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CALIFORNIA ADVISORY COMMITTEE
TO THE U.S. COMMITTEE ON CIVIL RIGHTS

A Factfinding Meeting on
Affirmative Action in Employment

March 21, 1980

TRANSCRIPT OF PROCEEDINGS

BOULEY, SCHLESINGER, DICURTI, SCHIPPERS, GARWOOD and ERWIN

1500 Arizona Bank Plaza

33 North Stone Avenue

Tucson, Arizona

CCR
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Meet.
317

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

A Factfinding Meeting on
Affirmative Action in Employment

March 21, 1980

THE ABOVE ENTITLED meeting was held in Room 8041,
Federal Building, 300 North Los Angeles Street, Los Angeles,
California, on the 21st day of March, 1980, commencing at
the hour of 9:30 a.m. on said day, and the following pro-
ceedings were had, to wit:

1 PROCEEDINGS

2
3 (The following was chaired by Ms. Nadine Hata)

4
5 THE CHAIR: This meeting of the California Advisory
6 Committee to the United States Commission on Civil Rights,
7 will now come to order.

8 We are convened here today to examine federal and
9 state laws and regulations for affirmative action in
10 employment.

11 I am Nadine Hata, Southern Vice Chairperson for the
12 California Advisory Committee. The advisory committee advises
13 and makes recommendations to the United States Commission on
14 Civil Rights on matters which the committee or any of its
15 subcommittees study.

16 This meeting is the responsibility of the affirmative
17 action subcommittee, chaired by Dr. Van Perkins, seated to
18 my right. For today's session he and I will be alternating
19 chair responsibilities.

20 Other members of the subcommittee in attendance during
21 the day will be Carnella Barnes, Helen Bernstein, Frankie
22 Gillette, Karen Hilborn, J. William Martinez, Alex Tobin,
23 Paula Williams, Vernon Yoshioka and Ron Arroyo.

24 Also with us today are staff from the commission's
25 western regional office.

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This factfinding meeting is being held pursuant to rules applicable to state advisory committees and other requirements promulgated by the United States Commission on Civil Rights. The commission on civil rights is an independent agency of the United States Government established by Congress in 1957 and authorized by the Civil Rights Acts of 1957, 1960, 1964, 1973 and 1978 to do the following things: One, investigate complaints alleging that citizens are being deprived of the right to vote by reason of their race, color, religion, national origin or sex. Two, study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution.

Three, appraise federal laws and policies with respect to equal protection of the laws. Four, serve as a national clearinghouse for civil rights information, and five, investigate allegations of voter fraud.

I would like to emphasize that this is a factfinding meeting and not an adversary type of proceeding. Individuals have been invited to come and share with the committee information relating to the subject of today's inquiry.

Each person who will participate has voluntarily agreed to meet with the committee. Every effort has been made to invite persons who are knowledgeable about the problems and progress in the areas to be dealt with here today.

1 In our attempt to get a well balanced picture about
2 affirmative action, we have invited persons representing
3 employees and employers as well as federal and state
4 officials with responsibility for administering and enforc-
5 ing government laws and regulations.

6 In addition, we have allocated time this afternoon
7 at 4:45 p.m. to hear from anyone who wishes to share in-
8 formation with the committee regarding affirmative action.

9 Each person or organization will have five minutes
10 to speak to the committee and may submit additional informa-
11 tion in writing for the record. Those wishing to participate
12 in the open session please contact commission staff during
13 the day.

14 And the commission staff is seated there to my left
15 and to your right.

16 Since this is a public meeting, the press, radio,
17 television stations as well as individuals are welcome. Any
18 person discussing a matter with the committee, however, may
19 specifically request that they not be televised.

20 In this case it will be necessary for me to comply
21 with their wishes.

22 We are very concerned that we get all of the informa-
23 tion relating to the matter under study. We are, therefore,
24 concerned that no individual be the victim of slander or
25 libelous statements. In the unlikely event that such a

1 situation should develop, it will be necessary for me to
2 call this to the attention of the persons making the state-
3 ment and request that they desist in their action.

4 If the comments a person is offering, however, is
5 of sufficient importance it may be necessary for the
6 committee to hear the information at a closed session. The
7 person against whom the allegations are being made will
8 have ample opportunity to make a statement in closed session
9 before the committee, if he or she desires.

10 In any event, prior to the time that the committee
11 submits its report to the commission, every effort will be
12 extended to get a complete picture of the situation as it
13 exists.

14 We are concerned that no individual be the victim of
15 retaliation for any statements made at this meeting. Partici-
16 pants are protected by the provisions of 18USC-1505, which
17 provides, whoever by threats or force or by any threatening
18 letter of communication, endeavors to intimidate, influence
19 or impede any participant in any proceeding pending before
20 any department or agency of the United States or in connection
21 with any inquiry or investigation, being held by either
22 house or any committee of either house, or whoever injures
23 any party or witness in his or her person or property on
24 account of his or her attending or having attended such
25 proceedings, inquiry or investigation, or on account of his

1 or her testifying or having testified to any matter pending
2 therein, shall be fined not more than \$5,000.00 or imprisoned
3 not more than five years or both.

4 In the event that any person speaking before this
5 committee considers any adverse action taken against him or
6 her to be the result of having spoken, he or she should
7 immediately contact the Western Regional Office of the
8 United States Commission on Civil Rights.

9 Thank you. And I welcome you all here this morning.

10 We'd like to introduce this morning, Mr. Henry Lozano,
11 from the office of Congressman Edward R. Roybal. Mr. Lozano,
12 thank you for coming this morning.

13

14 MR. HENRY LOZANO

15

16 A. (By Mr. Lozano) Thank you, Madam Chairman -- Chair-
17 person.

18 Chairperson Hata, Members of the Advisory Committee,
19 U.S. Commission on Civil Rights, my name's Henry Lozano,
20 I'm representing Congressman Roybal and on his behalf and
21 behalf of the total community, I would like to take this
22 opportunity to welcome you to Los Angeles.

23 We are pleased that you are here too and to state
24 that people are very much aware of your excellent work in the
25 area of civil rights for all citizens of California. The work.

1 U.S. Commission on Civil Rights has continued to be a strong
2 force in protecting the rights of citizens under the
3 American Constitution.

4 It is my understanding that your mission today is
5 to look at affirmative action for women and minorities in
6 the public and private employment sectors as part of the
7 national project. You will be evaluating results available
8 from various federal directives or from voluntary action
9 based on federal guidelines.

10 The process for affirmative action seems to be
11 designed to provide confusion and misunderstanding among all
12 who attempt to do anything with it. Federal agencies which
13 have enforcement responsibilities seem to be confused with
14 end results being that employers in the public and private
15 sectors receive information that is not clear.

16 We need a clear view of the total process required
17 by the federal government through which affirmative action
18 can become a reality for women and minorities. We also
19 need to have results of actual implementation of these
20 requirements.

21 Affirmative action can not be allowed to become
22 an empty promise by the federal government. We need to
23 assess federal responsibility in the implementation of
24 affirmative action. We need to also know that the federal
25 government, the largest employer in the nation, will be a

1 living example for all employers. I'm sure that what
2 you hear today will give you information which will assist
3 you in your recommendations to the commission on civil
4 rights, but beyond that, we hope that your deliberations
5 will contribute to a clearer view of opportunities for all
6 citizens of the United States. Good luck on your sessions
7 today.

8 Now, may I add, you have staff over there and I see
9 no Hispanics there or am I confused?

10 MS. SALLY JAMES: No, the rest of the staff is sitting
11 right there.

12 VOICE: Would you speak to the panel? I don't see
13 any Blacks up there either.

14 THE CHAIR: We do have a Black person but she is
15 northern vice chairperson. We have two in fact. So it's
16 more than token representation.

17 A. I think oftentimes it starts right here within the
18 people and it's one of the Congressman's biggest gripes,
19 the fact that people that are doing the thing are not
20 taking care of business themselves, and you know, I leave
21 you with that.

22 THE CHAIR: I do want to assure you for the record,
23 that we have minority representation and they are -- we are
24 real well represented.

25 A. I would like to see a copy of your staff. Of the

1 commission and the staff.

2 THE CHAIR: A copy of our commission and staff --

3 A. Yes, of your employment.

4 THE CHAIR: The membership?

5 A. Membership, right.

6 THE CHAIR: Fine, we'll be sure to get that to you.

7 Thank you very much.

8 A. Thank you.

9 THE CHAIR: I'd like to see Mr. Oliver Jones and
10 Donald Griffith, our first panel this morning? Donald
11 Griffith and Oliver Jones. Is Mr. Jones here?

12 Mr. Jones is on his way, we understand, he's taking
13 an airplane flight. So we'll move right ahead, then, and
14 ask Mr. Griffith to identify himself for the record?

15

16 MR. DONALD GRIFFITH

17

18 A. (By Mr. Griffith) My name is Don Griffith, I'm
19 director of economic development and employment with the
20 Los Angeles Urban League.

21 THE CHAIR: Thank you.

22 Mr. Martinez?

23 Q. (By Mr. Martinez) Yes, Mr. Griffith, could you
24 briefly describe how the urban league works with the OFCCP
25 and private employers to assure the effectiveness of affirmative

1 action plans and programs?

2 A. Well; I don't know about assuring the effectiveness,
3 but I can tell you how we work with OFCCP and also with
4 private industry.

5 There's approximately 40 equal opportunity specialists
6 in this particular region, I have the distinct honor of
7 interphasing with only two of those representatives and
8 they happen to be here in this room, Ms. Pearl Card (Phonetic)
9 and Mr. Bob Cole.

10 As they go out and make their reviews with the various
11 companies in and around Los Angeles, when in fact they are
12 met with the various deficiencies in those companies, they
13 themselves will contact my office, especially when they
14 hear that the employer is saying well, we'd -- the reason
15 that we are deficient is because we can not identify and
16 locate minorities, Pearl or Bob, they will call my office,
17 set up an appointment and physically bring that employer
18 by to introduce him to the urban league staff so that we
19 can, in effect, have, assist that person in their affirmative
20 action commitments.

21 Now, all to often, the company representatives
22 when they contact us, if they come through Pearl or Bob
23 or when they in fact call in job listing, job order, job
24 requisitions, the requirements are so unrealistically high
25 we often, well, we know for a fact that there are certain

1 games that are being played.

2 They will give us a job order for aeronautical
3 or aeronautical engineer with ten to 15 years of experience
4 when we know that they do have entry level exempt positions
5 that people that walking into our office can qualify for.

6 But in terms of that employer that actually reaches
7 out, comes to us, either through Pearl or if they are
8 serious in their affirmative action commitments, the urban
9 league can design various types of programs to help them
10 meet their affirmative action needs.

11 In terms of the area that I mentioned before, sure,
12 there's a-- you know, we'll get all kinds of jobs for the
13 top level types of engineers from the companies, we'll get
14 letters affirmative action letters of commitment, sure,
15 they're complying with 11246, 375, that they do not dis-
16 criminate because of national origin, sex and etcetera, but
17 oftentimes when we get calls from contract compliance and
18 they'd like to know what the activity has been between the
19 company and the urban league, oftentimes all we can report
20 is that they have just submitted a letter, there was no
21 job order, there was no open requisition that they could
22 give us and we're inundated with those letters and nothing
23 to back them up with.

24 On the other side of that coin we're also inundated
25 with discrimination complaints. People are calling us from

1 all walks of life, employment discrimination, concerned
2 citizens, visiting various high volume outlets, the various
3 public facilities and they are concerned because they do
4 not see minorities. Minorities are not visible to them.
5 They want to know what's going on.

6 We're inundated with these kind of complaints.

7 At a meeting or I was invited to attend a meeting of
8 OFCCP in this particular area where I advised and I -- I
9 even identified some of those companies that were -- that
10 we were receiving complaints against, and I really wanted
11 to know what was going to be done about it.

12 Well, it came to my -- to my dismay and much to my
13 surprise, that the answer that I got was well, we're
14 working ten and 12 hours a day, our case loads are so heavy
15 that we would certainly appreciate you maybe getting with
16 John Mack, my boss and writing a letter to Joe and seeing
17 if we can get the allocations for more agents or more ^{EOS} EOEE's
18 to help us with the tremendous load that we have.

19 The fact of the matter is, though, it's I think
20 common knowledge that rather in terms of the compliance
21 review, rather than to really concentrate on the hiring,
22 of minorities and the promotions of minorities, it seems
23 to be that they are inundated with the bureaucratic paper
24 work, they tend to concentrate and emphasize the fact that
25 they have completed compliance reviews or this seems to be

1 the issue, and they have maybe blocks checked on their
2 various pieces of paper, but they're never audited on the
3 hiring and the promotions of minorities.

4 And we know this for a fact, that this is what happens.

5 My main concern really is that OFCCP, they've got to
6 work closer with community based organizations, ethnic
7 organizations, and like I said, with the exception of these
8 two, they have got to come to us to try to locate and
9 identify minorities.

10 We can't say that we're going to fill all of the more
11 technical jobs that we get but as I said before, we can
12 design recruitment programs around those kinds of situations.

13 But I'd just like to see OFCCP, I hope -- well,
14 it's hopeful that most of the people that are working there
15 in the various capacities that they are serious about their
16 commitment with the exception of the two that I've
17 already mentioned, that they reach out and come to community
18 based organizations.

19 The urban league, we have in excess of 125 people
20 walking through our doors every day seeking employment. As
21 Pearl well knows, she comes there and these people are
22 sitting out waiting, waiting for jobs to get into another
23 area in terms of the qualifiable person.

24 All too often we're getting the job orders that are
25 requiring the years and years of experience, the, all of the,

1 you know, the qualifications that in my opinion they really
2 aren't warranted as it relates to the job itself. In other
3 words, they do not require as much experience as the employers
4 would like for them to have.

5 And I'm speaking of really the qualifiable person.
6 Increasing numbers are coming through our doors that fall into
7 the category of displaced education administrators, dis-
8 placed teachers, recent college graduates with no experience,
9 we have all kinds of programs designed for the underprivileged
10 and of course all of those programs are needed. But what
11 about that person that's going out and qualified themselves
12 and they are still having problems trying to get behind the
13 doors where they can actually get an interview and hopefully
14 get -- receive some gainful employment? There's problems
15 in those areas.

16 I think that the companies, corporations, they're
17 really missing the boat, they aren't looking at people with
18 qualifiable, transferable skills, specially in their personnel
19 departments where they have many divisions in training,
20 career development, they use counselors, but for some
21 reason we don't get these kinds of job orders come into the
22 urban league and I'm speaking mainly to the employers.

23 THE CHAIR: Mr. Griffith, does the urban league have
24 some kind of plan to reach out to the employers or are you
25 waiting for the employers to reach out to you?

1 A. Well, that's just one side of the coin in terms of
2 employers coming to the urban league. We have active staff
3 of field representatives and job developers where we actively
4 go out and job develop for a client. We will even go so
5 far as to design a recruitment package, a recruitment program
6 for them. We will hire recruiters for X amount of dollars,
7 just what it takes to bring a recruiter on board and for
8 that recruiter to recruit exclusively for that particular
9 company, utilizing all of the resources of the urban league
10 and other resources that we have developed.

11 Yes, we do reach out, part of my responsibility is
12 making presentations to companies that we happen to know are
13 deficient in their affirmative action commitments, at least
14 offering them the opportunity to join us in some kind of
15 a consortium to meet their affirmative action needs.

16 At this particular time we have two very good
17 contracts with two companies, one we recruit for seven
18 of its divisions here located in the southern California
19 area. They came to us, they says, look, we need folks,
20 we need minorities, across the board, what can we do? I
21 mean we would like to work some kind of agreement out with
22 you all so that we could really increase our numbers and also
23 help us in our commitment.

24 And we design these programs, one started in 1975,
25 one in 1976 and they have been very successful. We have been

1 identified. Located minorities for the various positions.
2 So, yes, we reach out, it's a two-sided coin.

3 THE CHAIR: Thank you. Mr. Martinez?

4 Q. (By Mr. Martinez) Yes, Mr. Griffith, do you feel
5 that the federal guidelines regarding jobs validation,
6 availability and goals and timetables are workable?

7 A. Well, yes, I think they're workable, you know, if
8 they're seriously considered. If in fact the companies
9 are sensitive enough to the real problem and that being
10 bringing more minorities on board, and putting them in decision
11 making positions and I'd just like to speak to that for a
12 moment, I'm going to mention this one industry that I know
13 we're all familiar with, the entertainment industry. They're
14 notorious for that lack of utilization of not only employees
15 that they have working there, but hiring minorities in the
16 various fields.

17 White males hold the overwhelming majority of all
18 the decision making positions. In contrast, women and
19 minorities hold subsidiary positions. Women, particularly
20 minority women continue to be concentrated within the
21 clerical ranks. Furthermore, the proportion of minority
22 women in office and clerical category has increased markedly
23 in recent years.

24 In comparison with their presence in the work force
25 in general, a relatively high proportion of minority females

1 and to a lesser extent minority males, are employed in
2 visible positions on the air talent, increased visibility
3 on the screen without comparable representation in decision
4 making positions suggest that minorities and women serve
5 merely as window dressing and this is common knowledge.

6 The actual employment status of minority and women has
7 been misrepresented by licensees. The FCC395 form allows
8 licensees to imply erroneously that women and minorities
9 are moving into decision making positions when their job
10 titles and salaries suggest that they perform primarily
11 clerical and routine administrative tasks.

12 The regulatory agencies require its participants
13 industries to analyze their work forces for representation
14 of minorities and women at all levels of responsibility.

15
16 The total employment of minorities and women employed
17 at local stations does not encourage licensees to employ
18 them in positions that carry decision making authority and
19 program responsibilities. GSA and FCC requires participating
20 industries to report recruiting and training efforts but
21 these reports do not have to be correlated either with
22 underutilization of minorities and women or with the
23 actual hiring and promotion. The resulting reports are
24 meaningless at best and misleading at worst.

25 The media industry has demonstrated a tendency to

1 report efforts which have not resulted in the employment of
2 or promotion of women and minorities.

3 Furthermore, some participants have reported under-
4 taking specific affirmative action efforts when in fact
5 they have not done so. So, yes, Ladies and Gentlemen, dis-
6 crimination at this point is well, it's alive and it's kicking.

7 Q. Well, my next question would be do you perceive
8 a weakness in present federal enforcement of affirmative
9 action?

10 A. Well, as I mentioned before, I think the weakness
11 is that I don't know whether or not OFCCP in this particular
12 area, they're understaffed or whether or not their case loads
13 are so heavy, but I don't think that there's enough
14 effort as it relates to reachout to the various resources.
15 The various community based organizations, I think that
16 there could be a heck of a lot done in that particular
17 area. I also feel that there needs to be more emphasis
18 placed on actually, on the actual hiring and promotion of
19 minorities, moreso than the paper work that's done and
20 moreso than whether or not you completed your review, how
21 many reviews have you completed.

22 They're under a handicap, they have a 60-day period
23 in which they have to complete their reviews, otherwise
24 they're penalized. All too often a lot of these companies
25 that they're visiting rather than to, when a company has

1 gross deficiencies, consequently they're only able to look
2 at maybe some of the more important issues and therefore
3 that company goes virtually unreviewed in a lot of areas,
4 and this goes on year to year to year.

5 So, in the total system, I feel that there has to be
6 some kind of revamping, I think that their mission has got
7 to be readdressed, and I think more importantly, there has
8 to be a commitment to the particular job that they are
9 doing. There has to be more people like the Pearl authorities,
10 like the Bob Coles, that actually come out, that really
11 seek out.

12 There has to be more people that are more concerned
13 about the people that are more concerned about getting
14 minorities and females and handicapped, all the affected
15 classes hired moreso than how many reviews have I completed.

16 MR. ALEX TOBIN: May I ask a question?

17 THE CHAIR: Yes, Mr. Tobin?

18 Q. (By Mr. Tobin) There are effectively two levels of
19 apparent breakdown in the affirmative action program as you've
20 expressed it and I wonder if you could point out to us where
21 you believe that is. Now, as I see it, you're speaking of
22 government enforcement aspects of breakdown, and also the
23 employer interpretation of the affirmative action breakdown.
24 At what level do you feel that this occurs? Is this at the
25 management level, is it at the policy making level, the --

1 what level does it occur in both of those instances?

2 A Well, I think in terms of the companies, I think the
3 breakdown is between personnel and the line staff, line
4 management staff, the supervisory staff, the foremen, I
5 doubt very seriously whether within any corporation, any
6 company, that line foremen, line supervisor, line management
7 that they're really aware of what affirmative action really
8 means. I doubt very seriously whether they even attend
9 EEO meetings, whether they even go to the various affirmative
10 action meetings.

11 And more importantly, I doubt that they are -- that
12 they really care. I doubt that there's the sensitivity to
13 it. So I think that's where the breakdown is.

14 Oftentimes we are -- we interphase with the affirmative
15 action coordinators, affirmative action officials within the
16 various companies, they are oftentimes I want to think,
17 well, look, aren't you going -- you know, why aren't you
18 doing the job? I mean why can't we get these people employed
19 here? But they in fact are -- do not have that decision,
20 in other words, they aren't the ones that are actually
21 hiring.

22 It's that line manager, that line management level,
23 at that level I think that's where the breakdown is. Even
24 in our contracting companies. Over the last year we have had
25 many problems with line people. These are the people that

1 actually do the hiring and the firing, these are the decision
2 makers, that's where the problem is.

3 I think that with OFCCP I think that the problem has
4 to be right up at the top. I mean at upper management
5 within OFCCP, you know. Washington D.C. Sure, there's been
6 some things done, well done when he came on board he, you
7 know, there were a lot of things done. But I think that
8 there has to be more of a concentrated effort in the areas
9 of -- in the areas that we've mentioned relative to contract
10 compliance.

11 MR. TOBIN: Thank you.

12 THE CHAIR: Thank you, Mr. Griffith.

13 Is Mr. Jones here, Oliver Jones?

14 VOICE: No, he's not here.

15 THE CHAIR: Then I'd like to ask Mr. Clinton Rogers
16 to come up and join us at the table. Mr. Rogers has very
17 kindly consented to fill in for Mr. Jones and Mr. Rogers
18 represents the NAACP.

19 Before we introduce Mr. Rogers, -- Mr. Rogers or
20 before he introduces himself, I understand there are other
21 members of the NAACP here this morning and I'd like all of
22 you to stand and be recognized.

23 No? Then I was -- I misunderstood.

24 Please go ahead and identify yourself for the record?
25

1 MR. CLINTON E. ROGERS

2
3 A. (By Mr. Rogers) Okay. Clinton E. Rogers, Chairman,
4 labor industry and EEO committee, southern area conference,
5 that's Lompoc ~~and~~ ^{to} San Diego.

6 THE CHAIR: Thank you. Mr. Tobin?

7 Q. (By Mr. Tobin) Thank you --

8 A. I would like to ask a question, if I may?

9 THE CHAIR: Yes.

10 A. Do you desire input from the community as we perceive
11 it or do you want responses to canned questions? Because
12 I don't think you're going to get at the substance of some
13 things that are very important.

14 THE CHAIR: Well, if you have a prepared statement
15 for us this morning?

16 A. I have some prepared comments, yes.

17 THE CHAIR: Well, would you like to make your prepared
18 comments first and then the committee has some questions
19 they'd like to ask you.

20 A. Okay. One I would like to speak to that basic thing
21 from which all affirmative action programs are developed
22 and that's the demographics, okay?

23 In Los Angeles, in the Los Angeles area, we use an
24 SMSA that extends from San Pedro to Simi Valley, okay? In
25 a specific instance, the relevant labor pool of a particular

1 company is within a 20-mile radius and yet using that SMSA,
2 it dilutes the surrounding 20-mile area such that the under-
3 representation is not there but it is really there because
4 White flight has moved all of the people away from the
5 Inglewood and that kind of -- the area around Washington wash
6 and that area, okay? When this was, the demographics were
7 done showing clearly that underrepresentation was there,
8 and a restudy was required, needed, it was done by secretary
9 of the navy, came down to the local agency and the local
10 agency opted not to use it.

11 That I don't know whether or not you people are
12 interested in, in substantive things like that or are you
13 just interested in form? But --

14 THE CHAIR: We're specifically concerned about
15 affirmative action programs, not so much in terms of the
16 implementation at this point, we will have a phase II in
17 which we will get into implementation.

18 A. Okay. In terms of phase I, the -- there's a, oh,
19 from the Federal Register, Volume #4, 13 April '79, in
20 which EEOC and OPM defines the relevant labor pool for
21 federal agencies. And the requirement is stipulated that
22 the lesser of the following will be used -- the greater of
23 the following will be used: If a local region is defined
24 as the hiring area, then that demographic picture will
25 prevail, okay? If this is less than the SMSA, then the

1 SMSA would prevail. If the national is greater than that
2 then that would be used.

3 This isn't being implemented in the federal agencies
4 as it should be.

5 Q. (By Dr. Perkins) That's a rather technical
6 statement, could you explain it a little more fully? I
7 think I understand but I'm not sure we all understand.

8 A. Okay. Basic to affirmative action you have to
9 define what the ethnic distribution is in the population.
10 Okay? That's basic. Okay. If you use the overall SMSA of
11 Los Angeles, you water down Watts and you water down East
12 LA to such an extent that people who should be working
13 there are not. They don't even appear as being underutilized.
14 Is that all right?

15 And that's basic. The whole thing develops from that,
16 it has substance from that or lacks substance because of that.

17 In this -- this is elemental. So what was defined
18 by OPM and by EEOC was that if the hiring area for the
19 federal building here turned out to be a 20-mile radius, then
20 that EEO, that affirmative action person must then do a
21 demographic study of that area. Now, what we did was to
22 take a map, do a five, ten, 15, 20-mile radius and did
23 every census track, male, female and ethnic distribution,
24 and determined what the exact, based on 1970 census, what
25 the exact ethnic distribution was with that criteria.

1 That then gives you a real thing and it turned out
2 to be considerably different from what had been used using
3 the SMSA. About an increase in terms of female and minoritis
4 of almost 50%, very significant. And if you do something
5 to see that that is implemented, because all of the companies,
6 I live in Orange County and all of the companies out there
7 are very, very active in hiring consultants to figure out
8 ways to avoid implementing in good faith affirmative action
9 and that's one of the -- that's where it begins because
10 everything is structured from that basis. From that foun-
11 dation. Okay?

12 Q. And the two levels are again are local, region --

13 A. Local, regional and then national. For example,
14 the Marine Corps Air Station at El Toro, their affirmative
15 action plan doesn't even mention Blacks, they've no
16 affirmative action plan for Blacks at all because in Orange
17 County the Black population is 1.7%, therefore we don't hit.
18 But what is said is what EEOC is saying is that okay, if
19 you only have one person then you must use the national for
20 affirmative action determination which means then that you
21 would be using about eight to 10%, in terms of the labor
22 pool.

23 Now, we're talking about labor pool and not just
24 statistics, okay? Not bodies.

25 Q. So when you said earlier used the word greater,

1 that's the definition which gives you the largest number of
2 women and minorities in the pool?

3 A. That's true.

4 DR. PERKINS: Thank you.

5 THE CHAIR: Now, Mr. Tobin, do you have some specific
6 questions you'd like to ask?

7 MR. TOBIN: Well, I do have a few. Have you completed
8 with what you wanted to say? I have a feeling that you
9 haven't.

10 A. No, sir, there's one other.

11 ~~We're not~~ all of the affirmative action plans in the
12 world are not going to make any difference unless some
13 punitive action begins to occur. Now, in terms of, let's
14 deal with the rights of myself as an EEO complainant, I've
15 been denied the job, I come to complain, I must -- I can
16 not go into litigation, I have to pursue the administrative
17 process and the administrative process inherent in that
18 says that there is not an adversary relationship but in
19 fact federal agencies are hiring attorneys to act as
20 management reps., so now I come in as totally unprepared
21 and here's an attorney sitting across from me as a management
22 rep. in a hearing that is formal, yes, but is not adversary.
23 Okay? And I get wiped out.

24 But even if my case is so strong that it goes to
25 hearing and now hearing is the first opportunity for me and my

1 peer group worker that I've asked to represent me who is
2 neither an attorney also, to talk and get some discovery
3 to take place, if that EEOC hearing officer does find dis-
4 crimination, it then goes to employee appeals review board
5 and without exception almost they reject everything.

6 And supposedly we are in the administrative process
7 and we're trying to resolve things without going to
8 litigation but all of the correspondence you get from them
9 sounds as if they have hired people from the supreme court
10 to pound you into the ground.

11 Okay? And then, when they are overturned, no one is
12 ever punished. And therefore, you -- we can go on forever
13 and ever.

14 There's the need for someone to get kicked once in
15 a while. I'm con--

16 Q. (By Mr. Tobin) May I inquire, one of the questions
17 I was going to ask you seems to be almost answered by what
18 you've said but it might not be so if you'd like to
19 augment that, please feel free to do so, but my question
20 was originally going to be, what do you feel are some of the
21 weaknesses of the federal affirmative action requirements
22 and efforts to enforce these requirements and you've just
23 been talking on that subject. Can you enlarge on that?

24 A. Yes, sir. There is the need, I was alarmed a while
25 back because Chair Norton indicated that she was going to do

1 away with the hearing process and -- hearing step and I'm
2 glad that didn't happen because the complainant never has the
3 opportunity to confront anyone to find out really how he
4 was discriminated against until that hearing takes place.

5 Q. And that's one of the weaknesses?

6 A. That's not a weakness, that's a strength.

7 Q. But I say the lack of it is?

8 A. Oh, the lack of it is a weakness, that's true because
9 I've been had, I don't know how I was had but I know I've
10 been had and that's the first opportunity for a face to
11 face confrontation to get into some discovery as to how it
12 was done.

13 Q. Now, what about areas of enforcement, you were
14 mentioning a moment ago that somebody's got to get kicked
15 on occasion.

16 A. And it never happens because what the administrative
17 process is is that this agency, okay, that punishment is
18 not a relief to me under 713, okay, under the regulations,
19 that the commanding officer or whatever will deal with that
20 as a part of the administrative action, okay?

21 Q. I follow you.

22 A. And what in fact happens and it just happened yes-
23 terday, a person who was guilty of sex discrimination was then
24 promoted and this, so -- it goes on and on.

25 Oliver Jones is here now and I will move back to my

1 seat.

2 THE CHAIR: Well, just stay there, perhaps, there
3 may be other questions from the rest of the committee, we
4 thank you for coming up on such short notice.

5 Mr. Jones, would you like to identify yourself for
6 the record, please?

7

8

MR. OLIVER JONES

9

10 A. (By Mr. Jones) My name is Oliver Jones, I'm a staff
11 attorney with the western region NAACP.

12 THE CHAIR: Thank you. Mr. Tobin, I turn it back
13 to you.

14 Q. (By Mr. Tobin) Well, we just had some input into
15 the original question I had. Perhaps I can restate it. And
16 get your point of view. Pro Jones. What I had asked was,
17 what do you feel are some of the weaknesses of the
18 federal affirmative action requirements and efforts to
19 enforce the requirements? So it's a two-sides question.

20 A. Well, you know, I have a lot of contact with people
21 who make complaints with EEOC, in fact I may see 40 or 50
22 people a week who have filed complaints. And generally
23 speaking, they come in for some information about what's
24 likely to happen and they ususally have, you know, a myriad
25 of complaints and questions. Problems in dealing with the

1 bureaucracy but probably the one problem which stands out
2 in my mind and the one I most increasingly encounter, has
3 to do with the investigators themselves. And the general
4 feeling that many of these investigators don't have the
5 requisite skills to ferret out discrimination.

6 You're dealing with a social policy which is
7 extremely difficult to enforce, in which questions of proof
8 be, problems of securing proof are often very difficult.
9 Yet if you look at the job descriptions for your investigators,
10 you know, there's -- there's little in those requirements
11 to really indicate that people should -- that the people
12 applying hold these positions really should have that kind
13 of investigative spirit.

14 And so the complaint we most often get is that I put
15 the facts in front of the investigator, oftentimes the facts
16 are very complex and convoluted, as you know, issues like
17 this often are and the investigator just doesn't have the
18 skills, doesn't have what it takes to actually make any
19 kind of determination. And so very often a complainant
20 feels that they provided sufficient evidence but the
21 investigator just didn't do much good.

22 Now, there are all kinds of reasons for that, their
23 case loads are I think too high and the time frame's often
24 unrealistic and the criteria of evaluation which I'll get
25 to in a minute, I think is also bad.

1 But generally, there is a feeling among many, many
2 people who complain that the quality of the investigative
3 staff is often lacking. And I'd say a majority of the
4 complaints we have, in which you know it appears that the
5 person has an arguable case, has to do with the perceived
6 deficiency of the investigator.

7 It seems to me if you were to look at other
8 agencies with investigative functions you'll find that
9 there is a concerted effort to get experts in that given
10 field. Whether the administration or --

11 Q. I was going to ask you if -- what weaknesses do you
12 find with respect to affirmative action requirements themselves?

13 A. Well, again you know, you can have a set of rules and
14 they may be -- and they may be good rules and they may be
15 able -- they may operate appropriately. But again those
16 rules mean very little if you don't have personnel who can
17 aggressively utilize them.

18 Q. Are you saying that that goes back to the first
19 statement that you made?

20 A. Yes, I'm saying it's all -- you know, you have a two-
21 fold problem, you have a very complicated set of rules,
22 you've got a complicated situation oftentimes to deal with,
23 and then you have investigators who may not be up to the task.

24 For instance, I challenge you to look at the job
25 qualifications for EEO investigators in a number of public

1 agencies. For instance look at the requirements the
2 department of the navy has for its investigators? And
3 you'll, I think, recognize the problem some people have
4 with these people.

5 Now, this is not to underrate them, it's simply to
6 indicate if you have a police department and you're trying
7 to catch criminals you try to have investigators with those
8 kinds of skills and people oftentimes don't feel these
9 investigators do it.

10 Another point I'd like to make has to do with the
11 criteria of evaluation applied to investigators. And it's
12 been my experience, and I've had some experience for in-
13 stance with the James Chin (Phonetic) case, who was an
14 EEO investigator for the environmental protection agency.

15 But anyway, it's my experience that there was so
16 much -- there was such a complaint about backlogs and
17 about people waiting years to have a resolution of their
18 matter, that now you find that there's -- that agencies
19 aggressively try to turn the cases over. And so that the
20 investigators are under extreme stress many times to get
21 cases completed and move on.

22 And to complete so many cases within a given period
23 of time. And that makes a perfect bureaucratic sense,
24 but in dealing with the kinds of problems which these cases
25 often represent, it's often unrealistic, it forces investigators

1 to oftentimes rush through cases and not give it the kind of
2 thorough going over which each case deserves, and so I think
3 that an accompanying problem is sort of the standard for
4 evaluation implied to investigators.

5 It's my understanding that careful scrutiny is given
6 to the time they put in on these cases, a lot isn't -- a
7 lot of attention and a lot of the evaluative process doesn't
8 go to the quality of work which this or that investigator
9 may turn in. So it's more of a quantitative approach as
10 opposed to a qualitative approach, and the results is the
11 complainant suffers oftentimes.

12 Those are just two areas I think --

13 THE CHAIR: Excuse me, Mr. Jones, and Mr. Tobin,
14 would you speak up a little bit? I understand the back
15 rows have a difficulty and the front row seems to be having
16 difficulty hearing you.

17 A. Okay.

18 THE CHAIR: Thank you.

19 Q (By Mr. Tobin) Mr. Jones, in your opinion what has
20 been the effect of OFCCP reorganization, particularly with
21 respect to the questions of improvement in enforcement and
22 secondly, problems with consolidation?

23 A. Well, it seems to me you're moving towards more
24 efficient process, in which people have more reasonable
25 expectations about when the investigation will occur and be

1 completed. But again there are the qualitative concerns
2 about the investigators themselves which I don't feel have
3 been adequately addressed.

4 Q With that -- that addresses itself primarily to
5 the enforcement aspect, is that correct?

6 A Yes.

7 Q What about the question of consolidation, any problems
8 with consolidation?

9 A Not per se, no.

10 Q Now, has the NAACP ever sought technical assistance
11 from EEOC or OFCCP?

12 A No. Generally speaking, we work closely with the
13 private bar, and people who have problems we generally will
14 refer to a member of the bar as opposed to the agency.

15 Q Is it correct that you did work with EEOC on the law-
16 suits against the San Francisco Police and Fire Departments?

17 A Well, we asked them to intervene somewhat late in the
18 process but initially this was a lawsuit brought by a
19 coalition of civil rights groups.

20 Q But in fact you did end up intervening?

21 A Well, we asked for their intervention when it appeared
22 that that kind of political clout was needed with the
23 judge in question.

24 Q What recommendations would you make to federal
25 enforcement agencies which you feel would improve the

1 affirmative action efforts?

2 A. Well, to my mind since justice after the fact in
3 discrimination cases is so elusive, it seems to me that
4 a greater attention should be paid to the periodic reporting
5 mechanisms which you have available. I -- closer attention
6 ought to be paid to these affirmative action plans that
7 various employers have and the degree to which they're
8 honest and represent a good faith effort over time to meet
9 their goals, because oftentimes employers, because they're
10 not under routine scrutiny, allow employment situations
11 to develop which result in a spat of complaints.

12 But we all know that resolution through your agency
13 and through the courts is expensive, it generally satisfies
14 no one, and I think there ought to be more of a preventive
15 strategy in terms of indicating to employers that they are
16 under constant scrutiny. And not putting the onus on the
17 beleaguered employee to come forward with the complaint and
18 try to prove his case.

19 Most of them don't ever prove their cases, your agencies
20 don't have the resources generally, they're not put into
21 proving these cases and so they go unaddressed. And frankly,
22 I tell many employees who come forward with a complaint
23 against a very large company that if the federal government
24 has presumed that they're in compliance, and they haven't
25 thoroughly checked out the reality of the situation, then it's

1 going to be very tough sledding for them. Without this
2 prima facia evidence that something is amiss.

3 Q That comment would apply to both the private as
4 well as the public sector?

5 A Yes. Yes, because the public sector in many times,
6 in many ways is more immune to scrutiny than anyone else.

7 Q That's the point --

8 A And you find more flagrant abuses there than you do
9 in other situations. And part of the problem may rest with
10 the existence of internal EEOC mechanisms. Which I find too
11 often be in bed with the agency, and to not have the kind
12 of aggressive posture which you need in order to keep
13 employers honest, be they private or public.

14 THE CHAIR: Are there any questions from the committee
15 members? Dr. Perkins?

16 DR. PERKINS: No, I was just going to ask you,
17 you said earlier that you thought that the reorganization
18 was moving toward a more effective process?

19 A More efficient, yes.

20 Q (By Dr. Perkins) More efficient process. I am
21 very sympathetic with the distinction you made between
22 the quality and the process but sometimes process can
23 get toward quality. You used the term moving foward. Can
24 you elaborate on that a little more? Do you have a feeling
25 that the OFCCP is essentially there or what is the situation?

1 A I think that it's essentially there. I'll say one
2 thing and this is a complaint which was made to me in the
3 last 72 hours. And it had to do with EEOC throughout
4 California. There has apparently been a marked decrease
5 in the number of Black supervisors in the EEOC, you might
6 want to check your statistics. But apparently there has
7 been a marked decrease in their presence, in the supervisorial
8 ranks, and some of this resulted from reorganization. And
9 there is a concern that the reorganization itself didn't
10 take into account its internal affirmative action objectives.

11 And that's a complaint which we've recently received
12 regarding the reorganization.

13 Q I have just one other question. You made some
14 reference a minute ago to EEOC is -- problem with EEOC's
15 enforcement in the state and local government area. Presumably
16 in the federal area. Do you see similar problems with the
17 office of personnel management?

18 A I have very little contact so I couldn't give you --

19 A (By Mr. Rogers) Can I respond to that?

20 THE CHAIR: Mr. Rogers.

21 A I can respond to the OPM thing now. We're having
22 a continual erosion of Blacks as deputy EEO's and it's
23 very prominent throughout the navy right now, and we have
24 a complaint up at ^{Hueneme} ~~Wyneeemy~~ (Phonetic) right now that they
25 want to make it a class but the class is too small, in

1 addition the people coming out of, the investigators coming
2 out of the navy civilian personnel command, NCPC San
3 Diego, there are no Blacks in it at all and I think
4 there's only one Hispanic. And I don't think there are
5 any Asians at all. So these are the investigators that come
6 to investigate our complaints.

7 THE CHAIR: Thank you. Are there any other questions
8 from the committee? Are there questions?

9 Q. (By Mr. Ron Arroyo) I have one clarification I
10 wanted to ask, Mr. Jones, a clarification. I took it from
11 what you said that previously with EEOC the complaint was
12 that they, they took too long to resolve a case, now there
13 is a methodology of getting these cases done faster. But
14 is your feeling that they're still unresolved, that things
15 aren't better just because things are getting resolved faster?

16 A. (By Mr. Jones) Well, I think they're better, but I
17 think to make them more effective in terms of resolution,
18 factfinding, that again you're going to have to have a
19 system of evaluating your investigators qualitatively, be-
20 cause oftentimes through experience, I can tell certain
21 investigators when they get a matter will never be able to
22 resolve it, they just never will and they just don't have
23 the requisite skills to do so.

24 It requires the same kind of investigative mastery to
25 solve one of these cases as it does to solve a criminal case.

1 Or a tax matter. These are very complicated and it does
2 require a skill, but if you look at the job descriptions
3 and the qualifications for investigators, they don't stress
4 that quality at all.

5 THE CHAIR: Thank you. Mr. Dickerson?

6 Q. (By Mr. Don Dickerson) Are you, I'd like to ask you
7 a question about the process. Are you familiar with the EEOC
8 rapid charge processing system and the reason I'm asking
9 that is in your opinion, could the weakness of the EEOC
10 investigator be really a weakness or not a weakness, a
11 requirement of restraints put on that investigator by the
12 rapid charge processing system?

13 A. Well, when they had no formal time frames they
14 were doing lousy jobs. And this is not to villify the per-
15 sonnel involved, it's simply to recognize when you're
16 dealing with tasks this complex, that it requires really a
17 lot of skill and knowhow.

18 MR. TOBIN: If that was --

19 THE CHAIR: Mr. Tobin?

20 MR. TOBIN: Yes, I'm sorry.

21 THE CHAIR: And louder, please, I understand the
22 back row can't hear.

23 Q. (By Mr. Tobin) From your testimony, if the one thing
24 were going to be extracted of greatest importance, it would
25 be the qualification of investigators or their lack of

1 qualification?

2 A It would be the qualifications of the investigators
3 and then a system of evaluation which stresses quality
4 as opposed to simply looking at the numbers.

5 THE CHAIR: Ms. Bernstein, one final question.

6 Q (By Ms. Helen Bernstein) I understand the point
7 you're making about investigators. In terms of the re-
8 organization on a higher level, have you seen any change in
9 philosophy toward affirmative action or has there been any
10 difference at all?

11 A I haven't seen a change in philosophy because I
12 haven't seen many faces change in that regard.

13 Q So you would see no change at all, basically?

14 A No, I wouldn't say that, but I haven't seen any change
15 reflected in your top administrative ranks.

16 THE CHAIR: Mr. Griffith, did you want to make a
17 comment on that question or are you going to pass?

18 A (By Mr. Griffith) No, it's well stated and I agree
19 with him.

20 THE CHAIR: Well, I thank you three gentlemen this
21 morning and the committee expresses its appreciation also
22 to Mr. Rogers for filling in. Thank you.

23 Our next panel is composed of Barbara Klein, David
24 Lehrer and Carl Martin, will you please step forward?

25 While the panel is stepping forward, I would like to

1 recognize from the audience several, two state advisory com-
 2 mittee members to assure those of you who are concerned
 3 about appropriate minority representation on the state
 4 advisory committee, Vernon Yoshioka from San Diego and
 5 Frankie Jacobs, if Ms. Jacobs would stand, please? Frankie
 6 comes from northern California.

7 MS. GILLETTE: Gillette.

8 THE CHAIR: Gillette, I'm sorry. I know her as Jacobs
 9 for years. Frankie Gillette serves as northern vice
 10 chairperson.

11 May I speak to -- is Barbara Klein here?

12 Then we have at the table Mr. Lehrer and Mr. Martin.

13 Let's go ahead then with Mr. Lehrer, would you
 14 please state your name and organizational affiliation?

15 A. My name is David Lehrer, I'm the
 16 western states counsel of the Anti-Defamation League of
 17 B'nai B'rith.

18 A. (By Mr. Lehrer) Yes, my name's David Lehrer, I'm the
 19 western states counsel of the Anti-Defamation League of
 20 B'nai B'rith.

21 THE CHAIR: Ms. Bernstein? would

22 Q. (By Ms. Bernstein) Could you tell us what the Anti-
 23 Defamation League's position is on affirmative action?

24 A. The ADL's position on affirmative action I think is
 25 fairly well known. We've been involved in -- ADL's been

involved affirmative action since Bakke, Webber, and many
1 years before and since.

2 We are firm believers in affirmative action, and we
3 do however, not believe in quotas or preferential treatment,
4 we've made that position very clear in numerous amicus
5 briefs which we've filed.

6 I think that position is not logically consistent,
7 I think we can, one can be in favor of vigorous affirmative
8 action without being a proponent of either quotas or preferen-
9 tial treatment.

10 And if you like, there are examples of programs we
11 are presently working on, one major one I think it probably
12 will be a seminal one in the field with the American Bar
13 Association. Where we have together developed a program
14 which is not a quota program but which has all the prospect
15 of being a major, having potentially a major impact on
16 recruitment for law schools around the country.

17 There will be pilot projects in three major cities
18 to try and tag or identify disadvantages and minority
19 students in undergraduate and high school and lower levels
20 and try and work with them. Have programs, summer
21 institutes and so on, and eventually have them prepared for
22 law school.

23 Q. What other --

24 THE CHAIR: May I ask committee members to raise their
25 voices as well and if you can not hear in the back row, I

1 suggest you sit in the front row. As an alternative
2 solution.

3 Q (By Ms. Bernstein) What are some other alternatives
4 that the Anti-Defamation League supports since you don't
5 support timetables and quotas?

6 A Well, I think there are various methods of affirmative
7 action which can be employed. When one's talking about in
8 terms of admission or whether one's talking in terms of
9 employment, in terms of employment, you know, vigorous
10 announcements of position, vigorous recruitment, vigorous
11 attempts to enlarge the pool of applicants.

12 And if you will, goals and timetables in terms of
13 applicants. So that when a test is administered for
14 particular position, we make sure that the employer has
15 made a good faith effort to make sure that there's large
16 a spectrum of the community as possible knows that a job
17 is available, that an opening exists and can compete on an
18 equal basis for that job.

19 Those are the kinds -- that's the example of a kind
20 of program which we think is nondiscriminatory, doesn't
21 generate ill will among anyone, and is the kind of good
22 faith effort which can be undertaken and I think can be
23 successful.

24 We quarrel with the notion that every strata of society
25 in the perfect world you have a slice of the pie in which

1 every racial or ethnic and every other kind of group would
2 be reflected on a proportional basis, I don't think life
3 works that way, we don't think in a perfect world it would
4 work that way and to try and preordain results of either
5 admissions tests or of employment hiring, to meet someone's
6 preconceived notion of how people should be hired and how
7 people should work, is wrong.

8 And I think what we've found is that it ends up being
9 counterproductive, it ends up generating tremendous amount
10 of hostility, and it ends up vulcanizing our country.

11 Q Well, if people were not voluntarily cooperative,
12 how would you hold them accountable?

13 A Well, in terms of the kind of program I was mentioning
14 for example increasing your applicant pool, I think people
15 could be held accountable for doing that and for showing
16 if they haven't achieved a mix in their applicant pool, that
17 they made good faith efforts to do that.

18 But we think there's nothing wrong in holding people
19 accountable for good faith efforts to achieve affirmative
20 action to satisfy an affirmative action program, good
21 faith efforts, that's where we put our emphasis on good
22 faith effort, not on -- that's the distinction I think that's
23 important between good faith efforts and goals and timetables.

24 Q Do you have any views on the effect of the reorganiza-
25 tion of EEOC and OFCCP?

1 A Well, we do take discrimination complaints that come
2 to us, the majority of which I think, for obvious reasons,
3 tend to be those complaining of anti-Jewish discrimination,
4 although we do get other discrimination complaints as well.

5 On occasion we refer them to either state or federal
6 agencies, sometimes we try and mediate, handle them our-
7 selves. I have noticed that we don't handle that many,
8 on a local basis, but the -- seems to have been an expedited
9 procedure, the response seems to come sooner or the referral
10 to the state agency seems to come sooner. And it appears
11 to be -- the process seems to be working more effectively.

12 The -- we just had a case involving, it was a complaint,
13 a complainant who was bringing charges against an inter-
14 national contractor who was still working there but
15 charged that because the contractor was engaged in a large
16 scale contracting with Saudi Arabia Jews were on a systematic
17 basis being eliminated from meaningful positions in the
18 company because of the connections with Saudi Arabia and
19 increasing contracting.

20 He chose to remain anonymous but said that if anyone
21 studied the employment practices of the -- or the
22 firing practices over the past, the retirement practices
23 over the past year, they would find that we referred it
24 to the OFCCP here, they in turn referred it to EEOC, OFCCP
25 was very interested and last week I got a letter from EEOC

1 saying they can't handle anonymous complaints and there
2 was nothing could be done even though OFCCP had originally
3 been interested and I think we're going to have to try and
4 sit down and see what could be done because there's
5 potential there for a very interesting complaint, even
6 though the particular complainant didn't want to come
7 forward. I think the evidence will probably bear out
8 his allegations with the company.

9 Q But in terms of the reorganization do you see any
10 differences in the offices? As they're operating?

11 A I can't comment.

12 Q Okay. And also I have one other question. In your
13 involvement in cases have you seen any differences in the
14 public or private sector in either the amount of cases
15 reported to you or followup?

16 A I -- well, in a number of cases for some reason
17 we seem to get a disproportionate number of complaints
18 about the postal service. I think of any particular agency,
19 private or public, we get more complaints proportionately
20 from the postal service than against anyone else and it
21 seems that there is a pervasive dissatisfaction, demoraliza-
22 tion, I don't know what it is but a lack of a constant
23 frustration for people in the postal service, desperate
24 areas is we'll get people coming in complaining of inability
25 to achieve promotions, inability, the feeling that they'll

1 never move ahead because certain slots are preordained,
2 their ~~supervisor's~~ not allowing them to work, to take time
3 off.

4 We have probably the most frequent complaints of
5 inability to get time off for religious holidays from
6 employees of the postal service where they'll suddenly be
7 having an audit on a Jewish high holiday or something of
8 that sort. It's postal service seems to be the most fre-
9 quent with the problems we have, disproportionately large
10 number of our complaints come from the postal service.

11 THE CHAIR: Thank you.

12 Mr. Martin, would you please state your name and your
13 organizational affiliation for the record, please?

14
15 MR. CARL MARTIN

16
17 A. (By Mr. Martin) Yes, my name is Carl Martin, and I'm
18 the executive director of the Los Angeles County Commission
19 on Human Relations.

20 THE CHAIR: Thank you.

21 Ms. Hilborn?

22 Q. (By Ms. Karen Hilborn) Mr. Martin, would you
23 briefly describe for us how your office works with employers
24 to achieve voluntary affirmative action?

25 A. Well, we work through employers, through an education

1 process, since we are not an enforcement agency. In efforts
2 to try to persuade them that it's beneficial to them as
3 well as the general society, even economically for them
4 to implement affirmative action programs.

5 Q Do you feel that your particular agency is able to
6 fill all the requests for technical assistance?

7 A No, not nearly all of them.

8 Q Could you elaborate on the possible reasons why not?

9 A Well, most of them are budgetary. Due to Proposition
10 13 among other things, where my staff has been cut back
11 for the past five years more than 50%.

12 Q In relation to that, then, how many inquiries from
13 employers do you receive in a year just to give us a
14 relationship?

15 A In a year, the past year we received about, complaints
16 from about a 100 different corporations in the private
17 sector. Some of these were initiated by people who had
18 complaints and when we contact the employers, with an
19 investigation, exploration of their problem, then we get a
20 request from them to help them develop some ameliorative
21 programs.

22 Q What federal regulations, guidelines, directives,
23 do you utilize in assisting employers to develop their
24 plans?

25 A We use the Executive Order from 1964, we use --

[sic]

1 frankly whatever, we try to use all the federal regulations,
2 statutes and court decisions in our educational process.

3 Q Following up on that, then, what do you perceive
4 to be the barriers for employers in meeting these federal
5 regulations in the programs?

6 A Well, I think there are many barriers. First, I
7 think that there is a lack of a will and commitment on the
8 part of not only the federal government, but on the part of
9 the private sector as well, to implement a meaningful
10 affirmative action. For instance, you asked the last speaker
11 what their position on affirmative action.

12 Our position is that through whatever action is
13 necessary we must correct the past and present causes of
14 discrimination. Whether we call them goals and timetables,
15 quotas or whatever, the standard by which we measure results,
16 and the results, very frankly, nationwide not only Los
17 Angeles County, remains abysmal.

18 Now, other barriers are these: Speaking to the
19 commitment phase of it, from our investigations and our
20 observations, many corporations and companies have affirmative
21 action programs and they have affirmative action officers.
22 But from what we can see, these are mostly ceremonial. They
23 are clothed with no authority to insist that management all
24 down the line implement affirmative action the same as they
25 insist that they perform in other areas.

1 This appears to be widespread and when we find an
2 exception and it indeed is an exception, so there is no
3 power to implement and we believe that there's no power to
4 implement because they don't have to. And if the proper
5 kind of vehicle is developed or implemented from the
6 federal government and from the courts for that matter, then
7 I think people will see the need to implement affirmative
8 action.

9 I heard one of the last speakers talk about he didn't
10 put it in these terms but enforcement by way of morality
11 rather than -- enforcement, you know. And I don't think
12 we can live by the morality rule, I think we can see that
13 it's not working, when we look at the results of unemployment.

14 And as compared to what it was ten years ago and
15 over that past ten years we've had affirmative action apparently
16 on the ~~front~~^{back} burner. So those are some of the barriers to
17 affirmative action.

18 Speaking, and you didn't ask me this but I've heard
19 it already, speaking of the reorganization, I think that
20 from our observations cases are processed faster but I
21 agree with the man from NAACP that this does not speak to
22 the quality.

23 However, I would hasten to add that EEOC is to be
24 complimented in the efforts they've made and if anything
25 we need more centralization and perhaps we can get at

1 some of -- some of the more effective enforcement if we
2 had not only federal contract compliance but any kind of
3 enforcement in the federal government, if you could put that
4 all, even if you develop a superstructure, if you could put
5 it all in one place and really put some teeth in it from the
6 top down, perhaps we can get better results from the
7 government and in the private sector enforcement. Those
8 generally are some of the barriers I see to affirmative action.

9 And one other that I might point out, resources, either
10 they are so meager or they are apportioned in such a way as
11 to turn the recipients, those who should be recipients, the
12 beneficiaries of affirmative action, into adversaries
13 and enemies. For instance, Blacks against Browns, Jews
14 against Blacks, women against all of them, for the resources
15 that we have.

16 And I think those who would like to see no affirmative
17 action at all benefit from this kind of a situation. I
18 think an educational process on the part of, not only my
19 organization but many across the country, including the U.
20 S. Civil Rights Commission, is necessary if we are to
21 correct that situation and really move meaningfully forward
22 in this whole area.

23 Q You've indicated several recommendations I think as
24 to how you feel that the federal agencies could improve.
25 Have you any other comments to make regarding recommendations

1 or that pretty well say it?

2 A. That pretty well says it.

3 MR. TOBIN: Thank you very much.

4 THE CHAIR: Thank you, Mr. Martin.

5 Ms. Klein, would you please state your name and
6 organizational affiliation for the record, please?

7

8

MS. BARBARA KLEIN

9

10 A. (By Ms. Klein) Yes, indeed, I'm Barbara Klein and

11 I'm one of those who's against all of them, I'm a member

12 of the Los Angeles County Commission on the Status of

13 Women.

14 Q (By the Chair) Thank you. Has the employment
15 committee on the status of women ever sought technical assis-
16 tance from federal agencies responsible for affirmative
17 action?

18 A. At one time in one specific case we did go to the
19 EEOC and were not helped. In fact, the impression that we
20 received was because we were women, and we're really
21 concerned about women in general and not specifically minority
22 women, or minorities as a group, help was denied us at that
23 time. We did not go back.

24 Q What about assistance from the state or local
25 agencies, have you received any kind of assistance?

1 A It's hard, first of all let me describe our commission.
2 Our commission is a 15-member voluntary commission
3 appointed by the supervisors, three of us from each super-
4 visorial district in Los Angeles County.

5 We are volunteers. When I heard that we're against
6 all of -- all of you -- well, no, I want to tell you a little
7 bit about the difference between the human relations commission
8 and ours is that we have one quarter of a person staff,
9 that's all, for all the women in Los Angeles County. So
10 all the work that gets done on behalf of our commission is
11 done by us as volunteers. We are all working elsewhere full
12 time.

13 So do we have help? Have we sought help? Sometimes
14 yes, sometimes no. Not with a great deal of continuity be-
15 cause we work as we can when we can without a great deal
16 of continuity ourselves.

17 If we were fortunate enough to be like the human
18 relations commission we could do a much better job.

19 Q We're not here to mediate, but have you sought assis-
20 tance at all?

21 A We have informally through our committees, for
22 instance, sought assistance, having people sit in in helping
23 situations in certain specific tasks.

24 Q Can you be specific now?

25 A Where they've helped?

1 Q Where they've helped, what the response has been,
2 who you've talked to?

3 A We have been in close contact with the state commission
4 on the status of women, not with any of the other state
5 agencies. We have had some relationship with the county
6 affirmative action office as well.

7 On specific -- mostly in terms of data gathering.

8 Q What's been the response?

9 A Because our ability to follow up is not very good,
10 generally speaking the response is not very good either. The
11 data that we request is very slow in forthcoming from almost
12 anywhere. And that's a problem that we deal with all the
13 time.

14 Q So your requests have been limited to data related
15 materials?

16 A Yes, when we have a problem we tend to deal with it on
17 our own in -- either by contacting the people who are the
18 source of the problem or going to the board of supervisors
19 or attempting to mediate ourselves. Or setting the woman
20 who has brought a problem to us on the path, we have no
21 legal standing to resolve problems so what we do is gather
22 information and then try to figure out paths for people to
23 go to pursue the solution.

24 Generally speaking, we are involved in either a complaint
25 in the private sector where a call from or meeting with an

1 employer sometimes is very effective. Even though we do
2 not have specific legal standing in the area. Or in the
3 county, where we work within the county system itself, and
4 a call again from a board-appointed commissioner can be
5 effective so that's the area that we follow.

6 But our problem is really basically in terms of
7 gathering and maintaining a data bank and understanding it
8 because again we are not staffed, we are volunteers.

9 We have to rely on other people with professional
10 staff to provide us the data which can be used to support
11 our position in individual cases. And I did bring some
12 data that I want to share with you that indicates why women
13 are angry.

14 This deals with the county but the federal data is,
15 although what I've seen is dated when I saw it a few years
16 ago it was significantly like what I'm looking at here, which
17 is that in the income bracket of 7999 or less, \$7,999.00 a
18 year or less, full time permanent employees, 79% of those
19 people working in Los Angeles County are women. All right?
20 That is not a living wage, we have come very far since 1973,
21 in 1973, 71% of that bracket was women. We've come far
22 and it's now 79%. As I say, in the federal figures that I
23 saw a few years ago it was comparable. When we're dealing
24 with where women are in the employment picture, we need to
25 have first of all a commitment from all levels that this is not

1 good enough. One way of showing that it's not good enough
2 is for the change to start occurring. And it has not
3 occurred in governmental sectors at all yet.

4 We need some help in making sure that that kind of
5 thing happens. We need to have clear guidelines dis-
6 tributed throughout society and those guidelines have to
7 be open so that, by open I mean they have to be known by
8 people who are going in, who are looking, not searched by
9 me with my quarter of a staff person.

10 I want them, they must be easily accessible. The
11 knowledge of sanctions, if any, have ever been imposed on
12 anybody we'd like that easily accessible. If there are
13 sanctions we'd like to know what they could be and how to
14 go about getting them. And not have to be professional
15 full time staff member in order to get that information and
16 have it.

17 It should be very handy.

18 If we're going to change this kind of situation.

19 I think it's really important that all levels of
20 government start making a commitment to have equal employment
21 opportunities for women, and let me tell you, I don't think
22 that that means population parity in the system. Because
23 you see what that means here. You are way -- we're way
24 over population parity having 79% of the bottom income
25 bracket be women.

1 So that will.

2 A county, for instance, has population parity in its
3 employment, in terms of women, but they're all down there.
4 I want to see the federal government, state government,
5 county government, and everybody make a commitment to
6 population parity throughout the income spectrum and we are
7 so far away from that that it's laughable. And throughout
8 all levels of employment. And one way I think to do that
9 is to first of all start developing a uniform method of
10 reporting. We don't have that now. By income level and by
11 job type, and by job type again I think that there have to
12 be clear guidelines on what those job types are.

13 We don't have them now. Sometimes the managing typist
14 in the typing pool is considered management. But yet she's
15 down in this lower level but it raises the parity figure in
16 terms of management. That is not acceptable.

17 It just should not be allowed. We have to, I think,
18 establish a training package not for women who are seeking
19 parity, but for managers, administrators, hirers in all
20 levels, and there have to be incentives to those people to
21 come, and that's very difficult.

22 We're unable to develop that sometime, but you're in
23 a position where you can build in those incentives, I think
24 and those incentives can be very important.

25 We, of course, feel as do you with the problem that

1 the last in is the first fired. And the last in generally
2 speaking, is women.

3 We have to build in, on top of somehow, the other
4 systems, a merit system so that women have access to
5 continued employment when things get tough. We are not --
6 we don't have that now. 75% of those women in the state --
7 75% of the people who lost jobs after the passage of 13
8 were women. So you may make a gain and you lose it very
9 quickly.

10 And I think that a commitment by you can be
11 effective in another way, too, jobs, of course, is an area
12 that I'm very concerned about. I'm also very concerned
13 about funding of programs, another of my interests through
14 the commission is rape.

15 I chair the rape committee. And anybody who's looked
16 at any kind of dollars that come through from the feds.
17 from CETA to LEAA, know that those dollars are not done
18 with parity, are not handed out with parity either. So that
19 women's programs operate on maybe 5% of the funding level.

20 Now, all funding, I guess, is going to be dried up
21 but anything that comes through we know is going to operate
22 and be handed out in the same kind of percentages as this.
23 Which means that women stay essentially where they are in
24 the bottom portion of the income level.

25 THE CHAIR: Thank you, Ms. Klein, there any questions

1 from the committee?

2 MR. ARROYO: I have a question for Mr. Martin.

3 I'm trying to get a handle on this and I heard about
4 four speakers speak to the same thing and that's that in
5 the reorganization, that there is a speedup on the implemen-
6 tation on cases, the case load gets resolved faster. I
7 think you used the term that does not speak to the quality.

8 Are you saying that resolvment, while it may be
9 faster, is not a resolvment that is in the interests of the
10 person bringing the complaint?

11 A. (By Mr. Martin) I was saying the same thing the
12 speaker before me said, that the resolvment of it might not
13 have had factored in the best or the highest quality of work
14 throughout the case, the investigation of it, especially, and
15 many times you might get a better result if you had a higher
16 quality investigation, etcetera.

17 Q. (By Mr. Arroyo) But how does that reflect on the
18 complaint itself? I mean if you have someone who is not
19 -- who is resolving this very fast, they do not have the
20 adequate skills to resolve it --

21 A. See, they aren't necessarily resolved to the satis-
22 faction of the client. And I measure it this way, you see,
23 prior to the reorganization we had people coming in request-
24 ing assistance and we -- if it's appropriate, we refer them
25 to EEOC. And we follow up the cases, even after they go,

1 see what kind of satisfaction they had, and I haven't seen
2 an increase in the number of or percentage of people being
3 satisfied with the result after the reorganization than
4 before.

5 MR. ARROYO: Thank you.

6 THE CHAIR: Thank you.

7 Mr. Tobin?

8 Q. (By Mr. Tobin) Yes, I would like to address this to
9 the entire panel. It really, my question stems from a
10 comments that Mr. Martin made, it also was, I believe, commented
11 indirectly by Ms. Klein. And that is that, and I perceive
12 this as a philosophical question.

13 You commented, Mr. Martin, that there seems to be
14 a lack of will and commitment, to accomplish the affirmative
15 action objectives. And what you also seem to feel is that
16 there, in many instances, is nothing more than a ceremonial
17 approach to this problem.

18 How do you perceive the resolution of this lack of
19 will?

20 A. (By Mr. Martin) Until the political climate changes
21 in the country, and I think the climate across the board has
22 been one of throwing back the clock to the days when dis-
23 crimination and prejudice was more acceptable than it was
24 after the civil rights movement. And to the present, until
25 we can do that, I think organizations like ours and like the

1 U.S. Civil Rights Commission will have to redouble our
2 efforts in educating and persuading the general population
3 really, and to the point of holding individuals and
4 organizations up to rebuke who behave and philosophize along
5 -- in ways which are antithetical to what we say the American
6 creed is.

7 I know that's philosophical but that's what I believe
8 about that.

9 Q That was the question.

10 A Right.

11 Q I would like to know what Ms. Klein might feel on
12 that subject?

13 A (By Ms. Klein) Well, I think that accepting the polit
14 situation as it is and everything else as it is, what we are
15 looking for is a commitment on the part of people who are
16 there now, who are administering programs, who are adminis-
17 tering departments, who have a great deal of latitude,
18 basically, in whom they hire, whom they promote, how they
19 run their departments, and those people are the people who
20 are not committed to affirmative action.

21 How you get them to be committed, I think it comes
22 back down to this training to developing methods of appraising
23 their performance, their job appraisals standards that
24 require them to do just that, to not bring in their buddies
25 from other corporations when they move and if you set up that

1 kind of appraisal mechanism where participation in affirmative
2 action doesn't occupy maybe 1% of their evaluation which is
3 what it is on some standards that I've seen right now,
4 then you start to get more accountability in the area.

5 THE CHAIR: Thank you. We've got one final question,
6 unless Mr. Lehrer wants to make a brief comment, we're
7 running out of time.

8 A (By Mr. Lehrer) Well, simply that I think there may
9 be a reluctance to follow through on affirmative action
10 programs to the extent that they are perceived as being
11 quota programs and I think because to meet quotas or numbers
12 at the end of a year, is truly not affirmative action, is not
13 genuine affirmative action. And I think to the extent that
14 the federal government and other affirmative action program
15 designers or responsible enforcers can impress upon people
16 that affirmative action is more than just meeting numbers
17 but it's a whole analysis and reworking and reexamination
18 of the hiring process and an attitude towards hiring, that
19 will help, I think, bring about the kind of genuine attitude
20 towards eliminating obstacles that are not job related
21 towards creating an atmosphere in which, you know, everyone
22 can prosper and be hired and promoted on an equal basis.

23 Q Do you perceive that as derived through legislation?

24 A I think through legislation, but I think perhaps in,
25 more in pronouncements, in regulations, in attitudes which

1 reflect itself in saying, look, when we say good faith
2 efforts we mean it. In having proper numbers at the end
3 of the year on December 31st, when you're audited isn't
4 the answer, we want to know what you're doing between
5 January 1st and December 31st, how you're going, where
6 you're making your announcements, what kind of an atmosphere
7 is created because you can have all the numbers you want
8 at the end of the year but unless the atmosphere's there
9 that encourages promotion and genuine attempts to move up,
10 those numbers are just a sham.

11 THE CHAIR: Thank you.

12 Dr. Perkins?

13 Q. (By Dr. Perkins) Ms. Klein, you indicated that you'd
14 made one approach to a federal agency, I think it was EEOC,
15 and that you received a basically negative response because
16 women did not seem to be regarded by them as appropriate
17 class in affirmative action.

18 Could you elaborate on that some, please?

19 A. (By Ms. Klein) I can't remember what the specific
20 instance is, what we tend to do, this was a problem that
21 we were examining in terms of one of the departments in
22 Los Angeles County that had clearly not met its established
23 guidelines and we were coming to EEOC for specific
24 advice and help. Left, after, I think about a half-hour,
25 45-minute meeting, feeling less than helped. I mean actually

1 feeling that we had misused their time, that they were
2 absolutely not interested in any problem that any potentially
3 -- well, any woman who was not a minority might have.

4 We said what about misplaced, displaced homemakers,
5 that kind of thing? No, absolutely no interest in that.
6 As a group. And as I say, we did not pursue it.

7 Q. Approximately how long ago was that?

8 A. This was about 18 months, 24 months ago.

9 Q. So it was clearly within the period that women have
10 been included in all legislation?

11 A. Oh, yes, indeed, it was, oh, yes.

12 DR. PERKINS: Thank you.

13 THE CHAIR: Staff?

14 Q. (By Mr. Dickerson) I'd just like to make a statement
15 to all of the panel members. One of the reasons why we're
16 having these hearings, factfinding meetings, is to identify
17 who is responsible for federal affirmative action programs.
18 And we have discovered in some of our other meetings, that
19 members of the community are a little bit confused as we
20 are as to who they should be dealing with.

21 Please keep in mind we are dealing with three agencies
22 basically, today, OPM, OFCCP and EEOC. And I would like to
23 concur with the Chair and encourage you to stay throughout
24 the day and see if you can find out and go away from here
25 with a clearer picture of who you should be dealing with,

1 so that if you have some gripes you can make them to the
2 right people.

3 THE CHAIR: Ms. James?

4 Q (By Ms. James) This is just a clarification question
5 but it relates to what he said. When I talked to you
6 earlier, Ms. Klein, you mentioned that you do get this
7 data from the county affirmative action office, and that
8 they report to someone. Do you know who receives all that
9 data from affirmative action the county prepares?

10 A (By Ms. Klein) No.

11 Q The other thing is you mentioned a need for clear
12 guidelines. Do you have any suggestions as to who at any
13 level of government should be providing those guidelines?

14 Who do you think should be providing it?

15 A I would hope that somebody who has that clear
16 picture that you were talking about would in fact develop
17 those guidelines and post them everywhere. I mean, you
18 know, I don't know exactly where but every place of
19 employment should have, do you have a complaint? If so,
20 if it's this kind of complaint call there, if it's this
21 kind, call there.

22 So that we don't have to go through this kind of thing
23 We, on the commission, developed a one-page sheet of kind
24 of common complaints with an outline of who you should go
25 to, when, and where. But even that is not particularly

1 effective because we don't have, you know, all those out-
2 lines either. And everybody that you talk to says, they,
3 that's alphabet soup, you know, I'm sure you hear it as
4 much as we do.

5 But you who have an opportunity to sit back and
6 look clearly at the picture at least on the federal level
7 should do that, on this local level we have to deal as well
8 with the state and with local agencies. And we can do some
9 of that. But we don't have the data clearly at our level
10 from you.

11 THE CHAIR: Well, you haven't answered her question.
12 Who, in your opinion, should be providing the guidelines?

13 A. As -- let me answer it again. I don't know the
14 federal system, I hope that you do but it should be somebody
15 from the federal system for the federal system who under-
16 stands the system well enough to clarify it so that we can
17 do it.

18 THE CHAIR: Very clear.

19 Are there any other questions from staff?

20 If not, we will take a 15-minute break. And recon-
21 vene at 10:30.

22
23 (Short recess)
24
25

1 (The following was chaired by Dr. Van Perkins)

2

3 THE CHAIR: We can resume, please?

4 Next session of the meeting is concerned with legal
5 perspectives. I'm pleased to introduce Mr. Thomas Hunt,
6 attorney for the Center for Law in the Public Interest and
7 William Steiner, associate counsel and director for the
8 Los Angeles Area Bar Association and the Mexican-American
9 Legal Defense and Educational Fund.

10 Mr. Hunt, will you identify yourself for the record,
11 please?

12

13

MR. A. THOMAS HUNT

14

15 A (By Mr. Hunt) Yes, my name is A. Thomas Hunt and
16 as you stated, I'm an attorney at the Center for Law in the
17 Public Interest.

18

19 Q (By the Chair) Approximately how many Title VII cases
20 has your organization filed or worked on cooperatively with
21 other attorneys or groups?

22

23 A We've probably been involved in about 30 cases in the
24 last seven and a half years since we got into the field of
25 employment discrimination. And approximately 20 of those
30 have been brought to a successful final judgment either
by, in the form of a consent decree or in the form of a

1 court ordering goals and timetables after a trial.

2 Q Approximately what percentage of these have been
3 against public employers?

4 A It's about 50-50.

5 Q What criteria do you use in developing affirmative
6 action remedies or objectives for your cases?

7 A Well, all of our work takes place in the context of
8 a lawsuit. So, maybe I could just rephrase the question
9 slightly, if that's all right, perhaps the question could
10 be how do we decide which employers to go after.

11 Q Fine.

12 A And then, after we do, how do we figure out what
13 the remedy should be for what we see as the wrong?

14 Answering the first question first, I think it's
15 important to keep in mind, and I was sitting here earlier
16 this morning and it just kept running through my mind con-
17 stantly, that everybody should -- it's my opinion that
18 everyone should keep in mind that there are two basic
19 kinds of discrimination situations when it comes to employment.
20 And they really don't have that much to do with each other.

21 I had the feeling this morning when the earlier
22 speakers were discussing matters that they were thinking
23 of the situation where an individual believes that he or she
24 has been discriminated against because of race or sex,
25 usually the -- it's an employee who's been terminated,

1 sometimes it's an employee who thinks that he or she didn't
2 receive a promotion or a transfer or an assignment because
3 of race or sex and many of those cases are valid cases,
4 from a lawyer's viewpoint most of them are losers and the
5 reason they're losers is that the employer is in a position
6 to defend that kind of lawsuit by superior testimony and
7 better documentation.

8 The statistics, generally speaking, are that about
9 90% of those cases are lost. Then there's the other kind
10 of case, and it's usually a hiring case although it may be
11 a promotion case, and the situation is that the employer
12 is utilizing hiring practices which appear to be neutral
13 on their face, but in actual operation are highly dis-
14 criminatory.

15 The classic case is the written test, but there are
16 other practices such as a height requirement that many
17 public employers have, on police and fire, jobs, that, and
18 the height requirements operate very severely to the detriment
19 of women and Hispanics and Asians.

20 Another example is high school degree or college
21 degree requirements, experience requirements, and so on.
22 Those kinds of practices are usually the cause of an all-
23 White work force.

24 I was speaking with Mr. Montez just a few moments ago
25 and I told him kind of an interesting story that I think

1 bears repeating. That I've looked at the statistics and it
2 appears to me that McDonald-Douglas Aircraft is probably
3 the best employer of minorities in this community. McDonald-
4 Douglas has the most charges on file of any employer in this
5 community the last time I checked it with the EEOC. What is
6 the cause of that phenomenon? The cause of that phenomenon
7 is that every time a minority at McDonald-Douglas gets
8 discharged, they run down to the EEOC, it's just part of the
9 grapevine.

10 By contrast, several years ago I found out that fire
11 departments are the, really about the worst employers around,
12 they're -- there was a presidential commission report in
13 1973 that described fire departments as the last bastion
14 of White country club supremacy, so I went down to the EEOC
15 and I said refer me all of your charges against fire
16 departments, any fire department anywhere in southern
17 California.

18 They did not have one charge. Why? Because there
19 were no minorities or women employed by fire departments
20 to get angry when they got discharged.

21 Now, having told that story, I think you can see what
22 I looked for in deciding who to sue. I look for the fire
23 department situation and not the McDonald-Douglas situation.
24 I'm really not that interested in individual situations
25 where people have been -- claim they've been treated

1 differently.

2 The law is that any of these practices such as
3 written tests, education requirements, experience requirements
4 and so on, the law is that if those operate to exclude
5 minorities or women as a statistical matter, regardless of
6 intent, then they are illegal unless the employer can show,
7 by an empirical validation study, that they're job related
8 which is a very heavy burden, almost impossible to meet.

9 So, we look at the statistics in ~~deciding~~ who to sue.
10 And deciding, trying to figure out the remedy, we always
11 look for goals and timetables.

12 I was -- I heard the gentleman from B'nai B'rith
13 testify this morning that, I guess wasn't testifying, speakin
14 that they're a sham. Well, the -- apparently he doesn't
15 live in the real world because it's been our experience and
16 it's been the experience of the justice department that
17 without goals and timetables as a result of a lawsuit,
18 nothing is accomplished. It simply does not work to say, have
19 a court order saying cease discrimination.

20 There's the need for goals and timetables so that
21 it's possible to monitor the progress of the employer. So
22 that's what we look for.

23 Q. In your perception, how do court orders or court
24 settlements differ from federal agencies' affirmative
25 guidelines?

1 A. Such as the office of contract compliance and things
2 like that. Well, we do have attorneys such as myself in the
3 field and attorneys at the justice department in the field
4 have a different perspective in that we start out assuming
5 that all of the qualifications that an employer is utilizing
6 such as written tests, high school degree requirements,
7 college degree requirements, experience requirements, we
8 start out assuming that those practices are illegal.

9 Because they have -- they operate to exclude minorities
10 and they have not been shown to be job related as it's
11 required by the law. And so we look to civilian labor
12 force and general population figures as being the criterion
13 for what an employer's work force should be.

14 Now, of course we're not -- we try not to be un-
15 reasonable about this, I do not expect to argue that the
16 local hospitals should meet population parity in their
17 employment of brain surgeons. However, for the overwhelming
18 majority of our jobs, professional, including most professional
19 jobs, the -- there is no reason that an employer shouldn't
20 be approaching population parity.

21 By contrast, based on what I know about how the
22 OFCC operates, and the various compliance agencies, they
23 tend to look to the statistics for an industry. For
24 example, I have -- I'm familiar with -- one particular
25 situation involving a trucking company that, a freight company

1 that I have sued and we're about to settle a case, but anyway,
2 when they were investigated by the OFCC what the OFCC did
3 was look to other freight companies, the general statistics
4 for other freight companies. And gave this company a clean
5 bill of health.

6 Well, all that showed is that all the freight companies
7 are discriminatory. And so since they were all discriminatory
8 why, that meant that it was okay that this one was dis-
9 criminatory.

10 So that's our basic difference.

11 Q. If you have gone through the suit process and arrived
12 at a consent decree or some other settlement, do you monitor
13 the settlement?

14 A. Yes. All of our decrees, whether they're court
15 ordered or whether they're by consent decrees, have a pro-
16 vision requiring the employer to report, usually on an
17 annual basis, sometimes semiannual depending on the situation.
18 Reporting on their hiring, what their hiring statistics
19 have been for the relevant preceding period.

20 This is one reason that goals and timetables are the
21 crucial element in affirmative action, because it's very
22 easy to monitor, it's easy for a person such as myself or
23 a government agency, to monitor the progress by just looking
24 at the numbers.

25 By contrast, if you don't have goals and timetables

1 and you're supposed to be out there monitoring this employer,
2 to determine whether they're using discriminatory recruit-
3 ment systems or they're using discriminatory hiring
4 standards, we would end up, my estimate would be, to
5 monitor an employer properly without goals and timetables
6 would probably take about 10% of our gross national product.

7 By contrast, I get annual reports and I look at them
8 and I can put them in the file within five minutes.

9 Q Generally is there cooperation from the employer
10 after a consent decree has been reached or a court order?

11 A One of the phenomenons of my work is that when we're
12 litigating a lawsuit, things can be very bitter and nobody
13 likes to be accused of having engaged in discrimination.
14 Most people think they're innocent, sincerely, no matter
15 how guilty they are. And I have been the subject of a great
16 many namecalling incidents.

17 The phenomenon is that after the lawsuit is over and
18 we get them under some kind of a court order, everybody
19 seems to realize well, we have an unholy marriage here,
20 and I've just had no problems.

21 Indeed, for the 20 cases that we have had, that have
22 gone to final judgment, for 19 of them we have had absolutely
23 no problem. Not a single, not a single problem, not a
24 single time when the employer was not in compliance with the
25 decree, as problems come up I call the attorney for the other
side and have always gotten the information I needed.

1 Even the one incident where we are having some prob-
2 lems, it's a case involving the port, Los Angeles-Long Beach
3 Port and there are about 30 defendants in this case and
4 actually about 25 of the 30 are doing a good job so even
5 that one case the problems are not that serious.

6 Q. Do you work cooperatively with EEOC attorneys?

7 A. Before about two years ago I had a close working
8 relationship with the local counsel for the EEOC, it was a
9 woman named Barbara ^{schlei} Shly (Phonetic), who has since left.
10 And has a job with the department of agriculture. Since
11 that time I have not worked that closely with them, although
12 I do have contacts and I am aware of what's going on
13 generally speaking at the EEOC.

14 Q. Are there institutional or other barriers to that
15 kind of cooperation or is it just a lack of mutual interest
16 or necessity?

17 A. I'm not sure what the situation is. I think that
18 the people at the EEOC litigation center, which recently,
19 it was established in January of '79, last year, are
20 getting their feet on the ground and my impression of it
21 is that they're trying to get organized and they're trying
22 to get some -- get their information together, get their
23 procedures together and really don't have -- just haven't
24 gotten around yet to the working with the private bar.

25 I guess I should emphasize that the period when I did

1 have a close working relationship it was a different system
2 at that time, the litigation center was in San Francisco,
3 there were no litigating attorneys in LA, the attorney that
4 I worked with, Barbara Shly, was -- did not bring lawsuits,
5 she was the legal adviser to the local office.

6 Q I assume that -- maybe I shouldn't assume but do you
7 have anything, would you say anything differently if I asked
8 you the same questions about OFFCP?

9 A I don't have any, really, dealings with them because
10 they're, as I testified earlier, their perspective is very
11 different from ours.

12 Q Do you have any recommendations, any other recommenda-
13 tions that you may not have touched on to improve affirmative
14 action compliance enforcement efforts?

15 A Well, taking the danger of being repetitive, I would
16 just emphasize that first of all, the EEOC should, in my
17 opinion, completely develop -- the EEOC should develop
18 procedures so that they can distinguish between the indi-
19 vidual one-on-one lawsuit, charge that's filed with them
20 and resultant lawsuit and the kind of systemic discrimination
21 that I'm talking about.

22 I understand they do have a systemic unit established
23 at the local office, but I also understand that the per-
24 centage of resources being put into that systemic unit is
25 relatively small, five or 10% of the office's actual effort.

1 And yet that's where the real problem is and that's
2 where the real hope is for making progress in eliminating our
3 segregated work forces.

4 THE CHAIR: Thank you, Mr. Hunt.

5 Mr. Steiner, would you identify yourself for the
6 record, please?

7 MS. GILLETTE: Could I ask Mr. Hunt a question, please?

8 THE CHAIR: Yes.

9 Q (By Ms. Gillette) You mentioned something earlier
10 in terms of monitoring, about annual reports and put them in
11 the file in five minutes. I wasn't quite clear as to --

12 A Well, my point is that, let me give an example, the
13 first lawsuit I brought when I came to Los Angeles was against
14 the Los Angeles County Fire Department, and the court order
15 that I was able to get the judge to give required them to
16 give every six months for the first two years, and every 12
17 months thereafter, give a report to me as to what their
18 hiring data was. How many people were hired and what their
19 race was. And so every six months for the first two years
20 and every 12 months thereafter, I get this report, and I
21 would open it up just like this and I would see that they
22 hired 200 fire fighters and 125 of them were minority and I
23 say, that's great, and I put it in the file.

24 By contrast, if I had not had goals and timetables
25 imposed and the court order were, you won't use discriminatory

1 recruitment practices, you won't use discriminatory tests,
2 you won't do this, you won't do that, it would have taken
3 me weeks if not months every year to be sure that the county
4 was doing what the court order said they were supposed to do.
5 And I just don't have time to do that. I have to move on
6 to the next lawsuit.

7 THE CHAIR: Mr. Steiner?--

8 Q. (By Ms. Gillette) Just assume those reports were
9 accurate?

10 A. Well, I do assume the -- they're accurate. Actually
11 in most instances I have employees who are usually minority
12 or women, if it's a case for women, who are at the work place
13 and once in a while I'll call them up and say does this
14 sound right and they can, for example, in the fire depart-
15 ment situation, there is a day when everybody is inducted
16 into the training academy and my friends go down and count
17 noses.

18 THE COURT: Mr. Steiner?

19
20 MR. WILLIAM STEINER

21
22 A. (By Mr. Steiner) My name is Bill Steiner, I'm the
23 project director in Los Angeles of the MALDEF office, MALDEF
24 standing for Mexican-American Legal Defense and Educational
25 Fund, and specifically my responsibilities are as the staff

1 attorney for the EEOC's ABAR project in Los Angeles, the
2 ABAR project is the Area Bar Assistance Region Project of the
3 EEOC which was instituted last July on a one-year basis
4 across the country, and as the name denotes, it is a project
5 to provide assistance to the bar, that is to private
6 attorneys, who are involved in handling employment dis-
7 crimination matters on behalf of plaintiffs and charging
8 parties.

9 THE CHAIR: Thank you.

10 Ms. Gillette?

11 Q (By Ms. Gillette) Is the ABAR project something that's
12 around the country or is this unique to MALDEF?

13 A It is all around the country, there are a few pockets
14 which are not covered but generally the country is divided
15 into five ABAR regions, and MALDEF has been awarded the ABAR
16 contract in regions 4 and 5, region 4 covering most of the
17 southwest, and region 5 covering the far west.

18 We have, as MALDEF, has four offices for those two
19 regions. Region 4 is covered by our offices in Denver
20 and San Antonio, and region 5 is covered by our offices
21 in San Francisco and Los Angeles. My office has an area
22 including all of southern California and all of Nevada
23 which must be served by the project. I am the only attorney
24 covering that area, I have a ^{legal} paralegal and a secretary to
25 assist me.

1 Q. You got your contract from EEOC?

2 A. That is correct.

3 Q. Could you summarize the findings of MALDEF concerning
4 federal employment discrimination cases?

5 A. MALDEF has not issued any formal findings in this
6 area. It's a very broad area, as you know, and for us to
7 come to any broad conclusions would probably require rather
8 extensive study of the overall problem and the hundreds
9 and hundreds of subissues that are involved in federal
10 affirmative action.

11 We have, however, had experience in a number of law-
12 suits, and that experience, I think, has told us that there
13 has been considerable federal government involvement in
14 affirmative action, we have seen responsiveness from the
15 EEOC, we have seen a response from the courts, response from
16 the executive branch. However, we, I think, have come to the
17 conclusion, at least from my experience in the past two
18 and a half years with MALDEF, that these efforts are far
19 short of what is necessary to accomplish the stated goals
20 of these programs.

21 Q. So, what does that imply, then, in terms of effective
22 Title VII enforcement?

23 A. It implies many things. Very specifically, since
24 these agents, specifically the EEOC, is attempting to make
25 it possible for the private bar to be an enforcement

1 mechanism, it means that there are too few resources being
2 allocated to the private bar to enable them to handle
3 cases in this extremely complex, expensive area of law.

4 For example, one of the needs that we feel almost on
5 a daily basis is a need for some loan funds or financial
6 assistance to cover the costs of bringing these lawsuits.
7 The EEOC has begun a pilot project, has given a contract
8 to the national bar association in the amount of \$100,000.00,
9 to advance costs of litigation.

10 In meritorious cases, so that an attorney who has
11 a case and has to do investigation and has to travel, has
12 to do things to gather the necessary evidence to prove the
13 case, does not have to take the money out of his or her own
14 pocket, does not have to call upon the client who in many
15 cases simply does not have the funds.

16 So, it is a question of whether or not these types
17 of resources will be made available to individuals who have
18 cases but simply can not afford to prove their cases with an
19 attorney. In fact most, I shouldn't say most, but in many
20 cases we have a situation where meritorious cases are not
21 brought or are brought by the individuals themselves without
22 an attorney because they can't even get into the attorney's
23 office. And we have one case like that here in Los Angeles
24 in which an individual recovered \$35,000.00 representing
25 himself against the City of Los Angeles. And later handled

1 his appeal to the Federal Ninth Circuit Court of Appeals,
2 it was learned that there was an error, this is, of course,
3 not the typical case but it does point out one of the types
4 of problems.

5 In Los Angeles a survey which we just completed at
6 MALDEF in Los Angeles covering our, the Los Angeles cases
7 filed in the past three years, shows that nearly 10% of the
8 cases filed in the central district federal court during
9 the three-year period ending June 30, 1979, were filed by
10 individuals without attorneys. They were desperate. So
11 this is one area where we've seen some help and we see the
12 pilot program I mentioned, but we have been asking for this
13 for a number of years, and it's a continuing need.

14 Q. These cases were filed because of lack of funds or
15 lack of available attorneys?

16 A. The cases filed by individuals without attorneys
17 from my experience is a result of an individual not being
18 able to afford to pay even a few hundred dollars to the
19 attorney so the attorney can attempt to obtain the minimal
20 amount of information necessary to determine if there is
21 a good case. And in some cases, if there is a good case,
22 it costs quite a bit of money to prove in a court of law
23 that there is a good case.

24 Q. So your suggestion of a loan fund would ameliorate
25 this condition. Do you have any other suggestions that

1 would help?

2 A Yes. As I say, we, at MALDEF, haven't prepared a
3 formal report or findings along these lines, but again
4 from my experience, in Los Angeles, I have felt certain
5 inadequacy in being able to deal with the many requests we
6 get from private attorneys and from individuals, simply
7 because I'm expected to cover an area which is rather large
8 when you consider that there are some 30,000 attorneys in
9 Los Angeles County and a very large number outside of Los
10 Angeles County which I am responsible for.

11 I did go to Las Vegas to provide a training seminar
12 to attorneys there, a couple of weeks ago, I will be in
13 San Diego next Saturday, we did hold a conference here in
14 Los Angeles in December which brought 150 persons to it.

15 But these, in my opinion, are really token efforts.
16 And when we consider the fact that there are -- there is
17 rampant discrimination, as I think Mr. Hunt did point out,
18 correctly, there is a great need for legal power to deal
19 with that, to respond to people's complaints, and on a
20 separate subject, if I may move on to another area, which
21 I think is also an area of need, which is not really
22 directly addressed by our program, is the need for general
23 education in the community about people's rights. Very
24 few people, one in thousands, have an understanding of the
25 rights which they have under federal and state laws, almost

1 no one, I would imagine probably only a couple of people in
2 this room, even have the elementary understanding of the
3 two basic types of discrimination outlined by Mr. Hunt a
4 few moments ago.

5 And we are certainly not a random selection of the
6 people in this community, we are --

7 Q Do you have any suggestions as to how those -- how
8 that educational process could be done?

9 A Well, I think at the start we have to apply the tech-
10 nology of the 1980's rather than of the 1880's to this
11 problem. I think that meetings of this nature are excellent,
12 I've testified in the past in a number of meetings, but it
13 seems to me that we have to try to reach the community with
14 all of our resources including television, radio, newspapers
15 and not only in English, but in Spanish as well, and I don't
16 know but I suspect that the Spanish speaking community has
17 heard virtually nothing about this meeting except perhaps
18 through a couple of organizations such as my own, and of
19 course we do not have the resources to publicly advertise it
20 in turn to the community because that is not our function.

21 So, this would be another area which is not covered
22 by our duties or covered, as I say, adequately by our duties,
23 and which I think is a crying need.

24 Q The fact that lawyers can now advertise on television
25 and whatnot, do you think that this will have any impact

1 on education in terms of rights?

2 A. No, it creates more problems. Because they probably
3 will have more potential discrimination cases coming in
4 their door which they will not be able to adequately handle.

5 Q. Let me get back to something you said earlier in
6 terms of training that you were doing for private attorneys.
7 What's the nature of the training that you are doing,
8 what's the nature of the questions they come to you for help
9 with?

10 A. The questions we receive run the complete spectrum
11 of handling an employment discrimination claim, both
12 administratively and in the courts. When I refer to the
13 courts I'm referring both to state courts and federal courts,
14 although our program is really aimed at federal litigation
15 because Title VII cases are brought in federal court.

16 And it is Title VII under the EEOC which we are
17 principally funded to work with.

18 The questions have to do with how to draft a charge
19 and where the agency is located, can I bring a class action
20 charge? How do I draft a class action complaint in
21 federal court? What do I have to do before I go to federal
22 court? What do I have to do to avoid having the judge throw
23 me out of court like he threatened to do last week?

24 These are the kinds of questions we get, how to
25 present the case in a persuasive manner. Virtually every

1 aspect of the handling of an employment discrimination case
2 comes within the purview of our project.

3 Q One other question for the record, I see you've
4 given us some materials, could you tell us what these are,
5 please?

6 A Yes. That is MALDEF's most recent annual report, and
7 our litigation docket which is dated April, 1979, and is
8 being updated. I will provide the members of the panel with
9 the updated version of that litigation docket. It includes
10 roughly 100 lawsuits which MALDEF is presently litigating
11 in our four priority areas and some other areas as well.

12 About 25 of those cases deal with employment dis-
13 crimination so it is one of our high priorities and has
14 been since the inception of our organization in 1968. The

15 The other areas mentioned in that docket are voting
16 rights, immigration and equal educational opportunity.

17 THE CHAIR: Thank you, Mr. Steiner.

18 Do other members of the committee have questions for
19 either of these gentlemen?

20 MR. YOSHIOKA: Yes.

21 THE CHAIR: Mr. Yoshioka?

22 Q (By Mr. Yoshioka) I had a couple questions which
23 I'd like to raise, I guess for Mr. Steiner first.

24 With regard to this, you said it's a preliminary
25 survey in the LA area, the implications of that with regard

1 to the effectivity of Title VII enforcement, would you
2 care to comment on that?

3 A Yes, I would. The survey was just completed a few
4 weeks ago, and one of the things I noticed in doing it was
5 that many of these cases brought by individuals without
6 attorneys and many of them brought by attorneys who are not
7 experienced in this field, are dismissed. And some cases
8 we know that there are good cases which are dismissed, other
9 times we don't know if it was a good case but the point is
10 if there is going to be enforcement of this law, there has
11 to be an adequate means of investigating individual cases
12 and seeing that the potential and meritorious cases are
13 properly handled. I also found that an extremely small number
14 of attorneys are experienced in this field.

15 In this survey we identified 542 private attorneys who
16 have handled some 635 cases over the three-year period.
17 And out of those 542 attorneys, only 18 had filed five or
18 more employment discrimination cases and only nine had filed
19 ten or more cases during that three-year period, and Mr.
20 Hunt is one of those nine.

21 So we are now talking about all of southern California
22 and all of Nevada, and that, I think, speaks for itself in
23 terms of the numbers of attorneys that are becoming involved.

24 Also along with this it's important to note that very
25 few cases are handled by government agencies. This survey

1 covered only the federal courts which is the only place
2 that Title VII can be brought. And in this survey we
3 learned that government counsel was provided in only 22
4 cases. That is the federal government either the EEOC
5 or the department of justice handled only 22 of these 635
6 cases, 3.5% of the cases filed.

7 And none of the plaintiffs was represented by a
8 state government counsel in these federal court actions.

9 So we do immediately see the importance of the
10 private bar, and on the other hand, we see the very small
11 number of private attorneys who have any experience in
12 this field, and the reasons I think are the reasons that I
13 mentioned previously.

14 THE CHAIR: Mr. Hunt?

15 A. (By Mr. Hunt) I'd like to address this point. I
16 think it's worse than what Mr. Steiner just said in that
17 probably 96% of those 600 cases were not the kind of cases
18 that I think are important. I don't know the statistics
19 but I would surmise that of the 600-odd cases that he
20 mentioned, probably no more than 25 or 30, other than the
21 ones that my office has brought, were the kinds of cases
22 where important results would be achieved if the lawsuit
23 is successfully concluded.

24 In other words, they would be cases where someone is
25 discharged from a company or someone didn't get a promotion

1 and if they win the case or they settle the case successfully
2 one person gets one job. And that's nice, but it's not
3 going very far to solve the problem. I am aware of probably,
4 I think there are less than ten final judgments in the
5 Central District of California which is our federal district
6 court here, in Los Angeles, it covers Los Angeles County,
7 Ventura County and Orange County and Riverside County.

8 I am aware, I believe there are less than ten final
9 judgments with significant goals and timetables other than
10 the 20 from my office. That is a startling statistic when you
11 realize that the Central District of California with the four
12 or five counties that I just mentioned, has the largest
13 minority and the largest female population west of the
14 Mississippi.

15 THE CHAIR: Does the staff have questions?

16 Mr. Dickerson?

17 Q (By Mr. Dickerson) I'd like to ask Mr. Hunt a few
18 questions. This is the fourth of ten regional hearings that
19 we're having across the nation. And the early indications
20 from these hearings is that the agency with a formal private
21 sector affirmative action compliance date is, in fact OFCCP.
22 How does this -- how does this affect your actions or
23 philosophy?

24 A (By Mr. Hunt) Well, I guess my philosophy sort of is
25 that I washed my hands of the OFCC long ago. And I'll tell

1 a story, if you don't mind. The story was that I was a
2 young attorney at the justice department and I was investi-
3 gating a company in Indianapolis that manufactured military
4 equipment. And this was in the middle of the Viet Nam War.
5 And this company was located in northeast Indianapolis.
6 Indianapolis is 17% Black and the Black community is in
7 northeast Indianapolis, right where the plant was.

8 The company had 2,000 skilled craft employees and of
9 those 2,000, two, not 2%, but two were Black. I was investi-
10 gating the company and of course, the first thing I did
11 was look at the OFCC affirmative action plan that the
12 company had and which had been approved by the department
13 of defense contract compliance officer.

14 The goal in the plan for the following 12 months
15 was to hire two Blacks into the skilled trades of this
16 company, and I was kind of young and I was taken aback by
17 this and I looked at it and I said two? And the officer,
18 the contract compliance officer said, yes, two. And I
19 said why two? And he said well, we wanted four, but the
20 company said that would be too much because that would be
21 a 200% increase and so we finally agreed on a 100% increase.

22 When attorneys such as myself, with public interest
23 law firms, we just are thinking in different perspectives,
24 and if I had been trying to impose an affirmative action on
25 that, if I somehow had authority to do it, I would have been

1 thinking in terms of a 25-person or 30-person goal for
2 Blacks for that company, the idea being 17% is the relevant
3 population and we should be somewhere above that in order
4 to get to the 17% within a reasonable period of time.

5 I think the real hope for government action in the
6 field, now I have a warped perspective and I'll concede that
7 because I'm a lawyer and I think lawyers can solve all
8 problems and of course that's not true. But I think the
9 hope has to be the EEOC, for the EEOC to get itself
10 organized, get itself oriented towards the systemic dis-
11 crimination lawsuit, and bring them.

12 We have a litigation center here in Los Angeles,
13 there are 15 attorneys at it, and if those 15 attorneys
14 could be effective in this community, maybe the problem
15 would be solved within our lifetimes or at least our
16 children's lifetimes.

17 Q In light of that, would you comment, would you care
18 to comment on this statement: The only effective affirmative
19 action requirements that are being followed today are those
20 laid down by federal courts?

21 A I think -- I think I would agree with that. With
22 the following proviso, that all generalizations are false.
23 Including this one.

24 I think that's basically true, that the real results
25 being achieved are in lawsuits of the kind that our office

1 brings and that the justice department brings, and the EEOC
2 has brought a few and hopefully will be bringing more.

3 Let me give an example. The first lawsuit that our
4 office brought when I joined the center was against the
5 county fire department as I mentioned earlier. As an
6 aside, this case actually ended up in the United States
7 Supreme Court. But that isn't really the point. The
8 point is that when we sued the county fire department they
9 had approximately 2,000 fire fighters, nine were Black
10 and 41 were Hispanic. And of course Los Angeles County
11 general population at that time was about 30% Black
12 and Mexican-American, and now it's approaching 40%.

13 And so they were at 3%, they were about one-tenth of
14 the population. The judge we had was Judge Grey, who is a
15 very -- is anything but a social activist but at the same
16 time a very fair and honest judge, and he issued the
17 first hiring quota order ever in California. He ordered
18 that 40% of all the new fire fighters to be hired were to
19 be Hispanic and Black. And that was a very brave act for
20 him since it was the first one.

21 It's not quite so hard anymore but it was then.

22 As a result of that court order, the -- for five and
23 a half years the county hired not just 40% but believe it
24 or not, 56% minority. And as a result, instead of there
25 being nine Blacks in the fire department there now are about

1 125 and instead of 41 Mexican-Americans, there are about
2 150. Those are real results. Those are real people with
3 real jobs. I don't see those kinds of results coming out
4 of these affirmative action plans that the OFCC gets,
5 because those affirmative action plans almost always have
6 an escape clause that you can drive a Sherman or is it a --
7 a Patton tank through and the escape clause is that if the
8 employer can not find enough qualified minorities to meet
9 the goals, even assuming the goals are okay, not like my
10 Indianapolis case, then the employer's off the hook. But
11 the assumption is that whatever the employer's qualifications
12 are, are okay.

13 And you see we start from the perspective that,
14 lawyers such as myself start from the perspective that
15 they're all illegal, or else we wouldn't have brought the
16 lawsuit.

17 The problem is obvious with my work. I testified
18 earlier, we've only gotten 20 final judgments. That's 20
19 employers we think we've probably gotten about 12 to 15,000
20 jobs as a result of our work. And that's important and
21 that's nice. But it's scratching the surface.

22 THE CHAIR: Ms. James?

23 Q (By Ms. James) Just a short one, Mr. Hunt.

24 Since you see the real crux as perhaps coming from
25 EEOC, would you care to comment at all on any training needs

1 or training criteria for EEOC attorneys that might, in their
2 reorganization process?

3 A. (By Mr. Hunt) Okay. Something you just said reminded
4 me I thought perhaps I should explain why I see that. The
5 real hope being the EEOC. And that is that the private
6 bar, as Mr. Steiner has outlined, simply doesn't have the
7 money and the resources and I'm not optimistic about this
8 pilot project. A \$100,000.00 is a drop in the bucket and
9 I don't know where the money's going to come from. There
10 are a few offices like mine that are successful and we make
11 a go of it. But we're very few. And as far as the OFCC is
12 concerned, I don't see any real hope there because they don't
13 really have the authority.

14 When I really cross examined that defense department
15 contract compliance officer in Indianapolis, he confessed
16 to me that he was a joke, because there was no way that the
17 United States Government was going to stop buying military
18 equipment in the middle of the Viet Nam War, because
19 they were not employing minorities. It just wasn't going
20 to happen in the real world.

21 And so he had no leverage. And that continues to be
22 true. So the real hope I see is through litigation, hope-
23 fully by the -- the only agency I see with the real resources
24 is the EEOC although the results aren't there yet, but
25 hopefully they will come.

1 There are 15 lawyers just here in Los Angeles,
2 now maybe it should -- maybe it should be more, maybe it
3 should be, you know, 150, I don't know, but 15 is a good
4 start. And what is needed is for these attorneys in the
5 local office of the EEOC and other offices, I assume,
6 around the country that are similar, to get experience in
7 litigating the kind of cases that I'm talking about as
8 opposed to the individual one-on-one case.

9 My suggestion is that they get that experience in two
10 ways, one would be by working with experienced attorneys,
11 by hiring experienced attorneys into the EEOC, and I
12 realize that's a problem, because of the salary for government
13 attorneys is not the kind of salary that the private bar
14 usually is used to, but by hiring experienced attorneys and
15 by the EEOC attorneys who are not experienced working with,
16 if necessary, outside attorneys such as myself to gain
17 the experience in the big, in the big lawsuit of the nature
18 I'm talking about.

19 I don't really believe that much myself in training
20 programs. I think that the way to learn how to sew is to
21 sew and not to read about it in a book. So I think, you
22 know, baptism under fire has got to be the ultimate answer.

23 MS. JAMES: Thank you.

24 THE CHAIR: Mr. Yoshioka?

25 MR. YOSHIOKA: Yes, since time is running out I'm listening

1 pass the question.

2 A (By Mr. Steiner) Excuse me, may I have an opportunity
3 to address the question that was addressed to Mr. Hunt? And
4 I think it's a very important question, the gentleman in
5 the corner, at the corner of the two tables raised it and
6 that is whether the federal guidelines on affirmative action
7 provide the only meaningful guidelines with regard to
8 affirmative action in employment.

9 And I think we have to remember that these guidelines
10 did become effective February 20th of last year. They are
11 excellent in the opinion of MALDEF. In my opinion.

12 However, they weren't even mentioned in the important
13 Webber decision by the United States Supreme Court. They
14 have not been mentioned in a number of the cases that I've
15 dealt with since that time, which specifically have raised
16 affirmative action issues and the question of voluntary
17 affirmative action, questions which come directly under that
18 affirmative action guideline policy stated by the EEOC.

19 And it is excellent, but it does need to go further
20 and I think in fact some of the municipalities in
21 California have taken, which, while being proper under those
22 guidelines, is specific action concrete action, and the type
23 of action which I think needs the specific approval of the
24 federal government, the specific approval so that we're not
25 spending millions and millions of dollars every year litigating

1 these issues and cases are going by the wayside because that
2 money isn't there to decide if in this case, this specific
3 procedure is proper.

4 One example of that is an affirmative action layoff
5 policy which was adopted in June of 1978 by the City of
6 Riverside, this was even before the affirmative action
7 guidelines took effect. And here we had a policy which
8 said, in effect, that the city was not going to follow the
9 last hired, first fired principle, it was not going to look
10 only at job performance in terms of layoffs, because
11 Proposition 13 was occurring at that time and the city had
12 to consider whether all of its affirmative action gains of
13 the past few years were going to go down the drain because
14 of this last hired, first fired principle.

15 The city adopted a resolution in June of 1978, saying
16 that along with seniority and job performance, the affirmative
17 action needs of the City of Riverside would be a valid
18 consideration in determining who would be laid off. And
19 as a result of that, an Anglo woman was laid off, having
20 four months more seniority than a Mexican-American woman
21 and a Black woman. She challenged -- her temporary layoff
22 because it was only a few months, fortunately, but challenged
23 it in court and we had to defend the position of these two
24 ladies who were retained pursuant to the affirmative action
25 resolution. And we were successful.

1 Within two months after the Webber decision, the
2 lady who brought the case alleging reverse discrimination
3 dropped her suit and her attorney told me that it was
4 largely because of the Webber decision and the principles
5 laid out in that decision, he didn't feel he could prevail
6 under the affirmative action guidelines and the Webber
7 decision.

8 Q (By Mr. Yoshioka) A quick one, Mr. Hunt, when
9 you mentioned, you said you select cases, I had -- was
10 wondering just how do people approach you? I mean what is
11 the normal, I guess both yourself and Mr. Steiner, approach
12 organizations?

13 A (By Mr. Hunt) People come to my organization from
14 a great many different sources. In earlier years when we
15 weren't as well known in the community, we used to get
16 referrals from the EEOC. In more recent years, people may
17 just read about us in the newspaper and that we've won
18 a lawsuit or we're litigating a lawsuit or something and
19 they have a similar problem and they write to us or call.

20 Similarly, another, in more recent years another more
21 interesting ~~source~~ source of cases has been that lawyers in
22 private practice bring a lawsuit and when they get into
23 it they realize they're in over their head and they start
24 asking around, what am I going to do, what am I going to do?
25 And sooner or later they come to us. And that is a very good

1 source for us because usually by that time they have gotten
2 more information than I normally would have access to and it
3 makes it very helpful in deciding whether to take a case
4 or not.

5 We, I would estimate, I spend about 15% of my time
6 trying to decide whether to take cases or not and that's
7 probably the most valuable time that I spend, because we have
8 such limited resources we want to be sure that we bring the
9 lawsuits where we're most effective.

10 We look for impact, that -- we look for growing com-
11 panies as opposed to, if a company is not growing, if
12 a company is laying off it doesn't do much good to get a
13 hiring order when there's no hiring taking place.

14 In fact, we're about next week to settle a case
15 against what is now the second largest air freight company
16 in the United States, and when we sued them just a year
17 and a half ago the company had 1,200 employees, they now have
18 1,800 and the projection is that within five years they'll
19 have 5,000.

20 By getting that kind of a company under goals and
21 timetables we're going to have a tremendous impact.

22 Q. Could I ask --

23 A. (By Mr. Steiner) MALDEF, I think uses a similar cri-
24 teria as is used by the center for law in the public
25 interest. We have very limited resources so we do have to

1 confine our cases to those which can be handled by our legal
2 staff, it consists of 16 attorneys, but as I mentioned,
3 we're thinly spread around the country. I've been the only
4 attorney in Los Angeles, for example, for the past two
5 years. We, in September, hired a second attorney also doing
6 almost exclusively employment discrimination work. So we
7 do look at the potential impact of a case, we look at the
8 need of the individual who is bringing the case to us, can
9 that individual afford to hire a private attorney. We look
10 at the question of the numbers of persons that would be
11 affected by a favorable decision, and we don't strictly
12 look at the legal questions, but if we can obviously set
13 an important legal precedent in the case, and if the case
14 has factual merit, we will consider taking it.

15 Largely it is a question of resources, there are
16 numerous cases which I would like to become involved in
17 which we simply can not handle because of the lack of re-
18 sources.

19 Q (By Ms. Gillette) Based on something you earlier
20 said in terms of statistics of successful cases and whatnot,
21 the average individual who would go to a private lawyer
22 for help with affirmative action or equal employment
23 opportunity is likely to lose because the lawyer doesn't
24 have the experience and knowhow in terms of winning the
25 affirmative action case? Is that correct? That's the

1 A. The -- in this field, unfortunately, there are
2 relatively few winners. And that's, I think, a fair general
3 statement that even Mr. Hunt would agree with.

4 But in answer to your question, we haven't been
5 able to determine by researching, you know, cases in detail
6 to determine whether greater investigation would have proved
7 a case in this instance versus this instance and this in-
8 stance, and accumulate any kind of statistics about how many
9 cases are lost simply because of the lack of resources to
10 prove them, it is to a certain extent a guessing game
11 but because we see so many cases go by the wayside, and
12 in some cases --

13 Q. But the cases are not lost because they're invalid
14 in the beginning? But because of what you said, that the --

15 A. (By Mr. Hunt) I think we have to come back to the
16 point I made earlier, that you've got to realize there are
17 two different kinds of cases, and when you're talking about
18 the individual one-on-one case of a woman or a minority
19 who has been terminated, those cases are losers and my
20 opinion is they're losers, most of them are losers no matter
21 how good the attorney is.

22 Looking over at other kinds of case, the case that
23 attacks the hiring practices and the recruitment practices
24 and the education requirements and so on, there are very few
25 attorneys that know how to do those kinds of cases and there

1 are very few attorneys that have the time and money. Our
2 case that members of the commission may have heard of, one
3 in particular, is against the Los Angeles Police Department
4 for sex discrimination. It's been in the newspapers in the
5 last few months.

6 We have over \$40,000.00 in out-of-pocket expenses in
7 that case, and we have approximately 5,000 hours of time
8 of attorneys' time alone and another four or 5,000 law
9 clerk and law student time.

10 You simply can not expect an attorney who is a sole
11 practitioner to make that kind of commitment and you're not
12 going to get the big law firms to take on that kind of case
13 because they're the ones that are representing the other
14 side. And although there are exceptions to that, there
15 are some Washington, D.C. law firms that have taken on those
16 cases.

17 In Los Angeles I know of only one where that was
18 done, where this kind of a major case was taken on by an
19 establishment law firm. So that's the problem. That's the
20 problem.

21 THE CHAIR: We thank you for coming this morning.

22 We'll move on, then, to the next sector of the
23 meeting. Dealing with private employers and unions. Mr.
24 Davis and Mr. Garland, will you come forward, please?

25 Is Mr. Garland present?

1 (No response)

2

3 THE CHAIR: Mr. Davis, will you identify yourself
4 for the record?

5

6 MR. ARTHUR DAVIS, JR.

7

8 A. (By Mr. Davis) Yes, my name is Arthur Davis, Jr., and
9 I'm representing the aerospace industry's ^{EEO} committee located
10 here in Los Angeles and incorporated in the State of
11 California.

12 THE CHAIR: Thank you.

13 Mr. Yoshioka?

14 Q. (By Mr. Yoshioka) Yes, as chairman of the Aerospace
15 Industry Equal Opportunity Committee, please describe the
16 purposes of that committee?

17 A. The group was -- I would like to first start by
18 giving you a little bit of, a little history of the organi-
19 zation. Back in the early '60's, just before or after
20 the passage of the Civil Rights Act, many of the large
21 companies in this area were asked to testify before a
22 hearing ~~or~~ ^{by} an EEOC, and at that time the various executive
23 officers from most of the aerospace industry, banks,
24 etcetera, got together to try to understand what it was that
25 they were supposed to do. As an outgrowth of that arrangement,

1 of course it kept, it was passed down, it went from the
2 executives down to the chief executive down to the presi-
3 dents, down to the various operating officers, and for the
4 last ten years, individuals such as myself, I'm manager
5 of an equal opportunity program, have had that responsibility
6 and we've been working together primarily to try to
7 collectively understand what it is that the government is
8 requiring, how we can best use that to further equal oppor-
9 tunity with our respective organizations.

10 Q How many companies have representatives now?

11 A We have 32 companies but we have 58 units. We have
12 our Boeing, of course, in Seattle and all of the large
13 companies here in Los Angeles, Rockwell, Northrup, Lockheed,
14 TRW, etcetera, are all part of this particular organization.

15 Q And are these all federal contractors?

16 A Yes.

17 Q What way does each representative work with other
18 members of this committee or I guess explain -- how you
19 operate?

20 A Well, as I mentioned earlier, what we try to do is
21 to, as Mr. Hunt mentioned earlier, a few minutes ago,
22 they don't believe anyone would deny the fact that this is
23 rather, this is a rather frustrating effort and I think
24 there is always more losers than winners in terms of what
25 it is that we're trying to do.

1 In that particular vein, what we are a -- attempt to
2 do in addition to trying to pat each other on the back
3 occasionally, we are trying to look at how other companies
4 are progressing and try to use the things that they have
5 that have been successful in implementing our own programs
6 internally.

7 One of the things that we've been very, very successful
8 with is, over the last number of years, we've conducted
9 internal surveys and we've shared those surveys with each
10 other. And both in terms of stats. and other kinds of
11 things. And that has, of course, helped us tremendously in
12 terms of preparing for compliance reviews.

13 I might just add at this point, most of the thrust
14 of the organization that I represent deals primarily with
15 compliance reviews, because we are representatives of various
16 companies that interphase ^{face} with OFCCP.

17 Q. Well, in that regard, then, let me ask, how frequently
18 are the companies reviewed and the types of reviews that
19 you are referring to?

20 A. I would guess that, and it is a guess, that most of
21 the large companies are reviewed yearly in terms of a yearly
22 compliance review. In terms of our pre-award reviews prior
23 to, of course, the things that are going on that I think
24 most of us here are aware of, there was an annual, at least
25 two additional reviews that I got involved with during the

1 course of a year, so overall it was probably about three
2 times a year that you were actually involved with OFCCP.

3 Usually one on-site visit, that was usually the
4 compliance review and then you had a status report of some
5 kind dealing with the pre-awards.

6 Q The question was things like desk audits and exit
7 reviews and --

8 A That's correct. That's primarily -- they were the
9 desk audits were handled off-site but with an awful lot of
10 input, and usually over the telephone, regarding specific
11 points.

12 Q And how about exit reviews?

13 A Unfortunately I guess that was ^{the} one time, in many
14 instances, the one time during the year when many corporate
15 executives or the executives of a particular plant actually
16 met and had something to do with an affirmative action plan,
17 because in many instances the agency would insist that
18 their representatives sit down the the president or director
19 or whoever, of a particular organization and discuss what
20 the problems were, etcetera.

21 Q Going on, have you or other members of your committee
22 found any areas of difficulty in applying affirmative
23 action guidelines?

24 A Yes. I think that, I guess that's a yes and no
25 question, really, but primarily many of the requirements that

1 deal with generating numbers have created a problem in that
2 you spend an awful lot of time, most of us spend an awful lot
3 of time in doing that as opposed to trying to find ways of
4 convincing our management to apply the concepts of the
5 program and trying to make some inroads in that regard.

6 Q. Have you requested technical assistance from EEOC
7 or OFCCP?

8 A. I don't think that any of our members have ever
9 really been involved in doing that. I might just add,
10 though, that, and maybe this will fall in that category, two
11 or three years ago when our OFCCP was conducting training
12 programs for our EOS's, our organization contacted Weldon,
13 Roucheau (Phonetic) and Blackwell and we were able to arrange
14 to have that program presented to our group and it was
15 presented by EEO[?], I guess the same people that were con-
16 ducting it for the agency.

17 I might also like to add that I found that to be
18 probably one of the most helpful and beneficial things that
19 we have done in this area, because we felt that because
20 of many of the questions that they were able to ask and
21 we felt that we were free to give answers to in something
22 less than a threatening environment or an adversary-type
23 situation, that we were able to better understand exactly
24 what it was that we both had to do in order to be effective
25 in this area.

1 Q. And this was under OFCCP you said?

2 A. That's correct.

3 Q. How about EEOC, have you had much dealing with them?

4 A. Very little. And as I mentioned earlier, most of our
5 -- most of the activities of the people that are represented
6 by this group are really -- deals with OFCCP.

7 Q. Have you ever used the services of a consultant
8 in developing affirmative action plans or meeting other
9 federal requirements?

10 A. If you are referring to something like EEO services
11 and people like that, yes, I think we have used, as an
12 organization we have certainly reviewed all of the programs
13 that we are currently aware of, and member companies, of
14 course, have used those from time to time.

15 Q. What are your views towards those that claim the
16 guidelines for affirmative action are unclear and con-
17 fusing?

18 A. I would believe that a strong case could probably
19 be made for that particular point of view, if, in fact,
20 the individuals that was projecting it really didn't have
21 as the focus of their activity the intent to try to
22 eradicate discrimination in the work place.

23 I do believe that there can be something and there
24 should be something done in certain areas and I won't get
25 involved in trying to outline those.

1 But I believe in most cases, that's an escape clause
2 or an excuse for really not trying to do something in a
3 positive way.

4 Q. Have you or other members of the committee ever
5 engaged in factfinding meetings with EEOC to resolve a
6 discrimination complaint?

7 A. I'm sure that other members of the group, of my
8 committee group, have. But primarily I keep repeating myself,
9 the thrust of our effort deals with OFCCP. And with all
10 deference to Mr. Hunt, he mentioned that he felt that the
11 future of civil rights and of course the improvement of
12 opportunities for both minorities, females, handicaps,
13 etcetera, lies primarily with EEOC, and while to some degree
14 I could accept that fact, I think that primarily when you
15 consider that the number of cases that are likely to be
16 brought over the next five or ten years as opposed to the
17 number when you consider the number of companies and the
18 numbers of people that are employed in the industry that I'm
19 in, obviously the need for OFCCP is very, very, very im-
20 portant.

21 Q. Do you know of any settlements obtained with EEOC?
22 You mentioned you're primarily OFCCP and --

23 A. You mean nationally or otherwise?

24 Q. Well, within the group.

25 A. With our group?

1 Q Yes.

2 A No, there have been very, very little, to my know-
3 ledge.

4 Q The next one is identify discrepancies between
5 OFCCP guidelines and EEOC guidelines, but again I think
6 you've more or less stated that you're primarily OFCCP?

7 A I just have one comment I would like to make in that
8 area, it's something that we've noticed in a recent meeting,
9 it came to -- it was surfaced, and that was that an area
10 that an area of complaints, notwithstanding that OFCCP has
11 the responsibility for investigating systemic complaints,
12 problems, and the problems that are growing as a result
13 of the handicapped, etcetera, but the membership felt that
14 because of a great deal of involvement in this particular
15 area, investigating complaints, they were beginning
16 to wonder whether or not some of their compliance activity,
17 programs dealing with affirmative activity, programs dealing
18 with affirmative action would be deemphasized and that was
19 a point that I've stressed and raised over and over again.

20 Q I think Mr. Hunt made mention of large numbers of
21 complaints from the best employer, so I was wondering about
22 that. Are there any inconsistencies between court rulings
23 and OFCCP policies? And if so, what operational difficulties
24 does this have with employers?

25 A I think it was last year that we, AIEOC, commented

1 on the new regs. that were coming out at that time, that
2 suggested that the -- the OFCCP was -- were going to pursue
3 back pay and the position relative to seniority and of course
4 the courts, the supreme court had already ruled in many
5 instances in that area, and we felt at that time that that's
6 something that even though there are -- the agency is moving
7 forward with, ultimately it's going to have to be decided
8 once and all by the courts.

9 Q What are your perceptions about the data requirements
10 for an affirmative action plan? And that is a work force
11 availability with regard to the aerospace industry? And
12 are the standards too general, too specific or unrealistic?

13 A I think I would have to go back to a statement that
14 I made earlier. While it's true that a lot of this effort
15 consumes an awful lot of time in terms of gathering data
16 and trying to interpret it and trying to apply it to the
17 standard, and then attempting to get the organization to
18 operate by it, I think primarily and by and large it,
19 without that particular approach, I don't know of any other
20 one that anyone else has suggested, and I believe that as
21 long as that is the case, then we would have to stick with
22 that and make it work.

23 Q Going back to this, you mentioned the joint training
24 session you had with OFCCP, would you have any comments on,
25 say the benefits or future benefits of future-type meetings

1 like this?

2 A We have discussed this possibility with the director
3 of OFCCP and several other individuals, and we have been
4 advised that in the future, they certainly would like to
5 do this. They were very receptive to the idea.

6 Our membership, of course, as I mentioned earlier,
7 has really found it to be very, very, very, very worthwhile.

8 THE CHAIR: Is Mr. Garland present yet?

9 If not, do members of the committee have additional
10 questions for Mr. Davis?

11 Staff, Ms. James?

12 Q (By Ms. James) Just, if you could go back to
13 mentioning how helpful within your committee, your sharing
14 of internal surveys and stats., these are the kinds of
15 data you use to develop your affirmative action plan, is that
16 correct?

17 A That's correct.

18 Q I just wanted clarification.

19 A To assist us in developing availability, requirements,
20 etcetera.

21 Q Okay.

22 Q (By Mr. Yoshioka) I had one further question with
23 regard to the effectivity of, or your perceptions of the
24 monitors that aerospace, say, have. Do you have any
25 comments?

1 A. Monitors, you're referring to the agency monitors?

2 Q. Yes.

3 A. Overall I would guess that they have been very,
4 very vigilant from the standpoint of trying to work within
5 their own organization. Understanding some of the problems
6 that they have had also. That brings me to something I
7 wanted to add, or actually in the form of -- present to the
8 group maybe in the form of a recommendation, and it cer-
9 tainly centers on the question that you've raised, and that
10 is that if there is a proposed compiling of EEOC and OFCCP,
11 our groups would strongly recommend that that combination
12 or combining be postponed for some time, simply because what
13 we have found and what we've seen as a result of the most
14 recent reorganization is that so much time is being spent
15 trying to determine and describe who has what part of what
16 organization, etcetera, that very little has been spent,
17 really, dealing with, I guess with the agency's mandate,
18 and that is to go about the business of understanding and
19 eradicating the problem in our society.

20 Q. (By Ms. James) When you say time, are you talking
21 two years, five years or had you thought that out yet?

22 A. Well, I -- if I can recall correctly, their intent,
23 it's something that the President said when he was going
24 through this particular activity, I thought he said some-
25 thing about two years they would look at it again. We would

1 certainly hope that it would probably be another five years
2 before they decide to look at it and beyond that, of course,
3 only time can tell.

4 THE CHAIR: The Chair should note for the record that
5 we had hoped to have representatives from other private
6 employers and the unions present this morning because of last
7 minute changes, that was not possible.

8 Mr. Davis, I'd like to direct a couple of questions
9 to you.

10 Q To what extent have there been problems or have
11 there been problems in the shift from the department of
12 defense as the cognizant auditing agency, enforcement
13 agency, to OFCCP?

14 A I'm not aware of any problems other than the one
15 that I've just identified, and that is that there is a
16 degree of confusion because of the fact that the organization,
17 the OFCCP is now in the process of, I would gather, trying
18 to reorganize and to identify itself within a new agency,
19 and the politics and everything of that kind, no doubt,
20 is having some -- having some adverse impact.

21 Q Do you think the fact that the aerospace industry
22 was for a long period of time monitored by DOB makes any
23 difference in terms of the attitude in the industry toward
24 affirmative action and the effectiveness of affirmative action
25 there?

1 A. There is no question at all in my mind that because
2 we are, as a whole, we are large contractors and because
3 our business depends primarily and in some instances totally
4 on government contracts, and because of the frequency in
5 which we were scrutinized, it had a very significant impact
6 on what we are doing and how we have done it.

7 Q. So that you also place substantial importance then
8 on the frequency of review and the carefulness with which
9 the industry has been monitored?

10 A. That's correct.

11 THE CHAIR: Well, thank you, Mr. Davis, for coming
12 today.

13 We will move, then, to state and local government
14 employers, Mr. Harvey, Mr. Ishikawa, Mr. Lake? Come for-
15 ward, please?

16 Mr. Harvey, we'll begin with you, will you identify
17 yourself for the record, please?

18

19

MR. HENRY HARVEY

20

21 A. (By Mr. Harvey) I'm Henry Harvey, I am the chief
22 of the public employment and affirmative action division
23 at the California State Personnel Board.

24

25

My division and the board has jurisdiction over the
state's affirmative action program.

1 Q (By Ms. Gillette) What did you say that was?

2 A Public employment and affirmative action division.
3 The division has primarily two missions, one of them is to,
4 as a result of some legislation, provide jobs in the state
5 to welfare recipients, to get them off the rolls, the
6 other is to manage the state's affirmative action program.
7 So that's what the name implies.

8 Q Well, then how does your responsibility relate to
9 federal compliance and enforcement efforts?

10 A Indirectly, but we don't have much in the way of
11 compliance except by OPM now which used to be the United
12 States Civil Service Commission where they review the
13 state personnel ^{board's} ~~period's~~ personnel management activity and
14 to that extent we have that compliance review.

15 We don't usually have any other compliance reviews
16 as an entity from federal agencies. However, we are in-
17 volved in the reviews of federal agencies of some state
18 agencies that get federal funds.

19 For instance our department of transportation, the
20 whole department of health, the department of education,
21 we have a local government services division that has some
22 affirmative action responsibility in the county welfare,
23 health and welfare and the services agencies that interact
24 with federal compliance agencies, so that's how the state
25 personnel board's involved with federal agencies.

1 Q Okay, go back a minute, please, and explain a
2 little more about how you're involved with OPM? The
3 office of personnel management in affirmative action?

4 A The OPM reviews our personnel management activities,
5 looks at our examination, whether or not we have a good
6 affirmative action program, generally that review is very
7 much in depth, talking about our procedures and things like
8 that.

9 Commenting on the quality of the things we do. And
10 there's considerable interaction between us and OPM with
11 regard to that.

12 Q How often is that done?

13 A The last review we had I think was '77.

14 Q Do you know when you'll get another review?

15 A I don't know when we're going to get another one.

16 They're probably going to inform me pretty soon because
17 I will be taking over the division that will be responding
18 to their review.

19 I'd like to just thank you for inviting me. I want
20 to -- I have canvassed all those agencies that I talked
21 to, that I've mentioned here, about their interaction
22 with the federal government and got their feedback and I
23 want to give that to you. And I want to --

24 Q Would you go ahead, please?

25 A Thank you for inviting me here to talk about that.

1 I'm pleased to be at one time when we're trying to
2 discuss ways of improving how we do business as opposed to
3 trying to defend affirmative action or to define it for
4 somebody.

5 I enjoy this job much better. First I'd like to,
6 based on what the response from the state agencies I talked
7 to I'd like to commend first of all the federal agencies
8 for the improvements that we see in the quality both in the
9 technical and in the human interaction between federal
10 government and state and local agencies as regards the
11 compliance reviews.

12 I think the -- those improvements are characterized
13 in some instances by more in-depth reviews, one that I
14 mentioned with regard to our own agency was certainly very
15 much in depth. I had the privilege of looking at a review
16 from OFCCP of one of our health agencies in which, as a
17 matter of fact they even used some of the state's categories
18 to review and were very much detailed about identifying
19 what the deficiencies were in that organization and requiring
20 certain activities of that department.

21 I think the feedback has been improved, and I think
22 general -- generally some attempts to reduce duplication
23 which is probably a greater issue. My own feeling about
24 that improvement, I think, comes from what I see as
25 competition between federal agencies. The fact that OFCCP

1 and EEOC have similar responsibilities, the fact that HEW's
2 office of civil rights has turned some responsibilities
3 over to OFCCP and they have to show that they can do that
4 job, identified some conflict in the reorganization between
5 OFCCP and the DOT's federal highway administration, some of
6 those kind of problems, but in general, there appears to
7 be an attempt and -- to reduce duplication and some apprecia-
8 tion of that by state and local agencies.

9 However, that competition, among them, is probably
10 the genesis of some of the problems, because the perspective
11 I'm giving you here is of the bureaucrats who have to
12 enforce affirmative action in state and local government,
13 those people who have to do the job and what I'm -- my
14 remarks relate to, the interaction with federal government
15 that allows them to do their job better or hinders them
16 from doing a better job, and that's going to be the tenor of
17 my remarks with regard to what emanates from that satis-
18 factorily by federal agencies.

19 Q. Mr. Harvey, when you talk about these federal
20 agencies just to clarify, which particular federal agencies
21 do you report to?

22 A. I told you, the only one that the state personnel
23 board --

24 Q. OPM?

25 A. -- okay, now, but for instance OFCCP, we have agencies

1 that report to them, department of transportation, depart-
2 ment of health, where that's been turned over to OFCCP
3 from HEW, we interact with office of revenue sharing, we
4 have lot of contact with them, and some problems with all of
5 the -- all of those people reviewing.

6 Let me kind of lay out what I see in terms of that.
7 If you are satisfied with that as identifying the people we
8 interact with.

9 Q Do any of them give you technical assistance?

10 A The answer to that is yes and no. For most of them
11 no, but for OPM yes. For instance, only yesterday I learned
12 that, and my colleague, Mr. ^{YANEK} ~~faunik~~ (Phonetic) is here, I
13 learned that we had gotten a grant to celebrate some affirmative
14 action activity in the state from IPA. My management
15 style is to keep pressure on the system at all times, and
16 my next phase is to bring more pressure to bear on the
17 directors of state agencies.

18 While we have affirmative action officers with re-
19 sponsibility, I recognize that the only way that's going to
20 move is to have the person who is responsible for all the
21 hiring, that is the director, directly involved in that
22 program. So that the affirmative action officer is supported
23 in his activities. And so we required, asked for a grant
24 to help us do that, to bring us in face to face confrontation
25 with that director, because many times they kind of opt out

1 of involvement in affirmative action and when we sent
2 them a nasty letter we get a letter from the affirmative
3 action officer and that's not what we seek.

4 We want to deal with the responsible person. So
5 we're very grateful for that grant and that's certainly a
6 whole lot of technical assistance.

7 The other organizations generally do not. One of
8 the reasons for not really receiving technical assistance
9 from them I think is the thing has been identified here
10 earlier is knowledge about systems.

11 For instance, OFCCP has generally been interacting
12 with private industry and they've just gotten into the
13 government or public employment business as a result of
14 reorganization. Consequently, they are unfamiliar, some-
15 times, with civil service rules and regulations.

16 There may have to be some interaction between OPM
17 and other federal compliance agencies with regard to that
18 public agency contact, to get them, give them some kind of
19 training in merit principles, pretty much the federal
20 merit, the merit principles that we follow emanate from OPM.

21 So there's a necessity before they can give a lot of
22 technical assistance, to understand what the system is about.

23 So the answer to your question is right now, not very much.

24 Some of the problems that were indicated, and I'd
25 like to put them in some kind of category, first is duplication.

1 We've been getting multiple reviews, we've been
2 having to deal with multiple jurisdictions, and file multiple
3 reports. And that third one I will talk a little bit more
4 about when I make some recommendations with regard to that.

5 Secondly, with regard to systems and organization,
6 there is first I indicated the failure to kind of understand
7 civil service systems in order to provide the kind of
8 technical assistance they may need to do to local and
9 government, local and state public entities.

10 And thirdly, to understand the organization, say for
11 instance of this state's whole personnel management system.

12 To provide an example of what the complication is, in this
13 state and insofar as state agencies are concerned, yes,
14 state agencies do hire and they sometimes give examinations.
15 But while they get their hiring authority from legislation,
16 the examinations and their approval to do that comes from
17 the state personnel board.

18 It's not very feasible that any federal agency could
19 come in and make an audit if they chose to do so, on a
20 state agency, without involving the state personnel board
21 who has to prove activities.

22 So it would mean that if federal agencies come in
23 with that intent, it might be wise and probably more
24 efficient and effective for them to also deal with state
25 personnel board simultaneously. So that all the players are

1 in the game.

2 Q As you see it, are the federal affirmative action
3 requirements consistent with what the requirements of the
4 state are?

5 A Yes, and I'm fishing a little. For one thing I set
6 up the state's program and I set it up based on the old
7 affirmative guidelines that we have published by the civil
8 service system, number 1, although I modified them con-
9 siderably because they were rather top heavy but I was
10 rather naive in my young days about getting away with
11 minimum regulations, although people squawk about regulations
12 I find if you give them two or three pages they ask for a
13 100 and when you give them a 100, they complain.

14 I've learned to live with that. But the answer to
15 your question is yes. We do -- those are consistent, and
16 in my mind, almost all of the so-called affirmative action
17 guidelines put out by any of the agencies are pretty
18 consistent. I don't think there's any great problem with
19 those regulations.

20 The real question is whether anybody intends to do
21 the job well because I think you can find the same kind of
22 instructions in all of them.

23 Q Well, since a part of your responsibility is also
24 helping people get into private employment, how about the
25 federal requirements for private employers, are they

1 consistent with what they require for public employers?

2 A. No. And I don't -- I find some considerable dif-
3 ference. I'm in, for instance I'm in a hassle right now
4 with one of the other agencies with regard to hiring wel-
5 fare recipients because there's some conflict between the
6 program I run and say the WIN, OJT program, and private
7 employers get some goodies that state agencies don't get,
8 for instance if you know within the last two years the
9 President has been giving considerable incentive to private
10 industry to hire disadvantages persons.

11 In fact, tax incentives that run over a year's time.
12 That, when state agencies are involved in the same program
13 they do that to some extent to their disadvantage, because
14 what's happening is out of state fund come a 100%, and
15 private employers are getting those tax incentives obviously
16 less expense to them.

17 In addition to charging employment office business
18 expense too.

19 Q They're getting tax incentives but there aren't
20 any different requirements as far as affirmative action goes?

21 A. No, no, there are not. Generally we would require
22 the same kind of things. The area that I have most ex-
23 perience with is with Cal-Trans (Phonetic), where we have
24 a lot of interaction with private industry, I used to be their
25 EEO officer and we would always require those people to have

1 affirmative action programs and in fact tell them how many
2 folks and give them X number of apprentices to put in to
3 make sure that the people were there, because contrary to
4 what I've heard here earlier, with me, numbers are what
5 count, because I see equal employment opportunity is
6 measurable and by measurable I mean talking about numbers.

7 Some of the recommendations I would like to make --

8 Q Let me just ask you before you get into your
9 recommendations you were talking about duplication. But
10 now, while the federal agencies to some extent may duplicate
11 do they conflict in terms of requirements?

12 A No. But I guess what local and state agencies
13 would object to is not that those people conflict, not that
14 they're not talking about the same subject but they're
15 having to talk to two people about the same subject.

16 It's not that they have any conflicting regulations
17 as such, you know, they have, what they have more is dif-
18 ferent kinds of forms, and they're bureaucrats and all of
19 them have to somehow justify their own existence and being
20 creative about looking and doing something that looks
21 different that may not necessarily be.

22 And those are real things that happen in the world,
23 but it means that somebody's job is being threatened,
24 if you really make all of that efficiency and effectiveness
25 real, so I understand what's happening in people's guts when

1 we say stop the duplication, but I think it's necessary.

2 THE CHAIR: Can we have your recommendations then?

3 A. Yes. With regard to duplication, where there is in
4 fact two or more jurisdictions over an agency, I think it
5 would be advisable and helpful if there was some kind of
6 deferral agreement between those federal agencies that
7 says hey, we think you got a good program, why don't you
8 collect this data and tell me about it if I have a need
9 to know. That would be a good arrangement between them
10 so that there is not that duplication with regard to juris-
11 diction.

12 With regard to reports, and I think this is very
13 important, one of the things I get, and I've been asked
14 as, you know, the affirmative action probably be the
15 longest on the job in this state and been influencing local
16 government programs too, for instance, EEO4 that everybody's
17 required to send in, all the local governments send that in
18 in EEO4 but if they have to report to some other federal
19 contracting agency they have to make up a different kind of
20 presentation of data. And if they're in the State of
21 California and Harvey's asking for a third kind of presen-
22 tation of data.

23 But I'm willing to meet people on some kind of common
24 ground so that we can come up with a system that would have
25 employers file the same kind of form for everybody. And I

1 think I'm not ready to say what that should be.

2 While most people are kind of comfortable with EEO4,
3 the fact is that's primarily a reporting document, it's not
4 very good for matching. You can, you know, EEO4 for-
5 instance lumps clerical supervisors with all the other
6 managers and there's no way that I can tell women that a
7 clerical supervisor is a manager.

8 I would just get shot by them if I sent that out and
9 said, look at all the women in this management category when
10 they new damned well they were all clerks.

11 THE CHAIR: Do you have some other recommendations?

12 A. Well, the systems, I think I've indicated that
13 probably some of the new people coming in to deal with
14 government are going to have to learn something about
15 merit system standards. In order to be effective and in
16 order to do a good job in either analysis of technical assis-
17 tance --

18 THE CHAIR: I think you put that one on the record
19 quite clearly in your statement.

20 A. Right. Secondly, to try to have them understand
21 what the organizations of the government personnel systems
22 are. Many of them have similar kinds of systems that the
23 state has. You have a central personnel system, then
24 you have departments that may be contracting with federal
25 agencies separately from the central personnel system, but

1 having to deal with the central personnel system, so --
2 there's some need for compliance people to understand that.

3 Thirdly, I guess, it has to do with, I got a lot
4 of feedback with regard to the kind of orders that federal
5 agencies make and what people are telling me is that they
6 would like the federal agencies to make orders and regards
7 results and not activities.

8 By that, tell us what our deficiencies are, ask us
9 when we're going to get the kind of results you want but
10 don't tell us how to do it. That's kind of the marching
11 orders I've been given.

12 THE CHAIR: Thank you, Mr. Harvey. Let's move on
13 for the moment and come back later, see if there's some
14 additional questions.

15 Mr. Ishikawa, will you identify yourself for the
16 record, please?

17

18 MR. MICHAEL ISHIKAWA

19

20 A (By Mr. Ishikawa) Yes, my name's Mike Ishikawa and
21 I'm the director of the LA County Office of Affirmative
22 Action Compliance. And an alumnus of the U.S. Commission on
23 Civil Rights.

24 THE CHAIR: Mr. Yoshioka?

25 Q (By Mr. Yoshioka) First big question is briefly

1 describe the functions of your office?

2 A The office was created in 1976 by the board of
3 supervisors, I think it came as a result of evaluating
4 and looking at the problems of implementing affirmative
5 action in a large government with 58 separate departments
6 which mean they had 58 separate appointing authorities.

7 The board felt, as given by testimony from various
8 employees associations and community groups, that there
9 was a need for an independent department to be able to monitor
10 and to enforce the affirmative action ordinances and
11 regulations set forth by the state and federal government.

12 That office now has approximately 25 people, independent,
13 working directly under the board of supervisors, independent
14 of the chief administrative officer, and is responsible for
15 working with these 58 department heads, department heads
16 ranging in terms of administrative authority from our
17 largest department, the department of health services of
18 25,000 employees, to some of the smaller departments, our
19 department of communications with 200 employees.

20 And in addition to that, because of the Proposition
21 13 restrictions, and considerations in 1978, the office
22 was also given the authority of monitoring all federal
23 contract compliance under the executive order, as well as
24 monitoring all department of labor CETA complaints from the
25 80 contract cities that are located and operating CETA

1 Manpower programs in Los Angeles County.

2 That's it in a nutshell.

3 Q What federal agencies do you come in contact with
4 regarding affirmative action in county government?

5 A All of them. And I say that with some sincerity in
6 that sense, that the county administers just about every
7 type of federal program offered by the federal government,
8 and as such, we deal with every federal agency that monitors.

9 Now, that changed somewhat at least in terms of
10 direct contact with the reorganization, and we are now
11 primarily working with the office of federal contract
12 compliance.

13 Q And that is the agency, then, that has the reporting
14 requirements or --

15 A Yes.

16 Q And the question is, do the agencies present conflicting
17 requirements?

18 A I don't know if I would call them conflicting, I would
19 call them inconsistent. I would call them, in many cases,
20 again before the reorganization, as Mr. Harvey pointed out,
21 the forms were oftentimes a different form asking for the
22 same information, I think the thing that I saw most frequently
23 was that each agency wanted to justify its own responsibility
24 and staff related to that responsibility, when asked whether
25 or not a plan submitted to the department of housing and

1 urban development, which was prepared two months prior, would
2 satisfy the LEAA requirements, the answer was negative,
3 and that we would, you know, they expected forms and
4 information to follow.

5 Q (By Ms. Gillette) Just to clarify, if you deal with,
6 say 50 federal agencies, you have 50 different reporting
7 forms?

8 A Prior to the reorganization that was the case, yes.

9 Q And now?

10 A And now we're ostensibly dealing with OFCCP. It
11 varies, now we -- with some of our special grant in aid
12 under Title VI we deal with the community services
13 administration directly. On those requirements.

14 THE CHAIR: Even on affirmative action matters?

15 A That's correct. Those agency regulations require
16 that.

17 Q (By Mr. Yoshioka) How about between requirements
18 for state and federal, state and federal requirements?

19 A I think the same, the same commentary goes for the
20 state as well.

21 We have experienced similar dialogues with the state
22 personnel board as well as with FEPC. And I think that in
23 -- you know, I don't have any problem, you know, maybe
24 you've heard testimony with regard to duplication. I
25 really don't have any problem with duplication as long as I

1 felt that the information were consistent, you know. I
2 think that's the major problem that I have.

3 Q Okay, changing the tack then, do you know where
4 or how to get technical assistance from federal agencies
5 on affirmative action?

6 A Not really. I -- you know, I must say that -- that
7 we've had department of -- the treasury, the office of
8 federal revenue sharing out, we've discussed with Mr.
9 Traylor (Phonetic) in the EEOC regional office with regard
10 to training, I think there's a clear distinction between
11 affirmative action implementation and training at the local
12 level as compared to the federal level.

13 I -- having worked in both levels of government,
14 I see that very clearly now. Federal level has to be more
15 general in application, the definitions have to be more
16 broad by virtue of geographics and size.

17 But when you're talking about local government, I
18 think you have to be very specific. You have to be very
19 detailed. I think you have to apply to the communities
20 you're working with and to the particular problems of
21 underrepresentation. In many cases federal agencies can't
22 deal with that detail, or at least from the standpoint of
23 training and technical assistance it's been our approach
24 that they can't.

25 Q Have you found it necessary to retain private

1 consultants to interpret federal requirements or provide
2 the training?

3 A. We have, but not under the title of affirmative
4 action. We recently have gone into the final negotiations
5 with a minority ad agency. My position is that I need
6 technical assistance and training in the business of adver-
7 tising, in the business of dealing with some of the areas
8 that I feel they have expertise in, professional expertise.
9 And I think that we need consultants, agencies that are
10 minority controlled or owned, because they have that sensi-
11 tivity that deals with the particular recruitment.

12 The ad agency that we are talking -- that we are
13 dealing with has that training and I think that that's
14 important.

15 Q. (By Ms. Gillette) This is an ad agency to explain
16 that affirmative action is for everyone or what?

17 A. No, what it is is that, for example, we will be
18 launching a rather major campaign with regard to our fire
19 department. Okay. That's an annual issue, and/or exam,
20 and we feel that an ad agency that is very familiar with,
21 say the Black media, with the community, with regard to
22 design of the ads that we run, with regard to what news-
23 papers we run in, with regard to what radio and television,
24 that is very important.

25 Q. (By Mr. Yoshioka) What affirmative action guidelines,

1 regulations or handbooks do you use to assist the county
2 agencies in developing their affirmative action plans?

3 A Well, we -- we've been using, as a basic guide,
4 probably guidelines that have essentially been outdated,
5 but I personally feel that they're -- they're better in
6 application, at least for Los Angeles County, such as the
7 revised order, and such as EEOC's handbooks on affirmative
8 action guidelines. Volume 1 and 2. Those particular
9 handbooks have a lot of standard information that I think
10 is very important.

11 Q (By the Chair) Do you have some recommendations for
12 changes?

13 A Yes, I do, I really do. I feel that affirmative
14 action, and especially the federal government, has totally
15 ignored something that's very important to, if we're
16 talking about maintaining our efforts to provide opportunity,
17 and that is what I call the back door of employment.

18 That's a whole issue of seniority, that's the whole
19 issue of what do we do, what kind of affirmative action
20 posture does public government have with regard -- what
21 kind of obligations does it have in the event of a massive
22 layoff?

23 And I think that's a real problem with California,
24 both with the passage of Proposition 13 and with the pending
25 passage or the probable passage of Proposition 9.

1 I have discussed this matter at the state and
2 federal level and I have essentially been told that the
3 argument of seniority is a vested right one and legally
4 it's something that affirmative action can not be applied
5 to. I -- I think that that needs to be explored more. I
6 really do. Because it's my opinion that unless the federal
7 agencies and the federal government comes up with some
8 guidelines, some leadership in this area, that any gains
9 made with regard to affirmative action in the last ten years,
10 I think, will be wiped out. Clearly.

11 We did an analysis in May of 1978 that showed that
12 if we did not receive, if Prop. 13 passed, and if bailout
13 funds or we did not know about those then, and if the county
14 were left with only the revenue remaining, that of the 50%
15 work force reduction that we would experience, close to 70%
16 would be minorities. and that kind of disparity impact is
17 frightening.

18 That doesn't even address the problem of upward
19 mobility and promotion of those minorities that may have
20 enough seniority to retain their jobs, but will lose whatever
21 advancement they've -- that's occurred in the last ten years.

22 I really think that's important. And secondly --

23 Q More?

24 A Yes, just my last one. And that is that with regards
25 to, you know, when Bakke decision was made public there was

1 a lot of administrative reaction to that as to interpre-
2 tation of guidelines, interpretation of what could and could
3 not be done.

4 I think there needs to be some federal leadership
5 in that area.

6 When Webber was announced, there was also some inter-
7 pretation. Now, essentially from an affirmative action
8 compliance or officer's perspective, you know, we're
9 told and we want to do more, we want to do, we want to under-
10 take some measures such as selective certification, such
11 as special recruitment, on one hand, and then on the other
12 hand, we know that we are having to carefully evaluate the
13 legal liabilities of that.

14 And I think there's been a lack, a clear lack
15 from the federal government standpoint to address those
16 concerns. Those are major landmark cases and I think that
17 they need to be interpreted.

18 I know that the UC system did it and I thought it
19 was a very good document that was prepared by their legal
20 counsel. That helped us in interpreting and be able to
21 apply it to some of our examinations.

22 THE CHAIR: Thank you, Mr. Ishikawa.

23 Let's move on to Mr. Lake at the moment, we'll come
24 back.

25 Mr. Lake, will you identify yourself, please?

1 MR. JAMES LAKE

2
3 A (By Mr. Lake) Yes, I'm Jim Lake, I'm affirmative
4 action officer at the University of California-Los Angeles.
5 And I'm here today representing our assistant vice president
6 from systemwide administration, which represents all nine
7 campuses.

8 Q (By the Chair) Thank you.

9 It may not be well known that the university is in
10 fact a major recipient of federal funds in the form of
11 grants and contracts. For that reason it is very much
12 under scrutiny of the federal government in affirmative
13 action matters.

14 What federal agencies does the university deal with
15 so far as affirmative action is concerned?

16 A We deal with several of them. In different categories.
17 Our major compliance agency is OFCCP. Next we deal with
18 EEOC in terms of discrimination complaints, and we deal
19 with OCR in terms of Title IX compliance.

20 Q Title IX is really not an employment measure, so we're
21 not concerned with it at this point, we probably will come
22 back to that at a later stage.

23 Have there been problems in the transition from OCR
24 to OFCCP?

25 A No problems at all except from the university's

1 perspective. We had rather cordial relationship with OCR.
2 Our headquarters up in Berkeley established all the ground
3 rules, the affirmative action officer on each campus simply
4 got vibes from our central office in Berkeley and we knew
5 how to react to OCR.

6 With OFCCP there has been no such coordination. We
7 have systemwide has attempted to set up some kind of mind
8 meeting, some kind of ground rules, thus far we've been un-
9 successful in doing that, so each campus now responds to each
10 area office.

11 And as a result of that, we find some conflicting
12 directions from area offices. I might say that there's a
13 network of affirmative action officers on each of these
14 campuses and there's a hot line, it's almost as if we lived
15 next door to each other.

16 I know what's going on at Berkeley, I know what's
17 going on in San Diego, I know what's going on in Riverside,
18 and whenever we get some kind of enforcement of a guideline
19 from one campus it goes throughout the entire system immediately
20 and we're getting conflicting directions, and of course I
21 attributed that to the new reorganization, it simply takes
22 time to get things under control.

23 Q That's true, even though you're dealing not only with
24 the same agency, that is OFCCP, but you're dealing with the
25 same regional office, or is it partly because there's some

1 disparity between regional office and the -- and the national
2 office?

3 A Well, the regional office in San Francisco, our
4 systemwide administration mostly deals with them. Now, when
5 we talk about area offices, the Van Nuys office, for example,
6 is the office that our campus responds to. That is very
7 different from the area office that our San Diego campus
8 might respond to and in terms of interpretation of
9 guidelines, etcetera, it's sometimes conflicting.

10 Q So that the conflict, then, is from area office to
11 area office --

12 A Yes.

13 Q -- within the region?

14 A Yes.

15 Q Okay. How many on site reviews have there been on
16 the -- in the system since OFCCP has assumed responsibility?

17 A UCLA has not undergone an on site review yet. Santa
18 Cruz has, San Diego has and Santa Barbara has. To my
19 knowledge, those three campuses have undergone --

20 Q Three of the nine?

21 A Three of the nine.

22 Q Do you anticipate additional during -- reviews during
23 the year? And if so, do you know how many or have they
24 been scheduled?

25 A They have not been scheduled. I anticipate, we just

1 sent in our data for the desk audit, I expect the area
2 office for Van Nuys to be at UCLA probably next month.

3 Q Do you have unusual problems with reporting require-
4 ments, extensive paper work, data submissions or would you
5 say that the university's situation mirrors that of the
6 other two gentlemen we've heard from this morning?

7 A Well, I -- I have not noticed or been aware of any
8 extensive paper work in terms of the collection of data.
9 It's always been my interpretation that any good personnel
10 office would want this kind of data for its own evaluation
11 anyway.

12 Therefore, of course, my background also is having
13 worked at HEW, so the paper work is no surprise to me as an
14 individual.

15 The university, and sometimes departments, view this
16 kind of scrutiny, this kind of paper work, this kind of
17 collection of data, who's hired according to race,
18 sex, etcetera, as somewhat of a hassle when we never had
19 to do this before, why do we have to do it now? That
20 attitude I noticed.

21 There are others that simply comply. It's no problem
22 with it. Especially. It's just some individual complaint
23 kinds of things.

24 Q Are there other problems, significant problems that
25 the university has encountered in the affirmative action area

1 in its relationship with the federal agencies?

2 A I think the biggest problem, and it continues to be
3 a problem, and it has been echoed by the two gentlemen
4 that spoke before me, is understanding the organization
5 that you are monitoring, that you are visiting. The structure
6 of that campus, most people have no realization of the size
7 and complexity that exists there just on that one campus
8 and I would dare say the Berkeley campus is almost exactly
9 the same.

10 We're talking about 44 acres where 50,000 people
11 congregate every day, you're talking about 30,000 students,
12 you're talking about some 15,000 staff personnel, you're
13 talking about some six to 8,000 from permanent to temporary
14 faculty, etcetera.

15 And the student area is totally separate from the
16 academic area. And that is totally separate from the
17 staff area. And all three areas have their impact and have
18 their power.

19 Then there is the chancellor who responds to the
20 president, which is up in Berkeley. So there are all kinds
21 of conflicting things that go on there, and many of the
22 compliance people who come in really don't understand that
23 kind of complexity.

24 That's why we are at an impasse now with the access
25 to information issue. That whole question, the university

1 is trying to hold onto the whole confidentiality of
2 letters of recommendation with regard to the tenure of
3 faculty. And they feel that's a vital thing to hold on to.
4 The confidentiality of that. If they are going to get honest
5 kinds of recommendation with regard to faculty.

6 The federal government feels that that's public
7 information.

8 Q Suppose the agency needs that information in order
9 to pursue a discrimination complaint or to come to some
10 other affirmative action settlement, is there any particular
11 reason why the university should be treated differently than,
12 say the aerospace industry?

13 A The university feels so.

14 Q Well, is this a problem of conflict between the
15 federal agencies or simply disagreement between the university
16 and the enforcement agency in the federal government about
17 what's appropriate?

18 A I think it's more the latter, disagreement about
19 what's appropriate, etcetera.

20 Q Do you have any difficulty in securing adequate
21 guidance from federal agencies with regard to affirmative
22 action plans and all of their components?

23 A None at all. It's a matter of a telephone call and
24 I can get more than adequate information.

25 Q Any problem in that regard with the shift to OFCCP?

1 A No.

2 Q Do you have recommendations for changes in the area
3 of federal enforcement of affirmative action, carrying
4 out affirmative action goals and objectives in general?

5 A Yes. I think that the federal government, OFCCP,
6 should make more of an attempt to deal with the University
7 of California as a single entity. Therefore focusing most
8 of its guidelines and imposing them and making agreements
9 with our systemwide administration. Each campus then reacts
10 very critically to systemwide administration as opposed to
11 getting different area offices.

12 It's my impression that we should be treated more as
13 a single entity. And I think there'd be less problems.
14 In addition to that, I feel that it may be possible or it
15 should be made possible that perhaps we, before a compliance
16 review, we give some kind of review of the campus, that we
17 educate our compliance officer as to our structure and how
18 the university goes about doing some things.

19 For the life of me, I've been there a number of years
20 now and I still don't understand how the university goes
21 about giving a professor tenure. That's -- it's unbelievable.
22 And that's set up by the faculty senate, I think purposely
23 confusing, but they have their way of doing it. I don't
24 understand it and I don't perceive how someone coming in
25 from the outside to stay on campus for a week could possibly

1 understand what's going on. So I think if we can increase
2 the level of communication with regard to our structure,
3 we may then have a better understanding of what we're
4 about and how we're going it, and we may be within guide-
5 lines when sometimes we're perceived to be outside of the
6 guidelines.

7 Q How long have you been affirmative action officer
8 at UCLA?

9 A I've been there three years now.

10 Q Three years. How long have you been in the system?

11 A Oh, I came from the east coast. I was state coordinator
12 for affirmative action in the State of New Jersey and
13 before that I was in HEW in Washington, D.C.

14 Q I was curious because three-year term, then, is after
15 the major problems were worked out with HEW-OCR?

16 A Yes, over the --

17 Q Five or six years ago?

18 A Yes.

19 THE CHAIR: Do members of the committee have questions
20 for these people? Karen?

21 MS. HILBORN: I have a question.

22 THE CHAIR: Ms. Hilborn?

23 Q (By Ms. Hilborn) For Mr. Ishikawa.

24 Earlier Barbara Klein, representing the commission
25 on the status of women spoke, I'm not sure if you were here

1 for that, and she indicated that her commission was extremely
2 concerned with the, in quotes, progress of women's status
3 in the economic ranks. And I believe the figures were
4 somewhere between seven and 8,000 annually and she indicated
5 that previously it had been about 71% and now it has
6 advanced to 76%. Has your agency and have you as the compliance
7 officer, been confronted with questions regarding these
8 kinds of progressions, and if so, I'd like some of your
9 reactions to those things?

10 A. (By Mr. Ishikawa) Yes. I wasn't here but I'm very
11 familiar with what Barbara mentioned.

12 The information that she has is provided by our
13 office. We instituted a quarterly reporting system which
14 was a significant increase from the only reporting procedure
15 with regard to changes and personnel actions taking place
16 every three months.

17 Yes, there has been a decrease in promotion, hiring,
18 but that's occurred throughout the country. It has had its
19 -- it has a very definite impact on minorities and women.
20 The number of promotions and appointments does create some
21 very serious questions about whether or not we can continue
22 to move forward and continue to move forward at the pace
23 that the commission on the status of women or that the
24 Black community or the Hispanic community or the Asian-
25 Pacific community would like to see it move at.

1 I think those points are -- I don't disagree with
2 them. I do think that there are some very serious factors
3 that have created that, and will continue to probably be
4 with us for some time to come.

5 With regard to the concerns of the commission on the
6 status of women, we have, and I think it's a wise course of
7 action, in this particular period of time, to focus, target
8 our areas of concern rather than using across the board,
9 shotgun approach. We have targeted some of our public
10 safety classifications, fire fighter, we have yet to succeed
11 in getting a woman fire fighter even though there have been
12 several attempts to prepare and train women to become a
13 fire fighter and those are physical agility considerations
14 at this point.

15 The other one is with regard to management. And we
16 find that there is -- there's more opportunity there, less
17 legal restrictions, and something that we intend to pursue.
18 But again this is not exclusive or particular to the con-
19 cerns of the commission on the status of women.

20 Certainly the Hispanic population is, and the
21 Chicano Employees Association for the County of Los Angeles
22 has been concerned about the fact that it is the community
23 that has, and the -- with regard to work force parity, has
24 yet to achieve that. And that is something that will
25 probably even be further out of sync. when the 1980 census

1 figures become public. These are very critical concerns for
2 anybody that has anything to do with affirmative action.

3 MS. HILBORN: Thank you.

4 A. (By Mr. Harvey) I'd like to kind of respond to that
5 issue. One of the ways I put pressure on that issue, we,
6 in this state, I give every state agency a report card at
7 the end of the year, this year's was particular nasty. But
8 one of the ways we highlight that is by, instead of lumping
9 the clerical classes with all other classes and then talking
10 about parity for women, is we separate them out and we talk
11 about parity for women in other than clerical classes,
12 and that's brought me some pretty acrimonious confrontations
13 with state directors in the last two weeks as a matter of
14 fact.

15 Because I just got a hot letter from somebody who
16 said if I do what you say, Hank, women are going to be --
17 parity for women will be 61% in my department.

18 But I -- that's the way we kind of put pressure on
19 that issue, so it does not get submerged any more than what
20 we try -- the same thing we did for Blacks in terms of
21 janitors and stuff like that, we took them out of there so
22 people could see what the picture is.

23 MS. HILBORN: Fine, thank you.

24 Q. (By Ms. Gillette) Mike, I believe you said that one
25 of the problems with maintaining affirmative action in the

1 county has to do with the built in barrier of seniority.
2 Are there other barriers built in just as in the federal
3 government, like the veterans preferance, etcetera?

4 A. (By Mrs. Ishikawa) Oh, yes. Veterans preferences,
5 specially for examinations where we go outside to recruit,
6 and some of those are our better jobs, engineering and
7 fire fighting and things like this, appraisers, whenever you
8 throw in that ten-point veterans preference it clearly,
9 clearly impacts the ranking, and we see that consistently
10 over and over again.

11 And every time there is a matter brought before the
12 board of supervisors to amend or to eliminate the veterans
13 preference credit because we feel that the veterans of
14 even the Viet Nam War or excuse me, the World War II,
15 are continuing to take advantage of that, and it does have
16 a severe impact on the women especially.

17 The board is filled by veterans group person and
18 that clearly influences their position on that.

19 We have even come in with a very positive approach
20 in terms of a proposal and saying rather than eliminate the
21 ten-point veterans preference credit, give a ten-point
22 credit affirmative action credit to those ethnic groups
23 and women that are underrepresented in a particular
24 classification. That also was opposed.

25 THE CHAIR: Mr. Yoshioka?

1 Q (By Mr. Yoshioka) Yes, a question, Mike, with
2 regard to your feelings on federal enforcement efforts,
3 any recommendations or opinions or --

4 A Well, yes, there's kind of a -- there's some real
5 confusion. I think that I'm a little concerned about the
6 training of investigators that are coming into the county,
7 I don't know about the other agencies, but some of the
8 investigators I feel are ill equipped, do not do the kind
9 of field investigation that I think would be helpful
10 both to the employer and to the plaintiff.

11 And in that case I think that contributes to the
12 backlog, I think it contributes to the administrative appeal
13 procedure and it fouls things up.

14 Secondly, I think that someone mentioned earlier,
15 and I think it's a very good point, that there are employers
16 now and there are training seminars put on to corporate
17 legal counsels which simply caution employers from stating
18 too much in your affirmative action plan because that can
19 certainly be used against you in a Title VII complaint.

20 Now, that, you talk to a director or you talk to
21 an executive vice president of the company, and here you have
22 legal counsel saying don't put too much in that plan be-
23 cause that may be used against you, and then you have your
24 affirmative action officer put more in it, and there you
25 have, I think, a real conflict.

1 And we have yet to receive any guidance on that and
2 I think this is something that we need to get a clarification
3 of.

4 Q. (By the Chair) Mr. Lake, from your point of view
5 as affirmative action officer or recognizing maybe you're
6 somewhere between the federal agencies on the one hand
7 and the university management on the other hand, is it your
8 feeling that the federal compliance effort is adequate in
9 terms either of monitoring or willingness to use sanctions
10 where necessary?

11 A. (By Mr. Lake) Let me give you my own personal feeling.

12 Q. That's what s wanted.

13 A. And perhaps I can give you a university perspective.

14 Q. I'll settle for your personal opinion.

15 A. My personal opinion is that I -- I think there should
16 be much more aggressive monitoring, that's my own personal
17 opinion. Most of what I get done in that university
18 environment is the result of outside pressure from the
19 federal agency. You know, that kind of pressure assists me.

20 I find that most people at the university are
21 totally immersed in their own little area, a host of them
22 know nothing about federal legislation with regard to
23 affirmative action and all kinds of things.

24 I take advantage of that. I go in and I tell them,
25 listen, we have in excess of 150 million dollars in federal

1 funds for all kinds of research projects, for three of our
2 labs and everything else, if that is ever cut off you're
3 going home, you don't have a job. And suddenly they start
4 thinking about who they hire. Maybe I better do something
5 about affirmative action because eventually it's going to
6 impact on me. So I think the more pressure, the better it
7 is for me as an individual affirmative action officer.
8 Boy, I'll get my job done.

9 THE CHAIR: Fine.

10 Staff, any questions? Mr. Dickerson?

11 Q. (By Mr. Dickerson) I'd like to address this to Mr.

12 Ishikawa but I'd like the three of you to reflect on it.

13 I think all three of you have generally mentioned that there
14 is some confusion involved with federal requirements. I'd
15 like to ask you if you are familiar, or do you have a
16 working knowledge of the federal authorities, these people
17 that are working to come into your agency and give you a
18 review? Do you know?

19 A. (By Mr. Ishikawa) Yes, I think I know the authority
20 and the -- put out by the Federal Register as well as the
21 agency guidelines, yes. I don't think I use the term con-
22 fusion, I just said lack of consistency. You know, I think
23 that there's some clear understanding that there is dupli-
24 cation, and -- but that doesn't mean that there's confusion.
25 They know that there's overlapping requirements.

1 Q Well, I'm saying that I'm confused because there is
2 duplication, there shouldn't be that. We have statutes
3 that tell the agencies what they're supposed to be doing.
4 Now, maybe somebody's doing that shouldn't be doing, we're
5 going to find out.

6 I'd like to ask Mr. Harvey a question.

7 You made the statement that perhaps the -- if the
8 compliance agency should become more familiar with the
9 merit personnel principles, and to me that means there may
10 be some conflicts and I'd like you to comment on this state-
11 ment: Perhaps the merit personnel principle people should
12 learn more about affirmative action.

13 A. (By Mr. Harvey) Let me do both. The example that was
14 brought to my attention as I told you, I canvassed people to
15 find out what problems they were having and I have examples
16 for all of these things.

17 The example that was brought to my attention with
18 regard to this particular issue was for instance office of
19 revenue sharing, going in to San Francisco, ordering --
20 finding deficiencies and ordering personnel actions that
21 were in conflict with federal merit system regulations.
22 And that was that problem.

23 Now, whether or not that meant that somebody did not
24 understand affirmative action and sometimes, why you have
25 affirmative action officers is because personnel officers

1 didn't do their job and that's the answer to your question.
2 You know, and I don't know what the people in San Francisco,
3 the personnel officer was doing in San Francisco, all I'm
4 saying is that they entered into an agreement either on the
5 ignorance of one or both parts that was in conflict with
6 other federal regulations.

7 THE CHAIR: Any other questions from staff?

8 If not, we thank you for --

9 A. (By Mr. Ishikawa) Mr. Perkins, I just have one
10 comment, I think it was the one program, federal program
11 that I really liked and it was the one you challenged,
12 of course, and that was the 10% setaside program for
13 minority owned contractors.

14 That program had the kind of guidelines, clear, I
15 mean they were straight forward, they said that 10% of your
16 EDA monies will go to minority controlled contractors, the
17 office of minority business enterprise, worked with EDA in
18 terms of setting up clearing houses to see that it happened,
19 at least it happened in Los Angeles County, it also stated
20 to contractors that after 40% completion, you were to be
21 reviewed and evaluated, if you did not comply you would --
22 the money would stop.

23 And that program worked. And of course it was
24 challenged, and you know, there was some real ping-pong
25 action between the supreme court and the federal district

1 court, but you know, I think if we're going to -- if this
2 commission is going to come up with a recommendation, I'd
3 like to see more of that kind of affirmative action direction,
4 because it got results.

5 THE CHAIR: I'll prolong this for just a couple more
6 minutes, I'm going to ask one of you, I'll pick Mr. Lake,
7 to respond to this.

8 You all could. Suppose I wr

9 Suppose I were to say that it has been suggested to
10 me frequently that one reason for the ambiguity regarding
11 affirmative action guidelines, regulations, everything that
12 goes with spelling out the basic legislation, is that we're
13 not really willing to get on with the job because we're
14 overly afraid of being accused of, to use the bad phrase,
15 reverse discrimination.

16 Is that a problem?

17 If you don't want to answer, Mr. Lake, pass the
18 microphone to anyone else.

19 A. (By Mr. Lake) I can almost guarantee that you will
20 be accused of reverse discrimination in that issue. You
21 have to, from my own experience in terms of the kinds of
22 things that I can accomplish, within that university
23 environment, when I make suggestions I get an expose on
24 Bakke.

25 And believe me it happened at Davis campus, everyone

1 in that university knows the whole history of Bakke, they
2 could almost cite the case to you.

3 Q (By the Chair) Most of them don't know that there is
4 no court opinion in that case.

5 A Well, they think there is. They think there is.

6 Q That's a fundamental difference.

7 A The whole position of Bakke was a middle-of-the-road-
8 kind of thing, where you simply do certain things. You
9 take certain things into consideration and you allow him
10 to enter medical school. And that was the whole finding.
11 I think you have to move ahead cautiously in terms of your
12 judgment as to how fast you enforce things, because you're
13 getting more and more cases of reverse discrimination.

14 Q Mr. Ishikawa, is that your opinion or do you take
15 a different --

16 A (By Mr. Ishikawa) I would agree, I just think that,
17 you know, we have a five-four Supreme Court and I think
18 we have a five-four federal government in terms of affirmative
19 action, when the charge of -- it discriminates and has a
20 negative impact on White males, and yet, you know, there's
21 -- there is that divided position on it. Legally and
22 administratively.

23 THE CHAIR: Well, I'd like to prolong this but I
24 better not.

25 Q (By Ms. Gillette) I was going to ask Mr. Lake if he

1 thinks that affirmative action will ever be a reality on a
2 University of California campus?

3 A (By Mr. Harvey) I don't want you cutting me off,
4 Mr. Perkins, from responding to that.

5 THE CHAIR: All right, Mr. Harvey.

6 A This is the only preaching I'm going to do today,
7 but there seems to be no doubt in this country about dis-
8 crimination in the past against various groups, and I guess,
9 I guess investigates, or something, the state police in
10 California, and people ask me about the racism and I
11 say, hey, go back to the county commissioners' report that
12 says what the problem is.

13 And my answer to your question is, not any more.
14 Because I see the victims of discrimination as being still
15 the same people and I see the beneficiaries of discrimination
16 as being still the same people. And so I take whatever
17 risk I think necessary to get the change made.

18 THE CHAIR: Thank you, Mr. Harvey.

19 We will take a brief recess, ten minutes, we will
20 reassemble promptly at 1:15.

21

22 (Short recess)

23

24 (The following was chaired by Ms. Nadine Hata)

25

1 THE CHAIR: I would like to reconvene the meeting
2 so we are not too far behind schedule.

3 The next group of people on our list are federal
4 employers. Hughie J. Barnes from the Veterans Adminis-
5 tration, Jane McIntyre from the Internal Revenue Service,
6 Claudia Van Blake from the Army Corps of Engineers was also
7 supposed to be here but she has, unfortunately, been called
8 away so we will just proceed with you two ladies.

9 Ms. Barnes, would you please state your name, agency
10 and position for the record?

11
12 MS. HUGHIE J. BARNES

13
14 A. (By Ms. Barnes) Hughie Joyce Barnes and I'm the
15 employee relations and development officer for the Veterans
16 Administration, Regional Office, Los Angeles.

17 THE CHAIR: Thank you.

18 Ms. Hilborn?

19 Q. (By Ms. Hilborn) Yes. Do you work on the federal
20 equal opportunity recruitment plan and the affirmative
21 action plan in your office?

22 A. Yes, yes, I do.

23 Q. Was technical assistance provided by OPM and EEOC?

24 A. Yes, in the form of a joint training session, I guess
25 you could call it. It came late in the year in terms of

1 when the plan itself was due. So we received some instructions
2 and we called around to people that we knew, the training
3 was held I think at the end of January with the first
4 portion of the plan due February 1st.

5 Q I see. Well, keeping that in mind, then, what additional
6 assistance would you have found to be of value?

7 A Well, I don't know whether you saw the instructions
8 or not, but it was an unwieldy document, and having to
9 sift through it and determine what they wanted, it would
10 have helped in the beginning if we had had clearer, concise
11 instructions, even to the format, what format they wanted
12 this plan to follow.

13 The statistics themselves were scary enough but we
14 could figure that out, but there were no clear instructions
15 as far as the narrative comments or documentation that they
16 wanted to go along with all of these charts and graphs.

17 Q Could you maybe elaborate on your views for the
18 EEOC's instructions for determining availability for
19 professional categories and setting goals and timetables,
20 etcetera?

21 A Could you ask that again, please?

22 Q We're curious as to your particular views as to EEOC's
23 instructions for determining the availability for professional
24 categories and for setting the goals and timetables and
25 that kind of thing?

1 A Okay, that portion was a little unclear because the
2 instructions said to name the three most populous profes-
3 sional and the three most populous administrative occupations.

4 Well, that in itself was a contradiction for us
5 because our most populous occupations were neither profes-
6 sional nor administrative. So -- but we went through the
7 paper work and when we looked at all of the occupations there
8 were only three professional occupations for which there
9 were no vacancies forecast during the transition year so in
10 effect, we had a plan that we couldn't act on.

11 THE CHAIR: Excuse me, could you back up again and
12 tell us what these three occupations were?

13 A You would ask that. Physicians, psychologists and
14 attorneys.

15 Q (By the Chair) And these were the three most populous
16 occupations?

17 A Right, professional occupations.

18 Q (By Ms. Hilborn) Do you see any conflicts between
19 the EEOC affirmative action requirements and the OPM
20 merit standards?

21 A If I understand you correctly, the merit standards
22 in that we have to follow certain competitive practices
23 before we can hire someone? Is that what you mean?

24 Q Right.

25 A Yes, therein lies the problem. We can identify

1 areas where there's underrepresentation and where there's
2 a need to pick up more women and minorities but we still
3 have the obstacle if you will, of civil service register
4 for certain positions that we must honor. We can not,
5 like private employers, go out and find someone that we
6 like who meets all the criteria of underrepresentation
7 and then hire that body, we've got to go through civil
8 service registers as such.

9 Now, that's not to say that there aren't exceptions
10 to that, but the exceptions are generally in direct hiring
11 authority for clerical positions or using the veterans
12 readjustment program again clerical-type positions and what
13 we would like to concentrate on is the higher level posi-
14 tions.

15 Bringing people in where there is severe under-
16 representation at the higher levels, even if we find
17 qualified women and minorities, we must honor the civil
18 service merit principles.

19 Q I see. On a little different vein, then, what kind
20 of monitoring do you see as necessary by OPM and EEOC to
21 insure that affirmative action and equal opportunity re-
22 cruitment are more than just paper pencil kind of thing, that
23 they in fact are realities?

24 A The monitoring would probably, I see no problem with
25 the way it was monitored in the past. But recruitment of

1 women and minorities is fine and the Veterans Administration
2 Regional Office has done a tremendous job in the past.

3 Right now our minority and women population totals
4 over 50%, but at our particular office that's not the problem.
5 We would like to have a program geared at upgrading women
6 and minorities, once we get them in they tend to stay at
7 the clerical levels and it's a long road up to the top.
8 So recruitment is fine, but I think it's time that one of
9 these affirmative action programs took a hard look at what
10 happens to them after they get on board.

11 How do we accelerate their movement up in the
12 organization?

13 Q So then, not just a monitoring but actually a
14 clarification or maybe a stiffening of the regulations or --
15 could you clarify? I'm confused.

16 A Maybe not clarify, I'm saying let's get beyond re-
17 cruitment, let's take a look at promotions. See the way the
18 program is set up now, and Jane and I talked about it a
19 little earlier, it's an affirmative recruitment program.
20 And I say yes, if we look at our statistics now we've done
21 well in recruiting minorities and we will continue to try
22 to upgrade them.

23 But if there are no vacancies even if we, all right,
24 now, we may project 15 vacancies but with the austere budget
25 we're all familiar with, these vacancies may not come to

1 pass so what effect is your affirmative action plan? Do you
2 see my point?

3 MS. HILBORN: Yes. That's all the questions I have.

4 THE CHAIR: Thank you, are there other questions?

5 Ms. Bernstein?

6 Q. (By Ms. Bernstein) You were just saying you think
7 now it's time to change sort of the emphasis of what the
8 plan is. Who is responsible for the plan?

9 A. You mean in changing the plan?

10 Q. Changing it, writing it, whatever? I mean where do
11 you get this plan from?

12 A. Well, the instructions, of course, come from the
13 equal opportunity commission, they state in their regulations
14 what our affirmative action plan should address for a
15 particular period of time.

16 In the past it was the civil service commission.

17 Q. Okay, so have you voiced your concern to anyone about
18 this, are they aware of it?

19 A. They will become aware of it. This is our first
20 time in dealing with the equal opportunity commission and the
21 trend is still on recruitment and so I think in some of
22 our reports to our central office we will mention the fact
23 that recruitment is fine and it has a part of affirmative
24 action but we need to go beyond that now.

25 Q. I think what I'm getting at is if you just send a

1 report to an office what I'm concerned about is if anybody
2 looks at that report. So who would be responsible for --

3 THE CHAIR: In your opinion perhaps you may not
4 necessarily know, but in your opinion?

5 A. It would have to be someone in the equal opportunity
6 commission, but who that person is and what position they
7 hold, I'm not sure who it would take to turn the wheel
8 around and go in another direction. I wish I knew.

9 Q. (By the Chair) You talked about some unnecessary
10 paper work involved when you talked about these positions.
11 What happens when you -- did you bring this to the attention
12 of somebody --

13 A. Yes.

14 Q. -- and if you did, what happens?

15 A. What happened was I had to start all over on the plan
16 and then we started to take a look at our six most populous
17 occupations without regard to professional designation
18 or administrative designation. We started all over and
19 looked at those where we knew we would have vacancies and
20 where we could make a dent, if you will, in the affirmative
21 action plan.

22 Q. Did you ask somebody for technical assistance or
23 reclarification or redefinition?

24 A. Yes, as --

25 Q. Who did you ask?

1 A -- as a matter of fact, at the training there was a
2 gentleman from the equal opportunity commission and
3 he justified the reason why they said professional positions
4 and administrative and I understood it clearly, because
5 traditionally you don't have a lot of women and minorities
6 in those occupations. But when I went back to my office
7 and did the final workup, I found that the vacancies weren't
8 there, so we couldn't do anything.

9 I finally got in touch with someone in our VA
10 central office and they told us go in the other direction
11 where there are going to be vacancies and where there are a
12 lot of positions and a larger grade structure.

13 Q Do you have any recommendations or comments you'd
14 like to make if you had the opportunity to talk to these
15 federal agencies you deal with?

16 A There needs to be clarity in the instructions. The
17 information we got with the federal equal opportunity
18 recruitment plan and the affirmative action plan, there
19 was so much in there that it took you a while to weed
20 through it and find out exactly what it was they wanted.

21 What our plan should look like, what kinds of things
22 they would look at.

23 I think the idea is good, they address underrepre-
24 sentation, but some of our managers feel that when you
25 look at only six occupations as they ask for here, and

1 then as you get further down the road you find you're not
2 going to have any vacancies you have no real affirmative
3 action plan.

4 The VA regional office has taken an organizational
5 approach, where there is a need, we try to fill it with a
6 female or a minority. Now, we're looking at six occupations
7 and we've got to gear all of our effort there, so we'll have
8 a clean report card, if you will, at the end of the -- at
9 the end of the year.

10 This is not to say we're going to neglect the others
11 but we sure have to address these six occupational areas
12 as required by EEOC.

13 Q To the detriment of the others?

14 A Not so much to the detriment, we're going to take
15 care of them, but with not so much full force.

16 For example, for the past year and a half the emphasis
17 has been on Hispanic employment. And our Hispanic employment
18 program manager has done a fine job in recruiting Hispanics
19 and we've been placing them in all kinds of positions in
20 the agencies, where we could, and I don't mean to paint a
21 picture that they were placed in higher positions, most of
22 them were clerical.

23 But now that our emphasis has to shift and look at,
24 for example the underrepresentation of White females and
25 Asians, etcetera, we're splitting ourselves and spreading

1 ourselves a little thinly. Trying to give everybody a little
2 taste of the pie.

3 Q In order to meet EEOC guidelines?

4 A Yes.

5 THE CHAIR: Thank you, are there any other questions?
6 Staff?

7 Q (By Ms. James) Two. In your weeding through all of
8 the various documents, both from the federal equal oppor-
9 tunity recruitment plan and the new EEOC guidelines for
10 federal agencies, did you come up with any kind of contra-
11 diction or conflict between the two separate directives?
12 They are coming from two separate agencies or are they
13 fairly consistent?

14 A They're fairly consistent. It's amazing two agencies,
15 I'm sure there was some coordination but they're fairly
16 consistent. Some of our managers questioned why it was
17 split instead of being combined under one plan.

18 Q But even though it is split it has not created a
19 problem in your organization?

20 A No, it has not.

21 Q Now, in reporting, is it clear to you yet, do you,
22 your FEORP goes where?

23 A It's attached to the affirmative action plan which
24 goes to our agency headquarters and eventually to the equal
25 opportunity commission.

1 Q You do not report regionally, you report to the VA
2 who forwards it on to EEOC, you do not report to anybody
3 in San Francisco in EEOC?

4 A As far as I know, no, we don't right now.

5 Q The only other questions I have is, just from your
6 professional experience in working in federal agencies on
7 affirmative action, do you perceive any difference between
8 what the federal government is asking private employers to
9 do versus what the federal government is asking federal
10 agencies to do in affirmative action?

11 A I don't perceive there's a difference but I perceive
12 there is the problem that I mentioned earlier in terms that
13 we must honor the merit principles, we can not simply go out
14 and find someone we like and hire them off the street in
15 any position that we want, and my conception of private
16 enterprise is that they can do that pretty much, a little
17 easier than we could.

18 THE CHAIR: Thank you, Ms. Barnes.

19 Ms. McIntyre, would you state your name, agency and
20 position for the record, please?

21
22 MS. JANE MCINTYRE

23
24 A (By Ms. McIntyre) Jane H. McIntyre, I'm the EEO pro-
25 gram manager for Internal Revenue Service in the Los Angeles

1 district.

2 THE CHAIR: Thank you.

3 Ms. Bernstein?

4 Q (By Ms. Bernstein) Did you develop the FEORP and the
5 affirmative action plan for IRS?

6 A No, I only did the affirmative action plan, not the
7 FEORP.

8 Q Is your plan developed separately from IRS headquarters
9 and other IRS area regional installations?

10 A -- Oh, yes. The Los Angeles District does their own
11 plan, because we are so large and spread out over approxi-
12 mately six counties. We forward our plan to the region
13 when it's completed and I understand they're supposed to
14 forward it to the national office.

15 Q So, each area does their own plan?

16 A Each district does their own plan, right.

17 Q Do you know if they're consistent or --

18 A No. I -- they follow the same guidelines, but it's
19 based on the need of that particular district.

20 Q Which EEOC instruction did you follow and what do
21 you think of EEOC's method for determining availability
22 and setting goals and timetables?

23 A When we first did our plan we didn't follow EEOC
24 guidelines. We had to weed through them the same as Ms.
25 Barnes said, because it was a lot of confusion, primarily

1 it was in draft stage. Our national office in IRS always
2 tells us they will give us the final guidelines so we really
3 do not really follow EEOC guidelines, we do what our
4 national office tells us to do. But eventually in January,
5 I believe, the last of January, we did have a combined
6 meeting of all of the federal agencies in this area and we
7 had a person from EEOC, San Francisco, come down and a
8 person from OPM and they both cleared up a lot of miscon-
9 ceptions that our agency had about the plan and of course I
10 contacted our regional office to tell them to get in touch
11 with EEOC because there was a lot of misconceptions.

12 Q. From what you're describing, and your knowledge of
13 federal government, would you say that this is -- that all
14 the agencies then are -- or it's conceivable they're all
15 doing something different, because as she described, this
16 large book of instructions?

17 A. Probably. It could be because I think in the federal
18 government each agency or department, they set up their own
19 guidelines based on the guidelines that they get from either
20 OPM or EEOC and there could be different interpretations.

21 Basically, I feel that the plan is good, it's probably
22 the best that we've ever had, because you can measure. But
23 you can still take that plan and manipulate it and use it
24 any way you want to by any agency and I feel that there
25 should be specific guidelines that every agency should have

1 to follow and I think that's what we really need.

2 Q What is your understanding of OPM's and EEOC's re-
3 sponsibilities to providing technical assistance to federal
4 agencies in meeting affirmative action requirements?

5 A We're in a transition year with the plan and it's
6 taken it a while, let's say six months to get off the ground,
7 and we're still changing it around.

8 We have gotten recently letters from EEOC that they
9 would, you know, come in and give us personal assistance
10 like to our addition. In fact, we're in the process now
11 of contacting the local EEOC office to set up some training
12 courses for us.

13 And they are very responsive in that area. But I
14 think it's because it's so new and not to defend them, I
15 understand they're very short of help, that it's kind of
16 hard to get things set up because they also have a lot of
17 work in private industry.

18 I don't know if you know this, but I believe the
19 federal government, any complaint or anything to that effect
20 has to come out of the national office. I think we have to
21 go through the national office to deal with EEOC or our
22 regional office. But we have gotten assurance that we can
23 get help from them.

24 Q Do you report to both?

25 A The national office and --

1 Q No, OPM and EEOC?

2 A No, no, I haven't reported to OPM on anything. I
3 understand EEOC will be reviewing our plans eventually,
4 but they are not doing that now. But we must have them ready
5 if they wanted to come on site to look at them. We're
6 supposed to have a waiver from the national office for our
7 areas.

8 Q So you're supposed to report to both in some form?

9 A Eventually, yes.

10 Q Are the forms duplicated, are they similar, different?

11 A No, all we do is send them a copy of whatever plan
12 we have, we just send the local office a copy, that's what
13 we should be doing. It was the same thing under OPM.

14 Q What about the directives, did they conflict with
15 each other?

16 A I don't think so, no.

17 Q Do you have any recommendations to improve affirmative
18 action efforts for federal agencies?

19 A Yes. Take the complaint system out of every federal
20 agency. It's conflict of interest, if the complaint system
21 was analyzed I think we would get better guidelines on
22 affirmative action plans.

23 There's no consistency to the complaints that you
24 get in the federal agency and -- versus the guidelines that
25 we are getting for AAP. Basically the affirmative action

1 plan is recruitment and that is necessary, but there's no
2 strong emphasis on up-mobility which is vital, very vital
3 to employment in any federal agency because of the way we
4 have to hire.

5 It's my understanding at the last meeting with EEOC
6 that that was supposed to happen under FEORP but for some
7 strange reason every agency feels that it's only outside
8 recruitment, there is no emphasis on upward mobility within
9 the services.

10 Q - Can you work independently of them and put that
11 emphasis on your local office?

12 A I can do it. How much impact I don't know. If it's
13 a requirement I can do it better. If it's not required they
14 may let me do it and they may not.

15 Q So, then, could you say that it would make it
16 easier if the requirements were stricter?

17 A Right, right.

18 Q Do you think -- the same question that Ms. James
19 had, do you feel that the -- there is less required of the
20 public sector than the private sector?

21 A I'm not really sure I know what's all required of
22 the ~~public~~ ^{Private} sector. I would think in a sense the federal
23 government is a little bit more politicalized than the ~~public~~ ^{private}
24 sector, and in that sense I would say yes, it's less required
25 of the federal government, because we monitor our own.

1 And you can't monitor your own. And this is what's
2 happening. Whereas with the private sector you have the
3 federal government coming in and establishing requirements,
4 and you talk about reverse discrimination but I think
5 that could be handled also. Although we do have the merit
6 system, there are certain positions and especially professional
7 positions that do not require testing, that we could get
8 better results as far as filling jobs for minorities and
9 women.

10 And we do not have to have tests for those and I
11 think those could be set up on the same scale as the ^{private} public
12 sector, that they require X number to be hired or whatever.

13 Q If it were up to you who would you designate as the
14 one who should monitor?

15 A EEOC.

16 Q (By the Chair) Why?

17 A I think they have stronger impact, I believe the
18 federal government respects EEOC just a little bit more
19 than they do OPM, I think OPM has been too close to the
20 agencies, it's my understanding that they're really there
21 to assist the agencies, I don't think EEOC is there to
22 assist them except in the affirmative action program, and
23 I believe the legal aspect of EEOC would have greater impact
24 than OPM.

25 Q I have one last question for either one of you ladies

1 and this may be a naive question, but working for a bureaucracy
2 I have this feeling sometimes that when I fill out all these
3 reports nobody looks at them. Do you have any proof that
4 anybody looks at anything and says that's a good plan or --

5 A Okay, I know for a fact that OPM looked at our plan
6 for two years straight. I know for a fact because they
7 bounced them back twice. And we had to make some corrections.
8 And it wasn't a scan, there were even numerical and typing
9 errors that they came across.

10 And I don't know if this was done across the country
11 but I know the local OPM office did a good job in reviewing
12 the plans and sending them back and making us meet the
13 requirements.

14 Q What about the reviews, were they realistic?

15 A I think they were. I think they were.

16 THE CHIAR: Ms. Barnes, we can't put nods on the
17 record so would you like to comment for the record?

18 A (By Ms. Barnes) Yes, I agree with Ms. McIntyre that
19 someone read the plan, that was where a couple of years
20 ago we started making the greater emphasis on Hispanic
21 employment, because we sent our plan in and someone was
22 reading it quite well and it's just a second now the county
23 statistics show 15.9% Hispanics and you only have how many,
24 five or something? So we got going on a vigorous recruitment
25 program as a result of that.

1 And I like the approach that the local office had,
2 there was a staff member responsible for a block of
3 agencies, I guess, so you had a person, you knew was reading
4 your plan and that you could get in touch with if you had
5 any questions as far as their recommendations.

6 THE CHAIR: Thank you, are there any staff questions?

7 Q (By Ms. James) Just a couple. Back up to Ms.
8 McIntyre, you mentioned something just for clarification,
9 I believe you were referring to the need for more upward
10 mobility --

11 A (By Ms. McIntyre) Right.

12 Q Getting beyond the recruitment program and you
13 said that was supposed to happen under FEORP?

14 A FEORP.

15 Q What was supposed to happen?

16 A There was supposed to be, according to my knowledge
17 in the meeting with EEOC and OPM, that they were -- they
18 were also supposed to inform the agencies that upward
19 mobility was a part of FEORP, it was supposed to have been
20 included in the total plan of FEORP.

21 Q I see.

22 A And agencies got the impression that it was only
23 outside recruitment, I shouldn't say agencies, our agency
24 did, so --

25 Q (By Ms. James) On the other thing, I'd just like a

1 brief response from both of you, earlier today we heard
2 a gentleman referring to, regarding federal agencies'
3 affirmative action plans in using availability data,
4 and I'm not clear in my own mind how this works, you have
5 an option of using the SMSA or the region or national
6 parity figures? What is your understanding?

7 A. Mine is SMSA or the national, whichever is higher.

8 Q. And that's the way you're doing it?

9 A. Right, we use the higher of the two.

10 THE CHAIR: And Ms. Barnes?

11 A. (By Ms. Barnes) Right, that's my understanding with
12 one exception, for clerical occupations, there was an
13 exception that you could use the lower local figure just for
14 the clerical positions, yes, but there are only the two
15 areas, the national or the standard metropolitan statistical
16 area.

17 THE CHAIR: And one final question from Mr. Tobin.

18 Q. (By Mr. Tobin) Yes, I'd like to address this Ms.
19 McIntyre. At one point in your testimony you said that the
20 question of upward mobility was not, at this point, addressed
21 properly or completely. And that when you were asked, well,
22 if you were to make certain recommendations, what would
23 happen. And you said well, they might or might not go
24 along with it, is that correct?

25 A. (By Ms. McIntyre) Yes, because in meeting the action

1 plan, I think each agency feels that they would like to show
2 that they have more people on board from the outside. People
3 tend to forget about the people within the service and
4 we do have a lot of minorities and women, and I think this
5 is throughout most federal agencies, at the lower level,
6 the grading is one through eight. And it causes a lot of
7 frustration with the in-service people when we are talking
8 about getting figures higher at our professional positions
9 and we aren't doing anything for the people that are
10 already in the agency when we could use those figures and
11 bring people in from the outside at the lower grade level.

12 Q Well, because of the particular nature of the federal
13 civil service upward mobility as you pointed out is a
14 rather important factor. When your program is recommended
15 and vetoed, who does the vetoing?

16 A Well, I'll put it this way, the guidelines are set
17 at the national level, and at this point they are really
18 looking at FEORP because that's what was stressed.

19 I think the whole thing is they're saying we're not
20 going to worry about this at this point, we've done upward
21 mobility, we've got good figures throughout our general
22 upward mobility program let's stay with the recruitment from
23 the outside and they're going all out for that and boom,
24 we're slapped with a freeze now. So at the end of the year
25 you can say well, we couldn't fulfill our FEORP plan because

1 we had a freeze for the rest of the year, and nobody thinks
2 about, well, what did you do with upward mobility?

3 THE CHAIR: Fine. Thank you very much. We appreciate
4 your coming this afternoon.

5 Our next panel deals with federal, state and local
6 government responsibility and we'd like to call forth Mr.
7 Yanak, Mr. Reyes and Ms. Lewis, will you please step forward
8 to the table?

9 We'd like to start with Mr. Yanak?

10 MR. YANAK: Yes.

11 THE CHAIR: Would you please state your name, title
12 and agency for the record?

13

14 MR. FRANCIS V. YANAK

15

16 A. (By Mr. Yanak) Yes, I'm Francis Yanak, the regional
17 director of the western region of the office of personnel
18 management.

19 THE CHAIR: Thank you.

20 Dr. Perkins?

21 Q. (By Dr. Perkins) Mr. Yanak, we have some problems
22 defining affirmative action. Could you give us your
23 definition of affirmative action?

24 A. Surely. Within the public sector's merit system per-
25 sonnel management system, to have an aggressive recruitment,

1 hiring, employee development and employee rotational
2 system that would be reflective of the society in which we
3 live, occupationally, organizationally, and in hierarchical
4 sense.

5 Q. Is this, in your judgment, essentially an equal
6 opportunity program or is it something more than that?

7 A. I'm trying to read what you mean by an equal oppor-
8 tunity program or more than that. Let me tell you what I
9 think it is, and let's see if that answers your question.

10 I think as a society we have progressed from a per-
11 ception of nondiscrimination to a perception of assuring
12 equal opportunity, to a perception that we need an
13 aggressive affirmative employment effort to reach what we
14 perceive to be a representational kind of national work
15 force.

16 So what I'm saying is I believe it's an evolutionary
17 kind of thing that we've experienced in our own society.

18 Q. In your judgment is embodied with sufficient clarity
19 in existing statutes, executive orders, regulations?

20 A. I think especially with the enactment in the fall
21 of 1978 with the Civil Service Reform Act, because there I
22 think some things are tied together that previously weren't
23 tied together. Example, the Civil Service Reform Act speci-
24 fically talks about the federal equal opportunity recruitment
25 program and the kind of outreach and the kind of affirmative

1 efforts that need be taken. It places on the shoulders of
2 the very executives of the national government, within their
3 standards of performance, there's a critical element,
4 they're being evaluated, individually and organizationally
5 on what they do on affirmative employment.

6 That our midlevel managers and in the federal
7 government these are characterized as grades 13 through 15,
8 under our merit pay provision the very same kind of re-
9 quirement, that part of their performance be measured as
10 it relates to what they have done in their own organizations
11 to achieve the goals of affirmative employment. However
12 those are characterized.

13 Q. Thank you.

14 Let's divide the discussion basically into two
15 components, one OPM's responsibility in the area of state and
16 local employment and then we'll come later to federal
17 employment.

18 In the state and local employment area can you
19 explain to us what OPM's authority is to impose affirmative
20 action requirements under the merit standards and the IPA
21 grants programs?

22 A. Sure. In the first part, I'm going to differentiate
23 between grants and then what we do and what we call the
24 merit standard. In terms of the merit standards under the
25 IPA act of 1970 very specifically, the principles require

1 that state and local jurisdictions that are covered by
2 those standards do have an affirmative employment program.
3 That that affirmative employment program is within the
4 context of the merit system of employment without specifying
5 the jots and jittles of what that ought to be. But in terms
6 of the merit principles...

7 And so my agency is responsible for assessing
8 the extent to which the jurisdictions covered by the
9 standard have an affirmative action plan, what its components
10 are, and how well it meets the criteria that we have pub-
11 lished for state and locals.

12 Like, have you made an analysis of the work force,
13 your own, the area in which you live and work, what is the
14 nature of the turnover or projected turnover, what are the
15 mainstream occupations, what are your standards, qualifica-
16 tion standards like, what are your recruiting programs
17 designed to accomplish and what are they achieving?

18 And then looking in terms of bottom line terminology,
19 what's happened.

20 In terms of the grant program, we operate under a
21 state designee and so each state, California as an example
22 has a state designee that is responsible for having a merit
23 system that covers the IPA designees, that we, when we
24 look at grants, requires certification by the chief executive
25 officer that they do have an affirmative outreach program,

1 an affirmative action plan that meets the criteria we've
2 published, and that we do review both pre-award and post-
3 award how those jurisdictions who have received dollars
4 have lived up to, if you will, the requirements that we have.

5 So, on both sides of the house.

6 Q. Okay. Do you have any other involvement with
7 affirmative action matters in regard to state and local
8 government other than that which comes under the grants
9 program and the merit standards program?

10 A. No, those are the two and these take many different
11 directions, if it would be of interest to you, in terms of
12 the technical assistance, in terms of on site training,
13 in terms of specific grants made under the act for affirmative
14 employment and equal opportunity kinds of objectives,
15 Hank Harvey mentioned earlier one that was just granted
16 a few days ago to the State of California.

17 On site technical assistance as well as persons
18 from state and local jurisdictions participating in training
19 programs that we conduct. Either through our regional
20 training center or through our intergovernmental personnel
21 staff.

22 Q. You do require agencies to submit affirmative action
23 plans of all agencies that have -- that come under these
24 two programs?

25 A. Yes, those who are, what we call who receive grant in

1 aid from the national government, those are the ones that
2 we're talking about here and they must develop affirmative
3 employment plans, yes.

4 Q A question came up a while ago and you referred to
5 it again just a moment ago, regarding technical assistance,
6 and Mr. Harvey stated, said something about the grant.

7 Let's look at the technical assistance in another
8 form. That is providing information regarding goals and
9 timetables, utilization analysis, matters of that sort.

10 Do you provide that kind of information to state and
11 local agencies?

12 A Yes, yes. As a matter of fact, both in the State of
13 California and in the other three states that are within the
14 jurisdiction of the western region, Arizona, Nevada and
15 Hawaii, in each of these jurisdictions members of our staff
16 have worked with those states in developing not only the
17 plan and either the legislative or the executive basis,
18 executive order for those plans, but have worked through
19 with them in developing the component parts of those plans.

20 Q Is that uniform throughout the region?

21 A Yes, we do that throughout our region, yes, sir.

22 Q Now, how about the other matter, the matter of
23 reporting requirements, say as between OPM, OFCCP and EEOC?

24 A I think that's a problem. And it's a problem to this
25 extent, that statutorially many of the federal agencies,

1 with the statutory base, let me rephrase that. With the
2 statutory base that is different among the different
3 federal agencies, many of the statistical requirements
4 differ from agency to agency at the national level, and they
5 all come to bear on the state or local jurisdiction.

6 Within this region, the western federal regional
7 council in San Francisco is a -- is an organization composed
8 of, now I think 15 federal agencies, principally concerned
9 with state and local intergovernmental matters. And for
10 two years we worked at designing and getting approval of one
11 affirmative employment approach in this region.

12 So that all the federal agencies could buy into it
13 and then all the agencies covered by the federal government
14 here, state and local, would not have to do the duplicative
15 kind of data collection, data manipulation and then reporting.

16 We were somewhat successful, but Mr. Perkins, I must
17 just tell you, that when it all shook down, we really haven't
18 done it yet.

19 Q You made some reference to different statutory
20 authority and there is that problem. But -- you also made
21 the effort to resolve the problem which suggests that it's
22 not fundamentally statutory. Is it statutory, is it in the
23 regulations or is it simply in the direction given?

24 A I think probably at all those levels. There is --
25 there are some differences in statute that mandate what a

1 federal agency would do. For example, if we talk to our
2 colleagues in HEW and they are concerned about employment in
3 schools of higher education and they collect data and make
4 comparisons of data, faculty, let's say to student body so
5 they collect data in one kind of way. Another federal
6 agency also concerned with employment wouldn't be that
7 particularized, and so the federal agency would call for
8 data in another kind of way.

9 The institution would collect it in both kinds of
10 ways and have to report it in both kinds of ways.

11 There is a problem in that federal agencies at the
12 national level have different and differing delegations of
13 authority to their field components. So at a regional level
14 as an example, we could have some federal directors who would
15 not have authority to make the kind of changes that perhaps
16 some of their colleagues could and they would go to the
17 national level. And so you have that, that sense of
18 fragmentation of authority.

19 And I'm not, I don't want to build this as too much
20 of an obstacle, because people really work at it, but in
21 answer to your question directly, it's at different levels,
22 statute, central level and then at a field level or
23 regional level.

24 Q All right. You have now affirmative action plans in
25 existence. How do you evaluate them, what guidelines do you

1 use?

2 A. We, in our own organization, have our criteria, our
3 manual that our own people use and our people are personnel
4 persons, and on our staff. We do it through on site
5 evaluations, you heard Mr. Harvey mention 1977 and we were
6 there in the summer of that year and made a, what we call a
7 comprehensive evaluation, do it on site, review statistical
8 data that we have collected throughout the year as the
9 pre-on site kind of preparation, through the interview
10 process of managers and affirmative employment people within
11 state employment.

12 Our look at their regulations, our look at the
13 results of their testing and hiring programs, and out of
14 that process make some assessments as to how well the state
15 was doing with respect to its affirmative employment program.

16 Q. Do you have published standards? If I'm responsible
17 for putting one of these affirmative action plans together,
18 can I be reasonably sure that what I put together will pass
19 your scrutiny --

20 A. Yes.

21 Q. -- or do I have to guess about it?

22 A. We do, we have them published and they are in the
23 public domain and are used by many different jurisdictions.

24 Q. Is that definition, those standards the same as are
25 used by the other agencies?

1 A. No.

2 Q. Is that a problem from your point of view?

3 A. Probably in some particular ways it would be. But
4 in a general sense, no. Somebody here mentioned, I
5 think from Los Angeles, mentioned that at the national level
6 they tend to be more general in nature and that when you
7 get to the local level you really need to be particular
8 and specific. and I think that's a very perceptive view of
9 things.

10 Q. Our guidance is directed at the nation as a whole and
11 so it tends to be more general. Giving folks walking around
12 room, if you will, to take or make what they have for their
13 own situation.

14 Q. Okay, let's take a specific case. Let's, I think
15 this one's applicable, let's take the California state
16 university and college system. Now, I would assume that
17 many of the employees in that system are civil service
18 employees, am I correct?

19 A. Yes, they are part of the state system.

20 Q. And many of them are not --

21 A. That's true.

22 Q. -- and for the ones that are not I would assume
23 that the primary responsibility would be the whole FCCP
24 and for civil service employees it would be the OPM, am I
25 correct?

1 A. It follows both sides, sir.

2 Q. Okay, then is there a problem, are we creating
3 problems for CSUC administration that has to deal with
4 two agencies who see things differently in affirmative
5 action areas?

6 A. I'd have to answer yes. But I really am not capable
7 and not competent to talk about degree and I really am not.

8 Q. You do perform compliance reviews, we've heard that
9 this morning --

10 A. Yes.

11 Q. How frequently?

12 A. When we do what I call the comprehensive review, and
13 we did our last one in California in 1977, before that we
14 did it in '74 and before that I believe in '72. We try
15 to do it now one every year and we have four states.

16 Probably we're going to continue with that cycle.
17 So California will be on our agenda next year unless
18 there is some reason, based on our judgment and assessment
19 of the full range of things, there's a need to do it sooner,
20 or more frequently, because we have done them more fre-
21 quently in California as a matter of fact we did.

22 Q. Does OPM act as an agent for other federal agencies?

23 A. Yes.

24 Q. That have grant in aid programs?

25 A. Yes.

1 Q Could you elaborate on that a little?

2 A Yes. We principally, because of the merit standards,
3 we do cover the state and local jurisdictions. If we find
4 that there is some part of a jurisdiction's personnel system
5 that does not comply with the standard, and in that I would
6 conclude affirmative employment, we would deal at the local
7 level with the state or the local jurisdiction and with the
8 federal agency, where there was some deviation from the
9 standard.

10 We would specify what that deviation is, what we
11 propose be done to correct that, and then would work with
12 that state or local jurisdiction to resolve it.

13 If that were not resolved in that way, we would go
14 to the federal agency and say here it is, here's where we
15 come out. At that point, then, it's the federal agency's
16 responsibility, I might add they do carry it out well,
17 to go to that state or local jurisdiction and say that their
18 fund may be in jeopardy.

19 Q Are there frequent or only occasional or never
20 situations in which you find yourself in disagreement with
21 the granting agency?

22 A I've been here four years and I can speak more
23 competently about that. I really haven't seen us be in
24 disagreement with the federal agencies. I might say they
25 have their own persons who are concerned about the way the

1 agency mission is carried out and the funds that they then
2 give to the state and local jurisdictions. And they are
3 aggressive in trying to do their job as well.

4 And we frequently work pretty much in tandem with
5 them which is a better use of resources anyway.

6 Q. Are all federal grant in aid programs covered by
7 your agency?

8 A. Merit standards, they are covered by merit standards.

9 Q. So it's not a matter of picking and choosing?

10 A. No.

11 Q. They're all blanketed in. And I gather from what you
12 were saying, then, that there is consistency in your standards
13 and the standards of the granting agencies?

14 A. Yes, that's a fair statement, except when, and I'm
15 going to come back to now HEW as an example, where they
16 have as condition for their own allotments of monies, they
17 then talk in terms of what their requirements are, and what
18 their objectives are programmatically.

19 The collection of data, the comparison of data,
20 may differ and will differ than what we have. As an
21 example, one of the persons mentioned the use of SMSA
22 and national and regional data.

23 When it comes to colleges and universities, the
24 universe may be much smaller than that or much larger
25 depending on the nature of what HEW is looking at.

1 Our universe generally deals with SMSA, or in the
2 case of the State of California, we would look at the
3 state as a frame of reference for state employment.

4 Q. Is there any variation regarding where the employment
5 is or job description, occupational classification? Let
6 me be -- let me go from that, I suppose I might argue that
7 if you are talking about a work force that's basically not
8 very mobile, let's say clerical, for example, may not be
9 a good example, is it really realistic to use the state
10 as a whole

11 A. No.

12 Q. -- in determining how many people should be employed
13 by X agency in the City of Los Angeles?

14 A. No. It's not.

15 Q. But you do use the state as a whole?

16 A. For certain kinds of occupations. For support kinds
17 of positions and what I would characterize as skilled
18 crafts and trades and support or semiskilled crafts and
19 trades, generally use a local commuting area, because that's
20 the nature of the work environment. 30 miles is a
21 generally accepted rule of thumb.

22 Q. Then where is the problem coming from that we heard
23 this morning from the community representative people who
24 were suggesting that there were problems because the
25 definition was too broad, it tended to confuse the issue?

1 A. What I heard here this morning was talking about
2 an SMSA in Los Angeles. Where within Los Angeles, there
3 are more discrete geographical, identifiable units and that
4 those using those units would more adequately and speci-
5 fically describe the commuting area for people who live in
6 those units, that's what I heard described this morning.

7 And that might be a, I think even used the term 20
8 miles. And so what we're doing in that case, as I heard it
9 described, was take an SMSA and fracture it in some kind of
10 way. And in terms of both the federal size of the house,
11 in terms of my agency's responsibility and state and local,
12 we do use with EEOC the SMSA character for measuring
13 employment in civilian labor force.

14 Q. What powers do you have to correct affirmative action
15 deficiencies when you find them?

16 A. I think two kinds, we're still talking state and local
17 and I want to focus on merit standards because I think
18 grant is a little different.

19 The affirmative employment effort is part and
20 parcel of the merit standards and so we look at the per-
21 sonnel system in its totality. Where there are parts of
22 the operating personnel system that deviate, we require
23 change.

24 As an example, if we find that exams, written tests
25 have not been validated, we have and do require that they go

1 through the validation process. If we find that in a larger
2 sense there is noncompliance, we go the deviation route that
3 I talked about with you earlier where there is a deviation,
4 and there is one further route that we go at the national
5 level where we find that a system is not substantially in
6 compliance with the standards, then at our national level
7 our director, Campbell, would go to the head of that agency,
8 let's say the secretary of defense and specify where there
9 was a deviation that was significant enough to require an
10 action at that level.

11 And so under the law the agency head has that re-
12 sponsibility to take correction, corrective action.

13 Q. What about cutoff of fund?

14 A. That is the ultimate.

15 Q. Is it used?

16 A. I think rarely. The time I've been here that has not
17 been used.

18 Q. Is it used as a potential?

19 A. Yes. By the granting agency.

20 Q. Has it ever been imposed in this region?

21 A. I think not. And I say I think, because I did some
22 research and as best I can tell that has not happened.

23 Q. If agencies, then again we're talking about a state
24 and local agencies under OPM's jurisdiction, realize that
25 there's a threat there, but it's never imposed, does it

1 become meaningless?

2 I think it could. As I've seen what happened and
3 have been a part of this effort, I find that the federal
4 agencies really do work to get resolution where there are
5 problems and issues. And I think that from the perspective
6 of the local jurisdictions, that is a real concern.

7 And I don't know that I've heard anybody here today
8 address that specific issue. But that's my general obser-
9 vation, as I go around and visit in this state as well as
10 other states.

11 And I think there's another point that -- that the
12 commission would be interested in knowing and that is that
13 the State of California and the state personnel board runs
14 a very good show. And they do have a system whereby they
15 closely look at where it's -- where they have jurisdiction,
16 at what the local governments do.

17 And so I think that has a bearing on what's going on
18 in this state as well.

19 Q. So you might argue that this, in this region
20 things are a little exceptional?

21 A. I think in the State of California that would be
22 true.

23 Q. Do you have problems of coordination with EEOC and
24 OFCCP?

25 A. In -- at state and local we really have not had very

1 much operational relations with EEOC. They're just not
2 involved with us to any great extent. Very well maybe as
3 we go down line and as we go through our transition time.
4 And so really have not had any problems. Nor with OFCCP
5 either.

6 Q What are the primary responsibilities of OPM in
7 regard to federal equal -- equal employment in the federal
8 sector?

9 A It comes principally out of the Civil Service Reform
10 Act, 5US code and it relates to the federal equal opportunity
11 recruitment program. And I know staff has copies of the
12 material that my agency has published that sets the
13 parameters and the specifics of this program.

14 Federal agencies are obligated by law, agency heads
15 specifically, OPM in terms of leadership and monitoring,
16 to have a federal equal opportunity recruiting program.

17 Q Do you provide data to federal agencies for the
18 development of their --

19 A Yes.

20 Q -- FEORP's?

21 A Yes.

22 Q We call them FEORP's, I don't like those terms, it's
23 easier to say.

24 A I wish there were something else we could use,
25 sir, and if --

1 Q You provide data. Do you regard the data that you
2 provide as adequate?

3 A I think for the time that we're in now, and the
4 way we have been collecting data in the national government,
5 and where we are now, it's what we have to go with.

6 Q If I turn that around, then, what I -- I say what
7 I hear you saying is that it's inadequate but it's the best
8 we can do at the moment, is that an unfair characterization?

9 A I think it's going to be more adequate as we really
10 do a better job of focusing on what we need and have a method
11 for collecting it.

12 Q One of the things that I'm concerned about, and I
13 should have been clear, I think in my question about cutoff
14 of grant in aid programs, in the private sector whether it's
15 much utilized at least it has been implemented occasionally,
16 funds are cut off if there's not compliance, one could --
17 why argue that it should be the same regarding state and
18 local employers and federal agencies too but let's pass that
19 for the moment.

20 Are the standards that you apply to FEORP's
21 essentially the same as you apply to the development of
22 affirmative action plans for state and local agencies?

23 A We have more specific kinds of things that we're
24 doing with the federal agencies now.

25 Q So, are you saying you actually demand more of them?

1 Or different kinds?

2 A. No, I think it's different kind. And I think there's
3 a shared kind of things with, in this case the State of
4 California. But in the federal side, the statutory base
5 puts, I'm going to use the term casts a different umbrella
6 over what we do, and we work with the EEOC in a way that we
7 don't do with the state and local governments, so in the
8 national level, I think we do ask, in the FEORP program,
9 more specific kinds of things than we have in the past,
10 principally the index of underrepresentation, that is the
11 critical difference now as to what was before.

12 Q. What about goals and timetables?

13 A. I guess you mean do we use them.

14 Q. Yes.

15 A. Yes, the answer is yes.

16 Q. In the same way? I mean basically?

17 A. Basically, yes.

18 Q. There are technical differences you say that the goals
19 and timetables requirement was the same --

20 A. Yes.

21 Q. -- for federal agencies and as private --

22 A. Except with the use of FEORP, the nature of the
23 program is more specific and more directed than it is with
24 the state and local jurisdictions.

25 Q. Are there any problems of conflict when FEORP

1 requirements and other federal requirements such as the
2 merit standard system?

3 A When we have, as we do in the national government,
4 a number of different legislative demands in the area of
5 public management, there are conflicts, we have a Veterans
6 Preference Act, that imposes, on the system, a requirement
7 to recognize veterans or military service. And so as you
8 well know, we have a five and ten-point veterans. And that
9 does interject an element in the public personnel jargon
10 that is a nonmeritorious factor.

11 And I'm not -- I'm not now addressing the basis for
12 that law and I'm not making a judgment about why that law
13 was passed. But in terms of evaluating relative competency,
14 it does intervene and so it does get in the way of affirmative
15 employment.

16 Q What's your responsibility for reviewing FEORP's,
17 is it essentially the same as you described for reviewing
18 affirmative action plans, state and local? Or is it dif-
19 ferent?

20 A It is different. I must digress just for a moment.
21 Until the change in our statutory base. We did review the
22 affirmative employment plans as the two previous persons
23 testified. Now, under our joint responsibility with EEOC
24 we will not be looking at the affirmative employment plans
25 in the same kind of way. So our review of FEORP's is going

1 to be done in, I think a multiple kind of way, we're going
2 to be doing on site reviews as we make personnel management
3 evaluations in this region, as we make special kinds of
4 reviews of federal agencies in this region, as we have
5 special things called to our attention by EEOC or other
6 levels within a community, minority organization, interested
7 parties.

8 So, the review process is many faceted but we don't
9 have that singularity of focus that we had when we got all
10 the affirmative employment plans from agencies in this
11 region.

12 Q. What plans do you have or what program do you have
13 operating for followup monitoring compliance?

14 A. Our plan will be, and is as a matter of fact, to cover
15 FEORP in all of the evaluations that we do in this region
16 through our personnel management evaluation program, through
17 our special affirmative employment program review. As well
18 as working with EEOC in terms of what they want us to look
19 at, where we would provide technical assistance.

20 Q. Now, will decisions regarding who is to be reviewed,
21 how they're to be reviewed, be made nationally or locally?

22 A. Both.

23 Q. Regionally?

24 A. Both.

25 Q. Both?

1 A. So you understand, within my own authority as a
2 regional director, I can determine how part of the resources
3 in this region will be utilized. At the national level,
4 our director also can specify the kind of coverage across
5 agency lines that he wants. And so we might do as an
6 example, the navy and agriculture and IRS from a national
7 basis, at the local level I might determine with staff that
8 we want to look at the department of interior and we might
9 want to look at the air force, for whatever reason we might
10 have, either the size of the federal activity, its geographic
11 location and some problems that we may have in that area,
12 so it's going to be a two-fold kind of determination.

13 Q. Does the fact that things are being cut this way and
14 this way, two different ways, for the record, create problems?

15 A. Only if the allocation, the use of resources was so
16 directed by my national office that I didn't have any
17 walking around room to address things that we perceived at
18 a regional level that needed to be addressed, and I might
19 hasten to mention I haven't experienced that so far.

20 Q. What sanctions do you have available if you find
21 inadequate compliance?

22 A. In terms of the FEORP?

23 Q. Yes.

24 A. As it relates to our personnel management program, the
25 kinds of authorities that stem from the Civil Service Reform

1 Act, and there are a number of them, I think it's good for
2 the commission for me to state for the record that in
3 terms of the principles and the prohibitive personnel
4 practices of the law, the merit systems protection board
5 which is an independent body, and the special council within
6 that board, has statutory authority, a rather far reaching
7 authority, to respond to any allegations of preferential
8 or discriminatory kind of conduct on the part of a federal
9 official or agency.

10 To take specific action both administratively as well
11 within the legal system. And I hasten to mention that be-
12 cause that's a feature of the reform act that I think is
13 a distinguishing characteristic of putting outside the public
14 the central personnel authority, a responsibility where
15 before being melded within one agency caused at least apparent
16 conflict if not real conflict within the agency.

17 So, in terms of enforcement and prohibited personnel
18 practices, a very strong arm in the merit system protection
19 board and particularly the special council within that
20 board.

21 I, as a regional director have, and will continue to
22 make referrals to that board, when our evaluative process
23 surfaces things that need, in our judgment, to be looked at.

24 In fact, the law requires me to do that.

25 Q. That deals primarily with discrimination, I assume --

1 A. No, sir.

2 Q. -- overt acts of discrimination?

3 A. No, sir.

4 Q. No?

5 A. It deals with system, systemic as well, and it could
6 well be the other but it also deals with the systemic kind
7 of situation as well.

8 Q. Any authority to cut off funds?

9 A. I suppose -- I suppose the President of the United
10 States could do that as the final chief executive.

11 Q. Why should it have to go to that level when it
12 doesn't in regard to any other jurisdiction?

13 A. I think that's what the law is, Mr. Perkins.

14 Q. All right. Is that, in your judgment, is that what
15 the law should be? Do you ever feel hampered because you
16 don't have that ultimate sanction?

17 A. To cut off funds?

18 Q. Yes. Or at least to threaten it, I mean let's just
19 settle for that at the moment, all right?

20 Okay, I won't --

21 A. I tell you, I like to threaten a lot because sometimes
22 that does help. I don't have that particular big stick,
23 however.

24 Q. I have one last question and then we'll go on to
25 Mr. Reyes and the committee will probably come back to you

1 later.

2 I hear, I'm going to make an observation, I hope this
3 is not unfair, I hear a great deal of clarity from you and
4 I'm impressed, I must say. On the other hand, I'm a little
5 bit puzzled by the fact that we can have this degree of
6 clarity when the memorandum of agreement between OPM and
7 EEOC is still in the process of being written and I don't
8 know when we're going to see it, can you explain it to me?

9 A I mentioned 720-2, that came out last fall.

10 Q Okay, will you explain that for the people around who
11 are not bureaucrats? I mean don't understand bureaucratese?

12 We're all bureaucrats, it's interesting to me that everybody
13 says, bureaucrats and they're never talking about themselves

14 Go ahead.

15 A The instruction 720-2 is a federal personnel letter
16 that is a directive to all heads of departments and
17 federal agencies, and within that directive a rather com-
18 prehensive one, specifies what the FEORP is. It defines
19 terms, it outlines how the FEORP program is to be implemented,
20 it gives data around which determinations are to be made
21 of underrepresentation, and I think very importantly, it
22 does two other things. It spells out both in terms of
23 external hiring, the processes that can and should be utilized,
24 and secondly, addresses rather comprehensively the internal
25 practices that a federal agency ought to go through.

1 Whether it's upward mobility or using coop. programs
2 or whatever that might be, job redesign. And then loosely,
3 it identifies on a national basis, and we do on a regional
4 basis, the places that a federal employer ought to go to
5 make contacts, whether it's in the minority, the womens'
6 organizations, minority community, other kinds of not-for-
7 profit groups that could help a federal agency develop a
8 labor pool from which to both attract and then hire under-
9 represented persons.

10 And I've gone into some little detail explaining
11 this because that really is at the heart of an affirmative
12 action plan. And that's why I believe that when we work
13 with EEOC, and they require the action plan and this is
14 such a critical element, the operating entities, the
15 federal field activities understand what is required and
16 what they're supposed to do.

17 The memorandum of agreement, I think being at a
18 national level, doesn't have the same kind of impact, I
19 think, that one might expect in a bureaucratic kind of
20 hierarchical organization.

21 But in the field it's really what do you have to
22 work with? And I was pleased to hear Ms. McIntyre mention
23 earlier the training that went on here in December and
24 January in this region. Where over 700 affirmative employment
25 and personnel people and managers were exposed to this rather

1 comprehensive training on FEORP and EEOC's action plan, on
2 the uniform guidelines. Because that was a base, if you
3 will, that after this 720 went out, we wanted to build on
4 in formalized kinds of training. That's why I think there
5 is this sense of understanding at the field level, what is
6 asked, and why, if there is any apparent conflict when
7 two agencies, it doesn't seem to be a reality here.

8 DR. PERKINS: Mr. Reyes, will you identify yourself
9 for the record, please?

10
11 MR. ERNEST REYES

12
13 A. (By Mr. Reyes) My name is Ernest Reyes, I'm the West
14 western region EEOC federal affirmative action program
15 manager. I'm stationed in San Francisco, my office is
16 a tenant in the San Francisco EEOC district office. And
17 a little background for clarity, the EEOC has two different
18 directions.

19 In the private sector, nationally it is broken up into
20 22 districts, therefore there is an EEOC district in Los
21 Angeles and there's one in San Francisco.

22 Okay. And Phoenix also.

23 My office has the jurisdiction comparable to OPM's
24 western region. I report to a director, federal affirmative
25 action in D.C. We are in many other transitions besides the

1 way we approach agencies, our own structure is going through
2 a transition, our functional statement is going through
3 a transition.

4 So, if I may, I will read to you a very short de-
5 scription that's going to be issued next week as to what my
6 function is, so that's how transitional we all are.

7 What's going to come next week in the mail to me will
8 say, my group will be called the affirmative action unit.
9 And it will read like this, under the direction of the
10 director of federal affirmative action division of the office
11 of government employment, assists field activities of
12 federal departments and agencies in developing of affirmative
13 action plans for minorities, women, and handicapped persons,
14 reviews and recommend approval of affirmative action plans
15 and monitors affirmative action progress against plans and
16 provides technical assistance, training and coordination
17 relating to affirmative action programs or field activities.

18 So that is the formal, the description of my function.

19 Perhaps what I, with questioning I probably will give
20 you another definition as to personally how I interact
21 and with whom.

22 Q Thank you.

23 Mr. Tobin?

24 Q (By Mr. Tobin) Yes, thank you.

25 Now that you have told us what is going to happen

1 with respect to your duties, can you tell us what your
2 understanding of the federal affirmative action process is?

3 A I think we're at a good point in the day where
4 we've heard it said enough that we have a basic national
5 deficiency and that is nonintegration of a lot of folks
6 into the federal labor work force. Therefore, if we begin
7 by identifying these deficiencies once again, because I'm
8 sure that there are very few managers who don't know in
9 their heart and in their eyeballs where the deficiencies lie.
10 So, therefore, to restate, we have deficiencies such
11 as women at -- relegated to positions that are rather low
12 graded. Blacks in large numbers in agencies but not super-
13 visory or managerial roles. Handicaps virtually nonexistent
14 in some areas and Hispanics virtually nonexistent in some
15 areas, so recognizing the target, recognizing the basic
16 objective, that is to say have a work force that's well
17 integrated, then the means is next concern.

18 And the means being this: As our previous speaker
19 has mentioned, when you have an agency that has an ample
20 number of Blacks and women, and to belabor the point of
21 recruitment seems a bit ridiculous when it is obvious that
22 the target there for parity is upward mobility of those
23 folks that are on board.

24 So, therefore, we see our role in looking to agencies
25 in those cases for those groups that are amply represented to

1 advance them through various means from within, and there
2 are OPM does have a numerous tools available to fellow
3 agencies that they can use.

4 My experience has been that you go to a fellow
5 manager and you mention to him a couple of tools, and it
6 would be like mentioning to my 16-year old daughter what is
7 a socket set? Socket wrench? She would not know and
8 managers often say to me I do not know of that appointing
9 authority.

10 So I think between OPM and ourselves you'll see
11 we're going to, I think, see to it that these tools are
12 enumerated so that we can move employees up.

13 Now that's, that's on one side of the house. The
14 other side of the house is how about those that are not
15 represented at all? Those that are missing? Well, as far
16 as the Hispanics are concerned, my objective there would be
17 to see what are the agencies doing about taking advantage
18 of these rare opportunities that present themselves to hire
19 someone, and so far as the handicapped are concerned, we have
20 mapped out a strategy whereby we will be of assistance to
21 agencies in paving the road towards incorporating more of
22 them.

23 Q Now, do I understand that you work directly for
24 headquarters in Washington, D.C?

25 A Yes, sir.

1 Q What training or guidance have you received in this
2 field?

3 A The training took place last December when my staff
4 of three and I went to D.C. and therefore, at that par-
5 ticular time the other nine regions also sent their staffs,
6 and we were given a rather comprehensive amount of training
7 on our basic objectives and our strategies and that's what
8 we did receive last month, yes, in December.

9 Q Did that cover the federal affirmative action re-
10 quirements?

11 A Yes.

12 Q And did it also require or I say cover the training,
13 did the training cover a plan or the plan submission process?

14 A Yes.

15 Q Did it also cover the review process?

16 A Yes. And in fact there was much mark of teeth in that
17 regard, because my supervision in D.C., I'm very happy to
18 say, was receptive to suggestions from the field. And there
19 are half a dozen regions that are headed by incumbents who
20 had some ideas and the ideas were as far as the strategy was
21 concerned.

22 First of all we appreciate that some agencies have
23 gone through nothing more than a paper exercise in affirmative
24 action, all right? In fact, it was not affirmative it was
25 merely EEOC. Which is a passive, wait and see who shows up.

1 And therefore we had a lot to do with some agencies
2 in turning them around to become a little bit aggressive.
3 So we, our strategies were discussed and the strategies ran
4 like this: Some planners in EEOC in Washington felt
5 that if all regions took on all agencies, we might make an
6 impact.

7 And our rebuttal was no, it would be preferable if we
8 worked out a strategy whereby some regions would tackle some
9 giants and if we can synchronize our attack, we might get
10 somewhere. And as a result, just about three weeks ago we
11 were given the first draft outline that, as an example, my
12 charge, my first charge, my first hill to charge will be navy
13 and at the same time that I take on navy, 26 field instal-
14 lations in my region, Philadelphia will take on navy and
15 Boston will take on navy.

16 The strategy will be that we three hit navy at the
17 same time with the same audit plan approach, perhaps we
18 can give our bosses in D.C. a profile.

19 Are they promoting Blacks, are they promoting women,
20 are they utilizing handicapped and are there any other
21 underrepresented groups around?

22 Q Now, is your guidance on how to perform these duties,
23 is that in writing?

24 A Well, the -- as I mentioned to you the charters have
25 been -- have not been wordy, they've been rather brief, I

1 just read you the one that's coming out soon but I don't
2 particularly need a lot of charter. The objectives are
3 pretty clean.

4 However, the mechanisms and the scheduling, that is
5 rather clear and it was negotiated about two weeks ago and
6 I expect a final paper to hit us within the next week
7 or so on particular strategies.

8 I know what exactly we have to do. Perhaps you
9 might be referring to another dimension we have, we have
10 two different styles of attacking an agency that we're
11 going to employ, one is that the desk audit. The desk
12 audit gives the paper exercise and if we see something
13 glaring then we'll take on another attack, another look
14 at that particular agency.

15 As far as navy is concerned, as an example we have
16 26 installations. Of the 26 based on our travel dollars
17 we can afford to take on ten on-sites. And those ten on-
18 sites, for example, will be ten northern California, ten
19 southern California. And in order to have some precision
20 and skill to our analysis, what I proposed and they allow
21 me this option, I will take on two naval shipyards, one
22 north, one south. Two supply depots, one north, one
23 south. Two naval air stations, one north, one south.
24 Two medical facilities, one north and one south, etcetera,
25 that's the approach we will take.

1 What is not developed yet in writing but I know it's
2 going to happen, is that contrary to what you've heard
3 earlier this morning -- not contrary but as a consequence
4 of what you heard earlier today, where EEOC advised federal
5 agencies submit your documentation from within your agency
6 to the top and at the top the head of the agency head-
7 quarters will transmit to EEOC headquarters.

8 Well, the field types have been complaining saying,
9 this has a lot of merit but it's -- it becomes unwieldy
10 to have a synthesis at DCC going from one office to another
11 that's so gigantic that it's meaningless and as a result
12 for this navy and others I'll mention in a moment, there's
13 a paper coming out very shortly telling agencies that not-
14 withstanding the fact that they have requirements to submit
15 from within, that they will be transmitting to regional
16 offices like mine also their data.

17 Q So then, in fact, you anticipate that this will take
18 written form?

19 A Yes, yes.

20 Q Now, have you been providing technical assistance
21 and training to federal managers?

22 A Yes, the form that Mr. Yanak mentioned a while ago,
23 I think there were maybe as high as a dozen different sites
24 throughout the region where OPM and my office together
25 put on a dual, a compound presentation to the managers

1 on, not only FEORP but also guidelines and --

2 Q Did you initiate that? Or was that --

3 A Well, no, it was -- see, I'm a former employee of
4 OPM and therefore we enjoy a working relationship at the
5 working level, which may not be the case in other regions,
6 and as a result, when OPM, affirmative employment office
7 and mine get a simultaneous invention we don't know who was
8 the first. When we call each other up, the other person
9 says I was thinking the same thing, so we did it together.

10 Q You do have occasions when requests may be made
11 for such assistance, technical assistance?

12 A Yes, we have two different types of technical assis-
13 tance therefore, that which we scheduled ourselves with the
14 assistance of OPM's area managers, they're a neat lot,
15 who did the announcing, sought the room, arranged for the
16 facilities and we participated together. In

17 In addition to that we do have agencies that will
18 call us and say we need assistance, and then we provide it.
19 In fact, we are earmarking a portion of our travel money for
20 technical assistance because if someone should call from
21 Phoenix or Tucson and needs help, I would really hesitate
22 to say I'm sorry I don't have the travel money.

23 So we are, and my bosses did say, yes, you may
24 reserve some bucks for travel if they need help.

25 Q Do you believe that available statistical data, whatever

1 is available today, do you believe that that is adequate
2 for a federal manager's need?

3 A Yes, [exceedingly so, particularly] when you're talking
4 to managers whom I've known for 30-some-odd years in the
5 business who are reticent; in this business of EEO, and
6 affirmative action, what tickles me is when they'll call to
7 my attention that there's a difference in the decimal
8 places in the data. And the managers who talk about decimal
9 places and SMSA data, they're the same ones that have no
10 women above GS9 nor Blacks.]

11 So, the data we have is excellent.

12 Q It's the reading ability?

13 A Yes, sir.

14 Q By the way, going back to one of the areas that we
15 discussed a moment ago and that is requests from other
16 agencies for assistance, could you define the nature of that
17 assistance that you do give?

18 A Well, the assistance we give is in a very broad
19 range. I'll conclude by saying what I do to the agency
20 is formally but from agencies I get requests from EEO
21 officers, supervisors, on questions that I can answer over
22 the telephone often.

23 I receive letters from job applicants, employees
24 and former employees. The technical assistance consists not
25 only of providing these people, information on their

1 complaints that they've filed, and have heard nothing
2 about, but also there are questions we receive from con-
3 gressional offices saying we understand this employee has
4 not been served well so we assist in clearing up that area.

5 But agencies themselves do call and ask us to speak
6 to their managers and what I'm happy about in this area is
7 that I'm getting fewer and fewer requests fo speak to
8 employees.

9 Because previously my experience had been that, and
10 some agencies will call and they'll say will you speak to our
11 employees at the employee meeting. What they really want
12 is some vaudeville, they want some entertainment. They want
13 something to report affirmative action plan we had an ov
14 orientation session.

15 That doesn't mean in any sessions of employees there-
16 fore no managers they don't bother, so I've been saying to
17 the agencies when you call us, don't call us to entertain
18 your employees or tell them whatever we tell them,
19 invite us to speak to your staff and that's changing as of
20 late.

21 The requests I get now are, would you come and
22 speak, my staff, to their managers? And that I appreciate
23 very much, that's changing.

24 Q Now, with respect to data, statistical data, who, in
25 your judgment, should be responsible for the data?

1 A Oh, I don't -- I don't understand.

2 Q Well, the data that -- I asked you a moment ago whether
3 you believed there is statistical data and whether it is
4 adequate to managers and you were pointing out the decimal
5 reading --

6 A Sure.

7 Q -- my question is, who do you feel should be re-
8 sponsible for that data?

9 A Well, the generation of the data, I know no better
10 authority at this time than EDD out of state. They're pro-
11 viding the data now, and I think we're relying on that
12 nationwide. That kind of approach. I don't think anyone
13 else should be in that business, in fact, one time I asked,
14 by letter, four naval installations, several years ago,
15 that were contiguous to each other, neighbors and they all
16 were using different bases. Population demoninators.

17 Whereas if we decide to use a FEORP approach with a
18 DD source, fine.

19 Q I'd like to sample your views with respect to EEOC's
20 method for calculating availability of professionals.

21 A Well, as a good soldier I'll accept the fact that
22 they issued to me a document 702, management 702 with data
23 that I'm directed to use and I have a tendency to salute a
24 lot when my bosses tell me to do something, my training.

25 Q (By Dr. Perkins) Excuse me, is that your way of

1 saying that you are not very happy with --

2 A. No, it's my way of saying that I think it's excellent
3 DR. PERKINS: Oh.

4 Q. (By Mr. Tobin) Now we'll go from there.

5 Do you believe the requirements demand enough of
6 federal employers?

7 A. No. I think -- I hope we will crank up or tighten
8 up the screw, so to speak, in time and by degrees we'll
9 change them. Phase 1 examine themselves, phase 2, where
10 they examine themselves and so on, and with our technical assis-
11 tance I think we will gradually move in on them and if they
12 come back with their wisdom and say the way to direct the
13 director from D.C. directs us we're looking at places where
14 there are no vacancies, we'll say fine, let's look where
15 they are, I think the escape routes will be plugged.

16 And by the time next year rolls around, I think we
17 will have agencies preparing a multiyear plans that will
18 be directed at those areas where you can make improvements.

19 Q. Do you think a differential or let's say should
20 something less be required of federal employers than of pri-
21 vate employers?

22 A. Oh, absolutely not.

23 Q. They should be the same, shouldn't they?

24 A. Absolutely, because it's criminal to have it any
25 other way.

1 Q How do you plan to review and approve federal
2 affirmative action plans?

3 A I plan to use the, first of all the audit plan
4 that's going to be sent to me which I've seen drafts of
5 it, and the style, the technique is that D.C. is going to
6 send me a document that says here are, the caption will be
7 a particular, or an authority or regulation. And under that
8 regulation will be the minimum interrogations I must make of
9 the system and then I will indicate satisfactory or unsatis-
10 factory, something along those lines generally speaking,
11 and if it's unsatisfactory, then I will create a finding
12 of noncompliance, and a recommendation of what corrective
13 action should be required. And then we will ask the agency
14 to reply instead of one particular finding what did you do
15 about it?

16 So that if we find an agency with, say 20 incidences
17 of noncompliance, we will write 20 findings and we expect
18 20 replies.

19 What we hope to do, as I mentioned to you before,
20 when I get the green light on navy and my other two regions
21 do the same thing, we will send our, that kind of a per-
22 formance evaluation to my bosses along those lines, what
23 were the deficiencies, and if all three regions are asking
24 the same questions, maybe it will be that much more
25 meaningful there.

1 Q Well, what sanctions could be applied against agencies
2 or agency heads that fail to meet affirmative action goals
3 and timetables set out by their own plans?

4 A That's a question that we tend to ask our bosses
5 and they refer to us to two different approaches, one was
6 there's a concern -- no, there's an interest in the senior
7 executive service merit pay that's available to top
8 managers, we hope that between OPM and EEOC they can
9 develop some mechanism for affecting the qualification or
10 realization of that raise in pay.

11 The other thing I was very happy about is that when
12 I was back there in D.C. a couple weeks ago, it was not
13 hearsay but a representative from OMB came and spoke to us.
14 And he is the person, and -- he is the person who is in
15 charge of the OMB's committee on EEO oversight in that
16 department.

17 What he said to us was this: That they are represen-
18 tative to information from EEOC to him on a performance
19 of the various agencies, because what he will do with the
20 data is give it to a person who is, I guess a budget
21 analyst or something that deals with the agency so that when
22 they deal with an agency as we're discussing your budget
23 here in light of the fact that apparently you are or are not
24 supporting the President of the United States to this
25 extent.

1 Now, if that plus reports to Congress by our chair
2 as to performance doesn't do it, maybe -- I don't know what
3 else would.

4 Q Well, effectively what you're addressing yourself to
5 is some type of sanction against the agency head. Rather
6 than to the agency itself. How do you sanction a federal
7 agency?

8 A I don't know how to do that. I only know of two
9 extremes, one is the ADO at the bottom of the ladder
10 and the top is the omnipotent head of the agency that
11 probably is very interested in complying.

12 Q Do you believe that the plan submission process is
13 workable?

14 A Yes. I think the process will work just fine,
15 particularly because, as I mentioned, the assignment I was
16 given for navy, I'm also given a second assignment to
17 review 16 Veterans Administration field installations' plans
18 and that will be a desk audit and that will be just fine.

19 We'll be able to -- the dollars we have can afford
20 us to do ten on-sites on navy and the balance will get desk
21 audits and on the other side we'll do over a dozen of
22 VA's installations, I think that's kind of a balance.

23 I was asked one time how many agencies are there
24 out there, with 500 or more employees? About 125, and
25 can I on-site them all? I can't afford it.

1 DR. PERKINS: Excuse me, I'm going to interrupt
2 at this point, Ms. Bernstein needs to leave and has some
3 questions for Mr. Yanak and Mr. Reyes.

4 Q (By Ms. Bernstein) Well, I just have one question.
5 Ms. Barnes and Ms. McIntyre referred to, when they
6 were talking to us, about, that their feeling was that the
7 emphasis in FEORP would be on upward mobility. And that
8 that is not what in reality is really happening, it's just
9 on recruitment, but that for instance in the VA, they don't
10 need recruitment, they need the emphasis to be on upward
11 mobility and that they don't really even know who they
12 go to tell this to.

13 And what is your feeling, is that where it's going
14 to happen? Is there going to be a change in emphasis?

15 A (By Mr. Yanak) Let me just tell you I think there's
16 two parts to this, the first one is in terms of what I
17 cited earlier, in terms of OPM's instructions it is both,
18 it has to be. Has to be the external recruiting hiring,
19 and it has to be internal development upward mibility of
20 people.

21 And this instruction I mentioned to you does, I
22 think, an excellent job of addressing both.

23 Now, with respect to the VA, I honestly have not
24 looked at whatever has come out through the VA, through
25 their chain. If in fact what I heard here is the way it is,

1 then it seems to me that the VA at the national office
2 needs to be told by the VA regional director here, by VA
3 Hospital directors what's -- what the impact of that kind
4 of emphasis is.

5 Secondly, having heard that, I know what I'm going
6 to do. I'm going to follow through and find out what is
7 the condition. I don't believe that we can say it's one or
8 the other. You heard mentioned the review of affirmative
9 action plans and where, in this region, when Mr. Reyes and
10 his predecessors were on the staff, we identified the
11 employment of Hispanics as being the number 1 federal
12 employment issue in this region.

13 And secondly, going beyond that, the movement of
14 women and minorities through managerial and supervisory
15 ranks. So you do the second part, you do the second part
16 by internal action, you do the first part by bringing
17 people in, because of the lack of Hispanics in the national
18 government's work force.

19 And so it depends on where you are in your assessment
20 of your work profile. So I've tried to answer specifically
21 but I've tried to relate that to a little bigger picture if
22 that helps, Ms. Bernstein.

23 Q Well, can you explain to me why people, I don't know
24 if you call lower level but within specific agencies are
25 getting the feeling that there is not an emphasis on upward

1 mobility?

2 A. I can't respond to that. I haven't heard that
3 before, in terms of what the training is that we talked
4 about earlier, and we have been also on site to about 20
5 federal large activities, hasn't addressed that kind of
6 specificity, so I have not heard it before.

7 So, as I say, I'm going to follow through.

8 Q. That's good to hear that.

9 A. Well, I chatted with my colleague that I was sitting
10 -- who I'm sitting with here and he is focusing on affirmative
11 employment in the national government, Tom Mason. And Tom
12 gets out and around in this region and he had not heard of
13 that kind of particularism in any other federal agency,
14 had not heard it about the VA either, so we really do have
15 to do some plumbing to find out what is --

16 Q. Well, and also they stated that they didn't know
17 who to tell that information to.

18 A. Yes, the VA said that, and I'm not -- I wasn't sure
19 as I listened to the exposition of that comment, exactly
20 what was meant.

21 Q. What did they mean by that there's a freeze?

22 A. Oh, there is a freeze now in the national govern-
23 ment's employment. It stemmed from President's message of
24 a week ago yesterday, where the federal government and the
25 executive branch is frozen to its employment level of

1 February the 29th of this year, any hires, new hires from
2 outside, additions to the staff over and above that, will
3 be on a basis of one for two.

4 So, if you have two vacancies, you can only hire
5 one person. And the objective, as the President said, was
6 to reduce the size of the full time permanent federal work
7 force by 20,000 persons by the end of this fiscal year,
8 which is the end of September.

9 Q Well, I understand that, but what effect does the
10 freeze have on upward mobility?

11 A I didn't understand that it did.

12 Q Okay.

13 A I think you may -- to answer that I think you'd have
14 to go back to the person who said it because I just can not
15 respond to that. It should have none.

16 DR. PERKINS: Anything more?

17 MS. BERNSTEIN: No.

18 DR. PERKINS: Ms. Lewis, will you identify yourself
19 for the record, please?

20
21 MS. JOANN LEWIS

22
23 A (By Ms. Lewis) Yes, I'm Joann Lewis, I'm director
24 of the Department of Fair Employment and Housing for the
25 State of California.

1 DR. PERKINS: Ms. Barnes?

2 Q. (By Ms. Carnella Barnes) Ms. Lewis, would you de-
3 scribe for us the affirmative action responsibility of the
4 state department of fair employment and housing?

5 A. Yes. Our affirmative action responsibilities are
6 limited to contractors with the State of California. We
7 just recently had enacted into law a bill that allowed the
8 department to examine the employment stamps of contractors
9 seeking to do business with the State of California, and
10 that is the limit of our ability to do -- examine affirmative
11 action plans for the state.

12 Q. How does your jurisdiction differ from that of the
13 federal government?

14 A. Well, in terms of affirmative action, I'm not sure I
15 can answer that. Our -- we have jurisdiction over employ-
16 ment practices and we have a responsibility for the pre-
17 vention of discrimination in employment. And we could
18 fashion that to include affirmative action.

19 We have a very broad mandate for the enforcement of
20 the civil rights laws in California. But in terms of re-
21 quiring employers to submit to us an affirmative action plan,
22 that is currently limited to contractors seeking to do
23 business with the state.

24 Q. Do you have any idea how many employers and employees
25 fall underneath your jurisdiction?

1 A. We just did a survey of that, in light of our budget
2 restrictions, it's very close to nine million employees,
3 I've forgotten now what number of employers that represents.
4 We currently cover all employers who have a regular
5 employment work force of more than five, so we have a broad
6 responsibility.

7 Q. We understand that DFEH has given additional powers
8 -- was given additional powers with regard to affirmative
9 action by the state legislature in 1978?

10 A. Yes.

11 Q. And that new regulations have been drafted to imple-
12 ment this legislation?

13 A. That is correct, that is the legislation I just re-
14 ferred to, and the regulations have been -- will be noticed
15 for hearing on April 2, 1980. These regulations follow
16 very closely the office for federal contract compliance
17 regulations, there are some distinctions but we have tried
18 to model them after the federal requirements to avoid some
19 of the comments that we heard earlier today about employers
20 having to make different kinds of reports to satisfy
21 different government jurisdictions.

22 Q. Will, then, the state affirmative action requirements
23 differ from existing federal ones? If so, explain the
24 difference?

25 A. Not substantially. We -- since we are just beginning

1 this kind of comprehensive examination of affirmative action
2 plans, we will model them, model the requirements for
3 meeting, satisfying affirmative action goals to those that
4 are already in existence, and basically those of OFCCP.

5 We do plan, however, to take a look at whether the
6 use of those requirements as set up by OFCCP are achieving
7 the objectives of affirmative action.

8 And we are also developing, within the department,
9 the capability of generating a demographic information that
10 will assist us in evaluating the statistics that come from
11 EDD and the statistics that come from other places, because
12 we have responsibilities for the universities as well as
13 for private employers and therefore our demographic in-
14 formation has to be far more detailed and specific than
15 is currently available.

16 Q What, if any, coordination will occur between your office
17 and federal agencies such as EEOC and OFCCP with regard
18 to affirmative action and private employers?

19 A Well, we have a formal agreement with EEOC. We have
20 a working relationship and a contractual relationship. And
21 we work very closely together. We are attempting to
22 coordinate the kind of assaults against employers so that
23 we're not duplicating each other's efforts.

24 We have been unsuccessful in creating a similar
25 working relationship with OFCCP. I might even say I can't

1 get them to answer my calls or my letters, but we're
2 determined that somehow we will be able to communicate with
3 them, because at the moment, the department of labor and
4 our department investigate similar charges. They have
5 responsibility for 503 and 504, and we have a similar pro-
6 vision in our law for protection of the handicapped. And
7 we have found on more than one occasion that a charge we
8 are investigating has been investigated and a decision made
9 by DOL.

10 Complainants are known to shop when they don't receive
11 the kind of satisfaction they want.

12 Q How do you propose to avoid duplication in investi-
13 gation?

14 A Well, only through communication. I think our work
15 with EEOC has shown us that it is possible that you can
16 define who will do what and when, and therefore you're not
17 both calling on the same employer on the same day about the
18 same charge.

19 And I think the only way we will be able to be success-
20 ful in avoiding duplication is through communication and
21 formal agreements and understandings.

22 Q Ms. Lewis, do you have any recommendations to
23 federal agencies on how to strengthen the federal enforcement
24 efforts?

25 A Well, I'm not sure I know whether you mean internally

1 or externally in their enforcement obligations. Do you
2 mean internally or externally?

3 Q. I would think both?

4 A. Okay. Well, let me say that internally I think all
5 of us have to assign accountability to managers for the
6 success or failure of affirmative action in their units.
7 Beginning at the lowest levels right on up to the top,
8 internally.

9 Externally, I think that the enforcement by federal
10 agencies needs to be coordinated. We are very concerned that
11 a federal agency will approve a plan, many employers -- let
12 me be more specific.

13 Many employers who will seek to do business with the
14 State of California are also doing business with the federal
15 government. And it well may be that they have a contract
16 with the federal government and that their affirmative action
17 plan has been approved by the federal government.

18 And we intend to accept that. But we won't know
19 whether that's so currently unless we ask the employer.
20 And I believe that if we are going to be in the business
21 of enforcing that the federal agencies with the responsi-
22 bilities for enforcement have to talk to each other and as
23 well as talk with the state agencies who have similar re-
24 sponsibilities.

25 So I think that's the only suggestion I could make for

1 improving is for us to begin talking with each other and
2 working together. And not be quite so concerned about turf.

3 Q All right. Do you or do you plan to provide technical
4 assistance to your employers under your jurisdiction?

5 A Yes, and no. We do currently provide technical
6 assistance, we have budget constraints. So we will be
7 making resource decisions about who, which employers we will
8 be able to provide technical assistance to.

9 Our inclination is to do that for the medium-sized
10 and smaller employers as opposed to the larger employers,
11 but yes, we do currently provide technical assistance
12 and we will continue to do that.

13 DR. PERKINS: Thank you, Ms. Lewis.

14 Do members of the committee have other questions for
15 these individuals? If not, I have -- Dick -- if not, before
16 we go to staff I have two or three questions. Several for
17 you, Mr. Reyes, short ones, short questions and short
18 answers, all right?

19 I asked Mr. Yanak if he would provide us with a
20 definition of affirmative action. Would you do the same?

21 A (By Mr. Reyes) Sure, I'll begin by saying that EEO
22 is the passive stance of, depending who shows up if no one
23 shows up that's the way the ball bounces, whereas affirmative
24 action requires a little aggressiveness in applying
25 innovation to whatever it is identified as a barrier.

1 In the event that there are no applicants of under-
2 represented types, there you seek out applicants. In the
3 event there's a shortage of promotions of unrepresented types,
4 you examine the cause there. Examining causes and then
5 doing something imaginative about it. That's affirmative.

6 Q (By Dr. Perkins) Okay. When you were giving an
7 example you said something about the failure to find
8 minorities, the failure to find the handicapped. You omitted
9 women. Was that deliberate or otherwise?

10 A Jees, I don't remember having forgotten, how about
11 that?

12 Q Well, I ask primarily because of the insertion of --

13 A No, the point is that we're very concerned about
14 women being concentrated in lower grades. And the same
15 plight of Blacks being in lower grades puts us in a position
16 where we can identify our objectives simply this, upward
17 mobility for both.

18 Q Now, you suggested that you were a former -- since
19 you were a former employee of OPM things might not be the
20 same in this region as they are in other regions. You
21 just suspect that or --

22 A Yes, I suspect it's rapport.

23 Q Should we really depend that much on cooperation between
24 two agencies --

25 A No.

1 Q -- on that sort of thing?

2 A No.

3 Q Do we?

4 A No, you'll never eliminate the value of the human
5 element.

6 Q But are we overrelying on that?

7 Let me turn it around the other way, is the sense
8 that I'm getting of cooperation of OPM and EEOC in this
9 region somewhat atypical because of that relationship?

10 A Perhaps. And the reason I say that is because in
11 some of the other regions we have new people. At both
12 sites, at both positions, new people in EEOC and new people,
13 perhaps, in OPM in the affirmative action business and per-
14 haps they haven't met.

15 Q In regard to EEOC, getting on with the business,
16 let's see you had your training in December, are you refer-
17 ring to this thing that will be in the mail next week,
18 several references to things that are presently being
19 negotiated. Now, this is more than a year since the re-
20 organization was supposed to have been completed. Why are
21 we so slow?

22 A Why is my central office so slow. My central office
23 was -- my central office did compose some instructions and
24 strategies in concert with the central offices of all of the
25 other agencies in D.C., and this was a very time consuming

1 exercise, deriving concensus and also in the final analysis
2 comparing and approval by the commissioners themselves, so
3 it's another world as to what's happening there.

4 Q Okay. You indicated that with regard to federal and
5 private employment they must be the same, it would be
6 criminal if it were any other way. Is in fact it the
7 same?

8 A I think it is not the same. I think, for example,
9 that OFCC can apply not only specifics, but the -- where the
10 pressure of either contract cancellation or award offer
11 denial or bid return or debarment in fact.

12 Q So, then, it would be not unfair if I said that we're
13 guilty of criminal action in this area?

14 Pass, I'm sorry, I have to have a little fun in this
15 world.

16 Okay, I have one last, I'm going to ask you and Mr.
17 Yanak both to comment on this briefly. I did think that I
18 heard a little bit different emphasis in the two presentations
19 in regard to the degree of cooperation that takes place
20 and the smoothness of the interweaving of the two efforts.

21 A My emphasis is on compliance. My primary -- my
22 secondary emphasis will be on technical assistance. My
23 primary role is not to provide agencies with the tools to
24 solve their problems, so there is a -- a necessity for both.

25 OPM providing the intelligence and the legal devices

1 for solving their problems, and myself inquiring as to the
2 utilization of those tools and then making a performance
3 evaluation on their bottom line, so that's how I see it.

4 DR. PERKINS: Mr. Yanak, you want to comment on that?
5 If not, it's all right, I have another question for
6 you.

7 A (By Mr. Yanak) I'd like to share something with you
8 and you very well may be aware of it but I think for the
9 record. I want to talk about employment in the national
10 government. And I'm going to preface my remarks by saying
11 that what I'm doing is not an apology, nor secondly, am I
12 characterizing what I'm going to share with you as being
13 where it ought to be. I just want to say this is what is.
14 And I'm going to look at some regionwide data, and in this
15 region, I'm just going to talk about minority employment,
16 of the total civilian labor force, about 25% in the four
17 states I identified to you, in the national government in
18 this region, it's about 38%. But I want to talk about more
19 specifically, I want to talk about what we call professional
20 administrative and technical, not technician which are
21 support jobs, but technical jobs.

22 And I want to -- these are the kinds of jobs that
23 generally require a college degree at the baccalaureate
24 level or some equivalent kind of experience.

25 I'm going to talk about data as of November of 1978.

1 Recognizing that in that overall the federal government's
2 employment of minority, and I'm going to just focus on that
3 because it's easier for time purposes.

4 About 38%. At the entry level for our professional
5 positions in the national government, over 25% of this,
6 of our white collar force, of our white collar work force,
7 is at the entry level GS7 which starts at \$14,000.00 a year.
8 The next level which is GS9, which is sometimes a journeyman
9 level job and sometimes kind of an intermediate level.
10 22% of our white collar work force, and I'm going to look
11 at grade 11, which generally is a journeyman level and
12 that starts at 20,000 a year, 17%, grade 12, which is a
13 journeyman level, 13%.

14 I'm giving you data, and then I've stopped going
15 because it really targets down, at grade 13 it's nine and
16 a half percent out of a total work force of 38.

17 Now, the point I want to make is that when I look
18 at the thrust of affirmative employment, the things I'm
19 talking about here if we were to go back ten years or five
20 years, what I have shared with you would nowhere be like
21 that. The kinds of data that courts, 23% of our entry
22 level professional jobs are occupied by minorities.

23 I want to say that because I think in the scheme of
24 things that has relevance. And what I think we need to
25 do in the national government, and Mr. Reyes and I are in

1 complete agreement because we've been in agreement on this
2 for a long time, is we need to focus on where the targets are
3 and then really do a job.

4 And I agree with him 100%, that there are these
5 targets that we need to focus on, I'm not speaking of
6 agencies, I'm speaking of occupations and then secondarily,
7 I could address that.

8 So I don't know if that answers your question directly,
9 it's longer than a short answer, but I don't believe that
10 we're that much different in terms of what we see being the
11 goals and objectives we're trying to achieve.

12 Q (By Dr. Perkins) Okay, I have just one other question
13 for you. We didn't really talk much about or look at the
14 performance evaluation dimension, the affirmative action
15 dimension of performance evaluation for merit increase
16 for supervisors. Without going into that, as a process,
17 because it's understood, does your agency perform any audit
18 of those performance evaluations or is it simply left to
19 the, let's say the head of X unit in Y department?

20 A So far we have not done that because the standards
21 of performance in the system really are within the agency's
22 jurisdiction. As we conduct our personnel management
23 evaluations, yes, we will be.

24 We will be looking at what are the standards, how are
25 they applied, what is the relevancy of them, and in particular,

1 when we look at the affirmative employment part of those
2 standards, we'll look at it from two standpoints, one,
3 are they a critical element and in our parlance critical
4 element means if you don't do a minimally satisfactory job
5 that's grounds for removal, and then secondly, how realistic
6 are those standards?

7 And I'm not suggesting that they be pegged low,
8 I'm really suggesting in terms of environment, are they
9 realistic? And so that will be a part of our evaluation.

10 Q -- This will be an actual audit --

11 A . Yes.

12 Q -- of actual evaluations?

13 A. Sure, and what we will do I'll just tell you, Mr.
14 Perkins, we aren't going to look at them all, as we do we
15 will make random sample and -- or sometimes more than random
16 because we'll focus on a particular organization.

17 Q If you identify your problem --

18 A. Then you do something more in depth, exactly right.

19 Q MS. Lewis, just, I -- occasionally my attention
20 wanders as I sit here. I just want to be sure I heard you
21 right. Did you say that OFCCP would not return the phone
22 calls to DFEH?

23 A (By Ms. Lewis) Yes, I did say that.

24 DR. PERKINS: Thank you. Thank you very much for
25 coming.

1 Oh, excuse me, Mr. Dickerson, I'm sorry.

2 Q. (By Mr. Dickerson) Just a few quick questions.

3 DR. PERKINS: I told you my attention was wandering.

4 Q. (By Mr. Dickerson) Of Mr. Yanak.

5 I'm glad you discussed those statistics there, and
6 are you aware that two EEOC commissioners wrote formal dissents
7 to the vote to approve affirmative action requirements that
8 were forwarded to federal agencies and in those dissents,
9 they said that the method of calculating the requirements for
10 professional employees in the federal government would never
11 achieve an increase in minority participation in those
12 positions? Are you familiar with those documents?

13 A. (By Mr. Yanak) No, and I'm not sure I understand the
14 words that you're using, would you clarify it and I might
15 know about it in a different way, I don't know that I know
16 the documents.

17 Q. All right. When the commission voted the affirmative
18 action requirements of EEOC, they had a vote of the five-
19 commissioners, the vote was three to two, in approving those
20 requirements. Two of the commissioners said that they
21 could not approve those requirements or they did not go
22 along with those requirements because the method that the
23 commission was using to calculate the availability of minorities
24 in professional positions would not achieve an increase
25 in minority participation in those job categories.

1 Are you familiar with those two?

2 A. No, I must confess I am not and I'd be glad, if
3 you have those, I would be very much interested in seeing
4 them. I may have had reference to them but quite honestly,
5 I don't remember. Could we have them?

6 Q. Oh, yes, sure.

7 MS. JAMES: We'll send them to you.

8 A. Yes, you know my address, thank you very much now.

9 Q. (By Mr. Dickerson) Okay, my other question would
10 be, you're familiar with, I know you're familiar with the
11 CSRA, the Civil Service Reform Act amendment?

12 A. Up to my ears.

13 Q. I got it right here. The amendment to section 208
14 of the IPA. And would you explain to us and the committee
15 just what you perceive that amendment did as far as it
16 affected the grant in aid agencies and OPM?

17 A. I'm going to ask you to do one more thing for me,
18 if you will, because quite frankly I can't place that number
19 in my mind.

20 Would you mind going a step or two further in de-
21 scribing what that change is other than the number?

22 Q. Okay. That is the change that gave over the function,
23 compliance with the affirmative action requirements of
24 Title VI agencies, the Title VI agencies at state and
25 local governments, gave that monitoring capabilities to OPM.

1 Now, you know what I'm talking about. Now, in
2 your -- would you give us a comment on what you believe that
3 amendment did?

4 A. Inasmuch as OPM is responsible for the merit standards
5 and the merit principles and the implementation of them,
6 and where the personnel management function is so critical,
7 my own sense is that that's going to strengthen what we do,
8 just as I believe that the Civil Service Reform Act doing
9 what it did is going to strengthen the delivery of what it
10 is we're trying to do.

11 Q. Well, my question, more or less, I probably didn't
12 make it clear, what did it do jurisdictionally is what
13 I'm trying to get at.

14 A. I must confess I'm not understanding.

15 Q. It is my understanding that what that agency did,
16 it took away the affirmative action units in the Title VI
17 agencies and gave that requirement to OPM to do the reviews
18 of the state and local government agencies under the merit
19 principles.

20 That was what my understanding is that that did.

21 A. I'm going to tell you what I'd like to do if it
22 pleases the commission. I would like to follow through on
23 this and if it's -- if it's acceptable to the commission,
24 I will give you, in writing, an answer to that because
25 I just am not capable right now.

1 DR. PERKINS: If you will please.

2 Q (By Mr. Dickerson) Well, the crux of this matter,
3 when you do send in your statement, is that we are trying
4 to find out that if under the reorganization certain
5 responsibilities from federal agencies was transferred to
6 OPM, why have we sat here all day and heard people say we had
7 this agency and that agency coming in to give -- to perform
8 reviews, when the Civil Service Reform Act and the reorgani-
9 zation, one of the objectives of those two documents was
10 to eliminate this problem.

11 And apparently it still exists, and it was my under-
12 standing that a lot of these functions had been given over
13 to OPM and apparently it hasn't.

14 And we'd just like to get your understanding of
15 what you think you were given and what you were not given.

16 A I think I must repeat to the Chair, I would really
17 like to provide that to you, because I feel anything else
18 really wouldn't do justice to the response.

19 DR. PERKINS: Can you send it in in the next few
20 days?

21 A Of course.

22 DR. PERKINS: Say in the next week?

23 A Of course, and would I send it to Mr. Montez here?

24 MS. JAMES: Yes, in the return mail you'll get the
25 dissent.

1 A I'm sorry, Sally, I didn't --

2 MS. JAMES: No, you asked for the EEOC commissioners'
3 dissent and I said --

4 A Okay, well, that's fair enough.

5 DR. PERKINS: Thank you very much for being patient,
6 enduring with us.

7 Since this was a long session, I'm going to give
8 you very short break since five minutes always turns into
9 15, because it's a kind of indefinite term you have four
10 and a half minutes, we will reconvenet at 3:30, if I'm the
11 only person here.

12

13 (The following was chaired by Dr. Van Perkins)

14

15 THE CHAIR: Mr. Jones and Mr. Dashiell here please?
16 Will both of you identify yourselves for the record,
17 please?

18 MR. DASHIELL: My name is Sam Dashiell, I'm the
19 regional attorney for the equal employment opportunity
20 commission in the Los Angeles district office.

21 MR. JONES: I'm Roscoe Jones, I'm the deputy
22 director of the Los Angeles office.

23 THE CHAIR: Mr. Martinez?

24 MR. MARTINEZ: Mr. Jones, would you tell us how you
25 define affirmative action in your own words?

1 MR. ROSCOE JONES

2

3 A (By Mr. Jones) How I define affirmative action. I
4 can -- let me start with the bottom line, that we don't
5 actually have any affirmative action programs in the federal
6 sector operating presently in the Los Angeles district
7 office. That's not answering your question but I want to say,
8 tell you exactly what we do in the office. I might add for
9 the record that that program is a pilot program. It's
10 operating certain of the offices, having talked with
11 Charlotte Frank out of Washington program ultimately will
12 be in each office.

13 When I was the director of the Chicago office, the
14 program was set up there. But it's operating right now on
15 the old regional basis. So I'm begging your question because
16 we don't operate in Los Angeles.

17 Q Would you tell the committee what is your district
18 office's geographical coverage?

19 A A good question. How far north do we go? We cover
20 the State of California, we have a boundary line north and
21 I've been out here about three months, what is it, Sam?

22 MR. DASHIELL: We go to --

23 A (By Mr. Jones) San Jose?

24 MR. DASHIELL: -- below Sacramento, and all the way
25 down and the State of Nevada. I don't know the exact line

1 in between where San Francisco stops and we stop, not being
2 familiar with California, I've only been here a year.

3 Q Probably Stockton area?

4 MR. DASHIELL: Probably.

5 A (By Mr. Jones) We're below Stockton. Near San Jose
6 it's north of here somewhere, it's below San Jose, somewhere
7 up north.

8 Q Okay, does your office impose any affirmative action
9 requirements on state and local government employers?

10 A The Los Angeles district office does not.

11 Q Does not?

12 A Now let me get the record clear here now, Mr.
13 Reyes, out of San Francisco, he's charged with that re-
14 sponsibility for the entire state.

15 Q Well, to your knowledge, then, that's the only other
16 office that would?

17 A At the present time the affirmative action matters
18 are handled out of San Francisco area.

19 Q Now, does the EEOC have any authority to require
20 affirmative action of private employers? And if so, under
21 what circumstances?

22 A Private sector you would arrive at that by way possibly
23 of a conciliation agreement and it's really not affirmative
24 action. It's an agreement whereby after having found cause,
25 you would negotiate for remedy. In the course of negotiations

1 you may set goals and timetables, but very limitedly, only
2 on the issues raised in the charge.

3 Q Further, what is the purpose of EEOC guidelines on
4 affirmative action?

5 A What is the purpose of it?

6 Q Yes.

7 A I -- rephrase my question again that the affirmative
8 action is not handled out of the Los Angeles district
9 office and I think Mr. Reyes would be a proper one to ask
10 that question.

11 Q And at what stage in EEOC's charge processing
12 systems might affirmative action measures be sought?

13 A Be sought on the compliance side in the office at
14 the conciliation stage. And then again I will point again
15 very limitedly, only on the issue raised.

16 Q (By Ms. Gillette) Do you have a rapid charge pro-
17 cessing system?

18 A We do.

19 Q Could you explain that, please?

20 A I'll be glad to. It was a system set up by Eleanor
21 North when she, let's see, September, 1977. In the three
22 offices of Chicago, Dallas, Baltimore, it was implemented
23 in the other 19 offices as of January, 1978.

24 The purpose of the system is to get resolution or
25 relief for complainants within a period of a month and not

1 in excess of that. It works by really taking the intake
2 process which were formerly handled by EET's, they're some-
3 where between a clerical position and a professional
4 position, the charge taking now is done by professionals.

5 It's resulted in making sure that the charges getting
6 into the system are good and valid charges as far as they
7 appear on the face of them. As far as the information
8 furnished by the charging party.

9 Upon receipt thereof they're immediately transferred
10 to a factfinding unit which is something brand new under the
11 reorganization. That unit's job initially to conduct a
12 preliminary investigation and if along the way they settle,
13 fine. If they got to go to the table within 30 days of
14 receipt in that unit by the charge. So the thrust is, I
15 would say, initially investigation. But great emphasis placed
16 upon settlement.

17 Keeping in mind they're easy to settle if the charge
18 is fresh, the back pay liability and so forth is minimal
19 compared to a five-year old charge.

20 Does that fully answer that or do you want me to
21 take it a little further?

22 Q (By Mr. Martinez) Do you have an early litigation
23 identification program?

24 A A ELI program, we do.

25 Q Could you briefly describe it?

1 Certain respondents are targeted for ELI processing by the
2 name of the particular respondent having been ascertained
3 from the volume of large and so forth having been filed
4 against them or certain issues might be ELI issues, based
5 upon their multiplicity.

6 Those charges are put in the system, go before a TMC
7 group, a top management group, it's myself, Mr. Shield,
8 and district director. And we meet on those we determine
9 whether they're to be ELI or not. If the ~~determination~~ that
10 they are ELI charges, you have a total involvement of the
11 assigned EOS and the assigned attorney, they work as a team
12 all the way through on them.

13 And they are targeted as litigation vehicles at that
14 time.

15 Our intent is to take them into court, the lawyer
16 involvement is there to make sure the case is proper
17 if it has to go into court.

18 Q. Would you have a systemic program?

19 A. A systemic program we do.

20 Q. Could you describe that to the committee?

21 A. Basically those are targeted the same way the systemic
22 unit is, separate, apart from the rest of it, those are
23 quite voluminous, they're broad, class-type investigations.
24 They must be presented to Washington and approved by Washing-
25 ton before the investigation commences but they're the very

1 broad-type class cases.

2 ELI, if you want to sum up this way, are small
3 classes. They're, I guess there's a great distinction,
4 handles a little bit different.

5 In the ELI we process solely out of the ELI office,
6 the systemic must be approved by Washington before we can
7 commence an investigation.

8 Q (By Mr. Yoshioka) I was going to ask you, how do
9 you initiate both of those processes, say you meet together,
10 but is there --

11 A The presentation is made to the committee. Now,
12 the charge is taken in the front door through the intake
13 section and they're identified preliminarily at that stage.
14 They're referred to this top management committee to make
15 the ultimate decision as to whether or not they'll be ELI
16 cases.

17 Q (By Mr. Martinez) Mr. Jones, would it be correct to
18 state that the EEOC's rapid charge process system was
19 effectively reduced -- has effectively reduced the number
20 of instances where EEOC seeks affirmative action remedies?

21 A It all depends on how you define affirmative action.
22 What is your definition of affirmative action? I see we're
23 getting relief and any relief whatsoever is, assists
24 towards affirmative action. If it's hiring one Black, one
25 female or three or four. This is toward affirmative action.

1 So I can't say it does, I say we're getting a lot
2 of relief, I say the ELI's are getting the small class.

3 Q But more specifically, would the rapid charge pro-
4 cessing system be -- would it have effectively reduced the
5 number of assists?

6 A Of persons getting relief?

7 Q Yes.

8 A No. No, it has not because the volume coming in
9 we're getting relief now. Keep in mind I think it's
10 common knowledge the EEOC had quite a backlog, we're moving
11 cases out much, much faster now so we're getting more
12 effective relief so I think the volume is there.

13 Q (By the Chair) Mr. Jones, how would you define
14 affirmative action?

15 A I will decline that answer, I will not -- because
16 I'm not involved in it at the present time, the compliance
17 side is not involved in affirmative action per se. And,
18 Gentlemen, I'll be honest with you, Ladies and Gentlemen --

19 Q Yet you're prepared to say that affirmative action has
20 been furthered by the rapid charge processing system?

21 A In the sense that basically --

22 Q So you must have some definition?

23 A I do, I do, but I don't know what Mr. Reyes has said
24 before I got here, he is charged with it, for this area.
25 I can say I made my statement predicated on the fact that

1 bringing people that have been denied the opportunity to get
2 into job classifications, that's what affirmative action is
3 all about, to open doors for minorities, females and the dis-
4 advantaged, and more are coming into the system through the
5 rapid charge processing.

6 Q If we take that only on a case by case basis, in your
7 judgment is that adequate progress toward the objectives
8 of the program?

9 A No, that's not quite what I said. You see --

10 Q No, I asked if, in your judgment, whether that was
11 or not? I didn't put words in your mouth.

12 A No, I'm saying in my judgment, no but I'm saying the
13 commission's doing much more than that. Much more than that.
14 You only have one phase, rapid charge, you've got systemic,
15 you've got ELI, Eleanor's got a very broad program so we're
16 discussing only one singular phase of it.

17 The program, yes, has great, great input into getting
18 the disadvantaged denied into jobs, promotions, the whole
19 bit, we're all about.

20 Q Let's switch to Mr. Dashiell for a few moments.

21 Q (By Ms. Gillette) Perhaps let me ask Mr. Dashiell a
22 question, and that is, is the court order the way you get
23 most of your affirmative action remedies?

24

25

1 MR. SAMUEL DASHIELL

2
3 A (By Mr. Dashiell) I would say yes. Through the
4 court in resolving a case, assuming we win or assuming that
5 there's a consent decree, if it involves large numbers the
6 affirmative action, it's almost always a part of the decree.

7 Q In 1978 and 1979 too, could you say how many concilia-
8 tion agreements and consent decrees with affirmative action
9 components your office --

10 A Well, this office, the reorganization was effective
11 January 1st -- January 29, 1979. Prior to that time this
12 office has no litigation history because that was not a
13 litigation unit here. I came here on January 29th, I was
14 the first one in the unit. And we only became staffed,
15 fully staffed in August of 1979.

16 So we, since that time, we have probably six con-
17 ciliation agreements, one of those conciliation -- I'm sorry,
18 six consent decrees.

19 One of those decrees involves the -- an amount of
20 about \$800,000.00 in back pay and about 300 employees, and
21 a complicated 400-page system for many hearings to
22 determine cases that are involved in that class. We have
23 other consent decrees which involve affirmative action on a
24 more limited basis within the area of the cases that we
25 let -- they were brought under, one involving a union and in

1 fact two or three unions.

2 We are currently monitoring ten consent decrees which
3 all involve affirmative action of some kind. We have a total
4 of 15 lawyers in the unit here.

5 Q As of, say the fall of '79?

6 A Yes.

7 Q So, actually, that's when you started going to court?

8 A Yes, that's when we started going to court with any
9 degree of significance. If there was something in court
10 prior to that time we went but we weren't fully staffed
11 and operational.

12 Q And in that time period how many affirmative action
13 remedies were obtained?

14 A The affirmative action remedies would have been the
15 fifth or sixth consent decrees that we have gotten since
16 January 29th.

17 Q Since January?

18 A Yes, January 29, 1979.

19 Q Now, you said you have 15 attorneys?

20 A Yes.

21 Q And how are they assigned?

22 A We have -- I assume you mean how do we operate in
23 units. We have two units of six each and a supervisor over
24 each unit who's called a supervisory trial attorney. We
25 have six clericals and three paralegals. And cases are

1 assigned on an as-needed basis or otherwise on a pure
2 rotational basis.

3 Q Let me ask you something about training then. What
4 kind of training or written guidance does EEOC give its
5 attorneys and investigators on developing the conciliation
6 agreements and consent decrees?

7 A Well, as consent decrees are handled under the guidance
8 of our office in Washington, our associate general counsel
9 for trial, must approve, as a matter of fact the general
10 counsel must sign all consent decrees that we get.

11 And there are broad guidelines for consent decrees,
12 one is that all issues raised in the complaints, in the
13 complaint have to be resolved. We can not leave unresolved
14 issues, and back pay must be gotten if it is applicable.

15 This refers to consent decrees. If, however, the
16 defendant is unwilling to enter into a consent decree of
17 that type, then we go to court and of course we are in a
18 completely different arena because we get what the courts
19 say we can get, and the court determines the relief.

20 We can suggest relief and we suggest that which is
21 practicable or possible under the circumstances. And then
22 the case is handled as a result of the court.

23 I might add that there's a section of the act, 706I,
24 which allows the EEOC to go into court to enforce private
25 consent decrees. In other words, if Mr. Hunt had gotten,

1 tried a case and got a consent decree and that decree was
2 lying fallow somewhere, we could go into court and seek to
3 enforce it.

4 As a matter of fact, we have -- we are seeking to
5 enforce two such consent decrees now. which have not been
6 enforced which involved affirmative action.

7 Q Well, what criteria do you use to decide which way
8 you're going?

9 A You mean which cases to take?

10 Q No, whether you're going to go for a consent decree
11 or a conciliation? Sort of remedy you want?

12 A Well, we only get the case when it has failed
13 conciliation. The administrative part of it, the compliance
14 parts must seek conciliation under the act. If they can
15 not conciliate, if the defendant or respondent does not
16 agree to conciliate then it is referred to the legal unit
17 for prosecution.

18 We then go into court. If the defendant is willing
19 to conciliate and give full relief, we will enter into
20 whatever type of conciliation that we can that we think
21 affords full relief. Which might be different in one case
22 than another, also we have the problem of the possibility
23 of our prevailing and what the evidence might be which might
24 shift as of various times depending upon how well we think
25 we can prove our case.

1 We seek full and ultimate relief in every case. What
2 we get is what comes out of the contested adversary process
3 which is the best we think we can do under the circumstances,
4 just as in any other contested piece of litigation.

5 Q (By Mr. Martinez) Mr. Jones -- Mr. Chairman, I'd
6 like to ask Mr. Jones a question.

7 A (By Mr. Jones) Yes.

8 Q Mr. Jones, if through the rapid charge processing
9 system, remedies are limited to, say an individual, does
10 EEOC on its own initiative, ever seek relief for the class
11 of people to which the charging party had belonged?

12 A The charging party on his or her own motion may
13 file a petition for a class-type case which must be for-
14 warded to Washington for their approval and that could be
15 a base of probably systemic action. On one

16 On the one-on-one filed by the respective charging
17 party that's all we look at.

18 Q The agency --

19 A That's all that's in the allegation.

20 Q So the agency --

21 A That's all that's in the allegation.

22 Q So the agency doesn't, on its own initiative, take
23 it upon itself to represent that class of people?

24 A The agency might on its own, not that particular
25 class but they will target certain systemic cases which may

1 or may not be the class involved or the same respondent
2 involved but they have on their own motion. If I may give
3 you a little background.

4 Part of the backlog in the commission was created
5 by allowing the charging parties on their own motion to
6 raise these class allegations which they had absolutely
7 no knowledge. And that created our backlogs, that was the
8 thrust of Eleanor's change, to let the commission determine
9 which class cases we're going after. And the petitions
10 as a result thereof, must be approved by Washington before
11 they become systemic vehicles.

12 Q (By Ms. Gillette) I was just wondering, does that
13 system where Washington decides in terms of it, whether you
14 go for the consent or not, does that make things easier or
15 does that hinder what you're doing?

16 A When it goes to Washington they have the final
17 authority on all systemic cases to approve whether we can go
18 in on the very, very broad systemic type case, maybe in-
19 volving a 100, two, 300 people.

20 So it doesn't. Because before the petition goes
21 up we have to accumulate certain evidence to go up with it
22 then make a decision.

23 Q Again Mr. Dashiell, what kind of training or
24 written guidance is given your staff on monitoring
25 conciliation agreements or consent decrees?

1 A. (By Mr. Dashiell) We don't have any training on
2 monitoring consent decrees or conciliation agreements, and
3 I think there again as Mr. Hunt said this morning, that is
4 one of the easiest of our tasks, to monitor a consent decree.

5 We usually give it to the legal research assistants
6 to do because it's merely matching numbers of what has
7 been done against what was promised to be done. And if it
8 comes out that they have done it, and there again I would
9 like to also say the same thing he said, that once a decree
10 has been entered, particularly a consent decree, once we
11 are in accord, there is usually very little problem in
12 that decree being complied with.

13 The only instances I know of I was formerly in the
14 Denver litigation section, and we probably only had problems
15 with some unions in reference to apprentice programs where
16 we filed contempt decrees.

17 See, the weapon is that if the respondent does not
18 comply with the consent decree, we can go in court for a
19 contempt, and they can be fined and held in contempt of
20 court for failing to comply with it. So there are very few
21 lawyers who are going to advise their clients not to comply
22 with it or if they know they're not, or suspect they're not
23 complying with it they're going to insist that they do comply
24 with it, so happily that is really not a problem once we
25 get the decree to see that it is complied with.

1 Q To whom did you say is given the monitoring re-
2 sponsibility?

3 A Well, the monitoring responsibility is in the hands
4 of a lawyer because the case is in court, but the actual
5 nuts and bolts is given to our legal research assistants.

6 Q Research assistant. And are there any written
7 guidelines for the research assistant to follow?

8 A Well, if they agree to -- see, our consent decrees are
9 rather specific... We don't do them in percentages, we don't
10 say that 10% of your work, say there's a 100 in the work
11 force, and there are two Blacks in the work force and the
12 affirmative action is that they hire ten. We don't say that
13 10% of your work force shall be Black, we say that eight
14 Blacks shall be hired within, say six months or a year.
15 And if the reports we get back say that eight Blacks have
16 been hired, then we know that that consent decree has
17 been complied with.

18 Now, if the next question is how do we know that they
19 are telling the truth? We don't send anyone out to check
20 to see whether they are telling the truth or not because
21 we are dealing with lawyers who have represented that
22 his facts are true.

23 And I have not known any situation in my seven years
24 with the EEOC where a law firm has misrepresented the facts
25 of that. Bear in mind, we're dealing with law firms whose

1 billings are in the billions of dollars a year and I don't
2 think they're going to risk that for some client.

3 Q So, actually, you don't monitor the compliance?

4 A We monitor it by looking at the reports. We don't
5 go out on the site and monitor the decrees.

6 Q So, about how much time is then spent on looking at
7 reports?

8 A That is a very small amount of time.

9 Q Five percent?

10 A Five, 10% or something of that nature. Now, that is
11 where -- where looking at the reports is the only thing to
12 do. For example the one I was talking about where we have
13 \$800,000.00 in back pay, that will require extensive, many
14 trials where people will have to come in and testify as to
15 whether or not they were victims of discrimination and
16 whether they fall within the protected class which has been
17 described in the body of the consent decree.

18 That will require a lot of time and a lot of lawyer
19 involvement because it will involve the taking of testimony.

20 But in the garden variety consent decree, where we
21 get money back pay, we make sure that is paid, they send
22 the checks to the EEOC, we then send the checks to the
23 people who are supposed to get them, if they're to hire
24 people within a period of time, certain reports are required,
25 they send us the reports, we check them against what's in the

1 decree and when the -- the decree has a life which is given
2 to it by the judge. He might say this decree shall be done
3 in three years. After three years that file is closed and
4 it is retired in accordance with the -- to the archives,
5 in accordance with certain rules set down and we move on
6 to the next one.

7 Q You started to say something?

8 A (By Mr. Jones) I did on the other side of the fence
9 of the conciliation agreement there was sort of comingled,
10 there are very stringent requirements for monitoring con-
11 ciliation agreements, it can either be done by the desk as
12 Mr. Sheets (Phonetic) stated or I had ordered people on
13 site. Like I say, when I was director of the Chicago office
14 I ordered the lawyers to go into courts and sue for breach
15 of contract on two of them which the on site investigation
16 determined they had not complied with the conciliation
17 agreement itself. So they are enforced and we'll take them
18 to court on breach of contract.

19 A (By Mr. Dashiell) There is a distinction between the
20 conciliation agreement and the consent decree. The concilia-
21 tion agreement is entered into usually by some person in
22 the company who might be general manager or the vice president
23 of the company. And somebody in the EEOC. So the court is
24 not involved.

25 There is not the threat of contempt, there is not the

1 misrepresentation by an officer of the court that would be
2 possible where it is a consent decree, so monitoring a
3 conciliation agreement would require much more definitive
4 checking, I would think, than the monitoring of a court
5 ordered consent decree.

6 THE CHAIR: Scott?

7 Q (By Mr. Martinez) Okay, Mr. Jones, could I ask you
8 another question. How would your office handle a request
9 for technical assistance from private employers, specifically
10 concerning their affirmative action plan?

11 A (By Mr. Jones) At the present time that would be
12 handled out of Mr. Reyes' shop. There was a time when the
13 regional offices which they had -- pardon?

14 A (By Mr. Dashiell) He said private.

15 Q Private.

16 A (By Mr. Jones) Yes, private too, private too, which
17 they had the technical guidance division within the regional
18 office under Ms. Norton's total reorganization of EEOC the
19 regional offices have been abolished, there have been no
20 provisions for that function in the respective district
21 offices.

22 It will come out of Mr. Reyes' shop or someone they'll
23 set up there eventually, I realize it's the federal sector,
24 I can imagine they may have guidance for private sector, I
25 don't know, but no provision at the present time.

1 Q. Would your office ever refer to a private consultant?

2 A. Beg your pardon?

3 Q. Would your office ever refer it to a private con-
4 sultant?

5 A. To my knowledge they never have, no. And I speak of
6 the office itself, not what they may be doing in the Washington
7 level.

8 THE CHAIR: We have a situation here where Mr. Reyes
9 is responsible for federal and you're responsible for this
10 enforcement effort and we don't know who's responsible for
11 the private sector, am I understanding correctly, or am I
12 confused?

13 A. On the affirmative action or complaints?

14 Q. (By the Chair) On affirmative action?

15 A. We're in charge -- our agency --

16 Q. On affirmative action?

17 A. We reach it by individual complaints having been
18 filed or by way of systemic charges having been filed by
19 the commission, we arrive at it that way by way of concilia-
20 tion agreements so in that context I'd say we would be on
21 the issues raised.

22 Q. Well, if I'm a private employer and I understand that
23 this operation is going on, and I need some advice, where
24 do I get it?

25 A. What type of advice specifically?

1 Q Well, how to avoid getting into a complaint situation?
2 How to be in compliance?

3 A I think a lot of that is covered in the seminars we
4 give, the talks, Mr. Dashiell, my staff, myself give, we
5 make a lot of speeches, those are generally to private
6 industry.

7 Q (By Mr. Martinez) I think maybe there's confusion
8 here because my question was, if a private employer called
9 your office --

10 A (By Mr. Dashiell) Right.

11 Q -- and requested information, what would be your
12 course of action?

13 A Our course of action if a private employer called
14 and said I want to be in compliance, I want to set up a
15 proper affirmative action program so that you will not
16 sue me, the only thing we could do would be to tell them to
17 go see your lawyer and let him do it for you.

18 We do not have a procedure for setting up plans,
19 affirmative action plans for private employers.

20 Q (By the Chair) In your judgment, is that a serious
21 deficiency in affirmative action efforts?

22 A No, it is not. Because if we set up a plan, we
23 would not know, necessarily know all of the facts. We would
24 have to do as complete an investigation of that company in
25 order to set up a plan. If they send us a plan and it looks

1 good on its face, and we approve it, and that plan, and
2 we do not know, we have not checked the underlying facts
3 which gave rise to that plan, then we have approved some-
4 thing without knowing the basis upon which it was formed.

5 Q I can understand that but shouldn't there be some-
6 place in this system where I can bring my plan and get it
7 stamped approved, so that if I carry it out properly and
8 in good faith, I know that I'm exempt from complaints?

9 A You may very well be correct, and if Congress wants
10 us to do that and they gave us the additional assets and
11 staff to investigate that company, so that we would know
12 completely what that company was, just as much as we know
13 when we file suit against them, then --

14 Q No, wait, wait, I'm not talking -- I'm not talking,
15 you're talking, I think you're talking about whether I'm
16 in compliance, you should -- somebody should be able to tell
17 me that my -- that my plan meets the requirements as opposed
18 to whether or not I am implementing my plan.

19 A I think a proper analogy would be if you ask a
20 doctor to prescribe for you and you don't tell him all the
21 things that are wrong with you, if you go to a lawyer for
22 advice and don't tell him all the facts, we would need to
23 know, we would need to have a thorough investigation and
24 knowledge of everything in that company in order to tell the
25 company whether or not this was a proper affirmative action

1 plan. Now, that is probably something we should do.

2 Q Pardon me, I don't see it the same way. Maybe I'm
3 dense. We have availability data --

4 A Right.

5 Q -- we are therefore able to determine that I, as
6 the employer, should hire, should have 10% of my work force
7 in occupational code X, Black, another percentage minority,
8 another percentage women, so on. It seems to me it doesn't
9 require any great investigation of the company, you're not
10 investigating the company in setting up a plan and approving
11 a plan, what you're doing is looking at the availability and
12 then just applying it to their work force, aren't you?

13 A If we accepted the facts that the company gave us,
14 what you're saying is true. They say these are -- these
15 are our employees, but these are -- they say we have 200
16 employees. We have five Blacks, we got 12 women, the rest
17 are Anglo. They give us those facts.

18 Now, we have no way of knowing those facts are
19 correct.

20 Q Isn't EEOC publishing affirmative action guidelines
21 in the process of trying to get them together and publish
22 them? I hope they are.

23 A Yes, they're general guidelines.

24 Q Okay. Then what's the point of them if someone
25 doesn't approve the plans that have been developed on the

1 basis of the guidelines?

2 A. Well, they are general guidelines that the
3 companies can take to their lawyers and their lawyers can
4 see whether their plans comport to those guidelines and
5 can give them an opinion that you are in compliance.

6 Which I --

7 Q I will express an opinion on that for whatever it's
8 worth, I think that puts such a burden on the employers that
9 it's no wonder that we're having difficulty even where
10 there's good faith interest in complying with affirmative
11 action and securing compliance.

12 A. Well, I can see your point and I think it's well
13 taken, and if we are going to do that, we need the manpower
14 to do it.

15 Q Okay. Then let me ask you the question a different
16 way. Supposing that as a result of this investigation
17 everyone became sympathetic and provided the manpower. I
18 assume then that's the problem. Would you say that this is
19 an objective that we should be working for?

20 A. Yes, indeed, I think it is.

21 Q So, the problem is deficiency of staff and funding
22 then?

23 A. Yes, and priorities of where to use staff and funding.

24 Q In the ideal world you would agree, then, that we
25 have a rather substantial deficiency?

1 A I don't know whether it's a deficiency, it's probably
2 something that we could be doing. I don't think that the
3 world will stop if it isn't done.

4 Q (By Ms. Gillette) You consider this a mandate to do
5 that?

6 A (By Mr. Jones) When I was in Chicago the regional
7 office didn't have too much of a demand on this service.
8 Now, the facility was set there, write my former deputy
9 director, and two other people in the regional office in
10 the, doing this job. He wasn't working too hard.

11 To my knowledge, the companies are not sending these
12 plans for review, didn't ask for that much advice and
13 maybe in addition to staffing, maybe some communication to
14 industry that it is here for your service. But as a result
15 thereof the staff was cut down to two people, I pulled one
16 as my deputy and one ran the shop.

17 A (By Mr. Dashiell) I can very well see why, too, be-
18 cause if a company sends --

19 A (By Mr. Jones) They want immunity --

20 A (By Mr. Dashiell) -- if a company has not ever had
21 a charge filed against them, they come to the EEOC to have
22 their plan approved, and in the investigating the company
23 and determining whether the plan should be approved or not,
24 we find that they are in stark violation of the law, then we
25 then have knowledge that they're violating the law and if the

1 plan that we suggest to them, they don't accept, then we
2 are at an impasse and if I'm representing a company I
3 certainly wouldn't go to them and ask them about a plan
4 no more than I would come down here and let the internal
5 revenue fill out my tax return.

6 A. (By Mr. Jones) But let me ask you one question.
7 Why OFCC has the responsibility. To search out the private
8 sector. Do you want us to duplicate their work? That's
9 their responsibility, to set up plans, give advice and make
10 sure they're implemented. And we both can't do the same job
11 that's been the problem before that's why Eleanor's trying
12 to bring everything under one number now.

13 THE CHAIR: Then fine, I would agree to that.

14 A. They're already doing it.

15 Q. (By the Chair) It would be nice if we could get some
16 order and simplicity and some direction but EEOC is then
17 issuing guidelines which, by your statement, I would assume
18 OFCCP should be issuing and EEOC should not?

19 A. No, no, no, no, we have the responsibility, the
20 reorganization issuing those guidelines, that came to us in
21 July of 1978. We're responsible for issuing all guidelines.

22 Q. But there was another reorganization in '79?

23 A. No, no, it was the same, it was the same reorganiza-
24 tion, different steps, it was Carter's reorganization program
25 number 1, Eleanor had the total reorganization of EEOC,

1 effective September, 1977, two entirely separate, different
2 things, but we are responsible for issuing guidelines for
3 federal agencies, that's why we issued them. It doesn't
4 mean we're going to enforce them, OFCC has that job and
5 until such time as Carter sits down and as there was dis-
6 cussion two years ago he'll look at EEOC to see if everything
7 should come under one umbrella law.

8 If so, we'll have the whole bag.

9 Q (By Mr. Yoshioka) I was wondering about this comment
10 about the private companies going to outside consultants,
11 doesn't what you've told us that if there's guidelines
12 issued, it almost forces that private company to go to a
13 consultant in order to establish their plans?

14 You're saying an attorney isn't that the same as --

15 A (By Mr. Dashiell) Well, to whoever they go to.
16 If -- everybody who has forms to fill out if you can fill
17 them out yourself you fill them out, if you can't you go
18 to somebody else to help you.

19 Q (By the Chair) What we should really do, it seems
20 to me, is require that all of these consultant groups,
21 private attorneys' firms, that are doing all this work,
22 be staffed solely by those people who are in affirmative
23 action categories and by one grant process we would have
24 solved the whole affirmative action process.

25 A (By Mr. Jones) No question.

1 A (By Mr. Dashiell) To some extent the same law firms
2 are representing all the companies anyway.

3 Q Let me come back, I --

4 A (By Mr. Jones) I say again, Gentlemen, OFCC may be
5 doing some of what we're talking about.

6 Q Okay, now you were saying, Mr. Jones, that OFCCP has
7 the responsibility for compliance, right?

8 A Affirmative action.

9 Q Affirmative action.

10 A In the private sector.

11 Q And should have it. Then why is your office in
12 existence, or why isn't it under OFCCP?

13 A Well --

14 Q Since it's clearly a compliance operation --

15 A I would say in my position here I couldn't speak for
16 what happens in the White House, I can only say that EOFC
17 is cre -- EEOC is created by Congress, and Ms. Norton right
18 now has picked up functions from labor and so forth
19 coming under EEOC, age, equal pay. We've got the authority
20 to issue guidelines. The agency is separate and apart.
21 Tru the ultimate position is to have one civil rights organi-
22 zation, and it was stated in the earlier reorganization
23 the President's going to look at it to see where it should
24 be. It may come into EEOC the broad umbrella we don't know
25 which way it's going to go.

1 We picked up functions from civil service. The
2 federal sector. That came in. How much we'll get, I --
3 I wouldn't know at this level.

4 Q Let me ask you a series, either of you a series of
5 sort of specific questions about data and records. Do you
6 keep such data and if we requested it, could we get it?

7 How many conciliation agreements, consent decrees, we
8 were entered each year?

9 A That is kept, not yearly, it's kept on a monthly
10 basis.

11 Q On a monthly basis. How about how many --

12 A I speak for the consent decrees, Sam, what about
13 the -- conciliations, how about consents, that's your shop.

14 A (By Mr. Dashiell) The consent decrees -- are you
15 talking about back or are you talking about current?

16 Q Well, let me project it into the future, since I
17 understand the problem of the newness of the office or
18 if we were projecting it backwards we would assume, let's
19 taking the last year and the present situation, assuming
20 it continues, if I were asking this question five years
21 from now?

22 A Well, we keep a record of consent decrees, as a
23 matter of fact I didn't bring it with me but I had a large
24 packet of consent decrees that had been entered into since
25 the -- we got litigational authority in '72, so we keep

1 those records.

2 Q Okay, now we're dealing only for, with a little more
3 than a year and less than that in terms of full staffing,
4 but are you able to keep up with this or are you beginning
5 to develop a backlog again?

6 A No, we have no backlog. We have -- we have 20 cases
7 in progress, 10 cases we're monitoring. And 15 lawyers,
8 so if we had a backlog we'd be rather slow.

9 Q Okay. Same for conciliation agreements?

10 A (By Mr. Jones) - No. The front side, there was a
11 backlog in EEOC and we have plans in reorganization to
12 develop new ways to handle the backlog. The backlog has been
13 there. We are now cutting into it.

14 Q And I gather you can supply data on how many employers
15 were found in noncompliance and what the outcome of those
16 were, still pending, resolved one way or the other.

17 I want to go back to the systemic for really just one
18 minute. And I want to ask you a question that is not dependent
19 on existing policy, I want to ask for your judgment, each
20 of you, as to what would be the best approach or whether,
21 from the point of view of really trying to get affirmative
22 action done, we have the best approach.

23 Do you -- do you think that deciding which will go
24 to systemic remedy, having that question decided by the
25 committee and the committee alone, with no representation

1 from the interested or affected group, is the best way to
2 get the job done? Or should there be input from affected
3 classes?

4 A. I would say many, many cases, the systemic cases
5 generate from affected group by a group of individual charges
6 that are in there and that are consolidated. So in many --

7 Q. All right, but a decision as to whether or not that's
8 going to be, we got 50 or 500 or 500,000, a decision is
9 still made as to whether to combine them into a systemic
10 remedy, I prefer class action myself but EEOC doesn't like
11 it.

12 So that decision is being made and it's being made
13 by people in EEOC without any of the 500,000 or the repre-
14 sentatives having any say?

15 A. Yes. I must agree Washington must do it because of
16 budgetary restrictions they're pretty expensive for systemic
17 work and we're operating very strict budget, extremely
18 strict.

19 Q. One could argue, however, that we actually get more
20 for our money from systemic than we do from individual --

21 A. You're thinking the same as Mrs. Norton, but the first
22 target is to get rid of the backlog. Why have people waiting
23 that have been waiting for seven, eight years and start
24 something brand new, let's clear the record up then devote
25 to systemic.

1 The systemic program is live and running the backlog
2 and the rest we'll put over in the front, we'll put in
3 ELI but we've got to get rid of the backlog first.

4 A (By Mr. Dashiell) One of the things the ELI program
5 is really not that much different from the systemic except
6 that the ELI program, if a charging party comes in for
7 example, and alleges that he or she and other employees
8 similarly situated have been discriminated against,
9 this will be sent to the ELI unit.

10 That charging party will then be given counseling
11 to ask whether he wants his charge handled individually
12 or whether he's willing to wait and have it handled
13 along with other class charges. If he says he is, then that
14 charge is then handled as a class charge, even though it's
15 not under the systemic unit.

16 So, in a sense we do have input from the persons
17 involved. And of course that has happened even here, we've
18 had groups of people, like a committee from one company has
19 come in and they've filed charges and their charges have
20 all been handled together and they have stuck together as
21 a group and we have processed their charges that way.

22 Q To your knowledge, have any remedies, any systemic
23 remedies been filed yet or --

24 A There have been no -- there have been no systemic --
25 there have been no suits filed as a result of systemic

1 cases initiated in this office since January 29, 1979. How-
2 ever, there have been systemic cases filed, and they were
3 cases which -- well, when I say systemic cases I'm thinking
4 exactly like you, cases that are under rule 23, that are
5 classic cases. We have filed class action cases. And we
6 have intervened in class action cases.

7 Q I don't understand, are those cases that are older
8 than January, '78, then?

9 A Some are and some are not. We have intervened in
10 cases that are older than January of '79.

11 Q How many cases, how many cases have we filed since
12 January, '79?

13 A We have filed in the Los Angeles --

14 Q Systemic?

15 A We have filed no systemic cases that have originated
16 in the office. As systemic cases.

17 Q In the Los Angeles office?

18 A Right.

19 Q How about nationally?

20 A I don't know, I have no idea about the total
21 EEOC.

22 A (By Mr. Jones) May I add for the record on systemic
23 we have two presently under investigation, two presentation
24 memos being typed now to go to Washington and the plan is
25 five for the fiscal year for that office.

1 Q Okay, I have one last question for you, Mr. Dashiell,
2 coming back to the issue of training. You asked the question
3 about training of attorneys or ~~staff~~ for handling consent
4 decrees and your answer you kind of got off track and
5 talked more about the approval and the fact that they have
6 to be approved in Washington by the associate counsel or
7 whoever was responsible for this.

8 But as we all know, the quality of a consent decree
9 must depend at least in part on the skillfulness with which
10 it was initially negotiated. Now, I'm a new attorney,
11 I just graduated from law school, I come to work in your
12 office.

13 What kind of training do you give me before you throw
14 me into the breach?

15 A (By Mr. Dashiell) Well, I thought of that problem
16 when I was assigned out here as the regional attorney. So
17 I recruited and hired two former law professors, one person
18 from the justice department, three people who had been in
19 major law firms, one person who had been on the other side
20 of a lot of our cases in another city, and we have no more
21 than two or three at the most inexperienced lawyers.

22 Q Okay, so there wasn't so much need for training
23 but what did you do for those two or three?

24 A For those two or three?

25 A For those two or three, they are under the supervision

1 of supervisors who have years of experience in civil rights
2 litigation and Title VII litigation.

3 Q So we give them a kind of on the job training?

4 A It's sort of on the job training, and also we have a
5 training session, well, this doesn't have to do with consent
6 decrees, but we have an on-going training session akin to the
7 American Lawyers Training Sessions for all lawyers.

8 THE CHAIR: Committee have other questions?
9 Staff? Excuse me, Mr. Yoshioka?

10 Q (By Mr. Yoshioka) Yes, Mr. Jones, you mentioned,
11 and I guess other people have mentioned, the EEOC backlog.

12 A (By Mr. Jones) Yes, sir.

13 Q And you said that you're making progress on it, I've
14 heard that it's a fairly large backlog. Could you put a
15 quantity on that and when you hope, you said you're making
16 progress, is there an estimate --

17 A I'll answer to ways, Eleanor Norton said get rid of
18 it by the end of 1982, that's the target I've got next year.

19 There -- the backlog has been streamlined by the
20 processing there's a contact program. You're going to find
21 in backlog a lot of the charges, the charging parties
22 have long left the earth. Contact --

23 Q (By the Chair) Well, they're likely to with that
24 kind of timetable.

25 A Well, Gentlemen, I was director of the Chicago office.

1 I can speak for the Chicago office, director there for five
2 years, I have no backlog. I got here all the various
3 systems and they're working. The closure rate is tremendous.

4 Q (By Mr. Yoshioka) Can you tell roughly what the
5 numerical quantity --

6 A I'd say right now the backlog in the Los Angeles
7 office is in the figure somewhere of about 4,000. It's been
8 brought down from the original figure of about 7,000 over
9 the period of, I'd say the last month. I look for '82.
10 I've got to get those people up front systemically and ELL
11 and I've got to get those people up front and they'll be
12 there, I can assure you.

13 Q (By Mr. Dickerson) I'd like to ask you a few ques-
14 tions. How many charges would you expect to take in at
15 that district office in a year's time?

16 A I can put it this way, my figures run out, I can --
17 they average about, good charges in the system about 90
18 per month.

19 Q About 90 per month?

20 A About 90 per month going in the system.

21 Q We'll say it's a 1,000 a year maybe?

22 A Times 12? It's rounded-off, okay?

23 Q Okay. Let's work on a figure of a 1,000.

24 A All right.

25 Q If you get a 1,000 charges that get past the intake

1 stage?

2 A Right.

3 Q Okay.

4 A Now, when I say this, some may go into -- may leave
5 in fact, may go to factfinding committee.

6 Q That's what we're going to get at, how many of those
7 1,000 are going to be one-on-one charges and how many are
8 going to be ELI charges?

9 A Of the 1,000, I wouldn't have a statistic on that.

10 Q Well, could you give me a percent, possibly?

11 THE CHAIR: Just an estimate.

12 Q (By Mr. Dickerson) Most of them? Half of them?

13 A Oh, no, no. A small portion of them, I'd say maybe
14 10%, 5%.

15 Q Would be ELI charges?

16 A ELI charges, those are generated by the respective
17 complainant, we can't create an ELI so if they don't walk
18 in we don't have them. But I'd say roughly 5%.

19 Q Now, when you say individual charge there is no
20 class allegation on those charges?

21 A No.

22 Q Is that correct?

23 A No.

24 Q Would it be correct to say that there can never be
25 any class allegation on that charge because it's not part

1 of the charge?

2 A. It's all the charging parties raised, I can't
3 create a class for him.

4 Q. Then would it be correct to say that in any instance
5 there can never be more than 10% of your cases which would
6 ever have the possibility of having any affirmative action
7 results, I don't want to use remedies, because you've
8 already stated that there's no class, in the individual
9 charges. Now, we got 10% where we have a class. Now this
10 10% in the ELLI system is where we're going to have affirmative
11 action requirements.

12 A. And the systemic --

13 Q. And the systemic.

14 A. Right. And I guess the narrow concept I look at
15 affirmative action, anything toward getting disadvantaged
16 into jobs promoted and so forth, I take that very neat concept
17 of it it's maybe a small portion of it, it's not a program
18 but you're going to find the relief now is much, much
19 greater than we had before, it's tremendous now.

20 Your fault, I mean your resolution rate out of fact-
21 finding is around 60, 65%. Relief for people. Which is
22 extremely good, extremely good. Keeping in mind that every
23 charge that goes through the system is not a good charge.

24 There are a lot of them that have to fall out and it's
25 no cause.

1 Q Would it be accurate to say based on these questions
2 and answers, that I think you've said it before right,
3 that EEOC is a complaint processing, not a compliance
4 agency.

5 A Right. No, I didn't say complaint, no, let me back
6 up, if I said it's not a compliance agency, that's what we
7 are, let me correct the record if I said that, we are a
8 compliance agency.

9 Q But what, who, what are the requirements?

10 A But complaints with the exception of systemic are
11 charge oriented, the charge must come to us, we can't
12 solicit it. Therein lies your difference between OFCC going
13 out on their own motion for affirmative action and so forth.
14 You're going to find that within age and equal pay is a little
15 different too.

16 Q What is it that you're requiring the people to comply
17 with, that's what I'm saying, what is the---

18 A To --

19 Q Thing?

20 A -- to correct the remedy, correct the alleged allega-
21 tion if proven it's discriminatory, the complaint brought to
22 us that required corrected by way of back pay, reinstatement
23 of the job, promote, whatever it might be.

24 Q I don't know whether we're getting mixed up with words
25 here but that sounds to me like that's enforcement, not

1 compliance?

2 A Well, enforcement then. I see it as compliance with
3 the law as a lawyer, I'm seeing that.

4 Q Okay. Would it be correct to say that if there is
5 anybody, any agency that has a compliance function for
6 affirmative action it is OFCCP?

7 A Rephrase your question, please, what is the question
8 again? If there is any agency --

9 Q If there is any agency that has a formal requirement
10 who is mandated for compliance to monitor compliance, with
11 affirmative action, it is OFCCP, under --

12 A I'll answer the question this way, I will say that's
13 one agency I know of. I can't speak for the entire federal
14 structure.

15 Q (By Ms. James) I feel like Dr. Perkins, I'm still,
16 you know, I've been working on this, as you know, for two
17 months, I'm still totally confused. Let me just back up
18 one little teeny clarification that you mentioned when we
19 were asking if, if your agency at any time was involved in
20 technical assistance.

21 You know, if employers called for it. And you
22 mentioned sort of in passing that you give a number of
23 speeches or EEOC holds seminars, right? We heard MALDEF
24 speak today about what they're doing in terms of that area.

25 Could you just very briefly, what are these seminars,

1 how do you determine what the need for them is, and who do
2 you invite?

3 A (By Mr. Dashiell) I can answer that.

4 A (By Mr. Jones) Answer, Sam, that's yours.

5 A (By Mr. Dashiell) Just about two months ago the
6 merchants and manufacturers association put on a seminar
7 in San Diego, Orange County and Los Angeles, and the people
8 invited were the presidents of companies, the --

9 Q Employers?

10 A Personnel -- yes, employers, all employers.
11 Mr. Thomas from OFCCP and I, Steve Talbot and some-
12 body else from the employers had a three-day travel road show.

13 Q Okay. That --

14 A And it was at that point that we discussed affirmative
15 action, but we discussed general guidelines as to affirma-
16 tive action.

17 Q That's -- oh, good, okay, so I can understand Mr.
18 Gladden's role in that, what -- what did you talk about at
19 that seminar? You said you discussed affirmative action
20 guidelines?

21 A Well, we didn't discuss affirmative action guidelines
22 as such, see, I think in terms of what the courts will do,
23 and what the courts will do might be something completely
24 different from what our guidelines say, or it isn't necessarily
25 the same.

1 So I talked in terms of what I thought the court
2 decisions were and what they would be.

3 Q Good. Which leads me to another question which we
4 really did want to ask you earlier on. Do you, as a lead
5 attorney in a district office, see a major difference between
6 what the courts are asking employers to do and what EEOC is
7 requiring them to do and what OFCCP is asking them to do?
8 Do you see a major difference there?

9 A I don't, the only difference I see is the time dif-
10 ference. For example, in the GE case, the seventh circuit
11 had said one thing about maternity leave, the EEOC said it
12 and the supreme court said something else. Well, between
13 -- between that time there is a difference. But it's only
14 a matter of catching up. The EEOC is not going to come out
15 and rule something that's contrary to what the supreme court
16 has said. But there again one circuit, for example, the
17 EEOC can bring class actions in the ninth circuit which
18 California is in, in the fifth circuit the EEOC can't bring
19 class actions. So we have a varied laws in different parts
20 of the country. And it's awfully hard for everything to be
21 consistent throughout the country. It's a matter of merely
22 catching up, there's no fundamental difference but for
23 a period of time there might be a difference.

24 Q This is the last one, I promise. Okay. So you go
25 to these seminars and talk to employers about what's going

1 on in the courts. What do you talk about with employers?

2 A (By Mr. Jones) Mine is primarily the new system set-
3 up at the commission. The people are interested in knowing
4 how we process charges, what we expect of them. And this is
5 primarily on the rapid charge, our intake procedure and
6 this ELI and CIC.

7 MS. JAMES: Thank you.

8 THE CHAIR: Thank you for coming.

9 A Gentlemen, I want to thank you.

10 THE CHAIR: We will take a ten-minute recess.

11
12 (Short recess)

13
14 (The following was chaired by Ms. Nadine Hata)

15
16 THE CHAIR: We are running behind schedule, so I would
17 like to call the last witness up to the desk. Mr. William
18 Gladden, Mr. William Thomas and Mr. Ralph Casarez.

19 Will you all state your name, occupation and position
20 for the record, please?

21 MR. GLADDEN: I'm William Gladden, the assistant
22 regional administrator for San Francisco region, office of
23 federal contract compliance.

24 MR. CASAREZ: I'm Ralph Casarez, I'm the area director
25 for the office of Van Nuys, office of federal contract

1 compliance.

2 MR. THOMAS: And I'm Bill Thomas, and I'm the Los
3 Angeles area director.

4 THE CHAIR: Thank you. I'd like to direct most of
5 my questions to Mr. Gladden this afternoon.

6

7

MR. WILLIAM GLADDEN

8

9 A. (By Mr. Gladden) Could I make a few comments before,
10 brief statement?

11 Q (By the Chair) Brief statement?

12 A. Brief statement. For the beginning -- the beginning
13 of the statement is although it's almost 5:00 o'clock
14 we're going to be willing to stay here as long as you have
15 questions, and our time is your time.

16 Q Thank you.

17 A. And we appreciate the opportunity to be here.

18 Q Well, we certainly appreciate your cooperation and
19 I'm sure your employers will note that you have been here
20 above and beyond the call of duty when we reach 5:00
21 o'clock.

22 Would you please tell us how you define affirmative
23 action?

24 A. In the context of this program I define affirmative
25 action as that action taken to insure equal opportunity

1 in all aspects of the employment processes on the part of
2 those obligated under the laws that we enforce, which are
3 Executive Order 11256, the Viet Nam Era Veterans Rehabilita-
4 tion Act, Section 402 and Section 503 of the Rehabilitation
5 Act of 1973.

6 Q. When you say in the context of this program, what
7 specific program are you referring to?

8 A. I'm referring to the executive order program.

9 Q. How many employers in your region are covered by
10 Executive Order Number 11246?

11 A. There are an estimated 30,000 employers.

12 Q. Does your office have any difficulty identifying
13 federal contractors?

14 A. We are presently getting some information that will
15 give us a better handle on the federal contractors in the
16 region. This information is coming from the EOI and it is
17 being developed by our data processing section.

18 Now, in case you may not know how the OFCCP is
19 organized, I ought to mention that the, after the consoli-
20 dation in October, the agency was brought into labor and
21 and we had the director and four major divisions, the
22 division or program operations, of program analysis, of
23 program policy, and enforcement coordination.

24 Now, the divisions have several branches in each of
25 them. One branch is the data processing branch, and this

1 branch is responsible for acquiring the data in the
2 systems to get information that we can use in the operation
3 of the program. Which includes the identification and the
4 maintenance of the universe. So our --

5 Q Of the universe?

6 A Of the contractor universe. Those are the contractors.

7 Q Has your office had difficulties in the past
8 identifying federal contractors?

9 A In the past there were, as you know, 11 separate
10 agencies involved in this program. And at one time more
11 than that. But each agency had to go on its own to try
12 to identify the contractors within their assigned standard
13 industrial classification group, and this was a, sort of a
14 hit or miss kind of thing depending upon the resources
15 available to the different agencies.

16 DOD had a large system which I suppose along with
17 GSA was the most sophisticated and they had the largest
18 number of contractors and a better fix on the universe. Some
19 of the other agencies that were smaller and had less re-
20 sources to work with had to develop the universe either
21 by questionnaire methods or by purchasing the EO1's from a
22 computer operating firm.

23 Q Now, how many federal contractors again that you have?

24 A About 30,000.

25 Q How many employees do they employ?

1 A. Now, I don't have a number on the employees.

2 Q. May we get a number from you at a later date?

3 A. I can try to get a number on that at a later date
4 and I will try to get that within the next few days.

5 Q. Great. You don't have any information at all in
6 terms of industry or type of employer or any statistics?

7 A. We don't have that broken out by this region in
8 terms of how many in particular standard industrial classi-
9 fications.

10 Q. May we secure that information from you, again in the
11 next few days?

12 A. You can get that, you can get that information.

13 Q. Our staff, then, will contact you. Thank you.

14 How many private employers in the region are required
15 to develop an affirmative action plan under the executive
16 order?

17 A. Every employer in the region that has 50 employees
18 or more and a contract of \$50,000.00 or more is required
19 to develop a written affirmative action program, and to
20 have it available at the time of review.

21 Q. How many employers would that be? Five, ten, 25?

22 A. I'm not sure. I don't have a figure on that.

23 Q. Why not?

24 A. Well, we just don't have that information.

25 Q. You don't collect it?

1 A We are unable to collect that kind of information
2 as a region.

3 Q Why not?

4 A Because of the Federal Reports Act. We can't go out
5 and ask contract, prospective contractors are you government
6 contractor? The information that we have, that I propose
7 to share with you, is information that we will get from our
8 national office, the data processing branch, which is taken
9 from 1976 EEO1 data.

10 Now, that is the most current information that we would
11 have.

12 Q Nineteen-seventy-six?

13 A That's correct. And that information is developed and
14 maintained by that branch and this is the information that
15 we use for, to assist us in the targeting.

16 Q How accurate do you judge this information?

17 A Well, there are some flaws to it because the company
18 reporting is asked to identify whether he's a contractor
19 or not. Some of them identify themselves as contractors
20 and they may not be contractors. Some of them may not
21 report at all. And so to that extent, the data may not be
22 perfect.

23 But that is the best data we have right now to
24 identify government contractors.

25 Now, there is another type of information that is

1 available, and that is the information that goes into the
2 labor department under the Service Contracts Act. Now, this
3 is limited to the extent that some contractors are not re-
4 porting there. In terms of identifying the universe of
5 government contractors, this program is a bit behind in that
6 respect because that data has not been maintained anywhere.

7 Now, the office of federal procurement policy at the
8 office of management and budget is supposed to be developing
9 a listing of all government contractors and that listing
10 is supposed to -- should have been available last February.
11 It has not come out yet.

12 And that is the listing that all government agencies
13 will be able to use. To identify government contractors.
14 And this is being done by the federal procurement data
15 system working for OFPP.

16 And that committee was established by or that office
17 was established by Congress to get a handle on that very
18 problem.

19 Q So, again you don't have any information by industry
20 or by type of employer either, again you have no --

21 A What I will be able to give you is that information
22 based on 1976 BEOL data.

23 Q Okay. Does your region have any affirmative action
24 responsibilities with state and local governments?

25 A Yes, we do.

1 Q What kind? Would you explain?

2 A Well, they're not required to develop an affirmative
3 action, a written affirmative action program unless they
4 are hospitals or universities. Now, that is the extent
5 of our affirmative action responsibility.

6 Q Let me proceed to something else.

7 Except for the 61.57 permits director of OFCCP to
8 exempt any contractor from the OFCCP affirmative action
9 requirements, and I quote, when he deems that special
10 circumstances in the national interest so require. Or for
11 national security reasons, have there been any exemptions
12 in your region granted under 61.5B which were granted for
13 reasons not specified in 61.5A?

14 A I don't think there have been any exemptions granted
15 either in the region or in the country.

16 Q None at all?

17 A None at all.

18 Q Do you believe OFCCP encourages employers to follow
19 revised order number 4 faithfully?

20 A Is this a question about the effectiveness of the
21 program? Is that -- if you don't mind?

22 Q Yes.

23 A I think it does. I think that in terms of this pro-
24 gram, as it is presently configured, I believe that it is
25 more effective than it has ever been. Now, for the first

1 time there have been allocated resources to deal with areas
2 of compliance that the agencies were unable to deal with in
3 the past. The program operations, for example, that is
4 division out of the national office coordinates and runs the
5 day to day operation of all of the regions and area offices
6 throughout the country.

7 Now, that is just one division in that office. You
8 have enforcement coordination which is another division,
9 that division coordinates all enforcement actions.

10 Now, that does not mean every enforcement action goes
11 through that divisional office, but it does mean that those
12 significant cases that have national significance will be
13 coordinated there. It means that those cases that involve
14 contractors with multiregional operations will be
15 coordinated through that, through that enforcement actions
16 against them will be coordinated through that division.

17 The office of program analysis deals with those
18 problems such as how do you develop a statistical construct
19 to improve the identification of affected classes? And
20 how do you develop a better system for availability? That
21 division is responsible for that. And then the other
22 division of program policy and the regulations, they are
23 all developed within that division.

24 The changes that have been made in the regulations
25 and in the manual have come out of that division. And since

1 the capability at the national office level that just was
2 not available in the past.

3 Now, the effectiveness of this program is really
4 contingent upon how well the very basic unit of our operation
5 functions, and that is a unit headed by module supervisor,
6 which is in the area office, and he will have from four to
7 seven people under his supervision. And that is a very
8 basic unit. They conduct the compliance reviews.

9 Now, the two gentlemen on my right are Ralph Casarez
10 and Bill Thomas, are area office directors. Now, Bill
11 Thomas heads up the largest area office in OCCP in this
12 region, and he has four module supervisors, so it means
13 that that is the very basic unit, the very basic technical
14 expert in this organization will be the module supervisor
15 and the area office director.

16 Now, Mr. Casarez has an office in Van Nuys, and I
17 think he has two or three -- two module supervisors, so
18 the very basic unit is that module supervisor's group.

19 And those are the people who are actually involved
20 in making the reviews work. That's where the cases are
21 developed.

22 Q You've given us a very glowing picture, do you see
23 any shortcomings in what just --

24 A I guess I gave you a glowing picture because I feel
25 rather -- rather happy about it. I think for the first time

1 that this program has been in existence that it is really
2 where it's supposed to be.

3 In terms of the systems that were developed and
4 in terms of the staff being available to do the jobs that
5 need to be done. You see, when the agencies had the program,
6 most of them had to concentrate on how many reviews can
7 you get done. And they -- they were wrapped up in the pro-
8 cess so much so that they could not properly analyze the
9 effectiveness of the program.

10 And the questions about the universe, we've wrestled
11 with that for some time but we're beginning to get a handle
12 on that because the Congress is for the first time interested
13 in getting a fix on the number of government contractors.

14 THE CHAIR: Dr. Perkins?

15 Q. (By Dr. Perkins) Yes, I am a little puzzled here.
16 We heard Mr. Lake, representing the University of California,
17 say that campuses are still getting conflicting information,
18 conflicting signals, conflicting standards from your area
19 offices within this region, that doesn't seem to me to
20 square with what you're saying. Can you explain that for
21 me?

22 A. Well, I don't know which instances that he would be
23 describing.

24 Q. Well, he referred specifically to the Van Nuys office
25 can answer that.

1 A Well, let me say this and then perhaps Mr. Casarez
2 would want to comment, but in different industries and in
3 higher education, for example, the national programs division
4 which is in the -- the national programs branch in the
5 operations division, in the national office.

6 Q Of OFCCP?

7 A Of OFCCP, is concerned with developing the kinds of
8 data packages, if you will, the informational or instructional
9 materials that would be used through OFCCP for those in-
10 dustries that require the kind of insight and technical in-
11 formation that we can provide.

12 Now, they are working on a package for dealing with
13 higher education. As they are working on a package that will
14 be dealing with reviews and banking and insurance, the
15 targeted industries.

16 Now, these are packages of information that will
17 enable the agency's operations in the field to be consistent
18 throughout. Now, at this point in time, there may be some
19 conflict. Not conflict but inconsistency between what
20 one area office does and what another area office does
21 until this, these reviews are coordinated. But as of this
22 moment there should be no inconsistency because we are
23 coordinating the reviews of the higher education in region
24 9 from the regional office and we are not moving in any
25 direction one way or the other without coordinating with

1 the national office. So if there is any specific instance
2 of the Van Nuys office going in one direction and another
3 office in some other direction, then we need to know about
4 that specific instance.

5 Q. Who has responsibility for the UCLA campus?

6 MR. CASAREZ: I do.

7 Q. Who has responsibility for the Irvine campus?

8 MR. CASAREZ: Santa Ana office.

9 Q. Who has responsibility for the Riverside campus?

10 MR. CASAREZ: Santa Ana office.

11 VOICE: San Diego.

12 Q. That's what I thought, so we have three different
13 offices dealing with three different campuses, when Mr.
14 Lake told us we didn't get specifics from him but he did
15 say that there was a network of affirmative action officers
16 I know that to be true, who regularly exchange information,
17 and that they are being asked for different information or
18 being given different information regarding what constitutes
19 compliance.

20 Now, can you explain that to me?

21 MR. CASAREZ: No, we certainly are not asking for
22 anything different other than what we're asking all the
23 other universities, I'm presently doing four universities,
24 there's two in the UC system in addition to UCLA, I'm also
25 doing UC-Santa Barbara. And we're also doing a couple of

1 California --

2 Q I assume you're consistent with yours, but that's not
3 the point, the point was specifically made that those three
4 campuses answering to three different area offices are
5 getting three different sets of signals.

6 A (By Mr. Gladden) I would say simply that that is
7 not so. And we would have to have very specific information
8 about it. Because there is no different format required,
9 and every show cause notice that is issued against a uni-
10 versity is going to come through the regional office
11 And that regional office monitor will determine
12 whether they are asking for the same thing.

13 Q I assume we're not talking yet about show cause
14 orders, we're hardly that far along after eight or nine
15 years, we're still reviewing plans.

16 I'll stop there. Expletive deleted. Restrained,
17 suppressed.

18 Okay. Then let's leave that part. I'm not -- I don't
19 suppose we're going to get an answer because we have two
20 different views but we obviously have a disagreement between
21 your view and their view.

22 In regard to the other part of what you were saying
23 in this glowing picture, as the Chair described it, you're
24 saying that the reviews are now really getting done, okay?
25 But we were told this morning that only two or three, I forget.

1 which number he gave, of the total of nine campus affirmative
2 action plans have been reviewed, with on site reviews and
3 that the rest are not yet scheduled. That doesn't square
4 in my mind it's --

5 A. You mean you think we ought to be reviewing all of
6 them right now?

7 Q. Well, you were saying that you were really getting
8 the reviewing done?

9 A. Well, maybe I misled you because I didn't mean to
10 lead you to believe that I thought we would be doing a 100%
11 of the universe every year. Because that is not so. And
12 beside that, I do not believe that you need to review a 100%
13 of any one of the industry groups, including the higher
14 education. Because if we do effective reviews, if we do
15 effective reviews at five or six campuses, for example, I t
16 think that just as the word gets around in other areas,
17 I think that we're going to have a tremendous impact. And
18 the reason that we are not probably running out doing as
19 many reviews as some people would expect, is that we want
20 to be certain that as we proceed, that we are proceeding
21 together. ~~That you won't have this kind of thing.~~

22 Q. All right, how many of these nine campuses, how many
23 do you think would be reasonable now after a year plus?

24 A. You mean how many --

25 Q. How many should have been done?

1 A Well, we have --

2 Q You said five or six, I mean you didn't say five or
3 six should have been done, you said when five or six are
4 done then a certain result will be achieved.

5 A Well, I think that we have something, the last count
6 I had we had 39 campuses, is that right? 39? About 39
7 units. I would say a third of those would be good for a
8 year. That's what I would think.

9 THE CHAIR: Perhaps we can get back to this toward
10 the end of our discussion, Mr. Gladden, would you, for the
11 record, once more define universe? You said you had a
12 difficult time coming to terms with it, I'd like for the
13 record, your definition of universe.

14 A The universe would be the identification of all of
15 the contractors for which we are responsible in this region,
16 to me. That's a universe of contractors.

17 Q (By the Chair) Okay, let's go on. What kind of
18 guidance does OFCCP recommend to help firms develop plans and
19 do you ever refer employers to consultants or other agencies
20 for assistance?

21 A We don't refer contractors to other agencies, we
22 don't refer contractors to consultants. Now, if a contractor
23 has a need for technical assistance, we encourage him to
24 contact one of the area office directors and they will
25 provide some technical assistance. And that technical

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assistance could be obtained either before or during the compliance review. Most of the technical assistance is provided during a compliance review.

Now, in addition to that kind of direct request, there is technical assistance provided by those type of seminars that the former witnesses described, because Mr. Thomas participated in one of those, where contractors are brought together and a workshop or a seminar is conducted by either a group or -- which will have our people as resource people, who will participate on the program, or we will make individual contacts with organizations within our area office responsibilities.

Now, in addition to that, back in January, there was a contractor seminar put on by the Hartford Brace people in cooperation with Law Week, and this was a seminar in San Francisco which was one of four held throughout the country. Contractors were invited to come in, we had Assistant Secretary Ellisberg there, the director of the program, and one or two other people from Washington, representatives from the solicitor's office and they made presentations and then we had six people from our various offices provide certain technical information to those contractors and other people who were there. This was --

Q. What kind of training do you give to your staff so that they can provide technical assistance?

1 A. The equal opportunity specialists? The equal oppor-
2 tunity specialists are given certain basic training.

3 Q. For instance?

4 A. A course A, course A is a basic course, it's a
5 basic two-week course that goes into all of the basic aspects
6 of how to do the job.

7 Now, then there is the desk audit training which is
8 another two or three-week course?

9 MR. THOMAS: Two.

10 A. (By Mr. Gladden) Two-week course which is put on
11 by the national office. One of the branches in the national
12 office division of program operations, is the technical
13 support branch. That branch coordinates the training for
14 all of OFCCP people. In other words, when a course is
15 designed, and they helped to design the course, when a
16 course is designed that branch will work together with the
17 employment standards administration, which is the main
18 agency, and they will arrange to have trainers go out to the
19 various areas in the country and put on training session.
20 For our people.

21 Now, that is the formal kind of training and there
22 is training scheduled for the desk audit, for construction,
23 for handicapped, for all of the programs. This is very
24 basic. But in addition to that there is training that is
25 conducted at the area office level by each of the area office

1 directors and their staff, and but for recent budgetary
2 constraints, we would be able to do a lot more in that
3 direction.

4 But they get the basic training that is formal
5 and they also get the hands-on training at the various area
6 offices.

7 Q Who provides training for assistance to the staff
8 so that there is consistency among all the staff members?

9 A Well, you see the -- the branch of technical support
10 coordinates the -- all of that training because they send
11 the trainers out.

12 Q So, I -- so they are a travel dog and pony show?

13 A Let me give you an example. If the technical support
14 branch is going to put on a desk audit training course,
15 they will come to me and say that we need three people from
16 your region to be trained as trainers to put on the desk
17 audit course for the next nine months.

18 So I will send them three people and they want top
19 people, and those three people will go to Washington or
20 wherever they're going to get the training, the trainers'
21 instructions, and then those people will begin to work
22 out of that branch to go to San Antonio, which is out of my
23 region or some other place and work with a team to put on
24 that desk audit training.

25 So, that is the way that works.

1 Q What do you believe are the principal problems facing
2 employers trying to follow OFCCP regulations?

3 A I think that the principal problem right now is
4 one of getting over shock.

5 Q Could you explain?

6 A And the reason I say that is what I hear so much
7 from contractors and lawyers is that, you know, for years
8 I was reviewed by HEW. And they didn't ask for this or that.
9 And I was reviewed so long by DOD and they didn't ask for
10 this or that and now here you come, OFCCP, and you've
11 changed your rules.

12 Well, the rules haven't changed, what is happening
13 for the first time is that there is one program and one
14 voice, and we have a program that is not run by personali-
15 ties, but it is run as an institutionalized kind of enforce-
16 ment program or compliance program.

17 And what we will have is people adhering to the manual
18 and the regulations more closely than they ever did in the
19 past. And so this is a bit difficult for some contractors
20 to accept.

21 Q THE CHAIR: Dr. Perkins?

22 Q (By Dr. Perkins) Mr. Gladden, wouldn't that have
23 been the same description that we would have heard from
24 OCR-HEW insofar as the area of their responsibility before
25 the reorganization?

1 A You mean they would have said that --
2 Q Yes. How have things changed?
3 A Well, who would they be saying that about?
4 Q They would have said it to the University of Cali-
5 fornia, for example?
6 A But you see, OFCCP never conducted compliance
7 reviews.
8 Q I know.
9 A They coordinated the work of HEW and defense or
10 whoever the compliance agency was.
11 Q But in that case OCR-HEW had sole responsibility for
12 the university, so wouldn't that have been true?
13 A No, they wouldn't have had anyone to say -- the
14 university would not be able to say we were reviewed by
15 somebody else and this is what they asked us to do and now
16 you come along and ask us for something else.
17 Q Now, who's the you, the you is OFCCP that's coming
18 along?
19 A Maybe I don't understand your question, could you
20 put it to me again?
21 Q Yes, I'll try. Before OFCCP became the responsible
22 agency, so far as higher education was concerned, that agency
23 was OCR, am I correct?
24 A That's right. That's right.
25 Q OCR had sole responsibility with a couple of exceptions?

1 A. For that assignment, yes.

2 Q. Then wouldn't, wouldn't higher education have said
3 exactly what you have just said about OFCCP?

4 A. If OFCCP had been reviewing the higher education
5 before OCR --

6 Q. Now you're -- you're --

7 A. Well, then I would say no because there was no one
8 reviewing them except OCR before.

9 Q. Exactly my point. They were then confused, why
10 should they be less confused now when the -- the only
11 answer you've given to the question was that there's now
12 only one agency, correct?

13 A. Uh-huh.

14 Q. I'm saying that before there was only one agency and
15 they were confused, why should they -- why should that prob-
16 lem have now been solved?

17 A. Because OFCCP was the supervisor and the policy making
18 agency for this program. And in a great many instances, the
19 agencies administering the program were not following the
20 guidelines and the procedural requirements of OFCCP the
21 way they wanted them followed. And there was --

22 Q. OFCCP was the parent agency or the agency to which
23 OCR was responsible?

24 A. They were the policy making agency, they were the
25 lead agency, if you will.

1 Q. Okay.

2 A. They provided the overall supervision and guidance
3 for all of those programs in each of those 11 agencies.

4 Q. So now we're dealing with the agency directly the
5 problem should be solved?

6 A. That's it exactly.

7 THE CHAIR: Let's proceed to other things, then,
8 or let's finish off the discussion of the employer.

9 Do you believe OFCCP requirements place a burden on
10 employer resources, an unreasonable burden or is this
11 balanced by employers' gains?

12 A. I think that that has been blown tremendously out of
13 proportion. Out of -- employers say that the program is
14 costing them so much money in order to develop these dif-
15 ferent kinds of analyses and prepare a lot of paper, and I
16 just don't believe that that is the case.

17 And I remember years ago when OFCCP was trying to
18 get through a form A which would have meant that the con-
19 tractors could report and selfanalyze their compliance
20 status, that this would not fly because one contractor,
21 Ford Motor Company, went to court and said it would cost
22 them, I don't know how many million dollars, to develop this
23 kind of thing.

24 You know, and that was supposed to have been a method
25 that could have been used to cut down on the mass of paper

1 that was involved. I just don't believe that. Now, I will
2 say that as our people get the kinds of data packets that
3 we need to have; and as the contractors get over the shock
4 of the supposed change in signals, with one agency, that the
5 impact will be less severe in terms of time.

6 And now when they begin to say that it's costing
7 them so much money, I guess the only argument that could be
8 made is that, if Ralph or Bill's people go in to an establish-
9 ment and spend ten days, that they have to interphase with
10 so many people at that establishment, whereas if they could
11 go in there and spend three days or four days, that's
12 a savings in money and that's the kind of thing that I see
13 we need to get to.

14 Q (By the Chair) You tell us you don't believe it's
15 going to place a burden on employer resources what leads you
16 to say I don't believe, anybody can say I don't believe
17 that's true. Why are you saying it?

18 A That it -- because the fact of the matter is all of
19 the employers benefit, and employees benefit from affirmative
20 action. And they benefit from compliance reviews. Every --
21 every corporation that has been subjected to good reviews
22 has a better organization than it did before the reviews
23 are started. And the affirmative action people, if they
24 are honest with us, will tell you that. I mean it's a
25 better work place. Because of those reviews.

1 And so I just think that the advantages far outweigh
2 the disadvantages. Now, in terms of what it costs the
3 government to do business with a discriminating employer,
4 I think that one of our functions is to insure that there
5 is that kind of compliance, because the government does not
6 want to do business with companies that are discriminating
7 and not complying.

8 Q How do you insure that there's that kind of compliance?

9 A I think that what we have to do is conduct a certain
10 number of reviews with considerable impact and they must
11 be very good reviews. I think that the present manual
12 affords the tool and the guidance to have very effective
13 reviews conducted, and if our people follow that guidance,
14 I think that we're going to be certain that the contractors
15 we review are in compliance and those that we don't review
16 that might be in that same industry.

17 Q There are a lot of if's, is all of this going to be
18 in the future? How do you assure that these if's will turn
19 into will or shall?

20 A Well, let me put it this way, I think that there's
21 a gross misunderstanding on the part of a lot of people about
22 this program. And some of it is purposely misunderstood
23 and a lot of it is just out of ignorance as to how programs
24 like this work.

25 You can take any program such as a criminal enforcement

1 program --

2 Q I'm not talking about a criminal enforcement pro-
3 gram, I --

4 A I realize that, I realize that, but I'm answering
5 your question. You can take an enforcement program where
6 you're dealing with drug abuse or whatever. Now, you can
7 have everybody doing their own thing and you're going to
8 have a few superstars and some spectaculars here and there.
9 But if the program is well organized and institutionalized,
10 and they have their basic procedures, you may not have
11 a lot of spectaculars, but you will, in the long run,
12 over a period of time, and here's where the if comes in,
13 you will have a program that will be very effective by virtue
14 of the fact that enforcement is sure and violations are
15 identified at a very early stage.

16 And what I'm suggesting to you is that if this pro-
17 gram is allowed to continue as it is presently configurated,
18 that you will see a kind of dramatic change in the work
19 place that is based purely on the fact that the systems are
20 in place and that they're working.

21 Q That you can guarantee dramatic change in a work
22 place?

23 A Well, when I say me, I'm just saying that, you know,
24 the agency as a whole.

25 Q Let's go on to something else and we may come back

1 to that.

2 Is there adequate data for employers to develop
3 meaningful utilization analyses?

4 A. That is -- that is an area that is presently under
5 study and they're trying to get a contract let in the
6 national office where they will have some means to get the
7 right kind of data that will be effective throughout
8 all of the contractor community? When will this contract
9 be let and what kind of --

10 A. Now, they've set aside several million dollars.

11 Q. When?

12 A. For this project. Now, I don't know when it's
13 going to be let. But I do know that that contract is being
14 developed. They are developed an RFP for it, which is a,
15 you know, request for the approval to purchase it, and they
16 have the money to do it, it has been set aside.

17 And as soon as they get the RFP developed, then they
18 will be able to find a contractor to do it.

19 Q. (By Dr. Perkins) You're saying that this is under
20 study, a euphemism for saying that it's presently pretty
21 badly mssed up?

22 A. No, I'm not saying that, I'm not saying that. What
23 I'm saying is that it is -- when I say it's under study,
24 there is a branch in the national office that special
25 analysis --

1 Q Well, obviously everything isn't okay or we wouldn't
2 be going to spend that many million dollars to correct it.
3 How would you characterize how bad it is?

4 I'm not -- I don't mean to put words in your mouth,
5 I'd just like a definition?

6 A Well, I think that -- well, how bad it is is that the
7 contractors are most uncomfortable with the inexact nature
8 of our methods for determining availability --

9 Q If I'm a contractor and I use that, I use that in-
10 formation, do I have any security at all knowing, in my
11 assumption that I'm okay then?

12 A Do you -- I didn't get that.

13 Q I develop my affirmative action plan, base it on
14 that data, am I certain that OFCCP is going to be satisfied
15 with me?

16 A Well, we're going to accept the best data that is
17 available.

18 Q Is it going to get the job done?

19 A It, based on -- the job is going to be done only as
20 good as the data is. If the data is defective --

21 Q How good is the data?

22 A Well, it's the best that we have, that's all I can
23 say.

24 DR. PERKINS: Okay, I give up.

25 Q (By the Chair) Are these utilization analyses, then,

1 in effect, just paper exercises?

2 A. Well, I don't think they're paper exercises because
3 I think you can see the change in the -- in the work place,
4 in the work force. You can see that. There are changes.
5 And if they were just paper exercises nothing would be
6 happening.

7 Q. Based on the data you have?

8 A. Well, we know, we know what the contractors have
9 accomplished at the end of a period of review.

10 Q. (By Dr. Perkins) Could you take an industry and
11 give us a specific, I mean spell that out?

12 A. How do you mean?

13 Q. You say that the evidence is in the change of the
14 work force. Pick either an employer or an industry and
15 tell me what change has taken place as a result of this?

16 A. Well, I can't pick an industry at this time. But
17 I can say --

18 Q. But you can sit there, apparently in full confidence
19 in saying that it's gotten much better, how can you do one
20 if you don't have the other?

21 A. Well, I think you could do the same thing, but
22 what I'm saying --

23 Q. I wouldn't do it if I didn't have some data.

24 A. Well, it's done every day, it's done every day, it's
25 a projection based on the fact that we are now --

1 Q All right, I will give you a specific example in
2 reverse, I happen to know the University of California
3 very well, that's the reason I referred to it a couple of
4 times. I would tell you that after this many years of
5 effort things have changed very, very little.

6 Now, if you're going to tell me the test is in the
7 results, I'm telling you there are not very many results.

8 A Well, that's one university, now in terms of --

9 Q Then give me a contrary example.

10 A Well, I can't give you a specific example.

11 Q Okay, let's take the banking industry, there has
12 been some major change accomplished, Bank of America,
13 result of a consent decree, Security Pacific, I believe,
14 result of a consent decree, can you make the same kind
15 of statements about the banking industry in general where
16 there has not been a consent decree?

17 A Well, let me say this, in --

18 Q Can you answer that question first or --

19 A No, I can't make any statement about it at all.

20 Q Okay, thank you, but that's two major industries --

21 MS. GILLETTE: The gentleman is here responsible
22 for the University of California, would you agree with the
23 statement? Aren't you responsible for monitoring the Uni-
24 versity of California --

25 MR. CASAREZ: Oh, I'm sorry, I thought you were asking

1 Mr. Gladden.

2 A (By Mr. Gladden) We don't have that information, I'm
3 sorry.

4 Q (By MS. GITTLETT) The statement was made that not
5 much change has been made at the University of California
6 in all that period of time and I was asking if you would
7 concur with that?

8 MR. CASAREZ: We're currently doing a compliance re-
9 view on UCLA, and UCSB also. But there's presently a --
10 we're awaiting an appeal that had been made to the Secretary
11 Lamb by -- by the University of California-Berkeley, and
12 also the -- our department is also is appealing, which will
13 decide whether we can have access to certain records that the
14 university, some university systems have failed to provide
15 to us.

16 DR. PERKINS: That relates only to faculty, how about
17 the non-faculty area?

18 A (By Mr. Casarez) Well, we have put the reviews, they're
19 stable at this present time until we get a decision from the
20 secretary.

21 Q (By Dr. Perkins) In spite of the fact that we're
22 talking about only one part of the university? That's under
23 contest?

24 Mr. Gladden, with all due respect, I -- it seems to
25 me that we have to be a little more precise. Either you have

1 some information which permits you to make statements about
2 this kind of substantial improvement or you don't have. And
3 if you have it then would you please send it to us?

4 A (By Mr. Gladden) Well, the only thing is this, I
5 think that everybody in here should know that the office of
6 federal compliance, as an agency, came into existence, you
7 know, as a compliance agency, came into existence October 8,
8 1978. At that point in time there was the beginning of data
9 gathering on an industrywide basis. The higher education,
10 the banking, the insurance, those key industries, we began
11 to pull the data together. That is benchmark data.

12 Everybody knows you don't start off with that kind of
13 of information right off. Now, at the end of this fiscal
14 year, they will be able to tell you what has happened in the
15 banking industry. Up to this point all that has been avail-
16 able is what treasury did with the banks prior to consoli-
17 dation.

18 Q Okay, then if you're dependent on data which is not
19 yet in, can we agree that your statement about improvement
20 was based on what you expect to see or hope to see, rather
21 than what you've seen --

22 A That's right.

23 Q -- that's really all I'm disagreeing with you on.

24 A Well, that's my -- that's my belief based on what I
25 see.

1 Q That's your hope, okay, your belief.

2 A And that's as far as that goes, is it's my belief.

3 THE CHAIR: Based on unsubstantiated data at this
4 point.

5 Okay, let's proceed to something else. How many
6 affirmative action plans did your region review in fiscal
7 '79 and how many have you reviewed in fiscal '80?

8 A I don't have that information. I can get that for you.

9 Q (By the Chair) Okay, we will see you next week, then,
10 for that kind of information.

11 What criteria does OFCCP use for selecting contractors
12 for review?

13 A The -- I guess the basic criteria might be first of
14 all preawards. As you know, any contractor with, receiving
15 a contract of a million dollars or more is subject to a
16 preaward clearance of supply and service contract. Now,
17 those are usually conducted on a priority basis and we do
18 have a substantial number of reviews that are initiated
19 from the preaward requirements where a contracting officer
20 must call OFCCP for a clearance. Then there are complaints
21 that come in.

22 And if we get complaints we can conduct reviews based
23 on that complaint information.

24 The other method would be the general selection of
25 contractors for review based on that analysis of the EO1

1 data that I mentioned earlier, where you determine the pene-
2 tration ratio of minorities and women in the work forces
3 and you determine which ones would be right for review
4 based on the size and the industry and the type of activity
5 you had have with them. Those are the basic methods that
6 we use to select contractors for review.

7 In construction we try to select those contractors
8 that have 8,000 hours of work on, and that would be feasible
9 for review. Now, the important thing about the program as
10 it stands now, is that there are priorities established.
11 Priorities in terms of industry.

12 Ralph or Bill, if they had been operating under the
13 prior organization, with an agency, and if each one had
14 responsibility for a different agency, they would be going
15 all over the lot or wherever they felt like going.

16 Well, that isn't the case today. What's happening
17 today is that certain industries are targeted and each
18 region identifies those industries within their region that
19 should be included in their review plan so that they will
20 follow a national priority rather than a regional or
21 an area office priority.

22 And so it means that every region in OFCCP is con-
23 ducting some banking reviews. Every region is conducting
24 some insurance reviews. And at the end of this fiscal
25 year, you and here we go again into this area that you're

1 concerned about, at the end of this fiscal year you will be
2 able to know what happened in banking.

3 You -- we wouldn't have that kind of information
4 before. Or what happened in insurance. Because everyone
5 has been working in the same kind of industry, at least to
6 some degree depending on their resources.

7 Q. Let's go back to these priorities, who selects the
8 priorities, on what basis are these priorities determined?

9 A. The national priorities? Those are determined at the
10 national office in the division of program analysis. And
11 they are based on studies that they conduct there.

12 Q. Are they spelled out for you? Are they clearly spelled
13 out for new guidelines?

14 A. Yes, the --

15 Q. As priorities?

16 A. The priority industries, yes.

17 Q. May we get a copy of that?

18 A. Yes, you can, that's -- that's releasable.

19 Q. Does OFCCP have a checklist for reviewing plans, the --

20 A. You mean an instrument that they use to identify
21 parts of a plan that they have reviewed?

22 Q. Right.

23 A. Yes, there is. Is there a review document? Yes.

24 Q. (By Ms. Gillette) Compliance or noncompliance?

25 A. Yes, yes, we have that.

1 THE CHAIR: May we have a copy of that for our
2 staff?

3 A Yes.

4 Q (By Dr. Perkins) How detailed is that?

5 A It's quite detailed.

6 Q So it really is a checklist,, it would be fair to
7 describe it?

8 A Of everything that they will check, yes. Could
9 someone keep a record of what you want from me, please?

10 All right.

11 Q THE CHAIR: I'm sure the staff is, thank you.

12 What kind of written instructions and training does
13 OFCCP provide its staff on reviewing affirmative action plans?

14 A The instruction is in the manual. And that manual
15 has all of the steps that they are to follow.

16 Q (By the Chair) Has this been sufficient?

17 A Yes, I guess I can ask these gentlemen here because
18 their people work with it every day.

19 MR. THOMAS: That's one of the happy things about the
20 OFCCP reorganization. It has, for the first time, been
21 provided a uniform manual that all EEOE's are using, and
22 one of the objectives of the reorganization was to have uni-
23 formity and consistency in the way we operate.

24 The first year we had a draft manual. There were a
25 lot of changes that were necessary, based upon field experience,

1 and those changes were made and after one year, that one
2 year to the exact month, we had a manual which will be
3 updated on a quarterly basis to make sure it's a dynamic
4 document, and so that's one of the things that I'm most
5 pleased about.

6 Q In the interest of time we won't ask you to spell out
7 the written instructions and the training program but may
8 we get copies of this for our staff?

9 MR. THOMAS: Yes. Of the manual?

10 Q Right.

11 MS. JAMES: We have that.

12 MR. THOMAS: The manual?

13 A (By Mr. Gladden) Yes, I think they got it from the
14 national office.

15 Q (By the Chair) Fine, does OFCCP maintain statistics
16 on the deficiencies and violations it observes in reviewing
17 plans?

18 A Yes.

19 Q Would you explain this?

20 A I don't have the statistics but you can get that kind
21 of information. It is being put, all of that data is being
22 put into the data collection system, and that is something
23 else that is relatively new, in that it is part of the new
24 OFCCP. And you can get an analysis of what we have done,
25 with managing the entire agency in terms of the kinds of
violations found, and it will give you everything from

1 hiring, you know, promotions, applications --

2 Q Can you give us an idea of what these principal
3 deficiencies and violations were?

4 A Not off-hand. They just run the gamut of -- the
5 employment process.

6 A (By Mr. Casarez) We are required to submit every
7 month a list to the regional office of all the actions that
8 were completed. Every action, be it a compliance review, in
9 service supply and construction or a complaint we have to
10 list there the deficiency, the basis for each entry where
11 that would find it.

12 Q Well, then, can you give us, for the record, some
13 example, what are some of the most frequent violations,
14 what are some of the principal deficiencies and how often do
15 these things occur?

16 A Hiring, promotions but they're all corrected, what I'm
17 saying is these actions that we report have been completed
18 but these deficiencies were found in the affirmative action
19 plan. But they basically deal with hiring, promotions, what
20 else?

21 A (By Mr. Thomas) Well, can I answer that? To be
22 more specific, there are two types of deficiencies, one
23 would be of a proforma nature where a contractor would refuse
24 to provide an affirmative action program, refuse to provide
25 access to data, records, refuse us, refuse us in to conduct

1 accomplishment review, things like that. Those are what we
2 call pro forma.

3 Q How frequently does this occur?

4 A That, I would say that the frequency is not too great
5 now. I think there are a lot of lessons have been learned
6 over the years. I would say probably 3% to 5%, would you say
7 that would be about right?

8 A (By Mr. Gladden) Yes.

9 Q He doesn't know, he doesn't have any statistics.

10 A (By Mr. Thomas) Well, it's a very low percentage.
11 But as far as the substantive violations it would be probably
12 in the goals and timetables, failure to establish or implement
13 goals and timetables. And to implement would be another
14 major class would be failure to meet the goals or -- and
15 also failure to provide reasons for not meeting those goals.

16 In other words, lack of good faith effort.

17 Another major area would be affected class and this
18 is a systemic discrimination of persons who have been denied
19 opportunities and are part of a class who, because of
20 present -- of past discrimination, continue to suffer the
21 present effects of that past discrimination.

22 It's different from class action however, because
23 the government itself is the one who determines, you know,
24 that people are suffering. Determines how much they're
25 suffering and determines what the restitution would be.

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In a class action situation, people know they're suffering. They can tell you how they're suffering and that's why they file these class complaints and they know exactly what restitution should be provided. But the government is the intervenor in the affected class situation. Because we are looking out after the interests of employees of government contractors, in this sense I think we could be dictatorial and we should be dictatorial in saying that in order to resolve this thing, it must be resolved to the satisfaction of the government.

Now, it's quite possible that an employee of a government contractor may be willing to settle for less, but not the government. And in that situation --

Q Let's talk about the contractors, how many contractors can you review in a 12-month period?

A In region 9, the projected number of reviews is about 726.

Q To what depth, what kind of interview or review are we talking about?

A We're talking about a complete review under the present procedures.

Q And for each individual this takes approximately how much time?

A Well, there's a 60-day time frame that they're supposed to be completed in and this is not always possible.

1 Because some cases take longer and there we get into the
2 question of those cases involving substantive violations
3 such as the affected class. They take considerably longer.

4 Now, in the whole of OFCCP, that is the agency as a
5 whole, there were 329 cases going on at the end of the first
6 quarter, in this category. Those affected class cases that
7 take longer. Those are the ones that really get down to
8 substance.

9 Q What about your region, how many cases?

10 A Thirty-two of those are in our region. I want to
11 correct something that I mentioned, not correct it but add
12 something to something I said earlier about the scheduling
13 of reviews.

14 Two areas have been called to my attention, one is
15 the directed reviews. We may be directed to do a review
16 by headquarters, the national office, and also we may have
17 to conduct a review based on congressional interest of com-
18 munity organizations may identify certain problems and we
19 will get into a review, those would be factors that we
20 would consider.

21 Q let's go back to the contractors again. What's been
22 your experience in calling on these contractors for the
23 first time, do you find that most have plans?

24 A Why don't I let you guys react to that?

25 A (By Mr. Gladden) There's something I'd like to say.

1 after you've finished.

2 A (By Mr. Thomas) Yes, we find that most contractors
3 do have plans. I would say that we've been in business
4 long enough for the word to get around that it's necessary
5 to have one if they have more than \$50,000.00 in government
6 contracts.

7 Q When you say most is this 99% of the time or 65?

8 A I would say probably better than 90% of the time. The
9 big problem we have is they're not acceptable affirmative
10 action plans.

11 Q Therefore what kind of sanctions exist if an employer
12 does not develop or implement a plan?

13 A Let me say this, it may be that if a contractor
14 has made a good faith effort to put together what purports
15 to be an affirmative action program, in other words, contains
16 all the necessary ingredients of the plan, but it has
17 deficiencies. We will go ahead and proceed with the review.
18 However, if the --if it's the Van Nuys telephone book, pardon
19 me for saying that, then in other words, it doesn't even
20 resemble an affirmative action program that would be
21 reason for us to issue an immediate show cause and the area
22 directors have the authority in that instance, in pro forma
23 type of situations to issue who cause notices.

24 If they have a, what purports to be an affirmative
25 action program, then we will proceed with the desk audit

1 and the review, and then if the -- if the deficiencies are
2 benign, we would probably -- we would only require, definitely
3 only require a letter of commitment from the contractor.

4 If they are serious, then we would require a concilia-
5 tion agreement which is a legal document, and it -- this
6 conciliation agreement would enable us to bypass, if need
7 be -- well, in fact in instances, all instances we bypass the
8 show cause process and take a contractor to, directly to
9 a formal hearing.

10 Q. Is this the only circumstance under which conciliation
11 agreements become necessary or are there other instances?

12 A. In complaint situations we also have conciliation
13 agreements.

14 Q. What data does your region maintain on enforcing
15 actions for noncompliance with affirmative action requirements?
16 Do you have any data?

17 A. (By Mr. Gladden) We, as was indicated earlier, we
18 do make our regular reports in terms of the actions completed,
19 and that would capture the show cause notices, the concilia-
20 tion agreements. We have that data for the region and it is
21 also maintained nationally.

22 Q. How long is this data kept? For how long has this
23 data been kept?

24 A. Well, it has been kept since October 8, 1978, so we
25 could give you the data for, you know, the last two years.

1 Q. Great, thank you.

2 A. Up to the present time. But there's something I'd
3 like to add about the enforcement, and that would be that
4 during FY79, there were more than 2,400 reviews throughout
5 the agency, and 1,300 of them were combined, and 300 of
6 those reviews involved affected class.

7 And the settlements in FY79 totaled 3.7 million
8 dollars in back pay for 2,160 recipients, and five and a
9 half million dollars in other financial settlements. in these
10 cases in Now, some of the large settlements in these cases
11 involved Chase Manhattan Bank, which was a two million,
12 dollar settlement, Consolidation Coal, 370,00, Hoffman-
13 LaRoche, one million, Merck and Company, that's M-e-r-c-k,
14 3.2 million and Kellogg, 575,000 and finally the Uniroyal
15 case which was 5.2 million, and I just want to point those
16 figures out, because they do show that something is happening
17 here in the program. And I just thought I would --

18 Q. Right, I'm pleased with keeping statistics, during
19 the fiscal year '79 and thus far in fiscal year '80 on how
20 many conciliation agreements, for example, were entered
21 in your region?

22 A. Now, I don't have that information where I can just
23 give it to you right now, but I do have it.

24 Q. It will be made available to our staff?

25 A. That can be made available.

1 Q Then let's go on, perhaps, to something that's non-
2 statistical, since you don't seem to have any other kind of
3 statistics at your fingertips.

4 Who monitors compliance review agreements?

5 A The area office.

6 Q Each of you are individually responsible?

7 A (By Mr. Casarez) Every conciliation agreement has a
8 section in it that deals with reports, and contractors
9 usually are required to report on a quarterly basis.

10 Q Are there any kind of internal written guidance,
11 guidelines provided to you or to your staff on these specific

12 A Just the manual, the manual provides all our guidance
13 for us.

14 Q So you rely entirely just on that one manual, no other
15 internal procedures or guidelines?

16 A No other.

17 Q One final question, do the requirements for federal
18 contractors under revised order number 4 conflict or dupli-
19 cate other federal agencies' requirements these contractors
20 have?

21 A (By Mr. Thomas) May I?

22 MR. GLADDEN: Go ahead.

23 A (By Mr. Thomas) You know, prior to the presidential
24 reorganization of 1978 there was an equal opportunity
25 coordinating committee comprised of all of the civil rights

1 agencies active in this field. When the consolidation
2 occurred the President saw fit to place this function,
3 this coordinating function, into equal employment oppor-
4 tunity commission, and so Eleanor Holmes Norton and her
5 staff have the responsibility for insuring that there is
6 not duplication across agency lines, across program lines.
7 And I understand that she's doing a very vigilant job on
8 that.

9 Q Do conflicts occur?

10 A I imagine they do.

11 Q You don't know of any?

12 A I don't know of any but I imagine that at the depart-
13 mental level, they can probably cite a number.

14 Q Mr. Gladden?

15 A (By Mr. Gladden) Let me explain something about that
16 that Bill brought up. Before I came out here I was in
17 Washington, and I was in the office of procurement
18 coordination in the enforcement coordination division. And
19 in that office, we got a lot of requests for delegations,
20 we got a lot of the requests for some kind of continuing
21 operation of programs in agencies that had not been picked
22 up during the consolidation.

23 Now, the consolidation was affected, but there were
24 many little loose ends out there. For example, federal
25 highway administration still had responsibility for

1 contractors working on highways under the Federal Highway
2 Act. But we would be reviewing those same contractors per-
3 haps, because there was a federal contract involved.

4 Now, that is the kind of thing that existed and the
5 agencies wanted, some of the agencies wanted some kind of
6 delegation. This question was put to the EEOC and it was
7 also carried as far as OMB. OMB said there will be no
8 delegation to any agency, and that the best we could do would
9 be to develop a memorandum of understanding, we meaning the
10 national office level people, not us down here, a memorandum
11 of understanding with the agency to exchange information.

12 Now, one of the -- one of the people who testified
13 earlier mentioned some contact that they had had with OFCCP.
14 Now, I don't know who they called that did not return their
15 call, but I do know that a proposal came in to Washington
16 from that office asking for some kind of arrangement to be
17 worked out, that proposal was sent to our policy program
18 people and then on to OMB and it got the same kind of treat-
19 ment. The best we can do --

20 DR. PERKINS: It came from Washington?

21 A. It went to Washington, yes.

22 There was a proposal that went to Washington or package.

23 Q. (By Dr. Perkins) From where?

24 A. From the -- the organization the lady represented who --

25 Q. The office of fair employment and housing?

1 A. Yes, that organization from her director.

2 Q. (By the Chair) What's happened to this proposal?

3 A. Now, that proposal has been sent back here because
4 we can not enter into any kind of delegation, the best that
5 we can do is exchange information.

6 Q. May we have a copy of that memorandum of understanding?

7 A. (By Mr. Gladden) We don't have one developed yet.
8 You want a copy of what OFCCP did with respect to the re-
9 lationships with other agencies. We can get a copy of that
10 directive, that came out in a directive.

11 A. (By Mr. Thomas) I think it did.

12 A. (By Mr. Gladden) Advising us that we could not enter
13 into certain arrangement but I'll get you a copy of that,
14 there's no problem.

15 THE CHAIR: Are there any questions from the committee?

16 DR. PERKINS: I have a couple.

17 Q. (By Dr. Perkins) I have a little difficulty getting
18 statistics on a regional basis so I won't go into that.

19 A. Well, let me explain, if I had known you wanted those
20 specific statistics on a regional basis, I would have
21 brought them with me.

22 Q. Well, I'm just saying since we don't have them, I want
23 to see if I can get from Mr. Casarez and Mr. Thomas, some --
24 since October, 1978, you've both been in the offices that
25 you're in now?

1 A. (By Mr. Casarez) Yes, sir.

2 Q. So we're talking about a year and a half of experience,
3 personal experience. How many times in the Van Nuys office,
4 Mr. Casarez, have you solicited letters of what do you call
5 it, letters of compliance or letters of commitment?

6 A. Letters of commitment?

7 Q. I mean approximately? I'm not going to do -- we're
8 not going to check the figures.

9 A. I would say that, approximately maybe 50% of our
10 reviews require a letter of commitment.

11 Q. Require letters of commitment which suggests, then,
12 that in the industries, either there was sufficient lack
13 of information or sufficient lack of willingness to comply
14 so that half of the people, half of the industries have
15 fairly substantially defective affirmative action plans
16 when you first review them?

17 A. That is correct.

18 Q. How many times have you gone to show cause order?

19 I assume that's a fairly small number or is it?

20 A. No, we have -- there's two types of show causes, the
21 procedural show cause which I can sign at the area office
22 level, and those are for affirmative action plans that are
23 not responsive, and also, that also includes construction
24 contractors that fail to report, and in addition, the other
25 show causes for major deficiencies are sent to the regional

1 office for Mr. Gladden's signature. Would I have to tell
2 you that in terms of percentages?

3 Q Yes, that will be --

4 A Maybe 20%.

5 Q Maybe 20% show cause. So again there's pretty sub-
6 stantial noncompliance and you're now moving into a fairly
7 serious level?

8 A Uh-huh.

9 Q How many conciliation agreements?

10 A I don't have the exact number. Because I have some
11 cases that are still pending out there and they're really,
12 in other words, they're just recommendations and until
13 they're approved by the regional office or set out by Mr.
14 Gladden, they're not really approved.

15 Q How long does it take to get approval?

16 A It depends on the individual case.

17 Q Well, give us a couple of examples, let's take a
18 short one and a long one.

19 A I'm trying to figure out where -- let's see. A
20 long one --

21 Q You mean you can't remember that far back?

22 A No, we have had a -- we have had some that have
23 taken, say about three months approval.

24 Q To get approval once everything has been done --

25 A Yes.

1 Q -- in your office? And --

2 A. And those are, those involve monetary, you know,
3 relief or -- for the complainants, cases, in this case --

4 Q. Do you think that's a reasonable period of time?
5 Personally?

6 A. Myself, personally?

7 Q. Yes.

8 A. No, I guess not, but you don't --

9 Q. Why not?

10 A. The other thing is always there's always, contractors
11 always has an appeal right and sometimes that's why it
12 takes longer.

13 Q. Consent decrees?

14 A. We're not -- we're not involved in consent decrees.

15 Q. Has your office recommended in that 18-month period
16 a cutoff of federal funds to any contractor?

17 A. I've recommended administrative complaints, adminis-
18 trative hearings against contractors, about --

19 Q. And about how many?

20 A. About six.

21 Q. About six? What's their status? Approved and pro-
22 ceeding, denied or pending?

23 A. They're pending.

24 Q. All of them are pending?

25 A. Yes.

1 Q How long?

2 A They vary. One has been up there maybe, I got a
3 couple of them at the national level, one is UCLA, it's
4 been there, I'd say maybe six months. And the other one is,
5 I got two that have been there about six months but they're
6 both at the solicitor's up in the national office.

7 Q I want to come back to you in a minute to just follow
8 that UCLA up.

9 Mr. Thomas, in your office, any substantial difference
10 or more or less the same? We won't go through it again if
11 it's more or less the same.

12 A (By Mr. Thomas) I would say that probably more than
13 50% letter of commitment, commitments. I would say 60, 65%.
14 But say --

15 Q Will either or both of you venture a guess as to
16 why? Is it primarily lack of information or is it primarily
17 lack of good will? Good faith compliance?

18 A Well, let me just say this, as I pointed out before,
19 you know, prior to the reorganization there was a lack of
20 the necessary consistency in program operations, some
21 organizations had very excellent programs, others had lousy
22 programs. There were organizations that had a very effective,
23 large staff that would be doing a job, others that had
24 very small staffs.

25 I happen to have been with the treasury department, had

1 a very small staff. I had three field people covering all
2 the banks and savings and loan institutions in nine states
3 which we haven't talked about. So I guess that some agencies
4 had known reputations for enforcement, had good technical
5 assistance over the years and therefore had -- were further
6 along the way, so that -- and that's one reason why I think
7 we have the targeting industry concept that came out.

8 Q. Let me ask you this question, say just the last three
9 months, is there -- has there been a substantial change in
10 the number of reviews of those resulting in letters of
11 commitment?

12 A. I would say that that wouldn't be that much of a
13 change.

14 Q. You see why I'm asking --

15 A. Yes, I do.

16 Q. -- because if the answer is the answer you gave,
17 then 15 months of experience with OFCCP the word should have
18 gotten around and we should then see a change and that
19 would maybe suggest the problem's information or something.

20 A. Let me just highlight the problem we have.

21 ~~Wilson Rujo~~ (Phonetic), at one of our national meetings,
22 brought out a very interesting point. He said that the first
23 year or longer, in the reorganization process, would be
24 actually putting the program into effect. As I pointed
25 out, we didn't have our manual until after the first year.

1 As far as regulation change, most of you know that major
2 changes in our regulations were just sent out last year.

3 In fact, we had a final rule making came out December
4 28th and even a larger document, proposed rule making, I
5 have copies here if you'd like to have one. So that our
6 regulations aren't even in place.

7 So, what Weldon was pointing out was the first year
8 we're involved with still planning. Still developing systems.
9 The second year and third year we'd still be involved with
10 trying to set up a good program of implementation. Doing
11 additional training of our own staff, providing a technical
12 guidance on the national level to our contractors, and he
13 pointed out then that this was a dramatic reorganization,
14 and he predicted it would take up to five years to put this
15 program firmly in place.

16 This is what Weldon said.

17 Q. It doesn't surprise me.

18 A. And I mean this is probably -- there probably has
19 never been a reorganization more -- larger, as massive, as
20 this one happens to be.

21 Q. I can think of a couple but we'll pass over them.

22 A. But anyway, it's kind of unique in government circles
23 to see this --

24 Q. Mr. Casarez, we couldn't make the decision on access
25 to confidential records in the University of California in

1 about three or four years, how long do you think it will
2 take DOL?

3 A. (By Mr. Casarez) I think Mr. Gladden will probably
4 answer that one because he's more or less, it's at the
5 regional office level.

6 Q. Mr. Gladden?

7 A. (By Mr. Gladden) It wouldn't be three or four years,
8 I'm sure of that, because I was talking with Mr. Ellisberg
9 two days ago, and they're going to settle that question.

10 Q. How long has it been now?

11 A. Do you recall? When you sent it up?

12 A. (By Mr. Casarez) No, that was -- we sent this one up
13 but we're waiting the results from, we have two, both cases,
14 but the one that they're really, that's really pending now
15 is the appeal to UC-Berkeley, because it involves a really
16 whole system now.

17 Q. Yes, yes. I know.

18 A. And I think it was --

19 A. (By Mr. Gladden) The secretary has to sign and I
20 think that -- I thought the decision was coming out a couple
21 of months ago. But it will not be a long time.

22 Q. Mr. Gladden, almost one last question but it has a
23 couple of parts, your perception of affirmative action
24 primarily an equated affirmative action and equal opportunity.
25 Is that deliberate or --

1 A. Yes.

2 Q. Do you think affirmative action goes beyond equal
3 opportunity?

4 A. Well, it was -- it was based in part on my reaction
5 to the comments that I heard before. Before we took the
6 stand. And that is I thought that there was a, perhaps,
7 mistaken notion that affirmative action program was just
8 some paper that you put together. And I just don't believe
9 that, I believe that a -- an affirmative action program,
10 as I think Bill Thomas said, has to be a living, viable docu-
11 ment and it is developed to obtain an objective.

12 Q. I agree with that but what I heard was Mr. Yanak
13 saying, for example, and Mr. Reyes saying, that affirmative
14 actions substantially beyond equal opportunity, so what are
15 we going to put into this living program? Is it -- is it
16 equal opportunity or is it equal opportunity plus?

17 Let me ask a couple of specific questions.

18 A. (By Mr. Thomas) Can I try that one first? I think --

19 Q. Yes.

20 THE CHAIR: Very briefly, if you please.

21 A. Yes, okay.

22 Q. (By Dr. Perkins) But in effect, I was just trying
23 to get Mr. Gladden to correct, elaborate on his definition,
24 so we're now switching --

25 A. Okay, let's take the reason for the affirmative action

1 doctrine, it came about under the Kennedy Administration.
2 There was a recognition that once the doors were opened,
3 and minorities at that time, and later women, were to move
4 into these plants and apply for jobs, there would be a
5 reluctance on the part of them to be considered and in fact
6 maybe even a reluctance on the part of companies to have
7 outreach, particularly companies that were remote from
8 minority areas.

9 And so there was a need for affirmative action. Which
10 is a mandated requirement.

11 Q Yes, I understand that.

12 A Okay, but affirmative action is a means of achieving
13 equal opportunity, and that's a definition, affirmative
14 action is a means of achieving equal opportunity.

15 Q Mr. Gladden, we speak of nondiscrimination, we speak
16 of equal opportunity, we speak of goals and timetables.
17 Clearly your agency includes goals and timetables and
18 affirmative action plan definition, am I right?

19 A (By Mr. Gladden) And where there is underutilization.

20 Q Doesn't that go somewhat beyond equal opportunity?

21 A (Shaking head negatively)

22 Q No?

23 A No.

24 Q Okay. What about quotas, are quotas ever justified?

25 A They never have been justified by this program

1 administration. They never have been.

2 Q Should they be?

3 A Well, I think that in terms of the philosophy of the
4 program as I have come to understand it, quotas are not
5 necessary and they are not the best thing that you should
6 have in a program like this.

7 Q You had a quota in the Kaiser Steel case that led to
8 the Webber Decision, right?

9 A No, that was --

10 Q California Supreme Court has just approved quotas,
11 so --

12 A Well, you see that, there again you're talking about
13 quotas that were established by the courts. And when I say --

14 Q No I'm not.

15 A Well, I don't know of any quotas that have been
16 established by any compliance agency.

17 Q Okay.

18 A They're specifically not allowed in our program.

19 Q All right. Mr. Yanak and Mr. Reyes said that from
20 the point of view of EEOC, and I mean their interpretation
21 of EEOC, affirmative action definition and OPM's, they
22 would both include in it very substantial positive steps to
23 end discrimination going beyond equal opportunity.

24 Do you agree with that or disagree with that?

25 A Oh, I think that that's one of the purposes for the

1 affirmative action program, because the fact of the matter
2 is that there must have been discrimination to start with
3 in the particular area to warrant the need for affirmative
4 action.

5 THE CHAIR: That is a yes?

6 A. That is a given.

7 Q. (By Dr. Perkins) The person from DF, department of
8 fair employment and housing, was Joann Lewis, the deputy
9 director, I assume you can reach her, see that her phone
10 calls are returned and the like?

11 A. Yes, I was wondering about that.

12 THE CHAIR: Are there any other questions from the
13 committee?

14 If not, staff?

15 Mr. Dickerson?

16 Q. (By Mr. Dickerson) Mr. Gladden, in other regions
17 we have heard that there are a great number of contractors
18 who never get reviewed. However, these employers may
19 employ large number of employees, and I'm referring to the
20 small to medium contractors with 75 to 200, 250 employees.

21 Would you care to comment on what happens to these
22 little guys?

23 A. Well, I can only say that my direction from Mr. Rujo
24 is that we review some small ones as well as some large
25 ones, and he wants a program that has a very good mix of

1 contractors. And that's our instruction. And to the extent
2 that there is some deviation from that, I don't -- you
3 know, I can't do much about it, but I know what our instructions
4 tions are and what we try to do.

5 Q. Why come on the recent court decision which gave
6 employees the right to sue OFCCP if they perceive that
7 OFCCP is not doing its job?

8 A. You're talking about the legal aid society case?

9 Q. Yes, what effect would that have on -- do you envision
10 it having an effect on your operation?

11 A. Well, the thing is the -- I think you have to under-
12 stand the context in which that case arose. That case arose
13 during a time when this program was struggling to implement
14 certain measures that they could not get through the labor
15 department. And the constituent groups had to get some
16 action in some way to get certain things in place in terms
17 of regulations and directives.

18 And it was out of frustration that they brought this
19 action, and they were successful. They were successful be-
20 cause even the proposed rule making incorporates some of the
21 requests that that organization made at the outset. Now,
22 in terms of how it affects us now? Most of what they were
23 asking for we are already doing, based on the manual, one
24 program, an increased quality assurance kind of activity
25 in this -- in the agency, and we have to prepare packages

1 of affirmative action programs, reviewed during a certain
2 period and have them available for the plaintiffs in that
3 case for their review, and this does not present a problem
4 because we are presently following the same guidance and
5 the same guidelines throughout the agency, and the work
6 ought to be up to a standard that they have required.

7 So it is not creating an onerous burden on us, all
8 we have to do is to pull data together, package it and have
9 them ready for them. They want to know how many show cause
10 notices have been issued, how many were withdrawn during a
11 certain period, what the reasons were, and we can -- we can
12 supply that.

13 Now, we have had a meeting with our solicitor's
14 office to find out what we need to do to comply and we're
15 implementing it so I find that there is nothing they're
16 asking for that we should have any difficulty providing and
17 we should be doing our work in a way that would be acceptable.

18 THE CHAIR: Ms. James?

19 Q (By Ms. James) A couple clarification things.

20 Mr. Lake, the gentleman from UCLA, brought up a
21 recommendation with regards to your whole operation definition
22 of facility. He recommended that OFCCP, for example, look
23 at the university but this could be true of other kinds of
24 industries with similar setup where you have one corporation
25 or one university that has nine installations. And rather

1 than having one area office look at one installation and
2 one look at another installation, does OFCCP ever consider
3 looking at one facility being the whole entity so that only
4 -- so there'd be uniformity is what we're getting at, the
5 question Dr. Perkins raised before about what does San Diego
6 ask, what does Van Nuys ask, is there any policy that pro-
7 hibits you from combining your resources in your region so
8 that your compliance review of all of B of A units or all
9 UC campuses?

10 A. Well, first of all there is just no way for us to have
11 the resources to do that at one -- at one time. What we are
12 doing and can do to insure uniformity as it relates to the
13 system, in all the higher education, is to coordinate those
14 reviews that cross area office lines, to coordinate those
15 reviews from the regional office with a senior equal oppor-
16 tunity specialist who will work with someone, say from
17 Bill's office and from Ralph's office and maybe another
18 office, and you have the coordination from the region.

19 And you also insure that what we're doing is consistent
20 with what the national office is doing with all other
21 universities. You see, that's another real problem. We
22 can not take off on our own dealing with University of
23 California because in Chicago they're reviewing universities
24 up there and in New York they're reviewing universities,
25 and we must be consistent because we have one program. And

1 that is a concern that we are working with, and it's part
2 of our plan.

3 Q Okay, I wasn't -- I guess I wasn't quite clear on
4 what I was asking. I was also referring not only to dif-
5 ferent directions coming from different area offices,
6 but the cost factor that every time you go to UCLA, Mr.
7 Lake also has to demand paper work from systemwide UC and
8 Berkeley, so if you do three UC reviews that same paper flow
9 gets duplicated, do you see what I'm saying? So it's
10 not a matter of what you're looking at in Chicago, it's a
11 matter of coordinating, if Van Nuys is looking at UCLA and
12 identical time, is the San Diego office looking at UC in
13 La Jolla?

14 A Not necessarily.

15 Q So it may be of months later or something?

16 A No.

17 Q I won't belabor that.

18 A It is coordinated.

19 Q What do you mean by coordinated?

20 A It means that the -- it is very unlikely that Mr.
21 Lake would be subjected to three reviews at the same time.
22 Where we would have to prepare the paper for all three of
23 them.

24 Q Yes, not Mr. Lake, but Berkeley, Mr. Huerta, his
25 boss in Berkeley.

1 A. That's one review, that's one.

2 Q. Not the Berkeley campus, the systemwide, I'm talking
3 about systemwide.

4 A. Well, we have to follow the direction of the national
5 office in terms of the definition of establishment or
6 facility.

7 Q. That's what I was asking for.

8 A. For the purpose of the reviews on university campuses,
9 there is that direction, that we will treat that as one
10 review.

11 Q. So that's a national policy?

12 A. That's a national policy.

13 Q. And that would be true in industry too, that you
14 would not necessarily look, if a company had various instal-
15 lations throughout the State of California, OFCC policy says
16 you only look at that one installation at a time?

17 A. Yes.

18 Q. Okay.

19 On the training packages you mentioned that national
20 headquarters is preparing training packages for all your
21 EOSE's, --

22 A. Well, it's not --

23 Q. On universities, OS&L's or whatever?

24 A. It is not really a training package. It is someone
25 used the term earlier, they said an audit guide. This is a

1 formal package on an industry. Not a particular industry,
2 say banking. This would be the banking informational package.

3 The kinds of jobs that you find in banks, the desig-
4 nations, the kinds of records you find in banks, the kinds
5 of problems that have been identified in banking reviews,
6 that kind of thing.

7 Q Right, right. And using banking as an example, was
8 the banking industry consulted with in having input into
9 these since they obviously know the industry the best?

10 A Now, that was developed at the national office but-
11 I'm sure they would have done that.

12 Q But you don't know whether they were?

13 A No. You -- you can probably, you know, check with
14 them.

15 Q One minor clarification thing. We had a representative
16 here from the Affirmative Action Office of Los Angeles
17 County, county government, and I'm still confused, you said
18 in answer to the question if you have any responsibility for
19 state or local governments it's only hospitals and uni-
20 versities.

21 A No.

22 Q But he said he reports to you?

23 A No. We are responsible for them in the sense that
24 they come under the executive order if they are a government
25 contractor. If they contract with the government, we are

1 responsible for them. But the requirement for a written
2 affirmative action program from those government entities
3 is limited to hospitals or medical institutions and the
4 universities.

5 Q But if a county government has a contract from the
6 federal government, they must submit or they must have
7 available for your compliance review, an affirmative action
8 plan?

9 A No.

10 Q They don't?

11 A That's right.

12 Q Even if they're a federal contractor?

13 A No, they have their own system.

14 Q Well, then, why did Mr. Ishikawa say that he always
15 deals with Mr. Thomas?

16 A I don't know, do you know why?

17 A (By Mr. Thomas) Well, let me say this, there is
18 coordination between his office and mine. We do have, in
19 the construction area, I think we're speaking of, there is
20 need for some coordination there.

21 Q He emphasized that most affirmative action questions
22 now go to you.

23 A Well, yes, if they deal with federal contractors.

24 Q (By Dr. Perkins) Building contractors? For example?

25 A Well, we have -- we have responsibility for the

1 construction industry. As a matter of fact --

2 Q Then that goes beyond what Mr. Gladden was just
3 saying?

4 A That's a different sit --

5 A (By Mr. Gladden) That's a different situation --

6 A (By Mr. Thomas) That's something different.

7 A (By Mr. Gladden) Because the Los Angeles outfit is
8 not where you get the plan, the review is done of the entity
9 that the Los Angeles entity contracts with to do a job in con-
10 struction that is federally assisted construction.

11 MR. MARTINEZ: Or subcontracted.

12 A Well, you can call it that. But the government group,
13 the Los Angeles County is the recipient of federal funds.

14 Q (By Ms. James) Right.

15 A Under a grant. They have a building they want to
16 put up.

17 Q Right.

18 A Which is in part paid for by government funds. That
19 building, we are responsible for under federally assisted
20 construction. We review that building contract. We do not
21 review, you know, the recipient of those funds.

22 Q You have nothing to do with reviewing the hiring of
23 county employees?

24 A Unless they are government contractor. Now, in some
25 cases a county organization might be a contractor.

1 Q Might do the work themselves.

2 Q (By Dr. Perkins) If the county chose to build that
3 building --

4 A There you are, there you are. But that's a tricky
5 kind of question but that's a distinction.

6 THE CHAIR: Mr. Dickerson?

7 Q (By Mr. Dickerson) I -- I'd like to get an example
8 of this. If you're going to build, if the government wants
9 to build a, is going to help finance the building of an
10 access, let's say an access road to the airport, now the
11 department of transportation is supplying the money for this
12 and they're going to give this money to --

13 A The airport authority.

14 Q -- the airport authority, okay. The airport authority
15 is going to let the contract out to somebody to build that
16 road --

17 A That's right.

18 Q -- now, you got DOT in there and OFCCP is going to
19 come in to review the contractor?

20 A Now, what happens is that the relationship between
21 FAA or DOT and the airport authority is a Title VI kind of
22 relationship. They are a grantee in that particular in-
23 stance. The improvement that is made to the airport is a
24 contract between the airport authority and Jones Construction,
25 that is federally assisted construction, and we follow that

1 money down there. And it is a construction contract that
2 we deal with, with the construction company.

3 Now, the airport authority we do not get involved
4 with them unless we go in on the basis of a contract, for
5 example, with them between FAA and the authority for the
6 tower that the controllers use for federal employees and then
7 we would go in there and we would not be asking them for a
8 written affirmative action program but rather we look at
9 their compliance with the executive order.

10 Q (By Ms. James) I just have one final question, not
11 referring to the recent court decision, in particular, but
12 in general in your opinion, in your judgment, since you deal
13 with it every day, do you feel that OFCC policy and guideline
14 differ from major court decisions dealing with affirmative
15 action directives?

16 A Well, I suppose there are some areas where there is
17 some difference.

18 Q You think there are some --

19 A I know there have been some criticism about our posi-
20 tion with respect to seniority, seniority systems and maybe
21 a few others but we have to take our guidance from the office
22 of the solicitor of labor, and that is where we get our
23 guidance.

24 Now, there may be some changes in certain areas
25 later on, but we can not act on them until we get the direction

1 from them.

2 THE CHAIR: Is that it?

3 One final question from the committee, Mr. Yoshioka?

4 Q. (By Mr. Yoshioka) Yes, I guess I'm still a little
5 bit confused, I was going to question Mr. Thomas on that
6 with regard to Mike Ishikawa's relationship. Does he, as
7 a representative of the county have to provide any written
8 report to you?

9 A. (By Mr. Thomas) No.

10 Q. Not under any of these programs that we've been
11 discussing?

12 A. No. It's just a coordination, tell you back and forth
13 what he had and --

14 Q. You're going beyond him, then, to other people?

15 A. (By Mr. Gladden) If I might add something, that is
16 a very confusing kind of issue and a lot of people don't
17 understand it, and I can understand how it could be con-
18 fused. But we have to explain it to people all the time.
19 Because it does make a difference in terms of federally
20 assisted and you see, we can not get involved with federally
21 assisted supply and service, you know? We can only deal
22 with it when it becomes construction. And that's the
23 real difference.

24 THE CHAIR: One last question, Dr. Perkins, and then
25 we will call it quits.

1 Q (By Dr. Perkins) Mr. Gladden, I want to be sure I
2 understand this right. I'll characterize it and you can
3 agree with it or you can correct it.

4 It seems to me that the issue is not a question of
5 where the problem of overlap, conflict, confusion, whatever
6 it may be, comes in, it's whether or not it's there.

7 Now, when you got to the end of that last matter that
8 we were talking about, you said that it wasn't your fault,
9 I'm not -- I'm -- not your words exactly, it was, you had to
10 take your orders from the solicitor of the department of
11 labor. Is it fair, then, for me to say that the department,
12 the solicitor of the department of labor is giving the
13 office of contract compliance some directives which are
14 creating some problems here --

15 A No.

16 Q -- or continuing some or why did you say that then?

17 A No, I think that you're talking about something else
18 that we really need to clear up. When I said that the
19 solicitor's office would have to give us the guidance in
20 terms of which court decisions we followed, that was in
21 response to -- I've forgotten her name but the lady's
22 question over here.

23 THE CHAIR: Ms. James.

24 A Ms. James. That was in response to that question.

25 Now, in terms of conflict, now where was the conflict?

1 Let's talk, then I can react to that.

2 Q (By Dr. Perkins) All right. The conflict, you
3 mentioned seniority. I assume that what you're saying
4 is that you are more generous in recognizing seniority
5 than some court rulings. And that you are so on the advice
6 of the solicitor for the department of labor, is that
7 correct?

8 A That's -- well, that's the -- that's the position that
9 the government has taken. In the labor department.

10 Q Not the government, the solicitor of the department
11 of labor?

12 A Yes.

13 Q In spite of the fact that federal courts, including
14 the Supreme Court, have ruled otherwise?

15 A That's right.

16 Q Okay.

17 A That's one of those issues.

18 Q Well, maybe that's enough of an issue. We could go
19 back into the, you know, into the Webber, the Bakke, the
20 whole business.

21 A I know we've been criticised about that. That kind
22 of thing, but --

23 Q Okay, that's sufficient, thank you. Since I asked
24 some very hard questions, I do want to say that I hope you
25 succeed.

1 A. Well, let me say this, since we're here late, and
2 all that, I guess I may sound very naive to some people,
3 but I am enthusiastic about this program. And I just happen
4 to think that for a very long time the program never
5 received the kind of support that it should have received.

6 And for a very long time we never had the kind of
7 management that we have now. And I'm just very sorry that
8 someone like Mr. Rujo could not testify to your group, be-
9 cause I think that you would really come away with a much
10 better impression of this program than we can possibly
11 give you because we just don't have the -- the stature and
12 we don't have the kind of persuasiveness that he has.

13 Q (By Ms. James) But the purpose as you may recall
14 from my meeting with you, the very purpose of these ten
15 meetings around the country is to speak directly with the
16 people who have to do it every day, and we appreciate your
17 coming and sharing that with us.

18 THE CHAIR: We certainly do, it's been a long after-
19 noon and we thank you, all three. Thank you.

20 VOICE: You were going to allow for some, I just have
21 one small question, please.

22 THE CHAIR: I think you'll have to check with
23 staff.

24 I've got two individuals scheduled to make some
25 statements and if you want to raise some questions, if you

1 will speak directly to our staff?

2 MS. JAMES: You can raise them after the other two
3 people, there are two people in front of you, is what we're
4 saying.

5 VOICE: All right, fine.

6 THE CHAIR: We'll now move into something called
7 an open session in which we allow some of you who have been
8 sitting in the audience very patiently all day to make some
9 comments.

10 You've heard our initial opening statement, you'll
11 know there are some rules and regulations to the comments
12 that we would like to hear from some of you this afternoon.
13 There is a five-minute time limit that we will place on
14 each individual statements, we will accept, however, written
15 statements or written materials and we would appreciate
16 your turning them over to our staff if you have written
17 material to give to the committee.

18 Secondly, I must also caution you against making any
19 kinds of statements which could defame and degrade individuals
20 so with that kind of precaution, I'd like to call on the two
21 individuals whom I have names for, Mr. Alfonzo Thompson
22 and Mr. Clint Rogers. Mr. Thompson is listed first and I'll
23 ask him to come forward.

24 Mr. Thompson, would you sit at the table and for the
25 record, identify yourself? Your name and address and other

1 kind of identification?

2

3

MR. ALFONZO THOMPSON

4

5 A. (By Mr. Thompson) I am Alfonzo Thompson and I live
6 in Los Angeles at 4116 and a half Golf Way Avenue. And I
7 am part of that year log at EEOC. And my complaint is that
8 I'm sort of in a complete state of confusion of being here
9 today, because all the good things that I heard about how
10 you can receive help when you file racial discrimination
11 charges, I just don't know about them.

12 And from what was stated here today, everything is
13 worked out and this is not so. And that includes EEOC and
14 I was happy to see Ms. Lewis from FEPC, because I'm at the
15 stage now where I've not been able to get help from either
16 one of the agencies.

17 First thing I went to, I was a social service
18 administrator for the LA City Housing Authority. So in
19 going through the procedures of trying to go through the
20 administrative remedy, I went to the city commission on civil
21 rights and they say we can't deal with LA City problem.

22 Then I go to the county, they say we can't deal with
23 them. You go to the state, I went to the state and they
24 said, well, we can't take your problem because your mayor
25 is Black. Then I had to go to EEOC and they said okay,

1 we can't take it now but you come back after you're fired
2 and then we may take the case.

3 I went back after I was fired, they took the case.
4 After they had the case there for three months they had a
5 hearing, it was a factfinding hearing, this is when I came
6 into the knowledge of finding out about statistics.

7 And the housing authority sent the affirmative action
8 person to represent management and this affirmative action
9 person would not take my case when I went and showed him all
10 the wrongdoing of racial discrimination.

11 So the factfinind hearing came up with nothing.

12 As a social service administrator I know that I would
13 have my staff do a followup. I did not hear from EEOC from
14 March up until September of '79 when I called them in, found
15 out the situation on my case. They said, well, we going
16 through new staff and we'll get back in touch with you.

17 I did not hear from EEOC until January of 1980,
18 at this time they said we've assigned a staff person to
19 your case. At that time I panicked, I went to the United
20 States Attorney's Office and I laid my case in front of
21 them. They said, well, let us show you the guidelines where
22 you can file charges, but of course, it's going to be hard
23 to prove Black as long as you got a mayor that's Black.

24 And you know, this is something strange to me.
25 Racist discrimination is racial discrimination regardless of

1 who pulling the strings. So they went through the guidelines
2 and she read off a part, one of the paragraphs there said
3 handicapped. I said ah, that's it. Then I won't have to
4 worry about Black because I am handicapped. She said you're
5 kidding. I said no, I got hurt playing with the Washington
6 Redskins and the state sent me to college for two years
7 and educated me and I am a bonafide handicap.

8 She said go back to EEOC. I went back to EEOC, I
9 filed my charges, they said, well, we can't take the handi-
10 capped charge, you have to go to FEPC. So I go back to
11 the state, I file my charges, they said, well, we have to
12 check it out to see if we can get it. They checked the
13 case out and then he contacted me and say, well, a year
14 passed, we can't accept new cases. And they quoted a law.
15 1421. I say okay, I won't accept it, I went back to the
16 law library, by the way, this whole year I've been doing a
17 lot of law studying and I checked the record and found out
18 that the staff quoted the wrong law to me, it wasn't 1421,
19 it was 1422.

20 And I quoted 1422 and said the last paragraph have
21 a provision in there that if you come up with new evidence
22 you have a 90-day extension automatically. And so this is
23 where we are now.

24 I told him that yesterday and he said no, we still
25 can't accept it. So now I have to go back to the law school

1 and try to find out a way to get EEOC and today I learn about
2 lawsuit procedure, maybe I have to file a suit, but one
3 problem with that, is that since I came from an executive
4 administrator, I have been unable to get a job for a year
5 and I know now what poor people go through trying to get
6 help.

7 Because it is expensive, I paid a lawyer over \$8,000.00
8 and I don't have that lawyer now because my funds run out,
9 I have no means of getting any type of legal assistance what-
10 soever, so that way I have to go to the law library and fight
11 my own case.

12 So, what I'm saying is that if you read my file, you
13 see all the documentation I have put in there, in fact, I
14 had to do my own brief and write a petition myself in
15 order to petition the housing authority. So now that I'm on
16 this side of the track, broke, no money, no job because
17 now an attorney won't even talk to you when he say where you
18 working, I'm not working, they won't even talk to you.

19 So is nowhere I can turn but try to come to, like
20 the meeting, it wasn't announced, EEOC didn't tell me,
21 neither did FEPC tell me. I saw it in the newspaper. And
22 this is why I came today, to let -- oh, by the way, I did
23 file it with the civil rights commission, this is how I got
24 to the attorney general's office. So I've tried every
25 avenue to get some type of relief and up to this day I

1 have not. And I hope that EEOC will be prepared to face
2 me tomorrow because I will go and talk to them, I found
3 out some things here today but it's this type of situation
4 that people are faced with. That are handicapped and
5 just fortunate enough, when I walked in both of these offices
6 they saw this big old Black guy and they says racial dis-
7 crimination. If they had explained to me the guidelines,
8 I could have told them that I was handicapped too. But it's
9 just one of those situations, it seems like the staff is
10 so anxious to get rid of you that they don't go through the
11 process of really trying to explain anything.

12 Then the other thing that gets me is now, like the
13 gentleman from EEOC stated that they really moving the cases,
14 they came to me and say okay, we can give you a right to sue.
15 Now, a notice to sue, since I've been researching, could have
16 been given to me a year ago. In fact, 60 days after my
17 case. But they didn't offer it then. And now what they're
18 trying to do, they won't explain to me if they give me the
19 notice to sue will they drop the case or just what will
20 happen to my case?

21 THE CHAIR: Mr. Thompson, I hate to interrupt what's
22 turned out to be a most moving story, I think, and we are
23 fascinated by the tale, but your five minutes are up, could
24 I ask you to conclude?

25 A. I will conclude with this, that I have the tenacity and

1 I played football hard and football was easy compared to
2 this, and I would like for you to look into the case and
3 to try to do something, help these poor people like myself.

4 THE CHAIR: Thank you very much. We appreciate your
5 coming forward this afternoon and I'm sure one of the staff
6 people will get back to you.

7 The next person on my list is Mr. Clint Rogers,
8 Mr. Rogers, will you come forward again and identify yourself
9 for the record?

10

11

MR. CLINTON ROGERS

12

13 A (By Mr. Rogers) Okay. Clinton Rogers, Chairman,
14 Executive Committee Labor Industry and EEO, Southern Area
15 Conference, NAACP.

16 I'd like to speak to the basis of affirmative action
17 again, demographics and clarify some things and speak to
18 some things that were said, that have been said earlier.

19 The civilian labor force determination should be
20 addressed as it is in the Federal Register in Volume 44,
21 number 73 of 13 April 1979. That's section 720.205,

22 paragraph C and D. And specifically that speaks to the
23 labor pool or relevant labor force determination. Okay?

24 Being defined for a particular company, the relevant
25 labor force is determined as that local labor force, if it is

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greater than the regional or the SMSA or the SMSA is the relevant labor pool, if it is greater than the national. Whichever is greater. If the national is greater, and I think that's important and I'll give you an example. At Crane, Indiana, there is a federal installation there, weapons station. Naval weapon station, Crane, Indiana. When I was a boy in Chicago, there used to be a saying that, baby, don't get caught after dark in Crane, Indiana, okay? Therefore, there is no minority population around that area. Okay?

So it is because of past discrimination that there is no minority population there and therefore, this approach is relevant to resolve historic discrimination.

Earlier, Mr. Reyes spoke to using EDD's data. EDD's data is extremely bad for Black folks. Okay? It is the same data that you can get at the library in the census data books, excepting that their interest in my behalf as a Black persons is so great that if I live in a community as I do in Orange County, where, in my census tract, there is only 11 Blacks in it, then I -- then that census tract, there are no Blacks because if they identify us, then when there is -- one of us is unemployed, that then would violate our rights to privacy.

Okay. That's a bunch of garbage. What it really is is another ruse to not count you even after you've been counted. It's BS. Okay.

1 The effect of that -- okay, the effect of using the
2 local labor force, and the gentleman that was just here,
3 Mr. Gladden, spoke to the difficulty in spending millions
4 of dollars to determine the relevant labor pool. Hogwash.

5 I used five clerical types over a five-week period and
6 we did a five-mile radius from Long Beach Naval Shipyard,
7 okay? Approximately 76,000 employees, it took us five weeks,
8 I've forgotten how manh, well, 20 hours a day times five,
9 about a 100, whatever the manhours are required. To do it.

10 And what we did was take a census tract map and
11 identify the linear distance of every employee in the ship-
12 yard. And then identify the -- up to 97% of the total
13 population, total labor force population and generally
14 nationally there is a consideration that the top 5% of
15 any organization will be recruited nationally and the other
16 95% are recruited locally.

17 That turns out to be a truism, we found it to be,
18 and, you know, a pragmatic situation, that's the way it
19 is at -- among those 7,600 people.

20 Okay. Previously, after identifying this relevant
21 labor pool, we then talked to the secretary of navy and
22 subsequent to that we received changes from the secretary
23 of navy's office. And the original labor market identi-
24 fication, and this is an area where there's been White Flight,
25 okay? Everybody run to Orange County and they've left that

1 area and Blacks and Browns have moved in. And we got from
2 the main ship -- NAFSE (Phonetic), a parent organization
3 of all shipyards in the country, all eight of them, a
4 projected employment through 1983, that required in terms
5 of craftsman supervisors, an increase of White males of
6 7%. Those people have already gone. A decrease in Black
7 White -- White craftsman supervisors of 25% and there's
8 underutilization there already.

9 A decrease in Hispanic craftsman supervisors of 23%
10 and they have always been grossly underutilized and still
11 are, still are. So -- anyway, the result that we got from
12 the secretary of navy was that for Black males, they had
13 been using under the original, and I think this is extremely
14 important because if you're serious about affirmative action
15 then you have to, the foundation for it all is the demo-
16 graphics, what is the relevant labor pool? 95% of that labor,
17 that recruit in the area. Where does 95% of your recruitment
18 occur? And the rest is national recruitment, assumed to be.
19 Okay.

20 Then what does that -- what is the ethnic distribution
21 of that area look like? Then that's what the ethnic dis-
22 tribution says, with the absence -- absence of past and
23 present discrimination, that's what chances your labor force
24 population look like.

25 Well, what happened at the shipyard, they using the

1 previous SMSA for Black males, it was 4.2%, after the study
2 was done, that changed to 7.1%, an increase of 69%.

3 Hispanics, there was 5.3% was the original labor
4 market and it changed to 8%, an increase of 50.9%.

5 In females on, in Whites it went from 37.2 to 32.1,
6 a decrease of 15% which is just about the way they left the
7 community, just about the way they left the area. White
8 females, 39.4%, and that decreased to 33.8%, a decrease of
9 minus -- a decrease of 16.6%. Black females was 4.7, it
10 increased to 7.5, an increase of 59.6. - And on and on.

11 And -- on the Hispanics 5.7 was the original using
12 the old data, the SMSA data and after the work, why, that
13 increased to 8.2%, an increase of 43.9.

14 THE CHAIR: You're out of time, Mr. Rogers, if you
15 have any more statistics would you provide them to our
16 staff?

17 A. Okay, I only have one thing I would like to say.
18 In terms of affirmative action, the fabric of our society
19 is no different from any other fabric. And I'd like to ask
20 Dr. Perkins if you would assist me in a demonstration. If
21 you would take your name card and lay it flat on the table.
22 Unfold it and lay it flat on the table, please. Can you
23 do that?

24 DR. PERKINS: With some effort.

25 A. Oh, you just did, what did you do? You just cheated.

1 You just took affirmative action. You took that thing with
2 the crimp this way and you bent it the other way because
3 you know you could not lay it down to its original situation
4 or what it should have been without you took some affirmative
5 action.

6 You bent it the other way and you've got to bend it
7 the other way. You've got to take some positive action, and
8 it's even so you didn't take enough because it's still not
9 laying flat.

10 Thank you very much.

11 THE CHAIR: Finally, Ms. Adelina Figaroa?

12 MS. FIGAROA: Yes, it is final and it will be brief.

13 THE CHAIR: Please identify yourself for the record?
14

15 MS. ADELINA FIGAROA

16
17 A. (By Ms. Figaroa) Adelina Figaroa and I'm only here
18 to make an observation. And you know, it's abundantly
19 clear that this committee is quite interested in affirmative
20 action. And equal employment opportunities for all minority
21 groups and women. So therefore, I'm a little bit at a
22 loss, as to why, in a community perspective 1. and 2, there
23 was no Hispanic representation, in an area that is a heavily
24 populated with Hispanics, there was no Japanese representation,
25 I concede that there was a Chinese individual scheduled to

1 be here, but that individual did not show up.

2 So I think it's a demonstration of how, perhaps, we
3 need to look in our own back yard or something.

4 THE CHAIR: Perhaps staff would like to make a
5 comment on to this?

6 MS. JAMES: I don't want to be defensive, we tried.
7 We called Mexican-American organization and we called
8 Japanese organizations and we called Chinese organizations
9 and they were all welcome.

10 A. I really wasn't looking for an explanation.

11 MS. JAMES: I think your comment is well taken and we
12 will increase the try, we will increasingly try to make
13 sure that we have a broad diversity.

14 THE CHAIR: Mr. Yoshioka?

15 MR. YOSHIOKA: I was going to respond on behalf of
16 staff that the effort was made, the contacts were made.

17 A. Well, I tell you what we call our contractors, maybe
18 we ought to provide you with some better resources.

19 THE CHAIR: Thank you.

20 This meeting of the California Advisory Committee
21 is one of ten such meetings throughout the nation being
22 convened during March and April, 1980. It is the hope of
23 the commission that at the conclusion of these meetings
24 clarification and concensus will emerge on the federal and
25 state role and responsibility for affirmative action.

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A report of findings and recommendations based on this effort will be forwarded to the President and Congress.

I would like to thank the members of the state advisory committee for their time and energy in today's session, and to especially commend Ms. Sally James and the staff for a well put together factfinding meeting and with that, the meeting is adjourned.

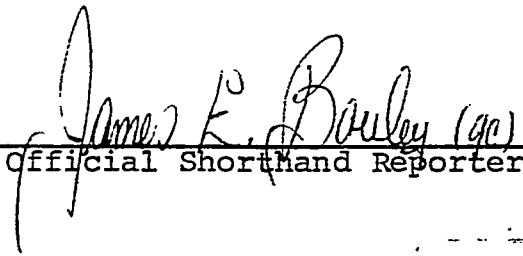
(Meeting adjourned at 6:45 p.m.)

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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 363 pages represent a complete and accurate transcription of my shorthand notes so taken.

WITNESS MY HAND this 3rd day of April, 1980.



Official Shorthand Reporter