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BEFORE THE  
ARKANSAS ADVISORY COMMITTEE  
TO THE  
U. S. COMMISSION ON CIVIL RIGHTS

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In the Matter of:                   :  
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CIVIL RIGHTS CONCERNS OF       :  
OLDER AMERICANS                   :  
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Holiday Inn-Center City  
617 South Broadway  
Little Rock, Arkansas  
Friday, February 3, 1989

PUBLIC HEARING

This Public Hearing was called to order  
9:40 A.M., on February 3, 1989, pursuant to Notice.  
The public was invited to attend, and members of the  
public were in attendance.

PRESIDING CHAIRPERSON:  
ALAN PATTESON, JR.,  
Arkansas Advisory Committee

PANEL:

WILLIAM MULDROW, Acting Director  
Commission on Civil Rights

EVANGELINE BROWN, Dermott, Arkansas

DR. JOSEPH ROSENZWEIG, Hot Springs, Arkansas

REVEREND RICHARD MILWEE, Little Rock, Arkansas

MORTON GITELMAN, Fort Smith, Arkansas

PENGAD/INDY MUNCIE IN 47302

SF-740

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P R O C E E D I N G S

1  
2 CHAIRMAN PATTESON: The Arkansas  
3 Advisory Committee to the U. S. Commission Civil Rights  
4 shall come to order.

5 I apologize for the wretched weather. I  
6 take no personal responsibility for it. I think we  
7 generally blame that on poor ole God, don't we? I do  
8 apologize for the late start that was necessitated  
9 because of that bad weather.

10 For the benefit of those in our  
11 audience, I would like to introduce myself and my  
12 colleagues. My name is Alan Patteson. I'm the  
13 Chairperson of the Advisory Committee. May I present  
14 to my left, Ms. Evangeline K. Brown of Dermott, a  
15 member of the Committee. To the far right, Dr. Joseph  
16 Rosenzweig from Hot Springs. And next to him, the  
17 Reverend Richard F. Milwee from Little Rock. We're  
18 pleased also to have Mr. William Muldrow who is the  
19 Acting Director of the Central Region Division of the  
20 Commission on Civil Rights, to my immediate right. And  
21 Corine Sanders of the Regional Office who was in the  
22 outer lobby as you were coming in. We are also pleased  
23 to have with us Jim Cory who is the liaison person from  
24 the Office of the Staff Director in Washington, and  
25 he's in the audience.

1 We're here to conduct a community forum  
2 for the purpose of gathering information on the civil  
3 rights concerns of older Americans. Of special concern  
4 will be issues related to discrimination against  
5 persons because of their age. The jurisdiction of the  
6 Commission includes discrimination, or denial of equal  
7 protection of the laws because of race, color,  
8 religion, sex, age, handicap, or national origin, or in  
9 the administration of justice. Information which  
10 relates to the topic of the forum will be especially  
11 helpful to the Advisory Committee.

12 The proceedings of this forum which are  
13 being recorded by a public stenographer will be sent to  
14 the Commission for its advice and consideration.  
15 Information provided may also be used by the Advisory  
16 Committee to plan future activities.

17 At the outset I want to remind everyone  
18 present of the ground rules. This is a public meeting,  
19 open to the media and the general public, but we have a  
20 very full schedule of people who will be making  
21 presentations within the limited time we have available  
22 unless the weather prevents. The time allocated for  
23 each presentation must be strictly adhered to. This  
24 will include a presentation by each participant,  
25 followed by questions from Committee members. To

1 accommodate persons who have not been invited, but who  
2 wish to make statements, we have scheduled an open  
3 period in our agenda during the afternoon session from  
4 4:45 to 5:30 p.m. Anyone wishing to make a statement  
5 during that period should contact a staff member for  
6 scheduling.

7 Written statements may be submitted to  
8 Committee members or to the staff here today. Or, by  
9 mail to the U. S. Commission on Civil Rights, 911  
10 Walnut, Suite 3100, Kansas City, Missouri 64106. And I  
11 will repeat that address if anyone needs it.

12 The record of this meeting will close on  
13 February 17th, 1989. Though some of the statements  
14 made today may be controversial, we want to insure that  
15 all invited guests do not defame or degrade any person  
16 or organization. In order to insure that all aspects  
17 of the issues are represented, knowledgeable persons  
18 with a wide variety of experience and viewpoints have  
19 been invited to share information with us. Any person  
20 or any organization that feels defamed or degraded by  
21 statements made in this proceeding should contact our  
22 staff during the meeting so that we can provide a  
23 chance for public response. Ultimately, such persons  
24 or organizations may file written statements for  
25 inclusion in the proceeding.

1 I urge all persons making presentations  
2 to be judicious in their statements. The Advisory  
3 Committee appreciates the willingness of all  
4 participants to share their views and experiences with  
5 the Committee.

6 Mr. Muldrow, at this time, will share  
7 some opening remarks.

8 MR. MULDROW: I would just like to add a  
9 note of welcome and thanks to both of you despite the  
10 weather difficulties. We're not so concerned that we  
11 don't have a room full of people to hear what's going  
12 on, although that would be highly desirable and  
13 informative for them. We are pleased that we will have  
14 your statements for the record which will then be  
15 summarized later in our report. And I trust that  
16 during the day we will pick up steam as people are able  
17 to travel and get here.

18 This is one means -- these community  
19 forums which are conducted by our Advisory Committees  
20 are one mechanism by which we gather information for  
21 the advice of the Commissioners in Washington and for  
22 the benefit of the public at large and other agencies  
23 which can use it.

24 So, we do these periodically on quite a  
25 wide variety of subjects. The topic for this forum, as

1 you're aware, the civil rights concerns of older  
2 Americans. We are concerned especially, as has been  
3 indicated, with matters which fit within our  
4 jurisdiction involving civil rights, discrimination,  
5 equal opportunity, disparate treatment, as well as  
6 tangential concerns which bear on those subjects. And  
7 we are very pleased to have representatives, I think,  
8 from most of the organizations and agencies in the  
9 city, and really from the state, who are concerned with  
10 this problem.

11 With those opening words of welcome, I  
12 will then turn the meeting back to our Chairperson, Mr.  
13 Alan Patteson so that we can begin the meeting.

14 CHAIRMAN PATTESON: I am very pleased to  
15 welcome as our first presenter, a native of my own home  
16 town, Jonesboro, Mr. Herbert Sanderson. Mr. Sanderson  
17 is Director of the Arkansas Division of Aging and Adult  
18 Services, and will also represent the Governor's Office  
19 today. He will describe, I understand, the objectives  
20 and programs of the Administration with regard to the  
21 topic of the forum, and explain the responsibilities of  
22 his office as they relate to civil rights concerns. He  
23 will include results from a study recently conducted by  
24 his office regarding access to the services. Mr.  
25 Sanderson.

## 1 STATEMENT OF MR. HERBERT SANDERSON:

2 It's good to be here this morning even  
3 though the weather isn't the best in the world. This  
4 is a subject that I think needs airing and  
5 investigation, so I congratulate the Commissioners on  
6 undertaking it.

7 I would like to say that -- I'd like to  
8 extend the welcome of the Governor. I assure you that  
9 he has an interest in this subject and older people.  
10 The Legislature is in session. This is a busy time for  
11 him, although I'm happy that some of the work is  
12 bearing fruit. Probably as of Monday, 250,000 low  
13 income Arkansans will no longer have to pay any income  
14 tax in Arkansas which I think is a bold step for this  
15 state.

16 Before I go into the duties of my agency  
17 and address the topic here, I would like to point out  
18 that Arkansas is really unique when it comes to the  
19 topic of aging and elderly. Eighteen percent of  
20 Arkansas' population is 60 years of age or older.  
21 That's 422,000 residents of this state. We rank very  
22 high nationally in the percent of our population that  
23 is 60-plus. When they did the 1980 census, we were  
24 second. As they have done estimates, a few states are  
25 slightly fractionally ahead of us like Rhode Island and



1 stuff, but the point is that we have a very high  
2 percent in our state. So, therefore, we have a lot of  
3 people that are concerned about the procedures that  
4 will be discussed here today.

5 Additionally, a second factor, one that  
6 is not one that we are proud of, but one, nevertheless,  
7 that we must recognize and be concerned with is that we  
8 rank third in terms of poverty among the elderly in all  
9 states. Over 28 percent in the 1980 census -- over 28  
10 percent of Arkansans that are elderly at or below  
11 poverty. Many people do not understand that that is  
12 roughly living on \$14.00 a day, or less. Only two  
13 states, Alabama and Mississippi, have higher poverty  
14 rates among the elderly than does Arkansas.

15 Another thing that is interesting about  
16 Arkansas is that we have a fairly substantial  
17 immigration of older people into Arkansas. A lot of  
18 older people have found Arkansas to be an attractive  
19 place to retire. We rank probably about 12th or 13th  
20 in terms of the number of older people that move into  
21 Arkansas from another state. And unlike some other  
22 states, with the exception of Florida, this has had a  
23 significant impact on our population makeup. There may  
24 be a lot of older people retiring in Florida -- I mean  
25 California -- but because the state is so large that

1 the impact is not felt like it is here in Arkansas.

2 So, all those three factors, I think, make Arkansas  
3 unique in terms of aging.

4 The responsibility of our office is that  
5 of a state unit on aging, and you may or may not be  
6 aware that there is a state unit on aging in each of  
7 the 50 states and the American possessions. The state  
8 units on aging were created by the Older Americans Act  
9 which is a Federal piece of legislation, and over the  
10 years that has been expanded. We also have programs  
11 that have been assigned to us by the State Legislature  
12 so they have continued to grow.

13 We, basically, are a planning agency and  
14 also a funding agency. Our budget for the division is  
15 in the neighborhood of \$24 million. Most of that money  
16 we fund through local programs known as Area Agencies  
17 on Aging, and we have a presenter from that  
18 organization who will speak later. The most visible  
19 programs that we fund are Senior Citizens Centers. We  
20 have 210 Senior Citizens Centers scattered throughout  
21 Arkansas. We also have a transportation program that  
22 provides services to people, 60 years of age and older.  
23 We have over 300 vans. At the Senior Citizens Centers  
24 one can get a hot meal that is one-third the  
25 recommended dietary allowance. We also provide meals

1 they enter a nursing home. They often are not free to  
2 decide when they want to eat, when they want to get up.  
3 In some cases, even when they want to use the restroom.  
4 It is an important area that requires a lot of  
5 attention, and with the ombudsman, there is somebody  
6 who can represent the patient. The ombudsman is not to  
7 be confused with the arm of State Government that  
8 regulates and licenses nursing homes. That is done by  
9 another agency, and the ombudsman program is separated  
10 from that on purpose, and this person, I think, is a  
11 good advocate for older people and can help make sure  
12 that the civil rights of those people that are in  
13 institutions are extended to them as well as all other  
14 rights. We are looking to expand that program, and I  
15 think the work with this Commission will be timely in  
16 terms of our thinking about that program as we attempt  
17 to expand it.

18 Another program that we operate directly  
19 through our office is The Adult Protective Services  
20 Program. This program is available to anybody over 18  
21 years of age, and by law, certain providers of health  
22 care, individuals in law enforcement, officials are  
23 required to report suspected cases of abuse or neglect  
24 to this office. And we receive over 1,800 referrals to  
25 our adult abuse hotline annually. Many of those turn

1 on a home-delivery basis for those that have a health  
2 need.

3 In relation to that, I think it is  
4 important to recognize that the Older Americans Act  
5 provides that services can be provided to anybody 60  
6 years of age or older. We are prohibited under the Act  
7 from administering a means test. So, theoretically,  
8 anybody that presents themselves for service can  
9 receive that service. However, when the program was  
10 first set up in Arkansas -- this was before my time so  
11 I cannot take the credit for it, but I think it was a  
12 wise move -- the programs were placed largely in  
13 low-income neighborhoods and neighborhoods that had  
14 large concentrations of minority populations. And I  
15 think, therefore, that unlike some other states, we  
16 tend to serve a large number of low-income and minority  
17 people in these programs where they are located and  
18 have a direct impact on who attends those programs.

19 We also operate a nursing home on a  
20 ombudsman program. It is involved in making sure the  
21 rights of individuals that live in institutions are  
22 extended to them. Probably there's not anybody here  
23 that has not read about problems that have existed in  
24 nursing homes, not only in Arkansas, but also  
25 throughout the United States. One gives up a lot when

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1 out to be not substantiated. They're cases of  
2 self-neglect or something like that, but it is unseemly  
3 to review some of the referrals that we get, and in  
4 fact, we have found that even among family members is  
5 where a lot of the abuse and neglect occurs, and I  
6 guess that's an unfortunate reality of our society.

7 Other programs that we work with and  
8 help promote on a more positive note are health  
9 promotion activities. We feel that as we continue to  
10 age in our society that a lot of our future is in our  
11 own hands, in some sense, in how we take care of  
12 ourselves and what we do at younger and older age and  
13 that can have an effect over the long haul. How one  
14 lives at 60 can affect their health and how they live  
15 at 80 and 85. We're trying to do some more in that  
16 area.

17 We do a little research. We have done a  
18 study, a random study of people aged 55 and older in  
19 this state. We're getting ready to publish the second  
20 year data and we hope to continue the study for five  
21 years to track the progress of people over this period.  
22 And it has borne out some results that I think you  
23 know, work with this Commission and our office, things  
24 to be concerned about. Blacks have a lower health  
25 status than their white counterparts, and we have

1 noticed some things that while on their face I don't  
2 think necessarily prove something, but at least point  
3 to further study. For example, blacks typically are  
4 not represented in nursing homes like their white  
5 counterparts, and we need to at least explore and find  
6 an answer to why that is.

7 We do a great deal of planning in our  
8 agency. We try to take information such as this and  
9 forecast into the future to determine what the  
10 services, needs will be five, ten, fifteen years from  
11 now. It's not a good method to look at what is out  
12 there today, the makeup of the population, and try to  
13 plan programs for that five years in the future because  
14 we know that the population and the needs are going to  
15 be different than they are today.

16 In terms of the efforts of this  
17 Committee, I think that this country was founded on the  
18 premise of independence. In terms of the civil rights  
19 issues of the elderly, I think that is an important  
20 thing to consider.

21 Health care is becoming an overriding  
22 issue in this country. We spend more per capita than  
23 any other nation in the United States in terms of  
24 health care. We spend the highest percentage of our  
25 gross national product on health care, and quite

1 frankly, it's going to be more of a problem in the  
2 future as our population ages because older people tend  
3 to use health care services more frequently than any  
4 other segment. It will be a challenge for our country,  
5 and I think there are some definite correlation between  
6 civil rights and the health care system, and people  
7 start talking about who can get health care and who  
8 can't get health care, and how that health care is  
9 delivered. I think it will become more important in  
10 the future and I think there is danger that certain  
11 care -- it's been talked about -- not being provided  
12 strictly based on age. Great Britain already has this.  
13 They don't do dialysis on people above a certain age.  
14 I hope that's not a path that we follow in this country  
15 when we decide how to provide the most health care with  
16 the limited dollars we have.

17 Employment, I think, is another area of  
18 concern in the area of civil rights. We have found  
19 historically that there is a lot of discrimination  
20 against older people in the area of employment.  
21 Fortunately, I think this attitude is changing. I  
22 think it's changing for two reasons. One, people are  
23 becoming more informed about the process of aging. And  
24 I think they've come to realize that we're doing away  
25 with some of the stereotypes that we have had. We used

1 .to see the Geritol commercial type stuff and I'm glad  
2 to see that's being replaced by the commercials by  
3 McDonald's where they're actively seeking out old  
4 workers. Smart companies have looked into the future  
5 and have seen that older people are going to have to  
6 work in this country in the future in order to meet the  
7 labor demands that we will have. There are labor  
8 shortages on the east coast now. In fact, even in  
9 northwest Arkansas we are starting to see labor  
10 shortages and the population and older people need it  
11 and many of those people want and desire to work. But,  
12 there is no doubt in my mind that older people have  
13 been discriminated against in the past. Some of the  
14 policies in terms of the health care that companies  
15 have forces them to make higher premiums for older  
16 people. I think that is an area that should be  
17 examined closely because that gives companies a  
18 disincentive to employ older people and may cause them  
19 to discriminate against those.

20 Finally, I think society as a whole has  
21 had an age attitude. We have lived in more or less a  
22 throw-away society. We use something up and it gets  
23 old and we throw it away. I think to some extent  
24 that's carried over in our attitude toward older  
25 people. I know many professionals that are in their



1 forties and stuff that I think, quite frankly, have  
2 horrible attitudes about aging. They say ageist things  
3 and they don't really realize it and I think that  
4 carries over in to how people are treated. I've seen  
5 people from simple things like standing in the grocery  
6 lines and somebody getting very exasperated and mad at  
7 an older person because they couldn't get their money  
8 and write their check out as fast as somebody younger.  
9 People driving down the street, you know, get upset  
10 with older people who maybe not could see as well.  
11 People that study highways have made recommendations  
12 that we need to do things like make highway signs  
13 larger because we are living in an ageist society and  
14 people cannot see as well in their older years as they  
15 do in their younger years.

16           Anyway, there's a whole series of things  
17 like that that we need to be aware of as a society and  
18 work on and probably start at an earlier age. School  
19 systems have very little, if anything, in the  
20 curriculum about aging, and I think as a result of  
21 that, it tends to produce a negative result as people  
22 grow older.

23           So, I think there are a lot of areas  
24 that could be examined and need to be examined. Some  
25 of them are not overt. Some of them are just subtle

1 things, societal things, and I think all of us working  
2 together with leadership from people like the  
3 Commission can overcome this and make it a better place  
4 to live.

5 At that point I'll conclude my remarks.

6 I don't know if you want to accept questions or go on  
7 to the next presenter.

8 CHAIRMAN PATTESON: Yes, we would  
9 entertain a few minutes for questions.

10 MR. SANDERSON: I would like to leave  
11 with the Commission two prints of books here for  
12 you-all's benefit. One talks about "The Old Alone at  
13 War." It also has some figures in there about  
14 minorities and their income. You'll find out they're  
15 substantially lower than their white counterparts. The  
16 other one is "On the Other Side of Easy Street" which  
17 talks about several myths that apply to the old  
18 population. I'll leave these here for the Commission.

19 CHAIRMAN PATTESON: Doctor?

20 DOCTOR ROSENZWEIG: Would it be an  
21 unfair question to ask you to try to list in order of  
22 their importance various infringements upon the rights  
23 of the aged in terms of what you think should be  
24 attacked first, second, and third?

25 MR. SANDERSON: Well, probably

1 employment first.

2 You know, I cannot present real hard  
3 evidence to back this up, but my experience has been  
4 that this is changing -- it's getting better -- but I  
5 still think that probably employment is an area that  
6 needs to be looked at. We have found so many positive  
7 responses when older people work. They want to work.

8 That's why I think there's a problem  
9 because I know a lot of older people that want to work  
10 that are capable of working that have difficulties  
11 getting employment.

12 I don't know if this is related to that,  
13 and I don't know if this is a civil rights issue as  
14 such, but a lot of people work for companies and have  
15 for a long vested period, and as they approach  
16 retirement, they're terminated or laid off from those  
17 companies, and they're two years shy of having ten  
18 years or 18 years of employment and they're laid off  
19 and not eligible for retirement and pension benefits.  
20 And if that's done systematically, I think that's  
21 something that the Commission ought to be concerned  
22 about.

23 I think the overall issue is employment.

24 The issue of health care, I think, is  
25 one that I would rank second and one that's going to

1 become more important to the future, about who has  
2 access to health care. Of course, there was an  
3 overstated, out-of-context statement taken by Richard  
4 Lamb about old people, move out of the way and die, or  
5 something to that effect. I think that that's  
6 something that -- that discussion is going to be  
7 unavoidable in the future.

8 And as I say, Great Britain does not  
9 extend dialysis to people over 65, and I think we need  
10 to be concerned about that before we walk down a path  
11 where we do select something like that.

12 And then the third thing, I guess, would  
13 just be the overall attitude of society about older  
14 people. Again, this is not, I think, something where  
15 we directly violate people's civil rights, but it's  
16 more subtle than that.

17 I read a study where somebody did a  
18 study of cartoons, children's cartoons, and they found  
19 that it wasn't that older people were treated in a bad  
20 way or that they were discriminated against. It was  
21 just that they were not represented in the cartoons.  
22 They weren't there. And the author of the study felt  
23 like that this sent a message to children that older  
24 people were just not -- didn't have the value because  
25 they weren't represented in the cartoons.

1                   If you look at the issue of agism,  
2 you'll find that that in itself is maybe not a problem.  
3 But, if you look at everything else and put it all  
4 together, it tends to become a problem. Now, there was  
5 an advertisement on for a battery, and it was obviously  
6 aimed at kids. But, the commercial had this line in it  
7 where this guy was playing the guitar or something and  
8 his battery dies, and it says, "It's such a drag to get  
9 old." And it was talking about the battery, but, you  
10 know, you have to wonder how that message translates  
11 into other things. I don't think the authors of that  
12 commercial ever thought about that, but I think when  
13 you put all this stuff together, it does tend to send a  
14 message to the public.

15                   MR. GITELMAN: Let me ask one question.  
16 You said you were a planning and funding agency  
17 primarily. Do you collect any data or do any  
18 monitoring or oversight in terms of the racial makeup  
19 of employment at Senior Citizens Centers and the ratios  
20 of minorities and majority citizens who either work  
21 there or utilize them, and the kind of concerns that,  
22 of course, we're interested in?

23                   MR. SANDERSON: We collect and report  
24 that information on a quarterly basis to a Federal  
25 agency.

1 MR. GITELMAN: I wonder if you could  
2 just sort of supply us with some of those reports if  
3 you could.

4 MR. SANDERSON: I could.

5 MR. GITELMAN: Thank you.

6 CHAIRMAN PATTESON: Would that received  
7 in time to go into this by February 17th so it could go  
8 into the materials?

9 MR. SANDERSON: One thing I'd like to  
10 emphasize, I know you have a speaker here later on  
11 employment. I think one of the things we're going to  
12 have to recognize as a society is that -- in fact, in  
13 our survey, we found that about 20 percent of the  
14 people over 55 that weren't working had a desire to  
15 return to work. However, 75 percent of those people  
16 only wanted to work part-time. And I think that's  
17 something that we're going to have to realize. The  
18 State, for example, you have to have a certain position  
19 number and you can't exceed the number of positions you  
20 have. And, therefore, we cannot job share. We can't  
21 hire two people to work in one position. If you're  
22 only allocated 40 slots, you can only have 40 employees  
23 at any one time. So, therefore, we really prohibit --  
24 you know, the job sharing which obviously the majority  
25 of the people, at least, in Arkansas only want to work

1 part-time and we're prohibited from doing that. Those  
2 are just, you know, the ramifications of how you're  
3 going to have to consider this problem.

4 MR. PATTESON: Two of us don't  
5 understand exactly what you mean by that, the job  
6 sharing.

7 MR. SANDERSON: Okay. Well, basically  
8 older people don't want to work a full 40-hour week,  
9 but they would like if you had -- let's just take a  
10 secretary. Maybe two people want to work only half  
11 time, so you share that job. One person comes in from  
12 8:00 to noon, and then the second person comes in and  
13 sits at the desk and does the same thing the person in  
14 the morning did from 1:00 to 5:00. So, you only have  
15 one fulltime position and two people are splitting that  
16 job. That provides part-time employment to those  
17 people and it meets the needs of the organization.

18 CHAIRMAN PATTESON: I have no problem  
19 with that.

20 MR. SANDERSON: Well, the State is  
21 because we're allocated only -- we can only put one  
22 person in each slot, so we can't do that. A lot of  
23 companies don't want to mess with the paperwork  
24 involved with keeping statistics and paying income tax  
25 and FICA on two people and health insurance on two

1 people. But, if you look at the statistics, something  
2 like 80 percent of the people that are going to be in  
3 the labor force in this country in the year 2000 are  
4 already there. Unless we have a large -- you know,  
5 bring a lot of people in from foreign countries, we're  
6 going to have a problem with our labor. We're going to  
7 have a shortage of labor. Even it's hard to believe  
8 that in Arkansas where we have such high pockets of  
9 unemployment, that eventually will happen in Arkansas.  
10 We're going to have to think about doing things  
11 differently than we have done. We have never lived at  
12 a time in history where we have had the number of older  
13 people that we have right now in the history of this  
14 nation. Things will have to be done differently than  
15 they've been done right now.

16 MR. MULDROW: I just want to ask one  
17 quick question. You outlined a variety of programs and  
18 services that your agency provides. Have you done an  
19 analysis of the participation rates of minority elderly  
20 and white elderly in those programs? If you have, how  
21 do they compare and what might be some of the reasons  
22 for different rates of participation?

23 MR. SANDERSON: The rates, we do  
24 maintain that information. We're trying to maintain  
25 that information on a better basis because we serve,



1 you know, literally hundreds of thousands of people  
2 through various programs. It's difficult to track  
3 down. We're trying to get better data so we'll know  
4 exactly who we are serving in terms of that. But, the  
5 Senior Citizens Center programs, I can present  
6 information to you on that, and I will, to show that we  
7 at least match or exceed the minority population. I  
8 attribute that to where the programs are located. Some  
9 of the in-home programs that we provide have probably a  
10 higher ratio of minorities because their health status  
11 tends to be lower than their white counterparts.  
12 That's directly what we attribute that to and that is  
13 where the whole series of reasons that deal with  
14 education, income, and economic status.

15 MR. MULDROW: Are there differences that  
16 you attribute to discrimination, racial  
17 discrimination, or are they mainly health as you're  
18 depicting here, cultural or social?

19 MR. SANDERSON: Well, we, unlike most  
20 states, I guess, have a good participation rate, I  
21 think, among physicians in terms of providing Medicaid  
22 which tends to be lower income and a lot of minorities  
23 are participating in those programs. The issue about  
24 why there are not as many blacks in terms of percent in  
25 nursing homes, I don't know the answer to that

1 question. I don't know whether that's due to  
2 discrimination or due to social patterns, large  
3 families, or what. I don't know. I couldn't stand  
4 here today and tell you that I have identified any  
5 patterns of discrimination out there. I do know the  
6 health status of blacks are not as good as their white  
7 counterparts. Why that is so probably needs further  
8 investigation.

9 CHAIRMAN PATTESON: We thank you very  
10 much for coming. We would like to thank you again for  
11 your July appearance because it was very instrumental  
12 in helping us design and set up this forum.

13 Our second presenter is the Advocate for  
14 Senior Arkansans. You are Ms. Wood?

15 MS. WOOD: Yes.

16 CHAIRMAN PATTESON: She's with the  
17 Arkansas Attorney General's Office. She will provide  
18 an overview of statutes and their application in  
19 Arkansas related to the civil rights concerns of older  
20 persons. Is that correct? We're very pleased to  
21 welcome you, Ms. Wood. Dina Wood or Dinah Wood?

22 MS. WOOD: Dina.

23 Thank you very much for your invitation  
24 to present to you what we in the Attorney General's  
25 Office and many aging advocates consider a strong

1 concern, and that is the rights of senior citizens, and  
2 in particular, the rights of nursing home residents.

3 I also want to issue a special "Hello"  
4 to Professor Mort Gitelman who as little as a year ago  
5 was teaching me law at the University of Arkansas  
6 School of Law. And I also send greetings from the  
7 Attorney General as well.

8 It may appear that -- you wonder why I'm  
9 coming and talking to you about the rights of nursing  
10 home residents because it's maybe obvious that nursing  
11 home residents have the same rights you and I do and  
12 those are the rights granted by the U. S. Constitution  
13 and State Constitution, and those other rights that  
14 have extended from those documents. But, the problem  
15 with nursing home residents comes where they lack, many  
16 times, the freedom to exercise those rights. Once one  
17 gets into an institutional setting, whether it be  
18 because of physical or mental infirmity, the exercise  
19 of their Constitutional rights becomes much more  
20 restrictive, whether it be because of the institution  
21 itself or because they do not know that their frailness  
22 does not inhibit their rights. They have the rights to  
23 privacy. They have the right to vote. They have the  
24 right to personal cleanliness and good health. But,  
25 either through experience in the institution or through

1 the aging process and them questioning their mental  
2 well-being, they don't exercise their rights.

3 One of the responses to that notice has  
4 been a response to the Federal Government, and that is  
5 through the Federal Residence Rights Provisions. And  
6 those residence rights are set out in the Code of  
7 Federal Regulations, 542, and their rights for skilled  
8 nursing facilities and those are at Section 1121,  
9 subsection K. Then you have rights for residents in  
10 immediate care facilities. Those are in the same  
11 volume, Section 442.311. There are other rights for  
12 the mentally retarded, and there are rights  
13 specifically about personal hygiene. Those are in that  
14 same volume, Section 442.443. It's sad but true that  
15 these rights have to be laid out and explained through  
16 Federal Regulations for the reasons that I just  
17 mentioned, that they aren't able to exercise those  
18 rights.

19 But, let me tell you about Arkansas'  
20 response to noticing the lack of rights of nursing home  
21 residents. And before I go into this, I want to  
22 preface everything I'm saying with there are nursing  
23 homes in Arkansas that are very, very good. My grandma  
24 could be in one of those homes and that's just fine.  
25 But there are nursing homes at the other end of the

1 spectrum. That's what I'm going to tell you about. It  
2 is a minority of the nursing homes, but that minority  
3 still is in charge for the care of many senior  
4 Arkansans and many developmentally disabled Arkansans.

5 In March of 1988, three people from our  
6 office, the Attorney General's Office, went in  
7 undercover in six different nursing homes. I will tell  
8 you about three of those nursing homes and about the  
9 way they deprive their residents from the basic  
10 fundamental Constitutional rights that you and I have.

11 One of our investigators goes into the  
12 nursing -- all of our investigators are well-trained,  
13 by the way, by our Medicaid Fraud Division and by other  
14 sources, so they don't go into this blindly. They've  
15 been trained as investigators. One investigator goes  
16 into a nursing home. She applies for a job at 8:00  
17 that morning. She says she's a babysitter, has no  
18 experience in the field of nursing home care. She  
19 received a call at 11:00 that afternoon and was told to  
20 report for work on the 11:00 to 7:00 shift that  
21 evening. She reported for work and was left to be the  
22 only staff person to care for 42 nursing home  
23 residents. She had received no instructions on how to  
24 manage these residents. She had received no background  
25 information about the facility. She was very ignorant

1 of what was expected of her as a nurses aide, yet she  
2 was left to care for all of these residents.

3 Another situation is similar to that.  
4 One of our investigators said he was a painter. He got  
5 hired the next day, very little training, minimal  
6 training. He got a walk through the facility.

7 Another one of our investigators didn't  
8 give a thorough employment background. I don't  
9 remember specifically what he told them, but he said it  
10 wasn't thorough. They didn't give him a job as a  
11 nurses aide, but they gave him a job in the laundry  
12 room, and a few days after he began the job in the  
13 laundry room, some of the other nurses aide came down  
14 and got him because he's a strong man, and said, "We  
15 need some help with a resident being rowdy." He was  
16 mentally incapacitated. He was not elderly, but yet  
17 they needed some assistance in handling him. So, he  
18 was brought up from the laundry room and after he'd  
19 performed well and helped restrain this one resident,  
20 he was given a job as a nurses aide.

21 In these three facilities that were  
22 investigated, we found in numerous instances, verbal  
23 abuse, in some instances, physical abuse; restraints  
24 both physical and medical restraints that were used on  
25 residents only for convenience. And we found instances

1 where instead of assisting a resident to the bathroom,  
2 they were given a catheter.

3 All of this information that was  
4 gathered from our undercover investigation in March was  
5 compiled and they took it on the road in public  
6 ~~hearings. We told the public what we found and the~~  
7 public was appalled. We were appalled. These homes we  
8 went into were suspect of giving bad care because we  
9 had had repeated complaints through the Medicaid Fraud  
10 Division and through the Office of Longterm Care at the  
11 Department of Human Services. So, they were suspect,  
12 but we wanted to go in and confirm our suspicions and  
13 we got them confirmed.

14 Stemming from that was a legislative  
15 package that the Attorney General and the Department of  
16 Human Services and other groups, other aging advocates,  
17 put together a cooperative effort on. And there was a  
18 special legislative session called in July and we  
19 passed some new laws. One of the laws in particular we  
20 passed is called the Longterm Care Act and it  
21 designates what the rights of Arkansas' nursing home  
22 residents are. Once again, this is sad that we have to  
23 express that they have all the Constitutional rights  
24 that you and I have. To have the right to a safe and  
25 clean environment and they have a right to dignity and

1  
2 respect, to good health care and the right to personal  
3 cleanliness. Time and time again we would find a  
4 resident with a large decubitus ulcer who is lying in  
5 their own feces which is dried and been there for several  
6 hours.

7 So, in October we did some special  
8 assessments of eight nursing homes in our state. Once  
9 again, all these were suspect. Of the eight nursing  
10 homes we went into, two were good. Two had straightened  
11 up their act. One of them I think had changed ownership.  
12 Two were very, very good. I went to the one known as  
13 Fulton County Nursing Home in Salem and it was great.  
14 That is another one of those my grandmother could be in  
15 there and that's fine. We were very, very pleased. The  
16 other one was an Arkadelphia nursing home.

17 But, three of the others were deficient,  
18 mainly through some violations of the some Federal and  
19 State standards of care. Three other were seriously  
20 deficient, especially in the quality of care for those  
21 residents. In one of those nursing homes, one of every  
22 three residents had decubitus ulcers. They shouldn't  
23 have decubitus ulcers. The nursing home we went to in  
24 Salem, in Fulton County, there was one bed sore and they  
25 received that at the hospital. We shouldn't have that  
kind of treatment to nursing home residents.



1                   So, anyway, we got our suspicions once  
2 again confirmed. There are some of those nursing homes  
3 out there that lack the skills, the something, that  
4 requires them to give the quality of care that is  
5 necessary for our aged population. Our response to that,  
6 that's still, you know, the Legislature is in session.  
7 We've worked on another package. We're going to have to  
8 have some major reform on the package we introduced  
9 because it is not going much of anywhere. What we wanted  
10 to do is go and make owners liable for the deficient care  
11 that is offered their residents, whether that deficient  
12 care be the fault of the staff members, the nursing staff  
13 or whatever. Whatever the reason is, we wanted to make  
14 owners responsible. We are having difficulty working at  
15 that. Mainly we didn't have the strong cooperative  
16 effort for various reasons in formulating the  
17 legislation. And I'm not pointing fingers at anybody  
18 because we just didn't have the cooperative effort.  
19 Things were rushed and busy and so now we have got a  
20 legislative package and we're going to have to work on  
21 some.

22                   But, we want to make sure that the reform  
23 starts now and if it hasn't started with the Federal  
24 Regulations and the State standards, then let's start  
25 with the owners and let's hold them liable as well. That  
is our intent behind our next legislative package. We

1 are still working on it, like I said. Hopefully within  
2 the next week or so we will have some substitute or some  
3 tighter proposals to offer the General Assembly.

4 Do you have any questions right now, and I  
5 know I've said quite a few things.

6 MR. GITELMAN: Yeah, I've got one.

7 MS. WOOD: Okay. Good.

8 MR. GITELMAN: I was wondering, I know and  
9 I think most of us are familiar with the great  
10 involvement of your office and the physical conditions  
11 and the medical conditions of nursing homes. Have you  
12 gathered any information at all on the rate at which  
13 nursing home residents have access to absentee ballots  
14 and can exercise their voting rights, whether they are  
15 commonly ignored, whether the County people don't pay any  
16 attention or whether the nursing homes don't make any  
17 effort to see that people can get absentee ballots?

18 MS. WOOD: You are so correct in pointing  
19 out that that is a problem. Nursing home residents don't  
20 vote like they should. It is because of lack of access  
21 to the poles and to the privilege or to the right, I  
22 should say. But, no, we have not done research on it.

23 Actually, when it comes to doing research,  
24 our office doesn't do that. A lot comes across my desk  
25 and a lot comes over Steve Clark's desk. I am constantly

1 getting new information, whether it be from Federal  
2 sources, public interest sources or state.

3 Mainly what I do is just stay apprized of  
4 the issues and learn how to solve problems out there  
5 without going to the additional research end of it. As  
6 we know, it takes a lot of time, a lot of money, to get  
7 facts and figures that can convey the actual status of a  
8 problem out there.

9 I don't have the information, no.

10 MR. GITELMAN: Do you think it might be a  
11 good part of some legislative package that you might come  
12 up with to suggest that nursing home operators may have  
13 some obligations to assist their residents in voting?

14 MS. WOOD: I think that that is a good  
15 idea. However, I think that some feedback might be that  
16 they are interested in this Bill of Rights that we just  
17 passed in July during the special session. They are  
18 guaranteed the right to vote and why expand on it from  
19 there. I can hear that being echoed from other  
20 directions.

21 Then I would agree it is there, but as far  
22 as giving someone the responsibility to make sure that  
23 right exists and is applied, that is what it lacks is,  
24 you know, getting that responsibility and oversight and  
25 implementation aspect. So, it is. It's something that

1 might be considered.

2 MR. GITELMAN: Okay. Thanks.

3 MS. WOOD: Yes.

4 MR. PATTESON: Mine is not a legal  
5 background and my question will reveal that. But when  
6 the Attorney General's office finds a violation, what is  
7 the process? Do you prosecute, and that may be the  
8 terminology, and, if you do, has it ever been done on a  
9 Civil Rights basis?

10 MS. WOOD: It depends on what the  
11 violation is. Within the Attorney General's office we  
12 have a division that we call our Medicaid Fraud Control  
13 Unit. Medicaid Fraud investigates allegations of  
14 criminal abuse and neglect of nursing home residents.

15 If it is criminal and we have a criminal  
16 statute under which we can prosecute, then we can  
17 prosecute on their behalf. If it is an allegation of  
18 neglect that lacks the criminal or the requisite intent,  
19 then the state survey agency or the office of long term  
20 care the ones that investigate that matter, sanction the  
21 nursing home for a violation of a Federal standard or a  
22 State standard of care and then gets the correction  
23 process going.

24 So, we actually have two groups that are  
25 out there trying to correct the standards of care, of

1 long term care, in the Attorney General's Office. And,  
2 always remember that if a nursing home resident is  
3 treated badly they have a private right to action. They  
4 can bring a lawsuit on their behalf. That's another one  
5 of those areas that is not exercised to its fullest  
6 extent. If someone is slapped by a staff member of a  
7 nursing home, they can file a tort suit in their own  
8 behalf for battery if they want. They have that right.

9 But, for several reasons, many times those  
10 suits don't get filed. One of the reasons is fear of  
11 retaliation. Because, if someone is going to slap you  
12 and then you file a lawsuit, are they going to retaliate  
13 against you for taking action against them? It's amazing  
14 how in some facilities that kind of have this gloomy  
15 cloud over them, in some of these facilities there really  
16 is that fear there.

17 I have a personal experience that I can  
18 tell you about that reflects that. I was in the October  
19 group that did the special assessment of the nursing  
20 homes. We went to one, it was Oak Grove nursing home in  
21 Conway. We went there and this lady said, "Psst, come  
22 here." So, I go around the corner and she says, "Look at  
23 these chairs." They are real, nice, pretty chairs in a  
24 new addition they had just built on. I said, you know,  
25 "What's wrong with them? They look good." She said,

1 "Lift up the cushion." You lift the cushion up and there  
2 are huge, dark, dark brown urine stains under the cushion  
3 and they reek of the same odor. And so I said, you know,  
4 "How long has this been going on? What is your name?  
5 Is there anything else that you can tell me about the  
6 facility?" She has already told me one thing and maybe  
7 she can tell me another. She said, "No, I can't tell you  
8 anything." I said, "Why?" She said, "Because my husband  
9 is here and I don't want them to do anything to him."  
10 She wouldn't tell me any more.

11 That is not an isolated case, that sort of  
12 sentiment. So, we don't get as much information as we  
13 think we should.

14 And, also, I will say one thing, is that  
15 the Attorney General's office makes many referrals to the  
16 Office of Long Term Care so we don't get all the  
17 instances or all of the reports of abuse or neglect. The  
18 Office of Long Term Care gets some. But between the two  
19 of us we know that there are still some problems up  
20 there.

21 MR. PATTESON: I remind those of you who  
22 told me last night to be heavy-handed because of the time  
23 that we are running over our time.

24 MR. MULDROW: Can I just ask one short  
25 question?

1 MR. PATTESON: Certainly, yes.

2 MR. MULDROW: Could you help, as a  
3 non-legal person, could you help me sort out a concept  
4 here that has been going around in mind? The  
5 distinction, if any, between what you are talking about,  
6 the basis Constitutional Rights to certain things and the  
7 deficiencies in the provision of those things for older  
8 people and the concept of discrimination against older  
9 people because of their age which results in a  
10 deprivation of these things. Is there any distinction in  
11 your mind between those two concepts?

12 MS. WOOD: Keep me on track if I get off  
13 of your question because I'm going to kind of phrase it  
14 differently.

15 There is not a great degree of distinction  
16 between the two. Where the distinction, or where it  
17 comes in contact with the senior citizens or elderly  
18 people, nursing home residents in particular, is the  
19 exercise of the rights. When you forget what day it is,  
20 you don't know it's November 4th, or 5th, or 6th, and you  
21 don't know you should vote that day. Someone should help  
22 you and remind you. Someone should be responsible.

23 When you are unable to ambulate or when  
24 you needed assistance to the bathroom and you don't get  
25 it, when people know that you need it, then it strips a

1 person of their dignity when they have to lie in their  
2 own excrement for hours.

3 So, it's those types of violations of  
4 civil rights that we are trying to correct in that I  
5 think they are now of issue and that they are on the road  
6 to correction. One thing that Arkansas is very, very  
7 luck about in particular is that we now have Senator  
8 David Prior as the chairman of the Senate Committee on  
9 aging. He has a strong commitment to the elderly and his  
10 commitment from Washington is going to help us in  
11 Arkansas and then filter down, effect us and the rest of  
12 the nation. I think that is something that is very good.

13 So, we should see some movement in the  
14 area of Civil Rights for older Americans and nursing home  
15 residents because he is there also.

16 Now, I don't know if I've answered your  
17 question.

18 MR. MULDROW: That's helpful.

19 MS. WOOD: Is that helpful? Okay. Thank  
20 you very much for you attention.

21 MR. PATTESON: Thank you very much for  
22 being here. I continue to be amazed when I see the  
23 product of Professor Gettleman and I'm sure he takes a  
24 great deal pride as it goes around the State and sees the  
25 people.



1 MS. WOOD: Thank you. One thing I will  
2 provide you with, and I will get it to you real soon, is  
3 a book on residents' rights that outlines a little bit of  
4 case and a lot of theory for non-lawyers. What it is  
5 recommended to do is to teach nursing home owners and  
6 administrators what a resident's rights are and how they  
7 should protect those rights and further them. I will get  
8 the Commission a copy of this publication.

9 MR. PATTESON: Thank you very much.

10 -----

11 MR. PATTESON: Ms. Ann Wasson. Ms. Wasson  
12 is Director of the Arkansas Association of Area Agencies  
13 on aging which provides services to older Americans. She  
14 will provide an explanation of these agencies under the  
15 Older American Act. Is that in the ballpark?

16 MS. WASSON: That's correct. That's real  
17 good.

18 MR. PATTESON: We are very pleased to have  
19 you.

20 -----

21 STATEMENT OF MS. ANN WASSON:

22 Thank you, Mr. Patteson. Mr. Muldrow and  
23 Committee members, thank you for the invitation to speak  
24 with you-all today. Mr. Muldrow asked me to explain what  
25 the association of area agencies on aging does to discuss

1 any civil rights problems that older Arkansans have and  
2 to discuss participation rights by minorities, older  
3 minorities.

4 The association was created to provide a  
5 focal point for state-wide activities, programs and  
6 issues. The eight area agencies on aging in the state  
7 have a regional focus and the association provides the  
8 state-wide focus. The association was incorporated in  
9 1979 but it has existed for at least fourteen years. No  
10 one really knows when, it just sort of grew out of the  
11 necessity to have a state-wide focus. It has only been  
12 staffed for two years and I am privileged to be the  
13 Executive Director. We have one other staff member, the  
14 Editor of our newspaper and I've brought copies there for  
15 all of you.

16 We are a non-profit corporation. We have  
17 a 501C-4 designation. Our budget is composed of dues  
18 from the area agencies on aging, from grants, from  
19 specific projects that are funded by the area agencies  
20 and some co-funding by the Division on Aging. Then we  
21 have a a teeny bit of profit, and I use that term  
22 loosely, from the conferences that we do.

23 Briefly, the association is involved in  
24 advocacy, research, public relations, long range  
25 planning, coalition building and education and training.

1 In terms of advocacy on behalf of older  
2 people, this is actually written into the Older  
3 Americans' Act, which is the primary funding source of  
4 the area agencies on funding. Much of our advocacy  
5 involves reviewing comment of proposed laws and  
6 regulations, state and federal. Right now much of our  
7 time in terms of advocacy is concentrated on the General  
8 Assembly. We have a legislative package which is the  
9 result of over a year's discussion and compromise. We  
10 are part of the ad hoc committee on aging issues, which  
11 was created in 1986 to provide, basically provide one  
12 voice in terms of legislative issues on issues that are  
13 important to the elderly of Arkansas. It represents  
14 about a half a million older people in this state. It is  
15 composed of not only our association but the AARP,  
16 Retired Federal Employees, the Geriatricological Society,  
17 the Governor's Advisory Counsel on Aging, the  
18 Silver-Haired Legislature, ABLE, the Employment Program,  
19 ASOP, which is Arkansas Seniors Organized for Progress,  
20 which concentrates on health issues and the Women's  
21 Conference which does an annual conference. It is the  
22 only state-wide conference that focuses on women's issues  
23 and we always have an area of the concerns of older  
24 women.

25 We also, in terms of advocacy, we have

1 developed what we call our Senior Advocacy Corps. We  
2 have trained a group of older people to be advocates on  
3 behalf of the elderly and they have been active in the  
4 ad hoc committee on aging issues. Very briefly, the  
5 agenda, the Legislative agenda for the ad hoc committee  
6 includes nursing home reform, tax reform, something we  
7 call, sort of a catch all, we call Choices in Long Term  
8 care, which advocates for more alternatives to nursing  
9 homes, such as home care, more home delivered meals, more  
10 transportation. These are these services most needed by  
11 older people.

12 Consumer rights, under that we are looking  
13 at guardianship, expanding Medicaid, health care cost  
14 containment, we are looking at preadmission screening  
15 prior to any health service, primarily nursing homes and  
16 home health care and we are strong backers of the Safety  
17 Belt Law.

18 In terms of research and long range  
19 planning, we do position papers. Long range planning, of  
20 course, provides us with direction and structure. It  
21 gives us a unified focus for the years ahead. We explore  
22 new services, we do needs assessments, we look at gaps or  
23 problems with services and try to find some solutions.

24 In terms of public relations, we do news  
25 releases, our primary effort is the newspaper. It's

1 monthly. It's free. It has a large type so it is easy  
2 for older people to read. The circulation includes  
3 thirty-five thousand older Arkansans so we are giving the  
4 gazette around for its money, except we are free. A  
5 number of regional newspaper were collapsed and we put  
6 ~~all that funding and made one large effort. That's how~~  
7 we have that. We are starting our second year and are  
8 very proud of Aging Arkansas.

9 In terms of coalition building, that  
10 means, primarily means I go to a lot of meetings. It is  
11 basic networking, I'm sure you-all are familiar with that  
12 term. We work with any and all groups that have an  
13 interest in the elderly. The ad hoc committee on aging  
14 issues is a by-product of that. We are co-sponsors of a  
15 number of projects. We do four to six conferences a  
16 year. We were co-sponsors with AARP on the Women's  
17 Financial Management, which is a very well respected  
18 financial management program for older women. The Energy  
19 and Aging consortium is something that we work on with  
20 the utility companies and the Attorney General's Office.  
21 Nursing home reform, we've been active with the Attorney  
22 General's Office on that. Out of that stems the Quality  
23 of Care Task Force which spent about eighteen months  
24 looking at the issues of quality of care in long term  
25 care facilities. The ABLE program, we helped get that

1 rolling and that is operated out of the area agencies on  
2 aging and Phyllis Hanes will tell you more about that  
3 later. The Women's Conference, we've been active in that.  
4 The Center for Creative Aging, Mala Daggett will tell you  
5 more about that later. There is an advantage to speaking  
6 before all these people.

7 Senior Legislature Advocacy Training was  
8 our primary way to train our senior advocates. There are  
9 just a number of, you know, we will co-sponsor most  
10 anything with any group that is interested in working  
11 with the elderly.

12 In terms of education and training, we  
13 work for a wide spectrum on our conferences. We try to  
14 have something not only for the staff of area agencies  
15 and provider agencies, other bureaucrats, we try to have  
16 something for the elderly themselves. The medical  
17 community, we have a broad spectrum with our conferences.

18 Mr. Muldrow asked me also to discuss any  
19 problems that older people have that may interfere with  
20 their Civil Rights, in reviewing the responsibilities of  
21 the Commission on Civil Rights.

22 In terms of voting, on the surface it  
23 seems that we have no problem with older people in terms  
24 of voting because they vote in such huge numbers, larger  
25 than any other age group. They are hindered in voting

1 only by bad health, bad weather, and illiteracy. Well,  
2 we can't do too much about the first two but illiteracy,  
3 I think, is something that keeps older people from voting  
4 in even larger numbers than they do. I don't have any  
5 numbers of black voting rates compared to white voting  
6 rates. I would suspect -- well, I shouldn't even say  
7 that because I really don't have any numbers. I think  
8 traditionally it's probably a little bit lower.

9 In terms of equal protection of the law,  
10 again I don't have any numbers here but I do feel that  
11 there is, as Mr. Sanderson said, there is discrimination  
12 in terms of employment of older people. They have fewer  
13 employment opportunities, fewer promotion opportunities  
14 once they reach a certain age and it is probably  
15 different with every company. There is some forced  
16 retirement, whether it is overt or covert. The options  
17 are not available that older people want or companies are  
18 not offering them. As Mr. Sanderson said, State  
19 employment can't offer the part-time option that so many  
20 older people want. They want to sort of decline the  
21 number of hours that they are working and I feel that we  
22 should be giving them that opportunity.

23 Also, the rights of movement in long term  
24 care facilities, nursing homes, boarding homes, I think  
25 as Dina Wood said, that a number of people are not, just

1 don't have free exercise of their Civil Rights, their  
2 Constitutional rights, as younger people do. I think it  
3 is important that employers learn that older workers are  
4 not to be discriminated against because they are probably  
5 the best workers they will ever have. They have a very  
6 strong work ethic, they are very productive, they are  
7 very loyal, they don't show up late, they don't show up  
8 on drugs or hung over like younger workers occasionally  
9 do. They have a great deal of wisdom that they bring to  
10 a job and they are by far the best workers. I think the  
11 employers who have made an effort to attract older  
12 workers have been very pleased with the success.

13 But again illiteracy, as in voting, is a  
14 major hindrance to employment. I think an issue that I  
15 hope you-all are abreast of is the worker shortage that  
16 we are looking at. It is hitting both coasts and it will  
17 probably arrive within the next ten years in Arkansas.  
18 If we don't use, continue to use, our older workers, we  
19 are going to be, have a very severe problem in terms of  
20 shortage. There is a brain trust of older Arkansans that  
21 we just can't afford to let retire so we have to offer  
22 them the options of part-time employments.

23 In terms of Federal Laws and Regulations  
24 which discriminate against the elderly, I think, I  
25 certainly can't comment on all Federal Statues. I think



1 there was infinite wisdom when the drafter of the Older  
2 Americans Act, again the primary funding source of area  
3 agencies on aging, when that was drafted in the 1960's.  
4 They set up a separate bureaucracy for older people simply  
5 because studies had shown that when older people were,  
6 that older people were discriminated against when they  
7 were thrown in with all age groups. That bureaucracy  
8 consists of a state unit on aging and at least one area  
9 agency on aging in every state. Our state has eight and  
10 they are the same regions as the planning and development  
11 districts. In fact, they were part of the planning and  
12 development districts until about ten years ago.

13 I've worked in the field of aging for  
14 about twelve years and the issue that keeps coming back  
15 to me in terms of problems of the elderly seems to be  
16 illiteracy. I suppose that's just something personal  
17 with me. I feel like that limits older people in the  
18 exercise of their Constitutional Rights in many, many  
19 ways.

20 I do have some good news though. In terms  
21 of participation in minority and services, the services  
22 that are offered in Arkansas, the statistics are very  
23 encouraging. The Title III, which is part of the Older  
24 Americans Act, funded services, these are services such  
25 as congregate meals, or meals of a senior citizens'

1 center, you've probably heard of those, home delivered  
2 meals, transportation, chore services, telephone  
3 reassurance, information, referral, those kinds of  
4 services, are used by minorities in much higher  
5 percentages than whites. Thirteen percent of the  
6 population in Arkansas, older population, is minority.  
7 Yet, their participation rates exceed thirty percent.  
8 For all other services, those funded by other sources,  
9 the use, again the use by minorities exceeds usage by  
10 whites. The only exceptions, we are not quite sure why,  
11 the only exceptions are -- in other words they are less  
12 likely to use than whites -- counselling services,  
13 employment training and education services. So, that  
14 bears some more looking into to.

15 Another interesting thing when I started  
16 looking into minority participation. The decade that we  
17 are about in the middle of right now, 1985, 1990, 1995,  
18 the percentage of minority is decreasing in all regions  
19 of the state even though the actual numbers are  
20 increasing. It's just that there are more older whites  
21 than there are older minorities. There are probably four  
22 reasons for this.

23 First of all, whites simply have a longer  
24 life expectancy.

25 Secondly, beginning in the 1940's, 50's,

1 and 60's, there was a very large out migration of  
2 younger workers and there was a higher percentage of  
3 black younger workers out migrating. Well, in fact,  
4 Arkansas's population declined with the 1910 census and  
5 it wasn't until 1970 that the population began to  
6 increase. Now, some people attach that to the  
7 development of the tractor, there was less need for labor  
8 intensive agriculture. So, a higher percentage, higher  
9 proportion, of blacks out migrated and again we did not  
10 have the influx of Hispanics such as Texas had and some  
11 other states in the Region.

12 The third reason for this is the phenomenon  
13 of aging in place. All that really means is that in your  
14 late forties or early fifties, whatever state you live in  
15 you are probably going to live there for the rest of your  
16 life. You tend to age where you are. So, when blacks  
17 proportionately moved out of the state in the 40's and  
18 '50's or even starting in 1910, the elderly population  
19 that we now have is going to be what was left, which  
20 would be more proportionately higher whites.

21 A fourth reason, although these doesn't  
22 have a great impact statistically, the in migration of  
23 native Northerners is primarily white. Of course, the  
24 northern tier of the state has a great many retirement  
25 communities and those are filled with Northerners. So,

}

1 for those reasons, we've got a declining minority  
2 population.

3 Are there any questions?

4 MR. GITELMAN: It's not a question. I'm  
5 going to suggest perhaps another project for you.

6 MS. WASSON: Oh, good.

7 MR. GITELMAN: You mentioned a great  
8 interest in the job opportunities and discrimination  
9 against elderly. I believe that this coming session of  
10 Congress we are going to see some more activity in  
11 raising the minimum wage. Probably the compromise that  
12 will be entertained is to have an exemption for younger  
13 workers, so-called McDonald's type exemption. In my  
14 opinion that would be reverse discrimination against the  
15 elderly. I think that you, as an umbrella person for  
16 many organizations, ought to pay some attention to that.  
17 It seems to me that those kinds of jobs are very  
18 attractive to very many elderly people.

19 MS. WASSON: Yes, I agree.

20 MR. GITELMAN: Minimum wage jobs. I think  
21 that is a form of discrimination, although it is reverse  
22 discrimination.

23 MS. WASSON: Those kinds of jobs are so  
24 attractive to older people that they would be willing to  
25 take them, probably, at a lower pay scale.

1 MR. GITELMAN: So if they give an  
2 exemption from the minimum wage for youth under eighteen  
3 or seventeen, you ought to ask for the same thing for  
4 those over sixty, equalize it.

5 MS. WASSON: I'm sure that would probably  
6 be -- I'll try it.

7 MR. GITELMAN: Just an idea.

8 MR. ROSENZWEIG. Another idea. We speak  
9 repeatedly of the illiteracy and certainly it exists and  
10 needs to be attacked. But, it almost carries a  
11 connotation that these people became illiterate after  
12 they got old. Actually, we need to start somewhere else.

13 MS. WASSON: Yes.

14 MR. ROSENZWEIG: Now, that's not a problem  
15 for the people working with the aged but it is a problem  
16 for people with the aged. We have the same thing with  
17 the part-time work. Here is a mother who wants to work  
18 some while her child is in school but she has to be home.  
19 Some of these things are not exclusively aging problems.  
20 That's what I was getting at. They have to be attacked  
21 in the aged but they also have to be attacked elsewhere.

22 MS. WASSON: Illiteracy is a particular  
23 problem for older people. It is an insidious kind of  
24 thing. An illiterate person generally, almost always, has  
25 a reader, someone who interprets the written word for

1 them all through their lives. As they grow older and  
2 their reader grows older, they may lose that person  
3 through death or mobility, they move away, children get  
4 tired of being asked to do these things. So, the older  
5 person becomes more isolated.

6 We know that an isolated older person  
7 becomes depressed. Their health deteriorates. There are  
8 a number of health related problems that translate,  
9 frankly, into an expensive person for society to care  
10 for. Whether that care is provided by a family care  
11 giver, whether it is provided by society through Medicaid  
12 reimbursement. They can't access health care like you  
13 and I can. They can't read the medicine bottle. They  
14 can't be a wise consumer because they can't read the door  
15 to door contract where they've been sold a way over  
16 priced vacuum cleaner. Employment, that option is not  
17 open to them. The use of free time, which they have a  
18 lot of, the options there are very diminished. They can't  
19 read. They are stuck with TV and radio. That's it.  
20 Some would say it is not a good use of free time.

21 MS. ROSENZWEIG: I think the voting aspect  
22 falls in the same thing with the literacy, too.

23 MS. WASSON: Yes.

24 MS. ROSENZWEIG: The person who is used to  
25 voting is going to be the one in a nursing home or out

1 who is going to be more determined to vote. So, I think,  
2 I'm not saying it is not a problem. What I am saying is  
3 I think these are problems of lifetime that are now, that  
4 person is in an age group.

5 MS. WASSON: Yes. They are all somewhat  
6 magnified. You know, a thirty year old illiterate has  
7 problems with his job and the role model that he has for  
8 his children is not as good as he would like.

9 But, an older person, they all become  
10 magnified. And frankly, an illiterate older person is  
11 more expensive for society and for his family to care  
12 for. Plus, I mean if we weren't looking at the quality  
13 of their life, that certainly is a consideration that the  
14 area agencies on aging are very concerned about.

15 MR. PATTESON: Does the law setting up the  
16 area agencies require some kind of a community board?

17 MS. WASSON: Oh, yes. They all have  
18 boards and they all have advisory counsels. The advisory  
19 counsels are mandated to have a number, at least half,  
20 participants in services. And they almost all, I can't  
21 think of a single advisory counsel that isn't ninety-five  
22 percent older. So, they are very sensitive to that.

23 MS. BROWN: How do you evaluate your home  
24 care?

25 MS. WASSON: Personal care services or

1 home health services?

2 MS. BROWN: Yes.

3 MS. WASSON: Home health services are  
4 monitored by an R.N. They are based on doctors' orders.  
5 They are, the client is reassessed every six months. The  
6 same thing with personal care, the Aids Act under the  
7 supervision of a trained R.N., and, of course, under a  
8 doctor's orders. You can't just get personal care  
9 because you want it. You have to, your health condition  
10 and your resources have to be such that your family  
11 cannot provide care for you.

12 MS. BROWN: After you get it how is it  
13 evaluated? I mean in our area we do have quite a bit of  
14 home care.

15 MS. WASSON: Uh-huh.

16 MS. BROWN: But so often it isn't home  
17 care. What I meant -- maybe that's not clear.

18 MS. WASSON: I'm not sure I understand  
19 your question. Like evaluated in terms of quality?

20 MS. BROWN: Like those Aids come and they  
21 don't do anything.

22 MS. WASSON: Well, that should be reported  
23 to their supervisor.

24 MS. BROWN: And where is the supervisor?  
25 That's what we can't find.



1 MS. WASSON: Well, the supervisor would be  
2 the R.M. who would work for the home health agency. Or,  
3 if it is personal care, they would be working for -- the  
4 only personal care provided in the state is provided by  
5 the area agencies on aging. Six of them provide that.

6 In the newspaper you've got a standard  
7 house ad that has the toll free numbers of all the area  
8 agencies on aging. If you've got any kind of a problem  
9 relating to older people, I would suggest you call that  
10 toll free number. My number is there, too, and if you  
11 don't get the answer you want I hope you would call me.  
12 We've got some back issues here and I hope you-all can  
13 take them and read them. And if you would like, this is  
14 free, if you would like to be on our mailing list just,  
15 please, there is a little form to fill out there.

16 MR. PATTESON: I'm already on your mailing  
17 list and it is an excellent magazine.

18 MS. WASSON: Good. Thank you.

19 MR. PATTESON: That was my question, how  
20 widely is it distributed?

21 MS. WASSON: Thirty-five thousand people.  
22 Fourteen hundred of those are out of state.

23 MR. PATTESON: It goes to all the news  
24 media in the state?

25 MS. WASSON: Yes.

1 MR. PATTESON: Thank you very much.

2 MS. WASSON: Thank you.

3 -----

4 MR. PATTESON: Phyllis Hayes is the  
5 Director of Abilities Board on Long Experience, ABLE,  
6 which is an organization providing training and  
7 employment service to older persons. It receives both  
8 Federal and State funding. Her remarks will concern  
9 various aspects of employment discrimination, how it is  
10 dealt with in their programs and the effects of such  
11 issues as forced early retirement.

12 Do you want to embellish on that?

13 -----

14 STATEMENT OF MS. PHYLLIS HAYNES:

15 You just did my speech. As a former  
16 school teacher, I know that the adult attention span is  
17 not much longer than that of a junior high school student  
18 so I'm going to force upon you three pieces related to  
19 what I am going to say. While I do that, it's all right  
20 with me if you want to stretch.

21 (Pause)

22 MS. HAYES: Do you want me to go ahead?

23 MR. PATTESON: Yes. Move forward.

24 MS. HAYES: Okay. I took this job as  
25 Director of Arkansas ABLE because I have never, to my

1 knowledge, suffered any personal discrimination. There  
2 may have been some because I am female but I never  
3 suffered from it. And, the thought of my not being given  
4 things or allowed to do things simply as I age was very  
5 appalling to me. So, I decided at the very young of  
6 ~~thirty-four that I was going to do my part to see that no~~  
7 one would ever be forbidden from contributing to this  
8 society simply because they were getting older.

9 Arkansas ABLE was started in 1982. As Ann  
10 Wasson told you, we came about because of a great deal of  
11 work by the area agencies on aging. However, we are not  
12 in any way legally affiliated with the triple A's. We  
13 are an independent, non-profit organization. We have a  
14 fifteen member board of directors who functions as our  
15 legal directors. We work with the area agencies on aging  
16 but we also work with other programs which provide  
17 employment, both to older people specifically, such as  
18 Green Thumb, and AARP, but also to other programs that  
19 provide employment in general such as the Employment  
20 Security Division which is the job service for the State  
21 of Arkansas.

22 We function primarily as a conduit and a  
23 coordinating agency for all of these programs which  
24 provide direct employment services. We do not for the  
25 most part provide any direct services ourselves from our

1 ABLE office. There is one exception, our jobs shop, but  
2 that is simply a program that is run out of our building.  
3 We serve in an advocacy capacity. We serve as a conduit  
4 of information linking up all of the programs to try and  
5 broaden the number of services that are available to  
6 older people seeking jobs and to connect services with  
7 services and to connect people with services. I pride  
8 myself on the fact that ABLE has done an outstanding job  
9 of knowing what is going on in the field of employment  
10 here in the State of Arkansas.

11 Since 1982 nearly five thousand older  
12 people have found jobs through the resources that we work  
13 with. We calculated that over the past two years through  
14 our Federal program JTPA alone, three and a half million  
15 dollars has been added to the economy from the salaries,  
16 the taxes, and the products purchased by those persons  
17 who have gotten jobs through our work.

18 I want to talk for a minute about the  
19 issues facing older Americans and older Arkansans from  
20 the area of employment. As I see them personally, and,  
21 please, know that these are my personal opinions, they do  
22 not reflect the Board of Directors necessarily of  
23 Arkansas ABLE although I am sure that they would not be  
24 embarrassed to hear them. Then I will address briefly  
25 again from my perspective, the problems facing older

1 people in terms of employment as I see them.

2 First of all, as has been alluded, one of  
3 the issues facing older Americans is the fact that they  
4 are living longer and healthier lives. You will hear a  
5 lot today about the issue of health care for older  
6 Americans, older Arkansans, particularly with regard to  
7 long term care. I would like to remind you that  
8 currently only five percent of our older people are in  
9 institutional long care facilities leaving ninety-five  
10 percent of our older population living on their own or  
11 with others in an independent setting. Many of those  
12 people are very health, very coherent, very enthusiastic.  
13 Many of them who retire at sixty-five can expect to live  
14 an additional twenty years. Those are the statistics  
15 these days. Many of them who retire at younger ages can  
16 expect to live twenty to twenty-five years. I understand  
17 that the average age of retirement these days,  
18 particularly from the private sector, is fifty-three. So,  
19 if you project generously, you're looking at a population  
20 that can live, on the average, thirty additional years in  
21 retirement and I think that is a great waste.

22 The second issue I see facing older  
23 Arkansans is the dwindling work force. We hear startling  
24 statistics about not only the fact that there are fewer  
25 younger people being born but that these younger people

1 are coming into the work force without adequate training,  
2 including the ability to read and write and do simple  
3 math. I read many times over that businesses are having  
4 to develop special programs and devote many training  
5 dollars to teaching these employees, these young  
6 employees, how to do simple calculations and how to read  
7 simple forms which can help them do their jobs.

8 So, not only are there fewer of them but  
9 they aren't, as a body, and I don't mean to be against  
10 against younger people, but as a body we are seeing that  
11 many of them are not as well equipped to work.

12 The third issue I see facing older people  
13 is the fact that employment itself as an issue is very  
14 low on the totem pole. I've been in this business for  
15 over six years. I've attended many, many conferences  
16 having to do with aging. I've attended many, many  
17 conferences having to do with employment. The employment  
18 field gives little regard to older people. The aging  
19 field gives little regard to employment. Very few  
20 workshops in either field are devoted specifically to  
21 aging and employment or the older worker. There is one  
22 conference held annually sponsored by the National  
23 Association of State Units on Aging that is targeted  
24 specifically for employment of the older worker and it is  
25 by far the best conference that I've had the privilege of

1 attending.

2 With regard to those three issues, a  
3 healthier older population, a dwindling younger work  
4 force, and the lack of employment as a major issue, I  
5 want to identify a couple of problems with regard to the  
6 civil rights of older Americans seeking employment.

7 The first one is the fact of employment  
8 opportunities. You have mentioned and Ann has mentioned  
9 the McDonald's programs. Well, believe it or not not  
10 only are some older people attracted to these fast food  
11 jobs, but these fast food employers are increasingly  
12 attracted to older workers. McDonald's has a special  
13 program called McMasters to recruit older people. Days  
14 Inn this year is conducting nation wide job fairs to  
15 recruit older people to work in Days Inn Motels. Kelly's  
16 Services has a special program to recruit older people.  
17 Kentucky Friend Chicken has a special program to recruit  
18 older people. There are more, and more, and more fast  
19 food, restaurant, and hotel, and other types of  
20 businesses that are recruiting older people. I think it  
21 is great, but, these are opportunities are primarily, as  
22 you already know, minimum wage. These are fine for some  
23 older people. Many older people do not care that much  
24 about wage. But, it is just a drop in the bucket and it  
25 is just a start.

1                   On the other extreme, you've got very high  
2 income types of jobs that are increasingly being offered  
3 to older people and I'm talking about consulting jobs.  
4 I'm talking about executives, business people and other  
5 folks who have retired and have savvy and have the  
6 resources and the connections to stay in the work force  
7 on a consulting basis. I know many of them, quite a few  
8 of them, are on our Board of Directors.

9                   What concerns me is the middle group of  
10 older people. Those are the folks that are laid off when  
11 a plant closes. They may have been drawing a mighty fine  
12 salary under a union contract. But, when they are laid  
13 off at the age of fifty they are in deep trouble because  
14 they've worked there for thirty years, since they've  
15 gotten out of high school. They've never looked for a  
16 job. They've never filled out a resume or an  
17 application. They've never been trained to do anything  
18 other than what a robotic machine can now do for them.

19                   I'm also concerned about the middle  
20 managers who have been offered an opportunity to retire  
21 with just a plumb, plumb retirement severance and now  
22 that they've been out of the work force for a couple of  
23 years, again never having had to look for a job before,  
24 don't know quite where to start.

25                   I feel that for many older people there



1 are not enough adequate training opportunities. In the  
2 two minutes that I have left for my fifteen minutes, I  
3 want to get on my bandwagon and complain about the  
4 Federal Employment Training Programs, the Job Training  
5 Partnership Act.

6 I do not feel personally that there is  
7 enough opportunity under this program for older people to  
8 be adequately retrained and to take advantage of the  
9 services available through JTPA. A case in point is here  
10 in the State of Arkansas.

11 Arkansas ABLE administers three percent of  
12 the funds that are set aside by Congress to work  
13 specifically with people over the age of fifty-five.  
14 Three percent of the funds in this state amounts to  
15 approximately seven hundred thousand dollars per year. I  
16 would like you to know that as of last year thirty-two  
17 percent of our State's population that was eligible for  
18 JTPA was over the age of fifty-five. Yet, only three  
19 percent of the funds are set aside to work with them.

20 Now, the other funds that are available  
21 through JTPA are supposed to be for anybody regardless of  
22 age. However, because of the mandates to serve youth,  
23 especially youth at risk, very few older people are  
24 served through these programs. I was just looking at  
25 some statistics before I came up here of each of the

1 ten private industry programs in the state who administer  
2 these other programs. Older workers are identified as an  
3 issue, as a special target group.

4 In most of these ten private industry  
5 areas, at least ten percent of the population was an  
6 older worker yet very few of them served more than one  
7 percent of that ten percent. Now, I am lousy at math so I  
8 don't know what that represents overall but it doesn't  
9 sound very good to me.

10 Nationally an advisory counsel has just  
11 recommended, as I understand it, I have not seen it in  
12 print, but I have heard that an advisory counsel has  
13 recommended doing away with the three percent set aside  
14 because it has not been spent in many of the other  
15 states. In Arkansas we have spent nearly a hundred  
16 percent of our funds every year. I think there are  
17 problems with that. I think the problem primarily is  
18 there is not enough adequate preparation to spend these  
19 funds.

20 I know I'm at the end of my time but I  
21 want to add one more comment about lack of training.

22 Going back to the private sector you are  
23 going to see in years to come, as employers get more  
24 desperate, that they are going to recruit and retain more  
25 older people. However, right now there is not adequate

1 training or adequate services in personnel and human  
2 resources departments devoted to working with older  
3 employees either in recruitment or in retaining. There  
4 is not adequate retraining to help them change their  
5 occupations. There is not adequate advancement  
6 opportunities. There is not adequate effort on behalf of  
7 younger managers to work with the special needs as in  
8 flex time and Herb Sanderson already talked about that  
9 with the State of Arkansas.

10 I could go on and on but I'll stop and  
11 I'll answer some questions if you have them.

12 MR. PATTESON: I have one.

13 MS. HAYNES: Yes, sir.

14 MR. PATTESON: Is the average age  
15 fifty-three the retirement in Arkansas, did I understand  
16 you correctly on that?

17 MS. HAYNES: No, sir, not in Arkansas. I  
18 do not know the average age in Arkansas. This is  
19 nationally.

20 MR. PATTESON: I'm seven years late. I  
21 wish you would help me work out how they did it.

22 Are there any other questions? You are a  
23 very effective teacher when the student does not have to  
24 ask any questions. You've done a good job.

25 MS. HAYNES: Thank you.

1 MR. MULDROW: Let me just amply just one  
2 thing. In the area of so-called forced retirement,  
3 that's a term that is being bandied about a lot. Have  
4 you encountered that as a specific problem? Are older  
5 people, is that a specific problem for older people in  
6 Arkansas that you have dealt with and does it effect  
7 elderly minority persons perhaps disproportionately? Are  
8 you familiar with that?

9 MS. HAYNES: Mr. Muldrow, I personally have  
10 not seen a whole lot of evidence or have not talked to a  
11 whole lot of people dealing with forced retirement per se  
12 except if you talk about plant closings and phasing out  
13 of jobs as being forced retirement. That seems to be  
14 more of an issue here in Arkansas where we have had so  
15 many manufacturing jobs than the "the golden hand shake."

16 It seems to me what we find with "the  
17 golden hand shake," which is more of a middle management  
18 kind of forced retirement, is that at the beginning it's  
19 very nice and there is not a whole lot of complaining.  
20 But, as time goes on and retirement sets in, these people  
21 who are still very healthy become bored and become sort  
22 of lost, many of them not feeling quite ready to be out  
23 of the work force.

24 Did I answer you okay?

25 MR. MULDROW: Yes.

1 MR. ROSENZWEIG: In that same line have  
2 you run into any appreciable number of people from the  
3 state program of early retirement?

4 MS. HAYNES: I believe the state program  
5 of early retirement was a one time thing a couple of  
6 years ago. We had a few people come in soon after that  
7 happened looking for assistance. Since then, I really  
8 don't know. They have dwindled in since then.

9 MR. PATTESON: Who deals with the  
10 questions that nobody ever quite says, the younger middle  
11 manager who is intimidated with an older person? I've  
12 bumped into that every once in a while. They are afraid  
13 to hire the older person, they're afraid they won't be  
14 able to manage them. The person who is afraid that if  
15 the older person comes aboard they will raise the cost of  
16 their health insurance, particularly the group life. No  
17 one mentions those comments but they are very real. They  
18 are out there. Does your organization deal with that?

19 MS. HAYNES: We have tried to deal with  
20 that. Now, away from the insurance part for a minute  
21 going back to the younger manager and attitudes and  
22 things like that. We have a quarterly news letter that  
23 we distribute to employers throughout the state  
24 particularly human resource people. In that we try to  
25 address specific articles that have been published in

1 other publications concerning various issues. In how to  
2 manage, supervise, work with older employees, we have  
3 done some programs with Kentucky Friend Chicken around  
4 the state on how younger people can supervise, train and  
5 work with other people.

6 As far as insurance is concerned, it is a  
7 fact of life in many employment insurance programs that  
8 older people are more expensive. It is not true in all  
9 programs. What we try to do is we try to outweigh those  
10 dollar expenses with the other more, what we think are  
11 equally important attributes such as dependability and  
12 attendance and all these other things that I think Ann  
13 already identified.

14 As I understand it, the Washington  
15 Business Group on Health in Washington, D.C. has been  
16 doing some research on health insurance benefits in that  
17 regard.

18 MR. ROSENZWEIG: You used the figure, if I  
19 got it straight, of the funds from the Training Act,  
20 three percent, whereas the older people constituted  
21 twenty-two percent.

22 MS. HAYNES: Thirty-two.

23 MR. ROSENZWEIG: Thirty-two?

24 MS. HAYNES: Yes, sir.

25 MR. ROSENZWEIG: All right. Now, in that

1 thirty-two percent when we use the term "older people",  
2 what age group are we covering?

3 MS. HAYNES: By JTPA law the older  
4 population is fifty-five and older.

5 MR. ROSENZWEIG: And older. For instance,  
6 that includes people ~~seventy, seventy-five, eight,~~  
7 eighty-five?

8 MS. HAYNES: Yes.

9 MR. ROSENZWEIG: So that gives us a little  
10 different, in other words maybe this eighty year old is  
11 not seeking employment. Of that thirty-two percent I'm  
12 not opposing what you said, but of that thirty-two  
13 percent could you tell us what percent you might like to  
14 have working for you?

15 MS. HAYNES: I'm not sure I understand the  
16 question.

17 MR. ROSENZWEIG: Well, the thirty-two  
18 percent encompasses all the people who are between  
19 fifty-five and death?

20 MS. HAYNES: Right.

21 MR. ROSENZWEIG: Of that group what  
22 percent do you think are really viable candidates in the  
23 labor market?

24 MS. HAYNES: I would say, and I have my  
25 data here but I would have to look it up, that viable

1 candidates would be between the ages of fifty-five and  
2 perhaps seventy. But, I would like to say that fifty  
3 percent of the people that we work with are between the  
4 ages of fifty-five and sixty.

5 MR. ROSENZWEIG: Okay.

6 MS. HAYNES: And I can get you those  
7 numbers if you want them.

8 MS. PATTESON: Thank you very much.

9 MS. HAYNES: Thank you. You've been very  
10 good.

11 -----

12 MR. PATTESON: We began about forty  
13 minutes late due to the weather, both the committee  
14 arriving and some of the presenters, too. So, we have  
15 somewhat of a problem. We will never be able to fulfill  
16 the schedule unless we make some changes. What we are  
17 proposing to do is have one more presenter at this time  
18 and then take a fifteen minute break. Instead of an  
19 hour's lunch we are sending out for sandwiches for this  
20 committee and have asked them to bring them in here.

21 So, we then will take, after one more  
22 presenter, we will take a fifteen minute quick lunch and  
23 then try to go right on. I hope that doesn't  
24 inconvenience somebody who has come early as a presenter  
25 but that is the only way that we see that we can fulfill



1 our schedule today.

2 At this time I would like to turn Jean  
3 Turner Carter who is Director of the Legal Services of  
4 Arkansas.

5 Ms. Carter?

6 -----  
7 STATEMENT OF JEAN TURNER CARTER:

8 Thank you. My name is Jean Turner Carter  
9 and I am the Director of Legal Services of Arkansas. We  
10 are a Federally funded agency that provides legal  
11 assistance in Civil matters to low income persons in  
12 twenty-four counties here in Arkansas.

13 In 1988 our program completed two hundred  
14 eighty cases for persons sixty and over. That represents  
15 approximately fifteen percent of our clients last year.  
16 The legal problems that we encounter for the elderly  
17 involve matters of consumer problems, real estate,  
18 housing, utilities, health care, and public benefits.  
19 Most of the classic Civil Rights cases that we've brought  
20 on behalf of clients have involved individuals of all  
21 ages, some being younger individuals middle age and  
22 elderly involved in voting rights, public housing  
23 problems and public benefits cases.

24 The number one problem that we encounter  
25 most of all with elderly persons involve the public

1 benefit programs such as food stamps, Medicaid,  
2 Medicare, Social Security problems. One of the biggest  
3 problems that we encounter among the elderly, and  
4 especially the illiterate elderly, is access to the  
5 public benefit programs. There is an inadequate notice  
6 on the part of the Department of Human Services and the  
7 Social Security Administration to inform people what  
8 benefits and programs they qualify for. In many cases  
9 they are not explained their appeal rights if they are  
10 denied access to these programs. The forms to fill out  
11 and qualify for these programs are quite complex and they  
12 are rarely given an explanation of how to fill out the  
13 forms and paperwork and are rarely given assistance in  
14 filling out these forms. In fact, particularly with the  
15 Social Security Administration becoming more centralized  
16 and having less and less regional offices and a presence  
17 in each county, we find out particularly with the Social  
18 Security programs that people are being talked to over  
19 the telephone, not in person. This is very difficult,  
20 for the elderly and illiterate to get adequate  
21 explanation on how to fill out the paperwork for programs  
22 that they might quality for.

23 Particularlly with these public benefits  
24 programs, there are resource limits that reflect harder  
25 sometimes on the elderly population than they do on

1 younger population, such as most elderly people already  
2 own a home. This can be a barrier, owning a home, to  
3 quality for certain public benefits, particularly food  
4 stamps and Medicaid. Also elderly people usually have a  
5 small savings account. And, if you have a savings  
6 account of over sixteen hundred dollars that makes you  
7 not quality for certain public benefits. Most elderly  
8 people say that these small savings accounts are there  
9 for their burial insurance. This is something that is  
10 really important to them and they want an adequate reserve  
11 in case there is an emergency like their death.

12 Also, elderly persons who are living with  
13 their spouse or other relatives who are necessary for  
14 taking care of them, the fact that they do not have  
15 adequate resources themselves to pay for medical care and  
16 food and everything, the fact that they are living with  
17 relatives who do have income makes them ineligible for  
18 certain public benefit programs.

19 Particularly the food stamp program is not  
20 nearly as available to many elderly people as they are to  
21 younger people. Most elderly people are drawing some  
22 type of old age social security or supplemental income.  
23 The minimum amount which we encounter most of the time is  
24 three hundred and sixty-eight dollars a month is all  
25 these elderly people are living on. At that level of

1 income, they can only qualify for ten dollars a month  
2 food stamps. And with the high cost of utilities, most of  
3 their social security benefits going to utilities, only  
4 ten dollars to get additional money to buy food is very  
5 inadequate.

6 ~~Mixed up with the public benefit program~~  
7 is the problem also of access to medical care. Many  
8 elderly people do not have health insurance or, if they  
9 did have health insurance at one time, as their health  
10 care needs increase, the premiums of that health  
11 insurance becomes increasingly more expensive and they do  
12 not have the income to continue paying for that. Then  
13 the only other recourse is the Medicaid or the Medicare  
14 Programs. Many elderly people on Social Security  
15 Benefits, while they qualify for the Medicare Program,  
16 their income is too high to pay for the Medicaid Program  
17 that requires a very low income level so that only part of  
18 their health care needs are taken care of.

19 Another problem we are suffering here in  
20 Arkansas is the problem with rural health care, the  
21 number of hospitals closing. So, even if they may have  
22 Medicaid or Medicaid cards, they don't have adequate  
23 transportation to see doctors at hospitals. We are  
24 increasingly seeing a problem with people between, it's  
25 hard to decide how you define elderly but particularly

1 people who fall in this age group of getting close of  
2 advancing age, between the ages of fifty to sixty-five,  
3 who are not qualified for the Medicaid or the Medicare  
4 program. If someone is not ready for Social Security  
5 benefits yet due to old age but between age fifty and  
6 sixty-five become disabled due to health care problems,  
7 there is a two year waiting period before these persons  
8 can qualify for Medicare benefits. So, their  
9 disabilities have placed them on Social Security  
10 disability but they may not qualify for any Medicare or  
11 Medicaid benefits. So, their health problems get more  
12 and more severe because they are not getting adequate  
13 attention.

14 As I was stating, many elderly people own  
15 their own homes but as they get older and they are on a  
16 very low income, these houses get in a very bad state of  
17 disrepair and become extremely dilapidated so that their  
18 housing becomes extremely substandard. But, at the same  
19 time, because they do own their home they do not qualify  
20 for public housing that should be more adequate, better  
21 standard housing, because they have the resource of their  
22 own home. Many people are forced in a situation where  
23 they continue to live in their homes though it is  
24 inadequate because they don't have many other choices.

25 Another problem we have encountered is the

1 adult protective services system. This involves elderly  
2 persons who are abused by family members or others. One  
3 of the biggest problems that we see that deprives people  
4 of their Civil Rights under the current Arkansas Statutes  
5 is that when someone complaints that they are being  
6 abused and neglected, the Department of Human Services,  
7 under their Adult Protective Services, gains a  
8 guardianship either through the state or through some  
9 other relative. This usually results in this abused  
10 elderly person being put in a nursing home. So, the  
11 situation becomes that they are being abused. Then they  
12 are held prisoner in nursing homes because they can't  
13 live in their homes or their relatives' home and the  
14 abuser is out running around free in Society. So this  
15 was something that was formed. The Legislation here in  
16 Arkansas, supposedly to protect the elderly person and  
17 sometimes it requires that they become a prisoner and  
18 don't get to live free in society. There are not that  
19 many penalties against the abuser.

20 Another problem that we see, particularly  
21 with the benefit programs, is that the elderly, is that  
22 their brothers and sisters are also aging and then they  
23 die. Then they jointly inherit property. Having some  
24 interest in those kinds of resources makes them  
25 ineligible for Federal and State public benefit programs.

1 As I said, while these are not necessarily  
2 your classic civil rights actions, particularly we don't  
3 handle the employment discrimination type case because  
4 these are fee generating and handled by private  
5 attorneys, this is just a smattering of the kinds of  
6 ~~problems that we encounter most with our elderly clients.~~  
7

8 Unfortunately here in Arkansas, as well,  
9 all over the south, that being poor and elderly in very  
10 rural area becomes quite devastating because of the lack  
11 of transportation, lack on adequate housing, lack of  
12 health care. Unfortunately for this elderly population,  
13 the prospects are rather grim that even employment  
14 improves, even if economic development of an area  
15 improves, these are people not likely to be working and  
16 so that the situation is rather grim.

17 MR. PATTESON: Would you define your  
18 clientele? Who do you serve? Who are you allowed to  
19 serve?

20 MS. CARTER: These are persons that fall  
21 below the Federal poverty guidelines.

22 MR. PATTESON: All right.

23 MS. MULDROW: Could you address the  
24 general problem of availability of legal services for  
25 elderly people?

MS. CARTER: Well, the availability is

1 there in that legal services programs are located, there  
2 are seven different legal services programs in the state  
3 of Arkansas. We have offices all over the state. Most  
4 of our programs like mine interview at least several  
5 times per month in the county seats of these counties.

6 So, the availability of legal services is  
7 out there to represent poor people. But, access due to  
8 transportation programs or it becomes a real problem that  
9 they may not be able to get transportation to a local  
10 courthouse or public building to interview with  
11 paralegals. Particularly, we feel like an under served  
12 population is the nursing home population because these  
13 people don't have their own private telephones, they are  
14 institutionalized because of whatever health or mental  
15 impairments they may. They are not likely to pick up the  
16 telephone and call one of our offices. So, there are  
17 certain problems with the institutionalized nursing home  
18 residents being able to get assistance to call about  
19 legal problems. Most of the time if a problem comes up  
20 they are more likely to report this to someone there at  
21 the nursing home who occasionally do call us and we will  
22 make visits to nursing homes. But, particularly, if it  
23 is a problem with the nursing home, they may not report  
24 it to anybody.

25 MR. MULDROW: So, in other words, if they



1 are infirmed or disabled and immobile for some reason,  
2 that places them at a special disadvantage in getting  
3 legal services that they might need?

4 MS. CARTER: That's correct.

5 MR. MULDROW: What about in other areas,  
6 like you handle mostly civil or all together civil cases?  
7 What about in other areas, in criminal matters, is that  
8 strictly a matter of private litigation? Do they have to  
9 hire an attorney to have their legal needs met or are  
10 there state services provided?

11 MS. CARTER: There are many counties that  
12 have public defender programs. Usually the large  
13 counties, like Pulaski County, that has a Public Defender  
14 program. But out there in the rural part of the state it  
15 is pretty much Court appointed attorneys who serve on  
16 some kind of rotating basis. So, it will depend entirely  
17 whether they are appointed an attorney with the crime  
18 that they have been charged with, whether it is a felony  
19 or not.

20 MR. ROSENZWEIG: What about the person who  
21 needs your services knowing that such services are  
22 available? In other words I'm thinking out in the  
23 boondocks particularly. Who is there to advertise your  
24 availability?

25 MS. CARTER: Our availability is usually

1 advertised through local telephone books. We have ads in  
2 local yellow pages, we send our schedule of where we are  
3 interviewing each month to local newspapers and the local  
4 newspapers are very good about including us in sort of  
5 their community bulletin boards about the areas where we  
6 are interviewing. And many places around the county in  
7 addition to courthouses, Department of Human Services, we  
8 have posters around so we do try to make efforts  
9 continuously to educate the public about the availability  
10 of legal assistance.

11 MR. ROSENZWEIG: I don't mean to be  
12 critical. A lot of these people deliver. Do the lawyers  
13 in Dumas tell the person who comes in from the rural  
14 areas there, "Well, no, I can't handle this but Legal  
15 Services will do it for you"?

16 MS. CARTER: I was going to say that we  
17 have a combination of delivery systems of both staff  
18 attorneys and paralegals that work for us as well as  
19 private attorneys who volunteer their time. We make an  
20 effort to try to recruit for our pro bono programs, our  
21 partially compensated programs, private attorneys in  
22 every county and every city that we serve. So, that is  
23 quite likely, for someone to see an attorney in Dumas and  
24 that, because of their affiliation with us as pro bono  
25 attorneys, they inform that person to come apply for our

1 services.

2 MR. PATTESON: Don't you generally have  
3 attorneys in there on each of your area boards, too?

4 MS. CARTER: That's correct. We are a  
5 non-profit corporation that has a Board of Directors that  
6 is made up of sixty percent private attorneys from our  
7 service area and thirty, one third percent eligible  
8 clients.

9 MS. BROWN: And maybe it would help them  
10 to know that you have client representatives on the  
11 board, too.

12 MS. CARTER: That's correct. Ms. Brown is  
13 one of our Board of Directors.

14 MS. BROWN: And we often go to these  
15 people, sometime we have it over the radio, and most of  
16 the time they will come in and ask what we can do. We  
17 find out their problem and then I refer them to Legal  
18 Services.

19 MR. PATTESON: Are there any further  
20 questions.

21 (No response)

22 MR. PATTESON: Thank you very much.

23 MS. CARTER: Thank you.

24

25 MR. PATTESON: All right. Mr. Holliday,

1 may we call on you at this time? Our lunch has not been  
2 delivered yet so we are going to squeeze you in if you  
3 are willing.

4 MR. HOLLIDAY: Yes.

5 ---

6 STATEMENT BY MR. SCOTT HOLLIDAY:

7 My name is Scott Holliday and I'm the  
8 Executive Director of Arkansas Seniors Organized for  
9 Progress. We are a non-profit membership organization  
10 for senior citizens. We have members throughout the  
11 State, both household members or individuals and also we  
12 have about twenty-seven organizations that are affiliated  
13 with us.

14 Our purpose is to provide a voice for  
15 senior citizens in Arkansas on public policy issues,  
16 especially we have chosen to focus on issues related to  
17 quality affordable health care for the elderly. Most of  
18 the issues we work on are related to Medicare, Medicaid,  
19 long term care and we are beginning to work on problems  
20 related to Medicare supplemental insurance that people  
21 buy from private insurance company.

22 I would say that normally we don't think  
23 of ourselves as working on Civil Rights issues like age  
24 discrimination but when I sat down and thought about it  
25 it seemed to me like the most important thing that I

1 could talk to you about, and something that some of the  
2 other people that I saw on the agenda probably brought up  
3 also, is the concern that our members and other elderly  
4 people have about nursing homes and the restrictions that  
5 that places on people. I think that that is one of the  
6 great concerns that older people have, being forced to go  
7 into a nursing home, because it does mean that their life  
8 will be greatly restricted. It means a loss of privacy  
9 and freedom.

10 Now, in our organization we don't claim to  
11 be experts on nursing home problems and we haven't done  
12 much advocacy work with individuals in nursing homes.  
13 Rather, we try to represent the concerns of our members  
14 who feel that this is a very great problem. We try to  
15 work on public policy solutions that will help to reduce  
16 this problem.

17 Part of the problem is that nursing homes  
18 often restrain people in different ways because it makes  
19 it easier to take care of them. Some of the things that  
20 we've heard about include physical restraints and use of  
21 drugs to keep, basically to keep people under control,  
22 and also use of catheters and diapers to make it easier  
23 to take care of people. Then there are other problems just  
24 like the general lack of privacy people have in their  
25 rooms. Some of these kinds of problems are being dealt

1 with now because of the new Federal nursing home reform  
2 legislation and also because of some of the related  
3 nursing home reform legislation that was passed last  
4 summer by the Arkansas Legislature. Right now the  
5 Attorney General and some of the Legislators and a lot of  
6 the senior organizations are working to get additional  
7 laws passed that will further help to protect people in  
8 nursing homes.

9 Another big part of the problem is that  
10 many people are placed in nursing homes because that is  
11 the only means that we have for taking care of them.  
12 From all reports, a big percentage of the people in the  
13 nursing homes in Arkansas are people who don't need  
14 medical treatment so much as they need help taking care  
15 of themselves with activities of daily living like  
16 eating, bathing, dressing, moving about and using the  
17 toilet. Because they have those kinds of impairments,  
18 they need assistance. In many cases the only way they  
19 can get the level of assistance that they need is by  
20 going into a nursing home. We think that that is really  
21 a problem and that we need to get some changes in our  
22 system that will enable people to get assistance without  
23 necessarily having to go into a nursing home because that  
24 is the most restrictive environment.

25 So, we are anxious to see moves away from

1 this kind of a medical model of dealing with people who  
2 need long term care and try to find, have more of a  
3 continuum of care where you would have, try to find the  
4 least restrictive alternative that could be used to help  
5 people.

6 A big part of the problem that results in  
7 so many people going into nursing homes who might be  
8 cared for other ways is Federal legislation and  
9 regulations for the Medicaid Program, which is one of the  
10 big funders, the biggest funder really, of nursing home  
11 care for people who have become impoverished or were  
12 impoverished to start with. Many people, the only way  
13 they can get help with long term care is by entering a  
14 nursing home and exhausting their own resources and then  
15 receiving Medicaid assistance.

16 The State of Arkansas, the Department of  
17 Human Services, seems to be working hard to try to come  
18 up with alternatives to be able to care for people in  
19 their homes or in alternative types of housing. But, the  
20 legislation, the law, the Medicaid laws and regulations,  
21 make it very difficult for them to do that, to provide  
22 those alternatives. So, for people who are below the  
23 poverty level, they have more flexibility as far as  
24 providing alternative care, than for people who are above  
25 the poverty level. For those people above the poverty

1 level, in many cases the only way they can qualify for  
2 Medicaid assistance is by going into the nursing home,  
3 exhausting their own resources and then finally, after  
4 becoming impoverished, qualifying for Medicaid.

5 So, we feel like that is one of the big  
6 ~~problems that faces elderly people in our society and we~~  
7 do think that a big part of the problem does relate to  
8 Federal policies that we would like to see changed. I  
9 think that's the most important message that we would  
10 like to give to you. Some of the kinds of alternatives  
11 that we think need to be more available to people to help  
12 to keep them out of nursing homes, and also because they  
13 are, in many cases, more cost effective, would be things  
14 like home health care, personal care for people in the  
15 home, home delivered meals, adult daycare and then  
16 alternative housing like residential care facilities.

17 Thank you. I'll be happy to answer any  
18 questions if there are any.

19 MR. PATTESON: I would be interested in  
20 your telling us something about your membership. Is it a  
21 cross section of the population?

22 MR. HOLLIDAY: I would say that it is to  
23 some extent. I would say that our members come primarily  
24 from several different groups. Quite a few of them were  
25 recruited through senior citizens centers and they tend



1 to be probably the lower income segment of the senior  
2 population. We also have recruited a lot of our members  
3 through mailing lists from union retiree groups and a lot  
4 of them tend to be, while they are working class they  
5 tend to be, some of them are fairly affluent, especially  
6 by Arkansas standards, because a lot of them worked up  
7 North. They have a pension. They have company provided  
8 health benefits that supplement their Medicare. So, a  
9 lot of them by Arkansas senior citizens standards are  
10 fairly affluent. And I would say those are the two major  
11 groups.

12 MR. PATTESON: What about minority  
13 representation?

14 MR. HOLLIDAY: We figure we have about  
15 thirty percent black members and I think that black  
16 elderly people, I think certainly tend to be lower  
17 income. I think it is easy to understand why because  
18 they didn't have the same job opportunities open to them  
19 when they were working. In some cases they may have been  
20 working in employment that wasn't covered by Social  
21 Security.

22 So, quite naturally, their retirements  
23 benefits are much lower than for a lot of other people.  
24 I think that is certainly a problem. I think that that  
25 is something that could be addressed better by the

1 Federal government. It's not that they didn't work  
2 during their working lives. A lot of them had to work  
3 very hard just to keep bread on the table. But because  
4 they were discriminated against and had low earnings or  
5 worked in employment like household work or farm labor  
6 that may not have been covered, they pay for it now or  
7 they aren't paid for it now.

8 MS. BROWN: How does one become a member of  
9 your organization?

10 MR. HOLLIDAY: Well, we have membership  
11 dues and they are quite low so that low income people can  
12 afford to joint. It is two dollars a year for an  
13 individual or three dollars for a couple.

14 MS. BROWN: Suppose he isn't able to pay  
15 that, would he get your services?

16 MR. HOLLIDAY: Pardon?

17 MS. BROWN: If he weren't able to pay that  
18 would an older person get your services?

19 MR. HOLLIDAY: Well, we try to give  
20 advice and information to people whether they are members  
21 are not. We are nor primarily a service organization but  
22 rather more of an advocacy group.

23 But, we do try to dispense advice such as  
24 we can and give referrals and on some types of problems  
25 we are anxious to talk to people so that we can get a

1 better understanding ourselves of what public policy  
2 problems there are that we need to be addressing.

3 So, in that sense, we are anxious to talk  
4 to people about the problems that they have and try to  
5 help them.

6 Thank you.

7 MR. PATTESON: Thank you very much,  
8 particularly for letting us run you in when maybe you  
9 weren't expected it.

10 MR. HOLLIDAY: That's fine. I was hoping  
11 I could get to talk to you as soon as possible.

12 Thank you.

13 MR. PATTESON: Fine. Thank you.

14 -----

15 MR. PATTESON: Twenty minutes.

16 (Whereupon the hearing was recessed at  
17 12:00 noon for lunch to reconvene at 12:20.)

18 ---

1 CHAIRMAN PATTESON: If we start with you  
2 right now, we would be exactly on schedule.

3 MR. LANTRIP: Well, I'm ready.

4 CHAIRMAN PATTESON: We have one person  
5 that was confused this morning as coming back later.

6 MR. LANTRIP: Do I sit right here?

7 CHAIRMAN PATTESON: Why don't you stand  
8 if you don't mind. I think we would hear you better.  
9 We are very pleased to have you back. We felt you  
10 contributed a great deal in our earlier meeting last  
11 July.

12 MR. LANTRIP: Well, I tried to find my  
13 notes so I could see what I did say, but I couldn't  
14 find them, so this has to be original.

15 - - - - -

16 STATEMENT OF MR. DEWEY LANTRIP:

17 What I'd like to do is just tell you  
18 briefly that I am not as active as I once was in the  
19 many different -- well, like the AARP organizations --  
20 because like the President of the United States, you  
21 serve so much and you're automatically out. So, I'm  
22 automatically out but I hold four different active  
23 roles now such as State Medical Board, the Governor's  
24 Advisory Council on Aging, the task force that the  
25 medical system -- several hospitals and another one or

1 two that I don't need to mention.

2 But, I have a written prepared statement  
3 which I will give you along with a couple of pieces of  
4 material that verify what I'm saying, some of it.

5 First, I'd just like to comment about  
6 ~~single women. That is, single, divorced, widowed and~~  
7 so forth. Some of them still are discriminated against  
8 in the field of finance such as getting loans and  
9 credit cards and that kind of thing. Now, I know it's  
10 somebody else's role to tell you that, but I try to be  
11 active in many different things that I keep up. I know  
12 this is still happening to some degree.

13 The second thing is about older persons  
14 in general. As I observed it, they're discriminated  
15 against in, oh, at least three things that I'll  
16 mention. One of them, of course, is still jobs. Now,  
17 every company would say, "We don't discriminate against  
18 them." But, in reality, they don't want older people  
19 without even interviewing them, so to speak. It's not  
20 on the basis that they're worn out or not good. It's  
21 just that they look at the application and at 67 years  
22 old they know they don't want them.

23 Another thing is automobile insurance.  
24 When an older person loses the right to drive an  
25 automobile if they have driven a lot or if they live

1 alone and they've got no way to go except their own  
2 transportation, they've lost like a right arm. Some  
3 insurance companies still slip a letter to you when you  
4 get 75 years old and say, "We no longer can renew your  
5 policy." I think I have a letter in my possession that  
6 spells that out in writing, that that's the reason.  
7 Most of them won't give that as the reason, of course.

8 A third thing is Medicare supplements,  
9 the rates of Medicare supplements that private  
10 companies offer. They're age-rated. Now, our  
11 Insurance Commission is trying to do something about  
12 that, but it has not been done yet. It probably will.  
13 I have, which I will give you a copy of, a sheet that  
14 shows some supplements that are age-rated. It's a  
15 sheet that we make up in talking with older people all  
16 over the state. Even though I'm past 80, I'm still  
17 active in talking to groups. I spoke to a group of 150  
18 people day before yesterday about Medicare catastrophic  
19 health insurance. And we still have age-rated  
20 supplements.

21 Another thing is the simple refusal to  
22 insure -- that is, to sell a supplement to somebody  
23 that's 75 years old. One of our very best companies  
24 here in Arkansas still has that policy. We've talked  
25 to them about it, but they have not yet done anything

1 about it. And they have very good reasons and all, but  
2 that is age discrimination if you will not offer a  
3 policy to a person and that's the only reason. Now, it  
4 is Blue Cross-Blue Shield here in Arkansas. I have a  
5 brochure here from Blue Cross-Blue Shield in Oklahoma  
6 that does what I think, and many other people think,  
7 that ours ought to do. They do offer a supplement to  
8 people over 75 -- that's the way this bracket is -- at  
9 a higher rate. It's about \$7.00 or \$8.00 a month  
10 higher. I would be willing to compromise on that if  
11 they would be willing to offer that to them.

12 Then, another thing that relates to  
13 Medicare. The family doctor receives a lower rate  
14 compared to specialists. Well, you say, "Of course,  
15 he's not entitled to as much." I'm talking about a  
16 doctor who does a cataract operation in 30 minutes  
17 getting like \$1,000.00 or \$1,200.00, and a family  
18 doctor who sees you 15 to 20 minutes getting \$13.40.  
19 To me, that's discrimination beyond any line of  
20 reasoning. The specialists under the Medicare system  
21 are treated far more fairly in my opinion than the  
22 primary or the family doctor.

23 This is my last item. The Medicare  
24 Catastrophic Health Act of 1988 discriminates against  
25 the middle income group on the surtax payment plan.

1 You may or may not know anything about that. But I  
2 have a sheet that discusses that, the benefits as well  
3 as the surtax and all. For example, 55 percent of the  
4 people on Medicare, the participants, will not pay any  
5 surtax. The sons and daughters of this 55 percent will  
6 pay nothing, you know, to the support of their parents  
7 because all of the costs of the catastrophic health  
8 care plan is paid by the participants. So, the sons  
9 and daughters of those who pay nothing, they also pay  
10 nothing. The Federal Government pays nothing. Then 45  
11 percent of the participants who file a Federal Income  
12 Tax pay all of the surtax, and that surtax will range  
13 from \$22.50 to \$800.00 depending on the Federal income,  
14 that tax that they pay for the year 1989. That's what  
15 it will range from. And, in the year 1993, it ranges  
16 from \$42.00 to \$1,050.00. That's per person. Now, you  
17 see, a man and wife who happens to be very fortunate  
18 and pays about \$7,000.00 Federal Income Tax will pay  
19 \$2,100.00. That's the maximum for a surtax.  
20 Fifty-five percent of the people pay nothing, the sons  
21 and daughters pay nothing, the Federal Government pays  
22 nothing. I think they discriminated against the middle  
23 income plan, particularly when our good friend Sam  
24 Walton, our No. 1 millionaire, will pay exactly the  
25 same thing that I'll pay. I think that's



1 discrimination. Thank you very much. Do you want to  
2 call for questions?

3 CHAIRMAN PATTESON: Yes, we do if you're  
4 willing to answer them, sir. Are there any questions?

5 DOCTOR ROSENZWEIG: I was paying  
6 interest all along but we had talked just before about  
7 the surtax because I happen to be one of those 45  
8 percent.

9 MR. LANTRIP: I started to point you out  
10 but I was afraid it would be offensive because I didn't  
11 know you.

12 DOCTOR ROSENZWEIG: Is it my  
13 understanding that AARP supported this, the passing of  
14 this law?

15 MR. LANTRIP: So did Senators Pryor and  
16 Bumpers. None of them knew --

17 DOCTOR ROSENZWEIG: (Interposing) what  
18 was going on --

19 MR. LANTRIP: (Continuing) what was  
20 coming. You see, a small committee of some kind worked  
21 out the details, and when the details came out, that's  
22 the way it was. I think all of them wish they had read  
23 the details.

24 DOCTOR ROSENZWEIG: Is there anything  
25 being done to rectify it?

1 MR. LANTRIP: There is a big clamor of  
2 people writing their Congressmen from all over the  
3 nation trying to get something done. Nobody seems to  
4 be able to put forward what can be done. What should  
5 be done, the Federal Government should pay a part for  
6 the 55 percent who are not paying. It's that simple  
7 but the man who said, "Read my lips," they ain't going  
8 to let you pay anything. The Federal Government won't  
9 pay anything.

10 MR. MULDROW: Who are the 55 percent?

11 MR. LANTRIP: That's the people who do  
12 not pay a Federal Income Tax.

13 MR. MULDROW: Oh, I see, because their  
14 income is too low.

15 MR. LANTRIP: And you see, they've  
16 saddled it right on the middle ones. That's my cry.  
17 Sam Walton and Jack Stammons, they'll pay the same  
18 thing that I pay. That's grossly unfair to turn all  
19 these others and the Federal Government not share, and  
20 then let off the upper rich, and the middle income  
21 group carries it. Anybody else?

22 MR. MILWEE: I don't have a question but  
23 I'd like to thank you for your very succinct and and  
24 lucid presentation.

25 MR. LANTRIP: Thank you.

1 MR. MULDROW: We have some more  
2 questions for you if you don't mind. Would you  
3 elaborate a little bit on the credit card item against  
4 single women? We're talking about older Americans now.  
5 Are you saying that single women who are older are  
6 discriminated against in this area?

7 MR. LANTRIP: Any woman who is single,  
8 yes, or widowed or divorced, any age. But, yes, older  
9 women, too. My daughter doesn't fall in the older  
10 group, but she had a \$25,000.00-a-year job, or  
11 something in that class a couple of years ago, and in  
12 spite of that, she couldn't get a credit card from J.  
13 C. Penney's, and that's a very responsible company, you  
14 know.

15 MR. MULDROW: So, are you saying there  
16 is a disparate effect on older women because more of  
17 them are single and it's especially hard for older  
18 women?

19 MR. LANTRIP: No. I'm saying all women  
20 which includes older women.

21 MR. MULDROW: What about the automobile  
22 insurance? Could you elaborate on that?

23 MR. LANTRIP: One of my Sunday School  
24 class members -- most people that know me know that I  
25 am the type of volunteer that it doesn't make any

1 difference whether it's water in the cellar which I'm  
2 helping a woman get her cellar fixed, or selling an old  
3 used car which I did for an 86-year old woman, or  
4 whether it's what's wrong with my insurance company  
5 that they cancel me because I'm 75 years old, and the  
6 letter implied exactly that. So, I took it up with the  
7 Commission, the Insurance Commission, and all that  
8 stuff. We never did get anything but a series of  
9 runarounds, and that was inadequate for me. Nobody  
10 really tried to defend themselves. They did, you know,  
11 cut him off. That's all there was to it. You've got  
12 to have insurance.

13 MR. MULDROW: The cutoff flatly based on  
14 age rather than --

15 MR. LANTRIP: (Interposing) Oh,  
16 absolutely --

17 MR. MULDROW: (Continuing) driving risk?

18 MR. LANTRIP: Oh, absolutely. He hadn't  
19 had any wrecks, any tickets or anything in five, six,  
20 or seven years. One letter that we got in pursuing all  
21 of this did say that because he was 75, they would not  
22 renew the policy and they had the right according to  
23 our own Insurance Commission to do that.

24 MR. MULDROW: Was that a nationwide  
25 policy for insurance coverage?

1 MR. LANTRIP: It was not an Arkansas  
2 company. It was sold all over the United States, or at  
3 least the company was somewhere other than Arkansas.

4 MR. MULDROW: We've been hearing from  
5 several people about discrimination in employment for  
6 older people. Could you give us your views  
7 specifically on the problems there?

8 MR. LANTRIP: I don't have an exact case  
9 that I could say for sure. I helped a woman find  
10 employment recently, and she was a very attractive,  
11 young-looking. Anybody should have been proud if they  
12 saw her to have her in their office. She didn't look  
13 her 65. But as soon as she made application, the job  
14 was filled. Now, I don't know whether the job was  
15 filled or not, you know, but I went down and got  
16 information from this place. It was the University out  
17 here. I'm not accusing anybody, but it does look  
18 suspicious that the day I was in there there was an  
19 opening and I got the application, gave it to her, and  
20 there might have been one day in between, and it was  
21 filled.

22 MR. MULDROW: You see this as a  
23 widespread problem. You're illustrating an incident  
24 that happened.

25 MR. LANTRIP: Oh, I believe it is

1       widespread, yes. I don't believe people want to employ  
2       older people from the things and the contacts and the  
3       talk that I have picked up. I've made no attempt,  
4       since that's not in my field, to pick up specific  
5       cases. I can give you case after case in the health  
6       care field, anything you want to know of discrimination  
7       or what-not.

8                   CHAIRMAN PATTESON: Why do you think  
9       that's true? That people are reluctant to hire older  
10      people.

11                   MR. LANTRIP: Because you mention old  
12      people, they're dead and gone. You see, no one believe  
13      25 years ago that a guy like me at age 70 would start a  
14      new career of being an Advocate for the older people in  
15      the State of Arkansas. I've devoted the last ten years  
16      fulltime at no pay whatsoever. I get a little fee from  
17      the medical board. That's all I get. It's changed but  
18      the concept hasn't changed with a lot of people. They  
19      think they're still no good, old and worn out, and  
20      should go sit down and watch TV. That's what the  
21      problem is. And it will be a lot of time before we can  
22      change the image that there's a lot of good in older  
23      people. That's right, but they put all of the good and  
24      bad in one class and don't want them.

25                   MR. MULDROW: So, you're saying it's

1 really a form of prejudice or bias against older people  
2 simply based upon their age?

3 MR. LANTRIP: Oh, sure. That's just  
4 the way they see it. That's the way it has been in the  
5 past, and to them it just still is. They don't want to  
6 fool with them.

7 MR. MULDROW: What about this Medicare  
8 supplement you mentioned, refusal to sell to a person a  
9 supplement. Could you explain that a little more?

10 MR. LANTRIP: Yeah. I phoned Blue  
11 Cross-Blue Shield and I've talked with them, and  
12 they've got a good logical reason. You see, why didn't  
13 the person take the insurance when he was 65 or 68?  
14 They could get it then. But, after they get to be 75,  
15 they can no longer get it. And the reason being, they  
16 had a chance and they didn't take it, so we don't want  
17 them now because they're going into the stage of being  
18 in the hospital a lot, medical bills a lot. That's  
19 logical from a business standpoint, but my only point  
20 is it's still discrimination. And I think that they  
21 should work it out like Oklahoma has and charge an  
22 extra fee, even though that's discrimination, that's  
23 not as bad a discrimination as it is not offering them  
24 a supplement. I spoke to the Insurance Commission when  
25 they had that public hearing, and my good friends from

1 Blue Cross-Blue Shield were there and I told them ahead  
2 of time what I was going to say because I had worked  
3 with them, and the president of Blue Cross-Blue Shield  
4 is instrumental in me getting the nicest plaque of all  
5 the plaques that I've got, you know. I feel good  
6 toward them. I'm not complaining except it is  
7 discrimination. And, yes, I'd like for you-all to  
8 help, or anybody else so that older people, 75 and  
9 older, could buy what I think is the best policy, best  
10 supplement that they could buy, but they can't buy it.

11 MR. MULDROW: When you met with our  
12 Committee before to bring us some preliminary  
13 information on this subject, you mentioned an  
14 exploitation of older people by insurance companies who  
15 mislead them about the coverage that they need and  
16 provide them with duplicate policies at a great  
17 expense, and this sort of thing. Could you elaborate  
18 on that a bit?

19 MR. LANTRIP: We still have some of  
20 that. We'll always have until they outlaw door-to-door  
21 sales on insurance with older people. It ought to be  
22 against the law. Or, especially on the first time they  
23 go talk to them. Or, there ought to be a cosigner, or  
24 a neighbor or something because an insurance person  
25 that's trained, he's got all the ideas and methods and



1 psychology of selling an older person. They're as  
2 defenseless as can be. And the little thing that some  
3 of them do which is horrible, they'll sell them a  
4 policy and six months to a year later, they'll come  
5 back and, "That policy is a good policy, but look what  
6 I've got. I've got a better one." And, of course, it  
7 will cost a little bit more, but the point is, he will  
8 get 35 percent of the first year's premium because it's  
9 a new policy, and he'll sell her a different one, and  
10 then he'll come back and sell her another different  
11 one. And what happens several times -- we know of  
12 cases and I've personally been involved where there was  
13 a waiting period and he didn't adequately explain that.  
14 He just hoped the woman wouldn't get sick during that  
15 three-month waiting period, and this woman was not  
16 covered. But, he had quit the company and the company  
17 didn't know where he was. That's just all there was to  
18 it, and that kind of stuff is discrimination. It's  
19 criminally wrong.

20 MR. MULDROW: When you find situations  
21 like this and others that you have mentioned, what do  
22 you advise these people to do in terms of remedy for  
23 wrongs which they have experienced?

24 MR. LANTRIP: Most of the people that  
25 get rooked like that, giving them advice wouldn't do

1 them any good. If you can talk to one of their  
2 neighbors that's interested that comes over when I'm  
3 talking to them, they can do more for them than the  
4 person can because the person is not the kind of person  
5 that would do anything anyway. But, I would advise  
6 them and the neighbor -- this is usually the way it  
7 works -- to --

8 MR. MULDROW: (Interposing) Is there a  
9 remedy for the situation you've just described? Is  
10 that illegal? I mean, is there a legal remedy?

11 MR. LANTRIP: I don't know. I don't  
12 think so. I think they are on thin ice legally, but,  
13 you know, all they got to do is get them a lawyer and  
14 -- that woman, she wanted it and she asked for it, on  
15 and on and on. You couldn't prove anything in court.  
16 They just quit and move somewhere else, the shyster  
17 type.

18 MR. MULDROW: One more question. Do you  
19 remember the Advisory Council on Aging to the Governor?

20 MR. LANTRIP: Yes. I remember.

21 MR. MULDROW: What is the function of  
22 that council? What impact or what has resulted from  
23 their activities?

24 MR. LANTRIP: Well, I've been on that, I  
25 think, eight or nine years, and during this time the

1 role has been the same, to advise the Governor on  
2 anything relating to programs for older people. The  
3 Advisory Council on Aging is the name of it. Now, for  
4 example, one thing that grew out of that council, about  
5 seven years ago they set up a committee to try to get  
6 more doctors to take Medicare assignments, and nobody  
7 wanted to get involved in that. You know, doctors are  
8 gods of their own. You know, you don't go talk to  
9 doctors. I hope you-all don't think I'm derogatory of  
10 anybody by my descriptions, but I'm trying to make it  
11 clear how I see things. Doctors don't want you to  
12 bother them or tell them anything. They're private  
13 individuals and they'll do whatever they want to.  
14 That's the concept and has been for years and years.  
15 My father-in-law was a doctor and you could say  
16 anything you wanted to like that and it would still fit  
17 him. A good man but he was the most independent person  
18 you could imagine. Well, to make a long story short,  
19 as a result of working on that committee, I found  
20 myself chairman of that committee and we did miracles  
21 in about a three or four-year period of time. And then  
22 I became a member of the State Legislative Committee in  
23 that time and still pursued it. In 1985, for example,  
24 Arkansas stood eighth in the nation, and that's  
25 something for Arkansas to stand that high on the

1 percent of doctors who took Medicare assignments for  
2 all the older people. That's just one example.

3 MR. MULDROW: Do you advise the Governor  
4 or suggest or make recommendations to the Governor --

5 MR. LANTRIP: (Interposing) Absolutely.

6 MR. MULDROW: Regarding exploitation and  
7 insurance area or employment discrimination, have you  
8 made any recommendations in those areas?

9 MR. LANTRIP: You see, that would be an  
10 area which he would refer to the Insurance Commission,  
11 and we wouldn't make usually much reference. We'd just  
12 do a light touch of it because we would make that kind  
13 of a recommendation to the Insurance Commission, and he  
14 would ask us to because that's his program. Yes, we  
15 have on taxes and various other things. Whatever comes  
16 up, transportation, taxes, insurance, these senior  
17 centers and work that the area agencies on aging do.  
18 Please don't think that I want to talk. I'm talking  
19 because you asked me to, but I'd be glad to.

20 MR. MILWEE: I want to ask another  
21 question. Mr. Lantrip, I did think of a question I  
22 would like to ask. Going back to the question of  
23 credit, women's credit that you mentioned, would it be  
24 a typical situation for a woman who has a credit that's  
25 shared presumably with her husband -- when she's

1 widowed, would the credit card company or a store or  
2 something just cancel her credit? Is that the sort of  
3 thing you're alluding to?

4 MR. LANTRIP: No. I really don't know  
5 of instances like that. But, my opinion would be they  
6 would take a look at her now. She's different. Has  
7 she lost her provider or has she lost her source of  
8 income which might not be true at all. See, she may be  
9 making more money than him. But that's the way they  
10 would look at it.

11 MR. MILWEE: But it would be more  
12 difficult if she were applying for credit in the first  
13 place?

14 MR. LANTRIP: Oh, yeah. Yeah. That's  
15 where it would be the roughest.

16 DOCTOR ROSENZWEIG: In reference to your  
17 reference to the doctors, these people up here know I  
18 happen to be a physician. I was talking beforehand  
19 about the lack of a better -- and we discussed some  
20 other aspects, but I was pleasantly surprised to hear  
21 you say that now only seven percent do not accept  
22 Medicare because I'm out of practice now. But, people  
23 would call me, "I can't get a doctor." I didn't  
24 elaborate to them, but someone said, "Well, he doesn't  
25 take Medicare and that's all I have." I am agreeing

1 with you in saying you make me feel better by saying  
2 it's down to seven percent.

3 MR. LANTRIP: I should, you know,  
4 apologize to you. I don't think I said a thing that I  
5 wouldn't have said if I'd known you.

6 DOCTOR ROSENZWEIG: What I was basically  
7 doing was complimenting you.

8 MR. LANTRIP: I understand and I accept  
9 it. I do not believe I said only seven percent.  
10 Someone else may have said that, and that may be true  
11 because since 1985 we have gone up considerably in the  
12 percent of doctors. At that time only 40 percent, 45  
13 percent in 1985 took assignment for everybody. Now, in  
14 the State of Oklahoma, 12 percent did that same year,  
15 and Texas 20 percent, and Mississippi and Tennessee, 21  
16 or 26. But, we stood at 45. Missouri was the closest  
17 state to us with 30 percent. We were real proud of  
18 what we had done, working with the doctors. I myself  
19 appeared before all of the committees that I could  
20 appear, State committees, Pulaski County Doctors  
21 Medical Society, and so forth. Any other questions?

22 CHAIRMAN PATTESON: I won't permit  
23 another question. They don't have time. They told me  
24 to be heavyhanded.

25 MR. LANTRIP: Can I give you this?

1 CHAIRMAN PATTESON: Yes, sir, Mr.  
2 Lantrip.

3 MR. LANTRIP: It's an outline of what I  
4 said and the two attachments.

5 CHAIRMAN PATTESON: Thank you very much.

6 - - - - -  
7 CHAIRMAN PATTESON: Are you by any  
8 chance, Mr. Von Egmond? Mr. Von Egmond is a member of  
9 the AARP Legislative Committee that develops  
10 legislative initiatives and proposals related to older  
11 persons, is that correct?

12 MR. VON EGMOND: That's right.

13 CHAIRMAN PATTESON: Welcome.

14 - - - - -  
15 STATEMENT OF MR. ELMER VON EGMOND;

16 MR. VON EGMOND: Thank you. I  
17 appreciate the opportunity to be here. I'm always a  
18 little hesitant to follow Dewey. He's very articulate  
19 and has been most well-recognized in the community for  
20 his service and is not only a very active volunteer,  
21 he's also a pretty good recruiter because the reason  
22 that I'm doing what I'm doing is his fault.

23 I'll start by just talking a little bit  
24 about the State Legislative Committee of which I'm  
25 chairman, and what our activities are. We basically

1 are a legislative advocate for the older citizens  
2 primarily, also handicapped. We basically are the  
3 policy-making group, and then we invite others to help  
4 in efforts to promote the kinds of legislative  
5 priorities that we suggest, and to help us with that.  
6 We have members of the Committee living in different  
7 parts of the state, so we fairly well represent all  
8 different sections of Arkansas and different parts of  
9 the area.

10 One of our primary -- kind of continuing  
11 concerns and legislative priorities has been to try to  
12 improve the quality of life and care for our older  
13 citizens, particularly in longterm care facilities, and  
14 basically nursing homes. We have been quite successful  
15 in obtaining legislation toward that end, and in recent  
16 months, particularly during last summer's session of  
17 the legislature, -- we just had another session of the  
18 Committee where we were quite unsuccessful in getting  
19 some further legislation passed, but we are hopeful  
20 that that will eventually turn around during this  
21 present legislative session.

22 Then, of course, there are obvious kinds  
23 abuses and forms of discrimination that older citizens  
24 experience in a nursing home, but I think the kind I'd  
25 like to mention a little bit about are more subtle.



1 Any institution begins to develop procedures which are  
2 for the convenience of the staff and the institution  
3 and not so much for the benefit of the person. If  
4 you've had any experience in a hospital, they don't  
5 come around and wake you up at 6:00 in the morning to  
6 give you a shot because they think you need it at 6:00  
7 in the morning for your health. It's the nurses going  
8 off the shift that need to do that. And in nursing  
9 homes it's the same kind of thing. People are often  
10 restricted about the times they can receive visitors,  
11 when they can go to eat, and do other kinds of  
12 activities, and often that's kind of an unnecessary and  
13 arbitrary limitation on their activities and on their  
14 routine.

15 In talking with people who live in  
16 nursing homes -- in fact, I was reading recently -- I  
17 guess it was in the newspaper -- a survey where the  
18 experts said they were quite surprised over the kinds  
19 of issues that nursing home residents were making as  
20 their primary concern, and it wasn't the big things  
21 that they were thinking about. It was more just the  
22 smaller items of feeling restricted and put down and  
23 limited in their range of activities.

24 The other area of concern that we are  
25 working with is that of guardianship and

1 conservatorship. I see Dina Wood from the Attorney  
2 General's Office has been here already and she may have  
3 addressed that area. We're working with the Attorney  
4 General's Office on that in proposing legislation to  
5 try to strengthen that area in terms of the protection  
6 of the rights of the elderly or handicapped people who  
7 have trouble taking care of those affairs or seem to  
8 need more supervision.

9 It is, of course, another great concern  
10 that once a person is declared incompetent, it's an  
11 extremely arduous and expensive process to get that  
12 turned around. I think this is a more important issue  
13 now because we're finding in many instances that the  
14 people can become confused, have difficulty managing  
15 their affairs, and this can be because of  
16 over-medication, or wrong medication. It can be  
17 because of some infection. It can be because of  
18 malnutrition. When these conditions are corrected, the  
19 person, you know, is no longer confused and unable to  
20 manage their affairs, and often they find that they  
21 have been placed in a nursing home and after a couple  
22 of months -- or in the hospital -- they come back out  
23 and they're ready to go back home. Meanwhile, somebody  
24 has sold their home and they have transferred their  
25 assets to other areas, and in a sense, have made it

1 impossible for them to retain their position and their  
2 possessions. So, we're also very concerned about that.  
3 We also see abuses of that in terms of relatives who  
4 basically are anxious to gain control of the property.  
5 We see it also in terms of just the courts not paying a  
6 particular great deal of attention to that area, and  
7 not following up in the supervision of their wards, so  
8 that a great deal of abuses can occur. And the major  
9 reporting that is required has to do with the assets or  
10 property of the person, rather than with the health and  
11 welfare and care of the person himself. So, they pay  
12 more attention to the dollar than they do to the  
13 individual in cases like that.

14 Another area that we're concerned about  
15 is the lack of information that patients receive on  
16 discharge from the hospital about what the charges have  
17 been in the hospital. We have passed legislation,  
18 assisted in passing legislation in the session two  
19 years ago of our State Legislature which required  
20 hospitals to provide an itemized statement to the  
21 patient on discharge if they so request. We found a  
22 great deal of resistance to that. Hospitals don't like  
23 to do that, and they have intimidated some people who  
24 have asked for it. They say it's coming and it doesn't  
25 show up, and all kinds of funny things like that

1 happen. Where the itemized bills have been received,  
2 we've often seen many errors. Not only are people  
3 shocked to find out what they're being charged for some  
4 commonplace item, but also that they're being charged  
5 rather large amounts of money for things they didn't  
6 use and didn't have. In fact, I was just at a meeting  
7 last night and a lady mentioned her husband had a  
8 cataract operation, and here they had a fairly large  
9 charge on the bill for a prosthesis. She said, "Well,  
10 we went to the doctor and he said, 'What's this?' We  
11 didn't have any prosthesis." So, it turned out, no,  
12 that was an erroneous charge. Another friend of mine  
13 mentioned that his mother had been in the hospital here  
14 in town for ten days and he took a look at the bill and  
15 found out that they were charged for a wheelchair for  
16 all the days she was in the hospital, and here the lady  
17 was lying flat on her back in bed. She didn't have  
18 much need for a wheelchair. So, those are some of the  
19 kinds of things that we are finding out.

20 A common attitude, unfortunately, is --  
21 and my wife received this. I had some surgery done  
22 about a year ago, and I said to my wife, "Be sure and  
23 ask for that itemized bill." And she did, and when it  
24 didn't come, she called back to the hospital and the  
25 clerk basically said, "Well, what do you care? Your

1 insurance is taking care of it." And, of course, the  
2 next step is, "Who do you think is paying the insurance  
3 bill?" The rates are determined by their costs. So,  
4 that's the kind of an attitude that I think contributes  
5 to that and feeds into the unwillingness of hospitals  
6 to disclose this kind of information.

7 Another area we're working on along the  
8 same line is to obtain a bill to require health care  
9 service agencies like hospitals, nursing homes, home  
10 health care agencies to systematically report cost  
11 data. The intent is that planning agencies need that  
12 information in order to do a sensible job. Right now  
13 they don't have that kind of information. The other  
14 is, of course, that it's very difficult for people to  
15 be informed, consumers of health care, if they have no  
16 idea what charges are levied or what kind of procedure  
17 or what kind of service by what kind of agency. And so  
18 these are some things that we are very interested in.

19 Right now, the State is all excited, or  
20 at least the legislatures are, about the Governor's tax  
21 program. And he has gone forward, and I think the  
22 House passed yesterday afternoon a bill which did  
23 provide some income tax relief for lower income  
24 citizens, and levied an extra fee on corporations and  
25 individuals that are making over \$100,000 a year. I

1 don't think Dewey or I have to worry too much about  
2 that. The income tax provision, I think, will be  
3 helpful to some of our older citizens, and particularly  
4 those that are at the lower end of the income bracket.

5 The next step, of course, is that he is  
~~6 pushing for a sales tax. AARP's official policy is we~~  
7 don't like a sales tax. We said that we would --  
8 because of the need for educational improvement in the  
9 State, we would go along with the sales tax if it would  
10 not apply to food, and that's kind of what our present  
11 stance is. We're holding with that for now to see what  
12 it would be. We think that it's very unfair in a state  
13 like Arkansas. My comment always is that if you're a  
14 chicken or a hog or a horse or a cow, you can eat all  
15 you want without having to pay the tax on it. But if  
16 you're a human, you can't do that. So, this is one  
17 area in which the farm area has obtained a lot of, you  
18 know, items that are excused from paying the sales tax  
19 as well as other areas in business and industry, and we  
20 think some of those should be assessed before we go on  
21 and charge more for food and clothing and things that  
22 are necessities.

23 We also know this affects the elderly  
24 folks more so than others because they spend a greater  
25 percentage of their income on such items, and generally

1 have a more restrictive income in retirement. And a  
2 greater portion of that income they receive does go to  
3 the areas of food, shelter, and utilities and things of  
4 that nature.

5 We do have in this State also a rather  
6 large number of the elderly who are at or below poverty  
7 level. The last census report indicated 28 percent of  
8 the folks over 65 in this State at or below the poverty  
9 level. So, a sales tax would certainly affect those  
10 people adversely, so we hope that there will be a way  
11 for us to achieve those goals that I would strongly  
12 agree with and think they're very important in terms of  
13 improving our educational system, but I don't think the  
14 poor people ought to be the ones that pay the major  
15 part of the bill.

16 I guess you've already touched on -- you  
17 were just talking with Mr. Lantrip about the problem of  
18 particularly single people and elderly people getting  
19 credit. One of the things that has been helpful in  
20 that regard is that the AARP has recently organized a  
21 credit union. And it is now possible to make  
22 application for a credit card based not just on your  
23 income, but they take a look at your total financial  
24 standing, and it's often possible to qualify for a  
25 credit card, a Visa card, where a bank would not do

1 that because of your income level. They don't look at  
2 the fact that you own a home or have the resources  
3 available, or what your record is.

4 CHAIRMAN PATTESON: May I ask a question  
5 on that specific thing? Who issues the Visa card? Is  
6 it issued in the State of Arkansas, and what is the  
7 rate of interest?

8 MR. VON EGMOND: It is issued in the  
9 State of Arkansas. The rate of interest now, I think,  
10 is at fourteen and a half.

11 CHAIRMAN PATTESON: Is it issued --

12 MR. VON EGMOND: (Interposing) From our  
13 National Headquarters in Washington.

14 CHAIRMAN PATTESON: By AARP?

15 MR. VON EGMOND: By AARP.

16 CHAIRMAN PATTESON: But at the local --

17 MR. VON EGMOND: (Interposing) People  
18 can apply for that from Arkansas.

19 CHAIRMAN PATTESON: At Arkansas' rate of  
20 interest?

21 MR. VON EGMOND: No, at that rate of  
22 interest.

23 CHAIRMAN PATTESON: What is that,  
24 fourteen and a half?

25 MR. VON EGMOND: Yeah.



1 CHAIRMAN PATTESON: Okay. Thank you.

2 MR. MULDROW: I'm interested in this  
3 -- the abuses you mentioned in the guardianship, and I  
4 wonder what initiatives you might have taken. I see a  
5 lot of potential for abuse there of older people,  
6 perhaps physically and financially, and  
7 psychologically. Are there statutes which limit or  
8 remedy these kinds -- or prevent these kinds of abuses?  
9 Have you taken any initiatives to deal with that issue?

10 MR. VON EGMOND: There are civil and  
11 criminal statutes which would deal with certain kinds  
12 of physical abuse or neglect. It's often not a  
13 criminal offense. It's a civil offense. It's very  
14 difficult for prosecution to take place properly in  
15 those cases. Our major step at this point has been in  
16 the direction of trying to strengthen the guardianship  
17 provision because we think that's extremely weak at  
18 this point, this time. The history of that is that  
19 about four years ago, the Legislature passed a rather  
20 improved law. That was then revoked at the following  
21 legislative session two years later. And then  
22 subsequently, the next legislative session, some new  
23 laws, provisions were added to that, but we think the  
24 present law is still quite inadequate. It does not,  
25 for example, require that there be legal counsel

1 present at the hearing, and the Notice of Hearing we  
2 think should be strengthened. Say, for example, if one  
3 is concerned that a person is confused and you have  
4 someone deliver to them a Notice of Hearing, and put it  
5 in their hand, they probably have no conception of what  
6 it is or what is implied by that and what it means and  
7 what the future consequences of that might be without  
8 somebody sitting down and slowly and carefully  
9 explaining it to them. We have also many older  
10 citizens who can't read in this state, so handing them  
11 something and saying, "Here, read this," is not very  
12 fruitful.

13 MR. MULDROW: There apparently is,  
14 though, a statute which attempts at least to avoid some  
15 of the exploitation of older people in the guardianship  
16 relationship. How is this monitored or who assures  
17 that the provisions are met in the guardianship  
18 relationship?

19 MR. VON EGMOND: My understanding of  
20 that is that the Probate Judge in the Probate Court is  
21 the responsible agent to appoint the guardian, to  
22 declare the ward incompetent, and to then monitor that  
23 and set up steps to monitor it.

24 MR. MULDROW: Do they monitor it? Do  
25 they actually do that?

1 MR. VON EGMOND: That varies a lot by  
2 county and in many cases, the answer to that is no,  
3 it's not very well monitored. There's very little  
4 follow-up on that.

5 MR. MILWEE: You began, I think, by  
6 alluding to some of the sort of minor annoyances or  
7 indignities that people in the nursing homes felt  
8 troubled them. That stirred some vague recollection in  
9 my mind of reading something a while back about some  
10 discussion about whether people could get a drink in a  
11 nursing home or smoke a cigarette. Could you throw a  
12 little light on that? Do you remember what I am  
13 referring to? I don't think I made that up.

14 MR. VON EGMOND: In the summer  
15 legislative session in one of the committee hearings,  
16 one of the representatives -- I think this had to do  
17 with the discussion on the civil rights declaration for  
18 residents of nursing homes -- he expressed concern that  
19 this allowed people to drink in the nursing homes, and  
20 he didn't think that older people in nursing homes  
21 should be allowed to do that. So, as one of the  
22 compromises in getting that bill passed, that was kind  
23 of stated that liquor not be served. I think you can  
24 still bring a jug in yourself. But that was a point of  
25 contention. I think, again, often there is kind of a

1 stereotypic attitude about residents of nursing homes.  
2 You know, that they all are probably at the lower level  
3 of dependency and so forth, and that's not true. And  
4 some folks are. They are many folks there that are  
5 quite capable of managing their affairs. They're there  
6 because they need that kind of protection, that kind of  
7 assistance.

8 MR. MILWEE: One of the earlier speakers  
9 gave the instance of the spouse of someone who was in a  
10 nursing home who was discontent with it. I didn't have  
11 the opportunity to ask them, but what sort of role does  
12 competition play in that? I mean, in other words, if  
13 you don't like one, what are the sort of impediments to  
14 moving and going somewhere else?

15 MR. VON EGMOND: I think there are a  
16 couple of problems there. One is that people choose  
17 nursing homes primarily because they're nearby. They  
18 tend to choose a nursing home in their community.  
19 Secondly, they don't do a very good job of checking it  
20 out ahead of time. They probably just don't perceive  
21 of the need to do that or have information about what  
22 they ought to ask and how you go about looking at  
23 nursing homes, trying to see what indicators are there  
24 that you should be aware of. The third thing that I  
25 think is a major problem, once people are in place they

1 almost rather put up with inconvenience and things that  
2 they know are not correct rather than move. And we  
3 also are aware that statistics indicate that when  
4 people do move at that age -- move from one nursing  
5 home to another -- this is a very serious problem and  
6 often shortens their life expectancy. In one sense you  
7 can say, "Yeah, why don't they move?"

8 MR. MULDROW: With regard to the billing  
9 procedures of hospitals, is this a problem you -- is it  
10 discriminatory in that it applies mainly to older  
11 people, or is it an across-the-board problem for all  
12 patients?

13 MR. VON EGMOND: As far as I know, it's  
14 an across-the-board problem. I think our concern is  
15 that older people tend to more often have serious  
16 problems and require longer stays and more serious  
17 procedures, but it's not a unique --

18 MR. MULDROW: (Interposing) It has an  
19 adverse, disproportionate impact on older people  
20 because...

21 MR. MILWEE: Did I understand you to say  
22 that there is a law that requires the hospital to issue  
23 those itemized statements if the person requested them?

24 MR. VON EGMOND: There is a law on the  
25 books. The State Board of Health is charged with

1 promulgating rules and regulations conveying that to  
2 the hospital, and then it is the responsibility of the  
3 hospital administrator to see that that takes place.

4 DOCTOR ROSENZWEIG: Illiteracy comes in  
5 here, too, in that we are all illiterate when it comes  
6 to reading those. I had experience with one within the  
7 last two months.

8 CHAIRMAN PATTESON: Thank you, sir.

9 We had to juggle schedules this morning  
10 and one of our presenters was kind enough to step  
11 aside. She has since returned and at this time I would  
12 like to call on Ms. Mala Daggett. Am I pronouncing  
13 that correctly?

14 MR. MULDROW: I don't think she's here.

15 CHAIRMAN PATTESON: Oh, she's not here.  
16 Excuse me. Well, I am obligated when she does return  
17 to bring her into the program as soon as possible.

18 If not, then we will continue and I'd  
19 like to call Doctor Mark Krain. Doctor Krain is  
20 president of the Arkansas Gerontological Society, and  
21 he will basically be discussing societal problems of  
22 the elderly.

23 - - - - -

24 STATEMENT OF DOCTOR MARK KRAIN:

25 DOCTOR KRAIN: First, let me thank Mr.

1 Muldrow fro inviting me here. I'm sure he had no idea  
2 what the weather would be like.

3 I am a Professor of Gerontology at the  
4 University of Arkansas at Little Rock, and I did invite  
5 my classes to be here today. I have been very active  
6 in the area of aging since I arrived in Arkansas in  
7 1977, as well as president of the Gerontological  
8 Society. I'm on Arkansas Project 2000 which is a  
9 project for planning longterm care for the elderly in  
10 the 21st century, and I have been part of the Attorney  
11 General's Commission, and ad hoc task force on nursing  
12 home reform legislation. I'm an officer in various  
13 community enterprises for the elderly. I'm  
14 vice-president of the board of the Pulaski County on  
15 Aging. I'm a board member and committee chairman of the  
16 Little Rock Senior Center so I have a great deal of  
17 connection with the aging. I am also engaged in  
18 research on aging with a colleague who is later to  
19 speak, Doctor Trevino-Richard. We were co-recipients  
20 of a grant from the AARP Anders Foundation to do a  
21 study on black, white differences in service  
22 utilization in Arkansas in 1984.

23 I was asked here to talk about the  
24 Arkansas Gerontological Society. The Arkansas  
25 Gerontological Society is a state-wide voluntary

1 organization that has as its main objective  
2 informational and educational tasks, missions on the  
3 status and the needs of the elderly in Arkansas and the  
4 nation. We have a board that is entirely voluntary  
5 that consists of a wide number of people, two of whom  
6 you just heard from. Mr. Dewey Lantrip is on our board  
7 and Elmer Von Egmond is the vice-president of the board  
8 of the Arkansas Gerontological Society.

9 Our objectives, as well as being  
10 educational, are also advocacy and legislative. We  
11 conduct primarily in concert with other organizations,  
12 legislative programs. We attempt to enact or get  
13 enacted programs by the State Legislature that benefit  
14 the elderly. The two organizations we work most in  
15 concert with has been the AARP -- originally, we first  
16 got involved with Mr. Lantrip when he was head of the  
17 State Legislative Advocacy Office of Arkansas AARP, and  
18 he's been on our board ever since. The ASOP group  
19 which is a recently organized group here in Arkansas --  
20 I'm sure you have speakers from ASOP -- we are part of  
21 the coalition that established separate priorities for  
22 the elderly for the 1989 biennial, State Legislative  
23 biennial. The organization's primary activity is to  
24 conduct two meetings a year which we bring together a  
25 broad representation, a broad consensus, primarily of



1 individuals professionally engaged in service to the  
2 elderly, the State Aging network which involves the  
3 Office of Longterm Care, its people; The Division on  
4 Aging, its people; the area agencies on aging, and  
5 their people. A wide variety of practitioners, health  
6 practitioners, mental health practitioners, volunteers,  
7 and our activities are primarily policy-oriented. As we  
8 discuss issues, we have speakers that are related to  
9 the current issues in the field. Our April meeting  
10 will feature a concentration on the topic of the  
11 nursing home reimbursement systems and the plausibility  
12 of adopting in Arkansas the Resource Utilization Group  
13 or RUG which is currently used by the states of New  
14 York, Pennsylvania, and some others.

15 We don't have a legal emphasis in the  
16 sense that we could serve as a legal representative for  
17 someone with civil rights problems among the elderly in  
18 Arkansas. We do focus on problems that have a bearing  
19 on that. For instance, we have a advocacy effort this  
20 year aimed at changing Arkansas' guardianship  
21 legislation. We bring, various times, interests to  
22 bear, although we don't have a focus -- civil rights --  
23 an orientation to that, you know. We generally work to  
24 the benefit of the elderly and the alleviation of their  
25 disabilities and problems, but, in essence, I think we

1 serve, but we do not -- we couldn't distinguish that as  
2 a civil rights issue.

3 A number of our individual members have  
4 been very active in given areas of working on problems  
5 for the elderly that have civil rights impact. But, I  
6 feel we serve and we serve very -- with distinction and  
7 we have a bearing on civil rights, but we've not  
8 emphasized ourselves as a civil rights organization.

9 Do you have questions?

10 CHAIRMAN PATTESON: You touched a minute  
11 ago on Doctor Trevino-Richard. If there are areas that  
12 you were going to discuss and were afraid you'd be  
13 stepping on his toes, fear no longer because we just  
14 received word that he was not going to be able to come  
15 because of the bad weather. So, if you can address any  
16 area that you feel he might have addressed --

17 DOCTOR KRAIN: Terry and I worked on the  
18 Anders grant and collected data in the summer of 1984  
19 from 16 counties in central and southeast Arkansas.  
20 Our primary orientation was are blacks underserved,  
21 black elderly -- everything I'm going to say is about  
22 elderly -- are black elderly underserved as compared  
23 with whites; do blacks use services in different ways  
24 or for different reasons; are the occasions for the use  
25 of elderly services different for blacks than for

1 whites, and questions like that. Our data consisted of  
2 exactly 1,100 questionnaires taken from a stratified  
3 probability sample of those 16 counties. And later we  
4 adjusted any variations in the sampling so as to  
5 conform -- by differentially weighting different  
6 components to conform to the census distribution of  
7 blacks and whites in five-year age groups. We feel our  
8 study is very representative.

9 Among the very many things we found was  
10 that in the counties we studied, blacks were not  
11 underserved. About the same proportion of blacks  
12 utilized services of the elderly as whites. We also  
13 found -- and the reasons for that were clear to us  
14 because we are very familiar with the area agency  
15 directors of both those areas. We both know very well  
16 Ms. Dixie Clark, the Central Area Agency on Aging, and  
17 Ms. Betty Bradshaw, the Southeast Arkansas Area Agency  
18 on Aging.

19 CHAIRMAN PATTESON: Those were the two  
20 areas that --

21 DOCTOR KRAIN: (Interposing) That we  
22 concentrated in. We did not get enough money to do the  
23 whole state. We would have liked that, but we  
24 concentrated in two areas. What we did find out was  
25 that there were a number of variations in conditions

1 under which services were used. For instance, we did  
2 find that out of the whites that used services for the  
3 elderly, were pretty much upscaled whites. They were  
4 sort of lower middle, middle-class whites. They were  
5 not the lowest socio-economic level whites that we  
6 found that were surveyed. The blacks on the other hand  
7 -- I'm sorry, I've got that reversed. What I just said  
8 is true for the whites -- for the blacks. That is, the  
9 blacks that tend to use services were upscaled,  
10 middle-class blacks. The poorest of the blacks did not  
11 use the services, and largely for problems of access.  
12 That's transportation problems, or knowledge of the  
13 existence of the programs. The whites that used the  
14 programs were pretty much the lowest socio-economic  
15 whites. The middle, upper middle income whites did not  
16 use the programs. So, although they were not  
17 underserved, what we did find was that for various  
18 reasons, the whites who need the services most are  
19 getting them, probably because these people are at the  
20 end of their ropes. These people have exhausted other  
21 opportunities or don't have other sources of help, and  
22 they go for it. Somehow they are limited to the  
23 network which provides them the services when they need  
24 them the most. The blacks who participated in the  
25 services are primarily the more robust, although not

1 without health problems, the more robust and the more  
2 wealthy among the blacks. Apparently, their level of  
3 health, their level of economic resources provides them  
4 the opportunity to link into the system where blacks  
5 who are below that point apparently don't have that  
6 ability. Our recommendations on that was greater  
7 outreach. Clearly, what was most needed was the  
8 ability to reach these people rather than relying on  
9 their ability to claim services.

10 We don't know the extent to which that's  
11 a nationwide problem. We've not come across studies  
12 which collected the same data or data on precisely  
13 characterizing socio-economic levels, and health levels  
14 of whites and blacks who collect services. We are  
15 planning to publish several articles on that point in  
16 Gerontological journals. But, that was one clear civil  
17 rights-related impact of our study was to identify  
18 that. There was a great deal of detail in descriptive  
19 findings which I can't recall in any accurate detail  
20 characterizing educational, financial, housing, living  
21 arrangements, differences between blacks and whites, at  
22 need levels, given levels of personal dependency. For  
23 instance, are those who had a personal dependency --  
24 for instance, meals -- are blacks different in terms of  
25 financial and housing, you know, and a variety of other

1 kinds of attributes than whites. There's a great deal  
2 of difficulty -- a great deal of detail, you know,  
3 things that don't add up uniformly across all  
4 categories and across all variables. But, we do know  
5 that the blacks are -- the blacks and whites who are  
6 utilizing services are really very different among  
7 themselves. Apparently, the AAA's have worked hard at  
8 assuring at least equal proportions in accessing these  
9 services. But, the conditions under which these  
10 services are accessed by blacks is different -- are  
11 different under which the ones whites access these  
12 services.

13           Once the data was gathered, Terry and I  
14 tended to look at different things in the data. The  
15 factors related to the predictability of personal  
16 dependency, I've utilized analytic methods that tries  
17 to see if there are differences between blacks and  
18 whites and males and females, and white males and white  
19 females, and black males and black females. For  
20 instance, what are the factors that predict personal  
21 dependency? And what I found is that there are some  
22 similarities and some differences in particularly black  
23 males. The personal dependency of black males is  
24 defined by a different set of predictors than are all  
25 the other groups. For some reason, black males are

1 different. Those who are dependent in terms of the  
2 needs for services are not well described by the same  
3 variables that well describe the other groups. I can  
4 submit to you a copy of that manuscript if you'd like.  
5 I'm presently revising it in hopes of publication. But  
6 those are some of the findings of our study.

7 What Doctor Richard could tell you that  
8 I can't is he's done a lot of work with Hispanics. I  
9 believe he's the current president of LULAC. Am I  
10 correct on that, Mr. Muldrow?

11 MR. MULDROW: Deputy State Director.

12 DOCTOR KRAIN: Deputy State Director. I  
13 know, although he's done no classic academic research  
14 on that, he's probably the most active individual in  
15 that organization working with Hispanic elderly.

16 CHAIRMAN PATTESON: Is that numerically  
17 significant in Arkansas?

18 DOCTOR KRAIN: There are 16,000 Hispanic  
19 individuals identified in the census as Hispanic in the  
20 State of Arkansas. Something on the order of eight  
21 percent of those are elderly.

22 CHAIRMAN PATTESON: Are they  
23 concentrated in areas, or are they widely dispersed  
24 throughout the state?

25 DOCTOR KRAIN: There is a large number

1 in central Arkansas. There is a number of camps, one  
2 near Arkadelphia, which serve as service facilities for  
3 health problems and survival problems. There are  
4 primarily field workers. So, there is a place in  
5 Arkadelphia. I can't fully answer these questions  
6 because I'm not the one that's worked with that area.  
7 I know of it from my association with Terry and I did  
8 serve at his behest a short stint on their Board of  
9 Trustees. But I can't give you accurate --

10 CHAIRMAN PATTESON: You've given us far  
11 more than we'd anticipated simply by willing to talk  
12 about the work the two of you have done together. That  
13 was a real bonus.

14 MR. MULDROW: Do you know what he means  
15 by what he calls the Multiple Jeopardy Hypothesis?

16 DOCTOR KRAIN: Yes. There is a theme in  
17 the gerontology of minority groups that says that for  
18 each minority group you're in, you suffer additional  
19 problems. So, if you're elderly, you have problems.  
20 If you're female elderly, you have problems being  
21 elderly and female. If you're black female and  
22 elderly, you have three sources of problems. And Terry  
23 has been doing a lot of analysis on that. Some of  
24 that, I think he's planning to publish. Currently, in  
25 the academic literature on aging, there's a great deal



1 of attention to that, and it points out that this issue  
2 of multiple jeopardy is not uniformly true. There are  
3 some circumstances in which being two or three  
4 minorities increases your problems and some conditions  
5 in which they don't. For instance, family  
6 relationships and degree of support from the family.  
7 Blacks and Hispanics get a lot more of that than whites  
8 do. Particularly being old, female and black predicts  
9 a good deal more supportiveness from the family system  
10 than does being black and white -- I mean being old and  
11 white. And the multiple jeopardy thing is one that has  
12 ended up by analyzing in what areas -- in what  
13 categories is multiple jeopardy true and in connection  
14 with what categories it falls. It is not an overall  
15 theme in gerontology anymore as it was a decade or so  
16 ago when textbooks writers simply wrote that the more  
17 minorities you were, the worse off you were. He has  
18 analyzed health categories, he has analyzed financial  
19 categories. and some other categories that he's much  
20 better prepared on than I am.

21 CHAIRMAN PATTESON: Questions?

22 MR. MULDROW: I'm just interested in  
23 perhaps why the -- let's see, what is the name of the  
24 association -- the Arkansas Gerontological Society is  
25 not more concerned with the civil rights area. It

1 would seem to me that that would be an increasing  
2 concern as the --

3 DOCTOR KRAIN: I did not mean to imply  
4 that we were not concerned. What I did want to say was  
5 that the attention we have paid to Arkansas' elderly  
6 hasn't been organized under the attack angle of civil  
7 rights. Our orientation is primarily educational and  
8 legislative. Even within legislative, our prime role  
9 has been provision of information. In Arkansas, the  
10 State Legislature doesn't get pushed around. You know,  
11 basically, tell them what the problems are, you  
12 convince them. Political scientists call it the soft  
13 lobbying. Even AARP, as I understand it, doesn't go  
14 off and say, "Vote for this or we put you out of  
15 office." They provide information. That's primarily  
16 what we do. We provide information, and I've been a  
17 good part of that personally at the University's data  
18 source. We have access to census records and studies  
19 that the gerontologists at the University have done.  
20 So, we've done a lot of that. The area agencies are  
21 organized to receive complaints that are more  
22 classically civil rights-oriented. We don't have  
23 offices in different parts of Arkansas, or we don't  
24 have -- we really don't have the ability to respond on  
25 a case basis. If I were to find out that an older

1 person had a serious violation of civil rights against  
2 him, we don't have the attorneys and we don't have case  
3 workers. We would probably report that to the area  
4 agency, or we would perhaps be able to provide  
5 resources, or we would be able to locate practitioners  
6 to assist. But, we have never been well enough  
7 financed to constitute an action agency, you see. This  
8 isn't to say we won't in the future. I mean, the civil  
9 rights issue -- it's my feeling that the policy in the  
10 future for the elderly is going to become one of much  
11 less -- much lower levels of Federal provision. That  
12 is, we're going to look at cutbacks in Medicare, we're  
13 going to look at increasing costs for the elderly. And  
14 it's my feeling that the future of policy for the  
15 elderly will be better approached by civil rights  
16 issues or the civil rights angle of attack on issues.  
17 Older people are living longer and it looks like  
18 Medicare and Medicaid will be providing less. The  
19 questions about who gets what will lead into civil  
20 rights issues.

21 At the recent meeting of the  
22 Gerontological Society in San Francisco, there was  
23 the question of rationing medical care, who gets  
24 medical care when it gets increasing expensive, and the  
25 ability to pay becomes less and less. Groups of people

1 are going to be excluded from medical care. Or, let me  
2 say that policy-makers are going to be considering  
3 groups of people as eligible for exclusion, and I think  
4 that may have a civil rights angle. We may get into  
5 that. But I didn't mean to say that we were neglectful  
6 of it. It's just not the way we're organized.

7 MR. MULDROW: A question I should have  
8 asked earlier, are there State statutes that deal with  
9 discrimination on the basis of age?

10 DOCTOR KRAIN: There are. While I was  
11 on the Attorney General's ad hoc committee for nursing  
12 home reform, we did tangle with the wording of a  
13 statute just like you're saying, what categories should  
14 it include, what categories should it exclude. We  
15 worked on this. I heard you ask Mr. Von Egmond the  
16 rights to alcohol question. The way that evolved was  
17 we were considering the wording of a State Bill of  
18 Rights for nursing home residents, and the one that was  
19 drafted included a very long list of rights. I'm  
20 trying to remember the wording of it but it was worded  
21 very innocuously to the point that if someone wanted a  
22 glass of wine in the evening, you know. It certainly  
23 wasn't worded, you know, if you want to get sloshed,  
24 you got a right to do that. It was worded very, very  
25 innocuously. There's a strong belief among the elderly

1 in this state, and I'm sure everywhere, that one or two  
2 drinks in the evening is good for them. I come across  
3 this continuously. I don't know the facts about that,  
4 but I do know that when my father was alive, his doctor  
5 proposed that a shot of bourbon every night was good  
6 for his circulation, his nerves, and all that sort of  
7 thing. And that was the intent of the item in the Bill  
8 of Rights was that somebody who believes that would  
9 have a right to that. That was about eliminated by  
10 several representatives' oral objections to that.

11 MR. MILWEE: Well, the fact that it's  
12 not in there doesn't mean that somebody that's in a  
13 nursing home, if they want to go out and buy a bottle  
14 of whiskey and have a drink, I mean, to come along and  
15 say, "You can't do that."

16 DOCTOR KRAIN: I disagree. I almost  
17 think it's the opposite. The level of restrictiveness in  
18 most nursing homes is great enough such that a nurse  
19 who thinks that the person shouldn't be drinking -- if  
20 she should find a bottle -- would eliminate it. And in  
21 most nursing homes, alcohol would not be served as a  
22 voluntary action of the nursing home itself. Now, I'm  
23 not advocating drinking in nursing homes, but I wanted  
24 to respond. The level of restrictiveness in nursing homes  
25 is quite great.

1 MR. MILWEE: Yes, that concerns me, the  
2 overall level of restrictiveness, and I happen to be  
3 among those who think taking a little nip now and then  
4 is not bad. I don't think that's an irrelevant or  
5 trifling consideration. It's particular symptomatic of  
6 a whole sort of atmosphere.

7 DOCTOR KRAIN: Yes.

8 MR. MULDROW: Thank you very much,  
9 Doctor Krain.

10 DOCTOR KRAIN: Thank you again for  
11 inviting me.

12 MR. MULDROW: Our Chair has stepped out.  
13 I wonder if we could take a five-minute break at this  
14 point.

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1 MR. PATTESON: Doctor Thompson, we  
2 appreciate you being here. I'm sorry we've held you up  
3 while we took a break.

4 As I understand it you are the head of the  
5 Department of Gerontology at the University of Arkansas,  
6 Little Rock?

7 DOCTOR THOMPSON: That's correct.

8 MR. PATTESON: We are happy to have you  
9 with us.

10 DOCTOR THOMPSON: I was looking at your  
11 agenda. You've had quite an audience of speakers, at  
12 least. I am almost reluctant to start for fear I'll  
13 repeat too much. And, if I do, you can say, "We've  
14 already hear that," and I'll go on.

15 -----

16 STATEMENT BY DOCTOR PERRY THOMPSON:

17 The issues of Civil Rights in the aging  
18 and representing, of course, the University with a sort  
19 of a mission of education, a mission of research and a  
20 commission of community service we become involved at a  
21 variety of levels in the idea of Civil Rights. The  
22 rights to education, of course, the rights to  
23 accessibility is a a big one on campus. We have  
24 committees on campus that do deal with the rights of, for  
25 instance, the disabled students to not only reach the

1 classroom but also have accessibility to all of the  
2 services that are available on our campus, libraries and  
3 so on.

4 It would be nice if the Civil Rights  
5 extended to our senior citizens in those areas as well.  
6 Colleges have been largely, to our older generation,  
7 something out of their reach, not out of their belief  
8 field because they have very effectively, I think  
9 supported the universities with their taxes and they've  
10 sent their children with more enthusiasm, I think, than  
11 the children have.

12 Arkansas is, I think, a step ahead of many  
13 states in the United States by offering senior citizens  
14 over sixty tuition free education from the state  
15 universities. It is a benefit that I don't think a lot  
16 of people know about and certainly it follows, in my  
17 mind, into the field of rights of people to make use of  
18 and take advantage of those services which a community  
19 extends to its citizens. Beyond its hospitals, beyond  
20 its nutrition programs beyond its transportation systems  
21 is an educational system as well. This speaks to a  
22 changing definition of what the whole aging process is to  
23 us and what it means to us.

24 We are beginning to pay the price in our  
25 society, and will continue to pay the price over the



1 coming decades for improving our health and our medical  
2 standards since the turn of the century. The price that  
3 we pay is that of increasing longevity for increasing  
4 numbers of our senior citizens, for increasing numbers of  
5 the population.

6 We have reached a point in time in which a  
7 child that was born today can expect to grow old. We  
8 have reached a new point in time in which we expect to  
9 die in old age. And with that, death has become no to  
10 random, not capricious but rather predictable and  
11 expected and associated with old age. This has raised  
12 for us a number of issues which typically clarify and  
13 discuss under the verbiage of ethics, of our policy,  
14 rather than the verbiage of Civil Rights. I think I would  
15 like to mix those ferrules just a little bit this  
16 afternoon.

17 We have begun to calculate the price  
18 factor of that longevity in the arenas of economics, the  
19 cost of survival has caused us to call into question the  
20 cost of equity. Equity in the distribution of income  
21 over a life span, equity of the distribution of health  
22 delivery systems, of housing, of housing choice and, most  
23 certainly of independence. Independence is a rather  
24 ambiguous value in American society. I happen to believe  
25 that it is rather a contaminated one. It is almost a

1 pathology. People in the field of aging have found time  
2 and time again people, older clients, who will stubbornly  
3 remain independent to the point of their own death.  
4 Somewhere in our society we need to break down that  
5 barrier. We are not independent. We are dependent on  
6 many others in order to make it through life, and I think  
7 we have to work on that particular value.

8 But we do the calculations of the cost of  
9 longevity in vocabulary terms beyond ethics and moral  
10 terms and beyond that even of Civil Rights by becoming  
11 economic about it. Can we afford this new thing that is  
12 happening to us and the choices? We were discussing just  
13 a little bit earlier about whether or not you can partake  
14 of alcohol in the nursing home. That is one that is  
15 fraught with economic consequences as much as it is with  
16 ethical and moral consequences. The cost to society of  
17 use and substance abuse, for instance, and the rights  
18 then of society to make controls becomes a continuing  
19 issue that we discuss and argue about. How we determine  
20 those available choices, and our values then  
21 automatically rule out some of those choices, will have a  
22 profound effect on our social and political policies. It  
23 seems to me that it falls into the realm of Civil Rights  
24 for the elderly and for all of us, to assert that if  
25 life is to be extended then it is not merely to prolong a

1 life of infirmities but to extend a life of vigor and of  
2 vitality. This involves, I think the Commission and a  
3 discussion of the Civil Rights of persons with respect,  
4 particularly in the areas that I am interested in, and  
5 there are others and you've heard them all today.

6 But the choice of medical treatment, for  
7 instance, or the right to not choose, even the right to  
8 un-choose a medical treatment once instituted. The  
9 issues of euthenasia, mercy killing, even of suicide come  
10 to the fore. Protection of the rights of choice is a  
11 touchy issue.

12 Certainly protection of the rights of  
13 access to services for the elderly without discrimination  
14 on the bases of race, or sex, as well as age, is  
15 paramount. Increasingly, Civil Rights Commissions will  
16 have to address the rights of the elderly in having those  
17 services. They will need to survive and survive well.  
18 Housing choices, involve a continuum of care choice. We  
19 have a right to have those services and it costs money to  
20 provide those services.

21 Do we have a right to have health services  
22 that are aimed at rehability and wellness plans as  
23 opposed to health services that simply patch us up after  
24 we become ill or debilitated.

25 Do we have rights to an economic or

1 pension system that insures a living? This is an  
2 especially critical issue for older women who, because of  
3 the way in which the laws are now written, older women  
4 receive fifty percent of their husbands' retirement  
5 pensions upon their husbands' death if they receive that  
6 much. It doesn't cost an older woman any less to live  
7 than it costs an older, single male to live in a year's  
8 time. We do discrimination in our pension systems on this  
9 basis if only one, in the amount of survival benefits  
10 available to males as opposed to females.

11 The older woman's plight as that of a  
12 single survivor seems almost a guarantee of poverty in  
13 our society. It is an issue which I think the Civil  
14 Rights Commission needs to address.

15 There is additionally another specific  
16 issue in which the developments of aging and longevity  
17 has led us, the area of adult and even older adult  
18 mentally retarded and developmentally disabled persons.  
19 This extends to the issue of care giving because the care  
20 givers are necessarily even older parents as well as the  
21 siblings of these disabled persons.

22 Care giving is not rewarded in our  
23 society. Care giving is a sacrifice that burns out the  
24 soul of the person giving that care and leaves them  
25 without economic compensation, not even tax credits that

1 could equal the savings to society of their dedicated  
2 time.

3 Bear in mind the family is not dead in our  
4 society. It continues to care. It continues to provide,  
5 I think you've been told already several times today, a  
6 majority of services, eighty-five percent of the services  
7 prior to institutionalization of the elderly. The family  
8 does live together in different ways than it did in the  
9 past. But, it is still there and it still needs our  
10 support.

11 One issue is that in the demography the  
12 sheer number numbers of caregivers are not there. We are  
13 looking at an older generation today who had their  
14 children or bore their children during the depression.  
15 One of the consequences of depressions is that people  
16 have fewer children. So, when we look at the older  
17 generation today and we say, "Where is their family? Why  
18 aren't they being taken care of by their family?"  
19 Because the family isn't there. They simply aren't  
20 there. In numbers they are gone or there never were.  
21 They didn't have the children to be here today to take  
22 care of them. This is not an issue that is going to go  
23 away with the depression generation. We've got a baby  
24 boom coming through by the baby boomers have small  
25 families so no one is going to be there to take care of

1 the baby boomers.

2 We are going to have to address again the  
3 rights of equity for our older citizens who will be  
4 increasing vastly in numbers over what they are even  
5 today, by some estimates even a trebling of the  
6 current, present numbers of elderly.

7 The smaller family unit means essentially  
8 that the vulnerable and the frail, whether they are due  
9 to the aging process, to disease processes, or accidents,  
10 becomes an at risk population. At risk for poverty, at  
11 risk for inadequate services, and especially for  
12 inappropriate housing relocation.

13 Our department was recently granted a  
14 research grant to review the needs of the family  
15 caregivers of the older adult, mentally retarded and  
16 developmentally disabled person in Arkansas. Our first  
17 task is to find them and it is a formidable order. It  
18 seems that the mentally retarded and mental disabilities  
19 network and the aging network don't talk to each other.  
20 We all have our separate networks. So, someone who is  
21 growing old and someone who is growing old as a  
22 developmentally disabled person, needs someone who can  
23 front for them not with just one bureaucracy but at least  
24 two bureaucracies and probably many more. In some  
25 respects I see that as a Civil Rights issue. Our society

1 does not protect our citizens who are frail and  
2 vulnerable in a very adequate way.

3 I think the Civil Rights of these persons  
4 need to be also given consideration and again in the  
5 whole litany of areas which have been addressed, very  
6 adequately, I'm sure, earlier in the day in terms of  
7 employment, in terms of adequate income, in terms of  
8 protection and pension rights and in terms of protection  
9 for housing and their sense of choice.

10 The field of aging, finally, I think has a  
11 rather formidable task in defining what we will permit to  
12 be addressed as Civil Rights. And as I sat trying to  
13 think of what the Civil Rights issues would be for aged,  
14 I find that in our work at the department we have been  
15 somehow remiss in using it as a category that sort of  
16 defines everybody that has reached a certain age.

17 There are well to do elderly, there are  
18 elderly and poor who are in poverty. There are elderly  
19 who are not only exceedingly literate but they are  
20 exceedingly creative and productive. And, there are the  
21 elderly who cannot read. I think basically what we have  
22 to do is identify inside of those categories a series of  
23 rights that would, in effect, adhere to a much narrower  
24 series of spectrums rather than whitewash the whole area.  
25 I hope I wasn't able to do that in the short period of

1 time that I realized that I didn't know the answer. I  
2 certainly have something to go think about now.

3 Any questions?

4 MR. PATTESON: I'll make one comment. I'm  
5 sorry I didn't recognize you earlier when we were  
6 talking. The minute you started talking I remembered  
7 your appearances in July at the smaller group that we  
8 were talking about.

9 I would like to personally thank you  
10 because you just have made money for me. I'm an  
11 occasional scholar and take a course now and again at the  
12 Arkansas State University and I did not know, since I  
13 became sixty in November, that I now can go free.

14 DOCTOR THOMPSON: Well, you'll have to  
15 prove it. You'll have to take your drivers license or  
16 birth certificate.

17 MR. PATTESON: Oh, that's no problem,  
18 that's no problem. I don't think they will question me.

19 The other is I would like very much if  
20 you, I know you probably are submitting that, but I would  
21 like it if you would personally jot down for me that  
22 line, that caregiving burns out the one, whatever, that  
23 particular sentence I would like very much to have.

24 DOCTOR THOMPSON: I'll give you this.  
25 It's on computer, sir, and it is reproducible.



1 MR. PATTESON: Questions?

2 MR. MULDROW: You've touched very nicely  
3 on what you see to be the rights or civil rights of older  
4 Americans. In connection with this, of course, our  
5 special interest is that of discrimination, things that  
6 happen to older people because of their age, age  
7 discrimination. There is also, of course, there are  
8 areas of discrimination involved here, racial and ethnic,  
9 administration of justice kinds of things are also  
10 involved, voting rights. There are many things that  
11 touch within our areas of concern.

12 Doctor Crane mentioned one very specific  
13 area which rang a bell with me which seems to be clearly  
14 a concern in our society now and one, as he indicated,  
15 that is going to become even more acute as the older  
16 population grows, that is a denial to older persons of  
17 resources or services available to the public at large  
18 because of their age. He mentioned, for example, medical  
19 treatment or medical resources.

20 Would you elaborate any views you might  
21 have on this area of concern, especially as it might be  
22 prevalent, a prevalent concern in our society now, not  
23 only in the area of medical technology and resources  
24 available but in other areas where this might be a  
25 concern.

1 DOCTOR THOMPSON: Well, certain I, just  
2 thinking in terms of work that I have done with what I  
3 would consider to be a vulnerable population, those that  
4 people call in about, neighbors call in, they call the  
5 police, that sort of thing. Because of age, I see a  
6 tendency on the part of society to take someone who is  
7 acting abnormally, to automatically assign any abnormal  
8 behavior to dementia and automatically incarcerate or  
9 institutionalize that person. We are victims of society, I  
10 think, of some subterranean, bad, Freudianism. Freud  
11 didn't think older people were capable of responding to  
12 psychoanalysis, of being too set in their ways.

13 So, we tend to, because of underlying  
14 cultural value, not attempt rehabilitation on the  
15 elderly, especially mental rehabilitation.

16 MR. MULDROW: Whereas you would with  
17 younger people?

18 DOCTOR THOMPSON: We would.  
19 Automatically, automatically we would help, we would  
20 offer intervention kinds of services. The elderly simply  
21 are institutionalized or they don't receive help. And,  
22 this is a patter that I see repeated over and over again,  
23 not only from the society on the outside but we see it  
24 repeated inside the mental institutions by medical staff,  
25 by psychiatric and psychological staff persons

1 themselves. So, it is a fairly ingrained kind of an  
2 attitude.

3 Another area where I see discrimination is  
4 in the treatment of sort of marginal people or basket  
5 pushers, bag ladies. They are old. They are also  
6 victims, in many cases, of a multiplicity of  
7 disabilities, both mental and physical. And, we sort of  
8 lay in wait for them, in effect, wait for them to cross  
9 the line of some public consciousness and then again they  
10 are incarcerated. In this case, gentlemen, jail is our  
11 method of treatment.

12 I find that a distressing failure on our  
13 part and a violation of civil rights. Of course, then  
14 you have the lady who is on the grates of New York City  
15 who exercised here Civil Rights to the great dismay and  
16 to the great public display over the whole United States.  
17 If she wanted to defecate in an alley and live on a  
18 grate, there was nothing the mayor could do about it. So  
19 in some ways I think we've had a great consciousness  
20 raising in this area.

21 In the area of people who rent housing. I  
22 find that older people are very much more vulnerable than  
23 young people to evictions. For whatever reason these  
24 people don't pay rent or become unable to pay their  
25 rents, the law is not evenly applied to people. I see

1 age as a major variable in this respect. As a  
2 consequence I see older persons, because they are faced  
3 with fewer choices, doing and behaving in ways that  
4 become quite disfunctional, unhealthy to themselves as  
5 well as unhealthy to people around them.

6 MR. MULDROW: Your testimony has been very  
7 interesting.

8 DOCTOR THOMPSON: The Police Departments  
9 are quite sensitive to reading Mirandas, you know,  
10 rights as a general rule but they don't really help older  
11 people.

12 MR. PATTESON: Are there any further  
13 questions.

14 MR. ROSENZWEIG: This is not bearing on  
15 Civil Rights but has there ever been any study, programs  
16 where, say, retarded, young, physically healthy  
17 individuals who need the love and attention and can do  
18 those care things are employed taking care of elderly who  
19 need care, who need love, and who are in that position.  
20 We take cats and dogs and things to some of the elderly.  
21 Has that approach ever been tried?

22 DOCTOR THOMPSON: We have done it with the  
23 very young, the foster grandparents program, for  
24 instance, does take emotionally and developmentally  
25 disabled children and uses older persons as sort of

1 giving the tender, loving care for those children. This  
2 works at this age.

3 We, again in the areas of disability,  
4 developmental disability and mental retardation we shut  
5 them off. They turn twenty-one and all the rules change  
6 in our society. At twenty-one I don't care if you are  
7 developmentally six or three or nine if you are  
8 chronologically twenty-one you are an adult. It's not  
9 right. We've got a lot of people out there not receiving  
10 the kind of attention that they need.

11 What the research is working at on the  
12 project is we have people who have been, as adults, been  
13 cared for by their older parents. Their parents are now  
14 in their eighties. We have sixty year old  
15 developmentally disabled persons. Parents are assuming  
16 that they are going to be able to put their children into  
17 nursing homes should anything happen to them. And they  
18 are getting, at eighty-five or eighty years old, getting  
19 close to that point.

20 We are going to pass a law, in fact we  
21 have in Arkansas, that those people, developmentally  
22 disabled cannot be placed or mentally retarded cannot be  
23 placed in nursing homes. Those are for the elderly only.  
24 We don't have any place else for them. We are setting up  
25 a situation, as when we discharged many of our sort of

1 stabilized emotionally distressed persons, we are going  
2 to have a bunch of others who will become street people,  
3 if we are not careful.

4 If we could, and I'm not sure how well  
5 this would work. I'm sure that there have been some  
6 attempt to do this, combine housing. But again we are  
7 back to that situation of networks. Networks don't talk  
8 to each other. So, the people working for mentally  
9 regarded and developmentally disabled don't talk to the  
10 housing people who have housing for the elderly. The  
11 idea of putting them both in the same kind of house would  
12 require -- see, it's probably not going to save us any  
13 money. This is what happens. If it's not going to save  
14 us any money, it is going to require a lot of staff  
15 supervision to pull it off, to make people's lives well  
16 and whole like that. It's going to require a lot of  
17 trained personnel whom we don't have yet. It would be  
18 just a lot easier to build another building and stick  
19 them in it and keep them all separated, you know, where  
20 we could do meals at certain hours and do laundry at  
21 certain hours, and do showers at certain hours and be  
22 done with it. That's cost effective. It is also  
23 inhumane but that is the way we do it.

24 I am incidentally going at the end of this  
25 month at the invitation of the National Developmental

1 Disabilities Commission to the University of Miami to  
2 attend the opening of a new facility for aging and the  
3 developmentally disabled. It's one of the, I'm told, one  
4 of three sites, and this is the third, so there have only  
5 been two of these in the United States. I'm hoping to  
6 learn enough not to re-invent the wheel in Arkansas when  
7 we go down. But there is a lot of work in that area to  
8 be done.

9           Again this is sort of like we woke in  
10 surprise the other day and found out, gee, we've got all  
11 these people over sixty coming into the aging network who  
12 used to be in the developmental, in the DDMR network.  
13 Then we discovered that most of them weren't even in that  
14 network because they were being taken care of by family.  
15 All of a sudden now they are beginning to fall out  
16 because the family is not there. Nobody knows what to  
17 do. That's almost, you know, that's just almost too  
18 grotesque a Civil Rights violation, you know, that our  
19 society doesn't plan for our citizens.

20           MR. MULDROW: Did you say that mentally  
21 disabled persons are not eligible for nursing home  
22 programs?

23           DOCTOR THOMPSON: We are going to have to  
24 -- they were -- we are in the process of removing them  
25 from nursing homes, too, yes. See, the first thing we

1 did is we took them out of the State hospitals and  
2 nursing homes became more in the nature of repositories  
3 for the stabilized mentally ill. Basically it is a  
4 problem of keeping medication coming into them at  
5 prescribed intervals and they basically have demonstrated  
6 they are not able to do that on their own.

7 MR. MULDROW: But aren't there many  
8 mentally disabled persons in nursing homes, people with  
9 Alzheimer's Disease and such?

10 DOCTOR THOMPSON: Well Alzheimer's  
11 disease, yes, if you get into a nursing home before you  
12 get it they essentially will keep you and take care of  
13 you. But, if you try to get admitted into a nursing home  
14 as an already full blown Alzheimer patient, you're going  
15 to find a very tough entrance procedure. You will be  
16 barred from probably most of them. There aren't a half a  
17 dozen facilities in the State of Arkansas that have any  
18 kind of staff and programs designed for caring for  
19 Alzheimer's victims.

20 MR. PATTESON: That is considered  
21 custodial care rather than acute care, is it?

22 DOCTOR THOMPSON: Yes. But this is  
23 custodial care. This is super custodial care. These  
24 people wander. You know, the kind of thing that they  
25 normally do if people get up at 2:00 o'clock in the



1 morning is resolve the matter with sleeping pills, sort  
2 of chemically immobilize them. That's a violation of  
3 Civil Rights if you want to get involved in what goes on  
4 in medication in nursing homes.

5 But you can't do that with Alzheimer's  
6 victims. ~~Drugs work very differently, and bizarrely and~~  
7 sometimes change from one month to the next. So, if they  
8 are up at 2:00 o'clock in the morning, you've got to  
9 leave them up. In effect, your whole treatment program  
10 has to be different so it is a very much rearranged  
11 program of care for that person and requires special  
12 means and special facilities as well as special staff.

13 No, they are not talking about discharging  
14 that person. They are talking about discharging someone  
15 who is fifty-five years old that has spent probably, on a  
16 rotating basis, fifty percent of his last adult twenty  
17 years going in and out of State hospitals, get  
18 stabilized on a drug regime as a schizophrenic coming  
19 out paranoid and then gradually going off the  
20 medications, manic depressing type of things, and then  
21 cycling, because they are not taking the drugs, cycling  
22 back into behavior that gets them rearrested back through  
23 the course, back through a hospital treatment system and  
24 out.

25 MR. MULDROW: Well, that's an interesting

1 area because there is, you know, discrimination on the  
2 basis of disability is clearly prohibited in certain  
3 Federal statutes at least. The programs or institutions  
4 receive Federal money so it's hard for me to see how that  
5 is not a violation of Federal statutes.

6 DOCTOR THOMPSON: In my experience it is  
7 routinely done and maybe in those respects it would be a  
8 major mission to sort of educate the public, or certainly  
9 the service delivery public, on what the Civil Rights are  
10 of these various categories of professionals.

11 MR. PATTESON: Well, thank you again very  
12 much.

13 -----

14 MR. PATTESON: We were supposed to have  
15 representative Erma Hunter Brown who, incidentally, is a  
16 former member of this committee. She came by a short  
17 while ago and had another commitment and left a prepared  
18 a statement. I ask Mr. Muldrow if he would read it into  
19 the transcript, please.

20 -----

21 STATEMENT OF IRMA HUNTER BROWN: (As read by Mr. Muldrow)

22 MR. MULDROW: I'm just going to read this  
23 statement into the record without comment. I will read  
24 it for the benefit of all of us at this point because we  
25 are scheduled later to have Senator Travis Miles from the

1 Senate Committee on Aging and Legislative Concerns. I  
2 thought it might be helpful background for us as we hear  
3 him and present him for questions.

4 "When we talk about discrimination against  
5 elderly persons, we are referring to things that inhibit  
6 their quality of life.

7 In July, 1988, a special session of the  
8 Arkansas legislature sought to address issues concerning  
9 the treatment of people in nursing homes. Legislation  
10 that was passed, called nursing home reform legislation,  
11 was initiated by the Quality of Care Task Force of the  
12 Joint Interim Committee on Public Health, Welfare and  
13 Labor.

14 Primary nursing home legislation that came  
15 from that session dealt with the following issues:

16 1. A receivership procedure for temporary  
17 operation of a long-term care facility when emergency  
18 conditions exist within the nursing home of substantial  
19 habitual violations have occurred (Act 3 and Act 13).

20 2. Amendments to the adult abuse report  
21 law and child abuse reporting law to require reports of  
22 abuse of long-term care facility residents to be made  
23 immediately to the sheriff for investigation (Act 5 and  
24 Act 15).

25 3. Requirements for long-term care

1 facilities to post for sixty days on the inside of the  
2 front door a 'Notice of Violation' when certain  
3 violations occur (Act 16).

4 4. The Omnibus Long-Term Care Reform Act  
5 of 1988 includes a residents' bill of rights and other  
6 provisions to protect nursing home residents (Act 17).

7 Nursing home legislation is continuing during  
8 the current Regular Session of the legislature.  
9 Identical bills have been introduced in both houses  
10 pertaining to making harassment of a long-term facility  
11 resident a crime, to make offensive contact with a  
12 resident a crime, to prevent photographing long-term care  
13 residents.

14 Bills are under consideration relating to  
15 Medicaid payments to rural hospitals.

16 We all know that civil rights and economic  
17 rights cannot be separated. Bills are currently in the  
18 legislature to reduced the number of persons who must pay  
19 income taxes by some two hundred sixty thousand; persons  
20 with low incomes would be exempt from paying. Proposals  
21 are also before us to exempt food from sales tax. The  
22 Homestead Property Tax Relief Act was passed several  
23 years ago, and it continues to provide economic  
24 assistance for elderly persons.

25 In 1987, we passed a law permitting

1 enhancement to the next higher classification for crimes  
2 which involved physical injury or threat of physical  
3 injury to persons aged sixty or older. Act 17 of that  
4 same year recognized not only grandparents' visitation  
5 rights, but great-grandparents visitation rights as well.

6 These, of course, are but a few of the  
7 laws on the books that pertain to elderly persons. These  
8 laws may not always pertain directly and immediately to  
9 civil rights legislation, but they do enhance civil  
10 rights by enabling the elderly to live with greater  
11 dignity and more enjoyment.

12 The elderly in Arkansas comprise a sizable  
13 minority of our population. The percentage of elderly in  
14 our state's population is second only to the state of  
15 Florida. Retirement villages are in several areas of the  
16 state.

17 But, as important as the laws are that are  
18 on the books, as large a percentage of the total  
19 population as the elderly are, a lot of the same  
20 black-white problems may flourish in the elderly  
21 population as in the general population. Discrimination  
22 against the black elderly is still a problem. The black  
23 elderly do not live in retirement villages, do not all go  
24 to the country club on Sundays, and are not all faced  
25 with having to decide between whether to serve white or

1 red wine to their dinner guests.

2 Discrimination exists in Arkansas against  
3 certain of our people. Growing old is difficult  
4 regardless of one's race. It is worse if you are black.  
5 If is worse yet if you are a black woman.  
6 Anti-discrimination laws do not totally address the  
7 problem, although they do help. There is less overt,  
8 blatant discrimination now against black working people  
9 than there was a generation ago; and it's because of the  
10 black leadership in American that pushed for passage of  
11 civil rights legislation under which the problems could  
12 be addressed.

13 The discrimination that exists now is  
14 different. It shows in the form of geerymandered  
15 legislative districts that were designed to dilute black  
16 voting strength. It shows in the form of welfare laws  
17 that prevent families in poverty staying together,  
18 weakening the family structure of those families. It  
19 shows in an elderly person not being able to afford the  
20 medicine she needs.

21 As a state, as a legislative body, as  
22 human beings, we need to be sensitive to civil rights  
23 concerns of older persons. We need to be vigilant in  
24 guarding and protecting the civil rights of others, lest  
25 we find our own civil liberties curtailed."

1                   And this is from Representative Irma  
2 Hunter brown of the Arkansas State Legislature.

3                   -----

4                   MS. PATTESON: Well, I guess at this  
5 stage of the game we can take another break.

6                   MR. MULDROW: Our next scheduled speaker  
7 is, what 3:55.

8                   MR. PATTESON: 3:55, is he aware of that  
9 time.

10                  MR. MULDROW: Yes.

11                  MR. PATTESON: Okay.

12                  MR. MULDROW: But there was one speaker,  
13 Ms. Mala Daggett this morning who asked to be put on the  
14 agenda for the afternoon.

15                  MR. PATTESON: We'll take a recess until  
16 the next speaker arrives.

17                               (A short break ensued)

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CHAIRMAN PATTESON: We will just turn it over to you.

SENATOR MILES: Okay.

STATEMENT OF SENATOR TRAVIS MILES:

Well, I don't really have anything formal to say, and I apologize for the fact that I had work to do out at the Capitol today, and could not come and sit in on the rest of it. I understand that some of your people have left, and I understand that you had some cancellations because of the weather, and I ask you all to understand that I'm about to lose my voice, so just kind of bear with me.

What I thought that I might be able to contribute that would be different from what other people might have brought to this forum, would be some of the things that we have done over the last couple of years in the Arkansas General Assembly, and some of the things that we are looking at doing in this session of the legislature with respect to older Americans.

I don't -- You know, there's no particular order to some of these things, but let me just kind of ramble through them, and I'll try not to take a great deal of time.

But those of you who live in Arkansas,

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1 are aware of the fact that the Arkansas General  
2 Assembly has been looking very carefully over the last  
3 two years, since the 1987 session, at a number of  
4 things having to do with the operation of nursing homes  
5 in Arkansas.

6 I did not identify myself for the record  
7 and perhaps should. I'm Senator Travis Miles from Fort  
8 Smith. I have served in the Arkansas General Assembly  
9 since 1981, and I am Chairman of the Senate Aging and  
10 Legislative Affairs Committee, which does deal with  
11 most of the legislation that affects older Arkansans.

12 This is coming to be kind of a major  
13 thing in our State, because I think that we are now  
14 second only to Florida, in the percentage of our  
15 population that is over 65 years of age.

16 We have looked at two different Bills,  
17 one in the interim session where we dealt with some --  
18 a special session, I should say, where we dealt with  
19 some nursing home legislation, and again in this  
20 session, having to do with the rights of people in  
21 nursing homes.

22 Some of this legislation has been  
23 promulgated by Senator Mike Kinard, from Magnolia, who  
24 has a particular interest in this area of legislation,  
25 and then some of it has been promulgated by Attorney

1       General Steve Clark, who has short of taking upon  
2       himself to become an advocate of the rights of older  
3       Arkansans, and particularly with respect to those  
4       residing in nursing homes.

5               So, between the two of them, we have  
6       looked at two different versions of what has come to be  
7       properly called a Bill of Rights of older Arkansans and  
8       nursing home residents.

9               Let me just for the record, read  
10       portions of the Bill that we're considering right now,  
11       which is authored by, or sponsored, authored and  
12       sponsored by Senator Mike Bearden from Eastern  
13       Arkansas, but really is an outgrowth of some of  
14       Attorney General Clark's work.

15               And this Bill, Senate Bill 31, is  
16       entitled, "An Act to Amend Title 20, Chapter 10, of the  
17       Arkansas Code of 1987, to Prohibit the Photographing of  
18       a Resident in a Long Term Care Facility Without Consent  
19       and For Other Purposes," and it sort of reenacts the  
20       resident's Bill of Rights.

21               It says: "The Office of Long Term Care  
22       shall promulgate through rules and regulations, a  
23       resident's Bill of Rights, which must include  
24       provisions addressing each of the following, as a  
25       minimum statement of residents rights.

1 "The Office of Long Term Care may place  
2 restrictions or limitations on any right listed below  
3 when such is necessary to protect the health, welfare  
4 or safety of the resident, or other residents.

5 "One, the right to exercise all  
6 constitutional and legal rights; two, the right to a  
7 safe and clean environment; three, the right to dignity  
8 and respect; four, the right to nursing and medical  
9 care; five, the right to personal cleanliness; six, the  
10 right to choose, at their own expense, a personal  
11 physician and pharmacist; seven, the right to have  
12 knowledge and input into medical treatment records and  
13 plan of care; eight, the right to refuse experimental  
14 treatment; nine, the right to confidentiality of  
15 medical records; ten, the right to be free from  
16 physical or mental abuse, or for punishment,  
17 involuntary seclusion, and any physical or chemical  
18 restraints imposed for purposes of discipline or  
19 convenience, and not required to treat the resident's  
20 medical symptoms.

21 "Restraints may be imposed only to  
22 ensure the physical safety of the resident or other  
23 residents, and only upon the written order of a  
24 physician, that specifies the duration and  
25 circumstances under which the restraints are to be

1 used, except for emergency conditions, until such an  
2 order could reasonably be obtained.

3 "Eleven, the right to exercise civil  
4 liberties, including the right to vote; twelve, the  
5 right to the free exercise of religion, including the  
6 right to rely on spiritual means for treatment;  
7 thirteen, the right to privacy, including the right to  
8 refuse being photographed by persons other than those  
9 licensed under the Medical Practices Act, Arkansas Code  
10 1793.201 to 1793.411, and any amendments thereto;  
11 fourteen, the right to personal clothing and  
12 belongings; and fifteen, the right to personal  
13 financial information."

14 And, of course, you know, we might think  
15 that all of these things are given and understood, but  
16 there are those in the Arkansas General Assembly, and  
17 in other branches of Government, both the Executive and  
18 the Judiciary in Arkansas, that feel that these rights  
19 need to be enacted, and listed, and published.

20 I would like to keep this just totally  
21 informal, and if anybody wants to ask me anything about  
22 anything that we have here, then, you know, just please  
23 interrupt me and we will depart and enter into an open  
24 discussion.

25 We have a set of Bills that are being

1 considered right now in the Public Health, Welfare &  
2 Labor Committee, of the Senate, which I also happen to  
3 serve on, and they are causing a great deal of  
4 discussion, and there may even be some, you know, a  
5 little bit of political jockeying going on there  
6 between the Governor's office and the Attorney  
7 General's office.

8 But the initial package of Bills in our  
9 meeting this past Wednesday of the Public Health,  
10 Welfare & Labor Committee, only one was recommended out  
11 to pass, and I'm going to refer to it in a minute,  
12 along with those that are still under consideration and  
13 are subject to being amended and changed.

14 The one that we did recommend out to  
15 pass this past Wednesday, simply enacts or codifies the  
16 right of a nursing home resident to rescind long term  
17 care contracts, and just to read the key part of it  
18 very briefly:

19 "For a 14 day period, beginning on the  
20 date of entry into a long term care facility, the  
21 resident shall have the right to rescind any  
22 contractual obligation into which he has entered, and  
23 receive a full refund of any monies transferred to the  
24 facility.

25 "If the resident entered the facility

1 and received some benefit therefrom, the charges of the  
2 services provided shall be prorated and payment made  
3 only for the benefits conferred."

4 The ones that we have not recommended  
5 out, have to do, the first one with, in the case of any  
6 kind of physical or mental abuse, any kind of  
7 wrongdoing to a resident of a nursing home, that the  
8 Office of Long Term Care cites the individual for, and  
9 maybe there's even prosecution involved, then in the  
10 case of a similar or like circumstances occurring  
11 within the next five year period, this proposed Bill,  
12 Senate Bill 180, also by Senator Bearden, would create  
13 a rebuttable presumption of guilt against the official  
14 of the long term care facility. That is, the owner,  
15 any Board member, anyone in a management capacity with  
16 the nursing home.

17 That is, you know, a pretty serious  
18 step, and so we're looking at that a little closer.

19 In other words, as far as the rules of  
20 evidence are concerned, it would just simply -- if it  
21 happens once and then it happens again within a five  
22 year period -- create a presumption of guilt until  
23 proven innocent, in laymen's terms.

24 So, you can see that is a pretty  
25 serious step.

1 Senate Bill 181, which is also being  
2 considered, would require that operators of nursing  
3 homes provide and record with the County Clerk in a  
4 given County, the following information, and the best  
5 way to go over it is just for me to read it very  
6 quickly, but these papers would have to be filed with  
7 the County Clerk in the given county where the nursing  
8 home was operating, and would include the name and  
9 business address of the facility and a statement as to  
10 whether the facility is a partnership, corporation, or  
11 other type of legal entity.

12 Also, the names and business addresses  
13 of the officers, directors, trustees, managers, or any  
14 general partners, any person having a five percent or  
15 greater equity or beneficial interest in or of the  
16 facility, and a description of each person's interest  
17 and their occupation with the facility.

18 A statement as to whether the facility  
19 or any of its officers, directors, trustees, partners,  
20 or managers, prior to the date of application:

21 (a) has ever been convicted of a felony,  
22 or a crime, that if committed in Arkansas, would be a  
23 felony, or any crime having to do with the provision of  
24 continuing care or long term care; has ever been held  
25 liable or enjoined in a civil action by a final

1 judgment, if the civil action involved fraud,  
2 embezzlement, fraudulent conversion or misappropriation  
3 of property; had a discharge from bankruptcy or was  
4 found insolvent in any Court action within the last ten  
5 years; has had any State or Federal licenses or permits  
6 suspended or revoked or had any State, Federal, or  
7 industry self-regulatory agency commence an action  
8 against him and the result of the action within the  
9 last ten years;

10 Or (e) had any Class A or B violations  
11 pursuant to this chapter -- those are in the Office of  
12 Long Term Care regulations -- within the last five  
13 years; a statement as to whether the facility is or has  
14 ever been affiliated with religious, charitable, or  
15 other non-profit organization, nature of that  
16 affiliation, if any, and the extent to which the  
17 affiliated organization will be responsible for the  
18 financial and contract obligations of the facility; the  
19 provisions of the Internal Revenue Code, if any, under  
20 which the provider affiliate is exempt from payment of  
21 income tax; location and description of the physical  
22 property.

23 The disclosure statements will clearly  
24 state which services are included in basic care  
25 contracts for long term care, and which services are



1 available at or by the facility at extra charge.

2 A description of all fees required by  
3 the residents, including the entrance fee, and periodic  
4 changes, if any.

5 The description shall include the manner  
6 in which the facility may adjust periodic charges or  
7 other recurring fees, and the limitations on the  
8 adjustments, if any.

9 A copy of the standard form or forms of  
10 contracts used by the facility, which contain the  
11 minimum requirements of this Chapter for long term care  
12 contracts, are to be attached as an exhibit to each  
13 disclosure statement.

14 Now, assuming that we pass this Bill  
15 into law, as I suspect that we will, it and an  
16 accompanying Bill will require that these papers be  
17 filed for obtaining a license, for relicensing the  
18 facility, and then also, will just be filed in the  
19 County Courthouse in the Clerk's office publicly, for  
20 anyone contemplating entering a nursing home, or any  
21 family member of anyone contemplating entering a  
22 nursing home, to review, and hopefully to compare and  
23 perhaps even make a decision regarding which home that  
24 they might enter, based on this information.

25 So, these are some of the things that

1 we're looking at in this session of the Arkansas  
2 General Assembly, that take this whole business of long  
3 term care, nursing home care, a step further than we,  
4 in terms of regulation, that we have ever gone in  
5 Arkansas, or than the Federal Government requires, or  
6 that the State law in Arkansas has ever before  
7 required.

8 I would expect -- and that's not nearly  
9 all of them, I mean here are several more. I would  
10 expect that in some form, these Bills will all be  
11 enacted into law.

12 We've got one here that provides a  
13 degree of punishment for anyone found to be guilty of  
14 such things against nursing home residents, as what it  
15 defines in Chapter 11 as offensive physical contact or  
16 offensive touching, offensive language, in paragraph  
17 12, offensive gestures, any harassment of residents of  
18 long term care facilities, and it just goes on and on.

19 I don't know how some of these things  
20 may compare with what's going on in other States, but  
21 there are certainly a step beyond anything that we have  
22 ever done in Arkansas, as I said awhile ago.

23 There are a couple of concurrent  
24 resolutions that have been introduced by Senator Kinard  
25 from Magnolia, that I think might be of interest to you

1 all and those who review this data.

2 Senate Concurrent Resolution No. 4  
3 requests the Department of Human Services, the Arkansas  
4 State Department of Human Services, to continue the  
5 study of nursing home reimbursement methodology as it  
6 relates to public evaluation of quality of care  
7 provided in nursing facilities.

8 Senate Concurrent Resolution No. 3,  
9 acknowledging the continuum of care for citizens of  
10 this State and indicating support for information,  
11 dissemination on the continuum of care through the  
12 Department of Services County offices.

13 What some of these things will do is  
14 finally get it around to what is being done in some  
15 other States, where the Office of Long Term Care, the  
16 Department of Human Services, or its equivalent in  
17 other States, will actually finally be, I suppose,  
18 classifying nursing homes, and as to the level of care  
19 beyond the traditional methods of classifying them, and  
20 you know, I suppose finally get around to what would  
21 amount to a preferred providers list.

22 This, per se, is not our objective, or  
23 the objective of any of the sponsors of this  
24 legislation, but it is certainly the direction that it  
25 appears to me that it's going.

1 Any questions that anybody has got on  
2 any of this material so far? I'd just like to see it  
3 read into the record and --

4 CHAIRMAN PATTESON: Are you optimistic  
5 that all of that will pass?

6 SENATOR MILES: I'm optimistic that all  
7 of it will pass.

8 Now, we gave, "we" being the members of  
9 the committee, and this again being the Public Health &  
10 Welfare & Labor Committee, on Wednesday, gave the  
11 sponsor of the Bills -- Senator Bearden -- a kind of a  
12 hard time, I guess you would say -- and of course,  
13 Attorney General Clark was with him at the committee  
14 meeting.

15 We heard testimony from both older  
16 Arkansan advocacy groups, and also from the nursing  
17 home industry, and like I say, we gave the authors of  
18 the Bills a pretty hard time, but not because of what  
19 the Bills propose to do, but just very frankly, they  
20 were rather poorly written, I guess is the way I'd have  
21 to express it.

22 So, they are going to get together.  
23 That is, "they" being the Human Services Department and  
24 the authors of these Bills, are going to get together  
25 and work out some of those language problems, and

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1 again, quite frankly, and I don't want to get into a  
2 political discussion but there is a certain amount of  
3 that going on in this thing, and very frankly, we've  
4 got to get the Governor's office together with the  
5 Attorney General's office, and work out some of the  
6 things, you know, that have political ramifications in  
7 these Bills.

8 I know those of you that live in  
9 Arkansas, are well aware of the fact that our Attorney  
10 General proposes to run for Governor, and our Governor  
11 may well propose to run for Governor again, and so  
12 these are some of the things that we are dealing with.

13 But the fact of the matter is that a  
14 great deal of attention has been caused to be focused  
15 on what had become not exactly a model nursing home  
16 industry in the State of Arkansas, and at least we are  
17 dealing with those things.

18 So, you know, they may not pass in the  
19 exact form in which they are presently written, but  
20 some form will pass, and it will be a further  
21 tightening of the regulations governing the operation  
22 of the nursing homes.

23 Have you all talked today about Arkansas  
24 ABLE?

25 CHAIRMAN PATTESON: We had a

1 representative from ABLE.

2 SENATOR MILES: Okay, great. You know,  
3 that's one of the -- These Bills represent, I suppose,  
4 some of the dirty laundry, but we've got some things  
5 that are going on in Arkansas that we can really point  
6 to with pride, and that ABLE organization project is  
7 doing an outstanding job.

8 CHAIRMAN PATTESON: The Director for  
9 ABLE was here ..

10 SENATOR MILES: That's one of the things  
11 that we are proud of.

12 And I'm sure that everybody here is  
13 aware of our Silver Haired legislative sessions, each  
14 biannual, preceding the meeting of the Arkansas General  
15 Assembly, and very frankly, those have been very  
16 helpful in stimulating some thinking on the part of the  
17 members of the General Assembly about some of the  
18 things that older Arkansans really care about and  
19 really need.

20 I have got -- I would have to have it  
21 back, Mr. Muldrow, but I've got a summary of all the  
22 Acts and proceedings of the 1988 Silver Haired  
23 legislative session, and I know, at the very least, you  
24 all would find interesting reading.

25 Like I say, I'd have to have it back,

1 because it's the only copy that I've got, but if y'all  
2 would care to take it and make copies of it and review  
3 it later, I'll be happy for you to do so.

4 CHAIRMAN PATTESON: Is that proposed  
5 legislation, or is that what was passed?

6 SENATOR MILES: Well, what they do, you  
7 know, they elect, what it amounts to, is a counterpart  
8 for each of us, from older retired Arkansans, and they  
9 meet in the Fall preceding our biannual legislative  
10 sessions, and they introduce Bills, and amend Bills,  
11 and vote on Bills, and everything just exactly like we  
12 do it.

13 Then their activities, their procedures,  
14 their Bills that passed and failed -- the Bills that  
15 have passed and the Bills that have failed, are turned  
16 over to us, and in a number of instances, have been  
17 picked up by legislators, introduced into the next  
18 session of the Arkansas General Assembly, and finally  
19 enacted into law.

20 Maybe not in the exact form, but you  
21 know, here's -- just opening this at random -- here's  
22 one by Robert Marsh and Willis LeGrand, Bill No. 14,  
23 entitled a Silver Haired Bill to allocate additional  
24 funding for alternatives to institutionalization, and  
25 it says simply that older people prefer to remain in

1 their homes.

2 Alternative services such as personal  
3 care in the home, respite care, adult day care, and  
4 home health, where appropriate, would enable them to  
5 stay in their homes, and prevent costly and unnecessary  
6 institutionalization. More trained aides, specialists,  
7 adult day care centers, and so forth, are needed to  
8 accomplish this adequately. We propose that an  
9 additional \$2-million be allowed for these much needed  
10 alternatives, thus eliminating institutionalization in  
11 many cases, and reducing the additional amount of  
12 dollars necessary for nursing home care.

13 Now, I can't tell you for sure that that  
14 precipitated a Bill that is currently before the  
15 Arkansas General Assembly, but I can tell you that  
16 there's a Bill very similar to that before the Arkansas  
17 General Assembly.

18 And so, you know, very possibly it may  
19 have been precipitated by this enactment in the Silver  
20 Haired legislative session.

21 This is, you know, I guess it's just a,  
22 I don't know any other way to say it, other than to say  
23 that I just think it's a tremendous thing that they do.

24 Now, here is one. This is Bill No. 22,  
25 by Marion Earl Crocker, and William Liebenech,



1 entitled, "A Silver Haired Bill to Require Mandatory  
2 Eye Examination Prior to Issuance of a Driver's License  
3 or a Renewal."

4 It's a couple of paragraphs and I will  
5 read it quickly:

6 "Many persons are driving with defective  
7 vision. Driver's licenses are issued without eye  
8 examinations. Many persons procrastinate eye  
9 examinations for various reasons -- cost, fear of loss  
10 of driving privileges, and so forth.

11 "However, for the common good, as well  
12 as personal safety, such eye examinations would most  
13 certainly improve safety on the highways, as is now  
14 required in most States of our country.

15 "Equipment for such examinations can be  
16 provided each License Bureau, and funded by a minimal  
17 increase in license fees."

18 There is a Bill before the General  
19 Assembly, authored by Representative Jerry Henshaw from  
20 Springdale, that does exactly this, if it's enacted,  
21 and I've got to believe that Jerry's, if not his  
22 inspiration, at least his decision to introduce the  
23 Bill, came out of this, because, quite frankly,  
24 Representative Henshaw, who has been a friend of mine  
25 for about 25 years, is no spring chicken himself.

1 I remember he ran for the United States  
2 Congress in 1964, and I remember he was 47 years old at  
3 the time, so whatever that adds up to -- 47 and 25,  
4 he's 72, I guess.

5 But you know, I mean, isn't that a  
6 wonderful thing to come out of the Silver Haired  
7 legislative session?

8 MR. MULDROW: Senator Miles, you have  
9 touched on quite a number of things that are of concern  
10 to us.

11 Of special interest within our area of  
12 responsibility and jurisdiction, is the matter of  
13 discrimination, and that is something that is done to  
14 or for older people, simply because of their ages.

15 For example here, employment  
16 discrimination we've touched on and what ABLE is doing  
17 in trying to rectify some of the problems in that area,  
18 and no more forced retirement for people who are older  
19 because of their age and no other reason.

20 Some of the other areas that have been  
21 touched on today, for example, in regard to this, the  
22 cancellation of automobile insurance at a certain age,  
23 regardless of any other reason, but simply an age  
24 factor alone, or the difference in the utilization,  
25 making use of services which are available to older

1 people by black elderly and white elderly, which might  
2 relate to racial factors.

3 Housing conditions, for example, are  
4 more common among -- or housing discrimination in  
5 getting housing, is another area that is mentioned with  
6 regard to age.

7 The failure to accept or to admit  
8 mentally disabled persons into nursing homes.

9 The access to legal services by an older  
10 person for whatever reason.

11 These are some of the kinds of things  
12 that have been come up in our discussions and  
13 presentations today.

14 Apparently, at the present time, from  
15 what you're saying, it seems to me, is that the main  
16 concern now is the rights of persons in nursing homes  
17 in setting some standards and guidelines for their  
18 operation.

19 Has the legislature dealt with any of  
20 these other areas?

21 SENATOR MILES: No, I'm sorry to say  
22 that we really haven't, and you know, I'll just write  
23 myself some notes on what you mentioned, these specific  
24 things.

25 You know, unfortunately, to a great

1 extent, the things that you're talking about are moral  
2 issues that I'm not sure that we can ever legislate.

3 You know, I've got a lot of friends that  
4 have, without question, older friends that have been  
5 discriminated against in seeking employment, and you  
6 know, I've got to say that I really don't know what you  
7 do about it, because it's so simple for the prospective  
8 employer to deny that that was the case and disprove  
9 that was the case, yet we all know it goes on.

10 I don't know, and I suspect that the  
11 same thing would apply to the other specific areas that  
12 you mentioned, like housing and like legal services.

13 Unfortunately, to a great extent, there  
14 are moral issues that I don't know just exactly how  
15 you'd deal with.

16 It seems to me, and I have had some  
17 experience in this area over the years, that what has  
18 to happen is further legislation at the National level,  
19 and stricter enforcement of laws and regulations of  
20 laws that are on the books and regulations that have  
21 been promulgated.

22 There is no question but that, you know,  
23 we see greater discrimination against blacks than  
24 against whites, older blacks than against older whites,  
25 and I suspect that that's the case throughout the

1 United States, and not just in Arkansas, and not just  
2 in the south.

3 And again, you know, you come back to  
4 these things that these things are moral issues, and I  
5 don't know, you know, if people's hearts aren't right,  
6 I don't really know what you do about that.

7 I don't know how we can pass laws to  
8 make people do right, to make people do the right  
9 thing. I wish I did know how.

10 MR. MILWEE: One -- This probably is a  
11 little bit off the straight theme of civil rights, but  
12 one of the things that has been alluded to by a number  
13 of speakers, is the kind of impact of our regressive  
14 tax structure in this State, on, of course, anybody  
15 that's poor, and particularly elderly people, and one  
16 proposed remedy that I'm sure you have heard of, is the  
17 exemption of groceries, at least, from the sales tax.

18 Would you just comment on that?

19 SENATOR MILES: Sure, I would be glad  
20 to, I really would, because, you know, we're going  
21 through a situation in this legislative session,  
22 wherein we've been asked to provide a tax exemption for  
23 the race track at Oaklawn, and supposedly we're going  
24 to offset that with a proposed Income Tax Bill, and  
25 everybody knows that once those two proposals are law,

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1 and I guess the Oaklawn Bill is law by now, I'm sure it  
2 was signed either last night or today, everybody thinks  
3 the Income Tax Bill will pass on Monday. It passed the  
4 House yesterday, and everybody thinks it will pass the  
5 Senate on Monday.

6 Everybody understands that the next  
7 step is that we're going to pass another penny's sales  
8 tax, and let me just say so that you will know where  
9 I'm coming from, I voted against the Oaklawn Bill and I  
10 voted against the Income Tax Bill, as much for the  
11 simple reason that when the time comes to vote on the  
12 sales tax Bill, I want to be able to vote against it,  
13 and to be able to do so in good conscience. In other  
14 words, I'm not going along with the program -- and I'm  
15 going to get around to your specific question in a  
16 minute.

17 The Income Tax Bill would take 260 or  
18 270,000 Arkansans off the income tax rolls, and a good  
19 many of those I'm sure would be older Arkansans,  
20 because you know, certainly they would be lower income  
21 Arkansans.

22 I've got a real problem with it, because  
23 what you're really going to do with the people at the  
24 bottom end of the scale, is that you're going to give  
25 them a \$42.00 income tax break, and then you're going

1 to turn around and you're going to pass a sales tax  
2 Bill that if they're living on \$7,000 a year and  
3 spending \$5,000 of it on, you know, the necessities of  
4 life that are taxable, you know, you're going to charge  
5 them another \$50.00 -- you're going to give them a  
6 \$42.00 tax break, and you're going to charge them  
7 \$50.00, and I've got a real problem with that. I've  
8 got just a problem that I can't even express with doing  
9 that.

10 So far, you haven't seen anything or  
11 heard anything said at any official or governmental  
12 level about exempting groceries, or the other way that  
13 we could give some help to older people and poor  
14 people, is exempting utilities from the sales tax.

15 You've seen advocacy groups talk about  
16 those things, but you haven't seen anybody that is in a  
17 position to vote it up or vote it down, talk about it.

18 The only way that I could ever live with  
19 the additional penny sales tax, is if we did exempt  
20 groceries from all the five cents, or if we did exempt  
21 utilities.

22 To do that would be giving, in my  
23 judgment, more of a break to older or poor Arkansans,  
24 than it would be to give them a break with the Income  
25 Tax Bill, that you know, is sort of giving it with one

1 hand and taking it away with the other.

2 Now, what happens with respect to  
3 practical politics, is that you're not really going to  
4 see a sales tax exemption on food, or a sales tax  
5 exemption on utilities, unless it becomes necessary to  
6 get the fifth penny sales tax bill passed.

7 You know, if we get to that point, and I  
8 know it sounds like I'm being critical of the Governor,  
9 and I'm not, believe me I'm not, I have a great  
10 admiration for him -- In my view, the natural growth  
11 that we are enjoying in State revenues right now, is  
12 enough to do all that we need to do right now, and we  
13 don't need to pass a sales tax, but if we do, and  
14 everything goes as it has been orchestrated, and we  
15 wind up passing the sales tax, then it has just got to  
16 be with some break for those at the bottom end of the  
17 economic scale, which include a great many of the older  
18 people that we're talking about here today.

19 CHAIRMAN PATTESON: If you'll pardon me,  
20 I need to gavel, because our time is running short on  
21 the 4:20.

22 Senator, we are very appreciative of  
23 your coming and going into such detail on those  
24 matters.

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1 SENATOR MILES: My pleasure, thank you.

2

3 CHAIRMAN PATTESON: May I presume that  
4 you're Mr. Brown?

5 MR. BROWN: That is correct.

6 CHAIRMAN PATTESON: Mr. Brown, if you  
7 don't mind, it's easier for us if you would use the  
8 podium over there, I believe.

9 Mr. Brown is the Little Rock is the  
10 Director of the Little Rock Area Office of the Equal  
11 Employment Opportunity Commission, correct?

12 MR. BROWN: That is correct.

13 CHAIRMAN PATTESON: Welcome.

14 MR. BROWN: Thank you.

15 STATEMENT OF MR. BROWN:

16 I'm not sure exactly what I'm supposed  
17 to be here today, other than to possibly tell you about  
18 the things that we at the U. S. Equal Employment  
19 Opportunity Commission do in the enforcement of the  
20 Age Discrimination in Employment Act.

21 Now, if there is something else that I  
22 should be dealing with, would you, at this time, please  
23 inform me?

24 CHAIRMAN PATTESON: Will you stand for  
25 questions when you're finished, that's all.

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MR. BROWN: Yes.

CHAIRMAN PATTESON: All right.

MR. BROWN: I will refer to the U. S. Employment Opportunity Commission as the "EEOC," that's the acronym for it.

The Agency has been in existence since July 1, 1965, after being created by Congress in 1964.

It was not until July 1, 1979, that the Agency inherited jurisdiction of the Age Discrimination in Employment Act of 1967, as had been amended.

The Age Discrimination Act I will refer to as ADEA, and states that it is unlawful for an employer, an employment agency, or a labor organization, to discriminate against any person who is age 40 and above, in any of the general terms and conditions of employment.

In order for either one of those entities to be covered, if it's an employer, there must be, at this time, at least 20 employees, during 20 or more calendar weeks during a given year.

It may be the current year, or it may be the preceding year, but once jurisdiction is established, it is good for a two year period.

For an employment agency, or a referral agency, as long as there is the duty of referring

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1 SENATOR MILES: My pleasure, thank you.

2 -----

3 CHAIRMAN PATTESON: May I presume that  
4 you're Mr. Brown?

5 MR. BROWN: That is correct.

6 CHAIRMAN PATTESON: Mr. Brown, if you  
7 don't mind, it's easier for us if you would use the  
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14 MR. BROWN: Thank you.

15 STATEMENT OF W. P. BROWN:

16 I'm not sure exactly what I'm supposed  
17 to be here today, other than to possibly tell you about  
18 the things that we at the U. S. Equal Employment  
19 Opportunity Commission do in the enforcement of the  
20 Age Discrimination in Employment Act.

21 Now, if there is something else that I  
22 should be dealing with, would you, at this time, please  
23 inform me?

24 CHAIRMAN PATTESON: Will you stand for  
25 questions when you're finished, that's all.

1 people out for employment, or placing people, it is  
2 covered. However, it would have to have the requisite  
3 number of employees to be covered as an employer.

4 For a union, there must be at least 25  
5 or more members.

6 In this State, a person who feels that  
7 he or she is aggrieved, has 180 days under the Statute,  
8 to file a complaint or charge with the EEOC.

9 If the person does not file within that  
10 180 day period -- this is from the date of the  
11 particular alleged violation -- all is not lost,  
12 because the individual has two years from the date of  
13 the alleged discriminatory action in order to get a  
14 lawsuit filed in the appropriate Court of competent  
15 jurisdiction.

16 The thing governing the 180 day period,  
17 is in order for EEOC to be given an opportunity to  
18 investigate the matter, possibly to conciliate it, or  
19 to determine, or otherwise resolve it, it has to be  
20 filed with the EEOC.

21 The Courts have also said that before  
22 one is able to resort to Court jurisdiction, that  
23 person must come to the EEOC.

24 So, it is for that reason, also, that  
25 the charge must be filed timely with the EEOC. The

1 normal time is 180 days from the date of the alleged  
2 violation.

3 However, a person has two years from the  
4 date of the alleged violation, in order to get a  
5 complaint or a civil action filed in the appropriate  
6 Court of competent jurisdiction.

7 Not only is a firm covered in this  
8 country, but if a firm in this country that is  
9 incorporated, has other locations that may be abroad,  
10 then there is coverage of the employees of that firm  
11 under the Statute.

12 One exception would be that if it is a  
13 foreign country, then there would be no coverage by  
14 EEOC.

15 In 1987, effective January 1 -- the law  
16 was passed in 1986 -- the Age Statute was amended to  
17 increase age coverage from age 70. The upper limit of  
18 the cap was removed.

19 At this time also, there was some  
20 deference that was given to a certain group of  
21 employees, and those would be fire and safety or your  
22 law enforcement officials. Where the EEOC had  
23 jurisdiction over the hiring of those up until 1987,  
24 there is now an exemption that they will not be covered  
25 until 1992.

1 CHAIRMAN PATTESON: They are not  
2 covered at all, or they are not covered under your --

3 MR. BROWN: They are not covered  
4 regarding their hiring procedures. Regarding hiring.

5 In that particular amendment also was  
6 included an exemption for some institutions of higher  
7 learning, especially the tenured professors, or anybody  
8 that has been granted tenure at one of the higher  
9 institutions of learning.

10 About any kind of employment practice  
11 that is covered under the other Statutes that we  
12 administer, is also covered under the Age Statute, be  
13 it a pension plan, hiring, promotion, transfer,  
14 seniority provisions. Any of those that are normally  
15 covered under any of those other Statutes, or any of  
16 the employment practices of a company would be covered,  
17 just as long as a person is age 40 or above.

18 As part of the procedure that we  
19 utilize to resolve complaints or charges, following the  
20 Age Statute, the Agency can go into the informal  
21 conciliation mode -- that is, prior to an investigation  
22 being conducted, they can get the parties together and  
23 attempt to conciliate or settle the matter, without  
24 doing a full scale investigation.

25 If that does not resolve the matter, if

1 we cannot have a meeting of the minds of all parties,  
2 then it is incumbent upon the Agency to conduct an  
3 investigation to determine the merits of that  
4 particular matter.

5 If it is discovered that the aggrieved  
6 party was, in fact, correct, that he or she had been  
7 discriminated against, then we go into the conciliation  
8 mode, and the Statute for filing a lawsuit is then  
9 tolled for at least one year.

10 Under normal circumstances, as I said  
11 earlier, a person has two years to file a lawsuit.  
12 Once the Statute is tolled, an additional period of  
13 time will be granted, pending conciliation of the  
14 matter. If it successful, then that will eliminate the  
15 need to file a lawsuit. If it is unsuccessful, a  
16 lawsuit may or may not be filed. It depends.

17 EEOC, at this point, is the Agency for  
18 which the Statute may be tolled. There is, I believe,  
19 a notice that is being circulated to the public, in  
20 order to grant this particular tolling provision, to  
21 other private litigants. It has not been passed by the  
22 Commission. The Commission has interpreted the law to  
23 allow for it, but the rule or the regulations have not  
24 been amended to so allow a private litigant to do that.  
25 But the Agency lawyers can, at this time, do it.

1                   When we are seeking relief, or a remedy  
 2 on a charge of a form of discrimination under the  
 3 Statute, where there is merit to the charge, the relief  
 4 that is sought is a complete remedy. If it is a wage  
 5 problem, for all of the wages or other earnings that  
 6 may have been lost by the individual aggrieved.

7                   We also seek to get liquidated damages.  
 8 Under the conciliation procedure, we may or may not get  
 9 those, but if the matter is litigated, then normally, a  
 10 Court will award liquidated damages. That is, total  
 11 losses that the person is entitled to, plus an equal  
 12 amount that the person will be given, or the group of  
 13 persons will be given. This is to show that the  
 14 Statute is to serve as a deterrent for those who are  
 15 willing to subject themselves to it.

16                   In those instances, and these are few  
 17 where there is found to be a willful violation of the  
 18 Statute, or the rights of a person because of the  
 19 Statute, it is possible for punitive damages to be  
 20 assessed. Court have done it. The test is rather  
 21 stringent, and the Courts do not do that as often as  
 22 the parties would like.

23                   But here again, the period for filing,  
 24 when it is determined that the action taken against an  
 25 employee, or an applicant for employment, was willful,

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1 it's three years rather than the two years.

2 EEOC as the Agency that enforces the Age  
3 Discrimination in Employment Act, or ADEA, is allowed  
4 to generate charges against various entities on its  
5 own.

6 It can, based on information that is  
7 provided it, or based on information that is  
8 researched, determine that a review of an employer's  
9 activities need to be investigated, and can so generate  
10 a charge to do it.

11 It is thought, although this Agency does  
12 not normally do it, that an investigator, as long as he  
13 or she had proper identification, can walk off of the  
14 street, into an employer's premises, and based on the  
15 information that he or she has, investigate the records  
16 of that company regarding its hiring of the agent, or  
17 terminations, or otherwise, the employment practices of  
18 the agency -- of the agent.

19 However, that is not done. What the  
20 Agency does, at this point, is to generate what is done  
21 as a directed charge. Notified by the Agency that it  
22 is going to do -- that it has a belief, and so  
23 conduct the investigation.

24 The remedy that is sought, if it is  
25 discovered that problems actually exist, would be the

1 same as those that are sought when a civil action is  
2 filed in a Court of competent jurisdiction.

3 Here again, once a finding has been  
4 made, the Statute can be tolled for one year, so that  
5 the matter can be either resolved, or if it is not  
6 resolved, then it would go into an appropriate lawsuit.

7 The recovery on those would be total  
8 monetary losses, if it's a wage problem. If it's a  
9 situation where a person has not been hired, or if it's  
10 a situation where the person has been discharged, you  
11 will still consider the monetary losses, plus an equal  
12 amount for liquidated damages.

13 If it can be shown that the actions that  
14 were taken against an individual, or a group of  
15 persons, were done flagrantly and willfully against  
16 this group, then a request for punitive damages can be  
17 made and on occasion, those have been granted.

18 The upper age limit having been removed  
19 on January 1, 1987, also means that as far as pension  
20 plans and health plans are concerned, there is no upper  
21 age limit.

22 An employee who is able, should be  
23 allowed to continue to work as long as the employee is  
24 able to do so. However, the employee wants to avail  
25 himself of a bonfide pension plan, or retirement plan,

1 then there is nothing to preclude the employee from  
2 doing that. But if an employee is forced into  
3 retirement because of a particular age, and the person  
4 has continued adequately performing, then, of course,  
5 it's something that needs to be reviewed by EEOC.

6 The law covers not only private citizens  
7 who are seeking employment, or who are employed by the  
8 private sector, it covers employees who are employed by  
9 the Federal Government, or State Government.

10 The one difference is, if it's a Federal  
11 Government employee, then, of course, the investigation  
12 is not conducted by EEOC, per se, but the person by  
13 whom they file the charge. The charge is normally  
14 processed through what is known as the agency's  
15 internal EEO process.

16 EEOC has oversight to review the  
17 findings and to make some judgment about what the  
18 remedy is in the matter, if it is not resolved at a  
19 lower level.

20 Now, a little something about the Little  
21 Rock Area Office. It is a part of the total agency  
22 field operation, but it is attached to the Memphis  
23 District Office as sort of a satellite office.

24 The Memphis District Office has two,  
25 what I call satellite offices. It has the Little Rock

1 Area Office which covers the entire State of Arkansas,  
2 and it has the Nashville Area Office, which covers the  
3 Eastern Part of Tennessee, that is east of the  
4 Tennessee River. The Memphis office covers Tennessee,  
5 west of the Tennessee River.

6 In this area, during the last fiscal  
7 year ending September 30, 1988, of at least 1,406  
8 charges received in the office, 10 percent of those  
9 were age charges.

10 The percentage may increase or change  
11 somewhat from year to year, but there has not been any  
12 drastic increase of the charge intake on age charges in  
13 this area, within the last several years.

14 Nationally, I do believe there has been  
15 some slight increase overall, in the receipt of age  
16 charges, but this office has not received anymore than  
17 roughly 10 to 10.7 percent.

18 Whether that will change at this point,  
19 I don't know. It's highly likely that it may. It  
20 depends on the extent to which the public becomes aware  
21 of their rights that exist under these Statutes. It  
22 becomes a matter of whether people are willing to  
23 assert their rights, and there may be some other  
24 factors, too. But there must be that educational  
25 process, as well as a willingness of the individuals to

1 assert whatever rights are available to them.

2 Now, we have had many times, people  
3 waiting until it is too late for EEOC's process to be  
4 invoked. They will come, but it is most unfortunate  
5 that we can't do anything for them when that happens,  
6 except to counsel them as to what the time constraints  
7 are, and what other rights they may have, if any still  
8 exist.

9 So, in summary, EEOC has administered  
10 the Age Discrimination in Employment Act, since  
11 January, not January, July 1, 1979, after it was  
12 transferred from the U. S. Department of Labor.  
13 Jurisdiction in this State is 180 days from the time  
14 that the alleged discrimination occurred, although a  
15 party does have additional time to file a lawsuit if he  
16 or she so desires. The only thing is, for EEOC to  
17 normally assert jurisdiction, that charge must be filed  
18 within 180 days.

19 We do have jurisdiction anytime it is  
20 filed within two years, but the charging party's,  
21 quote, "rights" may be adversely impacted.

22 The remedy under the Age Statute, where  
23 there is found a violation, both consists of correcting  
24 that practice, and where there has been a loss of  
25 money, attempting to get dollar for dollar, and also,

1 getting liquidated damages which would be an equal  
2 amount to that amount that was lost.

3 If it can be shown that the action taken  
4 against an employee, or an applicant for employment,  
5 was willful, was flagrant, then punitive damages can be  
6 requested and have been obtained.

7 Under a willful finding, the time for  
8 filing a lawsuit is three years. Anytime that EEOC  
9 goes into the conciliation mode, attempts to resolve a  
10 complaint or a charge through conciliation after a  
11 finding, the charge is automatically tolled for one  
12 year, up to one year, but it's not any longer than one  
13 year.

14 Where it is discovered that there is a  
15 willful violation, there is an additional period, but  
16 that does not exceed three years.

17 Are there questions?

18 CHAIRMAN PATTESON: If I may lead off.  
19 I have two questions really.

20 You mentioned that there were, in fiscal  
21 '88, about 1400 charges, 10 percent of which were age  
22 related. I presume a lot of those would still be  
23 pending, but on the history maybe in previous years, if  
24 the percentage was more or less the same, do you have  
25 any statistics on the disposition of those cases?

1 MR. BROWN: Unfortunately, today I  
 2 didn't bring those statistics with me. What I do  
 3 remember, just from memory, is that of all the charges  
 4 that we process in a year's time, approximately 90  
 5 percent will be closed or resolved as no cause,  
 6 administrative closures because the parties have failed  
 7 to cooperate, or because we were able to get some kind  
 8 of settlement -- so that would include settlements --  
 9 and a very small percentage would be those that we find  
 10 violations on.

11 Even though we do settle, but if I  
 12 remember correctly, last year our settlement rate in  
 13 this office was less than 25 percent of all of the  
 14 charges that were closed.

15 We did recommend a number of cases for  
 16 litigation. A number of cases were accepted for  
 17 litigation, and the agency, as a whole, filed more than  
 18 523 lawsuits in the last fiscal year. Of that number,  
 19 more than 123, I believe, were age charges, on those  
 20 lawsuits that were filed.

21 I do not know what the recovery was,  
 22 because some of those were settled, but I don't  
 23 remember what the figure was for the agency. That  
 24 information is available someplace else.

25 CHAIRMAN PATTESON: My other question

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1 was more out of curiosity than anything else. If you  
2 would tell us a little bit about the makeup of this  
3 particular office. I mean, the funding, the number of  
4 negotiators, or conciliators, or what kind of a staff  
5 you have working in the Little Rock area?

6 MR. BROWN: It's a small office, known  
7 as an Area Office. There are 27 people employed. Of  
8 that number, five are clericals, and I have three  
9 supervisory personnel -- four, very soon there will be  
10 four.

11 The remainder of the people are  
12 Investigators. Their classification was just recently  
13 changed to "Investigator." Before that they were  
14 "Equal Employment Specialists," but they are now  
15 Investigators as of November, 1988.

16 CHAIRMAN PATTESON: One other thing, is  
17 there an appeal process?

18 MR. BROWN: There is an appeal process.  
19 I'm glad you mentioned that. I had neglected to  
20 mention that.

21 The Agency established in 1987, about  
22 August 1, an appeals process for all of its no cause  
23 charges. That is, those that you make a finding on,  
24 and we say there is not reasonable cause to believe  
25 that the allegation is true.



1 This does not mean that discrimination  
2 did not occur. What it means is that the investigation  
3 and the amount of evidence and data collected, did not  
4 show that there was, in fact, discrimination.

5 Further probing may have, sometimes it  
6 does not, most times it does not.

7 The person who receives a no reasonable  
8 cause finding, can appeal to the Agency's office  
9 located in Washington, D. C., called Determination and  
10 Review Programs.

11 The person must complete the filing of  
12 those appeal papers within 15 days of the time that I  
13 issue a finding on the merits of the charge.

14 The DRP Program, Determination and  
15 Review Program, requires that be sent to them, some  
16 documents, some reason to support why the vacation, the  
17 review, should be reopened, or what you, and on  
18 occasion, after they have reviewed everything in that  
19 office, they may request an additional investigation,  
20 to determine whether a further investigation would have  
21 changed the outcome of the finding.

22 I can tell you, at this point, since  
23 that program has been in operation, I've only had one  
24 case reversed, just one, and over a two year period, I  
25 think I have closed now, or resolved, probably in

1 excess of 2600 charges.

2 MR. MULDROW: Mr. Brown, I'm a little  
3 surprised at the volume which you mentioned. According  
4 to my calculations out of 1400 charges in fiscal year  
5 1988, you had about 10 percent related to age  
6 discrimination, out of which about 90 percent of those,  
7 for one reason or another, were found to be no cause,  
8 or not pursued further for whatever reason -- some  
9 technical, some other reasons -- which leaves only  
10 what?, about 14 cases, in which some resolution was  
11 required in terms of compensation or conciliation, or  
12 whatever the process might have been.

13 We're told that Arkansas has a very high  
14 proportion of its population which are elderly, and  
15 today from many of our speakers, we have heard a great  
16 deal about that employment discrimination is one major  
17 concern, or at least in terms of the number of times it  
18 has been brought up today.

19 What is your impression of this as a  
20 problem among the older people in Arkansas? Is it a  
21 major concern? You're in a position to be able to  
22 assess and compare it with other kinds of employment  
23 problems.

24 Is employment discrimination, would you  
25 say, a major concern of older people in this State?

1 MR. BROWN: Let me address your question  
2 this way, Mr. Muldrow.

3 I said that approximately 90 percent of  
4 the charges that we closed last year -- Now, that was  
5 not 1406 charges that we closed last year. The number  
6 was less than that. We took in 1406.

7 MR. MULDROW: I see.

8 MR. BROWN: Of those that were closed  
9 without some finding of cause, I said that should have  
10 represented 90 percent, but you had administrative  
11 closures in there, you had settlements. Now, a lot of  
12 the age charges, as well as Title 7 and 8 charges that  
13 come into our system, are processed as negotiated  
14 settlements. We have a rather high number of those.

15 Some of those people who file charges,  
16 elect early to go into Court. Many times when they  
17 come into our office, they have attorneys already.  
18 Others get attorneys shortly thereafter. Then they  
19 request that they be allowed to go to Court within a  
20 reasonable period of time.

21 The only time that they have to do is to  
22 give us notice that they are going to Court, give us a  
23 copy of the lawsuit, and we will close their case.

24 So, we have many charges like that.

25 So, to say that the 14, the number 14

1 represents the number on which some merit was found, is  
2 not an accurate assessment.

3 I don't remember, at this point, exactly  
4 what the numbers are regarding the various Statutes.  
5 We administer three different Statutes, Title 7, the  
6 Civil Rights Act of 1964, as amended, the Age  
7 Discrimination in Employment, and the Equal Pay Act.

8 Now, we may have charges that are filed  
9 under one or more of those Statutes, or all of them.

10 Now, in terms of there being an  
11 employment problem in the State among the aged, yes,  
12 that is true. I did mention that sometimes the people  
13 who have problems, will not come forward to talk about  
14 the problems that they have encountered on their jobs.

15 There are those that come forward and  
16 talk about problems, but after the investigation is  
17 conducted, discover that the reason the action was  
18 taken, a specific act was taken against the employee,  
19 was because of something that the employee did which  
20 was an infraction of some of the rules and regulations  
21 of the company, and that happens a lot.

22 And there are other people who are not  
23 among the aged, who also are likewise disciplined, and  
24 have similar problems; therefore, we can't say that  
25 this is because of that person's age.

1 I believe that if the people would  
2 review the data that is on the various bulletin boards  
3 about their rights that exist for them, and if they  
4 would take time to think about these things, and not  
5 sleep on their rights, more age charges would probably  
6 be filed.

7 But I have also had a number of cases  
8 occur where people file charges, and then very abruptly  
9 say, "I don't want to proceed with this, I think I made  
10 a mistake, I misunderstood what happened to me."

11 Nevertheless, there is a problem among  
12 the aged, regarding employment. I think they are not  
13 hired as often as they should be. I believe that there  
14 are times when some who have been with various  
15 companies, are encouraged to take an early retirement.

16 Even though the retirement package may  
17 be sweetened, if the person has not had the opportunity  
18 to have counsel before this waiver is signed, that  
19 person can say, "Oh," say, "I was forced into this,"  
20 but many of them will not come forward.

21 Now, we have had people come and tell us  
22 that they had problems. When you check into them, you  
23 would discover that the facts as given, were quite  
24 different from the facts as they occurred.

25 Now, we are doing some things. There is

1 more that could be done. A lot more. I believe that  
2 is one reason why the agency is now advocating a change  
3 in the Statute to allow private litigants to have the  
4 Statute tolled while they are trying on their own to  
5 resolve their problems, before going to Court.

6 It is believed that many times, because  
7 that particular right does not exist, some lawsuits may  
8 be spurred that would not be.

9 Have I addressed your question?

10 MR. MULDROW: Yes, you have.

11 CHAIRMAN PATTESON: May I make a  
12 statement and tell me whether you agree with it or not.  
13 Age discrimination is a very difficult thing to prove.

14 MR. BROWN: It is.

15 CHAIRMAN PATTESON: Would you agree  
16 that probably a great deal more of it goes on, that is  
17 either not charged, or they're not able to prove it?

18 MR. BROWN: Well, there are several  
19 things. There is age discrimination that occurs that  
20 is not easily proved, and there is that age  
21 discrimination which may occur which may also have some  
22 other factors involved which is "age-plus." If there  
23 another factor involved, we may not be able to do  
24 anything about that.

25 What I have discovered all too often, is

1 that too many people in their workplace, fail to do the  
2 kinds of things that they can do to cover themselves,  
3 and I have looked at a lot of records, and I have  
4 talked to a lot of people myself.

5 I was, at one time, intimately involved  
6 in the investigative process. People would tend to not  
7 follow the company's rules and procedures, and many  
8 times they would say, other folks have done such and  
9 such a thing, or they may be doing such and such a  
10 thing, but when you check into it -- talk to whoever  
11 this is, and you talk to them again, you find that they  
12 may have had a misinterpretation of what the rules  
13 were, and what the other folks were doing. They may  
14 have had some misperceptions. That happens a lot.

15 But, yes, it is hard to prove.

16 CHAIRMAN PATTESON: Any other questions?

17 (No response)

18 CHAIRMAN PATTESON: We are very grateful to  
19 you for coming and making the presentation and being  
20 willing to answer our questions.

21 Thank you for coming.

22 MR. BROWN: Thank you.

23 CHAIRMAN PATTESON: Since no one else  
24 signed up for the open session, we will officially  
25 declare the meeting adjourned.

(Whereupon, at 4:55 p.m., the above  
public hearing was closed.)

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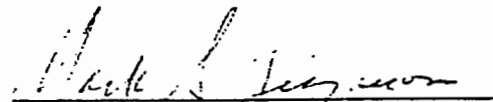


C E R T I F I C A T E

I hereby certify that this is the transcript of the Public Hearing held on Friday, February 3, 1989, beginning at 9:40 a.m., at the Holiday Inn-Center City, 617 South Broadway, Little Rock, Arkansas, and ending at 4:55 p.m., in the matter of:

CIVIL RIGHTS CONCERNS OF OLDER AMERICANS  
Arkansas Advisory Committee on the  
U. S. Commission on Civil Rights

and that this is a true and correct transcription of said proceedings.



MARK S. PIGMON  
Official Reporter

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