencies, governmental agencies, state  
24 and local, must file a report annually as of June 30th of  
25 each year, the number of employees, the categories in which

1 they are placed, the salary scales and is this not required  
2 each year?

3 A Yes, sir. I said an annual report. But it's off one  
4 payroll period.

5 Q Yes. And if you have 8,000 employees the computer  
6 printout stacks up like this.

7 A It's --

8 Q I have personally seen the Denver City and County and  
9 it stacks up awfully high.

10 A I understand what you mean, but in terms of the stack  
11 of the computer report that might be used to calculate those  
12 numbers it's only numbers that go on a four-page document,  
13 the numbers can be calculated by a computer.

14 Q I understand that. But I also find that the actual  
15 reports that are submitted to Washington, D.C., by the way,  
16 we have a heck of a time getting those reports but the  
17 forms, but it is my recollection that there are not less  
18 than one dozen, both sides, that are being filed in Washington  
19 each year. It is not a four-page. I'm referring to the  
20 EEO4 report. You're familiar with it?

21 A Yes, sir, I am familiar with it.

22 Q Well, it depends upon the number of categories in  
23 which you have to throw these people and as I recall  
24 there's at least a dozen that we have to report on.

25 THE CHAIR: Before I close this portion, Joanne Birge?

1 Q (By Ms. Birge) You've hit on the area I wanted to  
2 ask about. And pretty much cleared it up for me. But in  
3 talking with Mr. Woods, in the state office, he has EEO4's,  
4 EEO6's, ones, I don't know what else. On what authority  
5 is it that you can require those reports of state and  
6 local government?

7 A Title VII of the Civil Rights Act, 1964, as amended.

8 Q To assure that they are not discriminating? Is that  
9 the basis of it?

10 A That was written into the law by Congress that we  
11 had the right to seek those reports for that purpose.

12 Q (By Mr. Dickerson) Could you give -- make a state-  
13 ment of the number of charges, the number of charges that  
14 were taken in that resulted in conciliation agreements or  
15 consent decrees, as compared with the total number of  
16 charges taken in?

17 A It's very, very small. I'll give some rough figures,  
18 these are obviously not accurate, but based on my, some  
19 12 years experience with the Commission, I think I can  
20 give rough figures.

21 Basically the front part of the dismissal that would  
22 take place on a charge would be what we call no fault  
23 settlements, and in a no fault settlement no attention  
24 is paid to merit, so we don't know whether the case would  
25 have been one showing violation of the law or not. All we

1 know are we were able to make the two parties happy and  
2 resolve the case.

3           Approximately 40% of the charges that come before  
4 us settle someplace in no fault settlement. Approximately  
5 20% of the cases that come before us are dismissed either  
6 because of a jurisdictional problem, ~~as~~ these are cases  
7 we've already originally thought we had jurisdiction, either  
8 because of a jurisdictional problem that comes to light,  
9 because of failure to cooperate on the part of the complainant  
10 or charging party, because of failure to locate the  
11 parties who may move or something of that sort.

12           And a very small portion, maybe 5%, are dismissed  
13 because of a request for right to sue. The person doesn't  
14 want us to process the case, they simply want to get a right  
15 to sue and go to federal court in a private suit.

16           The remainder of those we do a full investigation on.  
17 You can see we're only talking about 35 to 40% of the  
18 charges that we do a full investigation on. Of those that  
19 we do a full investigation on, approximately 40%, that would  
20 be 16% of the total, end up with a cause finding. The  
21 rest of them end up no cause..

22           The cause findings, then, we can move in two directions,  
23 either a conciliation or the matter of choosing to go to  
24 court. The -- I would say probably at that point in time,  
25 no more than 10% of those will conciliate. The remainder of

1 those will be left open for court action, some of which will  
2 go to court by the Department of Justice, some to court by  
3 us, some to court in private action and some, of course, just  
4 die.

5 Q Just to keep the record clear, from your comments,  
6 would it be correct to say that EEOC's function is a com-  
7 plaints processing agency, complaints processing function  
8 for violations of Title VII?

9 A And equal pay and age discrimination.

10 Q As opposed to OFCCP, which is a compliance agency.

11 A That's right, we are very different.

12 Q And this is why you do not have --

13 A Affirmative action.

14 Q -- affirmative action requirements except when you  
15 get way down the road there to consent decrees or con-  
16 ciliation agreements?

17 A That's right.

18 Q (By Ms. Lucero) I have just two questions, very  
19 similar, one for Mr. Dunn and one for Mr. Livingston.

20 First Mr. Dunn, how do you see affirmative action  
21 requirements in federal agencies as compared to what is re-  
22 quired of private employers?

23 A (By Mr. Dunn) I have no knowledge of what is re-  
24 quired of private employers. I've been in the career service  
25 for almost 20 years and I really don't know what is expected



1 out there.

2 Q (By the Chair) Mr. Livingston, how do you see what  
3 is required of the State of Colorado as compared to what  
4 is required of private employers?

5 A (By Mr. Livingston) I see them as becoming very  
6 similar. I think that, I'm in a sense glad to see them  
7 because as a public employer we've been criticized for the  
8 amount of time that it takes us to complete the hiring  
9 process for the record keeping that has to be done, for the  
10 documentation and so forth.

11 With affirmative action, with EEOC requirements, I  
12 think private employers now understand what we have had to  
13 go through, and I really don't see that much difference now  
14 between the two.

15 MS. LUCERO: Don't go away, you'll get one more chance  
16 to comment after Mr. Daugherty.

17 THE CHAIR: I believe, has Mr. Casteel come in at  
18 all? If not, we will then proceed with Mr. Daugherty and  
19 Cynthia --

20 Q (By Ms. Cynthia Kent) Mr. Daugherty, for the  
21 record, could you please state your full name, occupation  
22 and position?

23 I am Bennie L. Daugherty

24 MR. BENNIE DAUGHERTY

25 A (By Mr. Daugherty) My name is Bennie L. Daugherty, Jr.

1 I am the Assistant Regional Administrator for the Office of  
2 Federal Contract Compliance Programs, Employment Standards  
3 Administration.

4 Q Could you tell us your definition of affirmative  
5 action?

6 A I think very simply it's a results-oriented program  
7 to correct the effects of past discriminatory acts.

8 Q Thank you. What is the geographical jurisdiction of  
9 your office and how is this compared to EEOC and Mr. Stone's  
10 geographical jurisdiction?

11 A Like EEOC, we cover six states, except that we have  
12 one that they do not. We cover Colorado, North and South  
13 Dakota, Montana, Wyoming, Utah.

14 Q How many employers within this region are covered by  
15 Executive Order 11246 and how many are required by the  
16 ~~Executive~~ Order to develop an affirmative action plan?

17 A That's a difficult question in that we are just in  
18 the process, since consolidation a year and a half ago, of  
19 trying to establish our universe. Because of the contracting  
20 procedures, you may have one contractor that is covered this  
21 month and when that contract is finished, they are no longer  
22 covered.

23 Q Do you keep any information as to industries most  
24 likely covered or the type of employers, a general --

25 A Yes. We have, through some reports that our Washington

1 office issues, a fairly good knowledge of the companies, the  
2 types of industries, that would be covered, yes.

3 Q The Code of Federal Regulations, Section 61.5B,  
4 permits a director ~~of OFB~~ to exempt a contractor ~~or~~ from OFCCP  
5 affirmative action requirements when he deems that special  
6 circumstances and the national interests so require or for  
7 national security reasons.

8 How -- have there been any other exemptions granted  
9 in your region?

10 A None that I'm aware of.

11 Q Do you believe that OFFCP encourages employers to  
12 follow Revised Order Number 4 faithfully?

13 A We try to, yes.

14 Q What kind of guidance does OFCCP provide employers  
15 for developing plans and do you refer employers to other  
16 agencies or to consultants for assistance?

17 A Normally the only time that we'd refer them to another  
18 agency was during the period when EEOC had out there two-  
19 volume manual on affirmative action programs. Otherwise, we  
20 refer to our guidelines that they can follow, our Revised  
21 Order Number 4, Revised Order Number 14, which indicated  
22 the specific affirmative action steps that they were re-  
23 quired to take, the standardized compliance review format  
24 that we would use in conducting reviews.

25 Besides that, we do provide technical assistance

1 during the review process, if the contractor requests or  
2 we feel that the contractor needs that. Otherwise we have,  
3 over the past several years, conducted what we call contrac-  
4 tors seminars where we have attempted to explain to the con-  
5 tractors our requirements and specifically what we mean in  
6 terms of some of our terminology.

7 Q What do you believe are some of the problems that  
8 face employers after they get maybe TA, trying to follow  
9 the OFCCP regulations?

10 A I would think the main problem with contractors would  
11 be two-fold, one, placing the responsibility for developing  
12 and implementing that affirmative action program at a high  
13 enough level in the company, and also providing sufficient  
14 personnel to adequately implement and monitor their program.

15 Q Do you think then that's a burden on an employer's  
16 resources?

17 A I don't think it's any more of a burden than hiring  
18 people to provide quality control over the product that  
19 they're manufacturing for the federal government.

20 Q Is there adequate data for employers to develop  
21 meaningful utilization analysis?

22 A I think to an extent there is. The State Employment  
23 Services under a contract with Department of Labor does  
24 provide availability data for the contractors. The contractors,  
25 however, have been informed that if they feel that information

1 is outdated, they are free to use whatever availability  
2 statistics they desire.

3 The only thing we tell them is that we may question  
4 the statistics they use if in fact it does not appear to be  
5 providing the types of jobs and job openings for minorities  
6 and females.

7 Q. Does that kind of <sup>utilization</sup>~~realization~~ analysis go to the  
8 employers as a paper exercise, something for them just to  
9 do or do you feel it's being used adequately?

10 A. Generally, I think our reviews would indicate that  
11 it may not be used adequately. We feel the information is  
12 there, the requirements in terms of what we expect have been  
13 enunciated correctly in terms of our regulations, Revised  
14 Order Number 4.

15 Q. How many affirmative action plans <sup>did</sup>~~does~~ your region  
16 review <sup>in</sup> '79, and also in this past, first part of the year?

17 A. I think you have to understand we do not as a matter  
18 of course review and approve affirmative action programs.  
19 We look at, we review, we approve affirmative action programs  
20 when we conduct a compliance review or a complaint investi-  
21 gation. Over the past year, fiscal year '79, we did 52  
22 combined reviews and 45 construction reviews. So we would  
23 have looked at that many affirmative action programs in  
24 fiscal year '79.

25 Up to this point in fiscal year 1980, we have probably

1 completed 20 to 25 reviews, we would have looked at that many  
2 affirmative action programs.

3 Q How do you select contractors for review?

4 A We have several ways, in terms of our construction  
5 program, contractors are required to submit what we call  
6 a CC257 form and we look at the number of hours that they  
7 report, the number of minority and female hours that are  
8 reported by them, and if we feel that they are not meeting  
9 the goals established in terms of female participation,  
10 in terms of minority goals, then we would select that con-  
11 tractor for a compliance review.

12 In terms of our supplying service which would in-  
13 clude anything other than construction, we have a targeting  
14 mechanism that comes out of our Washington office, where  
15 they look at the availability of minorities and females in  
16 that particular area where the company is located, and  
17 based upon that, they give us a printout which indicates  
18 whether or not that company is meeting those availability  
19 statistics.

20 Along with that, we, of course, look at the dollar  
21 value of the contract and the particular industry and also  
22 the number of employees. Obviously the impact of conducting  
23 a compliance review of a company of six or 7,000 employees  
24 would be much greater than a company of a 100 or 200  
25 employees.

1 Q Do you have a checklist like, something on paper that  
2 tells you what you have to be looking for when you are  
3 reviewing?

4 A We now -- yes, we do. We have a checklist, but that  
5 is part of our new ~~Federal Contract Compliance~~ <sup>M</sup> Manual that  
6 was issued October the 1st of last year.

7 Q Would that be possible to add onto your report and  
8 in 30 days, maybe, to give additional information? The  
9 checklist that you have, that you use?

10 A Yes.

11 Q When these -- when your staff or you go out to  
12 review, what kind of training do you give your staff and  
13 what kind of instructions so that, you know, they properly  
14 review the plans?

15 A I think you have to understand that prior to our  
16 consolidation, all of the individuals who were conducting  
17 compliance reviews were following the procedures set up by  
18 their particular agency. Since consolidation, we have  
19 given all of the equal opportunity specialists training in  
20 our basic compliance program, they have all had training  
21 in conducting reviews and complaint investigations for our  
22 section 503 and section 402 programs.

23 We have now a new program which will be given selected  
24 employees, those that we feel need it the most, training  
25 in desk audit skills to better prepare them to conduct a

1 desk audit, which would lead them to have a better idea  
2 when they go on site, some of the things that they would  
3 like to look for and the questions that they would like  
4 answered. ~~to~~ -- We have several other courses that our  
5 Washington office is in the process of completing. When we  
6 finish, hopefully by the end of this fiscal year, I think  
7 all of the equal opportunity specialists will have had  
8 adequate training and be able to go out and conduct  
9 quality reviews.

10 Q With the ones that have been reviewed last year and  
11 the first part of this year, has it been sufficient? Have  
12 you been getting the information that you needed for your  
13 reports?

14 A I think on the whole we have, yes.

15 Q Does OFCCP maintain statistics on the deficiencies  
16 and violation it observes in reviewing plans? —

17 A Yes, we do.

18 Q What are the principal deficiencies and violations  
19 and how frequently do they occur?

20 A I can not give you statistics on how frequently they  
21 occur in terms of actual numbers. I can tell you in terms  
22 of the major issues, which ones are the main ones and going  
23 down the list.

24 In terms of our reviews, compliance reviews, in  
25 terms of issues, starting with number 1, EEO policies, etc



1 procedures and practices, the second issue deals with work  
2 force composition. Number 3, hirings and terminations,  
3 four, record keeping, and support data, number 5, recruitment  
4 methods and resources. Number 6, promotions and transfers,  
5 and number 7, goals and timetables.

6 In terms of complaints, the major issues are dis-  
7 charge, number 2, wages. Three, job assignments. Four,  
8 hiring.

9 Q What has been your experience in calling on contractors  
10 for the first time? Do most of them have plans already  
11 when you're in there to review?

12 A Most of them, I think at this point, do have affirmative  
13 action programs. The problem we find is that those programs  
14 may not meet the requirements that we have established.  
15 And I think this also indicates one of the reasons why we  
16 consolidated, so that we would have a more effective  
17 program and have more total control over the affirmative  
18 action programs the contractors were instituting.

19 Q What sanctions, then, do exist for an employer not  
20 developing or not implementing a plan?

21 A Well, first of all in our administrative process the  
22 first thing is the 30-day show cause notice. And if I might  
23 be more specific, if we conduct a review and we find deficiencies,  
24 deficiencies, we give the contractor a letter indicating those  
25 specific deficiencies. If they are minor deficiencies, we s

1 ask a contractor to sign a letter of commitment, stipulating  
2 time frames in which they will correct them. If we feel,  
3 though, they are major deficiencies, we will then ask the  
4 contractor to sign a binding conciliation agreement. If at  
5 that point the contractor refused to sign the agreement,  
6 we would issue them a 30-day show cause notice.

7 If they still refused to sign, we would issue them  
8 a 15-day notice to issue an administrative complaint and take  
9 them to a formal hearing. Of course, with the final sanctioning  
10 being termination of contract or ~~debarment.~~ <sup>debarment.</sup>

11 Q Very good. How many contractors can you review in <sup>n</sup>  
12 12-month period and what depth can you do the reviewing?

13 A I would say probably somewhere in the neighborhood  
14 of 140, 150 contractors, looking at the resource level that  
15 we're working <sup>at</sup> with in this region.

16 Q When we're talking in depth, how many -- how long  
17 a period of time?

18 A It -- there is no set period. I like to think that  
19 all of the compliance reviews we conduct are in-depth re-  
20 views. If we find minor deficiencies a review depending  
21 upon the size of the company could be completed in 80 hours.  
22 That's like a basic standard for us.

23 Reviews of companies of five, 6,000 people would  
24 take longer, also if we find an affected class of minorities  
25 or females that would delay the review somewhat.

1           So we don't look in terms of saying that we're going  
2 to complete a review specifically in so many hours regardless  
3 of the deficiencies that we might find.

4           Q.     What kind of data do you keep on enforcement actions  
5 on noncompliance with affirmative action requirements  
6 and how long do you keep that data?

7           A.     Are you referring to the case files or the information  
8 that goes relative to the case?

9           Q.     Yes, like the steps you were indicating, how long  
10 do you keep that information in your files?

11          A.     We would keep any information relative to that com-  
12 pliance review for a period of two or three years in the  
13 regional office and retire it to the record center and  
14 keep it at that point anywhere from five to ten years.

15          Q.     Would you discuss conciliation procedures and  
16 explain under what circumstances conciliation agreements  
17 become necessary? Is that what you were talking about  
18 previously, if it doesn't occur then you have stages?

19          A.     Right. We try to conciliate most of our cases on an  
20 informal basis. If we find major deficiencies and the con-  
21 tractor is notified, we then attempt to conciliate through  
22 a series of meetings with the contractor to explain what  
23 we feel is necessary to correct those deficiencies and if  
24 they agree, then that's when we end up with the binding  
25 conciliation agreement.

1 Q On the conciliation agreement, who -- who monitors  
2 those compliances?

3 A In this region we have two area offices, one in  
4 Denver and one in Salt Lake City. And since the region is  
5 split among those two area offices, once we have a concilia-  
6 tion agreement or even a letter of commitment, we require,  
7 depending upon the particular deficiencies, either monthly  
8 or quarterly reports from the contractor until we are  
9 satisfied that all of the deficiencies have been corrected.

10 At the time the deficiencies have all been corrected,  
11 we would then no longer require reports.

12 Q So you have guidelines also for the monitoring?

13 A Right, and the monitoring is done by the area offices.

14 Q Do you think the requirements for federal contractors  
15 under Revised Order Number 4 conflicts or duplicates other  
16 federal agencies' requirements that these contractors have?

17 A No, I don't.

18 MS. LUCERO: Thank you.

19 THE CHAIR: I'd like to throw in a couple of questions  
20 at this time. We're concerned, of course, of coordination  
21 between the various federal agencies and I suppose I'd start  
22 with you, Mr. Stone, what kind of coordination do you see  
23 possible, with the EEOC, the OFCCP and the OPM and --  
24 do you have any comments, sir?

25 A (By-Mr. Stone) I think first we would have to say that

1 with the reorganization <sup>under</sup> of the President's <sup>R</sup> Reorganization  
 2 Plan <sup>W</sup> Number 1, EEOC was <sup>made</sup> the policy setter and that  
 3 means there is coordination <sup>been</sup> at the very top in terms of --

4 THE CHAIR: policy?

5 A. -- policy. At the local level we have a considerable  
 6 number of memorandums of understanding between the agencies  
 7 that are doing similar work. <sup>W</sup> We do have a memorandum of  
 8 understanding with the <sup>O</sup> Office of <sup>F</sup> Federal <sup>C</sup> Contract <sup>C</sup> Compliance,  
 9 with OCR of HEW, with most of the major compliance agencies  
 10 here in town, for the sharing of information, for the  
 11 coordinating of work so that we're not duplicating work.  
 12 That kind of thing.

13 We provide information. OFCCP, they, in turn, provide  
 14 other information to us on other cases. <sup>I</sup> In our systemic  
 15 program we have asked for input from them on who they think  
 16 we should consider, they've asked similar information from  
 17 us.

18 Q. (By the Chair) Mr. Dunn, would you have any comments  
 19 in this regard?

20 A. (By Mr. Dunn) No. Our primary coordination would  
 21 be with EEOC, since we now both have responsibilities in  
 22 the FEORP area, at the federal program level.

23 THE CHAIR: Well, I certainly thank all of you  
 24 gentlemen for the patience and long time that we've now put  
 25 in. We will have an open session so we will declare a

1 recess. Gentlemen, we thank you.

2

3

(Short recess)

4

5

THE CHAIR: It is my understanding that we have just  
6 one speaker for this open session. We will conclude with  
7 the testimony of Mr. Gary J. Archuleta, who is the  
8 executor of Uleta (Phonetic) Skycap Services, Incorporated,  
9 of Erie, Colorado.

10

Now, if Mr. Archuleta would come forward we will  
11 certainly permit you, would you take one of those microphones?

11

12

Mr. Archuleta, if you will take a chair and then  
13 first of all for the record, again, indicate your full  
14 name, your address, your occupation?

14

15

16

MR. GARY ARCHULETA

17

18

A (By Mr. Archuleta) Gary John Archuleta, I'm the  
19 executive director for Uleta Skycap Services, Incorporated,  
20 my address is P.O. Box 375, Erie, Colorado, 80516.

20

21

Q (By the Chair) Thank you. Would you then make your  
22 statment, if you please?

22

23

A On behalf of the Uleta Skycap Services, Incorporated,  
24 I'd like to extend our appreciation for the opportunity to  
25 make a presentation here today.

25

1           It's been our experience in the, since June of 1979,  
2 with the airline industry here at Stapleton Airfield, to be  
3 denied the opportunity to submit a bid to compete with the  
4 one competitor there at the airport for skycap services.

5           We have, on numerous occasions, three to be exact,  
6 in June, December and recently in February of 1980,  
7 requested an opportunity from each of the airlines, those  
8 airlines that don't have their own skycap employees, that  
9 contract for skycap services, we've requested the opportunity  
10 to submit a bid to provide skycap services.

11           We have been denied this opportunity in the vast  
12 majority of the cases. The understanding that we have at the  
13 airport is that the federal government is putting in  
14 federal dollars to the building of the current construction  
15 program at the airport at this time, that the airport has  
16 been built with federal dollars and that the federal  
17 government does have laws, rules and regulations which  
18 state that in the free enterprise system that there should  
19 be a bidding process and that there should be opportunity  
20 for bidding.

21           We feel that we've been denied this opportunity for  
22 numerous reasons, many times unspoken reasons. Traditional  
23 reasons. Such as it has been traditional in this country  
24 for porter service, the skycap service to be that of a --  
25 belonging to the Black community. We are the Hispanic,

1 Chicano community in this area, we are an equal employment --  
2 equal opportunity employer, we do have Blacks working with  
3 us, women working with us, youth working with us. We are  
4 not an employer setup, we are a profit sharing, each of our  
5 people are board of director members of our corporation.

6 We feel that we've been denied this opportunity not  
7 only for traditional reasons but for other reasons that  
8 haven't been made quite clear to us.

9 The innuendo being that our competitor only one person  
10 out there running his business has been out there for 12  
11 years, that he's established strong social ties with the  
12 managers out there, and that as a result of this kind of  
13 a nonbusiness relationship, we're in an area where we're  
14 just not able to compete in a business situation.

15 We would request that the Commission, that the  
16 federal government in some way lend its assistance in per-  
17 suading the airline industry to allow us that opportunity  
18 to submit a bid for skycap services.

19 I do have documentation in the form of letters that  
20 we have submitted to the different airlines requesting this  
21 opportunity. I have approached other agencies, the LARAZA  
22 agency, the Chicanos Coalition in the airlines agency and  
23 also the CETA, Colorado Economic Association, which, through  
24 the Department of Transportation, helps fund that program.

25 We are still hoping for and awaiting some results of



1 requesting this assistance from the other agencies.

2 THE CHAIR: Thank you very much, Mr. Archuleta. You  
3 certainly may submit any written documentation for the  
4 record.

5 No questions of Mr. Archuleta?

6 Q. (by Ms. Birge) I have one. What federal agencies  
7 have you contacted or worked with at all on this question?

8 A. We've talked about Mr. Grant of the Colorado Economic  
9 -- Colorado Economic Development Association who is funded  
10 through a grant of the United States Department of Trans-  
11 portation.

12 Q. No federal agencies?

13 A. Through the CCIA, the Coalition of Chicanos in the  
14 Airlines, they have worked with the Department of Labor  
15 and the Department of FAA in trying to, and this is an on-  
16 going relationship that goes back approximately four years.

17 THE CHAIR: Thank you.

18 (By John Bynkley)  
~~VOICE:~~ Was he filed a complaint?

19 Q. (By Ms. Birge) Have you filed a complaint with OFCCP?

20 A. No, we haven't, not that we won't, all we have to  
21 know is where to go and give us the forms. We felt that  
22 in working with the established agencies, that we would be  
23 able to go ahead and make the required process.

24 No, we haven't -- in fact, this is the first time  
25 I've heard of OCC or --

1 THE CHAIR: Thank you.

2 Are there any other individuals who wish to submit  
3 testimony at this time?

4 If not, I will proceed to close this session.

5 I do want to express, oh, Mr. Wu?

6

7

MR. BEVAN WUO

8

9 A. (By Mr. Wu:) Yes, I'd like to say something.

10 THE CHAIR: Please, if you'll come forward?

11 I'm sorry, would you please state your name, your  
12 address, your occupation?

13 A. I do have to state my occupation with what I'm here  
14 the purpose or is the profession I'm doing for a living?

15 Q. (By the Chair) In regard to the organization that  
16 you are representing, sir.

17 A. Fine, thank you.

18 My name is Bevan Wu, ~~last name is Wu~~ like Western  
19 Union, my address is 2633 Juniper Avenue, Boulder, Colorado.

20 And I am a director of CAPAA, which is the Coalition  
21 of -- Colorado Alliance of Pacific Asian Americans. It's  
22 CAPAA. And I'm here to present two issues concerning civil  
23 rights, representing the CAPAA.

24 The Colorado Alliance of Pacific Asian Americans is  
25 an organization to improve and maintain the general welfare

1 of Pacific Asian Americans in Colorado. So that they can  
2 participate more fully in the mainstream of the American  
3 society.

4 The Asian Pacific Americans in Colorado consists of  
5 members with a diversity of ethnic background, including,  
6 but not limited to, Cambodians, Chinese, H'Mong, which is  
7 H-apostrophe-M-o-n-g, Japanese, Korean, Laotian, Pacific  
8 Islanders, Filipino, Thai, and the Viet Nameese.

9 Our population, number-wise, is relatively small. It  
10 is estimated to be about 1% of the total Colorado population.  
11 Because we are a small group, the Asian Pacific people are  
12 often being forgotten by the American mainstream majority  
13 and are often left by the wayside to become American without  
14 assistance or support.

15 I wish to address the following issue to the com-  
16 mission, because of the existing racist attitude, dis-  
17 criminatory policies and the lack of awareness of our --  
18 of our society towards Pacific Asian Americans.

19 The issues are, language problems of Pacific Asian  
20 immigrants and refugees.

21 The second issue is employment problem of Pacific  
22 Asian Americans. The third issue is education problems of  
23 Pacific Asian Americans.

24 The last one, but not the least, is the problem of  
25 fragmentation of U.S. Government Civil Rights Programs.

1 All the above issues are applicable to government,  
2 educational institutions, as well as private industry.  
3 Now, I come to the first issue is the English language  
4 problem of the Pacific Asian Americans. Specifically the  
5 newly come to this country immigrants and refugees. The  
6 United States is basically a monolingual country. The  
7 recent Pacific Asian immigrants, refugees, in their daily  
8 living, experience serious problems in the areas such as  
9 like shopping, housing, legal, education, employment, and  
10 even the development or maintaining a positive selfimage  
11 because of language trouble, difficulties.

12 So we would like to recommend that the U.S.  
13 Government should establish a comprehensive English  
14 language program tailored to Pacific Asian immigrants and  
15 refugees.

16 Special understanding and sensitivity to Pacific  
17 Asian peoples' cultural and linguistic background should be  
18 stressed.

19 The second issue is the employment problem of Pacific  
20 Asian Americans. The Pacific Asian Americans, being the  
21 minority within the majority group, because of the small  
22 number of this group, lacks the political clout and because  
23 of its smallness, so they are often being denied of  
24 employment opportunities because of being left out of the  
25 affirmative programs. And also the Pacific Asian Americans

1 also being stereotyped as model minority, the misconcept  
2 is this group of people are well educated, industrious  
3 and selfsufficient. As a result, they have been deprived  
4 from the benefit other minority groups receive in many  
5 affirmative action programs.

6 But in reality, they are about 80% of the Pacific  
7 Asian Americans don't finish college education. So with  
8 that kind of myth, really put this group of people at a  
9 disadvantage.

10 THE CHAIR: Mr. Wu, I apologize for interrupting you  
11 but we do have somewhat of a time crunch, as I understood  
12 we wanted to summarize these statements in about five  
13 minutes.

14 I understand you have this in writing, do you not?

15 A. I will submit a typed copy writing to this Commission  
16 and at a later date --

17 THE CHAIR: That will be --

18 A. -- and I will speed it up, let's see how many minutes  
19 I have used?

20 THE CHAIR: You've used the five minutes, that's why  
21 I interrupted but if you can conclude rather quickly.

22 A. Fine, I can conclude right quickly. And the main  
23 problem of the employment is one of called underemployment,  
24 which is usually this group of people be looked as they only  
25 be good in the professional field, scientific or technical.

1           If you look at the management or administrative  
2 positions, you will find a relatively small disproportional  
3 Pacific Asian Americans in those positions. If you talk  
4 about high, policy making positions, it's even less. So we  
5 would recommend that a sincere program in the U.S. Government  
6 for the Pacific Asian Americans to exercise -- to enjoy the  
7 same affirmative action privileges and also the sincere  
8 application of the programs is the key.

9           You can have the policies, everything written in paper,  
10 if because of unfamiliarity or by not unknowingly, by not  
11 practicing that to this group of people, just because they  
12 have a small number, this may not do the justice to the whole  
13 program.

14           The third problem is -- issue is in education. By the  
15 same token, the admission to the graduate schools, profes-  
16 sional schools, such as like law and medical schools, the  
17 Pacific Asian Americans are excluded from affirmative program.

18           Another point is in the board of directors or trustees  
19 or high position policy making positions in the educational  
20 institutions you will hardly -- are hard pressed to find  
21 Pacific Asian Americans in those positions, yet you will  
22 have no lack of opportunity to find them working very hard  
23 and doing technical work, so in a sense they're saying you  
24 can do good work but we just don't want you to supervise.

25           Then you say, well, maybe they don't have these kind

1 of qualities or capabilities? What program there is to  
2 help this group to grow in this field? Such that to  
3 establish a proportional statistical balance.

4 The fourth one is the fragmentation, I have heard  
5 quite a bit in the testimony here, because it is very  
6 difficult even for a majority American people to find out  
7 who is doing what. Let alone the Pacific Asian Americans  
8 who have language difficulties and the cultural background  
9 usually prevents them even to actively seek out help.

10 So we would like to recommend the government to  
11 consolidate, streamline all these civil right programs and  
12 have a clearing house for the Pacific Asian Americans to  
13 tell them where to go, whom to see, what to do.

14 And thank you very much for your time and I will  
15 send a written report to the commission.

16 THE CHAIR: Fine, thank you very much, Mr. Wu.

17 You may certainly submit a written statement, there  
18 any other individuals so far as this open session is con-  
19 cerned?

20 If not, I will go ahead and close this session but  
21 before I do, I certainly want to express as Chair of the  
22 Colorado State Advisory Committee, our great admiration for  
23 the tremendous staff work done by the Rocky Mountain Regional  
24 Office people. We certainly recognize that this is the  
25 first of these series that will be taking place across the

1 country.

2 We also thank John <sup>Binkley</sup>~~Bingly (Phonetic)~~ and Don Dickerson  
3 for coming all the way from Washington, D.C. and I do  
4 want to say to my fellow members of the Colorado SAC that I  
5 certainly appreciate you're covering for me when I couldn't  
6 hop that plane to get back into Denver, Colorado, this  
7 morning.

8 Are there any other matters that need to be brought  
9 up at this time?

10 Bill Muldrow, Joanne?

11 If not, I declare this session adjourned.

12

13 (Meeting adjourned at 6:20 p.m.)

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STATE OF ARIZONA )  
                          ) SS  
COUNTY OF PIMA )

I, JAMES E. BOULEY, do hereby certify that I am an Official Shorthand Reporter; that I was present at the hearing of the foregoing matter; that I took down in shorthand all proceedings had and testimony adduced at said hearing; that the same was thereafter transcribed under my supervision, and the foregoing 317 pages represent a complete and accurate transcription of my shorthand notes so taken.

WITNESS MY HAND this 25th day of March, 1980.

*James E. Bouley (gr.)*  
\_\_\_\_\_  
Official Shorthand Reporter