

1 UNITED STATES
2 COMMISSION ON
3 CIVIL RIGHTS

24 DEC 1984

4 NORTH DAKOTA ADVISORY COMMITTEE
5 to the
6 U.S. COMMISSION ON CIVIL RIGHTS

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10 TRANSCRIPT
11 of
12 PROCEEDINGS

13 December 3, 1984

14 9:00 o'clock a.m.

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18 Taken at:
19 Embassy Roor
20 Townhouse Motor Inn
21 Bismarck, North Dakota

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24 REPORTER: BRENDA CERNIK
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A P P E A R A N C E S

1
2 WILLIAM F. MULDROW

Rocky Mountain Regional Office

3 Brooks Towers Suite 2235

1020 Fifteenth Street

4 Denver, Colorado 80202

5 NORTH DAKOTA ADVISORY COMMITTEE

6 Arthur Raymond

7 Robert Feder

Mark Schneider

8 Bea Peterson

Carol Jean Larsen
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1 WHEREUPON,

2 the following proceedings were had:

3 MR. FEDER: Good morning and welcome.

4 My name is Robert Feder chairman of the advisory committee
5 for North Dakota through the United States Commission
6 on Civil Rights. This morning as part of our monthly
7 meeting we are going to have a mini forum and
8 discussion of the human rights act that was enacted by
9 the legislature of North Dakota during the last session.
10 Many of you that are here in the audience have been
11 asked to come to give us the benefit of your thoughts
12 and your wisdom, conclusions, and we're very grateful
13 that you have taken the time to do that. We are going
14 to discussing in the morning session employment and
15 in the afternoon session housing and public accommodation
16 issues, government service issues, credit transactions
17 issues. And as well we will conclude in the afternoon
18 as we will in the morning with an open session. I want
19 all of you to know that we are grateful that you are
20 here and we look forward to having you tell us what you
21 feel is appropriate to give us the benefit of your wisdom.
22 If you are testifying you should know and all of you
23 who got letters from me should have gotten one of these
24 pieces of paper Privacy Act of 1974 which outlines
25 what the committee is, how we operate and what is going

1 to be done with the information. The commission on
2 Civil Rights is a federal agency which is part of the
3 executive branch of the government. It depends on which
4 party's in control and how they want to do this and
5 the Commission has five members in each state and
6 advisory committee that is charged with the responsibility
7 of collecting information, holding hearings and transmitting
8 this information on issues of civil rights to the
9 president and members of Congress. Our job here in
10 North Dakota is to observe the scene in North Dakota and
11 to make appropriate recommendations. We are today going
12 to have a hearing of sorts. We're going to call it a
13 mini forum. It's going to be rather informal, it will
14 be recorded by a court reporter. Your testimony of your
15 comments will be reduced to writing and you're more than
16 welcome to get a copy of them at the standard --
17 whatever Bill Muldrow charges per page to reproduce them
18 and when you testify you should know that because your
19 comments are going to be recorded/part of the record
20 that you should avoid defaming or degrading anyone.
21 If you have a comment that could tend to defame or degrade
22 anyone, kindly refrain from making it public. I see
23 that Al Thompson is with us. Unfortunately Alex
24 Schmalz from the Labor Department is ill and I was
25 hoping that Alex would be the first one up this morning

1 because as you know his job in the Labor Department among
2 others is to receive comments of discrimination and to
3 act along with Al Thompson, who is here, to investigate
4 or to make findings and recommendations and to conciliate
5 those that can be conciliated pass those others to the
6 appropriate source and recommend those that cannot.

7 Al, did you bring some figures with you and can you talk
8 with us for a little minute?

9 MR. THOMPSON: Yeah I guess I could.

10 BY MR. FEDER

EXAMINATION

11 Q Why don't you come on up and visit with us.

12 A I kind of got in on this on very short notice,
13 you know.

14 Q Al, I would like to tell the members of the
15 Committee and recognize myself that you were called up
16 here on short notice today and I want you to please
17 accept our thanks. I know it came as a surprise to you.
18 We're very grateful that you could come. First of all,
19 Al, for the record, why don't you tell us your name so
20 that the court reporter can get it down.

21 A Al Thompson.

22 Q Al, where do you work?

23 A I work as a private contractor with the
24 State Labor Department that was approved with the EEOC.

25 Q And as such would be tell us what your duties

1 are as a private contractee with the State Department of
2 Labor.

3 A First place the charges that come in to the
4 State Labor Department are accepted by Mr. Schmalz
5 and the Department and they are set up in a fact-
6 finding conference and in this fact-finding conference
7 we proceed to an investigation and get the facts.
8 And then after we get the facts we come back in and go
9 over them and make a recommendation to the Department
10 as to what our findings are. And in the process of
11 fact-finding conference we have the opportunity many
12 times to conciliate those charges and at that time we
13 do conciliate fact finding and resolve them with the
14 negotiated settlement and we try to, ten days from the
15 time the responses are in, we try to have the charges
16 set up in the fact finding and as quick as we can
17 possibly get these together. We have found that the quicker
18 it can be resolved the better it is for both parties
19 and so this is one of the reasons why we've tried to do
20 it within ten days from the time that the replies are
21 responded and the charging party's evidence has
22 been submitted. We try to have a fact finding to get
23 it resolved and get it back to the Department so that
24 they can make a finding or no finding or no cause
25 finding on it. Of course I was in the Department prior

1 to the time in 1979 when this EEOC law was put on
2 the books and I have worked with Denver too. With taking
3 charges and sending them to Denver long before there was
4 an EEOC on the books.

5 Q As I understand your testimony, Al, in 1979
6 the Department of Labor was called a 706 agency for the
7 Equal Employment Opportunity Commission, is that right?

8 A That's right.

9 Q And so since 1979 the Department of Labor
10 has had some kind of a contractor relationship with the
11 EEOC whereby the Department of Labor will investigate
12 charges of discrimination that are filed either with the
13 State Department of Labor or with EEOC, is that correct?

14 A That's correct.

15 Q Okay. We know that Title VII has been on the
16 books since before 1979?

17 A And the Labor Department was a 706 agency
18 prior to 1979 for a period of time and took the 706 away
19 from them not until 1971 to get back.

20 Q As such, does the Department of Labor receive
21 a fee for investigating those reports?

22 A Yes. They get so much for a 706 that is a
23 flat amount of money. I don't know what it is but I know
24 they have a contract and there's so much money in there
25 and so much per case.

1 Q And the charges are then filed dealing with
2 race, color, religion, sex, national origin or age filed
3 with the State Department of Labor or with the EEOC.
4 But the charge is then handed over to your department
5 as a private contractor and then you investigate?

6 A That's right.

7 Q Now, these charges are only against employers
8 who have 15 or more employees, is that correct?

9 A That's correct.

10 Q And in the event that the employer has less
11 than 15 employees your office -- when I say your office
12 I mean the Department of Labor -- does not have you
13 investigate these complaints, correct?

14 A That's right.

15 Q All right. After you investigate you said
16 that you tried to conciliate by having a conciliation
17 meeting, is that correct?

18 A That's correct.

19 Q Now, the sheet that you have given us here
20 today breaks down the number of charges that have been
21 filed whether they're on sex, age and race, national
22 origin, religion, how much of those have been resolved
23 and how many of these resolved as no cause finding or
24 settlement or withdrawals or referred to the EEOC, correct?

25 A That's correct.

1 Q And you also have the total dollar amounts
2 set forth that you have recovered in the various fiscal
3 years?

4 A That's right.

5 Q Okay. As you know from work in the Department
6 of Labor for many years, North Dakota passed a Human
7 Rights Act in 1981 which in essence created a state law
8 that mirrored Title VII and Age Discrimination Act and
9 the Handicap Discrimination Act. From your observation
10 point, Al, what effect has the human rights had in
11 North Dakota if any?

12 A I believe it's more awareness to the fact
13 that this law is on the books and I believe my conversations
14 with Mr. Schmalz would indicate that there's several
15 of them coming there to file charges wanting
16 the federal protection when they're not covered with the
17 number of employees. Of course now Mr. Schmalz has to
18 find out if they've got 15 or 10 or whatever they've
19 got before they can take and justify the charges as far
20 as EEOC is concerned, district office. So there we're
21 not taking one and going out on an investigation where there's
22 no jurisdiction as far as the federal government is
23 concerned.

24 Q I notice from figures that have been submitted
25 that for the third year in a row the number of charges

1 filed has decreased slightly. But the number of dollars
2 in settlement has drastically risen. Can you comment
3 on that?

4 A Well, the only thing I could say is that it
5 would probably be that the fact some of them have gone
6 longer before it was filed ^{than} what they previously had.
7 We find that in many cases -- not many cases -- but in
8 several cases where you can take an age discrimination
9 and time element is some days but yet the district
10 office says that if this person is not aware of what the
11 law is then you can go ahead and take it any way and that's
12 what the Labor Department does. And when they take this
13 kind and if it becomes a probable cause at that time
14 it gives you more of the negotiating in the settlement
15 if you have it that way.

16 Q What comments or criticisms or suggestions
17 do you have to improve that act?

18 A I was never satisfied with it being just ten.
19 At the time that I appeared for this 706 or the Civil
20 Rights or EEOC Act as they called it and at the time
21 I felt that it was very difficult for the labor commissioner
22 to say that well, ten of you people have--if you're
23 working for someone that there's only ten you're not
24 covered. I felt that the Labor Commission represented
25 all the people in the state of North Dakota and so testified

1 that the fact that it should cover all employees. And
2 the other thing/^{is} that it's got to be clarified in some
3 places I believe. Where it's better expressed the
4 easier it is for people to understand.

5 Q Do you have a suggestion as to what the
6 threshold should be--for those of you in the audience
7 that may be unfamiliar with it, the state law provides
8 that this law that deals with the fair employment
9 practices applies to employers who had ten or more full-
10 time employees. Our neighboring states of South Dakota
11 and Minnesota have a threshold of one. North Dakota's
12 threshold is ten. Do you have a recommendation, Al?

13 A Well, mine wouldn't have changed because of
14 the fact that I felt it should have been one to start
15 with and it gets to point of whether you can discriminate
16 because you got one employee, five employees, nine
17 employees when you get to ten you got to stop it. Well,
18 I never would buy that. I didn't buy that. I felt it
19 was good for all of us.

20 Q You have been involved in this field for a
21 long time and I would be very interested to find out
22 from you if you think that the act's existence is known
23 by the general public? Do you think most people in the
24 state of North Dakota know that there is a state law
25 as well as a federal law that prohibits discrimination in

1 employment?

2 A No. I think there ^{is--} right at the present time
3 there's probably 70 percent more people know about it
4 than they did five years ago.

5 Q What suggestions do you have so that this
6 act's existence would be known by more people?

7 A Well, all -- I don't know what they can do
8 to be improved. I know that the labor commissioners --
9 I've seen the articles that had been released to the
10 press. That coverage on the law and what it's been doing.
11 I realize that. I know that because I've seen it but
12 again this is a legislative act and to make suggestions
13 to legislature I'm not big enough to really want to get
14 involved in that.

15 Q Well, you've seen an awful lot of people in
16 the course of your years in the employment field and have
17 you had occasion to talk to them and say "well where did
18 you find out about this law, was it the posters up in
19 the Job Service North Dakota office, was there a poster
20 on the bulletin board at the plant or in the office,
21 did you get a little card in the paycheck envelope that
22 says what the law is." In other words, how do you think
23 most people would become aware that there is a law
24 prohibiting discrimination?

25 A Most of them saw it on the bulletin board of

1 employers of a fair employees, EEOC, that's where most
2 of them saw it at. One of the reasons why **there**
3 is not more of them filed because they haven't found a
4 cure for fear yet. When they give something that will
5 take and inoculate people to alleviate the fear I
6 think at that point then you'll find out there will be
7 more of them.

8 Q Are the people aware that there is an anti-
9 retaliation provision of the act? Do they know if their
10 employer tries to retaliate against them for seeking
11 enforcement under this act that that is an illegal act
12 in and of itself?

13 A Not until after they get the charge and they
14 read the back side of the charge, then they're aware of
15 it. Even at that point they are frightened at the thought
16 of it.

17 Q Do you have an opinion on whether this act,
18 right now, which provides for private enforcement gained
19 at the conciliation stage should have in there a paragraph
20 relating to public enforcement? In other words, should
21 there be someone like the attorney general or Human
22 Rights Commission or the Labor Department who will
23 bring suit on behalf of an alleged discriminatee or
24 do you think the law works best when it's left to private
25 enforcement?

1 A It's workable and I think it's working right
2 now. I find more paperwork you get involved in the
3 longer it takes and even with your district offices in
4 Denver sometimes it takes up to five, six years and I've
5 always felt you can't destroy a person in less than
6 two years. You really can't hardly destroy them and then
7 you can take an additional time and keep the people
8 waiting around to see whether they're going to be tried
9 or whether they aren't going to be tried. They got
10 other work, move out of the country and it's just a
11 bunch of paperwork that's accomplished.

12 Q Have you found where there has been a finding
13 of discrimination on your part or the EEOC's part that
14 most of those cases are easily resolved or conciliated
15 settlement or are most of them resolved at litigation?

16 A Most of them are resolved in conciliation.

17 Q Do you find that the people that accept these
18 settlements, these alleged victims of discrimination,
19 take the settlement that is offered willingly or they
20 take it because they don't want to go through the hassles
21 and the time and the expense of litigation?

22 A Basically, I can only speak for those that we
23 have on this because of the fact that's all I know
24 about. But to make them whole is to put them back to work,
25 pay them for the time they've been off and generally that's

1 about what this settlement is. And if they don't want to
2 go back to work then they are willing to accept the back
3 pay and go at it and so I couldn't say. The thing I
4 guess that I see is the fact that in litigation^{if}/it's
5 a probable cause -- and we give them 30 days to
6 conciliate, the department gives them 30 days to
7 conciliate -- at the end of 30 days if it isn't
8 conciliated it goes to the district office in Denver.
9 If the district office in Denver concurs in the
10 findings then after a length of time whatever they might
11 choose to have they send this person a right to sue
12 and be supporting. Well, they send them a right to
13 sue and maybe the back pay and the settlement would be
14 about \$500 to put them back to work again. They give
15 them this right to sue and say "get an attorney and we'll
16 be supportive." You don't find very many attorneys that
17 will take this kind of a situation for \$500 because
18 there's not really that much take in it as I see it.

19 Q Of the charges that have been brought in
20 fiscal year '84 with your documentation here it appears
21 that there were 37 of the 87 charges that were filed
22 you made a no cause finding on 50 of them which meant
23 that 37 of them were just ^{cause} / in your opinion. You
24 negotiated settlement in 34 of those and only three of
25 them were ^{bucked} / to Denver. That seems to be a very high

1 ratio of settlement. We'll talk about that. What I'd
 2 like to talk about are **no cause** findings of more than
 3 half. I think 60 percent of these are no cause findings.
 4 Mark tells me 66. What kinds of cases are brought where
 5 you say they are no cause findings, would you give us
 6 some examples?

7 A You're well aware of the fact when the person
 8 comes up to file a charge that the Labor commissioner
 9 or the deputy must allow those people to file the charge.
 10 If they're covered with the jurisdiction of the department
 11 on this situation he cannot tell them you can't file a
 12 charge. He might try to discourage them because of the
 13 fact that they weren't really within the entire act, but
 14 he still has to accept them, and after he accepts them
 15 send them to Denver and give it a 212 and if they get
 16 back from Denver with a 212 and the number on it --

17 MR. RAYMOND: What is a 212?

18 A That's just a form that has to be sent down
 19 there to the district office accompanying the charge
 20 showing you the transmittal. It's a transmittal.

21 MR. RAYMOND: Transmittal form?

22 A Yes. At that time it comes back and they get
 23 a reply from these people you go out and have the
 24 investigation. And several times you run into ~~not~~ several
 25 times -- lots of times the charging party will say "did you do

1 out and get into their books and make an investigation of
2 **this**"and on and on and on. Well, there's the payrolls
3 and all this and that. Good. I told them guys that
4 I'd get even with them.

5 Q In other words you're telling us that a lot
6 of these no cause findings are not righteous cases so
7 to speak in the first place that the employee is basically
8 interested in being retaliatory or punitive or something
9 like that?

10 A Yes.

11 Q I want to follow up on this because I'm trying
12 to get to a point. When there's a no cause finding,
13 we're just trying to be punitive and retaliatory and
14 acting childish and so on. What were the grounds that
15 they alleged? Were they racial, were they **sexual** ,
16 were they age, or did they cover the whole **gamut** ?

17 A Mostly **was** claims of sexual and age.

18 Q All right. Of the 66 percent or 50 charges
19 that were groundless where there were no cause findings,
20 how many of those would have been righteous if there
21 would have been a lower threshold or don't you accept
22 a charge where there are less than ten?

23 A I would not be able to answer that because
24 I don't know if they accept one less than ten.

25 Q Okay.

1 A I know they don't, I'm quite certain that
2 they don't, again, I'm not speaking of knowledge.

3 Q Do you know how many more charges would have
4 been filed if the threshold was less than ten?

5 A I couldn't answer.

6 Q Are in fact any charges filed and acted
7 upon where there are 10 to 14 employees?

8 A Yes.

9 Q You investigate 10 to 14 even though the
10 EEOC -- do you get paid from the EEOC, does the Labor
11 Department get paid from the EEOC?

12 A No.

13 Q Only where there are 15?

14 A That's right.

15 Q But the Labor Department is investigating from
16 10 to 14?

17 A That's right.

18 Q Okay.

19 A Must sometimes establish the number of employees.
20 Now the charge comes in and the employee and the charging
21 party says that they got 15 or more employees. Where
22 do you go to find out? You don't call the charging
23 party a liar, you know, you got to find out whether they
24 got 15 or more and if they have that many employees during
25 certain periods of time and a two-year period of time they

1 are covered by the act and until you go investigate it
2 many times you don't find this out. So that's when
3 you go ahead and if you got it you have the fact-
4 finding conference set up you generally dissolve it.

5 Q Do you think that there should be more
6 publicity or notice of the act's existence in the market-
7 place? As we know there are federal posters in
8 Job Service and in large employers throughout the state,
9 bilingual posters, that the Equal Employment Opportunity
10 is the law and so on. Do you feel that there should be
11 posters for the state law for example? Do you feel
12 that there should be more awareness by advertising or
13 whatever of the existence of this law?

14 A Well, I've never been opposed to education.
15 And so I couldn't say that I would believe that educating
16 the people would be the wrong thing to do. I also
17 believe that you can spend a lot of money trying to
18 educate people and still end up with a certain amount
19 of ignorance. That kind of a situation because of lack
20 of understanding. This is a complicated law.

21 Q Thank you, Al. That concludes the questions
22 that I was going to ask, I don't know if anybody on the --
23 Art Raymond has a question, Art?

24
25

1 BY MR. RAYMOND

EXAMINATION

2 Q Mr. Thompson, I have one specific question
3 in regard to the sheet of statistics you passed out to
4 us. Under the item RACIAL DISCRIMINATION, if my
5 arithmetic is correct, in the years listed there are
6 43 complaints filed. But whatever number how many of
7 those were filed by American Indians?

8 A Ten percent.

9 Q Ten percent? Okay. Thank you.

10 BY MR. SCHNEIDER

EXAMINATION

11 Q Mr. Thompson, as I understand you now are
12 investigating complaints of discrimination that even
13 if there are less than the EEOC standard of 15, is that
14 right, as long as they meet the state requirement of
15 10, is that correct?

16 A Actually what I'm saying is until you can
17 establish there is only 10 or 14 or 15 at that point
18 we have to investigate it up to that point. If I find
19 that in this investigation if they've only got 10 or
20 11 you don't find this out until you get the fact-
21 finding conference. You hate to go to the statistics
22 and not get them.

23 Q What you do then, Mr. Thompson, as you
24 establish a single employee or 11 employees and there are
25 complaints of discrimination and after establishing that

1 do you then go ahead and investigate and conciliate?

2 A At that time go back to the Labor Department
3 and the Labor Department tells people that the act is
4 covered by the courts and they can --

5 Q Under state law?

6 A Yes sir.

7 Q So in other words you understand the act itself
8 has a provision whereby citizens of North Dakota if
9 they feel they've been discriminated against can avail
10 themselves of the Department of Labor?

11 A That's right.

12 Q For investigation. But what you're saying is
13 that's what the act says but you don't do it, is that
14 right?

15 A The act says they can get this, do this.
16 But when they come up to file this first thing they
17 generally want -- they want the federal protection. And
18 at that time Mr. Schmalz says "look, you get no federal
19 protection until you get the 16 -- 15", see. So this is
20 where it's at. He'll take the charge and advise them
21 after he finds out what it is that they can't go to
22 the courts. This absolutely, as I recall and I'd have
23 to verify this with Diane, but I doubt very much there's
24 any funding to the state.

25 Q Funding is a problem?

1 A Right.

2 Q So we do have a law in the state of North
3 Dakota which allows citizens of North Dakota to go
4 to the Department of Labor and hopefully get that
5 complaint redressed without a lot of expense, and
6 God knows hiring attorneys is expensive, but yet because
7 we don't have any money administratively you have to
8 tell them, because you have no choice, that your
9 only remedy is the court, is that right?

10 A I guess that would be true.

11 Q Have you talked with Hagen or Deputy Schmalz,
12 is this a consensus among the Department of Labor that
13 there should be funding to investigate these complaints?

14 A Well, I've asked them about it and they said
15 there wasn't any so of course I'm ~~reluctant to go~~
16 elsewhere.

17 Q I understand the position you're in, Al, yeah.
18 And it's very difficult for you to speak to the Commissioner
19 of Labor or Deputy Schmalz, but I was curious to know
20 whether or not there is a consensus in the Department of
21 Labor. Are they going to ask for money in the next
22 budget to investigate these complaints?

23 A I couldn't tell you. Again, I'd have --

24 Q You'd have to ask the right person?

25 A That's right.

1 Q Do you think there should be money to investigate
2 these complaints?

3 A Well, again you're asking me to say something
4 that reflects on the Labor Department. I would have
5 no objection to some money there and of course I've got
6 a contract but I don't go in there and buck for this
7 kind of a thing for the fact I don't think it would be
8 fair as far as my contract is concerned. I've got a
9 job to do and I'm going to do this job as they present
10 it to me.

11 Q In your experience, Al, you obviously from
12 the statistics you show and you do make a pretty good
13 determination, a pretty good success in settling these
14 things, is that correct?

15 A That's right.

16 Q And do you have any idea how many people are
17 coming to your office or Department of Labor that fall
18 between the cracks, in other words they don't meet the
19 EEOC and ~~if they~~ meet the state guidelines there's no
20 money to help them, do you know how many people there
21 are like that out there?

22 A No, I don't. You might ask Diane, she's on
23 the intake. I couldn't tell you because I'm not up
24 there.

25 Q Diane?

1 DIANE: We've had numerous calls, maybe 10,
2 20 percent that we can't take.

3 Q (By Mr. Schneider) 10 to 20 percent guesstimate.
4 All right. Now, Al, your testimony was that at least
5 if you had your drothers you'd drother the act covering
6 everyone?

7 A That's right.

8 Q And if I do understand it, if the act were to
9 do that if the committee were going to recommend to
10 the governor and the legislature changing it they
11 would need money, State Department of Labor would need
12 money to enforce it, is that a fair statement?

13 A Definitely.

14 Q Can you tell me what exactly -- what efforts
15 does the Department of Labor take to let the people of
16 North Dakota know that there is not only a federal law
17 but a state law that protects their rights?

18 A Only thing I know is they have made news
19 releases, a number of news releases, as to the act and
20 availability of it.

21 Q You don't have any of those news posters like
22 you have, minimum wage law and things like that?

23 A They have some Equal Employment Act posters.

24 Q That's a federal law?

25 A No. No. They got state posters also.

1 Q Where are those posters or how do they get
2 out?

3 A They're all mailed out.

4 Q Could you mail one to us? I've never seen
5 one. Are they located in Job Services across the state?

6 A There has been some in those places because
7 I've taken them in there when I went in to hold hearings.

8 Q But as a matter of regularity they're not
9 posted automatically like EEOC law?

10 A No. The employers prefer to take and post
11 them in the back room.

12 Q Now, just a little bit of regard to these no
13 cause determinations. As I understand no cause determina-
14 tions made on the merits it's from the jurisdiction,
15 Al, because they're less than 10 or less than 15?

16 A That's right.

17 Q Those are made of merits so it's been a 66 percent
18 no cause determination in 1984 and all of the charges
19 that were filed. Do you have any statistics from
20 across the country as to how that rates with other states
21 as to the amount and percentage of those no cause
22 determinations?

23 A The last report that I saw from Washington
24 was that we have -- the state of North Dakota I should
25 say -- has one of the best ratings of any state in the

1 United States. I think they were second. Am I right
2 Diane?

3 DIANE: Either first or second.

4 Q (By Mr. Schneider) First or second in terms
5 of what?

6 A On the length of time on the charges, the / ^{number of charges}
7 its handling of the no cause findings, the number of
8 settlements, all the way down the line.

9 Q But my specific question was on no cause
10 determinations. You are 66 percent in North Dakota.
11 How does that square with the other states, is that
12 about average, are we high or low?

13 A We're low.

14 Q In other words most states are lower than the
15 66 percent no cause determination?

16 A Right.

17 Q Just one more thing. With regard to the absolute
18 numbers and I notice the act was passed in 1981 we had
19 80 claims, increased in 1982, dropped 10 in 1983, and
20 it dropped further in 1984. 76 numbers of complaints
21 particularly when 66 percent are found to be no cause
22 seems like a very small absolute number to me. How do
23 you account for that? Is that because you believe there
24 is no discrimination in North Dakota or very little or
25 is it just not getting the word out or what's your opinion

1 on it?

2 A I'm aware of the fact that this -- of the
3 awareness of it is very educational. To the employer
4 discrimination, and the employer certainly are
5 the ones that create the type of things, and I think
6 the employer has been made aware of the fact that this
7 act is here and it will be in force and so this is
8 one of the reasons why it's cut down.

9 Q I think that's an excellent observation.
10 What is your perception from employers across the
11 state of North Dakota with regard to this act, typically
12 the employer that gets investigated by the Department of
13 Labor, how do they respond?

14 A I think very favorably. Very favorably.
15 When the facts are all laid out in a fact-finding
16 conference, when they hear both sides of it if they feel
17 there is any -- if they're guilty or whatever it might
18 be that they're very happy to resolve it immediately.
19 As quickly as they possibly can and again if they don't
20 feel that they've done anything wrong they're just
21 as resistant to it.

22 Q Would it be fair to state that the act is a
23 service to the employer as well as the employee of this
24 state?

25 A Definitely.

1 Q Thank you, Al.

2 BY MS. PETERSON

EXAMINATION

3 Q I'm concerned about a couple of comments and
4 one is you mentioned in passing sort of that many
5 employers prefer posters in the back room. In other
6 words they'd just as soon not have them see the posters?
7 I'm not picking you down you understand because I know
8 this is the case. But doesn't that tell you something? To
9 go on with that, the reason I point that out or mention
10 it is because you mention reasons most haven't filed
11 because they haven't known how to eliminate the fear.
12 And in North Dakota that really is sad. I know it's
13 true again so I'm not questioning what you said. I
14 understand it. But, the thing that follows through on
15 that is you mention that many of them are not aware of
16 the retaliatory caution which appears on the back so
17 what could you tell me, what does the retaliatory **clause**
18 consist of or what does it say?

19 A Question number one that you raise, why was --
20 why are those posters. Very seldom you find a bulletin
21 board out in the main office. They're back in the
22 coffee room or that area. That's one of the reasons
23 you find them there. I don't believe it's necessarily
24 always deliberate that they don't want these posters
25 because they're living within the scope of it anyway.

1 I think the reason I say that is because there is
2 where their bulletin board is at. Discrimination on
3 the back of the charge says that the respondent cannot
4 retaliate because this person has filed a charge and
5 if they do they will be subject to action. That's right
6 on the back of the charge. And many times even the
7 employer is not aware what retaliation of it is until
8 they get the charge and everything.

9 Q Doesn't it almost sound like a threat?
10 I hear that particular statement on the back to me sounds
11 more like a threat if you do this you do this or is that
12 do you suppose the reason why a lot of them withdraw or
13 don't put in the first place even if they really do
14 have a good case?

15 A I don't believe so. When people become willing
16 to stand up and be counted at that point they've been
17 innoculated for fear and proceed regardless of what the
18 outcome will be.

19 Q Okay. One more question along this line, it
20 seems to me that the publicity really is lacking.
21 The understanding of the public really is not where it
22 should be on this whole act either on the national level
23 or in the state level, would you agree with that or
24 do you feel that they're fully well informed, they know
25 exactly what their rights are?

1 A No.

2 Q In depth?

3 A I don't believe they're fully informed. I tell
4 you again let me put it this way. Ignorance is very
5 costly but to spend a lot of money for educating people
6 and still end up with ignorance that's foolish.

7 Q Is the reason that you're ending up with
8 ignorance because of money/^{that was}used was misspent? Maybe
9 it could have been put into a booklet, maybe the
10 legislature is responsible for little more diffusion
11 of knowledge here. Maybe is there something they could
12 do to improve the information that reaches the public? Is
13 it entirely up to your office to get this knowledge
14 out, this information out or could it be expanded by a
15 legislative amendment? In other words, what I'm asking
16 you, could this legislature take another look at that
17 amendment or that act, do you think it is all encompassing?
18 To me it sounds like it's very deficient. The idea is
19 good but they've not carried it far enough, have they?
20 If you don't reach the people you're losing the whole
21 thing?

22 A You could reach the people and if you'll
23 recall at the time the act was passed it was in every
24 paper in the state. It was on TV, it was on radio, and
25 20 days after this was completed and the legislature had

1 gone home many of these people that had been witnesses
2 to this, you ask them about it and they don't recall
3 ever seeing it or ever hearing that.

4 Q I can understand that because that would be
5 the heat of legislative session, everything else combined
6 with it. That's why I think -- I don't think that's
7 ever a bad policy to distribute any information at any
8 time but certainly to just send it out during a legislative
9 to me is a waste of time because you've got this whole
10 line-up of things that people are trying to accomplish
11 in a small amount of time and sometimes probably get
12 a lot more attention than others, not because they're
13 not so much more valuable just because they have a
14 little more catch to them. Do you have any idea at all
15 how we could reach people better?

16 A Well, the only medium that I know of is the
17 press and TV and radio. That's the only way I know.
18 You can send out bulletins and a number up them end of
19 in file 13.

20 Q Maybe we could start with the posters, put
21 them on the front page instead of the back, on the front
22 door rather than the back door. I don't know but this
23 really disturbs me, like you say, a lack of knowledge
24 is a dangerous thing and in this case it's not only
25 dangerous, it could react directly on their livelihood.

1 I don't like that. I'm not criticizing you but it disturbs
2 me that the word fear even has to appear here, but I
3 understand what you're saying because everybody's got
4 to make a living?

5 A I don't know really.

6 MR. FEDER: Diane, may I ask that you send
7 or have someone in your office send to me, and I will
8 distribute it to the other members of the committee and
9 to the Denver office, any poster or document that your
10 office distributes to employers or employees or labor
11 unions that deal with equal employment opportunity,
12 would you do that?

13 Thank you. In the cover letter could you say
14 which document is distributed to which person and how
15 often that happens and so on? Thanks.

16 Does anyone -- Bill has a question.

17 BY MR. MULDRON EXAMINATION

18 Q I just want to follow up a little bit upon
19 the lack of funding for investigating complaints. Did I
20 understand you to say, you do not have any funding for
21 investigating complaints, is that what you said?

22 A Other than 706 EEOC.

23 DIANE: There's not money in the state.

24 MR. FEDER: So as I understand it then your
25 office -- I mean the Department of Labor -- will

1 investigate only 706 agency complaints involving
2 employers who have 15 or more employees, is that correct?
3 I'm talking about the merits, I understand that you'll
4 go out and find out how many employees an employer has
5 and if you find out the employer has 10, 11, 12, 13
6 or 14 employees you'll explain to the charging party
7 that there are no funds to administratively resolve that
8 problem and their remedies would be to go to court?

9 A That's right.

10 Q What about the retaliation complaints, is that
11 the same thing true for that?

12 A On the retaliation complaints, all retaliation
13 complaints that are brought in, a second charge is filed
14 because the retaliation, it goes to the district office
15 in Denver and the district office in Denver handles 90
16 percent of the retaliation. That's the way they ask
17 for it and that's the way they get it.

18 Q Have you had any retaliation complaints?

19 A Two.

20 Q And they have been fully investigated?

21 A We sent them back to Denver. There is 31 of
22 them we went back out on ourself. We went back out
23 and resolved it and put the person back to work with back
24 pay.

25 Q You did that on your own?

1 A The Labor Department recommended that we go
2 back out and see if we could conciliate it and we did.

3 Q What about the other two?

4 A We have no way of knowing what happened to them.

5 Q They don't inform you as to the results
6 of the complaints they investigate?

7 A No sir.

8 Q What is the reason for this? It would seem
9 logical they would inform you what the results of
10 investigations or any actions which they are taking.

11 A The only thing I can say is when the monthly
12 report comes back, or the report comes back they say
13 there's some accepted and some might be rejected and
14 they might need further information on them, and at that
15 point we have the choice of either going out and getting
16 "further information or send them back to them and say
17 "look, we've investigated and this is our finding, if
18 you want more information you have at it."

19 Q What kind of funding would you need to
20 investigate the complaints that you receive which do
21 not fall under the 706 guideline?

22 A I couldn't answer that. Again I don't have
23 any idea. See, the federal gives them so much per charge.
24 And again I couldn't even tell you what that is.

25 MR. FEDER: Do you know, Diane?

1 DIANE: No, I don't.

2 MR. FEDER: Al, do you have any parting words
3 of wisdom for us? We've exhausted the questions the
4 committee has, do you have any comments or suggestions
5 you'd like to leave with us?

6 MR. THOMPSON: My basic thing, I guess, is
7 the fact that the act has been passed in the last session,
8 quite broad, and it will take a number of dollars for
9 that investigation and this kind of thing as far as
10 the 706 agency is concerned, has been funded, within
11 reason, no biggy, but within reason of the withdrawal
12 and I feel quite strongly the 706 agency as far as
13 enforcing the federal act and that has been very well
14 governed.

15 MR. FEDER: Thank you very much for coming
16 up. We appreciate it and we know you were called in
17 on short notice and we're very grateful. Thanks, again.

18 We also have with us this morning Mr. Jim
19 Dubois.

20 BY MR. FEDER

EXAMINATION

21 Q Mr. Dubois it's nice to have you here. Would
22 you tell us a little bit what your involvement has been
23 with the Human Rights Act on employment discrimination
24 in general. Perhaps you can tell us what you do.

25 A All right. I guess you have my name so my

1 personal connection with the Act I guess has been as
2 the legislation went through the legislature I was
3 interested in trying to keep the legislation as close as
4 possible to the federal legislation. So that as a
5 company we don't end up having two different kinds of
6 laws which in some instances might be in conflict to deal
7 with. I do want to point out Northwestern Bell has been a
8 very proactive in the area of civil rights. We have taken
9 a strong position against discrimination of any kind and
10 we do everything that we see possible to enforce that
11 company policy making sure that none of the employees
12 that we employ, that we have, are discriminated against
13 in any way and some of our supervisors are guilty of
14 discriminating or harrassment of any kind of employees
15 in the areas covered by these laws.

16 Q Your company has a well-known policy of
17 opposing discrimination and I personally reviewed several
18 **cases** in your manual. And I know from **what** I have,
19 you speak, I think, in your company for that
20 your position with the company has been to deal with
21 area of employment discrimination on a public basis and
22 I would imagine that you are familiar with how the act
23 has affected your employees in the state if it has at
24 all. Would you tell us if in your opinion the Human
25 Rights Act that was passed by the legislature in the

1 last session has had any effect on your employees, on
2 your company?

3 A Well, of course our company is primarily
4 covered by the federal law, I think, and I don't think
5 that we've had any particular adverse problems with the
6 law of North Dakota. We try not to have complaints
7 in the first place. That's the first thing we have a
8 system in our company where there are internal remedies
9 within the company for anyone who feels they've been
10 discriminated against and a number of problems are
11 resolved in that area. I guess a director of public
12 affairs as I watched the legislature going through one
13 of the areas of concern I had was that there did not
14 seem to be a proper place for administrative remedies
15 before it went into district court. And it seems to me
16 that we had a bit of a problem theoretically at any rate
17 where under the federal law and under the state law
18 we could have concurrent complaints going on at the same
19 time and without an administrative proceeding happening
20 first in the state law.

21 So, as far as I know, however, in practice
22 that has not been a problem. I think we have had some
23 cases go into district court. I really can't even tell
24 you how many. I think there's one that might be residing
25 there now. I don't know, for sure. But I talked to our

1 attorney the other day and he said he thought there was
2 one complaint there so I'm not sure on that but we
3 have not, I guess, to sum up, we have not really had
4 any problem with this.

5 Q The act of North Dakota covers an employer
6 who has 10 or more employees. The federal act covers
7 15. So there's an area there where you, of course,
8 I'm not suggesting that the office of Northwestern Bell
9 does discriminate but there's an area where the employer
10 has between 10 or 15 would be covered by the state law
11 but not by the federal law. Do you think that the passage
12 of this act has had any effect on you, first of all, or
13 other employees who would have been covered under the
14 state act when it was passed but not reached the threshold
15 of the federal level?

16 A Well, you're asking me to say what's my opinion
17 of how it affected those employers that have between
18 10 and 15?

19 Q Yes.

20 A And I really have no way to gauge that.

21 Q Did the passage of that act give Northwestern
22 Bell any -- or cause Northwestern Bell to do anything
23 differently?

24 A No. We were already covered under the federal
25 act and our policies are against discrimination at any rate

1 so I would state passage of the act did not affect our
2 behavior.

3 Q What comments or criticisms do you have of
4 this act or suggestions do you have to improve it in
5 the area of employment?

6 A Well, I guess the only suggestion I might
7 have is that if the act or if a complaint is brought
8 under the state act there should be an administrative
9 procedure to try to resolve the complaint before it
10 goes into court.

11 Q Does that include having some kind of an
12 administrative agency or enforcement agency, do you think
13 they should have conciliation powers, cease and desist
14 powers, and suit powers?

15 A Well, I would think they should be handled
16 parallel to the way the federal cases are handled.

17 Q Am I understanding the federal act is that
18 there is an administrative determination by the EEOC
19 as to whether or not there is probable cause to believe
20 that there has been discriminatory acts performed,
21 parties are then urged to resolve their differences
22 privately, if they cannot be done privately the EEOC
23 then faces the choice of passing this case over to
24 their litigation section for litigation on behalf of the
25 employee or issuing a notice of right to sue?

1 A That's my understanding.

2 Q And would your suggestion be that if I'm hearing
3 you correctly that there be at the Labor Department or
4 perhaps another agency some kind of administrative
5 determination like EEOC does that would investigate
6 charges involving employers of 10 or more employees. If
7 it would be resolved fine. If it cannot be resolved,
8 then the EEOC or the Labor Department would have the
9 choice of accepting jurisdiction ^{for} / litigation or
10 passing it back to the alleged victim for private
11 prosecution?

12 A That's seems to make sense.

13 Q Okay. Do you think that the act's existence
14 is known generally throughout the state?

15 A Well, I can't imagine that there are very
16 many people that are not aware that it's illegal to
17 discriminate. Now, I think that most people probably
18 do not make as much of a distinction what's federal law
19 and what's state law. They just know it's against the
20 law. And I can't imagine that there's any of our
21 employees who are not aware of the discrimination laws.
22 We made a strong effort to make sure they do know about
23 this existence.

24 Q How do you do that?

25 A We do that by posting posters in all of the work

1 places where they gather. We've had discussions with
2 them at times notifying them of their rights under
3 the law. I guess basically that's it. We from time to
4 time --

5 Q You have an employee manual if I recall?

6 A Yes we have an employee manual which we try
7 to set out the guidelines and what --

8 Q And also if I remember correctly there's an
9 internal grievance procedure ^{that's} / outlined in the manual
10 of Northwestern Bell?

11 A There's an internal grievance procedure
12 to handle these things within the company as a first
13 step. Also, we have reports which keep our management
14 informed of any such complaints that arise. So we
15 have a rather extensive communication system to make
16 sure that employees know their rights.

17 Q Thank you very much. Those conclude the
18 questions I had. Members of the committee?

19 BY MS. PETERSON

EXAMINATION

20 Q I just have one for Jim. With your expertise,
21 Jim, in public relations and I know you have a lot of
22 it. Someone commented, and I think it was Al about
23 the cost to reach the public and we know that's not
24 necessarily the case. They can be reached in a lot of
25 different ways. Would you have any suggestions that

1 legislature or someone could look at as to simplifying
2 the information so that it would get out in very
3 concise form or do you think it would be better to do
4 as you have and have a manual that the Labor Department
5 here could, I suppose, they have a manual anyway,
6 so if they could include and specifically in it or
7 do this and include it specifically in it. Do you have
8 any suggestions, seems to me they're just floundering
9 here, it's not getting out.

10 A Bea, I don't know whether you can assume that
11 people do not know about this. I think if there's
12 really a question of whether or not employees know their
13 rights under these laws that perhaps one way to really
14 determine the true in this matter is to do some
15 surveying. But, I just really think that there is
16 a pretty broad general knowledge of these laws.
17 But, maybe, in a smaller community, among smaller
18 employees, there may not be. But, I think, that if
19 there's a real question that maybe a survey of some kind
20 might be the way to determine that.

21 Q Well, I'm thinking for instance of a large
22 motel that would employ 20 to 30 people. Do you think
23 that the maids for instance would be aware?

24 A Well, I think that the requirement is that the
25 employer put a poster up in the places where employees

1 gather as they go out to do their work. So I would
2 think that those posters would have to be in place.

3 Q But not too far in the back room?

4 A Well, where they gather, you know.

5 Q That's the important point right there.

6 A That's where you should put them. I don't
7 think you want to put them on the front door of the
8 business where the customers walk in, you need to have
9 them in place where the employees come to work in the
10 morning if they have a **locker** room or whatever. Those
11 are the logical places.

12 MR. FEDER: Perhaps I should ask Mr. Crowfeather
13 and maybe Mr. Thompson this. But my experience has been
14 that employees are acutely aware that discrimination
15 is against the law. What they are ignorant of is
16 what the law says. And I would estimate in my practice
17 that 80 to 90 percent of the people that come to my
18 office or call me up with what they think is a very good
19 discrimination case find out that the law has not made
20 it illegal to have a personality conflict with your
21 supervisor or to have it declared to be illegal to
22 tolerate laziness or something else. So most of the
23 discrimination complaints are not based upon race,
24 color, religion, sex or national origin. So I think,
25 and perhaps I'm wrong, but I think an educational process

1 that has to get out is to define to people what is
2 illegal. I think they know that there's a discrimination
3 law but I think they ought to know that it covers race,
4 color, religion, sex, national origin, handicap
5 status, and so on. Not just because you were terminated
6 or placed on suspension, demoted or transferred, but
7 that per se is illegal.

8 MR. DUBOIS: I think there have been a
9 number of instances that people have been disciplined
10 in some way or another for their work performance and tried
11 to turn it into a civil rights complaint.

12 MR. FEDER: Al is nodding his head.
13 Have you found that that has also been the case?

14 MR. THOMPSON: That's where I find a number of
15 no cause findings.

16 BY MR. SCHNEIDER EXAMINATION

17 Q Wouldn't the employees feel that they have
18 been discriminated against for being disciplined for
19 their work performance? That would be my analogy.

20 A MR. DUBOIS: I assume so. I don't know of
21 such instances, I assume if you have one kind you're
22 going to have the other kind too.

23
24 Q Mr. Dubois, I notice with interest your comment
25 about certainly preferable to have administrative

1 proceeding to try and conciliate a settlement on a
2 discrimination prior to filing a lawsuit, is that a
3 fair statement?

4 A Yes.

5 Q We in North Dakota have, and I think a very
6 good law, I think, it does follow the federal law,
7 it parallels the federal law?

8 A Basically.

9 Q But provides a state remedy. Would it be
10 your recommendation as representative of one of the
11 major corporations of North Dakota ^{to recommend} to our legislature
12 that in order to keep these complaints out of court
13 and to get the conciliated **fast and in^a** reasonable
14 process that legislature should appropriate ^{some} money
15 to insure that could be done?

16 A I think it's difficult to resolve a case
17 administratively without some money to do it.

18 Q You would recommend to the North Dakota
19 Legislature that there be money appropriated to that
20 purpose?

21 A I don't know if I would make that recommendation
22 but I certainly think such a recommendation from the
23 proper place would be in order.

24 MR. FEDER: Mr. Raymond?

25

1 BY MR. RAYMOND

EXAMINATION

2 Q Jin, Northwestern Bell Telephone seems to
3 have an admirable record in these areas. But referring
4 back to what Mr. Thompson distributed to us this
5 morning, a sheet which I assure you have not seen at
6 all?

7 A No I haven't seen it.

8 Q What he gave us/^{is}a report on the number of
9 cases filed and one had to do with racial discrimination.
10 In view of that then I have a question. How many
11 American Indian employees does Northwestern Bell Telephone
12 have in North Dakota?

13 A Well, Art, I don't know the exact number.
14 I don't know the exact answer to that. I do know that we
15 have tried extensively over the last 15 years at least
16 that I'm aware of to recruit American Indians in our
17 work force. We have really wanted to improve the number
18 of American Indians that we have on the work force and
19 we have been favorably successful in doing that. I can
20 remember one occasion a number of years ago in fact
21 when we had an American Indian woman hired who kept
22 trying to quit and I remember the supervisor bringing
23 her back from the bus station about five times because
24 she was trying to go back to the Reservation and we
25 would keep working with this person. I think we're a

1 little more sophisticated now in the way we go about
2 these things, but we very much try and want to get to
3 the racial balance in our work force.

4 MR. SCHNEIDER: Mr. Dubois, you're a
5 representative of a large corporation, you've been
6 under the federal law, so automatically you fell under
7 the state law. From your standpoint representing a large
8 corporation could you identify in the rational basis
9 in the state of North Dakota as EEOC Title VII which
10 puts the threshold of 10 or 15 employees before the
11 rights of the act applied to the employee?

12 A Well, I really can't respond to that because
13 the objections to have threshold that low comes from a
14 different kind of a business than our business. And we
15 are covered under it and under the federal law and we
16 have no problem with that kind of coverage and ^{it's} ~~it's~~ our
17 intention not to discriminate but there may be some
18 problems with the low number of employees that are
19 different than the kinds of problems we have so I really
20 can't respond to that kind of question.

21 MR. FEDER: You don't feel discriminated against
22 as such?

23 BY MS. PETERSON

EXAMINATION

24 Q I have just a short question. Do you have a
25 process whereby Indians or any other people who really

1 can't afford a lot of education have special training so
2 that they could fulfill any of these jobs, do you have a
3 special program?

4 A We have -- yeah, we have all kinds of
5 training programs for all of our employees. Opportunities
6 for them to take special training and we will reimburse
7 them for their expenses and we do that not only for
8 American Indians, for any of our employees who have an
9 opportunity to improve their education or their job
10 skills. And we will reimburse them for their expenses.

11 MR. RAYMOND: Mr. Chairman, this may be a
12 little bit out of order, I don't know, and if so please
13 correct me. In answer to Bea's question, Northwestern
14 Bell has a summer intern program for American Indians.

15 BY J. P. MULDRON EXAMINATION

16 Q You indicated you have an internal grievance
17 procedure which would handle most of the complaints you
18 receive in discrimination. Has there been any case
19 which employees have actually exhausted those internal
20 remedies to go on to file a complaint under the state or
21 federal statute?

22 A Yes.

23 Q What kind of volume are we talking about in
24 this?

25 A Well, I don't have very many. I don't have the

1 numbers but it's got to be -- I don't think we've had
2 over half a dozen complaints in the last couple of years,
3 altogether. So, really, I have no numbers but I know
4 that there have been some occasions that have gone on
5 into the courts after we've gone through the grievance
6 procedures in the company.

7 MR. FEDER: Thank you very much. Do you have
8 any comments or suggestions or words of wisdom that you'd
9 like to leave with us?

10 MR. DUPOIS: Well, I don't think so.

11 MR. FEDER: Then on behalf of the committee we
12 want to thank you very much for taking the time to come
13 up and chat with us and give us your words of wisdom,
14 they are very much appreciated. Thank you very much.

15 While Adrian Crowfeather of Job Service
16 North Dakota is making his way down here, a question
17 for our unofficial representative from the Department of
18 Labor. Is there a breakdown that is readily available
19 to the Commission that tells us how many employees are
20 employed by each employer in North Dakota?

21 MR. THOMPSON: I don't believe so.

22 MR. FEDER: Do you know of any place where
23 that information could be obtained?

24 MR. THOMPSON: I believe Job Service has a
25 rough breakdown of quite a bit of that stuff.

1 MR. FEDER: Then we'll ask Adrian.

2 Our next visitor is Mr. Adrian Crowfeather who is
3 with Job Service of North Dakota.

4 BY MR. FEDER EXAMINATION

5 Q Could you tell us what your job title is.

6 A Mr. Chairman and members of the Committee,
7 my name is Adrian Crowfeather and I'm with Job Service
8 and my job title is civil rights officer.

9 Q Mr. Crowfeather, how long have you been with
10 Job Service?

11 A 17 full years, in my 18th year.

12 Q Would you give us a brief description as to
13 what your duties of civil rights officer are?

14 A Sure. Primarily I work in the area of
15 employment and training programs and the scope of my
16 function in terms of equal opportunity and the concepts
17 of the law and that sort of thing are with the avenues
18 of the Department of Labor regulation.

19 Q From your observation point, Mr. Crowfeather,
20 has the Human Rights Act of 1981 had any effect
21 in North Dakota?

22 A I'd have to say no, simply because I have no
23 direct experience with the act itself as I indicated
24 before. Within the scope of my job we follow the
25 Department of Labor regulations.

1 Q When did you first become aware that the Human
2 Rights Act had been passed?

3 A Probably about -- if I was aware of it earlier
4 I forgot. And I wasn't really aware of it until about
5 two months ago.

6 Q And that's when you received --

7 A Received a copy of it late -- no, this was later.
8 I did receive a copy of the act itself as it was passed
9 and I did not recall that in our conversation we had
10 later.

11 Q All right. As such do you have a manual
12 that is prepared by anyone and given to you so that you
13 can enforce what laws are passed or at least make
14 recommendations to those individuals in the field who
15 are presumably dealing with these people on a day-to-day
16 basis?

17 A As far as the Department of Labor is concerned,
18 we do have a manual regarding this regulation and how
19 it relates to the Civil Rights Act of 1964. More
20 specifically Title VI and VII of the Civil Rights Act.

21 Q When was the last time that manual was published
22 or updated?

23 A We depend quite a bit upon the regional office
24 of the Department of Labor for any update or changes and
25 that sort of thing and as the federal civil rights law

1 has not changed depreciably' or at all as far as I know
2 we haven't received any particular update.

3 Q Would it be a fair statement to say that the
4 last time you received a manual dealing with employment
5 regulations and equal opportunity on employment would be
6 1979?

7 A That would be a fair statement, yes.

8 Q Put another way, you have not received any
9 guidance or regulations or comments from anyone in state
10 government dealing with the Human Rights Act of 1981
11 other than to receive a copy of the act?

12 A That's right.

13 Q Now, Mr. Crowfeather, you're familiar, of course,
14 with the act. And do you have any comments or criticisms
15 or suggestions on the act itself?

16 A I do have a couple of suggestions in terms
17 in the area of communication as well as enforcement.
18 I think that there should be more awareness, educational
19 programs and this sort of thing in regards to Human
20 Rights Act that was recently passed. And I think it's
21 an educational process ~~but~~ I think awareness of the law
22 is extremely important. The area of enforcement. I
23 think that in terms of having access to the district
24 court I think that perhaps maybe that works more in
25 detriment to the person filing the complaint than would

1 actually encourage that person to do it. I think one
2 of the reasons would be -- one of the primary reasons
3 would be question of economics. A person that is out
4 of work or has just been released from work or does
5 not have employment at the time that they file a
6 discrimination case in regards to this application for
7 work usually cannot afford an attorney. And that,
8 I think, is a discouragement. I think that prior to
9 the passage of the act that several citizens did have
10 or do have access to the court.

11 Q Excuse me, if I understand you correctly
12 you are saying before the Human Rights Act the citizens
13 had access to court but now they don't?

14 A No. No, no. I'm saying that the permission
15 to go to court was not really needed to be addressed in
16 a new piece of legislation. To me, and I'm not a lawyer,
17 but, so maybe I don't understand that part of it,
18 but it seems to me that private citizens who have access
19 to court anyway without having to pass a Human Rights
20 Act saying that they can go to court.

21 Q My understanding of the law was that before
22 the Human Rights Act was passed the only avenue that a
23 citizen of North Dakota had to a traditional judicial
24 determination and the employment discrimination case was
25 to the federal courts. There was no right to bring an

1 action in the state of North Dakota for employment
2 discrimination. One of the reasons that this act was
3 passed, at least my understanding, was to afford North
4 Dakotans the opportunity to bring a case in state
5 court, to be decided by a state judge or in some instances
6 a jury on their complaints. So one of the purposes of
7 the 1931 act was to allow direct access to state courts.
8 Prior to this time the only remedy was federal court.

9 Now, tell me, do you think that this act
10 as it has been passed needs to be addressed -- strike
11 that question.

12 You stated earlier that you feel we need
13 education and to have some public discussion or public
14 awareness of the act. Do you have any suggestions how
15 this could be accomplished specifically through your
16 offices?

17 A As far as the state act is concerned I think
18 that without committing the agency I'm not in a position
19 to do so. I think that perhaps information can be
20 distributed through our field offices and that sort of
21 thing. And I think because we do have contact with a
22 large group of people both applicants and employers,
23 and I think, that the press maybe, I don't know, if
24 the agency would want to do it or would do it, sponsor
25 public forums and that sort of thing would be another way.

1 Q Well, does Job Service have a budget that would
2 allow the printing of posters or manuals or to sponsor
3 sessions for field officers so that when people come in
4 there's an individual and one in your offices throughout
5 the state who's familiar with the act and familiar with the
6 employment law in general who would be in a position to
7 say to these individuals that there may or may not be
8 cause of action or this is the law or this is not the law.
9 Are there funds with Job Service to do this?

10 A Not at this time, I don't think so. But if
11 I add, under the Department of Labor regulations we
12 do have specific regulations that says we do have to
13 advertise that it is unlawful to discriminate. And we
14 do have -- I don't think I know -- six posters that we
15 are required to post in a public access area.

16 Q Would you be kind enough to assemble a packet
17 of those six posters and forward them to me?

18 A I sure will.

19 Q Appreciate that and then I will in turn
20 duplicate that and send them to the members of the
21 committee. You also made reference to the fact that
22 the access to district court is not a viable alternative
23 to many people because of the costs involved. Can you
24 tell us that you think it would be in the best interest
25 of the state and the people of the state to have an

1 enforcement agency that would be responsible for
2 enforcement of the law?

3 A It would appear to me that that would be a more
4 viable option; however, along with the enforcement
5 concept I think that that particular entity would have
6 conciliation or negotiating resolution of those kinds
7 of complaints.

8 Q So you would prefer that the powers that
9 this agency would have would be conciliatory rather than
10 cease and desist or litigation problems?

11 A I think that should be inclusive.

12 Q Do you think they should have the opportunity
13 to conciliate, if they don't then cease and desist orders,
14 and if that would be not appropriate they should also
15 have powers to act on behalf of the employee to bring
16 suit?

17 A I think so. I think we should try toward
18 local regulation first and if that doesn't work we should
19 escalate a full authority.

20 Q At the present time the Labor Department has
21 authority as I understand it under the Century Code to
22 bring an action in the district court in the name
23 or on behalf of the employee whose underpaid wages
24 are being withheld. In other words if I were to work
25 for you at Crowfeather's General Store for example and

1 regardless of the number of employees that you had,
2 if you kept my last paycheck I could go to the Department
3 of Labor and say Mr. Crowfeather said he's not going
4 to give me my last paycheck because I broke a window or
5 for whatever reason and then the commissioner would have
6 the attorney general bring suit on my behalf. Are you
7 suggesting that that is an alternative to having an
8 employment discrimination problem remedied legally?

9 A I think that could be one of the options.
10 I think that a person that is filing a complaint should
11 have as many options as possible.

12 Q That's been your experience in the field that
13 employees are either afraid to bring a suit or won't bring a
14 suit because of the cost involved. By bringing a suit
15 I mean a charge not just the litigation end of it but
16 bringing a charge generally?

17 A I think that's a fair statement. I think that the
18 Commission has a lot to do with how people follow through
19 on their complaints and this sort of thing. Especially
20 under the Human Rights Act as it is written now.

21 Q Do you think that most of the people are aware
22 that there is an anti-retaliation provision in the law?

23 A I think it was stated earlier that if they
24 are aware it really doesn't make that much difference
25 because of the fear factor. And I think in hard economic

1 times people tend to, if you will, think twice before
2 they would pursue their rights.

3 Q These are the prepared questions that I had for
4 you and I thank you very much. Other members of the
5 Commission have any questions?

6 Ms. Peterson?

7 BY MS. PETERSON

EXAMINATION

8 Q Could you spell out what your job entails,
9 your position?

10 A Basically I'm responsible to assure nobody
11 discriminates in all employment and training programs
12 under the administration of Job Service North Dakota.
13 We do maintain contact with -- we have 14 field offices
14 around the state as well as our central office and we
15 try to follow our follow-through on all of the Department
16 of Labor regulations that come down in regard to non-
17 discrimination.

18 Q Now, does that -- apparently you don't know
19 this Human Rights Act or you'd heard of it and you really
20 hadn't heard of it and I was the same way so I'm not
21 judging you, believe me, but I find it surprising that
22 your employers didn't emphasize it more to you so that
23 you would have have had it at your desk and I mean it
24 seems to me that if you're^a civil rights officer that
25 would have been very important to your work?

1 I got the copy of the law itself.

2 Q Maybe you can't answer this, do you know
3 if anybody in Job Service from the director on down
4 perceives at Job Service North Dakota in disseminating
5 civil rights information in North Dakota?

6 A I do have that responsibility under the
7 Department of Labor Regulations and we do have communica-
8 tions that are available from the Department of Labor
9 but in terms of Human Rights Act, I don't think we've
10 published anything in that direction.

11 Q It really strikes me as similar that we have
12 a state agency that reaches more employees than any other
13 agency in the state and our sole concern of civil rights
14 is what the federal government tells us through the
15 regulations and statutes and then we have a broad base
16 state statute of human rights and Job Service ignores
17 it basically, is that a fair statement?

18 A I don't know if they ignored it but I think
19 there was -- probably we failed to follow through on it.

20 Q How many local Job Service offices are there
21 across the state of North Dakota?

22 A 14 field offices as well as the central office.

23 Q Do you think it would be a good idea to have
24 at least an intake in each one of the 14 district field
25 offices whereby employees could go to Job Service North

1 Dakota if they felt they have a complaint and lodge it
2 there and have an officer to the Department of Labor?

3 A We do have that structure in there as of now.

4 Q You have it in place now?

5 A Yes, sir.

6 Q If someone comes in and complains they've
7 been discriminated on the basis of sex what happens
8 in the office?

9 A Basically operating under the Department of
10 Labor regulations, we would respond primarily to those
11 kinds of complaints that are involving employment
12 and training and unemployment insurance programs. And
13 this particular contact, if you will, in each local
14 office will ask the person that is filing or wishing
15 to file a complaint the nature of the complaint and that
16 sort of thing and our instruction under the Department
17 of Labor is to, if it does not involve one of our
18 particular programs then we refer to whatever enforcement
19 authority that exists in the state or another federal
20 agency.

21 Q All right. I understand then that if it
22 is a Title VII complaint --

23 A Uh-huh.

24 Q -- that you would refer them to EEOC office
25 in Denver, is that right?

1 A If it involved employment and training programs
2 then we would at some point, up to a certain point,
3 we do get involved in it in terms of informal resolution;
4 however, if we cannot achieve that then we refer it to
5 the Department of Labor.

6 Q U.S. Department of Labor?

7 A Yes. If it does not involve any of our programs
8 then we refer to state regulatory department through
9 a system we have in place.

10 Q Do you have any idea how often Job Service
11 has referred people who seem to have the complaint of
12 discrimination to the State Department of Labor?

13 A I'm not aware of that. I don't run that part
14 of the system.

15 Q Is it a frequent occurrence whereby employees
16 in the state will go to Job Service? It seems to me
17 you've had several complaints that have gone and Job
18 Service in their minds equated with the Equal Opportunity
19 and they feel discriminated. In my experience, as a
20 very unscientific sample, had any person come back and
21 say they have been referred to the federal EEOC or
22 state agency? Does it happen often? Do you know how
23 many people? Do you have any idea?

24 A I don't know specifically but perhaps in
25 questioning the people that file a complaint or want to

1 file a complaint they find out that maybe the employer
2 has 15 or more, 10 or less, or whatever, and also we
3 do encourage people that file through our office to
4 pursue or give them various alternatives in terms of
5 filing directly with EEOC, state labor, or hire an
6 attorney for themselves.

7 Q Do you have the forms, the discrimination forms
8 that the State Department of Labor uses for discrimination
9 in the Job Service offices?

10 A You'd have to ask the monitor advocate that.

11 Q Do you think -- just a last question, Mr.
12 Chairman. Do you perceive there is a role for
13 Job Service North Dakota to play in doing as you suggested
14 and that is getting the word out to the people that
15 they do have a state remedy that exists and that there
16 is a state agency that can help them? Do you perceive
17 that Job Service has a role in that?

18 A I certainly do see that as a possibility.
19 Job Service is a state agency and I think that if
20 that's what the law requires that's what we would probably
21 do.

22 MS. PETERSON: I have a question.

23 BY MS. PETERSON

EXAMINATION

24 Q You mentioned the monitor advocate. Do they
25 overlap with what you're doing or do you overlap with what

1 they're doing?

2 A The primary responsibility of the monitor
3 advocate is to assure that migrant population is receiving
4 equal opportunity just the same as other people in
5 North Dakota. And one of the functions of the monitor
6 advocate position in Job Service that this person was
7 assigned the complaint system. The EEOC complaint
8 system.

9 MR. RAYMOND: Mr. Chairman, I have a question.

10 BY MR. RAYMOND

EXAMINATION

11 Q Adrian, you were talking earlier about the
12 commission of other avenues were exhausted of taking a
13 case to an attorney by the individual complainant.
14 And it seems to be your opinion that that was too
15 expensive for many of those people who were complaining.
16 This may or may not be a leading question but is that
17 not discriminatory in itself for your forcing a person
18 of extremely low income to begin with, who in many
19 cases now has lost a job or is unemployed to try to seek
20 out the services of a highly paid attorney. Is that
21 not discriminatory of itself?

22 A Well, I think what I meant by that statement,
23 it could be expensive for a particular person regardless
24 of what their background might be. Now, on the surface
25 it might appear that discriminatory against some economic

1 class or what have you but I think that my point was
2 that if a person was unemployed or all of a sudden now
3 lost their source of income that it could prove to be
4 quite expensive. I know if I lost my job tomorrow I
5 would have some reluctance to pursue whatever remedy
6 that I could if it cost me additional monies.

7 Q So is the nature of the federal law and the
8 state law the same in this particular regard?

9 A I think under the federal remedies that
10 the structure of the complainant and has more access
11 to "nonexpensive remedy".

12 Q So that only the state law is discriminatory?

13 A No. I didn't say it was discriminatory.

14 Q I'm saying that.

15 A Well, I don't know what the thinking of or the reasons
16 for that particular approach that was built into the law here so
17 I couldn't comment on that.

18 Q Okay.

19 MR. SCHNEIDER: You do understand under the
20 federal and state law with regard to the attorney's
21 fees both acts state that the prevailing party will be
22 awarded attorney's fees and court costs maybe?

23 A That's a maybe, yes.

24 MR. FEDER: You also understand that Mr.
25 Thompson's department charges nothing for the investigation,
you understand that?

A Uh-huh.

MR. FEDER: So that an employee who believes

1 they are the victim of discrimination files a charge
2 there's no filing fee for that charge and that the
3 Labor Department will investigate it if there are
4 15 or more employees in that company and that investigation
5 is done without charge for the employee, you understand
6 that?

7 A Yes. But I'm talking about in terms if they
8 had to seek private counsel.

9 MR. FEDER: And if the conciliation fails,
10 and of those from the Department of Labor figures
11 there appear to be three just causes that were not
12 resolved through settlement, understand?

13 MR. RAYMOND: There appear to be 15 rather than
14 3.

15 MR. FEDER: I'm sorry, I lost you there.

16 MR. RAYMOND: You said there appear to be
17 3, according to the chart I'm reading there appear to
18 be 15.

19 MR. FEDER: Those are for the past four years.
20 I'm speaking of only 1984.

21 MR. RAYMOND: Let's look at the whole picture
22 not just one isolated segment of it which is discriminatory.

23 MR. FEDER: Any comments from the Committee?
24 Mr. Crowfeather, do you have any other comments or
25 statements you'd like to offer to us?

1 A Not at this time, thank you.

2 MR. FEDER: We very much appreciate you taking
3 the time and the Committee wants to thank you very much.

4 A Okay, thank you.

5 MR. FEDER: Last person that we have asked
6 to come and chat with us is James Gerl.

7 BY MR. FEDER

EXAMINATION

8 Q Jim, thank you for coming in, we welcome you.
9 It's nice to have you here.

10 A Thank you. You may not appreciate some of
11 my remarks but I wanted to be as candid as I possibly
12 can without abusing anyone.

13 Q First of all would you give the Committee a
14 little background what your involvement has been in
15 the employment area and what your experience has been
16 with the Human Rights Act?

17 A Well, not necessarily that much in the
18 employment area but as a state legislator in 1973 when
19 this act passed I was well aware of the process that
20 it went through and in my work in the field of organized
21 labor I've helped people, guide people, to various
22 agencies so they can file EEOC complaints and as far
23 as I'm concerned prior to 1980 things were running along
24 more smoothly than what they are now. To me it seems
25 as though there must be some attitude adjustment not on

1 the federal level but on the state level. I think
2 **whenever** a high administration director or what have
3 you describes a federal commission as being comprised
4 of three blacks, two women, Jew and a cripple more or less
5 dictates the attitude that trickles down to the state.
6 In the state I think that the act itself had a good
7 idea, philosophy, but certainly a lot of deficiency.
8 We haven't seen any improvements since 1980 where I
9 believe at that time there was something like a hundred
10 thousand cases being processed through the court of
11 EEOC violations and today that number has been reduced to
12 50,000. There is something wrong, there's something
13 lacking where we know that there is more complaints than
14 that out there. I understand through the
15 Congressman's office that complaints are not being
16 processed if there has been a precedence already established.

17 Now, how far can a person get with that type
18 of attitude? I don't know. And I think that it
19 behooves the state to fill in those cracks that some
20 people seem to be slipping through under the federal
21 jurisdiction. You know if we look at some of the
22 statistics in 1980 there were -- I'm going on a state
23 statistics and Job Service what they've done -- in 1980
24 there were 14,741 females placed on the job by Job
25 Service and in 1984 that figure has slipped 16 percent to

1 where it's 2,371. In 1980 Job Service found jobs for
2 3,327 minority workers and today that figure is 2,453.
3 That's a 26 percent decrease. And handicapped workers
4 has dropped 12 percent.

5 Now, these are just some of the statistics
6 and in 1983 under the CETA we see as compared to now
7 a big drop in what has been happening to some of the
8 minority groups. And as a percent of placement, youth
9 is down 6 percent of all minorities; so far in 1983 they
10 had placed or serviced 20.8 percent and that figure
11 has gone down to 15 percent and as far as Indian
12 population at 16.2 percent in 1983 and that has slipped
13 12 percent. Handicap is 19.7 percent in 1983 and that's
14 gone down to 13 percent. We also see a similar drop
15 as far as female placements just in a one-year period.
16 The figures I gave you before were from 1980 to this year.

17 Q What do you attribute this decrease in placement
18 of women minorities?

19 A The general attitude. I hate to sound so
20 partisan, I think there's just a general attitude of
21 let big business do what they will for the sake of
22 commission or what have you. Even if we go to some
23 of the brochures that are put out by Job Service you
24 know we see such/^{as}on this picture we see two male craftsmen
25 who are earning generally a lot of money. And then we

1 see a female in a so-called typical job, a clerical job,
2 before a typewriter or computer. And we see a picture
3 of females in the typing class. And you notice the whole
4 thing all the way through. This is a type of brain-
5 washing, if you will, of agencies such as Job Service
6 that says you have a traditional role to play and
7 play it or there won't be a job out there.

8 Q How do you think this attitude could be modified?

9 A I think first of all we have to improve
10 somewhat your human rights bill that was passed in
11 1983, house bill 1440.

12 Q What suggestions do you have there?

13 A How long do you have? Well, excuse me for
14 a second here while I see if I can find it. I just
15 returned from a meeting that we had in Las Vegas and
16 not only did I lose my money, I lost my luggage and
17 on the return trip home on the highway I was picked up
18 by the highway patrol so I seem to have lost everything.
19 In there was also/ ^{most of} my notes but I'll do the best I can.

20 If we go first of all I suppose and you've
21 heard it from the other three people that has to be
22 the agency to handle this. The Department of Labor,
23 Job Service, the one that the governor can appoint,
24 you know, human services someone, some agency has to
25 be directly responsible and they have to be provided with

1 the appropriate funds. As a five-term legislator I
2 know how well funding is for any agency to function.
3 The definition of employee of course in here it says
4 a person within the state who employs 10 or more full-time
5 employees. Now, what happens to the person with five,
6 six up to nine so-called full-time employees and 25
7 part-time employees? And I understand there was even
8 one case where that has happened. Where they did have
9 under the federal law I guess they had the minimal amount
10 for a complaint to be issued under Title VII but
11 then under investigation it was found that some of these
12 people were part-time employees so there again they
13 slipped through the cracks.

14 By the way, hello Representative Raymond, I
15 hope you remember me from the 1971 session.

16 MR. RAYMOND: I certainly do, yes.

17 A So that has to be changed.

18 Q Do you have a suggestion?

19 A An employee should be an employee as defined
20 in Subsection 4 of House Bill 1440 and perhaps change
21 the definition of the employer of anyone who employs.

22 Q So you're suggesting that the threshold be
23 brought from 10 down to 1?

24 A I believe Mr. Thompson even stated discrimination
25 in employment should cover not only full-time employees

1 but part-time employees. I think it's kind of ridiculous
2 to be like one of the major retail stores here in
3 Bismarck to have over 30 part-time employees and only
4 seven full-time employees. And then I know that because
5 they are such a large retail store that they would
6 come under the federal act but it could happen here.
7 And I think in some cases it does where during the
8 various seasons of the year employers, certain groups,
9 have to put on more people. And they might only have
10 two, three, four full-time year-around employees but
11 may have as high as 30 at various times throughout the
12 year.

13 Q What other changes do you think that this
14 act should deal with? We spoke so far with you a
15 necessity to have an agency. I'd like to discuss with
16 you a little bit what in your opinion the agency should
17 be able to do, as you know there are various forms of
18 agencies, federal and state, that deal with employment
19 discrimination. Some of them have conciliation powers
20 which mean they try and get the parties together to
21 agree, if they can't, the agency bows out. There are
22 some that have cease and desist powers which have
23 been determined in some states to mean that the employer
24 is given a directive to stop the discriminatory practice
25 and he must abide by that or face contempt charges by the

1 attorney general of that state but does not address the
2 issues of back pay or attorney's fees and other agencies
3 have suit powers that empowered to bring an action on
4 behalf of the employee to readdress the alleged grievance.
5 Do you have an opinion which of these forms of redress
6 would be best served here in North Dakota?

7 A They should have full power. In all three
8 of the areas that you've just spelled out. I can't see
9 giving someone just partial powers to do something.
10 Say only if you have where we can take it to court
11 will we pursue it. Certainly they should be able to
12 be allowed the latitude to go in through some form that
13 mediation or conciliation without grieved parties or
14 the employer or what have you since we're also talking
15 about accommodations and public services to go in and
16 tell the employer or person that complaints
17 made initially against that they should settle it or
18 however they want to handle it and they should be
19 allowed, like I say, to enter the court and have remedies
20 for breach of laws just as there is in any other
21 infraction of the law.

22 Q Do you have a preference whether this should
23 be the office of the attorney general, Department of
24 Labor, Job Service, or set up a separate commission?

25 A I have no preference as long as some enforcement

1 agency can do it and will do it. And believe me there is
2 prejudice even in the area of accommodation. A friend
3 of mine from Minot had a daughter who was not allowed
4 accommodations in one of the major motels here in this
5 city because they said she would not rent a room to an
6 18-year-old female who was single. Of course, my friend
7 was able to get an attorney and it was settled out of
8 court but things like that do happen. Anyone who says
9 they don't, have their heads buried in the sand because
10 there are cases and I can certainly give the committee
11 the name of the person and check it out if they want.

12 Q You also suggest lowering the threshold to 1
13 which is, as we know, the standard in South Dakota and
14 Minnesota. I don't know about Montana, it's been awhile
15 since I looked that up. But the part-time provision is
16 something that we've not yet heard. Do you feel that
17 that would work some kind of hardship on an employer to
18 have the law covered on a part-time employee as well as
19 **a full-time employee.**

20 A I don't. I actually don't see how. An employer
21 should look at an application without regard to race,
22 sex, religion, national origin, et cetera but hire the
23 person he feels is the best qualified. And I believe
24 that some of our employees or employers tend to ignore
25 that, especially, when applications they ask those very

1 questions. And I have a standardized one here which I
2 might say was an application for employment with the
3 upcoming governor, but even there they ask the same
4 questions. What sex are you? What's your race?

5 Q Does that have a block on it that says the
6 information is optional and is asked to be filled in
7 at the option of this employee or the governor's record-
8 keeping purpose?

9 A No. They have the age discrimination and
10 Employment Act 1967. It's kind of interesting to see
11 that they still use archaics. Let me state one other
12 thing.

13 To me it's kind of odd that if you read the
14 history and the legislative history of House Bill 1440
15 the only people who were testifying against 1440 were
16 employers. And one fundamentalist. And he was reading
17 the Bible. Now, irrespective of that and I respect all
18 people of all religions. If you just look at what
19 do the employers have to fear. I just don't understand
20 that attitude and I think we in North Dakota sometimes
21 are lacking and perhaps doing a little bit more education
22 with our employers and some of these were major employers.
23 Northwestern Bell, and we know the history there.
24 I wonder if the Civil Rights Act of 1967 hadn't of been
25 passed and the following law involving millions and millions

1 of dollars to their employers would they still have
2 the same types of employment practices that they had
3 prior to that time. This is why something is needed in
4 the state of North Dakota.

5 Q What suggestions do you have, sir, that
6 this educational process can begin?

7 A Well, they do very well on the wage and hour.
8 I believe the state does. And I think the same type of
9 dissemination of information could be handled through
10 either the Labor Department or Job Service and through
11 publicity, simply what you're doing here today. That
12 if once they knew that they should be fair and equal
13 in their employment practices and if you don't and if
14 you are discriminatory there are procedures to be used
15 against you. I think employers will wake up and take
16 a look at it.

17 Q That's been your experience that if employers
18 are aware of a law they've subsequently try and
19 comply with it?

20 A Yes. Generally speaking, yes.

21 Q If I'm hearing you correctly it would be
22 advantageous for everyone employers and employees to
23 become aware of this law?

24 A Right. For everyone to know what their
25 particular rights are and for the employers to know that

1 something could happen and I don't think many of them
2 do because they've heard testimony here today, not
3 many employers really knew about this act and I'm sure
4 many employees or people out there on the streets
5 looking for employment are unaware of the Human Rights
6 Act.

7 Q Do you think that the existence of that act
8 is well known or is known, and if it is known what
9 in fact the act actually does say?

10 A I'm sorry to say, no. And I suppose I'm just
11 as guilty of not getting that information out to the
12 people whom I represented at one time. More should have
13 been done in this area from my standpoint. We were
14 looking at, of course, in the 1983 session, more
15 economic issues because we were looking at slow down
16 of a couple of mega projects here in the state such
17 as the A & G project and Antelope 1, 2 and 3. And
18 what's going to be happening after that. And I suppose
19 this was one of those things that I was guilty of letting
20 slip through the cracks and not getting the information.

21 Q I appreciate you very much answering my questions.
22 I imagine the committee may have some and I'll ask them.

23 BY MR. MULDROW

EXAMINATION

24 Q At the beginning of your examination, Mr.
25 Gerl, you mentioned drastic reduction and replacement of

1 minorities, women and handicapped persons in positions
2 around the state in the last several years. How could
3 you relate this to the Human Rights Act of North Dakota?
4 How does that -- how would that act affect placement
5 of these persons in positions?

6 A Well, I think if Job Service had been
7 doing a little better job knowing full well that the
8 Human Rights Act was that perhaps there could have
9 been a better outreach program. You know, where these
10 minorities and other disadvantaged groups could have
11 received more attention. That attention has seemed
12 to slip with phase-out of CETA program, their
13 institutions of JDPa. There are other figures available.
14 Job Service does have a manual and that manual is
15 available. I know it has a red cover and you can see
16 some of the guidelines that they have in there. And
17 maybe if you'll allow other testimony that question could
18 be answered perhaps a little bit fuller. But there
19 just seems to be a lack of concern or not as much concern
20 as there was prior, say, to 1981.

21 Q A person who felt discriminated against in the
22 placement process -- maybe Robert you could answer this,
23 what remedies would they have in North Dakota, would they
24 be covered under the North Dakota Human Rights Act if the
25 employer had had more employees already?

1 MR. FEDER: If I understand the grievance would
2 be the placement and the complaint with Job Service and
3 the answer is yes. The state act does cover state
4 agencies such as Job Service. I don't know if I've
5 ever received a complaint in my office against Job
6 Service. Most of the complaints are against employers.

7 A And I think you know it would be very difficult
8 to find an attorney who would process this type of
9 complaint. I talked to people with a legal aid of
10 North Dakota and they have not processed that. They
11 had kept records of these types of complaints. Perhaps
12 that's what we need. I'm not sure but again a pamphlet
13 from Job Service North Dakota. The attitudes that
14 are involved in some of their literature in one sense
15 is designed for the presence of men in a trade and
16 to raise a status and hence the salary. Now, there are
17 many discriminations by that sense. The presence of
18 men in a trade. Why aren't they doing something to put
19 women in the trades? You know, I just see this all
20 throughout our publications today. Perhaps we should
21 start that attitude adjustment I mentioned earlier with
22 some of our state agencies.

23 MR. FEDER: Thank you, very much. Ms.
24 Peterson?

25

1 BY MS. PETERSON.

EXAMINATION

2 Q Jim, would it be possible, well, first,
3 have those figures been publicized by AFL-CIO as to the
4 terrible drop that there has been in employment of
5 women, handicapped, children, whatever? I mean, has
6 that ever gone out as a specific news release? I think
7 that's really shocking that it has dropped to that
8 degree because everyone is under the impression that
9 things are improving all the time and there's a better
10 balance all the way around and this proves that it's
11 not true, it's going backwards instead. It's going
12 backwards. Has that been publicized at all?

13 A It has not because Job Service has not even
14 made those figures available to the public. They are
15 there, you can get them. All you have to do is ask
16 them. All you have to do is ask for them but they
17 have not been published.

18 Q Can we have a copy?

19 A I have them written down in longhand but
20 I'll be certainly willing to make a copy.

21 MR. FEDER: Would you be kind enough to do
22 that and send them to me?

23 Q Would you have any objection to any of us
24 using those?

25 A I have no objection whatsoever.

1 MR. FEDER: Also would you make available to
2 us the pamphlet that you referred to?

3 A Certainly. I'll even leave this with you.
4 Being a male I suppose I can go out and find a job
5 so I really don't need this.

6 MR. FEDER: We very, very much appreciate
7 it.

8 MR. SCHNEIDER: Can I ask a couple questions?

9 BY MR. SCHNEIDER

EXAMINATION

10 Q Mr. Gerl, as a former director of the AFL-CIO
11 can you tell us what the perception is among organized
12 labor with regard to the Human Rights Act if they have
13 a perception at all in North Dakota, is it welcomed?

14 A That's very difficult because like I mentioned
15 I was perhaps very lax in not getting this out to the
16 people I represented at this time. I think that if you
17 check the record going all the way back to all the actions,
18 evolution, even the federal act you'll find that organized
19 labor has always supported Civil Rights Act and certainly
20 the Human Rights Act in North Dakota. This was used --
21 there were many arguments used against House Bill 1440
22 on the floor trying to get the labor representatives,
23 house members, to vote against it. Because they said
24 one of the arguments was look, you are singled out in
25 this bill, action can be brought against you and a

1 union officer if you discriminate. And my attitude was
2 so what if we discriminate then action should be brought
3 against us. But we have always been supportive of
4 it. I have been lax. I did not do it. Perhaps more
5 can be done in the future, hopefully through some
6 better amendment in this session.

7 Q Mr. Gerl, as you know there is a history of
8 discrimination, particularly race discrimination, among
9 organized labor in the past and, of course, that's what
10 led to hiring all provisions coverage and organized
11 labor in Title VII in the Human Rights Act of North
12 Dakota. Do you perceive there to be a problem with
13 organized labor in North Dakota with regard to discrimina-
14 tion?

15 A No. In fact the government has done some
16 surveys on that. How many of your members have
17 minority groups within your apprentice programs,
18 apprenticeship programs, excuse me, how many are
19 journeymen, how many minority members do you have?
20 I think it's on Form 1990. I don't swear to it but
21 they do ask those questions and we are monitored.

22 Q Mr. Gerl, you also mentioned in support of
23 figures that you gave us that there is a general lack
24 of concern, I think, because you put it with regard to
25 civil rights generally and employment specifically,

1 discrimination. Why do you perceive there is this
2 lack of concern?

3 A Well, the funding has been cut and certainly
4 in all the social issues and social programs and
5 the states have to pick it up. So the states don't
6 have the money unless they raise their taxes. No one
7 wants to do that. And the attitudes of the present
8 administration in Washington, when they come out and
9 describe a committee such as Civil Rights Committee and
10 the terms I just mentioned before, three women, two
11 blacks, Jew and a cripple that made national headlines.
12 Leaves an attitude that the Civil Rights Commission
13 shouldn't even be functioning. Let private enterprise
14 do as they will as far as employment practices.

15 Q Do you perceive that attitude changing at
16 all?

17 A I would certainly hope so. I think under the
18 present Senate leadership that will change.

19 Q Thank you, Mr. Gerl.

20 MR. FEDER: We're very grateful for you
21 coming in and I personally want to thank you very much.
22 I know you made some sacrifices to come here this morning
23 at this hour and I want to thank you.

24 A Can I just leave with this last comment?

25 MR. FEDER: Please.

1 A I would hope that this committee could support
2 some amendment either individually or as a committee
3 to support some amendment to the present Human Rights
4 Act passed by the 1983 session. With that I want to
5 thank you for inviting me, it's been a pleasure.
6 I usually don't -- I am not allowed to vent my true
7 feelings before anyone any more, so thank you very much.

8 MR. FEDER: Thank you for coming. We have
9 concluded the portion of the people who have been
10 listed on the agenda. First of all I see Jim Dubois has
11 got his hand up. Jim, do you have a comment?

12 MR. DUBOIS: Mr. Chairman, I would like to
13 make a comment on a couple of areas. First, I would like
14 to address the charge Mr. Gerl made against my company,
15 that we would not have the charge, was the way I understood
16 it, that we would not have taken any action in support
17 of civil rights had we not been sued by the federal
18 government. And I really object to that statement as
19 being basically untrue. Because for years and years
20 we did provide all kinds of jobs for people of all
21 races and colors and gender and certainly we did some
22 things in, I think, in those days that probably was
23 in line with what society's ideas were at that time
24 and certainly those ideas were not as advanced then as
25 they are now. And our understanding of discrimination

1 is improved over the years. But I did want to point out
2 for Mr. Gerl's benefit as well as for the rest of the
3 people, that I think it was in the 1971 session we
4 had a lot of laws on the books which discriminated
5 against our women employees which had to do with the
6 number of hours that they could work. With the poundage
7 there were laws on there that said they could not
8 lift packages over 50 pounds or some such thing as that
9 and there was quite a group of those laws and I came
10 in on one of my early sessions lobbying for Northwestern
11 Bell bringing in a bill to repeal all of those
12 discriminatory laws against women. And that, of course,
13 was before the action taken by the federal government
14 back in the '70s, whenever that was.

15 So, and I might point out, that Mr. Gerl's
16 organization opposed the repeal of those laws and I think
17 Mr. Gerl was in the House at the time and voted against
18 the repeal of those laws. So, I do want to set the
19 record clear in that regard.

20 The other subject that I want to talk about,
21 you questioned me about it; the area of resolving
22 differences. As I listened to the conversations when
23 the other people testified on this issue I think it's
24 important that these issues be resolved where there is
25 a discrimination complaint in most practice and economical

1 way which in my opinion means they be resolved before
2 going into the courts. I think the Courts should enter
3 into the case only where they're unresolvable otherwise.
4 I think there's some danger in the power of the
5 government coming down too heavily on one side or the
6 other on these issues and I think that's something your
7 commission should have some concern about because
8 there are a lot of small employers who cannot afford
9 an attorney any more than the complaining person can.
10 And while that may not be a problem for a company the
11 size of mine there are a lot of small employers who have
12 the same economic restraints as an individual might have
13 and I know we have had instances where an employee has
14 gone through the complaint system, Denver has said there's
15 no cause and dismissed the complaint but still gave them
16 a letter of right to sue which is fine. But I think
17 the commission needs to keep these kinds of situations
18 in mind in thinking about putting too much of the weight
19 of the government behind the law on one side or the
20 other of those issues.

21 MR. FEDER: Thank you very much for those
22 comments.

23 Could we have your name?

24 MR. KOENIGSMAN: Joseph Koenigsmann. I'm the
25 state monitor advocate of Job Service North Dakota.

1 MR. FEDER: Please come up here.

2 Why don't you tell us what your official title is sir.

3 MR. KOENIGSMAN: Members of the committee,
4 my name is Joe Koenigsman and I'm the state monitor
5 advocate in Job Service North Dakota. My primary
6 function involves working with the migrant seasonal
7 farm workers performing mediation between the migrants
8 and the employers where there are disputes in fields
9 and I have the additional duty and responsibility for
10 handling the entire state Job Service complaint system
11 which incorporates everything from wage and hour to
12 employment conditions to basically EEOC or civil rights.

13 Now, while I am not -- do not consider myself
14 an expert on civil rights or EEOC I usually defer
15 to Adrian Crowfeather on those matters. I am basically
16 familiar with the concept ^{of} /civil rights I have to be
17 so to handle the system. My expertise predominantly
18 is involving the complaint process itself. I am familiar
19 with the state law 173 which I basically refer to
20 under the North Dakota Century Code as Title XIV of
21 the Century Code. I have been involved in this program
22 since February of 1982. Before that I had been
23 involved in various other programs in the agency.
24 When I came to this program Job Service North Dakota had
25 a complaint process which attempted to address the federal

1 requirements. But the particular process was basically
2 inadequate so for the last two years I have been involved
3 in a entire rewrite of/^abasic complaint manual for the
4 agency. This complaint manual has been completed and
5 I have it with me. What it does is **compiles** requirements
6 for handling or receiving handling process or referral
7 of any complaints of any nature involving employment
8 practices to the proper federal and/or state enforcement
9 agency. The particular manual does include handling of
10 complaints which might occur in regard to Title XIV of
11 the North Dakota Century Code which is, I believe,
12 what these committees are to talk about.

13 BY MR. FEDER

EXAMINATION

14 Q Has this book been published?

15 A This book was published last year in probably
16 last October and it has been redone as of this October
17 and I have it here and I would be glad as of this date
18 to provide each member of this commission with a copy
19 of the book.

20 Q We would welcome that, thank you very much.

21 A Basically one of the problems that North Dakota
22 **has** involving complaints of any nature is the fact
23 that we are not an enforcement agency. We do not have
24 enforcement powers nor budgetary considerations to assist
25 in this. There are different functions in the Department

1 of Labor which do have enforcement. The function that
2 I made this book -- put this book together was because
3 when you talk about complaints there are probably --
4 they probably involve anywhere from 10 to 40 lives
5 federal and/or state. And the problem we had with
6 the local offices is that the people at the local offices
7 didn't know what they were dealing with. In some
8 cases if the complaint involved Job Service we were
9 supposed to process it under our state -- under the Job
10 Service complaint system. In other cases the complaint
11 did not involve us because we did not put the individual
12 on the job through our referral efforts. Basically
13 in this particular case we refer it.. We are a primary
14 focal point in a community to handle anything relating
15 to employment problems. That doesn't mean that we have
16 to resolve them or have the authority to resolve them
17 but naturally when an individual has a problem involving
18 his employment he will go straight to one of our local
19 offices and say "hey, I want to file a complaint or what
20 can I do about it." In every one of our 14 offices we
21 appoint a person an additional duty, usually the manager
22 or assistant manager who is directed to handle all
23 complaints that may come to him in regard to employment
24 practices. The manual that I have completed here is
25 designed to assist that individual into properly taking

1 the complaint, receiving it, taking it if we are supposed
2 to be involved in it or properly referring it to the
3 proper enforcement agency.

4 If Job Service puts an individual on the job
5 or if it involves a local job owner and there's a
6 wage and hour problem there this problem may entail
7 federal wage and hour. It may entail state wage and
8 hour Department of Labor. If it involved us we are
9 mandated under the federal law to take such a complaint
10 and to either process it through to the Department of
11 Labor or to move it into the proper enforcement channels.
12 If we did not put the individual on a job and they
13 have a wage and hour complaint that individual has a
14 right under state law and the Title I believe 34
15 to take a wage and hour to the Department of Labor.

16 Now, we do work very closely with Mr.
17 Orville Hagen with the Department of Labor whereas we
18 do not interfere with any complaints in his review.
19 We sit there and convenience ~~his office~~ by providing
20 each of the complainants that say I have a wage per
21 hour problem with a copy of Mr. Hagen's complaint form
22 provided with the proper address, the phone number,
23 et cetera where he can move that complaint if we had
24 nothing to do with it. If we had something to do with
25 it we take the complaint on our complaint form and also

1 Mr. Hagen's form in case he has to be involved later
2 on.

3 Now, if it involved a case of discrimination
4 there are no complaint forms provided through our local
5 offices to assist in receiving such a complaint.

6 If it involves our agency my manual here does have
7 the proper forms that are required to take such a
8 complaint under the Department of Labor requirement.

9 Now these complaints may come under a Title VI or
10 Title VII. We're basically familiar with both Title VI
11 being a complaint filed against other agencies or
12 predominantly for federally funded agencies. Or the
13 Title VII is related -- a complaint which we call a
14 706 complaint today. There's another aspect there.
15 There are handicapped complaints filed under the
16 Rehabilitation Act of 1973 and there are formats
17 for handling those and they must be handled slightly
18 different than the standard civil rights complaint.

19 Now, we do work very close with Mr. Hagen.
20 Each of our offices does have a complaint specialist.
21 He is basically an appointee. I am the one who provides
22 him with a step-by-step procedure what to do if a
23 complaint comes up. My guidelines in addition does
24 handle complaints beyond the employment area in a case
25 if let's say somebody walked up and said, "hey, I'm getting

1 A If it was us we would have a form.

2 Q I understand that. Let me just try -- and I'm
3 taking this one step at a time so when we get a transcript
4 I think I will have done what I wanted to do.

5 If you referred me first of all to the Grafton
6 General Store then I understand you have a complaint form?

7 A We have a process.

8 Q But if I walked in and I say jeez whiz, I just
9 can't seem to get a job. I saw in the Grafton newspaper
10 they were looking for employees at the grocery store, the
11 General Store, and I walked in and they told me I was
12 too old for the job, you had not seen me up until the
13 time I walked into your office, does Job Service North
14 Dakota refer these discriminatees or potential discriminatees
15 to the Labor Department?

16 A Yes sir. Right at this point this is where the
17 problem is. We do not have a basic form to do that.
18 We do have a wage and hour form from the Department of
19 Labor. What we do if it's a discrimination complaint or
20 if it's a sexual harrassment or equal pay for equal work
21 or whatever, the first thing we would do is realize that
22 it would either fall under Title VII of the Federal Code
23 or it would fall under Title XIV of the State Code, so
24 we would refer this individual directly to Mr. Hagen's
25 office and provide him with the address and the phone and

1 screwed out of my Social Security. The procedure at that
2 time is not let's go to the Social Security Office
3 where they can handle it. We may have a rehandling of
4 a 504 complaint come up in regard to a state employment
5 not another state agency. For example how many services
6 we do not have the enforcement powers for that particular
7 type of complaints so we basically refer the complainant
8 to the Civil Rights Office and Department of Human
9 Services. If it was in the educational area there are
10 a number of different offices that have different
11 aspects of the educational process in the state. For
12 example, what higher education may be able to assist the
13 individual if there was a complaint involving college.
14 The EPI may be able to assist if this was a claim at
15 the elementary. And secondary requires basically when
16 such a thing would occur we would refer it to either or
17 you to get to the right process. If they cannot get
18 satisfaction at the particular time then we would welcome
19 them to come back to us and we would follow a process
20 through to OCR or OFCCP or into the EEOC channels.

21 Q Thank you.

22 A But that would be the basic function.

23 Q Are you based in Bismarck?

24 A Yes I am. I basically -- primarily work in
25 the migrants in the Red River Valley and Yellowstone Valley

1 but I handle the complaint process through the state
2 agency. The basic philosophy we tell our people is all
3 individuals that feel they have a complaint have a basic
4 right to file. And I say any individual who feels that
5 he or she was unduly wronged by an employer or employer's
6 practice or feels that their rights in employment were
7 discriminated against and employment related laws were
8 violated has a right to file a complaint and redress of
9 such wrong. This right does not mean that the basis
10 for the individual's file is wrong or valid or invalid
11 nor does it mean a condition is right or wrong. It simply
12 means that the individual has the right to file a complaint
13 and the determination as to whether it's right or wrong
14 has to be determined in the investigating process by whoever
15 is empowered to enforce the investigation. So anybody
16 in this state that wishes to file an employment-related
17 complaint may walk into any Job Service Office and say,
18 "hey I wish to file a complaint." And we will attempt to
19 either move it into the right channels or refer him to
20 the power enforcement channel authorities.

21 Now, in Section 4 of the manual we basically
22 outline the voluminous number of different types of
23 complaints. This year I got 503 complaints which must
24 be submitted to the OFCCP in Denver. We cover the
25 service rights complaints that are covered on JDPa which is

1 an OFCCR. We also do OFCCP, excuse me. We also cover
2 what we do in case we get such things as 706 complaints
3 under Title VII.

4 Q How many primarily in this right now?

5 A In that regard in addition to this I do address
6 in this manual what would happen if there's a complaint
7 that occurs that may fall under the parameters of the
8 Title XIV in the North Dakota Century Code.

9 Q Tell us what would happen. Let me give you a
10 hypothetical. You have an office in Grafton, I think,
11 don't you?

12 A Yes I do.

13 Q Let's say I walk in your office in Grafton and
14 I say I'd like to get some work and I haven't been able
15 to get any work and I went in and I applied up here at
16 the Grafton General Store and they told me they weren't
17 going to hire me because they didn't want to hire me
18 because I was an Indian or because I was black or because
19 I was a woman or because I was Catholic or they were
20 looking for a younger person. And I spoke to an
21 employment counselor. Is that counselor trained or made
22 aware that each one of those statements creates a
23 prima facie violation of Title VII and of the Human
24 Rights Act?

25 A Each of our counselors and Job Service interviewers

1 predominantly are briefed at any time any individual
2 brings up anything that sounds like I want to file a
3 complaint on discrimination or what can I do they are
4 required to immediately refer that individual to the
5 correct individual within the office and like I said
6 is predominantly the manager or assistant manager who's
7 familiar with the parameters that I listed in this book.

8 Q I'm not quite to that point yet. The question
9 was: Is the counselor aware or has the counselor been
10 made aware that when somebody makes a statement that the
11 reason that they didn't get the job or whatever was
12 because they were looking for a younger person, does
13 that counselor know that's against the law?
14 I haven't said I want to file a complaint. I'm kind
15 of a low key type of fellow and I don't like to file
16 complaints, but is that counselor aware that that statement --

17 A People are aware -- they will not be aware
18 of where the complaint can be filed. They wouldn't know
19 where it went.

20 Q No. No. I'm not asking you if they know where
21 it went. I'm asking you if they would understand that
22 that was illegal if I walk in and I said I just shot
23 my mother they would know I committed a homicide?

24 A Yes. Our people would know if there was
25 some kind of discriminatory action on the part of the employer.

1 Q If I walked into an employment service office
2 in Grafton and I said that the reason I didn't get this
3 job you sent me out on was because they said they were
4 looking for a younger person. Fine. This counselor
5 now understands or should understand that that violates
6 the law if that's true?

7 A It may or may not, sir.

8 Q I understand that but if I then establish
9 that I didn't get a job because of age the counselor
10 would then, as I understand your procedure, would refer
11 that age complaint to a designated person in the agency,
12 a manager or assistant manager?

13 A That's right.

14 Q Now, tell me what happens.

15 A The complaint specialist would sit down there
16 and they would discuss the situation with the particular
17 complainant to find out what the problem of the wage
18 and hour discrimination or whatever. Based upon the
19 instructions of this manual and they're pretty well
20 defined if it has any tendency to indicate any discrimina-
21 tion they will tentatively, if they know it's against
22 you, they will file it a certain way under our
23 particular system.

24 Q All right. And we'll get to that in a minute.
25 Let's stick to the hypothetical. And it's my --

1 and I'm over the age of 40 and they said they're looking
2 for a younger person. We're talking about the Grafton
3 General Store for example. And I explain to the counselor
4 that I went for this interview, the interviewee declined
5 to hire me and stated the reason he declined to hire
6 me was because of my age.

7 A They would know that. They would know that.

8 Q What are they going to do?

9 A I would say in general that he would go to
10 the complaint specialist.

11 Q We're now at the complaint specialist.

12 A The complaint specialist would ask,"do you feel
13 you are discriminated against because of age" and if
14 the individual says,"no, then what do you want to do" they
15 would ask you. If he specifically says,"I want to file
16 a complaint because they've done this" he will take the
17 complaint and he'll automatically assume it would be
18 an age discrimination complaint and he would process it
19 one of the several ways depending upon the guidelines
20 in the book.

21 Q All right. Now, let's first assume that I
22 stated,"I don't know I'm not a lawyer. I've only worked
23 in jobs that didn't involve law. All I know is that
24 they took a look at me and asked how old I was and I said
25 I was 42 and they said I was -- they were looking for a

1 younger person." Now, would your manager have available
2 a form or at least some document that this person,
3 me, could sign and send off to the Labor Department?

4 A Absolutely. We have complaint forms there
5 all designed and sitting inside the manual for every
6 action.

7 Q All right. Good because I misunderstood you.
8 I heard you to say there was no specific complaint form
9 for discrimination.

10 A No. No. There's a variation in complaints
11 whether the complaint would be handled as to which form
12 would be used then that's a problem because of complexities,
13 because of all the laws were being imposed upon on this.
14 If it happened to be a handicap complaint he would
15 probably take it on our state created form which would
16 be a 504 complaint.

17 Q I'd like to follow this example through, the
18 hypothetical age discrimination. The potential employee
19 says he can't have a job because they said he was
20 too old.

21 A Let me fall back. It depends on whether Job
22 Service was involved in referral or places that individual
23 on a job. We are not in power to step into Mr. Hagen's
24 area except to refer.

25 Q That's what I'm going at.

1 advise him to either submit this complaint into that
2 office by phone or by letter.

3 Q All right. But you do not have a specific
4 form?

5 A No, we do not.

6 Q For alleged discriminatees who have not yet
7 been through Job Service?

8 A That's right.

9 Q Do you think it would be a good idea to have a
10 form that could be given to the employee and allow the
11 employee to fill it out if he wants to or to do what-
12 ever he wants to do with it?

13 A I would say that would be best to get that
14 because of the complexities of what's discrimination,
15 what ain't discrimination and certain questions that
16 might be asked to find whether a situation had occurred.
17 It would be valuable to have individuals state it in
18 their own words directly to the Department of Labor and
19 let Mr. Hagen or Mr. Schmalz who are familiar with their
20 own procedures assist that person in completing the form.

21 Now, if the situation came up through our
22 agency for example says a 504 complaint and it was to be
23 handled and sent to OCR in Denver we are required to
24 assist that individual in completing the form. But,
25 in the case of a straight discrimination complaint I would

1 hesitate in imposing a requirement on every interviewer,
2 assistant interviewer and claims taker in trying to fill
3 out a form that would be quite complex.

4 Q I'm not suggesting that.

5 A It would be more feasible to continue in the
6 process to send them right directly into Mr. Hagen's
7 office and let Mr. Hagen take the complaint properly.

8 Q Okay. That's what I was getting at. Thank you.
9 Those are the questions that I have.

10 Does anyone else on the committee have any
11 questions?

12 A I would like to address the Title XIV of the
13 Century Code itself.

14 Q Please.

15 A In the first place it's a step in the right
16 direction, I'm not trying to criticize Mr. Hagen's
17 office. He does a fine job in regard to everything we
18 send him as far as I can see. However, the particular
19 problem with that law is the fact that it does not require
20 the Department of Labor to seek a budget and in my
21 view unless such a thing occurs the individuals, the
22 most they can do, is we send them on up and if Mr.
23 Hagen says well, if they fall under the federal law he
24 may say okay we can handle this particular case. If they
25 just fall under the existing state law, then he will

1 probably say okay you can take this to court. Again,
2 I feel as some other people have testified, that this
3 is no good for the people. I think that somebody should
4 try to enforce the state law to whatever the state law
5 says. I feel it's important that you go through the
6 administrative process first and then if that fails,
7 if any individual then can proceed and get himself a
8 lawyer and go to court. If the administrative process
9 in the case of discrimination did occur then I feel it
10 is incumbent upon the -- provided there's a budget,
11 that's on the enforcement agency to carry out the case
12 to court for the benefit of the complaint if there's
13 a true case there. I do not feel that you should make a
14 law and then just say to the population at large you can
15 take it to court. I would like to say that prior to
16 this, in other testimony, it was said that there was the
17 right to take it to court existing before this new law
18 came into existence and this is basically true because
19 in Section 3401119, Subsection 2 it said the jurisdiction
20 of the district court in the state of North Dakota
21 charged the jurisdiction to try actions, complaints of
22 violation under Section 1 of this act which did cover
23 the primary points of discrimination in employment.

24 Q That's the bill that was passed after the
25 '79 legislature?

1 A I'm not sure this has been in the Century Code
2 for quite awhile. It changed in the '81 session and
3 incidentally this particular section of the Century Code
4 did require the Department of Labor at that time it said
5 here that the Department of Labor shall receive complaints
6 under this act and shall have 60 days to negotiate
7 settlement to an extent acceptable to the parties
8 involved. In other words, it required the Department
9 of Labor to receive the complaint and to resolve it
10 at that time. But when they passed the state law in
11 1973 what they did, they changed the last paragraph --
12 and look at legislative testimony -- I believe it involved
13 budget requirements. And says optional mediation by
14 the Department of Labor. The Department of Labor may
15 receive complaints on discrimination, determine the
16 practices under this chapter and shall have 60 days to
17 negotiate. The difference being before it was shall,
18 now it is may. And that little clause says to the
19 Department of Labor if you don't have the money you don't
20 have to make the decision. And that's my interpretation
21 of it.

22 Now, I feel if Mr. Orville Hagen has the
23 money and the budget he can carry out the law personally.
24 But without the money it's very difficult for his office
25 to do such a thing. They can only operate if they have

1 funding. And the only way they're going to get funding is
2 for this state law to be changed requiring him to go to
3 the legislature and seek the budget. How much budget
4 has got to be his determination as to how well he wants
5 to handle the problem at hand. I have no statements
6 in what. But if the individual who wants to file a
7 complaint has places to go it's important that this
8 **occurs** not only for the complainant but also for the
9 employer who is being charged against.

10 Now, the other problem here if you just leave
11 it up to the complainant to go to the court he may be
12 able if that court finds in his favor and gain redress
13 in regard to the lawyer's fees and the court costs, et cetera,
14 that's clear. However, if the court finds against him
15 that individual is in very dire danger of being slapped
16 with a frivolous suit contempt to the court which means
17 he may end up picking up his own court costs, the lawyer
18 fees and the court costs and lawyer fees of the employer.
19 For that reason, it's important that enforcement agencies
20 try to first resolve the problem and if necessary
21 and there's truly a problem there they can carry it to
22 the court. The individual is out on the street, doesn't
23 have that capacity. So therefore, they're frightened to
24 go to court.

25 Q Thank you.

1 A In one other regard as far as I'm concerned
2 discrimination in any form is an insidious act and it's
3 the worst thing that could ever occur. It's kind of silly
4 in my mind to have federal laws that limit the right
5 of an individual to pursue actions in their own rights
6 and have it limited to the 15 or more employees. This
7 law was a step in the right direction by coming down
8 to 10 or more employees. However, it must be brought down
9 to one or more because discrimination by one person,
10 even if it's just one person in 10 years, that should
11 be addressed.

12 Right now what's happening here is you have
13 a wide open field and you know discrimination, I'm not
14 going to cite you cases, but in my activity of field
15 mediation I have sat there and tried to solve wage
16 disputes and all I have gotten from a guilty employee
17 is "those God damn Mexican wetbacks" and that is
18 discrimination. But I can only -- I didn't have the
19 option of pointing them into any area in this particular
20 case. Discrimination does occur. And unless that
21 individual has the right to pursue it you'll never get
22 redress and it will never stop. I feel the law should
23 be changed to bring it down to anybody.

24 Q Thank you very much for your time to come in --

25 A Thank you.

1 Q -- and offer these comments. It's appreciated.

2 A I'll give you a copy of this manual right now
3 and give you any more so the balance of the Committee
4 would have them.

5 Q And if you would send them to me I would
6 greatly appreciate it. Thank you very much for coming
7 in. For those that are here in the room, we'll adjourn
8 for lunch. Anyone else in the audience that wishes
9 to make any comments on the employment phase?
10 We will adjourn for lunch and we will reconvene at 1:00 p.m.
11 for any discussion of housing and public accommodation
12 or government service issues and credit transactions.
13 So we will adjourn to 1:00. Thank you.

14 (Whereupon, the hearing adjourned for one
15 hour.)

16 MR. FEDER: The next person that we know is
17 here and will give us the benefit of his wisdom and
18 thoughts is Mr. Claus Lembke.

19 BY MR. FEDER EXAMINATION

20 Q Claus, what I'd like to do is ask you some
21 questions and have the Committee ask questions if they
22 have any of you and give you the opportunity to give us
23 any statement that you might have that covers topics
24 which didn't get discussed in your question.

25 First of all, why don't you give us the correct

1 spelling of your last name so the reporter has got it
2 and tell us where you're employed.

3 A My name is Claus Lembke, L-e-m-b-k-e, and I'm
4 the executive vice president of the North Dakota Association
5 of Realtors and also employed in this same capacity at
6 the Bismarck-Mandan Board of Realtors as executive
7 director.

8 Q Thank you. And reside here in Bismarck?

9 A Yes I do.

10 Q Tell me, Mr. Lembke, what has been your
11 involvement in the Human Rights Act and discrimination
12 in public accommodation and housing in general?
13 Do you have occasion to see incidents of discrimination?
14 Are you aware of the act, tell me in your experience what
15 you have seen, what the act has done if anything.

16 A Well, basically my involvement in the fair
17 housing law is that I'm a lobbyist for the realtors
18 organization in the state of North Dakota and interested
19 in watching what legislation has done with our business.
20 And that has been -- therefore, I'm somewhat familiar
21 with the Human Rights Act that was passed in the last
22 session. We also have a Code of Ethics. One of our
23 articles deals specifically with fair housing law, equal
24 opportunity and the Civil Rights Act also which prohibits
25 the same criteria as the state and federal legislation.

1 Our code prohibits you to discriminate also. As far as
2 my observation what specifically has Human Rights Act
3 had since it passed the last session is really -- and
4 you have to understand that my involvement is the sale
5 of homes through the realtors organization -- we don't
6 have any complaints or any allegations of wrongdoing
7 in the sale of homes. I have some personal thought on
8 that and of areas of rental, but my involvement is not
9 that area. We are dealing with the sale of homes and
10 privy to work closely with the real estate commission.
11 They have not had a complaint that was filed against any
12 individual or realtor alleging breaking of the law here
13 or within our own arbitration procedure. We have not
14 had a complaint filed against any one of our members based
15 on fair housing.

16 Q You mentioned that you had some personal
17 thoughts in the areas of rental. Would you share that
18 with us, please.

19 A I do believe personally there is an area of
20 discrimination that does exist that needs to be addressed
21 perhaps in the area of rental of housing. I do believe
22 that perhaps some discrimination exists.

23 Q Is it racial or sexual?

24 A Racial.

25 Q Are you talking in terms of Indians?

1 A That's correct.

2 Q What comments or criticisms or suggestions
3 do you have about the enforcement of this act that would
4 address some of the current concerns that you may have
5 about rental housing?

6 A Well, as far as enforcement would, of course,
7 be applicable most likely in the sale of homes. It's
8 more difficult for someone to seek relief like this
9 Human Rights Bill that provides only through the courts,
10 you have to go litigate the matter and I think that's
11 very difficult. Most likely someone that is very
12 knowledgeable in these areas and these fields, they are
13 able to go and seek relief. But that small tenant or
14 somebody that isn't very knowledgeable in the law, some
15 minority, they're going to have a difficult time to
16 litigate the matter. They're going to have to go look
17 up an attorney and those fees involved and how many of
18 us even know what you can go to an attorney and know you
19 can be counseled on what the fee would be. I can
20 imagine somebody would be very scared to go to an
21 attorney. In other words, relief should be something
22 that may be provided through arbitration. It would not
23 be expensive and it would not be cumbersome, difficult
24 or very technical. Because our intent is -- at least
25 our goal is -- and I think your goal is also to stamp out

1 any potential discrimination. Perhaps not through fines
2 and laws, but perhaps through education and to just stamp
3 it out. Get people to quit discriminating and I think
4 that can best be done through arbitration, informal
5 hearings or formal hearings but not through litigation.

6 Q Do you think that the act's existence is known
7 by the general population?

8 A No, I don't think it is.

9 Q Do you have any suggestions as to how the
10 act could be more well known?

11 A It has to be done by education or placing this
12 act on one agency. I believe several agencies cover it
13 now, the way I understand it.

14 Q Do you have any preference as to what agency
15 would handle it, whether there should be a new agency
16 created, whether the attorney general's office should deal
17 with it, the Labor Department or whomever? Have you
18 a preference?

19 A I really don't, Mr. Chairman. I guess I really
20 am not that knowledgeable in who would best be able to
21 handle it.

22 Q Are the realtors advised as to what the law
23 is on the sale of housing regarding discrimination?

24 A Yes, they are, Mr. Chairman and members of the
25 Commission. We do -- before anybody becomes a member of

1 our organization they have an indoctrination course
2 and in that indoctrination course we cover the areas
3 of federal, state fair housing law and our code for that
4 application. They are educated on that and later on
5 they have some ongoing education programs. Once they
6 become licensed and members of our organization, a
7 realtor and licensee, is required to have 30 hours of
8 education within the first year of their being licensed.

9 Now, that education is available either at
10 colleges, they are usually principal practices courses,
11 or through our association of realtors. You know we
12 handle about 95 percent of all that education, our own
13 association does handle that. I do believe at least
14 95 percent of all people will attend a GRI 1. In that
15 area those people will be told again about the fair housing
16 law and the code of ethics once more and every licensee
17 will be at least told within the first year immediately
18 prior to or after being licensed as a real estate agent
19 they will have been informed on this.

20 In addition to that, Mr. Chairman, I travel
21 around in my capacity as executive officer and I would
22 say it seems like every year and a half or so one of our
23 eight Board members that we have, an individual Board of
24 Realtors throughout the state association, they call me
25 in and request some kind of topic specifically dealing with

1 fair housing. Some kind of update. When the law was
2 passed originally I went to every Board and told them
3 about it. So we have some kind of an update system that
4 we did go around and explain to all members. But they
5 were not all there all the time. About half the members
6 attend these meetings.

7 Q It appears that there have not been very
8 many complaints in the area of discrimination in the
9 sale of housing so apparently your educational programs
10 are working. Is there a similar organization that you
11 are aware of that deals with renting, is there for example
12 a landlord association, state wide or in various cities,
13 or is there some kind of group that deals with rental
14 housing that can be approached to talk about educating
15 their members like you have educated your members?

16 A Mr. Chairman, members of the Commission, yes,
17 there is. There exists, I think, it's been a year and a
18 half ago they formed a state wide group, I think, there's
19 about three or four reasonably well-organized local
20 tenant or landlord associations that have formed a state
21 wide group. It's an organization, I think, their primary
22 function at this time is really one of education.
23 A little bit about majority would be the legislative
24 effort and they have been somewhat successful in that
25 area of the legislation. They have been able to pass some,

1 what I consider, some reasonable legislation. And if
2 they were to take over the program and they certain could
3 or they need to take on their own code or own education
4 to educate their members, I think, would take a few
5 years to develop that because no doubt even the realtors
6 organization, and we were formed in 1942 in the state
7 of North Dakota, over the years that education did not
8 exist to start with either. We have not really done no
9 education of equal opportunity or fair housing until
10 perhaps about eight years ago -- seven years ago, when
11 it became more prominent nationwide.

12 Q What was the name of the landlords organization?

13 A I believe it's called North Dakota Apartments
14 Association.

15 Q Where could I reach them?

16 A I don't know right offhand who the president is.
17 But I notice there are some Fargo people involved in that
18 too. Dave Bjone's wife.

19 Q Jackie?

20 A Jackie is secretary-treasurer of that
21 organization or at least she could supply you with a
22 current list of officers.

23 Q Very good. Those are the questions that I was
24 going to ask. Any members of the committee have any
25 questions that you can ask Mr. Lembke?

1 BY MR. RAYMOND

EXAMINATION

2 Q Mr. Lembke, you mentioned in passing a couple
3 of times about the fair housing law. I don't fully
4 understood, does that apply both to real estate
5 sales and rentals as well?

6 A Oh, yes. It would be applicable to rental
7 too in the same fashion as it is applicable to sales.

8 Q So that under the fair housing law the
9 provisions of the law which apply to nondiscrimination
10 would apply to rentals as well?

11 A That's correct.

12 Q And then you said you had some concern --
13 not in your own business, I recognize that fully -- as
14 far as the real estate sales where you seem to do your
15 work but you did have some concern about discrimination
16 in the area of rentals. Does that seem to follow the
17 larger towns like Bismarck and Fargo and Grand Forks,
18 or is it pretty widespread or what?

19 A Well, again -- is it Mr. Raymond?

20 Q Yes.

21 A Mr. Raymond, it's a difficult one to answer
22 because that's my own personal feeling. I don't have
23 any statistics to prove that. I know I can justify when
24 I say there haven't been any with the sale of homes
25 as by the Real Estate Commission records and our own

1 association records. I'm loosely involved with a
2 tenant organization which we work closely together with
3 all kinds of realtors and landlords so we're interested
4 in that legislation. I have to go by hearsay or
5 presumption of things that you hear over the coffee table,
6 somebody else talking about, you know, somebody says
7 is that apartment still vacant, they say their name is
8 Robert Johnson and just presume they're going to show you
9 and likely they eventually will say sorry it was just
10 rented. Those types of answers exist. In order to qualify
11 that I do believe, Mr. Raymond, if you go into the people
12 that do apartments manage there's perhaps four, five
13 professional apartment managers in town here and perhaps
14 another 10 or 20 or 30 or 40, 50 units probably very
15 knowledgeable in the law and treat the people fairly and
16 equally as provided for by law. But I do think that the
17 many ma and pa operations unintentionally will not abide
18 by the law. And since the state law does not have the
19 exemptions that the federal law has up to four units
20 there's a lot of violations going on and that's what
21 I base that on.

22 Because of the ignorance of the law which
23 boils right down to the remarks made earlier here. It's
24 a process of education.

25 Q Yes. What's the exemption of up to four?

1 A The Federal Fair Housing Law of 1968 you can
2 occupy units up to four and this was from parts of the
3 Fair Housing Law and I believe it's Section 1, I believe
4 religion --

5 MR. FEDER: That's the Mother Murphy Rooming
6 House exemption. That's what it's locally known as. If
7 you aren't an owner Title VIII provides that certain
8 parts of the Title VIII don't apply but that is not part
9 of the state law.

10 Q Mr. Lembke, I recognize that your business is
11 in the real estate sales but in view of your concern
12 about the rentals and the possible infractions in that
13 area, do you have any ideas how it could be corrected?

14 A Well, one of the things that has to happen
15 first in the game are numbers of the great -- larger
16 **numbers** of people have to join that apartment association.
17 I have been involved in some of the teaching, they put
18 on educational seminars occasionally and I have been
19 involved in the fair housing parts and even though many
20 of those are familiar with it they attend and they
21 can't believe it. This is the law. We didn't realize
22 that. They say do we have to abide by that. I don't
23 think it's difficult to abide by that but not knowing
24 and not realizing, it is a small organization.

25 I believe here at one time I was involved in that

1 organization locally and they have less than 50 percent
2 of all apartments.

3 Q Now, the fair housing law, as I understand it,
4 it is federal law?

5 A That's correct.

6 Q Do we need a state law?

7 A Well, we have been on that opinion that we don't.

8 Q I see.

9 A We have, during the last legislative session,
10 as a matter of fact, have testified to that effect that
11 we feel if there's something not correct and there'
12 certainly wasn't, there were things to be done yet under
13 federal legislation. The thing is not to introduce new
14 state legislation, rather should have kept the old one
15 working first. Maybe it needed more beef into it or
16 law enforcement or whatever. The old one was not
17 working and if you take a look at it I still have some problems
18 with that and the definitions are different, I believe,
19 I'm not an expert on this but, I believe, the definitions
20 of age are different between the state and federal
21 legislation. The definition of remedies are different.
22 I believe, I don't know how long they have on the state
23 level, but I believe it was different times schedules
24 and the federal legislation that you can seek relief
25 then under the state legislation and that's not right.

1 There's different departments in charge of that and
2 that's not right and that's confusing to people.

3 Yeah, it has some of the faults that I can
4 see in our state legislation that we have.

5 Q Mr. Lembke, sir, I appreciate your candor
6 and everything you've said here. My only question in
7 regard to the advisability of a state law was that in
8 view of what you have told us it seems to me that even
9 though under the Fair Housing Law, rentals, I guess,
10 are affected by this same law. They still seem to be
11 falling through the cracks and if then those laws are
12 not being enforced or are not enforceable, then would it
13 be advisable to have a state law to take care of those
14 which are falling through the cracks? That was really
15 the nature of my question, I guess, I didn't make it
16 quite clear.

17 A Well, it always would be nicer to have a state
18 law because we've had different problems and one would
19 have to cover all 50 states. Granted, perhaps relief
20 would be easier, I don't know, if you have to under
21 federal fair housing law go to federal court and this
22 could certainly, if it's in violation of our state law,
23 be in the state court. That part is always easier, yes,
24 and you can always talk to the people if you want relief.
25 They're your neighbors. They live right here.

1 They're not some outfit from Denver or some unknowns.
2 Granted, I think that is one of the reasons why it passed
3 in the first place.

4 Q Thank you very much.

5 MR. FEDER: Ms. Peterson?

6 BY MS. PETERSON

EXAMINATION

7 Q We talked about the racial problems but I know
8 there are others such as aging and if the family has
9 children or always another one that is getting increasingly
10 tougher to handle and that is the single heads of
11 households. Do you notice any discrimination in those
12 areas starting with the aging and if you have children
13 and then single heads of households?

14 A Ms. Peterson, members of the Commission, I don't
15 believe that happens in real estate either because many
16 times there's a sale of a home and there's financing
17 involved. 99.9 percent of the time that financing
18 institutions, lenders, they are so governed by their
19 regulations, no discrimination exists there. They will
20 simply look at the dollar and probability of continued
21 employment and probability of continued income and
22 simply qualify them on that.

23 Q I was thinking more of the rentals in these
24 cases there's not in the apartment to be any children.
25 Some neighborhoods where a young couple comes in and they

1 have one or two children and are going to buy a house
2 and possibly no one else on the block -- all the kids
3 are grown up, I notice that has happened. In Dickinson
4 once in a while they have a problem like that.

5 A I'm not aware of any problems in that area.

6 Q Or the rental applied to the aging?

7 A Not familiar with that.

8 Q And I guess I can toss one more in here if you'll

9 **also** me, and that is the problem of access almost
10 comes in. I notice some apartments in Dickinson that are
11 enormously high step-wise. Personally, I wouldn't want
12 to live in a building like that because I have a knee
13 that has three pins in it. But I can imagine it must
14 be very difficult for older people, or even it might be
15 too much on this, but the probability when it comes to
16 elderly and I'm thinking in your building projects, you
17 take that into consideration because certainly the public
18 buildings, many of them, have a lot of steps. I guess
19 they want to stay closer in on the bottom and **scoot** up. .

20 A Well, there would be one and hopefully the
21 market would be taking care of its own because things
22 that I hear, most of the people that are handicapped
23 of some sort are better tenants in the first place. I've
24 heard people say that and making studies of it and claiming
25 that you would provide one and two and three units on the

1 ground floor,, would be very nice. Federal legislation
2 also said you can modify your own building as long as
3 you don't affect it.

4 Q I just wonder if you're aware of it or if
5 you notice any problems in those areas?

6 A I am aware of it. I don't know of anybody
7 that specially caters to those. Could be it would be smart.
8 There's no harm done if there's nobody demanding the
9 ground floor and if it's accessible to a wheelchair.
10 Still would be nice to have that available to rent that
11 very easily in many instances and like I talked about
12 they're usually the better tenants. They don't move as
13 much and that's a desirable tenant.

14 BY MR. SCHNEIDER

EXAMINATION

15 Q Mr. Lemke, did your association, or North
16 Dakota Realtors Association, take a position with regard
17 to the North Dakota Human Rights Act when it was going
18 through the legislature?

19 A There were two bills introduced at that time,
20 I don't know the number of them but they did oppose them
21 both at first. And I can't remember the details of it
22 but it was my legislative committee at that time told
23 me not to oppose. They weren't happy with the Human
24 Rights Bill, but they told me not to oppose it.

25 Q So you took no official position?

1 A That's correct.

2 Q What were the reasons for initially opposing
3 it?

4 A I think **this** was confusing **over** + ~
5 contradicting legislation between this bill and I can't
6 remember what the other bill was. They were contradicting
7 each other.

8 Q Does your association have a position on
9 the Human Rights Act that exists now, are they on record
10 as in favor, neutral or opposed?

11 A They're neutral on it.

12 Q Why did you take a neutral stand?

13 A I would have to assume that it is because it's
14 in conflict. / ^{with} ~~the~~ federal legislation in some parts
15 and it is a matter that you have to litigate. When you
16 take the many rules and regulations and our thinking
17 is it can all be arbitrated and I think that's a fine
18 way to solve it and I assume that's the basis why we are
19 neutral. The intent is great but to achieve results is
20 not that way.

21 Q I understood from your testimony, I think, you
22 agree with most people that Title VIII is virtually
23 worthless as far as enforcement, is that right?

24 A We don't see much enforcement there any place.

25 Q I think also you said in your testimony that you

1 agree that these matters should be handled at the state
2 level by a state act if there's some act that will cover
3 the territory?

4 A We've always had that policy on any other
5 legislation.

6 Q And you do understand that there is nothing
7 that prohibits conciliation or settlement under the Fair
8 Housing Discrimination, under the Human Rights Act of
9 North Dakota that resorts to the courts, isn't that in fact
10 resort, you understand that too?

11 A Yes I do.

12 Q What position do you have with regard to who
13 makes the policy for the North Dakota Realtors Association,
14 how is that done in terms of the lobbying?

15 A We have a legislative committee existing of
16 one member from each local Board, the eight local Boards
17 of realtors throughout the state, they get together and
18 they develop certain policies and certain positions on
19 certain issues which will then be reported to the Board of
20 Directors for final action.

21 Q If this committee was to recommend to the
22 legislature that the Human Rights Act expanded to allow
23 for enforcement agency, through whatever method,
24 possibly arbitration, possibly through conciliation and
25 settlement, could you specifically allow administrative

1 redress of housing complaints, would your organization
2 enforce that?

3 A Mr. Schneider, it's a hypothetical question
4 I believe they would in principal enforce that. There
5 are some facts of our association that for budget reasons
6 have traditionally opposed any increase in government
7 funding or government agency. I think **they** were probably
8 somewhat favorable, there could be under an existing
9 agency.

10 Q Thank you, Mr. Lembke.

11 MR. FEDER: Mr. Muldrow?

12 BY MR. MULDROW

EXAMINATION

13 Q How is your association made up? Are all the
14 real estate companies in the state members of that on
15 a voluntary basis or how is it?

16 A Mr. Muldrow, **this** is strictly a voluntary
17 professional organization. Number one, you have to be
18 a licensee and broker to belong to the organization
19 and then we have our entire state divided into eight
20 regions, all counties involved in that, and we have
21 approximately 2400 licensees in the state of North Dakota
22 and approximately 1200 realtors, those that do belong to
23 us can call themselves realtors, members of our organiza-
24 tion. In all fairness I think we should probably explain
25 it. We have only half of the people that belong to us,

1 that ratio is much larger in the metropolitan area
2 including Jamestown and Wahpeton and I would include
3 80 percent in each one of those communities that belong
4 to us. We believe as many as 80 percent of all property
5 transactions are handled by realtors. These are a
6 large number of licensees that do not belong to us, are
7 not on the immediate Board and do not choose to belong.

8 Q Now, presumably many of these people which
9 belong to your association do manage property and as such
10 would be responsible for renting property and your --
11 you indicated a problem you felt that existed in the area
12 of rental property was largely on the part of the
13 individual landowners. Does that carry over to renting
14 of property by members of your association, do you feel
15 this problem is there of discrimination?

16 A I don't believe that is so. I do believe that
17 they're much more educated as those that belong to our
18 association they can't help but be exposed to that
19 several times and also on an ongoing basis.

20 Q If a person felt he or she was discriminated
21 against by a member of your association in the rental
22 of property which procedures would they follow if filing
23 a complaint or in complaining about the situation?

24 A If they call us we have a very strict rules
25 and regulations that guide us to an arbitration process.

1 Including one whereby as the executive officer I am
2 instructed to assist those people in filling out the forms
3 and it's not a form, it's not a requirement but what
4 they can do, they can send any kind of a letter to us
5 stating what they feel was wrong and we'll investigate
6 the matter.

7 Q Is this in any way made known to prospective
8 tenants, are they informed of this process?

9 A I guess they're not informed of that process.

10 Q Does this process in any way tie in with the
11 Human Rights Act of North Dakota?

12 A It could. Any violations that we find under
13 the law, our own codes, and we must uphold the law and
14 if we violate any of the law we turn that over to the
15 real estate commission.

16 Q If you received a complaint you would act
17 upon it yourself rather than referring it to HUD or
18 suggesting any private litigation of any kind?

19 A All of our eight Boards of Realtors don't have
20 ~~staff but~~ six of them that do have staff have been
21 distributed some material that you can send and postcards
22 that you could tear off to send to Denver if in that
23 area of discrimination they should also advise the
24 people to call in and have a potential complaint to
25 send to Denver if they violated the Real Estate Commission.

1 As a matter of fact I just had a call that did not
2 involve the alleged discrimination of fair housing.
3 Our remedies of our association are limited to that
4 and we cannot assess any fines or anything in our
5 own organization. They also then are informed of other
6 remedies of the Real Estate Commission who can
7 levy fines, who can make the licensee pay the damages
8 and/or if it involves fair housing violations they
9 will get these green cards, those tear-out cards
10 with the address of Denver.

11 Q So they received information if they were to
12 file a complaint with your association?

13 A That's correct.

14 Q If tenants -- prospective tenants and applicants
15 for rental are not aware of this process **there could be**
16 discriminatory behavior going on **that** you would not be
17 aware of **since** people would not be complaining about it
18 to you?

19 A That's true. There could be just ignorance
20 towards **seeking** remedies; however, there are some
21 organizations like in Bismarck that Community Housing
22 Resources Board which we are a federal member and the
23 realtors are and I attended their meetings. For instance,
24 if Bismarck -- but I don't know if they have done that
25 in other parts. In Bismarck **they've** developed a brochure

1 and go-around and we have handed those out to realtors'
2 offices but that's all a tough effort to get that
3 to all apartment owners. I believe they have mailed
4 them to all and getting a listing for the 8500 some
5 apartments that we have in town and trying to distribute
6 that. We have 20 percent turnover in those and I don't
7 know how they are doing on informing all the tenants.
8 It's a very difficult task.

9 MR. FEDER: Ms. Larsen.

10 BY MS. LARSEN

EXAMINATION

11 Q Clause, it was about four or five years ago
12 that both of us appeared before this/and I was a member
13 of this commission at the time and stepped aside to make
14 testimony as a landowner in the city. Both of us
15 testified. In this four or five-year period has anything
16 changed in North Dakota? It was a housing -- our
17 commission investigation was specifically in housing.
18 Has anything changed?

19 A Well, Carol, members of the Commission, number
20 one, Bill has mentioned those but I don't think that has
21 changed anything I can see at all. At least applicable-
22 wise it hasn't. Things that have changed within my own
23 work and all of our Boards have signed, since the time,
24 all of them have signed an affirmative marketing agreement
25 and that has changed. Some of them struggle with the

1 provisions of that agreement but as difficult to understand
2 some of it is and it takes education through to you.
3 But we are not placing ads in the newspaper. The state's
4 associations do. The Bismarck Board does and the Bismarck-
5 Mandan Board does. Most Boards do but not all of
6 them. Still a long ways to go on the Community Housing
7 Resources Board. Not all of them work with that and
8 there is some progress but I don't think it's a great
9 progress, no.

10 Q Does marketing-- does that primarily deal with
11 the purchase of houses?

12 A That's correct.

13 Q Or rental?

14 A Purchasing.

15 Q And this is not scientific but only a suspicion
16 that the majority of the discriminated in our state are
17 people who are not purchasing but who are renting?

18 A That would be true, and as I indicated,
19 I can't substantiate that but that is my belief that
20 that exists there, yeah.

21 Q So we're talking about probably women with --
22 single women with children, disabled people and probably
23 minorities?

24 A That's correct.

25 Q These three groups?

1 A That's correct.

2 Q Who are largely renting?

3 A Yes.

4 Q Do you have any comment on how we can impact
5 this group in terms of justice in North Dakota for
6 public accommodation?

7 A Carol, it's very difficult. You have to
8 educate two sides of it. You have to educate the landlords
9 and, I think, we've covered that, but it's much more
10 difficult to educate the tenant on what their remedies
11 might be. Unless they're knowledgeable in the law or
12 informed on these matters, no, they don't. It's not
13 an easy process to get to. No, and I don't know if there's
14 one pat answer. At least I don't know it.

15 Q I appeared before our own commission here four
16 years ago and I have a feeling that there are a great
17 number of people in North Dakota who are two person --
18 I happen to own property, a two-person unit, and I have
19 never heard from the Tenants Association. I happen
20 because I'm on this commission, know what the law is.
21 But I know in Bismarck there are a great number of what
22 you call mom and pop operations operating out of the
23 basement of their homes that would be applicable
24 particularly to single women or minorities. And we
25 never hear from the Tenants Association. If I were not

1 on this commission how would I know about your group or
2 how would I be educated on the law, what the law states?

3 A That's a good question. I don't honestly
4 know either. Because I've run into those cases too,
5 neighbors and friends of mine and say you should join
6 that apartment association if not for the fair housing
7 part of it but also for the state laws applicable to the
8 landlord and tenants and to be updated and informed
9 on that you should be wrong and they never heard of it.
10 It isn't in the yellow pages and they're a small struggling
11 organization and I guess if they were to be more aggressive
12 organization or larger they could afford a full-time
13 executive director, they could take on these projects
14 of informing the public or broaden their horizons
15 or get more numbers. Not go themselves but just to be
16 able to reach more. I don't know what the answer to that
17 is.

18 Q And what I'm asking you, I know this is not
19 your principle responsibility in Bismarck, but in
20 any of the metropolitan areas where these kinds of
21 issues are really critical there's those kinds of groups
22 that are interested in issues of justice. That's primarily
23 what the process of education is?

24 A I think in a larger metropolitan area outside
25 of the state of North Dakota.

1 Q But in North Dakota?

2 A But in North Dakota they've had tenant
3 organizations which presumably would be in that but I
4 guess the tenant is so mobile and not situated they're
5 not/^{that}strong of a member of your community. They're
6 transient and because of that it's difficult to get
7 them to join a tenant's organization. There was a
8 time ~~at~~ the landlords' association we were trying to
9 get a bond with the tenants' organization and form one
10 organization of both of them and iron out the differences
11 and there were no tenants' organizations left.
12 One landlord all of a sudden creates one, it's alive
13 for a year or two and it goes by the wayside and I
14 don't know how to help that either.

15 Q Is there, in your judgment, any kind of an
16 organization that will help educate ma and pa with the
17 majority of minorities -- that's a group of minorities
18 that are going to be renting from. Does that exist in
19 North Dakota?

20 A No. No such thing exists.

21 Q Okay.

22 MR. FEDER: Thank you.

23 Ms. Peterson?
24
25

1 BY MS. PETERSON

EXAMINATION

2 Q I just want to comment in Dickinson right now
3 is an organization, it's not an organization but a condo
4 group, that each buy their own place and they all have --
5 are supposedly sharing the swimming pool and have their
6 streets cleaned of snow and so forth and it's not working
7 and the owner in one of them is now in the process of
8 being sued by all the other condo owners in that area.
9 And do condos come under this organization that you're
10 speaking of?

11 A No. That's a different chapter.

12 Q Entirely?

13 A Each individual condo is an own association
14 just for that particular property and common owned
15 property.

16 Q Because they really are having some tough times.
17 Very expensive condos I might add.

18 MR. FEDER: Any other members of the Committee
19 have any questions for Mr. Lembke?

20 Claus, do you have any statement you want to
21 give us?

22 A No. Those usually get a person into trouble
23 anyway. I do appreciate the opportunity. It isn't an
24 easy task and I think that education perhaps we're fortunate
25 that 80 percent of all properties being sold at one time

1 or another, and it's an ongoing process, get involved
2 in our association are forced to listen to that and I
3 know that's necessary information and seminars and if
4 you could get the rest of them or more of them involved --
5 you can't get them all, I know that -- but if you could
6 get a tenant organization -- for a while it worked --
7 we were working closely together with the apartment
8 association. It could have grown but somebody has to take
9 that and make it grow. You can pass all the laws in the
10 world and there's no way you can enforce it unless the
11 people get informed of it and educated and wanting to do
12 that. It's a process of evolution that we
13 probably know. You're familiar with it and you understand
14 these things and they're not going to happen overnight
15 no matter what kind of law you pass. Enforcement of
16 local level over local control would help. It would
17 help get out there and if somebody was violating the
18 Fair Housing law or Human Rights Act, they get punished.
19 You bet that's education too. You know the word gets
20 out but it's not easy and it's not going to happen over-
21 night. It just simply isn't. We all have to learn it
22 over and over again.

23 BY MS. LARSEN

EXAMINATION

24 Q Do you have any suggestions then for strengthening
25 the current Human Rights legislation in the area of

1 housing?

2 A Well, number one, it should be parallel to
3 the federal legislation. That Human Rights Bill if
4 you take a look at it I challenge you that that Human
5 Rights Bill is totally ineffective in North Dakota.
6 If that was tested in a North Dakota court of law
7 it would be totally ineffective. Federal Fair Housing --
8 and the state can adopt a human rights legislation equal
9 to or greater than the federal legislation. This is not
10 equal to in form, some parts maybe. Some parts may be
11 greater, some parts may be lesser. I don't think this
12 legislation is good enough to recognize. I bet nobody
13 has contacted any HUD or any department that meets or
14 exceeds their demands. I'm not familiar with every
15 aspect of equal opportunity and employment in all these
16 areas, but in housing I know it doesn't meet it. I'm
17 familiar with, or somewhat familiar with the Minnesota
18 Fair Housing laws that they have and theirs exceeds
19 federal legislation, it does in all aspects, and they
20 have arbitration and they have conciliation processes over
21 there. And so, I think that's a problem that I think
22 should be solved, number one. It should be parallel or
23 should fall within the guidelines set by federal legisla-
24 tion.

25 If you go to court and they will throw the whole

1 thing out even if somebody was guilty. That needs to be
2 done number one and then I think you have to find local
3 enforcement.

4 MR. FEDER: The only difference, Claus, that
5 I see in the state law and in the federal law which is
6 Mother Murphy exception in the state law and the state
7 law also prohibits discrimination in the area. And you
8 feel the state may not have a broader law than the
9 federal government law?

10 A Yeah. It must at least meet the federal
11 standards or be larger. I believe the definition of
12 age is different on the federal level than the state
13 level and I believe that the period which you must file
14 suit or bring action is different under the state than
15 it is under the federal.

16 Q It's 180 days.

17 A But it's one year on the federal.

18 Q It's one year on the federal? I understand
19 it's 180.

20 A On the state.

21 Q On the state law?

22 A Like I said, Mr. Chairman, I'm not totally
23 knowledgeable but I do believe it just must be submitted
24 to federal agency to see if it complies to be parallel
25 to bring it up to date. Nobody was objecting to the

1 inclusion of regarding public assistance but that's
2 also misunderstood and most people don't even know what
3 it means.

4 MR. FEDER: As always, your testimony has
5 been very much appreciated. And I for one want to
6 thank you personally for coming in. Thanks very much.

7 A Thank you.

8 MR. FEDER: Another individual I would welcome
9 is Miss Juanita Helphrey.

10 BY MR. FEDER EXAMINATION

11 Q On behalf of the Committee, welcome to the
12 meeting. Glad to see you. And for the benefit of those
13 of us that might not be familiar with your office why
14 don't you give us a brief rundown on what your office
15 does and as director what you do.

16 A Thank you. And I welcome this opportunity
17 that has been provided me and I'd also like to, before
18 I describe the commission in a brief paragraph I'd
19 introduce you to a new commissioner, that is, Art Raymond
20 was recently appointed to the Indian Urban Representative
21 for our Board and he'll be with us hopefully next week
22 at the last meeting of the year. At any rate, the
23 commission, although it's been a law since 1949, has had
24 a staff since 1967 and the major goal is liaison agency
25 on state, federal and tribal issues. And also has been utilized

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1 as a forum in any concerns in Indian affairs and to get
2 things to happen so below the major underlying thrust
3 of the whole agency is six goals and I guess basically
4 that is to get Indians and non-Indian people to live
5 together as citizens of North Dakota on an equal
6 standard. Equal basis. I guess that in a nutshell
7 is what it's all about and we've been active in that
8 area. For ten years, I'll be marking the beginning of
9 my 11th year with the Commission January 15. So this
10 isn't the first time I've been before this Commission
11 and I really feel it's one of the areas in the Human
12 Rights area that we need to work with in our own agency
13 or to continue to work with.

14 Q Thank you. Would you give us the benefit
15 of your thoughts on what impact the Human Rights Act
16 has had in North Dakota in the area of housing with
17 public accommodations with respect to the native American
18 population?

19 A I've been trying to analyze that comment even
20 though I didn't know it was going to be asked of me for
21 the past week off and on. And having heard a little bit
22 of testimony just this afternoon came into my mind that
23 in all reality there has been no impact. I base this
24 on my own -- our commission's achievement in the past
25 biennium since the law was passed in 1983. As soon as I

1 realized that could be an issue, a very major thing to
2 look at, I began to wonder why, and I'm sorry I wasn't
3 present this morning to hear other testimony because I
4 maybe could have compared some of my own opinions. But
5 I think one reason that I feel that the law hasn't
6 impacted was presented by Mr. Clause and that's the
7 education aspect. There has been no information
8 supplied to the citizens of North Dakota as to the
9 passage of the law and what it might mean. That would
10 be my number one. I would even go so far as to suggest
11 that other state agencies including myself was not
12 aware of the last legislative session with the committee
13 of the Senate, I believe, conference committee, between
14 the House and the Senate in terms of a possible amendment
15 which occurred on April 8 that I hadn't been aware of.
16 And has the impact to give the Department of Labor no
17 authority whatsoever to follow through with actions other
18 than employment.

19 And so therefore I have -- maybe I have been
20 unaware for other reasons but even as a state agency
21 whose
22 who resides in the same building or /residency is the
23 same building as the Department of Labor I was unaware
24 of that joint committee meeting the last legislative
25 day of the session in 1983. So, there is no -- there was
no education materials provided as follow-through and no

1 information whatsoever about that committee hearing.

2 And finally there is no appropriation funded
3 to the Department of Labor and their plea was they do
4 have the federal contract in which to follow through
5 with employment situations and if they should follow
6 with other discrimination situations it may jeopardize
7 this money they have contracted under Title VII.

8 And then in this respect they did get out
9 of, I guess, you might say the governing part of the
10 law for the other parts of the discrimination, the other
11 aspects of discrimination.

12 Q What comments or criticisms do you have of the
13 Act as it is written?

14 A I really am not a legal authority to compare.
15 I spent a good four terms from 1977, '79, '80 and '81
16 with a body of people that were created to get a Human
17 Rights Act passed and we did have legal advice outside,
18 throughout our creation of this bill. We who testified in
19 1983 felt that that bill was equal to the federal law,
20 in fact, more broad. And that we could support and we
21 also felt that this, if we could get this bill passed
22 after four attempts that we could look for appropriation
23 or creation of a Human Rights Agency in the future.
24 And so if there was any legal problems involved, I don't
25 know. But I do know that personally the people that do

1 become affected by parts of this act, especially in a
2 housing area, are usually low income type people and
3 speaking for the Indian people in North Dakota there is
4 going to be some costs involved incurred with going to
5 district court and therefore because there isn't any
6 agency with an appropriation to manage some of the cost,
7 they fear going to court for that purpose.

8 And so personally the act itself didn't strengthen
9 the program that our agency has to help discrimination
10 in housing. And, in fact, it left us without it.
11 Left us without even the authority to do some of the
12 follow-through that we had done in the past because there
13 was a government agency through the Department of Labor
14 and rather than we will assist this person to follow
15 through we now say we have an act governed by the
16 Department of Labor and we refer persons to that division
17 and it was only when in a recent few weeks that two
18 parties actually did follow through that I realized
19 that the Department of Labor was not referring them back
20 to us nor were they following through because they had
21 no staff to do so.

22 Q Have you had any contact with Legal Assistance
23 in North Dakota to see if they will provide legal assistance,
24 assuming they will, in a case of discrimination?

25 A Yes they are if a person fell below the low

1 income guidelines. I had a workshop on Human Rights and
2 it happened there was a representative of renters
3 and they have similar problems. They have extensive
4 caseload and if the persons that are involved do not do
5 a lot of follow-through without a lot of assistance and
6 advice, it generally gets lost in the shuffle, they don't
7 come back for appointments, and you do need to get people
8 educated how to follow through on **a system**.

9 Q Do you find there is a reluctance on the part
10 of any people to follow through?

11 A Very much. I believe there's other kinds of
12 educational methods, not only do we have to show the public
13 the thrust of the act through the media sources and other
14 sources, but we have to, agencies like ourselves and
15 those that are concerned for people that are being
16 discriminated against, have to educate them almost on
17 a one-on-one basis to walk through a situation.

18 Q Are there applicants at United Tribes or
19 locally through your office that will do that, will take
20 them by the hand and walk through the steps and assist
21 them?

22 A Previous to providing the Department of Labor
23 with that method, we, our agency, did so and United
24 Tribes generally referring to us. The Peace Pipe Indian
25 Center in fact the last two days, the last two weeks,

1 came through. Both those centers came to our office and
2 it seems like the word has gotten out that it's not
3 working through the Department of Labor so therefore the
4 cycle begins again through the Indian agencies that are
5 out there.

6 Q I'm surprised that you thought the Department
7 of Labor had jurisdiction to deal with anything other
8 than unemployment problem. This is the first time I've
9 heard that from you.

10 A What did you say?

11 Q I was surprised to hear that anyone thought
12 that the Labor Department had anything to do with the
13 Human Rights Act other than employment areas. And that
14 came as a surprise to me.

15 A I was aware that the Department of Labor
16 had all of the authority from this act.

17 Q Well, that's not my understanding. The only
18 thing the Department of Labor is empowered to do under this
19 act is they may investigate charges of discrimination in
20 employment brought against an employer who has 10 or more
21 employees.

22 A Right.

23 Q That's the only thing they may do. They are
24 contractually obligated to investigate charges of
25 employment discrimination brought against an employer who

1 has 15 or more employees by virtue of contracts entered
2 in by the Equal Employment Provision. But the enforcement
3 of the act in the area outside of accommodations is
4 private. And the concern that I have is that from
5 speaking with you earlier there's apparently a lack of
6 native Americans who encounter discrimination in rental
7 housing to be aggressive in seeking private remedies.

8 What I was wondering, what suggestions you
9 have to see if there are ways that we can recommend to
10 someone that these people follow through?

11 A The number one area that I see and I know
12 again as I indicated some of the history of the Human
13 Rights Act how and where it became part of the Department
14 of Labor, at least the referral portion of it, is the
15 hope for a Human Rights Commission staff. That is very
16 clearly part of the state agency process. That would be
17 the number one.

18 And number two, the group that I was discussing
19 with felt that this should be in the attorney general's
20 office as a follow-through, at least if it's not being --
21 if there's no appropriation set aside for it and if there's
22 no chance in 1985 for appropriation to specifically
23 follow through and assist individuals with staff, then
24 perhaps the attorney general's the attorney office,
25 they do have an assistant attorney general of Indian Affairs

1 or they did for the past four years and the final part
2 on the discussion on the attorney general is that an
3 opinion should be asked of them to interpret parts of
4 the act that we were not clear about, probably the part
5 that you just mentioned. I know it's a private district
6 court referral action and it was clarified again in the
7 April 8, 1983 joint conference committee session. That
8 they're only liable for the employment Title VII but
9 that wasn't made clear. It hasn't really been made clear
10 to a lot of people that know about human rights having
11 a Human Rights Act. So maybe an attorney general's
12 opinion would enforce, at least help, with making clear
13 who has the jurisdiction and then perhaps what kind of
14 follow-through within that agency should be had.

15 I have notes on the third area here that we
16 also discussed, the possibility of appropriations for,
17 specifically for, the other discriminations, not the
18 employment discriminations, to appropriate an agency
19 outside of the government for its legal aid to help
20 assist not Indians but those low income people that
21 have no access to funds to get into court and so forth
22 and the follow-through that it takes. That was the
23 three areas we discussed Friday.

24 Q Thank you. Members of the Commission?

25

1 BY MS. LARSEN

EXAMINATION

2 Q Juanita, in those three areas that you discussed
3 recognizing that the most expensive is going to be Z
4 in Human Rights Commission separate agency is having R
5 an assistant attorney general or having any attorney
6 general, is that adequate? Will that cover all the al,
7 areas of discrimination to have help within the attorney
8 general's office? f

9 A I guess the group that discussed this with
10 me Friday were looking basically at the housing league. da
11 We didn't really look at all of the other areas this
12 act protects. The assistant attorney general for T
13 Indian Affairs has assisted with court cases that affect A
14 the Indian tribal government and costs incurred by that LA
15 had been incurred through the attorney general's office
16 so at least any legal fees or whatever would be defrayed. f
17 But we haven't given a lot of thought, Carol, to exactly =
18 how to utilize the attorney general. 2

19 Q So that in terms of meeting the needs of
20 probably the majority of people that have grievances T
21 the best procedure would be an actual commission and de
22 agency? ?

23 A In our overview of 30 some states, it is proven
24 to be the most effective source. T

25 MR. FEDER: Thank you. Members of the Commission?

1 BY MS. PETERSON

EXAMINATION

2 Q Carol referred to that report four years ago
3 and I've forgotten the number of years where we had
4 the hearings and had people talking about their problems
5 with housing and I thought that part was such a glaring
6 condemnation of some of the things that happened in
7 Bismarck, the city of Bismarck, that was zeroed in on
8 specifically for that hearing. Have you seen or heard
9 of any improvements since that report came out or did
10 it get buried? I have approached legislators on it,
11 I was able to get some extra copies, they had never
12 heard of it until they got the copy. Do you think anything
13 happened at all or was it hidden as far as the city of
14 Bismarck is concerned? Do you think they lock out the
15 door, look out the window, take the call and say the
16 apartment is available and see the Indian lady coming
17 in and say, "no, I don't have any apartments available."
18 This is one of the regards we had.

19 A I read the whole report and I was present at
20 those hearings, and I think it happened for awhile.
21 But perhaps it's because again there was no real public
22 education and no real fear has been put into landlords
23 the last couple years. There has -- it's starting to come
24 out again. The discrimination.

25 Q Never really followed through then?

1 A There was, I recognize, that there was a couple
2 quite a few recommendations in the back part and I for
3 one I recall the areas that the commission in North
4 Dakota Indian Affairs was charged or challenged with
5 some follow-through and we have done simply what we've
6 been doing in the past. But it still hasn't brought
7 to forefront the real needs and uncovered the actual
8 issues. It really hasn't because it's surfacing again.
9 It may have dulled it for awhile or toned it down, but
10 it's surfacing which when you resurface you know it's
11 not been done.

12 Q The Community Housing Resources Board, are
13 they an effective vehicle for education?

14 A I do not work with the Community Housing
15 Resources Board at all. I have not communicated or
16 been in contact with them. I'm on the Burleigh County
17 Housing Authority and we created, or we're in the process
18 of creating, a possible state-wide tenant committee of
19 some kind. And this is the way that we're doing it.
20 We're requesting to be managed by a tenant to phone
21 and log information on any complaint situations. It
22 will be separate from the Housing Authority.

23 MS. LARSEN: Juanita, you and Claus and I
24 appeared before, was it the Housing Authority shortly
25 after that hearing, was that the Bismarck Housing Authority

1 that we appeared before?

2 MS. HELPHREY: I can't --

3 MR. LEMBKE: I don't remember appearing.

4 MS. LARSEN: It was a fairly traumatic decision
5 is all I remember.

6 MS. HELPHREY: I just can't remember. It could
7 have been them or the Burleigh County Commissioners
8 would have the authority.

9 MS. LARSEN: It was not the Burleigh County
10 Commissioners. I think it was the Housing Authority.

11 MS. HELPHREY: I do recall the Fair Housing
12 Act. I wish that I would have taken some time to review
13 my -- perhaps I can see you still have some more
14 follow-through, maybe I can come back with comments later.

15 Q The essence is we had in the state of North
16 Dakota a very low private organization that is really
17 dealing with tenants. And the issue of tenants and the
18 kind of random discrimination that came out at the
19 kinds of conversations we had four years ago at that
20 hearing that I can recall.

21 MR. FEDER: Any other committee members have
22 any questions?

23 BY MR. SCHNEIDER

EXAMINATION

24 Q Miss Helphrey, your comments regarding your
25 perceived manner in which the Human Rights Act is enforced

1 in North Dakota is extremely revealing on the facts
2 that probably why this act hasn't had the impact it
3 should have. I find it incredible that the state agency,
4 one state agency, would be referring complaints on
5 discrimination to another state agency. Do you perceive
6 that -- well, obviously you testified there should be
7 more public information. Specifically, what recommendations
8 can you give the committee as to what agency or group of
9 agencies should take the bull by the horns and get this
10 law out to the people?

11 A I suppose most logical agency would be the
12 Indian Affairs Commission. It is the only state funded
13 agency. There is an office on Indian education, perhaps
14 that was created by Mr. Crawford in the Department of
15 Public Instruction but as for an autonomous agency,
16 North Dakota Indian Affairs is charged through its
17 act through its own law with that all facets of Indian
18 affairs including any non-equal treatment, unequal
19 treatment.

20 Q Would you believe that a separate agency, state
21 agency, would be preferable in the Human Rights Commission
22 for example?

23 A I would prefer a human rights commission.
24 I think North Dakota doesn't need to start with a large
25 staff maybe part time or full-time director and a part-time

1 secretary, one or two staff people. This may be in an
2 office, you know, space in another agency and just charged
3 with following through the two years even as a pilot
4 program, some type of case history of what's happening
5 and then perhaps it would imply that we needed more
6 full-time efforts in that area.

7 Q What's current appropriation level for the
8 Indian Affairs Committee?

9 A We only have three staff people. We have
10 close to a \$700,000 budget and we're charged with following
11 through and managing, monitoring three programs. The
12 Indian Scholarship Program, the Indian development
13 funding and the North Dakota Native American Alcohol
14 and Drug Abuse Education Program.

15 Q Is that appropriation level, \$700,000, always
16 been fairly constant?

17 A It's constant around half of these years and
18 the past several sessions, but in 1983 because of an
19 act we got passed in 1983 on alcohol and drug abuse
20 the treasurer's office and provided the legislature
21 turned it over and that came to 300 more thousand dollars
22 within our budget, so we did have around half of that
23 until 1983 because then it increased because of the
24 addition of that new program.

25 Q I think you mentioned one of the problems with

1 the Human Rights Act and particularly with respect to
2 the American Indian there's very much reluctance to go
3 to court. Largely because of expense involved, is that
4 correct?

5 A It's because of the expense involved, but
6 it's because too of a hard described feeling of being
7 discriminated against. It was described best by one
8 of the testifiers during one of our earlier hearings
9 when we were first pursuing this act by saying discrimina-
10 tion and an example was described to the fish on a
11 chain and they were taking over the whole tank, he'd
12 put a clear glass in the tank and food on this side and
13 the fish on this side and he kept hitting his head trying
14 to get through that glass to his food and was just
15 stuck in this little corner and eventually gave up.
16 And that's what prejudice is. When it happens to you
17 quite often and you handle it for housing quite often
18 and turn down quite often, you give up on a lot of
19 those avenues and that's the way Indian people still are.
20 It's a hard way, it's hard to take. You just lose
21 faith and it makes you lose value and it makes you lose
22 self-esteem too.

23 Those same types of individuals that go looking
24 for homes in all communities of North Dakota. By educating
25 our Indian people it is going to be a little harder than

1 educating the non-Indian public and landlords and so on.

2 Q One other thing. I think you mentioned Legal
3 Assistance of North Dakota 'has expressed a
4 willingness to help particularly in the area of public
5 accommodations, but of course, I happen to know personally,
6 my wife is managing attorney and in their priority case-
7 load they simply do not have the money to take a lot of
8 different cases. Have you ever given any thought or
9 has anybody in government that you're aware of given
10 any thought to have appropriation whereby Legal Assistance
11 of North Dakota to receive some money on priority cases
12 to attack these types of cases that the private bar
13 simply will not take. Has that ever focused or been raised?

14 A That's just been surfacing this last week since
15 I talked to your chairman about coming to this hearing.
16 It's something I think we're really going to discuss in
17 the next few weeks. I think it's a good idea if we're
18 not going to be able and I know we won't probably have
19 a good chance to get a commission established that it's
20 an avenue that needs to be explored because again a lot
21 of our Indian people, those are involved in housing
22 problems, demand a lot of legal aid state-wide and I
23 would like to explore that too.

24 MR. SCHNEIDER: As I understand, Mr. Chairman,
25 the state of North Dakota has never given any money to

1 the Legal Assistance in North Dakota.

2 MS. LARSEN: Has never given what?

3 MR. SCHNEIDER: Any money.

4 MR. FEDER: Thank you.

5 MS. LARSEN: May I make a comment.

6 I have been somewhat instrumental in the
7 initial legislation that did not as a member of the staff
8 of the governor's counsel and human resources for four
9 years introduce in this human rights legislation and
10 it has been very clear to me that money talks. And as
11 currently a business person in the city that continues
12 to impact me. And that it's clear to me that we need to
13 put some money into this commission. Can you make any
14 final comment related to the Human Rights Commission versus
15 an attorney general's Indian -- attorney general
16 staff person charged for Indian affairs? Do you have --
17 is there a preference, as we look realistically at the
18 amount of money to be available this year?

19 MS. HELPHREY: My, I have mixed feelings, Carol.
20 When I have worked with the attorney general and his staff --
21 the present attorney general and his staff for four years
22 the person that has been elected I don't really know.
23 And honestly depends on individuals in terms of their
24 priorities. If I knew the staff and if I knew that there
25 was going to be an assistant attorney general on Indian

1 affairs which there could be and there couldn't be, then
2 I would feel more easy -- readily easy. I would find it
3 more easy to answer, I think, I would probably be positive
4 about it. Again, they have priorities in their staff
5 in terms of their caseload and how much emphasis to put
6 on the various areas and it could be buried -- the issue
7 could be buried and put way lowly on their priorities
8 and nothing could happen again. I don't know, I can only
9 go by experience.

10 For many, many years affirmative action purposes,
11 for example. I did an Indian employee and state government
12 survey out of our office and merely published for the
13 benefit of Indian people and for the benefit of those
14 state agencies a poll return on the publication to them
15 to show this is how many Indians dropped from last year's
16 enrollment and so on and I was asked to stop doing that
17 three years ago by the attorney general's office because
18 there is an EEOC survey. They have to follow through
19 and do that type of survey. However, they didn't stress
20 the minority employment area. All we're doing is
21 picking that information out and publishing it in a
22 separate document. So you never know a reaction that's
23 going to be occurring and I would assume -- I would think
24 that the legal aid would be on most. They have no
25 discrimination at all. A lot of Indian people utilize

1 Legal Aid. And I would feel comfortable with Legal
2 Aid. I wanted to before -- I suspect you're going to
3 ask me anyway if I have any closing remarks -- but I was
4 going to mention fair housing and what I know about it.
5 I know again it was the wrong time and Representative
6 Hoffner was in favor of it and I recall certain
7 opposition to it but I feel like we lost that because
8 it was either one or the other and we had pushed so hard
9 for human rights that we needed to focus on that and I think
10 that the Fair Housing Bill should be, because I think,
11 it will be reissued or represented to this 1985 legislative
12 session and we have the backing of HUD, Fair Housing
13 Provision and they wanted that act.

14 MR. FEDER: My understanding is HUD doesn't even
15 know that there's a fair housing in the state of North
16 Dakota. My concern is that a bill is introduced that
17 deals with fair housing and what effect is that going to
18 have on Chapter 1420.4, what effect will your Fair
19 Housing Bill have on the Human Rights Act?

20 A That is something that I would have to look
21 into more clearly, but your comment about HUD wasn't aware,
22 there wasn't a lot of awareness two years ago. Now,
23 maybe a turnover happened in Denver and so it got lost
24 in the shuffle but I was almost receiving daily phone
25 calls from Denver for the status of the Fair Housing Bill

1 that Representative Hoffman presented.

2 Q Maybe it's a proprietary concern but the
3 concern that I have is that if legislation is introduced
4 that is contrary in some respects to the Human Rights
5 Act, I'm worried that what is in the Human Rights Act
6 will be repealed and replaced with something that may
7 have been intended to be better but in fact is not.
8 I would personally appreciate it if you would give me
9 a copy of the bill if you would before it's introduced?

10 A Okay.

11 MR. SCHNEIDER: Ms. Helphrey, one thing,
12 did I understand you to say that the attorney general
13 restricted you not to continue compiling statistics on
14 the American Indian employment?

15 A The attorney general, I met with his assistant
16 attorney general the next in line to him.

17 MS. LARSEN: Who is his assistant?

18 MR. FEDER: Deputy.

19 A Mr. Rolfson took me to coffee one day and just
20 plainly said that Mr. Wefald did not feel that our
21 agency should be issuing a separate document when it was
22 a job being done by such a personnel. I merely stated
23 we've been doing it for years and years and it's the first
24 time it's been brought to my attention that it could bring
25 to light some issues of North Dakota that were no concern

1 of anybody really. Again I stress that all I was
2 doing was taking EEOC information and then adding a
3 few agencies like Grafton institution, like San Haven and
4 the University of North Dakota that are large employers
5 of Indian people and there were about 80 agencies involved
6 so I haven't really done it since then, but I can't say
7 I quit doing it because of those comments.

8 I also, as all of you know, received a percent
9 in our budget, a five percent one year and a five percent
10 later on, a cut-down to the cost.

11 Q Did you ever inquire of the attorney general,
12 the independent commission what he was doing and what not
13 to do?

14 A Lots of times.

15 MR. FEDER: I have no other questions.

16 The bill that you're proposing, how does it
17 differ from the Human Rights Act?

18 A The bill?

19 Q Yes, the Fair Housing Bill?

20 A I honestly do not -- I have not looked at
21 this. That was what I was going to call my office about
22 to bring some information to me while you have the other
23 testifiers this afternoon. I stated perhaps it would
24 be good to look at that and perhaps it would be something
25 that would be brought before the '85 assembly. Merely

1 because we had it kind of cross paths with the human
2 rights in the 1983 and human rights is favorable and it
3 wasn't and they lost and if something because the
4 Department of Housing and Urban Development was supporting
5 it and it was an act that would put more responsibility
6 on North Dakota rather than federally. They supported
7 that, it should pass. In fact, we visited with another
8 agency, I can't recall, and the Denver people about
9 it before it was presented to the legislature.

10 Q I would very much like to know when you find
11 out, I would very much like to know what areas of the
12 housing discrimination that bill addresses that the
13 Human Rights Act does not?

14 A Okay.

15 Q Because I have a feeling that bill is going to
16 be substantially narrower than the housing provisions
17 of Human Rights Act and if that is passed it will no
18 doubt repeal the applications section of the Human Rights
19 Act.

20 A That would be certainly something we wouldn't
21 support if that should happen.

22 Q I very much want to have you be aware of what
23 happens when one piece of legislation is passed and it
24 deals with the same topics as an earlier piece of
25 legislation. That's what happens.

1 A Right. Okay.

2 MS. LARSEN: I also want to go on record as
3 stating in the 19 -- or precluding the 1977 legislative
4 session there was a very impressive ad hoc committee
5 in state government. It composed Juanita's office,
6 the government counsel on human resources, labor,
7 central personnel, I don't recall but it was about 15
8 people whom a comprehensive human rights act would impact
9 and it was a group, a very supportive group, that tried
10 to and they initially submitted a bill before that session
11 and so there is or at least in that year there were people
12 and in power positions who were interested in issues
13 of justice and in a cooperative effort and the only
14 way they saw dealing with it was a central agency. And
15 that bill dealt with a human rights commission. And the
16 bill in this last session was compromising, dealing with
17 funding but at least getting something in print. And so
18 I appreciate your remarks looking at the Legal Aid of
19 North Dakota versus maybe returning it to some focus on
20 state government. And would be interested in having you
21 pursue the issue of keeping these people in those various
22 agencies of state government informed of this and keeping
23 them, I guess, keeping them interested in pursuing this
24 issue.

25 A That's how that committee found out us and

1 Alabama and perhaps one third ~~state didn't have a human~~
2 ~~rights act.~~

3 MR. FEDER: Thank you very much.

4 Ms. Peterson, a final question here?

5 MS. PETERSON: She mentioned the five percent
6 cut through the budget, are you talking about the governor's
7 budget?

8 A I can't know. The state agency, well it was
9 just return of reallocation of funds, I guess, after
10 Governor Olson came in. There was a five percent --

11 MS. PETERSON: Is your funding --

12 A The total administrative costs were cut back
13 and we had to begin cutting back on travel and printing
14 and costs and so on.

15 MS. PETERSON: So you're working on a much smaller
16 budget than you were prior?

17 A The administrative budget, yes. We have
18 had hardly any increase over the past two bienniums
19 on administrative costs.

20 MS. PETERSON: And you have to go to the
21 legislature for that?

22 A Yes we have. We always get cut every time we
23 go. We approach them with anticipated needs and we
24 generally get some cuts. But we -- and I wish that we
25 had funds to do some of the more affirmative action

1 things that we have been able to do in the past. But I
2 guess I'd need five other staff persons first of all.

3 MR. FEDER: Thank you. On behalf of the committee
4 thank you very much for coming in. It's nice to see
5 you again.

6 (Whereupon, a five-minute recess was taken.)

7 MR. FEDER: The next person that we're going
8 to be favored with is Laurie Hammeren.

9 BY MR. FEDER

EXAMINATION

10 Q Could you tell us briefly what your office
11 does specifically and what you do in the area of civil
12 rights?

13 A Primarily it's my responsibility to make sure
14 that our department does not discriminate relative to
15 recipients of our program services and on employment
16 aspects.

17 Q Do you deal with discrimination only within
18 the employees who are employed by your department or
19 do you deal with areas of employment discrimination
20 throughout state government?

21 A No. I want to make that clarification.
22 My jurisdiction is the Department of Human Services only
23 and our political subdivisions which include County
24 Social Services Boards and human services centers employees.

25 Q In the course of your employment you are, of course,

1 aware that. Human Rights Act that was passed by the 1983
2 legislature prohibiting discrimination in employment by
3 government agencies in the treatment of their own employees,
4 correct?

5 A That's right.

6 Q Would you tell us what impact, if any, you
7 have observed this law to have had in your department?

8 A Specifically, I don't think that the Human
9 Rights Act has really impacted our department that
10 greatly. We have always come under the purview of
11 our federal regulations and laws and so the kinds of
12 activities that we have involved in has not changed that
13 much. I think specifically in the area of other remedies
14 now available, of course, to persons who have complaints
15 are there and I suppose in that respect how we advise
16 employees or recipients of services has changed somewhat.

17 Now they have more options than what were
18 currently available to them. But relative to how our
19 department or what the role of my office or our department,
20 I don't think our role has changed that much because we
21 have always seen our role as one of trying to assure
22 that people get services and trying to assure that they
23 are aware of what their rights are.

24 Earlier this morning I heard persons testify
25 to the fact that education is important and I indeed think

1 that it is important. Much like yourself, I believe that
2 people acknowledge that there are civil rights regulations
3 and laws but like you I don't believe they really have
4 a full understanding and comprehension of what the rights
5 under the laws are. I don't think the Human Rights
6 Act specifically has helped this along any. I'm glad
7 to see it's on the books, however, and I'm hoping that
8 that's a first step. But I don't think that in the last
9 two years we've seen a marked change in what's happened
10 in North Dakota.

11 Q Are you in contact with your field officers;
12 by that I mean, Southeast Human Services and Northeast
13 Human Services and Cass County?

14 A I communicate daily with the social service
15 office and as the need arises the human service centers
16 and the agencies and we do have eight regional human
17 service centers and 53 county social service offices.

18 I'm technical assistant of the county office
19 and that's just another hat that I wear within the
20 agency so I do have contact with the officers. There is
21 another personnel officer assigned to human service
22 centers; however, we work quite closely together in the
23 area of civil rights and so on. We have in addition --
24 we have an internal grievance procedure that we follow
25 relative to first of all discrimination and we have an

1 internal employee grievance relative to other matters
2 in our department that we use relative to services
3 provided recipients for matters not necessarily related
4 to discrimination. We have a fair hearings appeal
5 process and we have lots of individuals using that
6 procedure, so we do have internal remedies where we try
7 to resolve situations.

8 Q One of the concerns that I think we have is
9 that you have a network that is intensive and you come
10 in contact/^{on a}daily with basis with some people that have
11 suffered more discrimination than others. Are you aware
12 if in fact those individuals who do receive assistance
13 from your agency, from affiliated agencies expressed
14 difficulties in dealing with getting government services
15 because **their** minority status or their status with
16 respect to public assistance or whatever?

17 A I'm not aware of the great deal of problems
18 specifically in that area relative to us. We make
19 an attempt to notify anyone that could be eligible or
20 is eligible for our services and by that I mean we have
21 developed a brochure that indicates, I think, the title
22 is Your Civil Rights and indicates to them what their rights
23 are. We give the brochures to applicants for service
24 any time they apply at county service office or social
25 service office for service.

1 Q Did you bring one of them with you?

2 May I ask that you forward one to me. I and the other
3 members of the commission would like to see it.

4 A Sure. In addition to that, our department
5 has a poster that we require of counties and administrative
6 offices to post relative to discrimination.

7 Q Discrimination in what?

8 A Employment and assistance.

9 Q Okay.

10 A One of the things that I try to require is
11 at least annual notification of our political subdivisions
12 and the county offices to the general public. Now that
13 can be radio, it could be newspaper but we require them
14 to at least annually to announce nondiscrimination on
15 policies and so on.

16 In addition to that, our agency policy and
17 procedures manual, Chapters, two of them, one distinguishes
18 those laws and requires nondiscrimination to clients
19 and we have a separate chapter relative to EEOC concerns.
20 These are available to be in each county office and
21 human service centers and are available to supervisors
22 and staff. In addition to that, we have an employee
23 handbook where we reference their rights.

24 Q Thank you. Do you have any comments or suggestions
25 or criticisms about the Human Rights Act as it has been

1 enacted as the civil rights officer for the department or
2 as someone being able in the field of civil rights?

3 A Yes. I'd like to make a couple comments.

4 Q Please.

5 A First of all, I think that the state is in a
6 real weak position by not having a civil rights officer
7 per se for the state or a human rights commission.
8 Because I suppose, because I am visible through some county
9 office and so on because of the broad base or network
10 we have on our nondiscrimination position. People see
11 my office number and so they contact me a lot of times
12 and I get phone calls relative to issues occurring in the
13 state that I have no jurisdiction over. I try to assist
14 those people by giving them whatever information I have
15 and try to give them directions. However, I think because
16 the state does not have a person really to contact
17 that many of these people do not get their concerns resolved
18 and I think that that's probably a weakness of the human
19 Rights Act that there's not an enforcement agency to follow
20 through on those things.

21 Q Thank you. When you get these calls from
22 the individuals, do they know that there is a human
23 rights act, do they know that there are remedies for
24 discrimination?

25 A Generally, no. I find that people generally

1 have a broad sense that something is happening to them
2 that may or may not be against the law. They do not have
3 an understanding that the state has a law and sometimes
4 they're not even familiar with the federal regulations,
5 but often they probably have heard of federal regulations
6 but certainly are not aware that the state has a law.

7 I have even been contacted relative to
8 employment concerns not necessarily in our jurisdiction
9 but in private sector where it is my understanding that
10 the Labor Department is not handling those things
11 that come under the Human Rights Act. If the employer
12 employs less than 15 people and certainly not less than
13 10, so I think that there is a gap in services to many
14 people out there who are employed by smaller business
15 people. That's one of the weaknesses I think of this
16 act. I would like personally to see it modified to
17 include one employee. I would also like to see it
18 modified to include less than full-time and perhaps
19 temporary employment. I know many agencies, including
20 ourselves here, hire on temporary and sometimes on
21 emergency basis. I would like to see it include all
22 kinds of employment relationships or terms and conditions
23 of employment.

24 Q Thank you. Members of the commission?

25 MS. PETERSON: I guess I have one comment.

1 MR. FEDER: Mrs. Peterson?

2 MS. PETERSON: My comment is that listening
3 all the way through today it seems like it's very apparent
4 that all these state agencies, whether they intend to
5 or not, are really making a statement of the Human
6 Services Act because it just isn't working. It isn't
7 doing anything. It's just laying there so until it's
8 changed with this legislative session it's -- and we
9 don't want to see what we've got get lost when it isn't
10 working. I guess we're going to have to really push
11 some amendment or somebody's going to have to and I under-
12 stand there are some in the works and again are they
13 what we need or what we want and it's overwhelming.

14 Has anyone approached you with any possibility
15 of amending that?

16 A Interestingly enough, no. I have not had any
17 contact.

18 MR. FEDER: I think there appears to be some
19 confusion between substantive and procedural aspects
20 whether this legislation was passed substantively.
21 I don't think we have heard too much criticism to lower
22 that threshold of employment areas from 10 to 1.
23 Procedurally, there has been unanimity in the testimony
24 of the witnesses that deals with the enforcement of the
25 procedures whereby the substantive laws can reach their

1 goals. Consensus has been to enforce through another
2 agency be if the attorney general's office and human
3 rights commission and the civil rights. I think we should,
4 as members of the Committee and people who are appearing
5 before us and giving us the benefit of their thoughts,
6 should be aware that the difference was substantive
7 and procedural legislation and if there was comments
8 that are criticisms of substantive laws that I have missed,
9 I would sure like to hear about it. That's very important.

10 But procedurally, I think, I understood what
11 has gone on this far and there seems to be a consensus
12 that the enforcement area is inadequate.

13 MR. SCHNEIDER: That's my understanding.

14 MS. PETERSON: As good as it is, it isn't doing
15 anything. It's just not doing anything.

16 MR. FEDER: I just wanted to make sure I under-
17 stood.

18 MS. PETERSON: I'm not tearing down what was
19 there; I'm tearing down what should be there and isn't.

20 MS. LARSEN: And in this piece of legislation, then
21 impact a great variety of state agencies and nobody is
22 willing to take leadership or even take leadership within
23 their own two sentences of the act or even to take leader-
24 ship in terms of establishing some kind of an ad hoc committee
25 within state government of all the agencies that have been

1 theoretically impacted by this act to work within state
2 government.

3 MR. FEDER: On behalf of the committee, I want
4 to thank you very much for coming in. Your testimony
5 was very much appreciated and I'm sorry the room was
6 so cold that you had to wear your coat.

7 A I guess I have one other comment and that's
8 probably for this committee is that I would like to see
9 this committee be more visible in the state of North
10 Dakota. I've had many questions concerning what the
11 role of this committee is and who are you folks and what
12 are you doing. Maybe that shows some ignorance in the
13 terms of civil rights in general in the state. But I
14 would like to see that there be more opportunity
15 for more comment or something relative from this committee.
16 I'm not sure exactly what format or how or whatever
17 but I just don't think that there's enough.

18 MR. FEDER: Thank you. I appreciated that.

19 The final area we are discussing today deals
20 with credit transactions. As you know, the act prohibits
21 discrimination in the area of credit. The individual
22 that I understand we're to hear from is Mr. Keith
23 Magnason.

24 BY MR. FEDER

EXAMINATION

25 Q Mr. Magnason, on behalf of the committee, thank

1 you very much for coming in and we look forward to
2 hearing from you.

3 A Thank you, Mr. Chairman and members of the
4 committee. My name is Keith Magnason and I'm associate
5 director and staff counsel for the North Dakota Bankers
6 Association and I do appreciate the invitation on behalf
7 of the executive director.

8 Q Mr. Magnason, in your capacity of counsel,
9 I imagine you are, of course, aware that discrimination
10 in the granting of credit on the base of the areas
11 we all discussed here is illegal. Would you tell us if
12 in your opinion the course of your activities you
13 have found that there is a problem in the granting of
14 credit first of all we'll leave it at that.

15 A No I have not found a problem in the granting
16 of credit.

17 Q You are, of course, familiar with the act
18 and do you find that this act is in need of any revisions
19 or modifications or does it serve as a satisfactory
20 standard to provide for adequate remedies in the event
21 that there is someone who feels grieved of discrimination
22 in the granting of credit?

23 A I can just restrict myself to the granting of
24 credit provisions. As you probably know, banking,
25 and I can't speak for the other financial intermediaries,

1 banking is a highly regulated industry besides all the
2 talk you hear about deregulation of the financial industries.
3 This portion is becoming more highly regulated all the
4 time and regulation compliance what have you and
5 is heavily regulated on the federal sector as you're
6 aware federal laws. The federal reserve regulations
7 talks about equal credit opportunity and there are several
8 others. I also believe regulation is now being
9 revised so that they're going to make it even more
10 stringent.

11 In our opinion, the act, or this particular
12 topic, would not have to be changed. If you look at the
13 Section 14-02.4-17 in reference to the Equal Credit
14 Opportunity Act and very much parallels that. We feel
15 that the federal law as it's enforced, adequately covers
16 this area and it is enforced. Banks are examined by
17 federal regulators most notably the Federal Deposit
18 Insurance Corporation for state chartered banks and the
19 Department of Banking here in North Dakota and the
20 comptroller of the currency examines national chartered
21 banks. Those agencies, those federal agencies also
22 examine and check for compliance with the Federal Reserve
23 Board regulations. There are also regulations that come
24 up under the Federal Trade Commission regulations and other
25 federal agencies. But we believe that the federal law

1 and regulations adequately cover this area.

2 Q Do you think there has been any impact on the
3 bankers with enactment of this Human Rights Act?

4 A To be truthful, no. Because the Human Rights
5 Act does not provide for anything that the bankers
6 are not already required to comply with and complying
7 with prior to the enactment of the act.

8 Q Thank you. Those are the questions that I had
9 for Mr. Magnason.

10 Members of the Commission, do you have any?

11 BY MR. SCHNEIDER

EXAMINATION

12 Q Does the North Dakota Bankers Association take
13 any position on the Human Rights Act?

14 A To my knowledge, it did not. And I might add
15 that the reason we did not is it was on no provisions
16 that really impact the banks. We already had these
17 regulations. I might add before Chairman Feder asks
18 me the question that based on my experience over the
19 last three years at the Banker's Association we have not
20 seen any complaints to our office. We are not a regulatory
21 agency but we are state-wide trade organization
22 representing 173 of the 178 commercial banks in the state.
23 If someone does have a complaint against the bank, they
24 seem to find out where to go. We're in bold print in
25 the telephone book. So we do get complaints about the

1 bank usually handling of a check, handling of some
2 problem, a mistake, that type of thing so people do
3 find us as far as I know.

4 MR. FEDER: You have not found some lady
5 would call up and say they couldn't count my alimony
6 payments in my income for purposes of getting a loan.

7 A We have had no inquiries like that at all.
8 If we do receive an inquiry on a bank, again, since
9 we represent the banks, we try and refer that bank to
10 the appropriate agency that regulates the bank. If
11 we did get a complaint of this type, we would most
12 likely refer it directly to the Federal Reserve Bank
13 in Minneapolis. It does have counsel, too, as far as
14 staff and we'll investigate this type of thing and take
15 it to a logical conclusion.

16 Q I would imagine that your association has
17 conventions and opportunities for educational get-togethers
18 and so on. Is that right?

19 A Yes we do. In fact, for the last three years
20 I've also been the education director for the Association.

21 Q As such, are you charged with the responsibility
22 for reminding these bankers that there has been a
23 change in the law with the passage of the Equal Opportunity
24 and Credit Act?

25 A What we have been doing, each year we've been

1 having what we call a compliance program, compliance with
2 regulations, and our speakers that come in talk about
3 compliance mainly with the federal regulations. It's a
4 compliance with the federal regulations they have complied
5 with this provision in the North Dakota act.

6 But we do have a compliance **session** every year at least
7 once a year. You might also notice when you go into banks
8 that they formally have a bulletin board they're required
9 to post certain items of information on that bulletin
10 board conspicuously and judging by questions that have
11 come up by ~~that~~, one of the ways the public finds out
12 what their remedies are in certain areas. Those are
13 posted in banks so they don't have to go looking and trying
14 to find out who they can contact and what their remedies are.
15 There are quite a few pamphlets available.

16 MR. SCHNEIDER: I have one more, Mr. Chairman.

17 Q Do you keep a log of how many complaints your
18 association gets with regard to equal credit matters?

19 A No, we don't. We probably -- one of the reasons
20 is we haven't had an equal credit complaint in the three
21 years I have been there. We do not have a formal log
22 though we try and keep those complaints -- because we
23 want to help the banks as part of other educational
24 programs -- if we received complaints we try and get
25 the person to go back to the bank and try and get that out

1 in our programs.

2 Q And you do refer them on to the proper personnel
3 for enforcement?

4 A Not at first. We ask if they contacted the
5 bank and try and talk to an officer. Maybe they've
6 been looking at just some loan officer and try and talk
7 to a higher officer. If that does not work, we give them
8 a telephone number and names of the appropriate regulatory.

9 Q Thank you.

10 BY MR. MULDROW

EXAMINATION

11 Q Just to clarify my understanding of something
12 you said. The federal regulations you feel adequately
13 covers the field of discrimination in the area of these
14 **actions?**

15 A Yes I do.

16 Q And if you were to receive a complaint it
17 would be handled under federal statute rather than
18 under the state statute?

19 A At the present time, yes. Because we do --
20 there is an enforcement authority in the federal system
21 we feel that is adequate.

22 Q Uh-huh.

23 MR. FEDER: Again, on behalf of the committee
24 I want to thank you very much for taking the time to
25 come in. We are very appreciative, thanks, again.

1 The last person that we are scheduled to hear
2 from today is Marilyn Foss.

3 BY MR. FEDER

EXAMINATION

4 Q Now, I understand from some of the things that
5 Mr. Magnason has told us that the Human Rights Act
6 provides for equal opportunity and credit and prohibition
7 of discrimination in the granting of credit pretty much
8 parallels with the Equal Opportunity Credit Act and so
9 I would imagine that there is not a great deal of
10 difference between what you would say and what he would
11 say. And rather than go through all the questions that
12 we have, why don't you just give us your statement as
13 to what you think this act has done.

14 A Well, I would have to say, Mr. Chairman and
15 members of the Commission, that I tend to agree with
16 Keith. I do not think that the Human Rights Act has
17 had any measurable impact on the actions of regulated
18 lenders in North Dakota and that is because they have
19 been subject to the Equal Credit Opportunity Act for
20 almost 10 years. And the traditional lenders, by that
21 I mean the banks both state and nationally chartered,
22 the savings and loan associations, and now the federal
23 savings banks and the credit unions in this state have
24 been subject to affirmative review of their compliance.
25 The FDIC performs separate compliance exams for state

1 chartered non-member banks. By that, I mean banks that
2 are not members of the Federal Reserve.

3 The FSLIC examines federal savings banks and
4 savings and loan associations as part of their safety
5 and soundness examination. Creditors which are
6 covered by the federal are covered by the jurisdiction
7 of federal and state commission. If I were going to
8 evaluate that compliance process I would say that it
9 works out pretty well. 'I'm most' familiar with FDIC
10 so I guess I would like to explain to you a little bit
11 about what the FDIC does, if it thinks it comes across
12 the compliance problem. ~~They~~ have enforcement authority
13 under the Section 8 of the Federal Deposit Insurance Act
14 and are very vigorous in using that authority.
15 The FDIC and then, of course, the FSLIC for federal
16 savings banks and savings and loans regard this matter
17 very seriously because if an institution should fail,
18 the FDIC and FSLIC are placed instead of the institution
19 and are subject to the penalties for the bank's failure
20 to comply with the consumer regulations. And they do
21 look at it and they take it pretty seriously. When they
22 find a problem they order affirmative relief on the part
23 of the institution. That relief can take in a very broad
24 scope and it can be anything from requiring the bank to
25 include certain notices in its advertising and submit that

1 advertising for review by the federal regulatory agencies
2 to contacting the applicants and advising them that
3 the bank or savings and loan or whatever may have violated
4 their rights and are advising them on how to go about
5 redressing that violation.

6 **It can also** take the remedy of reimbursement
7 if that violation was, for example, in making for
8 owners terms of credit something like that on a prohibited
9 basis. So, the lending institutions themselves are
10 pretty careful to comply and tend to agree with the
11 federal regulatory agency pretty easily if they are
12 cited for a violation.

13 Now, I guess I would also have to say this;
14 we get copies of the compliance examination report so
15 we are somewhat familiar with the problems that the
16 federal agencies see. First of all, I would say that I
17 happen to be interested in this area and I can only
18 recall two compliance examinations which had ECOA (?)
19 problems cited. Those were in the area of different
20 treatment based on marital status. Both of the institutions
21 involved were requiring a nonapplicant signature, co-signature,
22 on a note. The institutions changed their policies when
23 it was suggested to them that it was a violation, although
24 in at least one case it suggested that part of the reason
25 they were making this a requirement is because of a

1 suggestion from their counsel as far as the uncertain
2 status of the North Dakota law as far as your ability to
3 get a perfected security interest in collateral where
4 there are joint owners. But when pressed, they adopted
5 the position of the FDIC that it is not permissible to
6 require a nonapplicant co-signer on a note.

7 As far as other areas of discrimination, I am
8 aware of one complaint which was grounded on the basis
9 of racial discrimination against a North Dakota
10 institution. The FDIC investigated it very vigorously
11 and concluded that the allegation was without merit.
12 The only other concern that I have seen from somebody
13 doing an investigation as far as compliance with North
14 Dakota institutions had to do with the possible impact
15 of an institution policy on making installment loans
16 for automobiles.

17 Well, while it was applied across the board
18 and it had to do with the amount of equity and the
19 borrower would have to have an automobile. Well, the
20 policy was applied across the board, there was the
21 concern that it might have the disburd impact
22 on low income people. Particularly, Native American
23 and they were going to follow up on that at their next
24 regular compliance exam. So as far as protection for
25 North Dakota consumers under federal law, they are there

1 and they are enforced.

2 When I was advised, or requested to come here
3 and testify, I did kind of a survey among the staff members
4 in our office because we, too, get complaints so people
5 know we exist. And none of them could recall having
6 received a complaint about an ECOA violation
7 essentially for a violation which would parallel the
8 Human Rights Act prohibition.

9 During the past few years that I've been
10 involved in it, I received one complaint. It was
11 from a woman in southwestern North Dakota and it had to
12 do with having a nonapplicant spouse sign a note. I
13 explained to her both the federal regulatory agencies
14 that could assist her and suggested that she also contact
15 private counsel if she was interested in pursuing it
16 and she declined to do it and in fact she said her
17 son was an attorney and she still wasn't going to do
18 anything. I guess from my experience I could not conclude
19 that there was a significant problem in this area in
20 terms of credit extension in North Dakota.

21 Q Thank you. Do we have any questions of
22 Commissioner Foss from the members of the committee?

23 On behalf of the committee, thank you very,
24 very much for coming. It's nice to have you here.

25 That concludes the testimony from individuals

1 that we have asked to appear. We have a period of
2 time called open session. If anyone in the room wishes
3 to give any comment or criticism or offer anything to the
4 Committee, you are more than welcome to.

5 Please, sir, come forward, give your name
6 and your occupation, job title.

BY MR. FEDER

EXAMINATION

7 A My name is Richard Gray and I'm the program
8 manager for the North Dakota Community Development Block
9 Grant Program. With the Office of the Intergovernmental
10 Assistance from the state of North Dakota. And to go
11 along with what everyone else has said, our office in
12 fact I found out about this committee meeting from
13 Robert the other day and we found out for the first time
14 a human rights act existed.

15 In administering our federal programs, which
16 is the Department of HUD and the Department of Energy
17 Programs specifically under the Department of HUD Program.
18 As we give grants out to counties and cities for different
19 types of projects, house rehabilitation, public
20 facilities, we are charged with the responsibility of
21 administering the grants and assisting those entities
22 that receive grants. One area that is covered extensively
23 under the Department of HUD and covered is the Fair
24 Housing and Equal Opportunity Offices, all the civil
25 rights compliance requirements that pertains to federal

1 legislation. One of our specific concerns right now is
2 the Human Rights Act and I did want to let the committee
3 know which is the reason for my testimony, is that we
4 will be forwarding a copy of the Human Rights Act
5 to the Fair Housing and Equal Opportunity's office within
6 the next week so we can seek their guidance and their
7 comments on compliance of that act with fair housing.

8 The Human Rights Act here provides us with the
9 ground work that says what we are looking at to furthering
10 fair housing through making sure the discrimination does
11 not exist and as such we will be asking for their comments
12 and whether or not the state of North Dakota has an
13 affirmative fair housing policy. We've been asking
14 communities to develop policies of local laws pertaining
15 to affirmative fair housing which has been all we have
16 been doing to this point in time. The biggest problem
17 right now, or the only problem that the Department of HUD
18 has expressed by simply me reading the law over the phone
19 to them and the act over the phone is the fact that
20 they are void of any enforcement mechanism and without
21 an enforcement mechanism how can we assure that action
22 from either the human rights agencies or from any of
23 the other federal laws will in fact be enforced and that's
24 where we are right now and I thought I'd like the
25 committee to know about that.

1 civil rights acts that exist right now that they are
2 required to abide by. Certainly in our administrative
3 manual it's not a document we simply give out and say
4 "read", this is a document we spend a day and a half
5 to and possibly two days going over step by step with
6 each of the counties and cities that apply for the
7 grant so they know what the responsibilities are when
8 they're dealing with contractors and dealing with applicants
9 and when they deal with business they are in fact
10 made aware of the civil rights requirement and go all
11 the way through in a contractual relationship with
12 contractors so that they have affirmative, they are in
13 fact equal opportunity employers and not discriminating
14 and in terms of housing they are not overlooking minority
15 population.

16 They are required to keep data on their
17 population so assistance is provided to low and moderate
18 income persons. If a target area fits into a particular
19 project, they are actually going out and making sure
20 a low and moderate income person, regardless of their
21 race or sex or age, are in fact participating but
22 hopefully they're not neglecting an entire group of
23 people.

24 Q Very good.

25

1 BY MR. SCHNEIDER

EXAMINATION

2 Q Mr. Gray, I would like to make one comment.
3 I think you ought to be congratulated. As near as I
4 can tell, you're the only representative that the state
5 and government is doing in trying to figure out what
6 the human rights is to disseminate to the people and
7 to coordinate it to the law and I think you are to be
8 congratulated for that.

9 A In terms of the Human Rights Act, it was last
10 Tuesday or Wednesday we first became aware there was
11 a human rights act.

12 MR. FEDER: Didn't you say someone from HUD
13 had written you a letter?

14 A A letter was sent to the state urging the
15 state to be like 33 other states in regulation that has
16 been enacted that affirmative fair housing and the state
17 of North Dakota, however the letter didn't -- the letter
18 actually put Bismarck as the state of North Dakota and
19 North Dakota as the capital city, and it was written
20 the other way around. In any case, and the particular
21 letter did urge the state of North Dakota to adopt
22 this legislation.

23 Preliminary discussions at the Department of
24 HUD seemed to result in a decision that possibly it
25 does meet with fair housing requirements. Title VIII of

1 the 1968 Civil Rights Act and the only thing that may be
2 a problem, there simply is no method or enforcement.

3 Q Thank you very much for coming in. It's
4 appreciated.

5 Is there anyone else in the room who has
6 any comments to add to our hearing today or mini forum
7 today?

8 None appearing? On behalf of the committee I will
9 thank all of those who appeared here today to give us
10 the benefit of their wisdom. They are very appreciated.
11 If you have any additional comments you want to make in
12 the form of writing, please send it to either me or
13 Mr. Muldrow. The procedure will be a transcript of this
14 hearing will be prepared and the committee and the staff
15 will draw from the transcript conclusions, recommendations
16 and so on.

17 MR. LARSEN: Mr. Chairman, before Juanita
18 or Rich or Laurie leaves the room, I would just encourage
19 you to show this -- obviously, this bill was passed
20 two years ago and not a great deal of communication
21 within the state government. ~~There was;~~ five years ago,
22 an ad hoc committee that was chaired by Gary Cartiff (sp?)
23 in the old social services agency. Whoever needs to
24 take the leadership in terms of chairing that committee,
25 there were 15 critical agencies represented and

1 that bill did not become law in that legislative session.
2 That was a very instrumental committee in terms of drafting
3 the first piece of legislation that was, I think,
4 Senator Franklin that brought it to the floor of the
5 Senate. That was a Senate bill that year and we as a
6 civil rights commission can do only one piece of
7 the leg work and that result is that this is work
8 that really, in fact, is state government and that I
9 would appeal to you as people who have a sense of
10 justice for state government to try to resurrect this
11 kind of an ad hoc committee.

12 Is Darrell Farland still a member of our
13 committee?

14 MR. SCHNEIDER: He is.

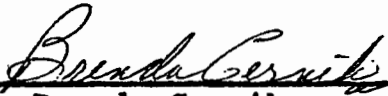
15 MS. LARSEN: Darrell Farland is the director
16 of the Governor's Counsel for Human Resources and part
17 of our committee. But I want to ask that you get together
18 even five or six people informally to look at all
19 the agencies of state governments should be interested
20 in this kind of legislation.

21 MR. FEDER: Thank you. The formal part of
22 the hearing will close.

23 (Whereupon, the above hearing was concluded at
24 3:50 o'clock p.m.)
25

REPORTER'S CERTIFICATE

I, Brenda Cernik, a general shorthand (Stenograph) reporter, 1122½ - 1st Avenue North, Fargo, North Dakota, do hereby certify that the foregoing one hundred ninety-one (191) pages of typewritten material constitute a full, true and correct transcript of my original Stenograph notes, as they purport to contain, of the transcript of proceedings reported by me at the time and place hereinbefore mentioned.



Brenda Cernik
1122½ - 1st Avenue North
Fargo, North Dakota 58108

Dated this 17th day of December, 19 84.