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ARIZONA ADVISORY COMMITTEE
TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS

Open Meeting

December 2-3, 1982

Phoenix, Arizona

VOLUME II

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VOLUME II

WITNESS

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1 December 3, 1982

2 9:00 a.m.

3
4 THE CHAIR: We shall reconvene, following the
5 closing of our meeting yesterday.

6 We expect another member or members from the state
7 advisory committee.

8 I would like to paint some background material so
9 you understand why you're here. This is a meeting of the
10 Arizona Advisory Committee to the United States Commission on
11 Civil Rights. And we're here to gather information on civil
12 rights problems in Arizona, and recommendations to resolve
13 these problems.

14 A little bit of information about our relationship
15 to the U.S. Commission on Civil Rights as well as procedures:
16 This fact-finding meeting is being held pursuant to rules
17 applicable to state advisory committees and regulations that
18 are promulgated by the U.S. Commission on Civil Rights. The
19 Commission on Civil Rights is an independent agency of the
20 United States Government, established by Congress in 1957
21 and it's directed to do four things. One, to investigate
22 complaints alleging that citizens are being deprived of
23 their right to vote by reason of their race, color, religion,
24 sex, age, handicap or national origin, or by reason of fraudu-
25 lent practices.

1 And secondly, to study and collect information con-
2 cerning developments constituting discrimination or a denial
3 of equal protection of the laws under the Constitution because
4 of race, color, religion, sex, age, handicap or national
5 origin or in the administration of justice.

6 Thirdly, to appraise federal laws and policies with
7 respect to discrimination or denial of equal protection of
8 the laws.

9 Four, to serve as a national clearinghouse for informa-
10 tion about discrimination.

11 And five, to submit reports, findings and recommenda-
12 tions to the President and Congress.

13 I want to reiterate there, this is a fact-finding
14 meeting and it's not an adversary proceeding, and you have
15 been invited to share with this committee information relating
16 to the subject of today's inquiry.

17 I might indicate that the press and radio have been
18 invited and it's conceivable that some will come, they were
19 here yesterday, representatives were here yesterday.

20 So, we're primarily interested in edification of what
21 the civil rights issues in Arizona are, and what impact
22 these issues have upon the social or political, economic
23 well being of the state and what efforts have been made to
24 resolve these issues. And what recommendations should be
25 made to the state and federal officials to alleviate that.

1 And with that as background, do you want to come for-
2 ward, Mr. Davis, and do you have someone with you or --

3 MR. DAVIS: Yes, I have Sal Martinez, who also is
4 with the same organization. In listening to the information
5 that you just shared with us, I think the information that I
6 have to share with you all might be somewhat in a different
7 manner.

8 THE CHAIR: Before we begin, I'd be interested in
9 knowing your name, the organization and your position within
10 the organization.

11 Last time I saw Sal he was about four-foot-three and
12 60 pounds, I was his elementary school principal. I'm glad
13 I didn't mistreat him.

14
15 DWIGHT DAVIS

16 A (By Mr. Davis) .Okay. My name is Dwight Davis and I
17 work for Metro Youth Centers, Incorporated. With that organi-
18 zation I am Center Director of the Maryvale Facility, which
19 is the youth center.

20 I also have here Sal Martinez, who also works with the
21 Metro Youth Centers, Incorporated, and he works with the
22 neighborhood communication project which is a community
23 advocate program. And because of that, we have been able to
24 compile some information.

25 The area that we'd like to target is the youth, being

1 that this particular area has been discriminated against
2 because of, both male and female, because of the economic
3 situation of the nation.

4 Because -- I mention that because of the fact that
5 when jobs were -- when jobs were first being cut, the youth
6 were the first ones being targeted. This is a large block
7 of energetic, taxpaying population that, with their job
8 market being limited, gives them a lot of time on their hands
9 which sometimes has a tendency to be focused in some negative
10 areas.

11 So, with the deletion of jobs and this particular age
12 group being discriminated against, it being targeted first,
13 has the, you know, brings about a lot of concern from the
14 community and from our organization, because once again that
15 gives this particular age group a large amount of time on
16 their hands where they have nothing to do or nowhere else to
17 generate those energies and sometimes they have a tendency,
18 once again, to focus them in a negative area. So that's one
19 of the reasons for us bringing this information to you, tar-
20 geting this particular program.

21 Q (By the Chair) Okay, do you have any statistics or
22 anything else?

23 A The only stat. that we have in compiling this par-
24 ticular information is that the youth market, the age ranging
25 from 14 to about 21, is, that's the highest unemployment group

1 of individuals at this particular time and that's the only
2 stat. that we have at this particular time, is that they are
3 the largest unemployed, and because of their age, because of
4 their particular group, they have been discriminated against
5 being the first ones to be targeted with the large amount of
6 unemployment.

7 Q Are you familiar with any laws or specific laws or
8 regulations that are not properly being administered, and
9 therefore the effect is discrimination against this target
10 group?

11 A That was one of the reasons why I mentioned that the
12 information that we share might be in a different realm. No,
13 I'm not familiar at this time with any laws that are being
14 broken but just the fact that there are no jobs and we are
15 aware of that and this age group being targeted first and
16 more harder than the other ones, you know.

17 Q Okay. Do you have -- are you familiar with any case
18 studies of specific young people and processes involved in
19 trying to get jobs? What's happening?

20 A What's basically happening is that a lot of the pro-
21 grams that were targeted for on-the-job training, some skill-
22 type training, have been, you know, basically cut out or no
23 longer exist or some have a, you know, real long waiting list,
24 and those particular programs were the catalyst or the way for
25 a lot of the young people to become marketable or at least

1 become job-eligible. And because of those programs being
2 cut out, they, now, can't even become knowledgeable to hold
3 a job.

4 Q So, if I'm reading you correctly, you're just articu-
5 lating a concept that this targeted group of young people
6 between ages 14 and 21, have been most seriously hurt by the
7 economic market place, and one of the results of that is
8 involvement in criminal activities --

9 A Yes.

10 Q -- or loss of hope, and negative selfimages?

11 A Things of that nature, yes.

12 Q About sense of worth and so forth, and so you're
13 articulating that concept, affirming that concept, more or
14 less?

15 A Yes. Very much so.

16 THE CHAIR: Okay, do you have any questions?

17 Q (By Mr. Arthur Palacios) I'm just curious about, you
18 work with young people, what do you do with them exactly?

19 A Okay. Our particular facility offers counseling both
20 youth, family and drugs, and the whole gamut as far as
21 counseling is concerned.

22 We also have a dropout prevention program that is being
23 run out of the Colleson (Phonetic) High School area that
24 targets dropouts and does intervention before or after they
25 do drop out, to try to keep them in the high school system.

1 We also offer a dropin rec. program that is also being
2 cofacilitated with the PAL program, Police Activity League,
3 to form some activities, form some functions for these young
4 people who have some things to do, because they are, you know,
5 basically nothing to do. And we target all White, Anglo,
6 Mexican, Black, you know, the whole gamut.

7 Q How successful is the dropout program?

8 A I would -- I would -- I really wouldn't want to say it
9 was a 100% successful because it wasn't. I would definitely
10 want to say it was about 25% successful and this year, because
11 of that, it will be that much more successful, okay?

12 Q (By the Chair) Is one of the collateral effects of
13 this phenomenon the development of gangs, increasing develop-
14 ment?

15 A That is one of the areas that -- yes, it is, that's
16 one of the main concerns is that, you know, when a lot of
17 young people have a large amount of time on their hands they
18 have a tendency to congregate and yes, they do form clicks,
19 they do form, I'd like to try to stay away from the word
20 gang but yes, they do form those type of organizations and
21 focus some energies into a lot of negative behaviors.

22 With the availability of some type of employment, some
23 type of training programs, a lot of this negative energies
24 can be focused into some positive things to deal with, you
25 know, once again, like you mentioned their selfimage, making

1 them feel that they're worth something, at least worth being
2 human, and want to become a very workable member of society
3 as opposed to a negative member, you know.

4 And we tried to divert that before they get off into
5 the correctional system and go that route.

6 Q So, you're recommending new, creative programs?

7 A I'm recommending that if -- because there has been a
8 lot of budget cuts, maybe they pigeonhole or allocate some
9 funds to try to help maintain those -- these particular type
10 programs to help deal with that particular situation.

11 Q Do you have opportunities to share this information
12 with any other governmental or agency groups in the valley?
13 At the city, county, state?

14 A Yes, to our funding sources.

15 Q To your funding sources. And I take it you are not
16 pleased with the results?

17 A Well, to an extent, yes, but also looking down the
18 road, looking as far as maybe next year at our funding time,
19 our program might be cut, you know, not necessarily because
20 they're, you know, targeting our program but because there
21 is no money to, you know, fund programs such as this.

22 Q You've made a general statement about young people's
23 energies being directed in negative ways. Can -- from your
24 experience can you identify some specific things that are
25 happening without naming names or -- those examples of those

1 negative features tend to be increasing.

2 A Okay, a good example would be if you travel anywhere
3 in the Phoenix vicinity, north, south, far west, you see a
4 lot of painting on the side of residence homes. That is an
5 increasing problem and that has a tendency to be started from
6 these gangs.

7 Q Anything else?

8 A The vandalism.

9 Q Increased vandalism?

10 A The increased crime. Burglary. Home burglaries,
11 things of this nature, okay? Also just plain out property
12 damage because the graffiti on the house, sometimes on cars
13 and things of this nature.

14 Q Any evidence of selfdestruction? Increase in drug use?

15 A At this particular time if we were to talk about that
16 selfdestruction a year ago I would say yes. Because of some
17 of the interventions of our program and others, there has
18 been a decrease in a lot of that. But there's still a lot of
19 gang activities where people are hurt, but not as much as a
20 year ago. Due to a lot of police intervention as well, you
21 know.

22 THE CHAIR: Okay. Do you have any other questions?

23 MR. PALACIOS: No.

24 THE CHAIR: Thank you.

25 MR. DAVIS: Thank you.

1 THE CHAIR: I didn't ask, Mr. -- did you have anything
2 to say, Mr. Martinez? I'm sorry.

3 MR. MARTINEZ: No, I was just trying to fill him in.

4 THE CHAIR: Okay. Thank you.

5 Ms. Carol Zimmerman?

6 Will you give us your name, the organization that you
7 are a part of, and your position in the organization?

8
9 CAROL ZIMMERMAN

10 A (By Ms. Zimmerman) I'm Carol Zimmerman, I'm the
11 Executive Director of New Directions for Young Women, which
12 is located in Tucson, Arizona. And this is Ruth Crow, who is
13 the Project Director of the National Female Advocacy Project,
14 a program of new directions and she's going to make the
15 initial presentation this morning.

16 THE CHAIR: Thank you.

17
18 RUTH CROW

19 A (By Ms. Crow) I'm pleased to be here this morning,
20 and very pleased that the advisory committee is hearing from
21 people that are dealing with youth in our community.

22 What I want to speak about this morning has to do with
23 the disparity treatment accorded young women in the juvenile
24 justice system. I'd like to provide a general overview of
25 how we see the problem, and then leave with you a pamphlet

1 which is called Basic Facts and Issues, which document, in
2 empirical fashion, the problem that does exist.

3 The problem with juvenile delinquency has always
4 claimed a large share of the public's attention. Historically,
5 however, this concern has been limited mostly to a discussion
6 of the male delinquent and his behavior. As in so many other
7 areas that we've been looking at in recent years, women have
8 been rendered almost invisible.

9 If one reads the research, one finds females often
10 relegated to footnotes by scholars and practitioners alike
11 and yet, of course, the lives of girls and women have been
12 very deeply affected by the course of, and practice of the
13 law in this country.

14 The unequal treatment of females in the juvenile jus-
15 tice system is really very deeply rooted in traditional views
16 held by society regarding what is considered women's appro-
17 priate role and status. Societal restrictions placed on
18 women have had a direct bearing on the predicament of females
19 in the juvenile justice system, and therefore it's very dif-
20 ficult to separate these matters.

21 The juvenile courts both reflect and enforce a double
22 standard of behavior for males and females. The legal
23 attitudes towards women and children have had much in common
24 throughout our nation's history. What sets these two groups
25 apart from other groups that have been denied fundamental

1 rights is that the discrimination that these two groups, women
2 and children have faced has been rationalized as benevolent.
3 The inequities faced by women have most often been described
4 as protection. While youth have been denied certain legal
5 rights with the claim that the decisions are in the best
6 interests of the child.

7 We don't think that reality supports either of these
8 rationales.

9 At various times, courts have denied women the right
10 to vote, enter universities, hold public office, practice
11 medicine, manage their own property, or serve on juries. I
12 think in -- during the 1980's we will not see this any longer
13 as benevolent.

14 The best interests of the children, we think, are
15 rarely obtained by locking them up in overcrowded, under-
16 staffed, highly secure facilities with very few educational,
17 vocational or rehabilitation opportunities. In fact, we think
18 that a close examination of the juvenile justice system
19 suggests that there's very little protection and even less
20 benevolence.

21 When one examines the plight of those who are both
22 young and female:

23 What we do find is a system which treats females far
24 more harshly than males for comparable behavior. Females under
25 the age of 18 are subject to legal sanctions for behavior

1 which is considered to violate the predominant moral code
2 rather than the criminal code. They've been referred in
3 very large numbers to juvenile courts, sentenced and locked
4 up for actions which, if committed by adults, would not be
5 criminal or if committed by male juveniles, would be simply
6 ignored.

7 Although juvenile status offenders, offenses such as
8 running away, truancy, ungovernability, theoretically apply
9 equally to males and females, in practice more than twice as
10 many girls are charged under this category of violations.

11 So, we're speaking here of status offenses which would
12 not be considered criminal behavior except for the status of
13 being young.

14 Approximately 70% of the females referred to juvenile
15 courts are charged with having committed status offenses.
16 Not only are most young women referred to juvenile court for
17 non-criminal acts, they're locked up for longer periods of
18 time than males, remaining longer on probation and when re-
19 moved from their homes, they are not returned as quickly as
20 males.

21 Between 70 to 85% of adjudicated females in locked
22 detention centers are there for status violations compared
23 to 25% of the boys. Making it three to four times more likely
24 for females than males to be locked up for non-criminal acts.

25 Approximately 50% of the girls in state institutions

1 are status offenders compared to 17% of the boys. That's an
2 enormous difference. And despite the fact that young women
3 generally pose no threat to community well being, the average
4 institutional stay for girls is approximately 12 months
5 compared to that of males, which is about 9.3 months.

6 One last statistic that I'll discuss for now, reveals
7 that nearly one-fourth or 23% of the girls that are referred
8 to the court are referred by their parents compared to less
9 than one-twentieth or 3.5% of the boys.

10 One of the implications of this referral pattern is
11 that girls do not have the support of their families when
12 dealing with the juvenile justice system. They are often
13 there alone. It also suggests, of course, that parents will
14 tolerate behavior in their sons that they punish in their
15 daughters.

16 It's only been in the past few years that we've begun
17 really to gather data on the incidence of incest, sexual and
18 physical abuse among girls involved in the juvenile justice
19 system. The studies that are currently being reported are
20 alarming and strongly suggest that these young women in
21 significant numbers have been badly victimized prior to con-
22 tact with the juvenile court system. Yet it's clear that
23 these same females suffer further in the system on the basis
24 of gender alone.

25 Non-criminal behavior then places females within a

1 criminal system and this ought to be a matter of grave con-
2 cern. And yet it's been a difficult matter to bring to public
3 attention, perhaps because the group that's involved is young,
4 female, and very, very powerless.

5 There's an urgent need, we think, to separate the myth
6 of protection and benevolence from the reality of jail and
7 victimization.

8 Other large segments of people in our society have
9 already learned that separate or different standards of jus-
10 tice are never equal protection under the law, and this same
11 concept, we believe, very much applies to females in the
12 juvenile justice system.

13 I'll be glad to answer any questions that the advisory
14 committee might have.

15 Q (By the Chair) You mentioned two concepts, disparity
16 treatment and unequal treatment --

17 A Yes.

18 Q -- is one to just clarify the other or are they two
19 different concepts?

20 A Between disparity --

21 Q And unequal --

22 A Well --

23 Q -- is unequal just a further clarification or example
24 of disparity or are there two separate concepts?

25 A I would say they're the same concept.

1 Q They're the same concept?

2 A Yes. What seems to be operating is indeed a different
3 standare of justice, with females simply being punished for
4 behavior which is not punishable on the part of boys. Very
5 often the terms ungovernability, runaway, are euphemisms for
6 sexual activity on the part of females or perceived sexual
7 activity. Males, as we know, are -- are really never involved
8 with the criminal justice system on the basis of their --
9 of consensual sexual activity on their part.

10 Q With the criminal justice system as a context, with
11 specific edification of statutes, laws, practices, are
12 dramatic changes taking place in equalizing, relatively, the
13 treatment of males and females?

14 A Well, some of the laws have been changed, and some of
15 the practices have been challenged in the courts and struck
16 down. Perhaps the most single -- the most important piece
17 of legislation was the 1974 Juvenile Delinquent Apprehension
18 Act, which was not passed or seen as protecting the interests
19 of females, but it turned out that once people in this field
20 began examining who the status offenders were, they learned
21 that most of the females in that system are indeed status
22 offenders, and so the push began to remove this group, this
23 population from detention centers and secure institutions so
24 it did turn out that those working on behalf of girls had a
25 piece of legislation that gave some impetus and some attention

1 to the problem.

2 There had been cases, one in New Mexico that occurs
3 to me, very often another disparity, unequal way in which the
4 system functions, is that once institutionalization has
5 occurred, one finds that as dismal as the picture is for
6 males, with respect to vocational learning, vocational oppor-
7 tunities, they still tend to have more opportunities and more
8 relevant opportunities offered than do females who are often
9 tracked into cosmetology, file clerking, laundry service.
10 Those are the typical ones.

11 There was a judge, a federal ruling came out of the
12 State of New Mexico that suggested that -- said that the fact
13 that there is a smaller population of females did not
14 entitle administrators of those institutions to offer fewer
15 and different opportunities to females than males.

16 So, some of the -- some legislation is in place, some
17 laws have been challenged and struck down. I think what
18 we're dealing with primarily, well, we're dealing with several
19 things. Very, as I -- very deeply rooted ideas about the
20 double standard of male and female behavior in the society,
21 we're also, quite frankly, dealing with a group of people,
22 juvenile court judges, who traditionally have held a lot of
23 power. They are not -- in addition to other people within the
24 system, the juvenile court system they have a good deal of
25 power and are very much, of course, influenced by prevailing

1 norms, as it were. So it's practices as well.

2 A (By Ms. Zimmerman) I'd just like to add, in addition,
3 to your question, that while there have been some changes in
4 many states to -- to take status offenders and those girls
5 out of secure facilities like the training schools, the state
6 laws, and it's on a state by state basis, still allows status
7 offenders to be brought into the juvenile court and detained
8 for a certain period of time.

9 And so, therefore, because the laws are ambiguous,
10 and somewhat arbitrarily applied as Ruth implied, parents
11 can refer them and all kinds of people can bring them in on
12 very loosely defined charges. These young people still are
13 being brought into juvenile courts and not only in this state
14 but around the country for those non-criminal offenses, so
15 that's one area of the law and policy that needs to be examined
16 is getting those kinds of status offenses out of the juris-
17 diction of juvenile courts.

18 Q You alluded to those working in behalf of girls. Who
19 are you talking about, men and women or --

20 A (By Ms. Crow) Primarily the research that gave those
21 of us in the field the data has been done by women.

22 Q By women?

23 A At -- more often academic women working in departments
24 of sociology, political science, criminology, have provided
25 practitioners, people in the field, with the dimensions and

1 the scope of the problem so that we now are beginning, we do
2 have some data and we're beginning to accumulate more and
3 that's very important. To have that baseline of information.

4 Practitioners in the field include men, I would say
5 however it has --

6 Q It seems to me that, you know, at the heart of the
7 issue as you have alluded to is the -- is a whole question of
8 myths that guide cultural society, and the whole socializa-
9 tion scheme?

10 A Right.

11 Q As well as education, etcetera. And if I'm reading
12 you correctly, the essential element in terms of civil rights
13 that you're articulating is unequal protection under the law?

14 A Right.

15 Q Which falls within our interests and our purvue.

16 A And youth, of course, have their own problems, I mean
17 we in the State of Arizona are familiar with the Gault
18 decision which after all is very recent, 1963, I believe,
19 that gave juveniles even some measure of due process.

20 So, we're speaking about, in a way, the developing
21 concepts of both children's rights and women's rights as they
22 come together and affect this population of people and --

23 Q Okay, one other question. In your judgment, with
24 Arizona as the context, are rules, regulations, policies,
25 laws, on the books that if aggressively followed, would

1 change the effect that you are speaking of? Or are we talking
2 about proposed development of new law? New policies?

3 A (By Ms. Zimmerman) For the most part, we're talking
4 about changing existing laws and policies which have served
5 to enforce a different standard of justice and I think one
6 that -- a couple that come to mind that are in terms of legis-
7 lation are the current in the juvenile court, the current
8 enforcement of status offense, laws that allow juvenile
9 courts to hold runaways for a certain period of time, that's
10 been very resistant to substantial change, although the last
11 few years. Another one that comes to mind is most recently
12 enacted policy that requires parental notification for young
13 women to receive reproductive -- freedom of choice abortion
14 services or birth control services, those kinds of things.

15 Then we come down to perhaps less clear but equally
16 detrimental policies, not only in the allocation of funds
17 but those same myths and the same attitudes that you were
18 just talking about get reflected all the way down in terms
19 of our state child welfare, health, social systems, that say
20 not only allocation of funds are inadequate but the types of
21 programs that are provided, the types of remedies to the
22 social problems are clearly not only not adequate but are
23 clearly out of line with what really young women need.

24 So, I think those kinds of things that are perhaps
25 institutional practices as well as policies that become

1 reflected in attitude not only in the funding but in the way
2 in which we approach, and it pervades education, as you
3 said, job, types of opportunities, a whole arena of areas that
4 affect young women.

5 Q You alluded to even those discretionary areas that
6 persons in positions to adjudicate and make decisions.
7 They're controlled by the normal of the community.

8 A Absolutely, and juvenile court judges in particular
9 have enormous discretion in terms of who's detained and what
10 sort of disposition happens to that youth and being governed
11 by a stricter sense of morality for young women which is re-
12 enforced by parents and schools, than they in fact reflect
13 the society and so the element is the young women is treated
14 more harshly.

15 I think what I wanted to be careful to say is that
16 while the status offenses laws, we're not requesting that
17 those laws be equally enforced male and female, males now
18 will be locked up in the same way females are.

19 What we're saying is that those kinds of policies and
20 laws discriminate against young women and are not necessary,
21 should be eliminated.

22 THE CHAIR: Do you have any questions?

23 MR. PALACIOS: No, no questions.

24 Q (By the Chair) I have one other question. Within
25 the class of women, are there differential administrations

1 of the law tied to social class?

2 A (By Ms. Crow) Well, yes, I think it is more clearly
3 understood that the adult prison system very much reflects
4 the continuing problems of discrimination that our society
5 has based on class, race and ethnicity. It's not as well
6 understood but the juvenile court reflects the same kind of
7 bias. There's no question about it. We're dealing with
8 roughly the same phenomena we see once again the prison
9 systems both adult and juvenile reflecting the problems of
10 discrimination as it works it out, both minors and adults.

11 Q Fine. Do you have a statement to leave with us or --

12 A Well, -I --

13 Q It's not absolutely necessary.

14 A I could certainly send -- I don't have this typed in
15 a way, I'll be glad to do so.

16 THE CHAIR: Okay. We'd like to take just a short break,
17 if that's okay with you.

18
19 (Short recess)

20
21 THE CHAIR: Mr. Flores, you heard the opening of the
22 session and you are aware of what we are about?

23 MR. FLORES: Yes, sir.

24 THE CHAIR: And we would be interested in your testi-
25 mony. Before you begin, if you please would share with us

1 your name, the organization that you represent and your posi-
2 tion in the organization?

3 MR. FLORES: Thank you.

4 THE CHAIR: Thank you.

5

6

ALBERT FLORES

7 A (By Mr. Flores) My name is Albert Flores, I'm an
8 attorney in private practice here in Tucson with the law firm
9 of Cordova, Flores, Morales and Hindequez (Phonetic). I'm
10 vice president of the corporation and I've been in practice
11 for about six years now.

12 It's a real pleasure to be here, I was asked to give
13 my remarks by Art Palacios, whom I first met back in, I believe
14 1979, it's been some time.

15 I don't know why I was asked to speak here, I'm cer-
16 tainly not an expert in the civil rights areas, although I've
17 had occasion to do some things in the legal area involving
18 civil rights.

19 I've been trying to limit my practice to criminal law
20 and personal injury, but invariably somebody comes along
21 and tells me a sobstory and I end up doing a civil rights,
22 here in federal court. The first one of which, well, I have
23 done quite a bit of police misconduct litigation but the first
24 of any consequence to the public at large anyway was back in
25 '79 when I first met Mr. Palacios.

1 I had filed an action against the City of Phoenix under
2 the Voting Rights Act in an attempt to bring about a district
3 .. representation for the City of Phoenix. I intended to give
4 my views on that to the commission, or to the committee
5 because in my estimation that was one of the major problems
6 within our city and its electoral system.

7 However, the early morning news on Thursday clearly
8 showed a victory for district-type system here in the City
9 of Phoenix and personally I'm glad to see that.

10 I think that will keep the city out of court for a
11 little while anyway.

12 It's interesting, though, to note in today's paper,
13 some of the reactions by the City of Phoenix and the officials
14 of the City of Phoenix to that victory. Or loss on their
15 part, I take it -- they're taking it that way. So, I think
16 it's important.

17 I'm not going to dwell on that although I intended to
18 originally until that vote, but as someone who's interested
19 in the civil rights area I think it's going to be important
20 for the state and the -- even the United States Commission on
21 Civil Rights and for this committee to keep a view on how
22 these districts that are going to be drawn will be drawn,
23 and also to see what the reaction is going to be.

24 There's talk of perhaps expanding what the electorate
25 has voted for and I have my questions as to the legality of

1 some of the things that are kicked around now and I'm cer-
2 tainly going to keep my eye on it, and I hope that you people
3 that are interested in the civil rights area too.

4 But aside from that I'm not going to dwell on that,
5 although I intended to originally, I'm glad for the victory
6 but they ruined my speech.

7 The second action that I brought in the civil rights
8 area is just recently I was involved, and I know Dr. Warren
9 knows about this because he was involved in part of the
10 testimony in a companion case, in an action against the
11 Phoenix Union High School School District for the discrimina-
12 tory, what we did, I think, show to be discriminatory action
13 in closing down the city's inner city schools and affecting
14 a large population of the -- the large minority population of
15 the City of Phoenix.

16 What I would like to do with the committee is share
17 some of the things that I found in conducting our discovery
18 for that particular case, not so much in what has already
19 been partially solved by the court's recent order to reopen
20 an inner city school but some of the things that tangentially
21 were found out by discovery are really rather interesting.

22 And I'd like to submit to this committee that our
23 educational problems within the inner city and for minorities
24 are far from over. They're simply starting to begin. And
25 the reasons for that are two-fold. One, one thing that I

1 found during our discovery and during this whole trial, was
2 that in fact our Phoenix Union High School District is very
3 badly financially strapped. There is money available to spend
4 for education in the inner city and elsewhere, but state
5 legislation keeps them from using any kind of -- exercising
6 any kind of flexibility in the distribution of their monies.

7 There's over 11 million dollars in the city in what is
8 called capital outlay funds for our district, but they are
9 forbidden from using that money for maintenance and operation.
10 Capital outlay is to be used for the construction of new
11 buildings, long term planning and construction. While main-
12 tenance and operation is the everyday running of the schools,
13 the providing for materials, books, etcetera, teachers,
14 janitors, it's the day to day workings of a school district.

15 They are very, very restricted in how they can use
16 their monies.

17 Consequence of that is as you get declined enrollment,
18 you start to lose more and more money. And as that happens,
19 schools have to close. I certainly found that they -- the
20 school district was not closing school simply to close
21 schools but they have a financial problem. The schools that
22 they chose to close, we have shown affected minorities dispro-
23 portionately and that's being remedied, but the financial
24 problem is not being remedied.

25 And throughout our discovery, we were able to speak

1 with some of the most renowned experts in the area of housing,
2 education, discrimination, desegregation throughout the nation,
3 and we didn't use a lot of them as witnesses but we certainly
4 had occasion to speak with a lot of them.

5 And as they came, a couple of them came to our city,
6 one most notably was Dr. Gary Orfield (Phonetic), who is a
7 desegregation expert, who has set up desegregation programs
8 for school districts throughout the nation. And he came to
9 the City of Phoenix several years ago at the request of the
10 Carter Administration to conduct a housing study as to how
11 the City of Phoenix was using its funds for low income hous-
12 ing. The funds that were being granted by HUD and how they
13 were applying to those funds.

14 Dr. Orfield conducted an extensive study which I was
15 able to see and speak with Dr. Orfield about, and in looking
16 at that study and speaking with Dr. Orfield, he is the first
17 person that really told me your problems here in the City of
18 Phoenix, as far as education is concerned and education for
19 inner city students is just beginning. And he traces that
20 problem back to the housing. And some of your people here
21 from Phoenix are familiar with what happened with the scattered
22 housing hearings that were held here in an attempt to have
23 low income housing placed throughout the city as opposed to
24 where they've traditionally been placed in south Phoenix and
25 central-west Phoenix now, where the minority community is

1 now being dispersed to and Dr. Orfield says that is what is
2 happening in this community is that you have no scattered
3 housing. And you can't force people to live where you want
4 them to live and that's really the basis of integration.

5 Well, the study, to make a long story short, basically
6 tells us that these homes are being placed in areas where
7 you can predict they are going to be placed. And the end
8 result is discrimination. And that is especially true in
9 education because as your funds are cut, the first schools to
10 go, and it was shown here in the City of Phoenix through
11 this trial, we had four minority schools go first, the simple
12 reason for that is that those are the first to be neglected.
13 Those are the first that students start moving away from, the
14 areas where you're getting low income housing, where you're
15 getting folks that people, it's not so much the folks, it's
16 just the stigma of being in the areas, they move on.

17 They move on to Scottsdale and it's becoming quite
18 apparent here in our city the whole inner city is being
19 redefined. It's going further and further north and
20 as we go further and further north, those people who do not
21 want to be affected by those who are moving further and further
22 north, they keep moving further and further north, or east.

23 And what we end up with ultimately is Dr. Orfield's
24 theory and something that I strongly believe in is a downtown
25 New York or downtown Los Angeles or a downtown Detroit.

1 You have a black and a brown corridor running down the
2 center of your city and that's because people are moving out
3 and as people move out for education and your enrollment
4 declines in the inner city, your programs, your educational
5 programs start to suffer. And what happens in terms -- not
6 only do the Anglo people move out from the inner city, your
7 priority or your -- your active and -- minority students
8 that really want to get ahead, really wants to get those
9 21 hours, those good courses and wants to go to the power
10 university, he or she moves out of your district.

11 If they can't afford to move, lock, stock and barrel,
12 they go to school somewhere else. We see it today, even
13 minority students who can afford to get out of the public
14 school system now are going elsewhere. You have St. Mary's,
15 you have different schools where your minority students are
16 going, those that want to get ahead, get to a power university
17 simply have no faith in our public education system.

18 And if we continue as is continuing today, I think in
19 terms of civil rights, maybe I haven't tied this all into
20 civil rights yet, but what is happening is if this move
21 continues to go, it's the minority person who is being affected,
22 it's the minority person in the inner city who's going to be
23 affected with the cut in courses, as your enrollment declines
24 you have to cut that money. Where does your money go? Well,
25 as enrollment decreases you can put more money into that so

1 those people that are moving out from the inner city and
2 moving elsewhere as those areas repopulate, the new money
3 comes in there and your capital outlay money will build a
4 new school for those folks that can afford to move out of
5 the inner city.

6 The inner city suffers and the inner city, when we
7 talk inner city I don't think there's any question we're
8 talking about minorities. These are some of the things that
9 I learned in our discovery.

10 I would urge anybody who can get a hold of the report
11 from Dr. Orfield, as a matter of fact, in viewing your
12 agenda for yesterday, Henry Cabirac, from the City of Phoenix,
13 I think is privy to that information and has a copy of that,
14 it has not been published, by the way, but it is, in my
15 estimation, a very important document in that it really sets
16 forth what is occurring in the City of Phoenix in terms of
17 its housing, development and also how it affects education.

18 I'm not sure what we can do or what the committee or
19 even the commission can do on some of the problems that I see
20 occurring here in the City of Phoenix, but it's important.

21 I'm certainly, again, going to keep my eye on it and
22 I hope that our school district officials have enough fore-
23 sight and can learn from what I consider mistakes of other
24 cities in allowing this problem to continue, I hope to have
25 enough foresight to cut it short.

1 If I can be of any assistance, I certainly will. I
2 will be glad to answer any questions.

3 THE CHAIR: Fine. Do you have any questions, Art?

4 Q (By Mr. Palacios) During your discovery and during
5 your background in this whole school thing, were you able to
6 or did you find any kind of disparity between the academic
7 level, achievement levels of the inner city schools versus
8 those where the other people have fled to?

9 A Absolutely. As it relates to the Phoenix Union High
10 School, what was occurring is that the school had been
11 threatened foreclosure for so long that as we, as I have
12 predicted will occur when, as you move further and further
13 down the corridor, your bright students tended to leave the
14 school, the downtown city school, to go elsewhere, there was
15 an open enrollment policy where you could attend, a student
16 could attend school wherever he or she wished, and they
17 would leave the school to go to another school that was not
18 threatened foreclosure or a school that was not neglected in
19 terms of its physical facility, they would go elsewhere.

20 And yes; so Phoenix Union High School in fact was con-
21 sidered an underachieving school and that's exactly how our
22 board members characterized Phoenix Union High School during
23 the trial. And yes, it was an underachieving school, but
24 that's not -- that's not anything unusual because the testing
25 that they were using was in fact standardized achievements

1 tests, which traditionally minority students have performed,
2 for a myriad of reasons, performed a lot more poorly on those
3 tests than Anglo students and your inner city schools are
4 basically minority schools.

5 And using those test procedures, they were under-
6 achievers, yes.

7 Q How about the faculty, I'm interested in -- did you
8 find that there was any kind of effort on the part of school
9 district to put bright, energetic teachers into this, Phoenix
10 Union High School, or were they the dredges and the leftovers
11 or what?

12 A That's an interesting question because one of the
13 things that they -- that we brought up is one of the
14 criterias they used for determining which schools would be
15 closed was the experience of teachers.

16 In other words, they looked at each school and said
17 how much experience does this teacher have and how much
18 experience does this teacher have? And what they determined
19 experience was simply number of years teaching. And they
20 closed, based on that as one of their criteria, all four
21 minority high schools were closed in the inner city and
22 that's, that's simple.

23 I could have predicted that without doing any kind of
24 study, because the kind of teacher that is placed in minority
25 school is basically or generally a minority teacher. The

1 minority teacher is a new phenomenon, generally speaking it's
2 just a new animal. So naturally the school with the least
3 amount of experience for any teacher is going to be a minority
4 school. And that's one of the things that they used for their
5 criteria, they used several other, they used five or six of
6 them and each of the criteria could be traced back the same
7 way, it was inherently based criteria, but the teachers are
8 good.

9 But there's a high turnover rate, there's a burnout
10 rate in the inner schools. You have some that have been at
11 Phoenix Union High School since day 1. And those are the
12 tough skins that remained there, but there's a high turnout
13 rate, but the teachers are generally good teachers, I saw
14 no complaints there.

15 THE CHAIR: Very fine.

16 A Thank you.

17 THE CHAIR: Thank you. And you think we would have
18 access to Orfield's report?

19 A As far as I know it's public record, although it's
20 not -- it has not been published, it was not completed until
21 after the Carter Administration and -- for whatever reason it
22 has not been published, although it's an excellent report.

23 And I also know that Dr. Orfield would be more than
24 happy to speak with you. He's an excellent individual and
25 he's just very interested in the City of Phoenix, I know that.

1. Q (By Mr. Palacios) Does he live here in Phoenix?

2. A He lives in Chicago now, he just moved from Ohio.

3. THE CHAIR: Okay, thank you so much, Mr. Flores.

4. Mr. Saldate, are you present?

5. How are you today?

6. MR. SALDATE: Real well. Good morning.

7. THE CHAIR: May we get your name and the organization
8. that you represent and your position within that organization?

9.

10. MACARIO SALDATE

11. A (By Mr. Saldate) Certainly.

12. My name is Macario Saldate, and I'm the Director of
13. the Mexican-American Studies and Research Center at the
14. University of Arizona.

15. With your permission, Dr. Warren, Mr. Palacios, I'd
16. like to read from my prepared text.

17. THE CHAIR: Fine.

18. A An examination of the ideological philosophy of the
19. American Revolution reveals such values as inalienable rights,
20. equality, justice, due process, general welfare, representing
21. democracy and others. The actualization of these values has
22. constituted a major objective of the American Government since
23. its inception in 1776.

24. Moreover, the three branches of government have theo-
25. retically provided a federal system of checks and balances

1 between the forces operating in society and the formulation,
2 development and implementation of public policy.

3 Additionally, it has been commonly thought that
4 societal institutions in general will direct their develop-
5 mental efforts towards goals congruent with the democratic
6 precepts mentioned above.

7 Among this institution's educational units have ideally
8 and traditionally served as a standard bearers of these
9 values. Said rhetoric notwithstanding a litany of disparity
10 have been documented regarding constitutionally written and
11 espoused values and realizations, particularly with respect
12 to this country's women, ethnic and racial minorities.

13 Based upon this historical context, it is both foolish
14 and impossible to rank order with any legitimacy, civil rights
15 issues as if one is more important than the other. However,
16 I choose to discuss with you civil rights area relevant to my
17 higher education background, training and experience, that
18 continues to remain unresolved and inhibit minority socio-
19 economic mobility, namely, equal employment opportunity,

20 The opinions and ideas I share with you today are non-
21 exhaustive synthesis of many academic and intellectual efforts
22 pertinent to equal employment opportunity discrimination for
23 Hispanics in higher education.

24 I will present a brief framework for current employ-
25 ment discrimination decisions but more important, examine

1 within today's time limitations, the social, political and
2 economic circumstances within which civil rights violations
3 occur and legal text applied.

4 Moreover, I will suggest some reforms and innovations
5 needed to progressively and positively influence the complex
6 and difficult problem of Hispanic employment discrimination
7 and mobility in higher education.

8 According to Kenneth E. Bolding, quote, discrimination
9 is a phenomena which is so pervasive in all human societies
10 that there is no doubt at all that it exists. It is not,
11 however, a unitary phenomenon but a complex of number of
12 related forms of human behavior and this makes it not only
13 hard to define but frequently difficult to comprehend, end
14 of quote.

15 The three federal statutes imposing the most direct
16 limitations on university policies concerning personnel
17 decisions are Title VI of 1964 Civil Rights Act, dealing with
18 race, Title IX of the Educational Amendments of 1972, dealing
19 with sex. And Section 504 of the Rehabilitation Act of 1973,
20 dealing with physical and mental handicaps.

21 Specific to employment opportunity legislation are
22 five components. One, Title VII of the Civil Rights Act of
23 1964, as amended in '72. Two, Presidential Executive Order
24 11-246, 11-373, 11-141 and 11-758.

25 Three, the Equal Pay Act of 1963, and its extended

1 coverage of executive, professional and administrative
2 employees in 1972.

3 Fourth, the Age Discrimination Employment Act of
4 1967 and five, the Rehabilitation Act, Section 500, 503 of
5 1974.

6 Title VII is the most significant law affecting both
7 private and public sector employers and institutions of higher
8 education with 15 or more employees. Initially the majority
9 of Title VII suits involve racial discrimination but over the
10 past six years, sex discrimination suits have predominated
11 in higher education.

12 In Title VII cases there are two basic causes of action
13 for the plaintiff. First, disparity impact which looked
14 at whether the employer's neutral stance affects certain dis-
15 proportionately, and secondly, whether in fact there is
16 documental treatment of a group or individual or adverse
17 impact. Presenting this brief context of employment dis-
18 crimination laws is necessary in understanding the relation-
19 ship, if any, exists between higher education employment
20 practices and those laws.

21 According to Webster's Dictionary, William F.
22 Buckley's literary Bible, mobility is defined as, quote,
23 having the opportunity for or undergoing a shift in status
24 within the hierarchical social levels of society, end of
25 quote.

1 This definition is clear. What is not clear is that
2 if we know the societal dynamics that enhance or inhibit
3 employment, mobility and opportunity, yet why have our legal
4 programmatic and institutional responses been inadequate?

5 Minorities continue to suffer a lack of mobility and
6 opportunity, again the recurring persistent question is why.
7 Many people blame education, but is education the problem or
8 the answer?

9 Someone responded educational institutions merely
10 reflect the social, political and economic values of the
11 majority or ruling class which has produced the rhetoric
12 but not the programmatic or institutional structures necessary
13 to make the concept of equal employment opportunity a reality.

14 Still others suggest that minorities are to be faulted
15 for their implied inability to function in the system. How-
16 ever, we are appealing for the participation of both minority
17 and majority groups. The issue is not we versus them, los
18 otros o ellos, but us as a whole.

19 As a concession to the statistically minded, our aca-
20 demic appeal to authority, allow me to offer you some of the
21 lowlights of mobility opportunity issues specifically to
22 higher education.

23 Data from 1979 compiled by the Equal Opportunity Com-
24 mission, indicates that Hispanics comprise 2.8% of all full
25 time employees in colleges and universities. 1.4% of higher

1 education executives, 1.5 of faculty, 1.8% of non-faculty pro-
2 fessionals, 3.4% of secretaries, 3.4% of paraprofessionals,
3 3.7% of skilled workers and 5.9% of maintenance workers.

4 EEOC data from 1975 shows that on salary and tenure of
5 Hispanic employees in higher education, medium salaries
6 for Hispanics were lower than those of Whites in six of the
7 eight occupations.

8 Hispanic full time faculty relative to Whites were
9 less likely to be senior in rank and more likely found in
10 junior positions. This statistical trend may clearly indicate
11 that higher education's programmatic efforts to recruit and
12 retain minority faculty members reflects limitations to a
13 commitment which is not substantive in its intent or results.

14 On the other hand, the institutional counter argument,
15 has been based on that alleged scarcity of qualified indi-
16 viduals for the positions in question. The question is how
17 have institutions of higher education in fact linked that
18 issue of Hispanic professional preparation to the preparation
19 to the needs in the field in, if major civil rights policy
20 efforts in higher education have been reactionary, crisis-
21 oriented and remedial in nature, what proactive measures can
22 be explored or undertaken?

23 Four problem areas in administration alone are noted
24 below. Which indicate first, that the majority of Chicano
25 administrators are recent appointments with only three or

1 four years of experience.

2 Two, the majority of the positions they hold are non-
3 tenured faculty positions with high turnover rate.

4 Three, most Chicano administrators are probably in a
5 staff position, non-decision making positions as opposed
6 to line positions, decision making positions, and finally,
7 most Chicano administrators function -- are functioning in
8 segregated units such as minority affairs, have little impact
9 on total university or college policy.

10 What can these problem areas be attributed to? Who
11 is responsible? Us? Nosotros? Them, ellos?

12 According to Henry M. Levine, with whom I concur, this
13 statistical indictment of education is not the problem, nor
14 would educational reform alone be a satisfactory solution,
15 these statistics reflect deeper societal problems that must
16 be simultaneously confronted if we are to see a positive
17 change in the professional and numerical indicators by which
18 we gauge both mobility and success.

19 Furthermore, I do not believe that change in institu-
20 tions of higher education can and will alleviate all of the
21 problems. Nevertheless, higher education has the resources
22 available to analyze these issues in order to develop and
23 promote alternative resolutions.

24 It is the responsibility of higher education to be on
25 the cutting edge of this effort. If higher education personnel

1 do not examine and extend the knowledge base on these issues,
2 then who? The majority? The minority? Us? Nosotros? Them,
3 ellos? Regardless of the answer, a basic premise of this
4 response must be that resources and power accrue to those
5 that have information, just as information accrues to those
6 that have resources and power. Another assumption is that
7 with increasing competition for academic resources, the
8 availability of information and skills in research is one of
9 the most important in determining any individuals or groups
10 advancement.

11 In this light, our definition and examination of the
12 problem of equal employment opportunity is then critical
13 to developing relevant recommendations, alternative solutions.

14 In order to stimulate further discussion and considera-
15 tion of the equal employment opportunity legal versus policy
16 development, and implementation in higher education issues,

17 I will explore briefly the social, political and
18 economic context within which equal employment opportunity
19 in higher education is carried out. First the social context.
20 In order to understand the social context within which pro-
21 fessional opportunity does or does not happen, it is essential
22 to know that generally, injustices must be perceived by a
23 large segment of society before adequate forces can be brought
24 to bear upon them.

25 Because institutions of higher education are microcosms

1 of society it is necessary for minorities to become proficient
2 in working in institutional social dynamics in order to
3 generate a positive institutional response to the interests
4 and needs of minorities. If this is to occur, institutions
5 of higher education and society in general must view minority
6 social interests and needs as intertwined with their own.
7 This has simply not happened. Generally, universities have
8 failed to constructively examine or respond to the plight
9 of minorities in a broader, interdisciplinary context. Thus
10 the continuing poor enrollment, dropout statistics, etcetera.

11 For example, bilingual education has been relatively
12 successful yet an analysis of its impact on higher education
13 has not been forthcoming and is critical.

14 The question is how has it helped and how has it
15 hindered? Maybe the most important result of bilingual educa-
16 tion has been the hiring of numerous Hispanic faculty which
17 most likely would be without a job in higher education.

18 Corresponding to this positive contribution and essen-
19 tial to its continuation, we must promote an interdiscipli-
20 nary dialogue regarding everything, cultural pluralism and
21 its potential to enrich the various disciplines in terms of
22 both educational instruments and the population that they
23 serve.

24 In retrospect, bilingual education may have tended
25 to isolate minority faculty in the colleges of education.

1 Simply stated, institutional and social reform
2 relevant to these shortcomings will accrue as a result of
3 organized and well directed activities, not continued
4 fragmentation.

5 'Can the majority tolerate minority participation in
6 higher education only within the context of special programs?
7 I.e., bilingual education, Chicano studies, etcetera?

8 As we know, higher education personnel are generally
9 very specialized and represent the spectrum of attitudes
10 associated with the diversity of the United States.

11 Moreover, the bureaucratization, consolidation and
12 departmentalization institutions has resulted in a cumber-
13 some organizational structure which impedes the development
14 of communication networks both formal and informal. Programs
15 and people tend to isolate themselves within the university
16 structure and remain that way having little revisionary
17 impact on the institution. Often the result is a strained
18 competition and division which detracts from the progressive
19 intellectual advances thought to be the strength of colleges
20 and universities.

21 How well have these social dynamics in higher education
22 been studied? Does someone know about these dynamics? Who
23 is letting who know? If someone has the answers, who should
24 be taking the course?

25 At some point even some intuition would be appreciated.

1 The political context. Historically, institutions
2 within society has responded to the problems of minority
3 mobility with that which is politically expedient and symbo-
4 lically adequate for the occasion. Significant political
5 reform to include minorities simply can not be cited. Un-
6 fortunately, the general public, particularly minorities,
7 have not traditionally participated in or understood the
8 political process and thus have not benefitted from its
9 existence.

10 Politics within the university is no less important
11 and it too suffers from this nonparticipatory attitude since
12 many academicians would like to either think or have others
13 think that they are above politics or ignore it out of hand.

14 It is critical for minorities not to participate in
15 this delusion and develop the political acumen to effectively
16 participate in the politics of education. Some would think
17 this effort is fruitless because as Max Weber once commented,
18 quote, Americans prefer to be governed by political hacks on
19 whom they could look down on rather than abler officials
20 who might look down on them. End of quote.

21 Though the value of participation obviously depends on
22 one's perspective, to misunderstand or refuse to recognize
23 the important peculiarities of a political situation will
24 most likely have a negative effect.

25 From the federal perspective, policy and legislation

1 affecting minorities continue to reflect a bandaid approach
2 in controversy envelops most of these deluded efforts. Basic
3 problems go unresolved and shallow criticism diverting to the
4 existing one dimensional programs that have tended to compound
5 and confuse the issue.

6 Many federal agencies, policies and procedures have
7 reflected this confused approach, the EEOC, OCR, are two of
8 the most prominent. Similar as noted by numerous political
9 observers the Carnegie Reports have had a considerable impact
10 on policy and programs coming out of Washington, D.C. Now,
11 whether this report focused on analyzing the problems and
12 controversy surrounding specific programs as opposed to
13 critically evaluating the underlying issues which determine
14 their direction and performance.

15 Moreover, numerous studies and legislative process
16 indicate that the original intent jeopardized by political
17 expediency. In other words, the end result is not always in
18 the best interests of the intended beneficiary.

19 Significantly, Bailey and Moser examined the operational
20 parameters of legislative intervention and indicated, quote,
21 the American polity has, for a generation, operated on the
22 assumption that the market place of opinion and clash in com-
23 promises of adversary proceedings are better guarantors of
24 racial and responsible policy making in the public interest
25 than a system imposed by bureaucratic planners and enforced

1 by authoritarian powers, end of quote.

2 Within this context political participation and know-
3 ledge is mandatory. The economic context. The problem of
4 economic inequality and lack of mobility is glaringly apparent.

5 According to DeLobe (Phonetic), quote, the hopes for
6 more equal opportunities for all have been confused with
7 the presumption that making opportunities equal will reduce
8 the overall extent of poverty and economic inequality in
9 the society. Consequently, quote, in the literal tradition
10 the emphasis on individual assistance has had an ironic foot-
11 note.

12 When individuals fail to profit from the help they
13 receive, the blame will be laid to the individual, not on
14 the helper, or the program. This footnote continues to be
15 significant because programs and policies still develop along
16 the same lines.

17 And the finger is pointed at the failure of minorities
18 as a group and individually to break out of the cycle of
19 poverty. This phrase unveils the interdependent forces which
20 hinders an individual from escaping the social, cultural,
21 educational aspect of poverty. Typically in response to
22 the cycle, the reformists' chosen strategy for reducing
23 inequality is first to stimulate the economic growth so that
24 opportunity, in general, will be increased.

25 Second, to make sure that everyone has an ability and

1 exercises effort can capitalize on that opportunity. For
2 instance, by this passage of antidiscrimination laws.

3 Third, to provide various kinds of compensating assis-
4 tance to people's whose background handicap them in the race
5 to seize opportunity, end of quote.

6 Unfortunately, the reformer is never the one to imple-
7 ment such a strategy and falls play to those who both formu-
8 late and control the social, political and economic realities.

9 In conclusion, the importance of this presentation is,
10 of course, subjective. But this discussion of the chasm
11 between the legal treatment of employment discrimination and
12 social, political and economic contexts in which higher
13 education, employment policies are developed and implemented.
14 is critical.

15 The relationship context and practice is often vague,
16 due to both the arbitrary interpretative parameters of legal
17 enforcement and the arbitrary employment compliance practices
18 of institutions of higher education.

19 Alternative employment and retention practices must be
20 explored and undertaken. The long term possibilities will
21 have to be developed considering the historical, legal con-
22 text presented here.

23 In addition, short term, more immediate alternatives
24 may be to first develop nontraditional recruitment and reten-
25 tion efforts to attract minority faculties for non

1 traditional disciplines.

2 Second, develop effective communication and support
3 networks between the minority faculty within and between
4 universities.

5 Third, stimulate and acquire research funds for
6 minority faculty.

7 Four, evaluate the tenure and promotion criteria for
8 relevancy.

9 Five, staff development must be established as a
10 university priority.

11 And six, money should be available to minority faculty
12 to attend professional and academic conferences.

13 According to Hinn (Phonetic), persistent conditions of
14 cultural contradictions may result in alienation or worse
15 yet, may produce anomie. Disenchantment with institutions of
16 higher education on the part of minorities may be attributed
17 to a perceived declining ratio of power to problems, expect-
18 tations in relation to professional mobility and inadequate
19 or inappropriate programmatic solutions to societal problems.

20 When a feeling of powerlessness pervades efforts and
21 a disparity between expectation and likely development is
22 evident, the result can be something less than despair or
23 disillusionment.

24 The programmatic institutional and legal efforts
25 directed at equal employment opportunity issues affecting

1 minorities in higher education may alleviate alienation,
2 nonetheless, it must also recognize that cultural contradic-
3 tions and inconsistencies between democratic values and social,
4 political and economic realities are oftentimes beyond the
5 scope of possible solutions, implemented at an individual level.

6 On the other hand, this should not be misconstrued to
7 mean that no effort should be explored or undertaken. With
8 this in mind, a participative mechanism for policy decision
9 making concerning equal employment opportunity for Hispanics
10 in higher education should be developed. The compilation and
11 dissemination of pertinent information may very well be the
12 most significant variable in the formulation, development and
13 implementation of policies affecting minorities in higher
14 education.

15 Finally, the professional opportunities for minorities
16 in higher education will be determined by our efforts supported
17 by societal institutions that confront the underlying social,
18 political and economic issues discussed here.

19 Thank you very much.

20 THE CHAIR: Thank you, a very excellent report, Mr.
21 Saldate.

22 Do you have any questions? Do you have a copy of that
23 for us?

24 A What -- could I mail it to you? Would that be best?
25 There's some corrections that I -- we have made on that --

1 THE CHAIR: If you would do that, I think it's a very
2 significant statement. Do you have questions?

3 Q (By Mr. Palacios): Recently something happened there
4 at the university where your department was going to be
5 cut entirely, am I correct?

6 A That's correct.

7 Q Could you just briefly summarize that, what happened
8 there?

9 A It's hard to briefly summarize it because, like those
10 things, at institutions of higher education they're quite
11 complex, but one of the things that happened very initially
12 in the summer was that a new president was hired at the Uni-
13 versity of Arizona. First of all, I think in general there
14 was a misunderstanding of the function of that center as it
15 relates to Hispanic scholars at the University of Arizona.
16 The understanding of the president was that in fact the center
17 constituted sort of a comforting culturalization for minority
18 faculty. Instead of being what it in actuality the center's
19 mission is, and that is to coordinate research among faculty
20 and to try to attract Hispanics into a variety of disciplines,
21 based on the notion that we think that the university should
22 respond to the great variance of skills, abilities and talents
23 of Hispanic students as well as other people that should
24 know about the Hispanic issue. But that was the major
25 problem in terms of understanding the role of Hispanics in

1 higher education, particularly as a unit. As well as the
2 whole climate of, economic climate that is now affecting all
3 of us in many institutions, there were some proposed cuts,
4 in fact there were some cuts in terms of our personnel at
5 the center, and that was very critical to us, and the com-
6 munity that has been supporting that kind of effort so since
7 then there has been a reconsideration of the role of the
8 center by the president, by the administration, we're currently
9 now submitted a budget to the board of regents, it has been
10 approved, it is in the high priority at this point in terms
11 of the other budgets submitted, however everything is now
12 up to the legislators who will in fact look at the three
13 university budgets.

14 Hopefully, there will be some understanding on -- in
15 terms of the minds of the legislators as to the importance
16 of this type of effort within higher education. I'm not sure
17 that that's the case, but hopefully, there is some under-
18 standing of the role that Hispanics are now playing and other
19 minorities in higher education and how important it is to
20 present a program that is systematic in its approach to the
21 three missions of the university, that is instruction,
22 research and service.

23 And basically goes back to the talk.

24 A lot of issues that minorities are experiencing at
25 this point are very complex, but we as an institution have to

1 respond, one, to be able to interpret the legal aspect of
2 equal employment opportunities as it relates to us as an
3 institution, as well as to look at the underlying problems
4 of social-political nature to begin to resolve and push the
5 horizons of knowledge as it relates to minorities.

6 I think we've done that very well, that is a mission
7 of the university, particularly the University of Arizona
8 being a very strong research oriented institution, has done
9 that in many, many areas in very admirable ways, but in
10 relationship to the large number of Hispanics and other
11 minorities in this state, we've done very poorly.

12 Here is a unit, the Mexican-American Studies and
13 Research Studies that is going to do this in an organized,
14 scholarly way, but yes, it either is misinterpreted or not
15 considered at the level that it should.

16 And that's, very briefly, what has happened at the
17 University of Arizona.

18 Q (By the Chair) Do you have faculty rank?

19 A Yes, I do, sir.

20 Q In which department?

21 A In the college of education, educational foundations
22 administration, I'm associate professor there.

23 Q If you would get the address of the commission so that,
24 I think it's very important that we get a copy of that.

25 A Certainly.

1 THE CHAIR: Thank you so much.

2 We have Mr. Austin here, Philip Austin, do you want
3 to come up, please?

4 MR. AUSTIN: A few years ago I met Tom and he gave me
5 some tips about how to win friends and influence people.

6 THE CHAIR: May we have your name and your position
7 with the organization you represent, please?

8

9 PHILIP A. AUSTIN

10 A (By Mr. Austin) Dr. Warren and Staff of the Civil
11 Rights Commission and the Arizona Advisory Committee, my name
12 is Philip A. Austin, I am Chief Counsel and Executive Director
13 of the Civil Rights Division of the Arizona Attorney General's
14 Office, as well as Executive Director of the Arizona Civil
15 Rights Advisory Board.

16 And during my presentation I shall explain and dis-
17 tinguish those two entities.

18 And I would also like to take this time to introduce
19 also, on my left, Virginia Aguero, from Mesa, Arizona, who
20 is a member of the Arizona Civil Rights Advisory Board as
21 well as a past chairman of the board.

22 On behalf of the Civil Rights Division of the
23 Attorney General's Office, of the Arizona Civil Rights Advisory
24 Board and the Attorney General, Bob Corbin, I'd like to
25 offer a belated welcome to the staff and the welcome more

1 in the sense of cooperation and brotherhood to this committee,
2 in its efforts for the promotion of civil rights in Arizona.

3 I do underscore our firm hope of cooperation with the
4 Arizona Advisory Committee and the U.S. Civil Rights
5 Commission in general, for, as I think -- as I will explain
6 during the course of my presentation, I think we have common
7 goals and can work together in a manner that can fulfill those
8 goals most expeditiously.

9 In response to your request to address the subject of
10 this conference, I'd like to speak on four general topics.
11 The role and the work of the Civil Rights Division of the
12 Arizona Attorney General's Office, and the Arizona Civil
13 Rights Advisory Board, and the note taker, who the opportunity
14 -- if I speak too fast, stop me at any time. I'm used to work-
15 ing in depositions like that, and sometimes I do speak rather
16 fast.

17 The second topic is the work that we see that needs,
18 that yet needs to be done to accomplish, I think our common
19 goals of promotion of civil rights in Arizona.

20 On the areas of interest that are out -- that may be
21 outside our parameter as I will describe later, and some
22 suggestions, suggested roles where our agency and board can
23 work with you to fulfill those above-stated goals.

24 The Arizona Civil Rights Act of 1964 created the Arizona
25 Civil Rights Commission and created it as an independent state

1 agency. Did I say '74? I mean '64. To enforce the Arizona
2 Civil Rights Act.

3 The commission, after much review and study, was modi-
4 fied in 1974 and a division of the Arizona Attorney General's
5 Office was created, Arizona Civil Rights Division, and an
6 advisory board, Arizona Civil Rights Advisory Board, was
7 created to take the place of the commission.

8 The reasons for the changes was a lack of competency
9 and frustration by both the charging, what we call the charging
10 party community and the respondent community to the function-
11 ing of that commission. So, combined effort by businesses,
12 community groups, created the change in 1974 and the structure
13 as we have it today.

14 I would like to speak first about the structure of
15 the division, and its activity. The Arizona --
16 the Civil Rights Division of the Arizona Attorney General's
17 Office is a full fledged division of the attorney general's
18 office with equal standing to the tax, criminal, antitrust
19 and other divisions of the enforcement agency of the Arizona
20 Attorney General's Office. It has two main offices in Phoenix
21 and Tucson, and is staffed by seven attorneys, 12 investi-
22 gators and support, clerical staff.

23 We have also developed outreach offices in Flagstaff,
24 Yuma and part time in Sierra Vista.

25 The Arizona Civil Rights Act prohibits discrimination

1 in the areas of employment, public allocations and voting
2 rights. Far and away the most active part of the function of
3 the division is the processing, investigation and if need be,
4 litigation of employment discrimination complaints.

5 The coverage of the act is similar to that, in fact,
6 the Arizona Civil Rights Act was amended in 1974 as I mentioned
7 before, to trace Title VII of the U.S. Civil Rights Act. And
8 only varies from Title VII in the following manners, one
9 it substitutes Arizona wherever it says United States,
10 obviously, and two, it gives us only one year statute of
11 limitation to sue in a case when we have found cause, that
12 discrimination has taken place, which, at first brush seems
13 to be a great limitation but as I'll explain to you later,
14 it's not proved to be.

15 And three, I was going to say in the area of remedies
16 but that's not true, because we are allowed the same equitable
17 remedies, that is if we find discrimination, remedies we can
18 obtain for a charging party, usually equitable, that is back
19 pay and reinstatement.

20 Under the Arizona Civil Rights Act, employment pro-
21 hibitions as you will -- can see in the newsletter I pro-
22 vided on the third page, gives you some sense of the activity
23 that has developed over the past few years.

24 Since 1980 when I became chief counsel, the activity
25 and the processing of cases has almost doubled whereas in

1 1979 there were 384 cases processed, in 1981, there were 745
2 cases processed. This year, '81-'81, we've processed approxi-
3 mately 800 charges of employment discrimination.

4 In the same vein, our litigation activity has increased
5 and again this I note in spite of the one-year statute of
6 limitation. Whereas in 1979, we have listed four cases,
7 suits brought, 980, 14, this year, our records in the last,
8 since August, in the last four months, we have filed 13 pieces
9 of litigation in the last four months, and anticipate about
10 30 or 35 cases of employment litigation suits we filed in
11 the State of Arizona.

12 This is due, in major part, to -- was done with little
13 or no increase in staff, we presently, as I mentioned before,
14 the numbers I've stated before, approximately 23 staff members
15 and so you can see the great deal more efficient processing
16 of cases has taken place over the past few years.

17 The other areas -- well, still in the employment
18 field, we maintain these other areas of activities. Ed
19 Valenzuela spoke to you yesterday and might have mentioned
20 the cooperative attitude and work-sharing agreement we have
21 with the EEOC, we are, it's known as 706 agency and receive
22 federal funds from the EEOC to help process those cases.

23 We have developed work-sharing agreements of how to
24 process those cases so they are now duplicative, employers are
25 not investigated, are not doubly investigated, and we have

1 also worked out litigation strategies together so that we can
2 make the most effective use of our joint resources.

3 In the same vein, we have begun a more cooperative and
4 more unified stance with the Department of Labor, Office of
5 Federal Contract Compliance in this area. We obtained this,
6 and this is, I guess getting away from the strict employment
7 discrimination facet, in that we are designated by the
8 governor as the agency to enforce the state contract com-
9 pliance program, which, under which, Executive Order 75-5,
10 signed by Former Governor Raul Castro, the state must practice
11 affirmative action in the letting of contracts.

12 What we have done in cooperation with the Office of
13 Federal Contract Compliance and the individual state agencies
14 as well as the City of Phoenix Human Relations Commission and
15 I know that Henry Cabirac spoke yesterday, begun a training
16 program. Analysis was that when, again last year when we
17 looked at this situation was that part of the problem was
18 that the individual agency personnel assigned to do the task,
19 one, were greatly undermanned, lack of personnel. And two,
20 a great deal of them lacked any education in the field. So
21 have developed an education and coordination system so that
22 the state agencies who are monitoring state contractors are
23 at least educated in what their responsibilities are.

24 And then we are serving as a backup if they need assis-
25 tance and legal advice; suits and the like.

1 In this effort, we have, are developing sort of work-
2 sharing agreements with the city and the federal government
3 again to avoid duplication of monitoring, at the same increase
4 the coverage of those contractors monitors for many of the
5 state contractors are also federal and city contractors. And
6 that way get the big, greatest return for the investment of
7 time and effort by different agencies.

8 This also leads to our activity in the cooperation
9 with the local human relations commissions like the City of
10 Phoenix Human Relations Commission and the Tucson Human
11 Relations Commission, where we have, in Tucson area, provided
12 a great deal of the training that that staff has right now
13 and entered into agreements about what cases are most deemed
14 -- are deemed best suited for our investigation and what is
15 deemed for them, and to, as much as can be provided by the
16 confidentiality statute, share information and resources
17 available.

18 In the same vein, we have done that with the City of
19 Phoenix, have held joint training sessions and have advised
20 them and worked with them on different cases they have under
21 their statutes that may come into our purview.

22 Another aspect of, in the area of employment discrimina-
23 tion that's unrelated to the enforcement but does, and these
24 last items I deem to be viewed as non-enforcement activity
25 that achieve the results of the goals of civil rights, and

1 that is primarily in the area of education and cooperation,
2 is working with the bar association that one of our members
3 is a chair of the fair employment practices committee of
4 the bar and have put on conferences and training sessions as
5 well as discussions of your rent topics with the bar and a
6 lot of the -- and have done training to encourage the private
7 plaintiff bar.

8 Although we have been very active lately and are more
9 active and intend to be more active in the area of suits and
10 processing of cases, there's still a lot of work to be done
11 that our agency is just not able to handle so the promotion
12 of a private plaintiff bar in this area is, we think, some-
13 thing that is -- will be of assistance to the promotion of
14 the cause of civil rights, as well as educating and developing
15 a deep respect by the respondent bar.

16 I think that we have maintained that, I think that
17 I am proud to say that I can say that I think we have the best
18 EEO law firm in the state, and I think that if you ask the
19 defense bar they would say that too, because it's been an
20 approach first of explaining to them our position before we
21 jump on them.

22 And I think it has gotten us very much cooperation from
23 the respondent bar, who by and large are concerned about civil
24 rights in that they think legally the best way to protect
25 their clients is to comply with the law. And I don't think

1 that there's a great deal of -- on the bar's part, concerted
2 efforts to avoid the law, it's just a matter of disputes over
3 interpretation of what the law says that makes it a horse
4 race.

5 This activity also has generated, I think, progressively
6 in benefits to the citizens and residents of the state in
7 that if you view it from actual monetary benefits, that last
8 year, as opposed to 1979, I think we had about 50% increase
9 in the amount of, total amount of dollars in back pay and
10 reinstatement that have been provided to charging parties
11 throughout the state.

12 Another area of jurisdiction we have is that of voting
13 rights. And I have -- the division has just developed a
14 voting rights section, and again if I may -- it gives me the
15 opportunity to maybe espouse the merits of having a civil
16 rights division within the attorney general's office which,
17 in our studies, you probably know is the exception and not
18 the rule.

19 I think only New Jersey and Arizona is that the case.

20 In negotiations and working under the mandate of the
21 attorney general and especially this Attorney General, Bob
22 Corbin, the civil rights division has played a major role in
23 advising, as you know, the attorney general is the attorney
24 for the state, through the auspices of the attorney general
25 of the state in different decisions it makes in regards to

1 voting. As you know, Arizona is covered by the United States
2 Voting Rights Act, and has to fulfill those requirements of
3 section V, the Arizona Civil -- the Civil Rights Division
4 is the compliance division in that regard, and you might have
5 heard this morning in regard to the redistricting election
6 that was just finished and results of that, that the governor
7 is submitting to the attorney general the review of the plans
8 being proposed and that will come under our auspices to review
9 that plan in regard to the precepts and laws set down under
10 the current Voting Rights Act.

11 Previously, you may have been aware of the attempt
12 by the Arizona Legislature to create a new county in northern
13 Arizona. we played a role in the sense we advised the -- or
14 tried to advise the legislature against that, but sometimes
15 even the -- if you're familiar with the lawyer-client relation-
16 ship, the lawyer's role is just to advise and not to direct.
17 However, we worked and made proposals not only in regard to
18 that but also advised in regard to the redistricting that
19 took place statewide and I'm proud to say that my review of
20 the final outcome followed a lot of the recommendations we
21 made that again weren't followed that closely.

22 But we are maintaining a role, we do work with the
23 justice department voting rights section on any changes that
24 develop, and in those specific areas, will remain active.

25 Another function that we have is the A-95 review

1 function for those who are requesting federal grants. We
2 are the state agency that clears the prospective grant appli-
3 cant concerning their equal opportunity -- from meeting their
4 equal opportunity and affirmative action requirements, and in
5 the past, prior to giving approval, we require a report on
6 statistical breakdown of the applicant and have been respon-
7 sible for the slowing up and stopping of several grants until
8 a plan was developed.

9 One other important program, we deem as important, is
10 our outreach program. As I mentioned before, outreach and
11 training program, this newsletter which a current copy is
12 coming out, is mailed to approximately 2,000 recipients, and
13 is an attempt to educate residents both the charging party
14 community and the respondent community, as to their rights
15 and obligations. It's carried out by the division but is a
16 project that was developed by the board and I will go into
17 that later and has been successful in educating the residents
18 of the state, again with the mind and our philosophy is that
19 we are going to get more return with regard to obtaining our
20 goals by cooperating and trying to educate those employers
21 and other agencies who are trying in good will to comply with
22 the law, but at times just aren't educated or times don't
23 feel they have the technical resources to do that.

24 Toward that end, this newsletter and our, I think a
25 very active training program that we have films, speakers

1 bureaus, and the like, is made available throughout the state
2 upon request and is upon clearing of any conflicting limits
3 we have of persons already requesting that time slot.

4 The division is a member of and the board is a member
5 of IORA, International Association of Official Human Rights
6 Agencies, this is a body made up of state and local agencies
7 throughout the United States and Canada. With also repre-
8 sentatives from Great Britain, who have joined to espouse
9 the positions of state agencies vis-a-vis the federal govern-
10 ment in working in this field of civil rights.

11 And the division has gained a great deal in the way of
12 resources that IORA has developed.

13 One last concern to the division is funding. We are
14 both, as I said before, we are funded in part by the federal
15 government as well as by the state government, and the
16 division's activities on the increase have created the need
17 for more expenditures, again not only personnel but a slight
18 increase in travel and the like, but the -- I was addressing
19 in regard to future problems, we're just aware that we may
20 have to take, lower down some of our activity because of,
21 from both the federal and state level, we are facing cuts in
22 that direction.

23 I would like to now switch over and discuss with you
24 the Arizona Civil Rights Advisory Board. And its structure,
25 purpose and activity. As I said before, initially there was

1 created the Arizona Civil Rights Commission. When the move
2 in '74 was made to put a division under the attorney general's
3 office for better enforcement, the commissioners were and
4 the commission was transformed into an advisory board. As
5 such, as opposed to being commission, they had no enforce-
6 ment powers, their function was advisory.

7 However, this has not stopped them from being active,
8 very active as the newsletter and this report will summarize
9 some of their activities.

10 They are composed of seven persons from around the
11 state and by law, no more than four can be of one political
12 party. Again Ms. Agüero is former chair of that.

13 They have made an effort to meet throughout the state
14 to hear from different facets of the state concerning the
15 problems in the area of civil rights. And from their
16 hearings, they have for the last two years ago developed a
17 set of goals which they set out to accomplish.

18 And these goals, I think, are fairly comprehensive in
19 at least touching the, a lot of the major concerns around
20 the state in the area of civil rights.

21 One of their first goals was to improve equal oppor-
22 tunity for minorities and women within the state government.
23 Obviously, the reasons for this were obvious, one, the state
24 representing -- being acting in parens parenti (Phonetic)
25 with the citizens, has an obligation to represent all its

1 citizens and if minority persons and women were being dis-
2 criminated or not provided equal opportunity, this was a
3 great affront to, I think, any theories of government.

4 Secondly, and almost more importantly, is the state's
5 probably one of the primary or largest employers in the state.
6 And thereby instituted meetings with the governor's, with
7 different agency heads, to analyze and study the problems that
8 were creating obstacles to equal opportunity.

9 Pursuant, out of these meetings several things de-
10 veloped. One was an issue that had been pursued by the
11 Federal Office of Personnel Management and that is the State
12 of Arizona had really no clearcut grievance procedure in
13 regard to employment discrimination. I can't recall the
14 number of times I was called by persons from Washington, OPEM,
15 complaining about this.

16 That brings up another point if I may stop, I must
17 clarify the position of the civil rights division in the state
18 and why this was also a problem.

19 One of the down sides of becoming an arm of the attor-
20 ney general's office is that the attorney general defends
21 the state. In the area of discrimination complaints, among
22 state agencies, the civil rights division, although empowered
23 by law to investigate, but also at the same time disallowed
24 by law to sue the state, found itself in a conflict situation
25 when investigating charges of discrimination. Therefore, we

1 do not have direct enforcement prosecutorial stance with state
2 agencies and have chosen, through again the actions of the
3 board, to serve as advisory and I think achieved the same
4 results.

5 What we -- that created a conflict that state employees
6 couldn't come to us to complain about state agencies' dis-
7 crimination. They could go to the EEOC, however the EEOC, as
8 you know, can not sue state and local governments. And would
9 have to defer to the justice department.

10 I think historically, nationwide it's been a cumber-
11 some process in Arizona, it's been a process that has not been
12 in practice at all. The governor created an office of
13 affirmative action and historically has been understaffed and
14 its function, I think, has been unclear. Therefore, the per-
15 sonnel board had a grievance procedure but was not trained
16 or just did not take complaints of discrimination.

17 This led to a void for state employees in regard to
18 processing, the grieving of complaints. To address that,
19 the board took on, again identified the problem and took on
20 various approaches.

21 It met with the governor and with the governor estab-
22 lished a grievance procedure, specifically for discrimination
23 complaints that would be handled through the personnel board.
24 However, that needed legislation, so the work of the board
25 and cooperation of the governor, legislation was passed, the

1 personnel board adopted rules and a discrimination procedure
2 is available, specific employment discrimination procedure
3 is available for state employees at the present time.

4 Key to that, however, and again was we saw problems in
5 training. The procedure provides that a step process, by
6 which an agrieved employee complains to again their initial
7 supervisor, then the agency head. At that step, it's provided
8 that the agency head seek an advisory opinion, purely advisory.
9 And that opinion is requested of our office, of the situation,
10 and it also requires that the opinion, when requested, is
11 included in the report, and to the final determination.

12 Finally, the final board appeal, level of appeal to
13 a grievant is to the personnel board. The personnel board
14 uses a practice of hearing officers that is common to other
15 personnel boards. The weakness we saw there was that the
16 hearing officers they had were not versed in the area of EEO.

17 So, what we -- the board did with the cooperation of
18 the staff, is provide training to the hearing officers of
19 the personnel board. So now, I think what is made available,
20 is an EEO procedure that is at a different level, different
21 guarantees, that objective, expedient and objective review
22 is had, is available for employees.

23 It has been implemented this fall so we don't know the
24 results of that.

25 At the same time, we saw in this area of state employment

1 was that EEO, antidiscrimination work is one thing, but
2 however, with regard to affirmative action and other activi-
3 ties, is another.

4 We have developed, with the personnel division, a
5 monitoring system whereby they have now computerized the
6 application and hiring process and are able now to break down
7 how many applicants apply for certain positions, how many are
8 screened out at the personnel level, the old argument is that
9 in state governments or in any type of hiring system, is that
10 the personnel division says that sends over enough applicants
11 and the hiring agency claims that no, they didn't, and they
12 blame each other for the lack of hiring in that division,
13 saying, the hiring agency saying personnel did not send over
14 sufficient applicants, personnel saying yes, we do, but they
15 don't hire them.

16 We have now computerized a breakdown by race, national
17 origin, age and handicapped, the numbers of applicants who
18 apply, those initially accepted as having minimal qualifica-
19 tions by personnel, those referred over from personnel to the
20 agency requesting a certification list, those interviewed
21 and those hired.

22 This, again, has been developed in the last year and
23 the results of it are a lot of bugs to get out but again
24 it reflects the cooperation or the movement that has been made
25 by the activity of the board in taking, because we weren't

1 allowed to take an enforcement stance developing cooperation
2 with different state agencies again would seem like we're
3 eager if given the techniques and the assistance to develop
4 a program that could promote voluntary affirmative action.

5 In the same light, you might have heard and you just
6 heard from Mr. Saldate, a second problem priority of the board
7 was affirmative action at the universities. To that end, the
8 board held hearings at the three major universities, and,
9 Art did I give you those reports?

10 MR. PALACIOS: No.

11 A I brought along one report and give it to you at the
12 end of my presentation, by our Arizona Civil Rights Advisory
13 Board, 1980, Report on Equal Employment Opportunity and
14 Affirmative Action at the University of Arizona.

15 We held one at Arizona State University and one at
16 Northern Arizona University. The report, the hearings
17 requested as you have here, some very much attuned with your
18 process of hearings and the like, requested input from
19 various on-campus and off-campus groups and individuals.

20 And the information we gleaned from there was that,
21 one, despite its oral commitments, the university had not, in
22 regard to monies and staff, supported affirmative action
23 efforts. In NAU there was no affirmative action office, at
24 ASU there was an office with one person and a part time
25 secretary. At U of A the functions were spread which had the

1 most sophisticated program in part because I think of their
2 reviews by the federal government, again paper program, but
3 had the functions split over about five or six different
4 individuals and staffs.

5 That, of course, led to confusion and very much, you
6 know, void in any use of the program.

7 We also found that statistically there was -- these
8 like a lot of other industries, were bottomheavy, the kind
9 of pear-shaped employment strata, that they were below overall
10 what was available in the work force and those that they had
11 were in the, both in the, according to EEO classifications,
12 in the service and clerical, service, maintenance and clerical
13 areas, and even those that were in faculty or administrative
14 positions were in the lower entry -- or lower tiers.

15 There was a problem in the faculty side specifically
16 with the tenure programs in that despite the denials it was
17 evident that some practice of publish or perish was used in
18 the use of tenure.

19 Statistically, we obtained breakdowns, on the category
20 and were found remiss and compared them, 77 statistics to 75
21 position statistics and found no changes.

22 The report made several recommendations and out of
23 this report the board, Arizona Civil Rights Advisory Board,
24 demanded and did obtain meetings with the board of regents
25 and have since that time met bi-annually -- semiannually with

1 the board of regents with the following results: Generally,
2 and -- I may forget some things but I can give you those
3 reports. The board of regents now annually creates an
4 affirmative action report on the board level. The board of
5 regents has centralized their affirmative action efforts
6 of the three universities by having personnel established at
7 the board level to coordinate the functions of the individual
8 affirmative action officers.

9 At NAU, an affirmative action office was created and
10 it was just recently because again of protests by the board,
11 after an inspection, followup inspection in October, has been
12 expanded with secretarial and research staff been committed
13 to that.

14 At Arizona State, that office has been created and is
15 at -- consistent with one of our recommendations, a presidential
16 level office, reports directly to the president of the uni-
17 versity, Dr. Nelson. The staff has been increased and the
18 functions centralized.

19 At the U of A, that staff function has been -- has
20 been, is still at the vice presidential level but the staff
21 has been increased and the, as I noted before, the decentrali-
22 zation has all been centralized. Specifically, and I think
23 take a step back here and say that the civil rights advisory
24 board made a decision at its initiation that it would be
25 more interested in effectuating systematic changes than looking

1 at the individual type changes in the hopes that you would
2 get, giving the time and effort needed for this giant challenge
3 of dealing with universities, in effect, more from trying to
4 structurally promote change.

5 And I think those changes are not immediately trans-
6 latable into facts and figures, that is that since that time
7 I can not report in the last three years there has been over-
8 whelming changes statistically in the hiring practices of the
9 university but I think that there is no question that pro-
10 cedurally and structurally there's been improvements.

11 The fact that the board of regents now have an affirma-
12 tive action committee, subcommittee and personnel dealing at
13 that level, which many -- I noticed on your lists individuals
14 who we have dealt with may have alluded to, that fact was --
15 is a result of this advisory committee's reports and demand
16 to meet with the regents to develop this committee to meet.

17 And the advisory board has been meeting and discussing
18 some of the things like the Minority Affairs Program at the
19 University of Arizona, student affairs program, however our
20 limitation is one that I didn't clarify before, we have no
21 jurisdiction in the area of education, per se.

22 I think this is important historically, I have my
23 guesses why, in that when the changes were made, the business
24 community in this state feelings are that as long as there's
25 federal mandates out there, they would prefer the state to have

1 powers equal to that assigned to the federal program and that
2 is one of the reasons why they allowed our act to trace
3 Title VII.

4 However, in the area of education there was a fear
5 for a strong program being involved in desegregation issues
6 and the like, and so we just don't have any jurisdiction.

7 Therefore, in working we, in working with the univer-
8 sities, any attempt to work at their educational posture the
9 board has to work in a sense with the back door through
10 employment, and argue that educational programs are needed
11 to develop the applicant pool of available minority personnel
12 to honor that level.

13 And I think it has been fairly successful. Where we
14 are at now is on-going negotiations with staff, the board
15 of regents on an acceptable availability pool for, as you may
16 well know, legally through discrimination or failure to
17 promote affirmative action you have to compare what you've
18 got with what's available.

19 What we have found at different universities that have
20 been using statistics which we would question as to what
21 are available so that you get as a result of that a report
22 that says we have one person out of a 100 in their department
23 and yet they're -- they're plus three over what's available.

24 And this is of concern of what statistics are being
25 used to support their positions of having a successful program.

1 However, I'm confident and we are at the point now,
2 one of the goals of the board was to, in a manner objectively
3 look at the problem, criticize where criticism was needed,
4 but try to incorporate the resources of the university to
5 address the problem, instead of alienating the universities
6 and having them fight us with statistics, use statistical
7 analysis available to help us address the problem and resolve
8 it. I think we have successfully done that in that the
9 staffs of the universities, both at the regent level and at
10 the universities, are now working with us in compiling informa-
11 tion about availability and we are jointly looking over that
12 information to come up with acceptable data base on which to
13 claim this.

14 If I am holding up any -- just push me out of my chair
15 and I'll stop.

16 In the same regard, another priority in the same way
17 of education was to look at the community college systems.
18 And the board made another decision, in addressing this issue,
19 by, the first step we did was request statistical information,
20 EEO-1's from all the community colleges in Arizona. Upon
21 doing that, we made a tactical decision to look at the Mari-
22 copa Community College district for a number of reasons, one,
23 it had the most campuses, most population, and if looking at
24 one district with the thought if we could successfully work
25 with one district we could use that as a model for the other

1 districts in the state.

2 We have, because of the input of the board, the Mari-
3 copa Community College district created a faculty hiring com-
4 mittee which has been meeting and which the board serves on
5 a -- board members serve on an ex officio basis and internally
6 are addressing again using the resources of the community
7 college district, the data processing resources, the training
8 resources, personnel resources, to look at the problem and
9 they have identified which colleges are, quote, unquote,
10 worse in their EEO posture than others.

11 There's been no final report, that committee was
12 developed in the summer -- no, the late spring of this year,
13 and I think we have a meeting later this month.

14 One of the areas in the area of equal opportunity that
15 the board saw, essentially in this state as being drastically
16 overlooked, is that of discrimination protection, especially
17 employment, for the handicapped.

18 With that in mind, the board held hearings in 1980,
19 and recommended introduction of legislation to extend the
20 coverage of the Arizona Civil Rights Act to include the handi-
21 capped. At that time, this is an aside, saying the fluctua-
22 tions of and vicissitudes of politics, out of the blue some
23 -- somebody else introduced an Age Discrimination Coverage
24 Act which the board did not prioritize, and that act fell
25 through, I mean went through without any opposition. I think

1 the business community, again in reaction to the passage of
2 it and the apportionment of a DEA on the federal level, sup-
3 ported the inclusion of the age discrimination presents in the
4 Arizona Civil Rights Act.

5 That is also -- serves as a historic basis of why
6 there is no, presently no handicapped discrimination act in
7 the State of Arizona, because there is no similar federal
8 statute. If the federal statutes covered all employers the
9 way statutes in regard to race, national origin, religion,
10 sex and age do, there'd be a handicapped statute in the State
11 of Arizona right now.

12 Because of that hearing, as I said, legislation was
13 introduced. It was before the first community of the legis-
14 lature created such a commotion both from the groups repre-
15 senting the handicapped as well as the business community,
16 that the legislature assigned the attorney general's office
17 and the attorney general gave the lead to the civil rights
18 division and the advisory board to coordinate a subcommittee
19 made up of representtives of handicapped organizations and
20 the business community.

21 The initial year the -- the committee agreed only to
22 disagree, and the bill did not get out of committee. However,
23 in '81, the subcommittee was reformed with some much more
24 preparation and a bill, a concensus was reached out of that
25 subcommittee and this was a concensus of both handicapped

1 groups and the business community. It was introduced into
2 the house, passed the committees of the house and passed the
3 house. A key portion of that bill was from the employers'
4 point of view that if they were going to be exposed to more
5 enforcement on the civil rights basis they needed more pro-
6 tection in the way of insurance, especially workmen's compen-
7 sation insurance.

8 The disabled again we serve as a moderator in that
9 regard, the organizations apply, however after it passed the
10 house, labor organizations and trial attorneys and the like
11 felt that it was discriminatory in its workmen's compensation
12 aspects, and failed by two votes in the senate in part be-
13 cause of a threatened governor veto. Very controversial bill.

14 The next year again we brought the two sections to-
15 gether and in light of the governor's veto they could not
16 agree on this workmen's compensation issue although there was
17 total agreement on a handicapped enforcement bill by both the
18 community of handicapped and business community. The disabled
19 community again just tried to introduce a handicapped bill
20 alone, the business community objected and the bill was
21 defeated again.

22 The board has prioritized the passage of similar
23 legislation again this year so again they're working in that
24 regard, held a hearing at the beginning of this month,
25 the report of which is in the process of development by our

1 staff, which reports on the effect that hiring the handicapped
2 has on employers' workmen's compensation liability.

3 Initially, it seems that the report, and it gives a
4 lot of evidence that the objections by the business community,
5 while having some evidence of being a possibility, lacks any
6 credence for being a probability, that it will have any major
7 effect on employers' liability.

8 Again this is an activity of the board, to try to
9 further the introduction and passage of legislation to
10 govern the handicapped.

11 Another, as I mentioned previously, priority for the
12 board, was publicity, education and outreach. To that end
13 the board prime sponsor in developing of this newsletter,
14 their efforts in meeting throughout the state, last month
15 they met in Casa Grande during which representatives and
16 individuals from the Black community came out in force to
17 explain to the board the problems in employment there and
18 subject to that, staff from the division was sent out this
19 last week and reported at least ten complaints of employment
20 discrimination filed from that area.

21 Again this is a way, and it's a way that the board --
22 what I'm getting at, there's a symbiotic relationship between
23 the board and the division here working together to enforce
24 this act. One of the major program goals of the board was
25 the development of a community relations unit, modeled in part

1 after the justice development community relations service, to
2 provide mediation services for community disputes involving
3 racial, ethnic or religious confrontations between community
4 groups and police.

5 You're much aware and I don't know if you received any
6 information on that situation in Miracle Valley, the division
7 has been in receipt of several requests for assistance from
8 different parts of the community and we currently have, are
9 looking into situations in Prescott, Holbrook as well as
10 monitoring the situation in Miracle Valley, because again,
11 in that situation, we are in a unique position or questionable
12 position because the attorney general's office is prosecuting
13 in that area against the defendants involved.

14 However, the function of this community relations unit
15 is purely voluntary, it's not an enforcement function, if
16 you're familiar with the community relations service, the
17 request and this has been endorsed by county attorneys in
18 four major counties, the City of Phoenix, City of Tucson,
19 City of Mesa and Coconino County Sheriff's Department, as a
20 needed function and the process, as the board developed it,
21 would be a cooperative support unit which would help the
22 community relations unit of different police departments who
23 have identified on-going problems that have developed or
24 develop potential violence and upon the request of those
25 agencies or other social service agencies, provide mediation

1 services to the parties in the dispute.

2 Training of 16 of our staff people was undertaken two
3 weeks ago, and we are now in the process of receiving formal
4 requests for assistance.

5 One of the actions of the board and again they have
6 hearing power much like yours, was in the area of a contro-
7 versy that developed over the last year and has continued to
8 develop and that is the issuing of tax credits to -- for con-
9 tributions to schools that discriminate.

10 At the time that -- I can explain discriminate in their
11 admissions and educational qualifications on the basis of
12 race, national origin or religion. If you're well aware, it
13 became quite a controversy in regards to suits before the
14 U.S. Supreme Court, at the same time legislation was passed
15 in Arizona prohibits any state tax credits for such contri-
16 butions.

17 The civil rights advisory board held hearings on the
18 matter and received information from several representatives
19 both of school districts and community organizations, and
20 recommended the passage of legislation which was accomplished
21 during the 1982 Arizona Legislative Session.

22 As you can see, then, from what I've explained to you,
23 the Arizona Civil Rights Advisory Board works with the
24 Arizona Civil Rights Division in a manner that your U.S. Civil
25 Rights Commission would work with the EEOC. It's kind of a

1 combined EEOC, U.S. Civil Rights Commission with both
2 enforcement powers to investigate and litigate suits as well
3 as the hearing power to -- which makes reports and works on
4 an advisory capacity and a cooperative capacity after
5 addressing problems.

6 Future activities of the board will include again
7 another attempt to introduce legislation to protect the
8 employment rights of the handicapped. On-going and further
9 discussions with the universities on their employment prac-
10 tices looking at the availability schedule as well as working
11 with concerned groups that are concerned about pronounce-
12 ments by the governor's office of raising the admissions
13 standards to the universities and what effect that would have
14 on minority admissions to the university.

15 The program, I don't think, has been spelled out com-
16 pletely but the thrust of the program has concerned many
17 who are concerned with the admission of minorities into the
18 universities.

19 And finally, one of the new priorities for this coming
20 year which the board has started to work on already, is the
21 introduction of a fair housing act in Arizona. Presently
22 there is no statewide fair housing act and from our, my
23 description you can see that we do not have direct jurisdic-
24 tion over discrimination complaints based on -- in the area
25 of housing except indirectly through our general public

1 accomodations statute. The fault there lies in that its
2 coverage is vague, subject to legal challenge and the penal-
3 ties are criminal, which presents, as you may know that most
4 employment discrimination penalties are civil, which eliminates
5 the problems of Fifth Amendment defenses and prove beyond a
6 reasonable doubt standards.

7 The City of Phoenix and the City of Tucson do have
8 fair housing ordinances, the state does not, we have been
9 working and again another example of our cooperative efforts
10 with local agencies in examining the problem, I would see
11 hopefully the introduction of legislation this year for the
12 carrying out of that goal. This goal by the board.

13 I'll move on to another area in the interests of time
14 and other speakrs.

15 Two other issues that we have identified, again I
16 have marked education, educational standards at the univer-
17 sities, that again are explicitly or not explicitly but not
18 directly within our jurisdiction, but over which we have
19 concern.

20 One area where we have gotten some -- have jurisdic-
21 tion under our attorney general's office is in the areas of
22 admissions and the requests for information from possible
23 applicants, information concerning their citizenship. As you
24 know, under the Prior (Phonetic) versus Doe (Phonetic)
25 standard, elementary school districts are prohibited from

1 making that determination of qualifications for attendance.

2 In Arizona, there are several, Attorney General Bob
3 Corbin has issued an opinion stating that under Arizona
4 Statutes, residency is the only requirement for attendance at
5 school districts, not on -- and questions of citizenship are
6 illegal under Arizona Law.

7 So, in Arizona it's a two-tier approach in regard to
8 the question of citizenship and education. One, the state
9 statutes mandate the perfect qualification being residency
10 where the person is domiciled and then you have the U.S.
11 Supreme Court's Equal Protection Status. The board -- the
12 division and the board have received information that perhaps
13 at the community college levels they are asking and making
14 as a prerequisite of admissions green cards or other type of
15 identification.

16 The application of the state statute to the community
17 college and the universities is a question that the attorney
18 general's office may be asked to respond to or opine on and
19 the civil rights division will probably be involved in that.

20 Tangential to that is the whole area of immigration
21 and its effect on employment, as well as education and other
22 aspects of life, that you might be interested in looking at,
23 the division again does not directly have jurisdiction over
24 such matters but tangentially, since in employment and educa-
25 tion, we do get involved peripherally on those matters.

1 Finally, the area of voting rights and districting,
2 there is much evidence now after the cur -- after the recent
3 election and I explained to you before, the civil rights
4 division under the auspices has worked with the attorney
5 general's office may be involved in commenting at least opine
6 on the validity of the current districts and the -- in re-
7 lation to voting rights in the other areas, will continue
8 to monitor as actively and working on the committee,
9 governor's committee on the northern Arizona counties to
10 monitor the situation there that led to the introduction of
11 legislation to create a separate county primarily based upon
12 the reservation lines.

13 Finally, I would like to comment on suggestions and
14 role for U.S. Civil Rights Commission and the Arizona Advisory
15 Committee in relation to the Arizona Civil Rights Advisory
16 Board and the civil rights division of the attorney general's
17 office.

18 One, I state emphatically, that cooperation and
19 presence is needed and welcomed. You might, one might think
20 that my presentation is geared to tell you that everything is
21 well in hand here, and you need not concern yourself. In
22 regard to the civil rights enforcement and civil rights pro-
23 tection, it's a national as well as state priority, it should
24 be, and I think resources that we have available are all too
25 few and support is definitely welcomed.

1 However, I think that there needs to be some work on
2 the type of support and the delivery of support and your posi-
3 tion vis-a-vis agencies like ourselves.

4 One, for example, one immediately that comes to mind
5 is elimination of confusion between our two bodies. I have
6 been recipient of several phone calls about activities of the
7 U.S. Civil Rights Commission or the advisory board and asked
8 what we are doing or asked what the Arizona Civil Rights
9 Division or advisory board is doing on the matter and not
10 being -- not really informed about your activities or the
11 like, causes some confusion and some duplication of effort.

12 Two, I think a clarification is needed from you of
13 exactly what your intentions are, what your goals are,
14 whether this type of activity will be on-going, and what
15 facilities you have to carry out your goals.

16 In regard to that I'd offer our cooperation in both
17 assessing those goals and trying to attain them, however our
18 cooperation is going to be limited by both financial and other
19 restraints, as well as political restraints.

20 One, and importantly, financial, is, again I mentioned
21 our dual funding source, are both subject to the budgetary
22 cuts. The State of Arizona is much publicized present deficit,
23 and there may be future requests for cutting.

24 We have already undergone 10% cut which fortunately
25 so far has not affected personnel, but further cuts might

1 limit our services. Two, in the federal level, and I can
2 say that often I'm asked about the effects of the new
3 federalism program, that in many -- in one, I think we're just
4 fortunate to have the support of a cooperative attorney
5 general, that the state has been able to and as I've reported,
6 to increase our activity to supplement any cuts that have
7 come so far on the federal level.

8 In fact, I think -- by this report and any number of
9 statistical information you desire from number of cases
10 resolved, number -- amount of money gained for individuals,
11 as I reported earlier, there's been a great increase in the
12 activity on the state level, and I think that has, at the
13 present time, compensated for any cutbacks in the department
14 of labor or OCM, for example I don't believe the EEOC has
15 been cut back. I think they have not grown or there have
16 been -- their positions have been frozen but I think the level
17 of enforcement has increased because I think the state has
18 taken on the burden.

19 What I think and this is why I supported new
20 federalism in the manner that if they would use the federal
21 agency in this regard to help the state accomplish its purpose
22 through channeling the funds through the federal government
23 to the states. That is a recommendation I wholeheartedly make.
24 Because I think we do have a viable state agency that can carry
25 on the job.

1 Finally, in regard to our cooperation, I'd just like
2 to make a mention that we would like to reemphasize our need
3 for assistance in the area of research capabilities, even
4 travel assistance, any other assistance that we, after dis-
5 cussions, if you are open to discussions, can combine, any
6 services we can combine to create the effort.

7 Again we have done this with other agencies, the depart-
8 ment of labor, the EEOC as well as local agencies, and in
9 that way can help overcome budgetary shortfalls that are
10 befalling each of us individually. Your presence again,
11 once again is welcomed, your cooperation is prayed for, and
12 we hope that with this information and long winded, I admit,
13 information that I've provided to you, can serve as some
14 basis for information to give you a better handle of what is
15 going on especially from the state's point of view in
16 enforcing the antidiscrimination laws and encouraging volun-
17 tary compliance with affirmative action and equal opportunity
18 and in trying to promote community relations among the
19 residents and citizens of this state.

20 I'm available to answer any questions you have and --
21 but basically I'd just like to reiterate our stance of, our
22 cooperative stance to be open to work with you on any of the
23 priorities you set.

24 Q (By the Chair) Thank you very much.

25 * Am I correct in thinking that the report of the hearings

1 at the three universities are available for sharing with the
2 committee?

3 A Yes, they are.

4 THE CHAIR: Thank you.

5 Do you have any questions?

6 A (By Mr. Palacios) Yes. You mentioned a city plan as
7 far as redistricting was concerned, has the city already pre-
8 pared such a plan?

9 A No.

10 Q Okay, they're in the process?

11 A It's in the process of being presented and the plan is
12 to have it be reviewed by the AG's office also.

13 Q As far as the state employees are concerned, is there
14 some kind of report issued yearly, statistical report, by the
15 state? Promotions, hiring, firing, deaths and applications?

16 A There was one promoted, developed by the governor's
17 office of affirmative action, that was one of its primary
18 responsibilities. They haven't done it in the last year or
19 so and there's been a new person appointed to that position
20 who is just reevaluating the whole program and I just can't
21 speak for whether they're going to have a current one.

22 It can be -- we are -- personnel division again does
23 a monthly run by agency of hiring practices which I reported
24 on earlier that we helped develop and I am recipient of that
25 I don't think it's comprehensive in its handling of

1 promotions and terminations in that regard. The state, of
2 course, has to file an EEO-1's and or not EO-1's but sixes,
3 by department, and EEOC should have that.

4 We left that to the governor's office by kind of a
5 memorandum of understanding between the attorney general's
6 office, the governor's office, affirmative action, the per-
7 sonnel division, subsequent to that there became a change in
8 the governor's office which has left a temporary void in that
9 activity being taken on. so it can be gotten.

10 There's no one document at the present time that I
11 think presents that, it can be gotten with a little difficulty
12 if you ask for it right now, I don't think I'd say I'd like
13 to give it to you.

14 Q The State of California, their state personnel board,
15 which is their state personnel division, prepares every year
16 and has for a number of years, a report which is statis-
17 tical in nature and outlines applications, hirings, firings,
18 deaths, promotions, broken down by male, female, by clerical,
19 supervision, you know the whole darned thing, a very valuable
20 tool.

21 I know what's interesting, though, that the state
22 doesn't do that here, your state prison board does for their
23 prisons, and the people within the prison system, because I
24 have a copy of a report that they did

25 A Again, there was a report that came, that the governor's

1 office used to -- used to develop, it's been a couple years
2 since it's been recently developed.

3 And again I can't speak for the present affirmative
4 action officer, Ron Johnson, who was recently appointed and
5 what his plans for that are, but we, by agreement again and
6 we will have on-going meetings, the important thing is as
7 opposed to the past there is a cooperative attitude despite
8 different, I don't want to emphasize this was a major prob-
9 lem but I think it could have been a problem, political
10 affiliations of the different elected officials, the attorney
11 general is independently elected from the governor. Presently
12 under this attorney general there's been a spirit of coopera-
13 tion with the governor in this area of employment to combine
14 our resources to a common goal.

15 MR. PALACIOS: Thank you.

16 THE CHAIR: Thank you.

17 A Maybe the board can ask for that report.

18 THE CHAIR: Thank you. Who's your current chairman
19 of personnel?

20 A Louise Wellie (Phonetic), she was here yesterday
21 morning. She's recently moved from Prescott to Phoenix.

22 THE CHAIR: Thank you very much.

23 Five-minute recess.

24

25

(Short recess)

1 THE CHAIR: Mr. Schorr, I think you're familiar with
2 the procedures associated with this hearing as to its form,
3 function and so forth, and being so, will you give us your
4 name and the organization that you are a member of and your
5 position in the organization, please, for the record?

6
7 KENNETH SCHORR

8 A (By Mr. Schorr) Thank you, Dr. Warren.

9 My name is Kenneth Schorr, I am the Interim Executive
10 Director of Community Legal Services which is a legal services
11 corporation grantee, which provides legal services to eligible
12 low income persons in the four western counties of Arizona,
13 in Maricopa, Yuma, Yavapai and Mohave Counties. My permanent
14 position with the agency is litigation director. I appreciate
15 the opportunity to speak to the commission.

16 The people who think that they have been discriminated
17 against or have otherwise had their civil rights violated,
18 come to our agency for assistance in obtaining a legal remedy.
19 My remarks are directed primarily at the availability of legal
20 remedies for civil rights violations, based on the actual
21 practical experience of our agency.

22 We find and communicate to you, sir, use deficiencies
23 in the availabilities of remedies, deficiencies which require
24 federal legislation to correct. At the end of my general
25 remarks I have a few thoughts concerning two minorities which

1 we serve through special programs, that is Native Americans
2 and migrant farm workers. The CLS, our agency provides
3 services through a variety of programs including a metro-
4 politan program with three neighborhood offices, rural program
5 offices in Yuma and Prescott, specialized programs to serve
6 migrant workers and off-reservation Indians and a joint program
7 sponsored with the county bar association which provide ser-
8 vice through private attorneys who volunteer to handle
9 individual cases. Although our service area encompasses
10 approximately 40,000 square miles, the large majority of the
11 population we serve is in the Phoenix metropolitan area.

12 The 1970 census showed that about one-sixth of all
13 Arizonans had income below legal services income eligibility
14 guidelines. This means that almost 300,000 eligible persons
15 live in our service area today.

16 As with all legal services corporations grantees, CLS
17 faced substantial budget cuts in the past two years and
18 relief from budget cuts is not apparent. LSG once established
19 a goal of providing minimum access to low income persons
20 for legal services and set that goal at a level of two
21 attorneys for every 10,000 eligible persons in a geographic
22 area.

23 I would like to put that figure into perspective.
24 Maricopa County, which is Arizona's largest in population,
25 has over 4,000 practicing attorneys for a non-poor population

1 of about one and one-quarter million people. A ratio of about
2 one attorney for every 300 non-poor persons. Our legal
3 services program has nine general program staff attorneys in
4 Maricopa County to serve almost 300,000 eligible poor persons,
5 a ratio of about one attorney for every 30,000 poor persons.
6 Or about one-sixth of the minimum access level that the Legal
7 Services Corporation had set as a goal.

8 There are more than 100 times as many attorneys to
9 serve non-poor persons proportionately as to serve poor
10 persons although poor persons encounter more frequent and
11 more serious legal problems than non-poor persons.

12 Minimum access to legal assistance is not achieved
13 in any sense for poor persons in Arizona. CLS serves poor
14 persons both minority and non-minority. The scarcity of legal
15 services for poor persons is in itself a civil rights issue
16 because poor persons are disproportionately minority and
17 minority poor persons suffer disproportionate from the law.

18 The 1970 census showed that just under 20% of the
19 Arizona population was Hispanic located rurally to a larger
20 degree than the remainder of the population. Although we
21 serve a mostly urban population where the proportion of
22 Hispanics is considerably less than 20%, our case statistics
23 show that between 20 and 30% of all the cases we handle
24 involve Hispanic clients.

25 Blacks and Asians who make up about 3% of the Arizona

1 population constituted between five and 10% of all of our
2 cases.

3 Native Americans who make up less than 1% of the metro-
4 politan Phoenix population constituted almost 10% of our
5 case load.

6 The inability to obtain an attorney is in most cases
7 denial of access to the legal system, a problem which falls
8 in gross disproportion upon the poor and even greater dis-
9 proportion upon the minority poor. Because of the extremely
10 high ratio of clients to attorneys, we are forced to establish
11 priorities that amount to a battlefield triage.

12 Cases which do not present immediate hazard to life,
13 health or safety are declined for cases that do and cases
14 that do, those which involve basic survival issues, come in
15 sufficient numbers to keep all of our attorneys working
16 overtime.

17 Our priorities are limited primarily to issues involved
18 in very basic survival matters including basic income, aid to
19 families with dependent children, food stamps, general assis-
20 tance, SSI disability and unemployment compensation. Cases
21 involving basic shelter, public housing eligibility, eviction
22 and fore closure, and child/spouse safety.

23 The domestic relations cases we handle now are pretty
24 much limited to those involving children or spouse abuse or
25 custody disputes.

1 Our priorities include some additional matters on a
2 special needs basis only, such as extreme cases of consumer
3 fraud, institutional conditions, access to education and civil
4 rights. We do handle some civil rights cases, but we are
5 not able to do so in every case where we feel that an indi-
6 vidual's civil rights have been violated.

7 We only have the resources to do so when presented
8 with an extreme case, particularly a case involving a pattern
9 of activity by which the civil rights of large groups of
10 persons are being violated. To the extent that civil rights
11 problems are susceptible of legal solutions, we frequently ask
12 who else can provide a remedy. If we can not.

13 It is a question with a disconcerting answer, for fre-
14 quently the answer is no one.

15 Civil rights remedies may sometimes be prosecuted by
16 public agencies. The U.S. Attorney and state prosecutor, the
17 EEOC, and agencies' offices of civil rights or office of
18 federal contract compliance.

19 In other cases civil rights established by law are
20 selfenforcing in theory. Where the victim in theory obtains
21 a private attorney to bring a lawsuit, attracted by the fee
22 that will in theory be awarded by the court if the suit is
23 successful.

24 Neither of these situations is, today, reliable. Public
25 agencies of your staff have demonstrably less interest in

1 enforcing civil rights than they did only a year or two ago.
2 Our referrals to public agencies are made with very little
3 assurance that anything will be done with some pleasant
4 surprises to be sure, but generally with nominal efforts and
5 ineffective results.

6 Private remedies for poor persons are harder to come
7 by. While attorneys participating pro bono in volunteer
8 lawyers program, will handle civil rights cases without
9 expectation of a fee, few lawyers will handle cases for the
10 money they will make if they win the case and the court awards
11 them a fee.

12 Study done by one of our attorneys in 1979 demonstrated
13 that fee awards in civil rights cases were considerably lower,
14 other factors held equal, than in commercial cases.

15 A conclusion borne out by our collective institutional
16 experience, although the theory behind fee awards is sound
17 the actual practice is quite different.

18 Profitability of civil rights cases is demonstrably
19 insufficient to attract private attorneys who will not per-
20 form such work on a commercial basis as a general rule. It
21 is likely that LSC regulations will require a reduction in
22 the scope of the civil rights services we provide in the next
23 year or two. We have not found any alternative source for
24 those services in public agencies, in the private corps or
25 elsewhere, has not been available in the past and the sources

1 of such legal assistance are being reduced in many way.

2 This is the largest single need evident to us in our
3 work. the congressional action is required to insure adequate
4 legal assistance for civil rights problems.

5 In Arizona, there are two minorities with problems of
6 a unique dimension. Native Americans reside on and off
7 several large reservations in Arizona and many travel to
8 Arizona cities for periods of time to escape reservation
9 unemployment levels as high as 80%, and the Urban Indian Law
10 Project, a joint program of our agency and the Phoenix Indian
11 Center, our staff sees a large number of Indian clients.

12 The two most frequent complaints are housing dis-
13 crimination and employment discrimination tending toward openly
14 exclusionary practices. We actually still see a large number
15 of cases involving posted signs, we don't rent to Indians,
16 we don't employ Indians.

17 For the reasons stated earlier, few private attorneys
18 are attracted by the possibility of a fee award at the
19 successful conclusion of an employment or housing discrimina-
20 tion lawsuit. And for the most part, the people who face that
21 type of discrimination, find neither an attorney nor a remedy.

22 Native Americans also enjoy a special trust status
23 under American Law by which they come under a variety of
24 extremely complicated federal statutes. Most public agencies
25 would provide benefits to the public generally have an

1 insufficient understanding of Indian status to treat Indian
2 Americans fairly and equally and Indians are often excluded
3 from assistance programs for incorrect reasons.

4 Examples are varied. In health cares, under the county
5 indigent medical care program, effective until this past
6 October, Indians in the Phoenix area were routinely referred
7 from the county hospital to the Indian Health Center
8 and referred back to the county hospital and back to the
9 Indian Health Service again and again until they gave up.

10 In education, many Indians come to Phoenix or send
11 their children to Phoenix for schooling because reservations
12 may not have schools which are accessible or which go beyond
13 the elementary level.

14 Indian children are frequently excluded from public
15 schools because they are living with extended family and
16 technically lack residency to attend any public school.

17 In public assistance, Indians are frequently denied
18 eligibility based upon trust property or anybody which is
19 technically but not actually available or are terminated
20 because they are linguistically unable to comply with reporting
21 requirements.

22 In many cases, these type of problems would be remedied
23 with a small amount of care and work but public assistance
24 agencies are generally unwilling to go that distance and legal
25 assistance is insufficient.

1 The second minority with unique problems in Arizona
2 are poor persons of Hispanic appearance, many of whom are
3 migrant farm workers who appear as though they might be
4 undocumented Mexican aliens. These persons are subject to
5 discriminatory questioning and exclusion from a variety of
6 public agencies by eligibility workers who have no under-
7 standing of either immigration statutes or of their own func-
8 tion with respect to immigration laws. Though this type of
9 discrimination happens frequently with no official basis, it
10 sometimes rests on a narrow obligation to determine residency.

11 United States Supreme Court recently recognized this
12 problem in the context of exclusion from schools. In Arizona,
13 there is no state statute which obligates or permits school
14 officials to determine citizenship in school admissions but
15 it has been the practice of many Arizona school districts
16 to do so.

17 Children whose parents are Hispanic and poor are ques-
18 tioned prior to admission about the immigration status of
19 themselves and relatives and maybe excluded or deterred based
20 on their answers.

21 Many private hospitals do the same. Several of the
22 public assistance programs now have a requirement that appli-
23 cants determined to be undocumented be reported to immigra-
24 tion officials. The effect of these requirements is to sub-
25 ject persons of Hispanic appearance, particularly poor persons,

1 to additional questioning by persons who have no knowledge
2 of the immigration statutes concerning the ancestry of the
3 applicants, and some persons are excluded or deterred as a
4 result.

5 Lastly, a number of local police agencies routinely
6 stop, question and arrest persons of Hispanic appearance
7 based on nothing more than a suspicion that those persons
8 may be undocumented Mexican aliens. Peoples who are citizens
9 or documented aliens, are harassed and released while those
10 who can not produce documentation are arrested and held for
11 federal immigration agencies.

12 Although this practice is contrary to law and to official
13 immigration service policies it is now encouraged by local
14 immigration officials.

15 I've spoken primarily about legal remedies, that is
16 the expertise of our agency. Civil rights problems exist in
17 Arizona, the remedies are not sufficient. Enforcement needs
18 additional resources in the public agencies charged with
19 enforcement for private attorneys who are expected to handle
20 cases for fee awards that are only theoretically available
21 and for free or reduced fee legal assistance.

22 Without better remedies the existing civil rights
23 statutes are being repealed de facto.

24 Thank you and I'll be happy to answer any questions
25 you have.

1 Q (By the Chair) Am I reading you saying that the
2 adequate statutes do exist but they are applied unevenly?

3 A The statutes, for example Title VII of the Civil Rights
4 Act of 1964, involving employment discrimination are
5 premised on the notion that if you're discriminatorily fired
6 or were not hired or not promoted, you go to a private lawyer,
7 who will represent you even though you don't have the cash in
8 your pocket to pay a fee because if he does, at the end of
9 the case the judge will award him a legal fee which will make
10 that kind of work competitive with commercial litigation.
11 It just isn't so. There are so many difficulties in the cases,
12 there are so many ways in which the cases can end which do
13 not produce a fee for private lawyers, that we find it diffi-
14 cult to even find lawyers who are willing to talk to people
15 for free to see if they might be interested in taking a case
16 like that.

17 The private bar, some lawyers handle a few of those
18 kinds of cases under what they consider to be pro bono cir-
19 cumstances. They may get a fee in the end but the chances
20 are so small and the money will be so small, that that's not
21 a justification for taking the case. There are virtually no
22 lawyers in the Phoenix metropolitan area who will routinely
23 handle that kind of case, because they can make a living doing
24 it.

25 And in that sense, Title VII doesn't work here the way

1 it was meant to work.

2 Q (By the Chair) Do you have any recommendations?

3 A We would like to be able to do that kind of work. We
4 have in the past done some. Because you see we have 30,000
5 eligible clients for every lawyer it's not high enough priority
6 we're able to handle those.

7 One recommendation would be to provide for appointing
8 counsel to strengthen the attorneys' fee provision, to make
9 sure that attorneys' fees are awarded more often and in
10 larger amounts, or to make legal assistance available in some
11 other way.

12 Q Are there efforts being made to dismantle the Legal
13 Service Corporation?

14 A Absolutely. We find, or the support that we get from
15 the Legal Services Corporation decreasing very much. The
16 regulations that have been proposed will -- I'm sorry, let me
17 go back to your question.

18 President Reagan has stated his opposition to Legal
19 Service Corporation funding, there are substantial efforts
20 in Congress to do that. It's my understanding that although
21 we're on a continuing resolution now we will obtain funding
22 for 1983 calendar year, future is extremely uncertain.
23 Besides the attempts to dismantle Legal Services' program,
24 there are also substantial attempts to redirect the kind of
25 work we do. And these are made both through restrictions on

1 our funding, not in the amount of funding but in what we can
2 use it for, and in the regulations proposed by the new board
3 of directors that President Reagan has appointed.

4 Many of these restrictions will severely hamper our
5 efforts to do civil rights work. The civil rights statutes
6 which provide for fee awards, the fee awards will be
7 neutralized for us by regulations requiring us to pay our
8 fee awards back to the federal treasury which would not
9 then be incentive for our program to be engaged in that kind
10 of litigation.

11 Restrictions on the class action litigation. As I
12 say, we're not able to handle every individual case of dis-
13 crimination but we do try to handle serious cases of sys-
14 tematic discrimination and some of those we handle through
15 class actions and we expect to have new regulations adopted
16 which limit our ability to do class actions.

17 It seems very clear to me that the regulations are
18 designed very deliberately to limit the amount of civil rights
19 work we can do.

20 THE CHAIR: Any questions?

21 Q (By Mr. Palacios) You spoke of signs, that say we
22 don't hire Indians?

23 A Yes.

24 Q There -- today there are such signs?

25 A Yes.

1 Q In the Maricopa County or Phoenix or --

2 A In metropolitan Phoenix, we see these kinds of things,
3 signs more often people just being told, you know, I'm sorry,
4 we won't hire you because you're an Indian. Individual
5 situations like that we can generally remedy on an individual
6 basis with a couple of telephone calls. But we see them in
7 great number.

8 The employment discrimination for Native Americans in
9 Phoenix is the worst employment discrimination I've ever seen
10 and I've practiced Title VII law extensively now throughout
11 the south and southwest. It's must more blatant here.

12 THE CHAIR: That's the only questions I have.

13 A Thank you, Dr. Warren.

14 THE CHAIR: Thank you, Mr. Schorr.

15 Mr. Decochia (Phonetic)?

16 MR. RICO SOTOMEYER (Phonetic) Mr. Decochia Contatende,
17 but he did bring -- I brought for him --

18 THE CHAIR: He said he would send a paper --

19 MR. SOTOMEYER: Yeah, correct, and here's a cover
20 letter. And here's the actual report, and he's made some
21 extra copies if you want them, I can just leave them here.

22 MR. PENA: Please. Thank you, thank you.

23 THE CHAIR: And thank you so much.

24 Are you two together?

25 MR. DEL MATTO: Yes.

1 THE CHAIR: And you were going to give the report or --

2 MR. DEL MATTO: Right, not about what Alfred was going
3 to talk about.

4 THE CHAIR: And will you also identify the organiza-
5 tion that you're representing and your responsibility in the
6 organization?

7

8 BRADLEY DEL MATTO

9 A (By Mr. Del Matto) I'm representing the Human Rela-
10 tions Division of the City of Tucson, and I'm an investigator
11 for the Human Relations Division.

12 My presentation is about the effects of Section 504 of
13 the '73 Rehabilitation Act on public transportation in par-
14 ticular in Tucson.

15 I've employed a cost-benefit approach to my presenta-
16 tion. In general, over the past 25 years, the United States
17 has addressed civil rights in a serious and forceful manner.
18 The passage of the Civil Rights Act of 1964 and judicial
19 decisions in favor of the plaintiffs in the cases Brown versus
20 Kansas and Griggs versus Duke Power, the civil rights lobby
21 was fueled with the makeup needed in order to further their
22 cause and bring to a halt injustices that for so long plagued
23 our country to a lesser extent are still prevalent in our
24 society today.

25 Along with great leaps that our country has made in

1 this area are the extremely complicated legal matters that
2 must be addressed as evidence in our own state by the legis-
3 lature's failure to amend civil -- along with the great leaps
4 that our country has made in this area, are the extremely
5 complicated legal matters that must be addressed as evidence
6 in our own state by the legislature's failure to amend the
7 Arizona Civil Rights Statute to include physical disability
8 because of the second injury clause.

9 This is an example showing just how extremely compli-
10 cated legalities can be.

11 The point is the civil rights issues have evolved in
12 the United States more people are being afforded protection
13 under civil rights laws as certain groups are being considered
14 a protected class of individuals.

15 In many states, as in the federal law legislation, has
16 been passed extending protection to those classified as the
17 physically disabled. Historically, this has been one of
18 the tougher issues to deal with because of the many legal and
19 social problems that have plagued this particular group. Part
20 of the reason that this issue is now just receiving the atten-
21 tion that it deserves is because the physically disabled were
22 not visible to society and since most of them lacked the means
23 to move freely among our society they were, in essence,
24 shut off from the outside world.

25 Throughout the time a lot of these people, because of

1 their disabilities, were not able to be productive because
2 they lacked the proper training or tools to be selfsufficient.
3 It is not hard to imagine, then, how this group came to be
4 dependent upon the relatives and friends for help concerning
5 even the simplest of normal everyday functions.

6 Over a period of time, it is easy to see two stigmas
7 developing, one in the minds of the disabled and one in the
8 minds of those that are not disabled. Those that are dis-
9 abled begin to believe that they can not function without the
10 help of others and society believes that they are a burden
11 because they must be cared for.

12 The stigma that our society carries is not a prejudice
13 based on hate but more a bias based on pity.

14 But along with the computer age came many technological
15 advances and communications and transportation. The physically
16 disabled have reached some of the -- reaped some of the
17 benefits from the technological advances and as a result, are
18 now becoming highly visible in our society.

19 Also with the aid of some public and private agencies
20 the society is beginning to understand that being disabled
21 does not condemn people to a life of selfpity and unproduc-
22 tivity. As these people begin to be accepted in society
23 they're becoming more productive and less of a burden on
24 society.

25 One of the tools that have facilitated disabled persons'

1 emergence into the mainstream of society is legislation that
2 began on the federal level with the Rehabilitation Act of
3 1973. Many states have followed the federal lead by amending
4 their civil rights statutes to include physical disability.
5 In Arizona, as I have mentioned before, legislation has not
6 been passed because of the pending issues that have yet to
7 be resolved.

8 Yet, the federal laws pertaining to the physically
9 disabled are extended to any agency or corporation, public
10 or private, that receive federal assistance.

11 Section 504 of the Rehabilitation Act of 1973 has been
12 applied to transportation. The Section 504 regulations re-
13 quire that at least one-half of the peak hour bus service
14 be accessible by July 2, 1982. For those sites not achieving
15 this status, interim accessible transportation for handicapped
16 persons who could otherwise use the system must be provided.

17 Now, since I am here to discuss how 504 has been imple-
18 mented in the City of Tucson with regards to the public bus
19 system. By studying the effect of Section 504 on the trans-
20 portation system, it is possible to make some observations,
21 inferences and calculations about the effects of 504 on the
22 social, political and economic system.

23 One way to view the matter from an economic perspec-
24 tive is to employ a cost-benefit approach. The definition of
25 cost in this sense could be measured by the amount of

1 services for the general public that have foregone and incre-
2 mental cash outlays:

3 The benefits may be measured by the incremental services
4 rendered to the disabled and of course, the integration of
5 the disabled into the mainstream of society. The easiest of
6 these to measure, of course, would be any marginal cash outlays.

7 In 1981, the City of Tucson purchased 19 wheelchair
8 lift-equipped buses, each bus cost \$143,000.00. The estimated
9 cost of each lift is \$12,000.00. If the estimated useful
10 life of the lift is ten years, with no residual value, and
11 the lift was depreciated separately from the bus, using
12 straight line depreciation, then \$1,200.00 would represent
13 the amount of the asset used to generate revenues in one
14 year.

15 Along with the depreciation expense of the year repair
16 expenses to the lift which are estimated to be \$300.00 per
17 year, so the total expenses associated with each lift for
18 one year would be \$1,500.00.

19 If the cost of operating a lift were unitized using a
20 number of persons boarded by the lift as the denominator
21 level and the unit cost per person boarded by each person
22 would then be roughly \$81.00 per person boarded per lift.
23 In this computation numerator was 28,500, which was found
24 by multiplying the 19 buses by \$100.00 expense incurred per
25 year.

1 The denominator level of 365 was the estimated number
2 of passengers for the year. This number was derived from the
3 actual figures that showed that about one person per day
4 boards the buses by means of the lift, system-wide. On the
5 national level, the average was just under seven, system-wide.
6 But of the 16 cities surveyed, the average number of buses
7 with lifts per city was 131.45, where Tucson only has 19.

8 Also, the yearly expense to operate each lift on a
9 national level was \$1,927.00 which consisted of \$625.00 for
10 operations expense and \$1,302.00 of depreciation expense,
11 based on a useful life for the equipment of six years. Then
12 the cost per person boarded by the lift was \$164.00.

13 Another aspect to consider is the time element.
14 Each time that the lift is operated to board a disabled
15 passenger, the driver must park the bus, walk to the operating
16 panel, lower the lift, board the passenger and clamp the
17 wheelchair with the safety. In theory this process should
18 take about two minutes. But in actuality it takes between
19 five and ten minutes barring any malfunction by the lift
20 system.

21 Though, according to figures compiled by the United
22 States Department of Transportation, three to seven minutes
23 probably represents the range of combined on and off dwell
24 times for most wheelchair patrons barring any lift problems.

25 The impact of this added delay on the operator's schedule

1 adherence would be very much dependent upon the route and
2 the time of day. It would severely disrupt short headway,
3 high volume peak routes. At current ridership levels and
4 without any significant number of real wheelchair bus commu-
5 ters the overall operators schedule adherence impact due to
6 longer dwell times is small. This could change if lift usage
7 increases dramatically.

8 Incidentally, there is a small percentage of persons
9 denied boarding due to malfunctions in the system, though
10 the national level is less than 10%. Also, the city buses
11 could only accomodate 12 persons in wheelchairs at one time.

12 The main thrust behind the idea of integrating the dis-
13 abled into the mass transportation system is derived from the
14 Supreme Court's decision in 1954 stating that separate but
15 equal is not sufficient.

16 Though other forms of transportation might be less
17 costly, the department of transportation has taken an
18 affirmative action stance that it can be proud of.

19 Access to the public bus system gives those confined to
20 wheelchairs another degree of independence and in the eyes
21 of the public, they are seen as individuals who no longer need
22 a special mode of transportation separate from the mass
23 transportation system.

24 The psychological advantages are clear but hard to
25 quantify.

1 In conclusion, there are no clearcut lines that can
2 be drawn in order to measure the cost effectiveness of the
3 effect of Section 504 on mass transportation system. Of
4 course, from an accountant's point of view the program is
5 clearly not cost effective, and will remain so until either
6 more persons requiring the services of the lift use the
7 system, or the cost of the system recedes.

8 On the other hand, it is hard to measure the benefits
9 exceed the cost because so many of the benefits are difficult
10 to measure.

11 One suggestion that I have is to let a group from the
12 community made up of disabled individuals decide if the
13 money might not be better spent on other modes of transpor-
14 tation. Quite clearly, if only two or 3% of the mobility-
15 impaired persons of the community are using the system,
16 they might simply prefer other modes of transportation.

17 In any case, government involvement in this area is
18 still in its infancy. There are other modes of transportation
19 being federally funded which should be considered as much of
20 an experiment as the use of lifts on buses.

21 Finally, cost must be balanced with the benefits, both
22 the disabled community and the community in general are to
23 receive the optimum benefits from their tax dollars.

24 I just wanted to make a few general comments. One was
25 that the handicapped community in Tucson opposed to using

1 the federal monies to support the lifts, on buying lifts for
2 the buses. They preferred other modes of transportation such
3 as Handi-Car or paratransit, as they call the alternate mode
4 of transportation in Tucson, which are just vans that are
5 available to the handicapped community at any time if they
6 so wish.

7 Are there any questions?

8 Q (By the Chair) And the handicapped preferred that
9 alternative?

10 A Yes.

11 Q (By Mr. Palacios) Were there actually any of the lifts
12 installed in the buses? Were the lifts installed in the
13 buses?

14 A Yes.

15 Q Nineteen, you say?

16 A Well, they bought 19 new buses that were lift-equipped,
17 okay? As I remember correctly, the cost to put a lift on a
18 bus that wasn't originally built with a lift was somewhere
19 around \$45,000.00 per bus.

20 Q How would I find out that the City of Tucson had buses
21 like this if I were in a wheelchair, how would I even learn
22 of that?

23 A Well, Suntran, which is the name of our system, bus
24 system in Tucson, did have a public -- they passed out litera-
25 ture and what else did they do?

1 Q Was there anything on the air, radio, television,
2 anything like that?

3 A No, no, just --

4 Q Because if there are that few people actually using it,
5 of course it's not cost efficient, but then I'm just wonder-
6 ing, you know, so often within our society, we have all kinds
7 of little things that people don't learn about.

8 A Right.

9 Q But if they did they would use them, they'd utilize
10 them and I have found in my short life, I lived in a couple
11 different cities, I'm amazed at different things that I have
12 stumbled upon that no one ever tells me about or I learn
13 through word of mouth rather than the actual provider of that
14 service somehow getting the word out that that service is
15 there to be provided.

16 I'm just wondering if that's one of the problems with
17 this particular case?

18 A That could be, but the fact that the mayor's committee
19 on the handicapped, they were the ones who originally opposed
20 putting lifts on the buses, so even those persons that did
21 know about it didn't like the idea, they just thought that
22 the money could be better spent elsewhere.

23 Q In some other way.

24 Someone was here yesterday talking about handicapped,
25 disabled and so forth and one of the things that was discussed

1 and mentioned was the fact that we as a society don't like
2 to look at handicapped people. We feel uncomfortable around
3 them. We, quite frankly, don't like to look at Blacks be-
4 cause we feel uncomfortable around them.

5 We don't like to look at people that are, quote, not
6 attractive. Winos down in wino park down here in Phoenix. We
7 are uncomfortable around people like that.

8 And so I asked the question, well, how can we change
9 that? And the answer was to integrate, in other words, to
10 integrate the so-called handicapped within the general popula-
11 tion and I'm just thinking, this is a perfect opportunity to
12 do that.

13 In other words, next time sitting on a bus and the bus
14 pulls up to a stop and someone in a wheelchair uses a lift
15 to get on the bus and I keep seeing that, I get to feeling
16 that that's a normal part of life and I get to feeling more
17 comfortable with that.

18 And now what I hear is that these people would rather
19 not be stared at, I think probably. So they'll take this
20 other form of transportation rather than riding the public
21 transportation.

22 I don't know what the reasons are, I'm just throwing
23 that out.

24 A Right. Well, I think that's an important point. I
25 think that the whole basis was to bring these people into the

1 mainstream in society, let them be seen with the normal,
2 everyday, blue collar worker or whoever uses the mass trans-
3 portation system. But if these people themselves would
4 rather see the federal monies go elsewhere in order to sup-
5 port other modes of transportation, I don't think that the
6 department of transportation can justify --

7 Q I agree, I'm just curious in my own mind about if I
8 were a person in a -- well, quite frankly, I'm not handicapped,
9 other than being Mexican.

10 But I don't like people staring at me, quite frankly,
11 and we tend to look out of the corner of our eye at people
12 that have a white cane or a lead dog or that kind of thing.

13 A For sure.

14 MR. THOMAS PILLA: Dr. Warren, can I ask a question?

15 THE CHAIR: Sure.

16 Q (By Mr. Pilla) I was intrigued by the time it takes
17 to put this lift into operation. You said that it was sup-
18 posed to take how much?

19 A It was, in theory it's supposed to take two minutes,
20 that's according to GMC.

21 Q And they have to physically leave the bus driver's
22 seat and go somewhere else and do it?

23 A Right, they must go to the back door of the bus, it's
24 not right there next to the driver's seat.

25 Q Now, I've seen these buses in operation in Los Angeles,

1 the operator operates it from some gizmo that's near his seat
2 and it's -- in Los Angeles, and it's never taken that short
3 amount of time when he doesn't move to move that chair.

4 Now, the point I'm getting at is, it's this point of
5 -- period of time that the handicapped individual in the
6 wheelchair seems to me when I'm observing it anyway, seems a
7 little uncomfortable with the amount of time it's taking, is
8 this part of the problem, in your experience with the handi-
9 capped individuals in Tucson? Are they uncomfortable with
10 the amount of time it takes to set this lift into operation,
11 to physically get out of the bus?

12 Because that's what I observe in LA, I don't think
13 they're comfortable with the amount of time it takes.

14 A I, myself, haven't talked to anybody who was really
15 uncomfortable with the time element, as far as those who are
16 handicapped and need the use of the lift, but I think that
17 it's important to understand that even if a lot of people did
18 start using, handicapped persons did start using the mass
19 transportation system, that this would have one heck of an
20 effect on the time element, because if you could imagine
21 them stopping at every stop and taking --

22 Q Yes, the bus driver's don't like it either?

23 A Yes, taking six or seven minutes out to pick somebody
24 up, not to mention that as in Tucson we can only hold 12
25 persons per bus, so --

1 MR. RICO SOTOMEYER: You know, we never witnessed
2 that happen, you know, having passengers, but what we did is
3 we went down to transportation, our department of transpor-
4 tation and sort of conducted an experiment. What they did
5 is they brought in a bus, now this was a controlled situation,
6 okay, there was no traffic, it was just a closed situation,
7 but the bus driver pulled up and put Brad in the wheelchair
8 and the bus driver came back to operate the lift. From the
9 time that he walked up to the rear of the bus and started the
10 operation to the time Brad got on and got himself buckeled
11 was about ten minutes.

12 Q (By Mr. Pilla) I've never seen it take the amount of
13 time you mentioned, never, and I've observed -- I take the
14 bus all the time to and from the office and I've observed
15 at least eight of these lift operations, through the --
16 through the time. And it's always taken at least 20 minutes,
17 at least. Which appears to be frustrating to other passengers
18 waiting to get on the bus, but I've never heard anybody
19 complain about it.

20 I had another question about this. What were the
21 training that was provided the bus drivers in the operation
22 of this, perhaps, and also in dealing with handicapped indi-
23 viduals, the sensitivity toward handicapped individuals,
24 were there any training programs provided bus drivers for both
25 of those types of things?

1 had this information been provided initially --

2 MR. PALACIOS: It's about \$250,000.00.

3 MR. PILLA: That's just for the lifts, those buses
4 were over a \$100,000.00 each.

5 A Not to mention the amount of money that is being spent
6 on maintenance every year to continue this, it's just
7 incredible that it continues.

8 MR. PALACIOS: That's a very, very good point.

9 A A waste of tax money.

10 A (By Mr. Del Matto) Even in my calculations in my
11 report I tried to use very conservative figures, just to be
12 on the safe side.

13 I did read a report by the United States Department
14 of Transportation, they had done a study of, I think 16 major
15 cities across the nation, and the incremental cash outlay
16 was, as I remember, somewhere over 30 million dollars. Quite
17 an amazing figure.

18 MR. PILLA: What's also intriguing in this is that the
19 office of management of looking toward the department of
20 transportation's section 504 guidelines as potential
21 guidelines for all other federal agencies to follow.

22 MR. PALACIOS: Thank you very much.

23 THE CHAIR: The state of civil rights in Arizona in
24 1982 has been the focus of this meeting. The advisory com-
25 mittee has heard from those individuals and organizations who

1 have been active in these issues. We have collected this
2 information as part of our responsibility to advise the U.S.
3 Commission on Civil Rights about local concerns relating to
4 equal protection of the laws.

5 We will report our findings and recommendations to
6 the commission and they will be made public to the citizens
7 of Arizona.

8 The advisory committee would like to thank all those
9 who have participated in this endeavor and this meeting is
10 now adjourned.

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12 (Meeting adjourned)
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1 STATE OF ARIZONA)
2 COUNTY OF PIMA) SS

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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 308 pages represent a complete and accurate transcription of my shorthand notes so taken.

WITNESS MY HAND this 15th day of December, 1982.

James E. Bouley
OFFICIAL SHORTHAND REPORTER