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DELAWARE ADVISORY COMMITTEE

TO

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

FORUM:

IMPLEMENTING THE AMERICANS WITH
DISABILITIES ACT (ADA) IN DELAWARE

COMMITTEE MEMBERS:

HENRY A. HEIMAN, Chairperson
RALPH A. FIGUEROA
HELEN SKINNER
RAYMOND WOLTERS
BLANCHE M. FLEMING
JOHN ~~IV~~. BINKLEY
CAROL-LEE HURLEY

ALSO PRESENT: EDWARD M. DARDEN,
Senior Civil Rights Analyst

J.C. Boggs Building
844 King Street
Grand Jury Room
Wilmington, Delaware

Thursday, December 17, 1992
9:15 o'clock, a.m.

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1330 King Street - Wilmington, Delaware 19801
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ORIGINAL

1 THE CHAIRPERSON: Good morning. I would
2 like to thank everyone for coming.

3 Let me begin by saying that this body is the
4 Delaware Advisory Committee to the U.S. Civil Rights
5 Commission. The Commission has a network of advisory
6 committees, there is one in each state and the
7 District of Columbia, made up of residents of the
8 state who serve without compensation.

9 As appointed members our purpose is to advise
10 the Commission of information concerning civil rights
11 within our respective states.

12 To do this we receive reports, suggestions and
13 recommendations from individuals, public and private
14 organizations, and public officials about matters
15 pertinent to inquiries conducted by the State Advisory
16 Committee.

17 We are not an action committee in the sense
18 that we carry out policies or enforce laws.

19 Our main function is to advise the Commission
20 in ways that it may use to appraise the laws. We have
21 been called the eyes and ears of the Commission.

22 The U.S. Commission on Civil Rights and its
23 advisory committees have authority under federal law
24 to collect and study information regarding

1 discrimination and the denial of equal protection of
2 the laws under the United States Constitution when
3 that denial is based upon race, or color, or national
4 origin, or religion, or sex, or age, or disability,
5 and it is pursuant to that authority that we undertake
6 today's forum.

7 To assist the Advisory Committee a record of
8 the proceeding is being made and all persons
9 submitting information to the Advisory Committee are
10 going to do so voluntarily. Failure to give
11 information will not result in either penalties or
12 sanctions.

13 For access to any of the information provided
14 to you here today or any contained in the files of the
15 Commission you may contact the Office of the Solicitor
16 at the U.S. Civil Rights in Washington, D. C., and
17 that information will be made available to you.

18 Do we want to discuss about the pamphlets and
19 other materials that we have available?

20 MR. BINKLEY: Ed?

21 MR. DARDEN: In the anteroom as you came
22 in we have just a few copies available of materials
23 provided by other federal agencies about the ADA.

24 Those materials are from the Department of

1 Justice and from the Equal Employment Opportunity
2 Commission.

3 You can obtain copies for yourself, additional
4 copies for yourself, by contacting those agencies.
5 Those materials are also available in braille, large
6 print, and audio tape.

7 If you would like any of those materials you
8 can get also from the area in the back a sheet that
9 has the telephone numbers for all of the agencies that
10 provide information about ADA.

11 THE CHAIRPERSON: Thank you. The
12 Commission and its advisory committees are required by
13 federal law to request that all persons who provide
14 information refrain from degrading or defaming other
15 individuals.

16 Federal law also provides that anyone who
17 appears here today who does not want to be
18 photographed, who does not want their comments
19 reported in the press, can indicate that and we will
20 take steps to honor your request.

21 Before we begin let me introduce myself, my
22 colleagues, and explain how we will be conducting our
23 forum today.

24 I am Henry Heiman, I am the chairman,

1 chairperson, excuse me, of the Delaware Advisory
2 Committee to the U.S. Commission on Civil Rights.
3 When I am not doing this I am an attorney in private
4 practice in the State of Delaware.

5 My colleagues on the Advisory Committee, not
6 all of whom are obviously available or here today, in
7 alphabetical order are Ms. Emperatiz Alaix, who is the
8 Executive Director of Wilmington's Latin American
9 Community Center; Joyce Felton, a business owner with
10 restaurants in Rehoboth Beach; Ralph Figueroa, who is
11 a counselor to migrant workers for the Delaware Labor
12 Department and a member of the Delaware State Human
13 Relations Commission; Glover Jones, who is a research,
14 pardon, senior research chemist at the DuPont Company;
15 Emily G. Morris, Executive Director of the Dover
16 Educational and Community Center, Inc.; Helen Skinner,
17 who is Vice Chair of the Developmental Disabilities
18 Planning Council of Delaware; Lynn Wilson, who is an
19 attorney in public service in the Family Court of
20 Delaware; Raymond Wolters, who is a professor of
21 history at the University of Delaware.

22 Those are the members of the Committee, and
23 now if I may I will take just a few minutes to explain
24 what the Committee's rules are for the proceedings

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1 today.

2 As you can see in the agenda that was
3 provided, we have scheduled three panels to make
4 presentations, and after the panelists have completed
5 their statements questions will be posed by members of
6 the Advisory Committee.

7 Due to limitations on time we will not take
8 questions from the audience. If anyone has any
9 questions, if they would prefer, would write them down
10 and pass them up to us. As time permits we will see
11 what we can do.

12 Let me underscore that the Advisory Committee
13 isn't empowered to receive individual complaints that
14 come within the jurisdiction of the Commission. If
15 there are any persons here who feel they have grounds
16 for a discrimination complaint, see Mr. Darden. Mr.
17 Darden is standing over here next to the window.

18 Just another word about our complaint handling
19 process. The Commission is not an enforcement agency
20 and will not investigate your individual complaints.
21 We will forward your complaint to the appropriate
22 enforcement agency for review and possible
23 investigation. The complaints we receive will be
24 turned over to the Commission's headquarter staff for

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1 processing.

2 If you prefer to contact the headquarters
3 directly you may do so at the Commission's complaint
4 hot line, and the numbers are 1-800-552-6843, or area
5 code 202, that's Washington, D.C., 376-8513. The TDD
6 number, (202) 376-8116. If you didn't get those
7 numbers or you want them afterwards please let me know
8 and I will make them available to you.

9 The objective of today's forum is to gather
10 information for a report to the Commission on the
11 implementation of the Americans With Disabilities Act
12 in Delaware. The act is often identified simply by
13 its initials, ADA, and we will be hearing this short
14 form used often today.

15 The Advisory Committee has decided to
16 undertake this inquiry at its recent planning session.
17 This forum is part of an Advisory Committee general
18 effort to monitor developing civil rights issues in
19 the state and to report to the Commission on ways to
20 better enforce civil rights laws.

21 Our focus is also shared by the Pennsylvania
22 Advisory Committee, which has plans underway for a
23 review of ADA implementation in Pennsylvania.

24 The Delaware Advisory Committee intends to

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1 delineate the steps being taken to implement the ADA
2 by public officials. We also plan to gather
3 information about complaints reported by persons that
4 ADA is intended to benefit.

5 Our plans for follow-up to the forum will be
6 decided in later planning sessions by the Advisory
7 Committee.

8 The level of this and the Commission's other
9 advisory committees, however, continues to be affected
10 by underfunding and staff resources. In order to keep
11 our activities within the limits of the Committee and
12 staff's limited resources we narrowed the scope of
13 today's inquiry to a manageable but hopefully
14 meaningful focus, one important factor in our decision
15 to concentrate on implementation of the ADA and its
16 recent application to all employers with 25 or more
17 employees, effective July 26, 1992.

18 Persons with disabilities who are ready to
19 enter the work force are more numerous than we
20 realize. Some 43,000 persons in Delaware are
21 identified as having work, mobility or self care
22 disability, which constitutes 11.3 percent of the
23 state's potential work force.

24 The Committee intends today to learn from

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1 advocats for the disabled about the community civil
2 rights problems and hear from responsible government
3 officials about their commitment to improve civil
4 rights monitoring and enforcement.

5 We will be convening three panels of
6 knowledgeable speakers to bring us information.

7 In Panel A the Advisory Committee will hear
8 from four public officials who will outline the steps
9 being taken to implement the ADA in Delaware. Our
10 objective is to ascertain the status of ADA
11 implementation efforts by public officials.

12 In Panel B the Committee will hear from two
13 ADA proponents who will relate information about a
14 statewide ADA coalition and its activities. Our
15 objective is to identify problems with Delaware's
16 implementation and enforcement efforts.

17 Panel C, the concluding panel, will include
18 two representatives of nonprofit employers and a
19 statement by the Delaware State Chamber of Commerce.

20 Mr. Burris, who was originally planning to be
21 with us today, had to excuse himself because of other
22 commitments.

23 The Committee's aim for this panel is to
24 identify needs for education amongst small employers

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1 and nonprofit organizations to their obligations under
2 the ADA.

3 At the conclusion of our public forum the
4 Advisory Committee will gather the information we
5 gather in preparation for a written report to the
6 Commission.

7 I should just suggest, digressing for a
8 moment, that we have a Commission member with us who
9 will speak to us a little later, Mr. Redenbaugh, and
10 of course his ears will bring to the Commission far
11 more than the written report.

12 The meeting record will remain open for 30
13 days to receive comments from any person or persons
14 who wish to contribute to our understanding of this
15 important topic.

16 If there are no further questions from any of
17 the Committee members, the first panel will begin
18 shortly, followed by a break for lunch, and the second
19 panel will begin at 1:30 here in this same room.

20 If there are any members of the media I would
21 ask that they identify themselves now so that we are
22 aware that they are in the room.

23 No media? We must advise you that the
24 Delaware courts require you to obtain prior approval

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1 for photography of any kind, but since they are not
2 here it doesn't matter.

3 We will now begin our forum, and I turn over
4 to John Binkley, Director Eastern Regional Office, to
5 get us started with a brief comment and introduction
6 of our speaker, Commissioner Redenbaugh.

7 MR. BINKLEY: Thank you, Mr. Chairman.
8 It is my pleasure today to introduce to you
9 Commissioner Russell Redenbaugh. He is one of eight
10 Commissioners of the United States Commission on Civil
11 Rights, and we are fortunate that he is conveniently
12 close, a resident of Philadelphia, to be able to
13 attend the meeting today and join us and present us
14 with some background information and show the need for
15 the ADA as we know it.

16 The Commissioners of the United States
17 Commission on Civil Rights are part-time so they
18 either are retired, have other occupations or
19 something to take care of the rest of their time, and
20 I don't know how Commissioner Redenbaugh has time to
21 do all he does for the Commission because he is so
22 busy and active in other pursuits.

23 He is partner and director at Cooke & Bieler,
24 a Philadelphia based investment advising firm. He is

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1 chairman of Action Technologies, Inc., a software
2 development and consulting firm in California, and
3 president of the Workflow Institute.

4 In addition, he has authored several papers
5 and articles on a variety of topics, including
6 monetary, tax and trade policy, business technology,
7 management and other issues involving increasing the
8 prosperity of disadvantaged citizens.

9 So we are very fortunate to have Commissioner
10 Redenbaugh with us today. And I would also like to
11 introduce with him his special assistant, Rachel Budd.

12 And I might add informally at this point that
13 the Commissioner has a phone call to make at 10:30, so
14 if you see him get up and leave, this is part of his
15 other obligations and he will return and join us.

16 And at this time it is my great pleasure to
17 introduce Commissioner Russell G. Redenbaugh of the
18 United States Commission on Civil Rights.

19 MR. REDENBAUGH: Thank you. I am going
20 to stand. Often when I talk it is the only way I can
21 keep from falling asleep.

22 And, Ed, we have the same time line? How long
23 would you like me to talk?

24 MR. DARDEN: It is your pleasure.

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1 MR. REDENBAUGH: Well, no, we can't --

2 MR. DARDEN: The first panel begins,
3 first speaker begins at 10:00. We have half an hour.

4 MR. REDENBAUGH: Okay, good. You need to
5 constrain me. I am a professor at University of
6 Pennsylvania and we can talk forever.

7 I want to talk a little bit about my life, not
8 because it is so interesting but because it is the one
9 I know the most about and I want to connect that to
10 why we are here today, the reason we have the
11 Americans With Disabilities Act and the opportunity
12 that that can be not only for the 43 million Americans
13 with disabilities but also for the society, the
14 economy and the business community.

15 It was 30 years ago this year that I became
16 blind and lost most of my fingers. I was a 17 year
17 old high school junior and I was building a rocket
18 which exploded.

19 That event quite obviously changed my life.
20 And until I was appointed to the U.S. Commission on
21 Civil Rights, and I was appointed expressly because of
22 being disabled, until I was appointed to the
23 Commission on Civil Rights it is the first job I ever
24 had because of being disabled. All the other jobs and

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1 opportunities occurred in spite of that, in some cases
2 with some difficulty.

3 When this happened to me I was just a regular
4 17 year old gangly teenage adolescent boy with
5 pimples, living in a little suburban area of Salt Lake
6 City, Utah, and was really quite undistinguished in
7 any way, fit in well with what was happening, which
8 was not much in that time and place.

9 But I realized that whatever career plans I
10 had needed to be altered dramatically, and I realized
11 I needed to become suddenly very serious about
12 achievement and scholarship and my academic life.

13 My attitude, which I had been following quite
14 successfully, was that school was an interruption and
15 was something that one should minimize. I minimized
16 attendance at school so much that, actually, there was
17 some doubt as to whether I would complete the high
18 school there.

19 I did, however, get very good at skiing. We
20 lived near a ski resort there in Salt Lake and you
21 could leave classes at noon and be on the ski slopes
22 by 1:00 and ski in the afternoon. So I took my PE on
23 the ski slopes, not for credit.

24 That all changed and I decided I needed to

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1 become a serious student. So I did that. I applied
2 to the University of Utah and of course was accepted.
3 They have a policy there of taking anybody in state.

4 And as soon as I appeared there my counselors
5 began to recommend that I not pursue business because
6 it was a career involving accounting and arithmetic,
7 and there was an effort to push me into some of the
8 softer things, sociology and psychology.

9 Fortunately for me, that didn't seem very
10 appealing, and I stayed in the college of business and
11 graduated there, did very well, and applied to
12 Stanford to the Masters in Business Administration
13 program, which was something that really interested
14 me, to study business and study finance.

15 Unlike Willy Loman, I figured out that that's
16 really where the money was, and that was very
17 important to me.

18 Stanford declined my application, as did
19 Harvard, both of whom said we are certain that no one
20 who is blind could get through a program as difficult
21 as ours.

22 Harvard was actually even kinder because they
23 didn't cash the \$25 check that goes with the
24 application. They said, look, we don't even need to

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1 read your application, so there is no reason for you
2 to pay the \$25. \$25 was a lot of money in 1962 to
3 blind high school -- blind college seniors, so I was
4 glad to have the money but unhappy with the result of
5 their decision.

6 But Stanford really bothered me. I really
7 wanted to go there. I could imagine myself living in
8 California. I really couldn't imagine myself living
9 in Boston.

10 So I reapplied to Stanford, mounted a very
11 well organized campaign that included getting one of
12 the donors who was about to make a million dollar
13 contribution to the Stanford University to hold up on
14 the check and that really got the attention of the
15 admissions committee.

16 Plus I organized all my faculty members at
17 University of Utah, some of whom were Stanford
18 graduates, and he said you guys are making a mistake,
19 this is our best student, he is third in the class and
20 you guys are crazy if you think he can't get through
21 your program.

22 So they reconsidered and they decided that
23 they had really made a mistake, that I definitely
24 would be able to get through a program as difficult as

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] 1 theirs, but they had to decline my application because
2 they concluded that even if I, as now seemed likely,
3 finished the program, I would be unemployable, and
4 they just couldn't see that it would be responsible to
5 waste their resources training somebody who would be
6 unemployable.

7 And I don't know how they knew all these
8 things, but they were very clear that they needed to
9 act responsibly.

10 So I didn't go to Stanford. Instead I came to
11 Penn, went to the Wharton School, did very well there,
12 and then after, as a matter of fact, reapplied to
13 Stanford, this time to the doctoral program, and by
14 then there had been sort of a shift in attitude, as
15 well as a shift in committee, and I was admitted to
5 16 the doctoral program there in applied mathematics and
17 didn't go, went to work instead.

18 But I had a very difficult time finding a job.
19 This was at a time when my peers at Wharton School
20 were getting more offers than interviews. It was a
21 time when, especially in finance, 1969, there was just
22 demand for top MBAs from Wharton, Harvard, Stanford,
23 that if you were in the top of your class all you had
24 to do to get a job offer was open your mailbox. In

5
1 fact, it was easier to get a job offer than a Visa
2 card.

3 But I found one offer, only had one, but, as
4 somebody said, one was all you need and you can't
5 accept more than one, and that was with this little
6 investment company in Philadelphia that was small, 175
7 million dollar asset company. So I went there and
8 have been there for the last 24 years. And the
9 company is now six billion dollars, so we have grown
10 the company a lot.

11 But I see what a very difficult time I had in
12 getting the kind of education that I wanted, in
13 getting an attractive, really in getting any kind of
14 job offers. In fact, the only one I got was from this
15 company that nobody had ever heard of that was very
16 small and even local to Philadelphia.

17 Attitudes have changed tremendously in the
18 last 30 years with respect to our willingness and
19 ability to educate persons with disabilities. They
20 have changed a lot.

21 This story could never happen today. Stanford
22 and Harvard actively recruit and accommodate and
23 encourage disabled people to be in their programs.

24 The dean of the Harvard Business School, the

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1 dean of admissions at that time, who I made famous
2 because whenever I told this story I always said his
3 name, in fact, made him more famous than if he hadn't
4 turned me down, he got so famous that he even heard of
5 me going around the country telling about him and he
6 wrote me letter of apology and said, look, I made a
7 lot of mistakes, but I think this is right at the top
8 of the list for the biggest one.

9 And he really saw, you know, how much, how
10 different the attitudes were then from now and what a
11 mistake it was to have the prejudice that he had. And
12 so since and he apologized so sincerely I never say
13 his name anymore.

14 But the attitude of employers has not changed.
15 It continues to be very much what it was 30 years ago,
16 25 years ago. There continues to be an attitude that
17 people who are disabled can't work.

18 You know, the unemployment rate among the
19 disabilities population is 68 percent. There are
20 eight million work ready persons with disability in
21 this country, 43,000 in Delaware, that want to work
22 and can't.

23 That's why Americans With Disability Act was
24 passed, that's why the regulations are being written,

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1 to open the work place, as well as the places of
2 public accommodation, to those of us who want to work
3 and can work.

4 Let me talk a little bit about coordination,
5 not the normal physical coordination that you think
6 of, that you see in a good athlete.

7 I want to talk about something more
8 fundamental than that. The basic dance of life for
9 any biological system is kind of a dance of
10 coordination.

11 All of the animals, including humans,
12 coordinate their behaviors inside the biological
13 network in which we live. In humans, with humans we
14 become very elaborate in our systems of coordination.

15 Commerce is a very sophisticated system of
16 coordination. It has come to replace war as a method
17 for accumulating resources, standard of living, social
18 power.

19 The history of human development is the
20 history of increases in our capacity to coordinate
21 with others, to enter into this dance of commerce, to
22 organize our lives and our social systems and our laws
23 around the ability of people to make exchanges, make
24 offers, to do this in a way that expands the social

5 1 and economic well-being of the participants.

2 So there is something deeply fundamental about
3 this issue of coordination, that is fundamental to
4 being able to maintain yourself alive, is the ability
5 to engage in this coordination of action with other
6 human beings.

7 Disability then shows up as an interruption in
8 that transparent ability for coordination. Disability
9 is a breakdown that interferes or can block this
10 capacity to coordinate.

6 11 The Louis Harris survey people recently did a
12 study in 1991. It was undertaken for the National
13 Organization on Disabilities. And the study surveyed
14 a number of people and ranked the discomfort that
15 people feel in dealing with persons with disabilities.

16 You know, there is a hierarchy of
17 disabilities. The most preferred disability to deal
18 with on the part of the nondisabled community are
19 people in wheelchairs. About 45 percent of the people
20 surveyed indicated discomfort in dealing with people
21 in wheelchairs. About 53 percent reported discomfort
22 dealing with people who are blind, 60 percent
23 discomfort dealing with the deaf, and so on. It goes
24 up to 80 percent.

6
1 People who are disabled produce discomfort in
2 other people, and people like to avoid discomfort.

3 Part of this discomfort comes from this
4 inability to know how to coordinate, how to behave,
5 how to interact, how to be in this social dance or the
6 dance of commerce with people who have limitations in
7 the physical body.

8 Now, what happens, this happens because we
9 confuse two things. You know, we confuse the
10 limitation in physical body or in the mental
11 capability, we confuse those limitations with
12 limitations in the capacity to act, think or be
13 effective in the world.

14 See, the two happen in very different domains.
15 One domain is the domain of the body. The other
16 domain is the domain of action in the world.

17 It is true that for certain actions you need a
18 certain kind of physical body. But when we collapse
19 these two domains that are fundamentally different and
20 separate into one, we conclude that if you have a
21 limitation in the physical body your limitation for
22 action or effective action is tremendous.

23 It is just not true. Look at Stanford. They
24 concluded improperly that because I was blind I

6
1 couldn't study, I couldn't learn, I couldn't go
2 through their masters program. They confused the two
3 domains.

4 And they did so without any experience because
5 no one who was blind had ever tried and failed in
6 their program. So they had no empirical evidence for
7 what they believed, but they believed it without
8 malice and with certainty.

9 One of the problems, the reason I had such a
10 problem getting a job was employers confused these two
11 domains. They confused the limitation in the physical
12 body with limitation in the, with action called, in my
13 case, be a security analyst, be a financial analyst,
14 be an investor. It is a very different domain of
15 action.

16 And they generally didn't see that doing well
17 in graduate school, graduate school is a domain of
18 action, that doing well in graduate school could be a
19 good indicator, a good predictor of doing well as a
20 researcher in the investment business.

21 It is curious because in both places you do
22 research and write reports and study, reach
23 conclusions, make recommendations. But they confused
24 the domains.

6
1 This is a tremendous problem that we have.
2 This is the basis of the prejudice against persons
3 with disability. We confuse the domain. We confuse
4 the limitation in the physical body with the capacity
5 for action in the world.

6 What surprises me is not that I have been so
7 successful in school, in business, in the things that
8 I do in the investment business, in the software
9 business, in the education business. What surprises
10 me is that other people, is that there aren't -- what
11 surprises me is there aren't more people like me, that
12 there aren't more people doing what I do.

13 Part of what the ADA is about is giving more
14 people the opportunity to do what I have done.

15 Let me talk a little bit about prejudice and
16 superstition. You know, I realize that I have been
17 doing all the talking and this group is pretty quiet
18 and I need to check and make sure that I haven't
19 anesthetized you.

20 Good, there are some vital signs still
21 present. That's good.

22 So what are some examples of superstitions?
23 Are any of you superstitious?

24 MR. DARDEN: No, no.

6
1 MR. REDENBAUGH: No. Are any of you
2 honest?

3 MR. DARDEN: No.

4 MR. REDENBAUGH: What are some -- do any
5 of you know of people who are superstitious?

6 MR. DARDEN: Yes.

7 THE CHAIRPERSON: Everyone else in the
8 world.

9 MR. REDENBAUGH: Everyone else, all of
10 our friends, associates. So what are some
11 superstitions?

12 MR. DARDEN: Well --

7
13 MR. REDENBAUGH: Go ahead, somebody.
14 Speak.

15 MR. DARDEN: Friday the 13th.

16 MR. REDENBAUGH: Friday the 13th.

17 THE CHAIRPERSON: Black cats.

18 MR. REDENBAUGH: Black cats.

19 A VOICE: Broken mirrors.

20 A VOICE: Under ladders.

21 MR. REDENBAUGH: Under ladders. What
22 else? What about the notion that the earth was flat?
23 It was a commonly held belief at one time. Can that
24 qualify as a superstition?

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1 Something everybody believed, knew to be so,
2 turned out not to be true. People believed if you
3 went toward the edge of the earth, what would happen,
4 fall off. I would put that in a category of
5 superstition. Anybody have any others like that?

6 MS. BUDD: Copernicus.

7 MR. REDENBAUGH: Are you coaching me or
8 making that announcement to the room? If I couldn't
9 hear you I doubt they could.

10 MS. BUDD: No, I was telling you.

11 MR. REDENBAUGH: Oh, you were telling me.
12 Well, I already knew that. I already knew that the
13 sun was not the center of the universe. The center of
14 the universe has been well established to be located
15 in Salt Lake City, Utah.

16 MR. BINKLEY: Along with church.

17 MR. REDENBAUGH: Temple Square, that's
18 correct. You got it. Now, not a lot of people have
19 been convinced of this truth, but the number grows
20 every year.

21 Yes, I am going to suggest that the
22 superstitions you named, the black cat, the mirror,
23 the ladders, and the ones I named sort of more based
24 in the notion of science, aren't superstitions.

7
1 Those, in fact, are former superstitions.
2 They are the ones that we laugh at, the superstitions
3 that are what I call the real superstitions are those
4 things that we believe that aren't so.

5 See, it is a former superstition that the
6 earth was flat, but it was a superstition when people
7 really believed it and when they lived their lives
8 based on that belief.

9 So what are the superstitions that we now have
10 that in 50 years or ten years or a hundred years
11 people are going to look back, maybe some of these
12 people will be us, and say that wasn't true, it is
13 amazing we believed that one so long, that was really
14 a dumb superstition.

15 I don't think there are any smart
16 superstitions. But what are some of the superstitions
17 that, it may be our children are already beginning to
18 see are superstitions that we think are so, anybody
19 have any candidates for that list, the future prior
20 superstition list?

21 THE CHAIRPERSON: Bort's concept of the
22 atom.

23 MR. REDENBAUGH: Oh, Neils Bort concept
24 of the atom.

7
1 A VOICE: Yes, I think about that a lot.

2 MR. REDENBAUGH: Me too. I was thinking
3 about that this morning, in fact, as an argument for
4 why we need a super collider.

5 THE CHAIRPERSON: Quantum mechanics will
6 tell you.

7 A VOICE: Persons with psychiatric
8 disabilities can't function in roles of society.

9 MR. REDENBAUGH: Psychiatric disabilities
10 can't function, good, that's a good one. What else?

11 A VOICE: Fix the problem but not in my
12 backyard.

13 MR. REDENBAUGH: Uh-huh, I am all for the
14 solution as long as it doesn't involve me.

15 MS. SKINNER: It is all right for you to
16 live here, but not next to me, not beside me.

17 MR. REDENBAUGH: Uh-huh, uh-huh. What
18 else?

19 The notion that, there is this whole notion of
20 throwing things away, the notion that there is an
21 away. Yes?

22 THE CHAIRPERSON: That there is an
23 unlimited supply of resources, Malcus Wright.

24 MR. REDENBAUGH: Not yet. He was

7
1 premature, anyway.

2 THE CHAIRPERSON: Timing was wrong.

3 MR. REDENBAUGH: Timing was wrong.

4 Interesting timing, everything you know you need to be
5 right but in the right time. He may be right. What
6 else?

7 THE CHAIRPERSON: Mechanism of
8 transmission of disease?

9 MR. REDENBAUGH: Oh, that's one to get
10 the doctors crazy. Doctors are the group that are
11 most filled with superstitions and least able to see
12 it, and every 20 years they have to rewrite all the
13 books but they never admit --

14 THE CHAIRPERSON: That's true.

15 MR. REDENBAUGH: -- how little they knew
16 last time because this time they have the real truth.
17 Right?

18 THE CHAIRPERSON: Absolutely.

19 MR. REDENBAUGH: Yes, this time we have
20 really got it. Yes. Yes, there is not much, not much
21 historical learning in the medical allopathic
22 tradition.

23 MR. BINKLEY: Capital punishment is a
24 deterrent.

7
1 THE CHAIRPERSON: It is for the person it
2 is done to.

3 MR. REDENBAUGH: Yes, I don't think I
4 will answer on that.

5 A VOICE: How about funding is the
6 solution?

7 MR. REDENBAUGH: Funding is the solution,
8 yes, I like that one. Reducing the deficit is the
9 solution.

10 THE CHAIRPERSON: Government is the
11 solution?

12 MR. REDENBAUGH: Raising taxes. Our
13 taxes are either too low or too high.

14 Some of those we are already beginning to poke
15 fun at. Economics is riddled with this. Economics
16 even more than medicine has to repudiate itself with
17 shorter and shorter half lives. So much of what we
18 used to believe in economics just, I mean, it turned
19 out to to be opposite. Not only didn't work, it did
20 harm.

21 A VOICE: How about government can solve
22 the problem?

23 MR. REDENBAUGH: How about the problem
24 can be solved? How about the notion, I like that,

8

1 government can solve the problem, but the corollary of
2 that is there are problems without solutions, which
3 means they are issues we need to put up with.

4 There are issues and problems, and problems
5 can be solved, but if this is an issue, no, we need to
6 tolerate it. Like death looks like an issue. It is
7 not a problem to be solved. In fact, we would have a
8 big problem if we solved the problem. You think we
9 have over crowding now. Yes?

10 A VOICE: How about schools are the new
11 surrogate parents?

12 MR. REDENBAUGH: Yes, that seems to be
13 not working. Or how about the notion that school is
14 where learning happens. Yes. Yes, then the notion of
15 what we know begins to break down.

16 Every generation or so repudiates the
17 knowledge of the prior generation, at least that's the
18 the case in the last hundred years.

19 There was a time that lasted for about a
20 thousand years where this wasn't the case. A thousand
21 years where the knowledge base didn't change. In
22 fact, there are only two important innovations in this
23 thousand years. The two inventions that I am talking
24 about during this thousand year period were the water

8
1 wheel and the windmill. And this thousand years in
2 which nothing changed we now call the Dark Ages.

3 So there have been long periods where things
4 didn't happen, but at least the way it looks now is
5 about every generation we repudiate the knowledge of
6 the past. The truths that we held self-evident and
7 obvious and profoundly so, we see were just
8 superstitions.

9 And I think that's what we are going to find
10 when we begin to put and allow persons with
11 disabilities to go to work, that mostly what we know
12 about disabled is in the category of superstition.

13 Another way we could call this is prejudice,
14 but prejudice has kind of a bad reputation.

15 It is tough to get people to admit they are
16 prejudiced, that they prejudge. It is easier to get
17 people to admit that they may have some superstitions.

18 But I think when we look back on this period
19 we will do what Stanford did and say, oh, we were
20 really superstitious. We were really prejudiced. We
21 really had the wrong idea about what was possible for
22 people who are blind.

23 So I think that one, that the big change
24 coming in the next 20 years is the superstition about

8

1 what people can do who are disabled.

2 There is a real cost for having this
3 superstition. Obviously, the cost is highest to the
4 people who are kept out, people who don't, people who
5 are disabled who don't have full dignity, who don't
6 live a full life, who can't find a way to have the
7 offer that they are accepted in the marketplace, who
8 live their life because we are told what we can and
9 can't do, where we can and can't sit, where we can
10 work, go to school, shop.

11 And that still happens. You know, about every
12 year I have got two Philadelphia cab drivers hauled up
13 before the Public Utilities Commission because they
14 refuse to have a dog in the cab.

15 But the cost to the people who are disabled is
16 high, but there is also a tremendous cost to the rest
17 of the society and the rest of the economy. We have
18 eight million people who want to work, able to work,
19 not working, not in the marketplace, not exchanging,
20 not bringing customer satisfaction to the people who
21 would participate in those transactions with them.

22 That's a cost. Eight million is a lot. You
23 know, there is only 600,000 people in Delaware, so
24 that's, you know, a dozen Delawares. It is a lot of

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1 people. So there is a big cost to that.

2 There is a cost that we all face of regarding
3 people as different, separate. How we define the us
4 and them. So the cost is high to everybody.

5 The Americans With Disability Act, I interpret
6 it, and you are going to hear a lot more about it
7 today, is basically a request, it is a request to
8 employers, public accommodation providers,
9 transportation, communication, all that it is is a
10 request to examine your superstitions and prejudices.

11 And it is a request that people can decline,
12 but, like declining most requests, there are
13 consequences for declining.

14 It is not yet clear what all the consequences
15 will be for those employers who decline this request
16 to examine their superstitions, but there will be
17 some. The courts are going to resolve what they are.

18 But it is a request to examine your
19 prejudices. It is a request to say, wait a minute,
20 maybe I am like Stanford, maybe I don't really know
21 what is possible here. Maybe with reasonable
22 accommodation there is something possible that I never
23 imagined was possible.

24 Maybe I am ignorant about what it means to be

9
1 disabled and what a limitation in the physical body
2 means or doesn't mean in terms of the limitation and
3 the capacity for action to do the job, and maybe we
4 can do something here.

5 So the ADA is a request to have that kind of
6 conversation with yourself and with the people that
7 you work with and your company and to look and see.

8 That's why I support the ADA, because it is an
9 invitation to look beyond what are traditional common
10 sense interpretation about what people can do and
11 can't do.

12 And so much of my adult life has been that,
13 has been forcing people, whether they want to do it or
14 not, to look and see.

15 I am really glad to have the ADA to help then
16 in that, because an awful lot of people in my
17 experience when they have looked they have said, oh, I
18 had the wrong idea here, I made a mistake. It is,
19 something is possible I thought wasn't possible.

20 Then we are entering this implementation phase
21 of the ADA, and my encouragement to people is to look
22 and see what is the opportunity, what is the
23 opportunity for business that this new law is. What
24 is the opportunity for having a more effective,

14
1 (Recess taken.)

2 THE CHAIRPERSON: We have as the first
3 panel four people who are going to talk with an
4 objective and the objective that we have asked this
5 panel to talk to is to ascertain the status of ADA
6 implementation in Delaware from public officials.

7 We have asked each of them to speak for
8 approximately ten minutes. We can hopefully then take
9 some questions from the Commission. If there are any
10 questions from people in the audience, if you want to
11 write them down, pass them up, as time permits we will
12 deal with them. Unfortunately, there are limitations
13 with the time and resources that we have.

14 The first panelist to speak will be Eugene
15 Weaver, Manager for the Federal Affirmative Action,
16 Philadelphia District Office of the U.S. Equal
17 Employment Opportunity Commission.

18 The second panelist will be Karen Peterson,
19 Manager for Labor Law Enforcement, Delaware Department
20 of Labor.

21 The third panelist is Kathy Kunkle, ADA
22 Coordinator, Delaware Department of Administrative
23 Services, and caretaker of those five feet of files
24 that Brian Hartman talked about a little earlier.

9
1 productive, satisfying work place, a healthier
2 corporate culture.

3 Because if it doesn't make money, if it
4 doesn't improve things, shouldn't do it.

5 But it may only be the prejudice that has kept
6 you from doing some of these things that make sense,
7 that make money.

8 I think there can be dramatic change in
9 employment, in the productive employment of persons
10 with disabilities. And we are just at the start, sort
11 of the front end of beginning to make that happen.

12 So I thank you for your interest and
13 participation, for your dedication in being here
14 today, and I want you all to know that the U.S.
15 Commission on Civil Rights will be increasingly active
16 in the area of disability, particularly with respect
17 to employment of the disabled. So thank you.

18 THE CHAIRPERSON: Thank you very much,
19 Commissioner Redenbaugh. That was very interesting
20 and educational.

21 Our first speaker today is going to be Brian
22 Hartman, Supervising Attorney for the Disabilities Law
23 Program, who is going to discuss the review of the ADA
24 titles and legal developments in Delaware. Mr.

9
1 Hartman?

2 MR. HARTMAN: Good morning, Henry. Good
3 morning, Commissioner, members of the Committee.

4 I have been given the unenviable task of
5 trying to give you an overview of the ADA in about 20
6 minutes. The law itself isn't really all that long,
7 but the regulations certainly are, so this morning we
8 are only going to be able to really highlight some of
9 the key features of the Americans With Disabilities
10 Act.

11 If time permits, if I don't get the hook from
12 the Chairperson or Mr. Darden, maybe we can talk a
13 little bit about two of the cases that the Disabilities
14 Law Program has already brought under the ADA in
15 Delaware and some of the opinion letters we have
16 issued, in order to give you some perspective on the
17 scope of the ADA and what context ADA issues can
18 arise.

19 Let's begin with the ADA itself. Conceptually
20 you can think of the ADA as having five different
21 areas or components. One is employment; two, public
22 accommodations; three, transportation; four, state and
23 local government; and five, telecommunications. And
24 that's the order in which I am going to be analyzing

9
1 them.

2 Starting with employment, which the
3 Commissioner has indicated is probably one of the more
4 key aspects of the Act. The employment standards of
5 the ADA only became effective in July of this year,
6 July 26th, and only covers the larger employers at
7 this point. It covers employers who have 25 or more
8 employees.

9 That's going to change in July of 1994 and
10 will be covering employers who have 15 or more
11 employees.

12 To put that in context, the state law that we
13 have which prohibits discrimination on the basis of
14 disability covers employers who have 20 employees, so
15 the state law was sort of in the middle.

16 The EEOC regulations were issued in July of
17 1991, and in January of this year the EEOC issued some
18 technical assistance manuals, and I have noticed that
19 some people have already gotten a copy of that, and I
20 would highly recommend that you get a copy of that if
21 you are dealing with employment in any way.

22 The examples that are provided in the
23 technical assistance manual are excellent and it makes
24 this much more understandable than just trying to read

10
1 the law and the regs.

2 Who is covered? Qualified individuals with
3 disabilities are protected, and they are defined as
4 individuals who with or without reasonable
5 accommodation can perform the essential functions of
6 the position in question. And the ADA covers all
7 aspects of employment, from the application, hiring,
8 promotion, benefits, and discharge.

9 Turning to public accommodations, this is
10 another very key component of the ADA. The effective
11 date here was not July but January of this year. The
12 Department of Justice issued its regs in July of 1991.

13 And public accommodations are very broadly
14 defined. There is a laundry list in the statute that
15 is designed to be very encompassing. So we cover
16 anything, any public accommodation really that deals
17 with commerce. So we cover motels and hotels, and
18 recreational facilities, bowling alleys, skating
19 rinks, stores. We cover day care centers, zoos,
20 banks. The list goes on and on.

21 Accessibility. Any new construction or
22 alterations must be accessible, and if there are
23 existing physical barriers they must be removed if it
24 can be readily achievable, and that's defined as

10
[]
1 easily accomplishable and able to be carried out
2 without much difficulty or expense. Sort of a common
3 sense approach.

4 Turning to transportation, the Department of
5 Transportation issued the ADA regs in September of
6 '91, and there is different treatment here for buses
7 and for trains, and different treatment on the basis
8 of whether they are public or private.

9 Public buses, any new buses ordered after
10 August of 1990 must be accessible. If you have a
11 fixed route system, like a DART system, and some
12 individuals with disabilities can't use that, then
13 there is supposed to be the provision of comparable
14 Paratransit or special transportation services unless
15 that would constitute an undue burden.

16 Turning to public trains such as Amtrak, new
17 rail vehicles must be accessible and existing trains
18 by July of 1995 must have one car per train that is
19 accessible.

20 Private buses such as Greyhound, any new buses
21 ordered after '96 or '97 must be accessible, depending
22 on how big the bus company is, either the earlier,
23 1996, or the later deadline.

24 State and local government operations, we have

10
1 had Section 504 of the Rehabilitation Act in effect
2 now since 1973, and Section 504 already required of
3 state and local government a lot of what the ADA
4 requires, and the coverage is very, very similar. It
5 covers your state governments, your cities, your
6 school districts, local government operations.

7 And the standard is similar. You can't
8 discriminate against qualified individuals with
9 disabilities, and that covers employment, also covers
10 access to services. In the context of accessibility,
11 new buildings must be accessible.

12 The governmental regs were issued July of last
13 year. They were effective January of this year. Self
14 evaluations are required of state agencies and the
15 state, all the agencies of the state were submitting
16 their self evaluations to Kathy Kunkle, who will be
17 talking later on this morning, and I understand that
18 they are about five feet high if you stack them up.

19 And if there is governmental entity with 50 or
20 more employees they are supposed to designate a person
21 to handle grievances.

22 Telecommunications, telephone companies are
23 supposed to offer relay persons to persons who use
24 TDDs by July of '93.

10 1 So that's a real quickey overview of the ADA.

2 The Disabilities Law Program has filed two
3 complaints under the ADA this year. You may recall
4 that the state and local government regs became
5 effective in January.

6 Within 30 days of their effective date we had
7 filed a case in Federal District Court challenging the
8 expulsion of a special ed. student who was both
9 learning disabled and socially and emotionally
10 disturbed, and we brought it under various federal and
11 state statutes but including the ADA.

11 12 We were able, with the Federal Court's
13 intervention, to keep that youngster in school, and he
14 was promoted to the next grade in June and got his
15 credit, and then the state offered him a program which
16 basically mooted out the case, so the court never had
17 to reach the ADA issues on the merits.

18 Second case we filed in May with the Office
19 for Civil Rights in Philadelphia involved a young man
20 who is also dually diagnosed, person with mental
21 illness and mental retardation. He was in the state
22 hospital.

23 And we reached an agreement which was
24 submitted to the court under which he was going to be

1 transferred to a prison down state and certain
2 services were going to be provided, and all the
3 agencies signed off on this official agreement.

4 And once he got down there they reneged and
5 they wouldn't provide the services. And on November
6 20th of this year we got a decision from OCR in
7 Philadelphia saying that they violated the ADA and 504
8 and certain compensatory educational services will be
9 provided to that young man.

10 Opinion letters. We had a call from a parent
11 of a youngster in a wheelchair who wanted to go to his
12 local high school, and the school district was saying
13 he had to go to another high school because his home
14 school was not accessible.

15 And we looked at the ADA and it only requires
16 program accessibility so they can do that under 504
17 and the ADA, especially since, as we looked at the
18 survey that was done of the school, involved, they
19 would need an elevator and a lot of expensive
20 accomdations in order to make it accessible.

21 Interpreter. We got a call from a clinic that
22 said they didn't get any federal funding, which was
23 surprising, most clinics you would think would get
24 Medicaid or Medicare and therefore would be subject to

11
1 504's Rehab Act, so this was a situation in which only
2 the ADA applied, wanted to know if they had to provide
3 an interpreter for hearing impaired patient coming in
4 and we gave them our interpretation.

5 The ADA doesn't have a per say requirement,
6 but what they say is that if, if it is going to be
7 necessary to provide effective communication,
8 especially in a specialized area, especially when you
9 are dealing with health care vocabulary, it may be
10 required that you provide an interpreter.

11 Same thing goes for law firms, so if somebody
12 goes to Henry's firm for legal advice, there are
13 situations in which an interpreter might have to be
14 provided. And we have the same situation come up with
15 a private psychiatrist's office.

16 The Commissioner mentioned his attempts to get
17 into college, Stanford, and suggested that things are
18 better now.

19 I had a call from a local attorney whose son
20 was trying to, was applying for local college, and on
21 the application form they wanted to know about any
22 history of emotional problems. Well, they shouldn't
23 be able to ask that anymore under the ADA and under
24 504.

11
1 And I thought, it is helpful to take a look at
2 the, there is a check list that the EEOC has put into
3 that EEOC guide I mentioned earlier, and this covers
4 job application forms and has a list of examples of
5 questions that may not be asked on application forms
6 or in job interviews, and we have all seen these, but
7 I thought this list was really interesting.

8 Have you ever had or been treated for any of
9 the following conditions and diseases, followed by a
10 check list of the various conditions and diseases.

11 Please list any conditions or diseases for
12 which you have been treated in the past three years.
13 Have you ever been hospitalized, if so for what
14 conditions. Have you ever been treated by a
15 psychiatrist or psychologist, if so for what
16 condition. Have you ever been treated for any mental
17 condition. Is there any health related reason you may
18 not be able to perform the job for which you are
19 applying.

20 Have you had a major illness in the last five
21 years. Do you have any physical defects which
22 preclude you from performing certain kinds of work.

23 It goes on and on. And I thought that that
24 check list was very insightful.

11 1 And finally, I think it is interesting to
2 apply that to an application form which I am going to
3 quote from here, a couple questions, and see what you
4 think of some of these questions, and then I will tell
5 you where it is from.

12 6 Are you or have you ever regularly used, been
7 addicted to or dependent upon narcotics, drugs or
8 intoxicating liquor, or been accused of being addicted
9 to any substance. If yes, please state the details,
10 including dates.

11 11 Have you ever under gone treatment or received
12 counselling for or consulted any psychologist,
13 psychiatrist or counselor or any other medical
14 practioner about the use of drugs, narcotics or
15 intoxicating liquor. If yes, give the dates and
16 details and circumstances and names and addresses of
17 the persons providing treatment under counselling.

18 18 Have you been declared legally incompetent.
19 If yes, give the details. Have you ever received a
20 diagnosis of amnesia or any form of insanity,
21 emotional disturbance, nervous or mental disorder. If
22 yes, please state the names and addresses of the
23 psychologist, psychiatrist or other medical
24 practitioner who made the diagnosis. You must enclose

12
1 copies of letters which direct each of the foregoing
2 practitioners to furnish to the board any information
3 the board may request with respect to any such
4 treatment or counselling.

5 Have you ever received regular treatment for
6 amnesia or any form of insanity, emotional disturbance
7 or mental disorder. It goes on and on.

8 Henry, have you any idea where that is from?
9 That's the Board of Bar Examiners if you want to be a
10 lawyer, which is a governmental agency. So there is
11 lots of room for improvement out there.

12 THE CHAIRPERSON: May I answer that?

13 MR. HARTMAN: Sure. There is lots of
14 room for improvement out there, and the ADA can be
15 raised in a lot of different contexts. You have got
16 accessibility issues that come up, education,
17 corrections, employment. And that's basically it in a
18 nutshell.

19 THE CHAIRPERSON: Brian, what agency are
20 you with? What is the agency that you are involved
21 with that deals with this?

22 MR. HARTMAN: I am an employee of the
23 Disabilities Law Program, which is a component of the
24 Community Legal Aid Society, Inc.

12
1 THE CHAIRPERSON: And is there a phone
2 number if people -- you say people call you with
3 problems. Is that the mechanism to get to you?

4 MR. HARTMAN: Normally they would call
5 the Community Legal Aid Society and the case is
6 screened by a receptionist and paralegal and then it
7 gets to me.

8 So I prefer that they go through the regular
9 system rather than calling me directly, but the number
10 there is 575-0660.

11 THE CHAIRPERSON: If they want to do it
12 by documents, letter, is that an acceptable method of
13 getting to you?

14 MR. HARTMAN: The address is 913
15 Washington Street, Wilmington Delaware, 19801.

16 Now, we have certain federal standards for
17 eligibility, so not everyone qualifies for the
18 services, but if you do qualify the services are free,
19 and we work with certain priorities.

20 THE CHAIRPERSON: What are the
21 priorities?

22 MR. HARTMAN: It is about eight pages
23 long.

24 THE CHAIRPERSON: Class, that usually

12
1 involves some type of income or dependency situation
2 before you are involved. Does your involvement in
3 terms of ADA also require that type of income
4 dependency?

5 MR. HARTMAN: No, the Disabilities Law
6 Program is not a poverty driven program. You do not
7 have to be poor to qualify for the services.

8 We do consider whether the person has
9 alternate means of achieving their objective, and so
10 if we can only handle two cases coming in the door,
11 for example, one person was poor and the other person
12 could afford private counsel, we would probably take
13 the poor person's case.

14 THE CHAIRPERSON: Blanche?

15 MS. FLEMING: In perusing the material
16 and reading some of the literature the phrase undue
17 burden seems to surface any number of times.

18 I would like to know how that decision is
19 reached. Is there a level according to the number of
20 persons or the size of the corporation or industry?
21 How do you attain --

22 MR. HARTMAN: The regulations talk about
23 that is --

24 MS. FLEMING: You have a level, a

12
1 percentage of?

2 MR. HARTMAN: No, it is not a percentage
3 of.

4 MS. FLEMING: How is it determined?

5 MR. HARTMAN: Well, in Delaware we
6 actually put a percentage in for employment, that an
7 undue burden, it was presumptively not an undue burden
8 if it was five percent or less of an employee's
9 salary.

10 But the ADA does not have an analog to that.
11 And, in fact, the Third Circuit Court of Appeals in
12 Philadelphia, interpreting a case under 504 of the
13 Rehab Act and similar language of undue burden, struck
14 down an agency's attempt to have a percentage figure
15 for undue burden.

13
16 So you have to look at, there are several
17 factors in the regs that say what an undue burden
18 consists of. There is no percentage, there is no
19 black and white answer. You look at the size of the
20 organization and their budget and those sorts of
21 things.

22 MS. FLEMING: Who makes a final call?

23 MR. HARTMAN: Well, a judge ultimately if
24 there is a disagreement.

13
1 MS. FLEMING: That's what I wanted to
2 know.

3 MR. HARTMAN: You negotiate.

4 MS. FLEMING: That's what I wanted to
5 know. Thank you.

6 MR. HARTMAN: Sure.

7 THE CHAIRPERSON: Any of the other panel
8 members? Mr. Binkley?

9 MR. BINKLEY: I would like to find out if
10 you have counterparts in other states. Do other
11 states have similar services?

12 MR. HARTMAN: Sure, all 50 states have
13 what are known as protection and advocacy systems for
14 developmentally disabled persons and persons who are
15 mentally ill living in residential settings.

16 And that is pursuant to two different federal
17 statutes, but all states have P&A systems in them. In
18 some they are part of state government, like in New
19 Jersey, they are part of the Office of Public
20 Advocate. In Virginia it is part of the government.

21 In other places it is part of nonprofit
22 organizations such as Community Legal Aid Society in
23 Delaware. And the governor designates the P&A for
24 each state.

13

1 MR. BINKLEY: Thank you.

2 MR. DARDEN: Is there any way for you to
3 anticipate in the coming year or so, or the next two
4 years, how the response to the ADA might result in
5 more complaints or more people coming to you for
6 assistance? What do you think is going to be the
7 experience in the disabled community?

8 MR. HARTMAN: Well, I think it does open
9 up some doors. There are entities covered now which
10 were never covered before.

11 We already had in this state an employment
12 discrimination statute. We also have an equal
13 accommodations statute, but it is not as well-defined as
14 the ADA. So there is more that we can do for people
15 when they come to our door.

16 Secondly, I think the ADA, because of the
17 amount of publicity that it has gotten and the number
18 of forums such as this one that have been conducted,
19 have prompted persons with disabilities to be more
20 aware that there is redress available if they feel
21 they have been subject to discrimination.

22 So I would envision more people contacting
23 lawyers and more people invoking rights, and the
24 ability to do more for those people because of the

13
1 ADA.

2 THE CHAIRPERSON: What do you or your
3 group do in order to advise people who may have
4 problems but don't know it to come to you or some
5 other resource in order to obtain some kind of
6 redress?

7 MR. HARTMAN: Well, we do some out reach.
8 We do give presentations on various aspects of
9 disability rights.

10 I am on the Developmental Disabilities
11 Planning Council, along with Helen Skinner, and we
12 have put together a Partner's in Policy Making Group
13 in which we are funding consumers with various
14 disabilities to receive training every week for about
15 13 weekends in a row to empower them, and they are
16 going to be educated in all aspects of disability law
17 and self advocacy.

18 So we promote self advocacy. We give
19 presentations on request, on any number of issues
20 involving my constituency. We have pamphlets.

21 MR. BINKLEY: Can I ask another question,
22 Mr. Chairman?

23 THE CHAIRPERSON: Certainly.

24 MR. BINKLEY: If I can phrase it. At

13
1 this point of time in the implementation of ADA would
2 you be willing to rate it on a scale of one to ten in
3 terms of its implementation?

4 MR. HARTMAN: In the state?

5 MR. BINKLEY: Yes.

6 MR. HARTMAN: No, I couldn't.

7 MR. BINKLEY: Your observation?

8 MR. HARTMAN: I talked to Kathy Kunkle
9 earlier this week, who has been collecting the state
10 agency's self evaluations, and I was asking if I could
11 get copies so that I could get a better handle on what
12 that is looking like, and she said it was five feet
13 tall.

14 Well, you know, I don't have the time to go
15 through that many documents. A lot of this is so new,
16 a lot of this is only effective in July, that I can't
17 say I have got a handle on the state's implementation
18 at this point. It is too early to tell.

19 I am aware that most of the agencies actually
20 submitted their self evaluation plans to Kathy, which
21 is good.

22 But we, we are going to have to keep raising
23 the issues in all sorts of contexts. I am on a
24 committee, for example, of the Delaware Council for

13
14
1 Crime and Justice, and we are looking at corrections
2 and their grievance system and do they, if someone
3 acts out in a prison are they going to be taking any
4 consideration of the person's potential mental illness
5 or do they just say you did this, therefore this is
6 your punishment.

7 So the ADA, we keep considering it and
8 applying it in all sorts of contexts in state
9 government, and you ordinarily couldn't even think of.

10 It is not just the employment. It is not just
11 the physical barriers. It is the policies as well of
12 every agency in the state and local government.

13 It is mind boggling when you think of the
14 scope of the ADA.

15 MR. FIGUEROA: We do have quite a few
16 disability people around the state. Many of them, I
17 am not sure, they are not aware of the services we
18 have to offer them. Do you out reach, cover the whole
19 state, the three counties?

20 MR. HARTMAN: We have an office in each
21 state, Community Legal Aid Society.

22 MR. FIGUEROA: To reach these people in
23 the other two counties, just not here in New Castle?

24 MR. HARTMAN: We have offices and staff

14
1 in all three counties. In fact, Sandy Reyes here used
2 to be the attorney in our Sussex County office. She
3 now works for the Attorney General's Office.

4 THE CHAIRPERSON: Mr. Hartman, I
5 appreciate your time and the diligence you bring to
6 your job.

7 MR. HARTMAN: Oh, it is fun.

8 THE CHAIRPERSON: I have known you for a
9 long time and you always have done a very good job.
10 Thank you very much, appreciate you being here.

11 MR. HARTMAN: Thanks, take care.

12 THE CHAIRPERSON: We are now going to set
13 up for our first panel. Are the four panel members
14 here, Gene Weaver, Karen Peterson, Kathy Kunkle and
15 Diane Treacy? One, two, three, four. Okay.

16 Mr. Darden, we are going to try and set it up
17 in a way that is meaningful because of the constraints
18 we have here.

19 (Discussion off the record.)

20 MS. KUNKLE: I am Kathy Kunkle and I am
21 one of the next panelists. It appears we only have
22 one sign language interpreter. Could we take a couple
23 minute break so that she could rest her hands and stay
24 up with us in the rest of the morning session?

14
1 And the fourth panelist is Diane Treacy,
2 Executive Director of the Governor's Committee on
3 Employment of People With Disabilities.

4 Mr. Weaver?

5 MR. WEAVER: Thank you, Mr. Chairman.
6 First, let me bring greetings from John, and Jake
7 Butler, who was the director of Philadelphia Office of
8 EEOC, and from Evan Camp, who was the chairman.

9 The Philadelphia office is the office of the
10 EEOC that has jurisdictional responsibility for
11 enforcement of Title I of ADA in the State of
12 Delaware. Our district covers in addition to Delaware
13 South Jersey and Eastern Pennsylvania.

14 As you know, Title I went into effect in July
15 of this year for employers with 25 or more employees,
16 and coverage will drop to employers with 15 or more
17 employees in two years.

18 The EEOC began, well, prepared for our
19 enforcement responsibilities by, first of all,
20 spending a considerable amount of time communicating
21 the requirements of the ADA and the regulations
22 drafted by the EEOC for enforcement of ADA to all
23 people within, within our district, certainly.

15
24 In fact, I am the person that's been primarily

15 1 responsible for conducting that communication.

[2 I have addressed groups in Delaware on at
3 least four occasions. One in Wilmington, I think it
4 was the Wilmington United Way. I addressed the
5 Delaware Wellness Center, I believe it is called, in
6 New Castle. I participated in a seminar in Newark at
7 the University of Delaware just a couple of weeks ago,
8 and also addressed a group of employers, small
9 employers, in Georgetown, Delaware, within a month or
10 so ago.

[11 We are taking complaints from individuals who
12 feel that they have been discriminated against in
13 violation of Title I of ADA, in one of several ways,
14 an individual can either appear in person at our
15 district office in Philadelphia and file a complaint,
16 they can file a complaint in writing by mailing it to
17 our office, they can call our office and do it by
18 telephone, or they can, they can file their complaint
19 with the Delaware Department of Labor with which we
20 have a memorandum of understanding in which Delaware
21 Department of Labor will accept the complaint and
22 refer it to us.

[23 I can tell you at this stage the number of
24 complaints that we have gotten from all areas within

15
1 our district. At the last time I looked, which was a
2 couple of weeks ago, numbered just over 30.

3 I don't know, I can't tell you how many of
4 those were from Delaware, but if the distribution
5 follows the pattern in our other, in the enforcement
6 of our other statutes it would be a small number.

7 I can't assess for you how effective ADA is
8 being enforced in the State of Delaware because I
9 don't think there has been sufficient time in which to
10 make such an assessment. You are probably in a better
11 position to do that than we are anyway.

12 I can tell you we have not brought any
13 lawsuits against any employers in Delaware, and I like
14 to think that a part of that is because of the
15 extraordinary length that the EEOC has gone to
16 communicate to both employers and to the disabled
17 community what the provisions of the ADA are, what is
18 expected of employers, what their obligations are and
19 what the rights of individuals with disabilities are.

20 As I said, I have spent a considerable amount
21 of time addressing groups, both employer groups and
22 groups that represent, advocate on behalf of
23 individuals with disabilities, and have reviewed our
24 regulations, reviewed with employers again their

15
[]

1 obligations, have distributed some of the materials
2 that the EEOC has published, that is available for
3 public distribution, some of which are broad samples,
4 of which I brought if you would like to have those,
5 which again communicate to both sides of the equation,
6 both employers and potential charging parties, what
7 the requirements of the law are, what EEOC's
8 enforcement role will be, how we will go about
9 investigating complaints and reaching our
10 determinations in those complaints.

11 EEOC as an agency has spent a considerable
12 amount of time training our own staff in preparation
13 for discharging their responsibilities under the law.

14 As a matter of fact, I was one of a handful of
15 people that was rewarded with the benefit of spending
16 five weeks in Dallas, Texas, in the middle of the
17 summer, to conduct that training. And I can assure
18 you that every investigator, every paralegal, every
19 attorney and every manager has received that training
20 and is well prepared to discharge our responsibilities
21 for enforcement of Title I of ADA.

22 THE CHAIRPERSON: Thank you very much. I
23 think that what we will do is refrain from any
24 questioning until all four of the panelists have had

15
1 an opportunity to make their comments and then we will
2 ask questions generally.

3 Ms. Peterson, you are next.

4 MS. PETERSON: Mr. Chairman, members of
5 the Delaware Advisory Committee, my name is Karen
6 Peterson. I am the Administrator of Labor Law
7 Enforcement for the Delaware Department of Labor.

8 Also here this morning is the assistant
9 administrator, Ed Taus, who is seated back in the
10 corner, and Debra Neff, from the Secretary of Labor's
11 Office.

12 One of the 22 laws we enforce at the Labor Law
13 Enforcement Section is the Americans With Disabilities
14 Act. We have been in the disabilities discrimination
15 business for four years, ever since the Delaware
16 General Assembly passed the Handicapped Persons
17 Employment Protections Act in 1988. Consequently, we
18 were already up and running when the ADA took effect
19 in July of this year.

20 Because we were already under contract with
21 EEOC to investigate charges of discrimination based on
22 race, color, sex, religion, national origin and age,
23 EEOC approached us about assuming responsibility in
24 Delaware for the enforcement of the ADA as it pertains

16 1 to employment discrimination.

2 Despite the fact that EEOC has no funds to pay
3 the local agencies to investigate ADA cases, we, out
4 of the the goodness of our little hearts, entered into
5 a memorandum of understanding with EEOC on July 24th,
6 this past summer, to handle those cases here in
7 Delaware.

8 Our primary reason for entering into that
9 agreement was really to provide Delawareans with
10 intake services here in Delaware, rather than sending
11 them to Philadelphia to file claims.

12 We have offices here in Wilmington for New
13 Castle County residents, and we have contracted with
14 the Human Relations Commission to provide intake
15 services for us in Kent and Sussex Counties.

16 The Human Relations Commission does not
17 conduct any of the investigations. They simply take
18 the charges for a fee, paid by us, and forward the
19 case to us for investigation.

20 Most of the disability cases we are handling
21 involve discrimination which occurred before the
22 effective date of the ADA.

23 We currently have 53 of those cases in our
24 case load. That represents 21 percent of our total

16
1 case load.

2 The number of disability discrimination claims
3 has been as high as 30 percent of our case load as
4 recently as two years ago. We expect that the number
5 of cases being investigated by our office will
6 decrease as claimants opt to have their cases waived
7 to EEOC, at our urging, I might add, because of the
8 lack of EEOC funding for ADA enforcement at the local
9 level, and because the remedies under ADA are far
10 greater than those available under Delaware law.

11 Our law simply says that the victim is to be
12 made whole again. Obviously, the ADA provides for a
13 whole lot more than that.

14 Our law also provides a cap for cost of
15 accommodations, which was mentioned a little earlier,
16 and that cap is five percent of the employee's
17 annualized wages, unlike the ADA which has no such
18 cap.

19 So it is to the employee's benefit that the
20 case be waived to EOC for handling under their law
21 rather than ours. That's not to say that all
22 claimants opt to do that. As I said, we still have 53
23 cases within our own case load.

24 With regard to any problems we have

16
1 encountered with the ADA and our state law, which I
2 was asked to address this morning, I guess the main
3 problem we have, if you want to call it that, are the
4 differences in the laws themselves. The cap on
5 accommodation, for example.

6 They are not major problems. Most of them can
7 be reconciled the same way we reconcile differences
8 between Title VII of the Civil Rights Act and our own
9 state statute prohibiting discrimination on the basis
10 of race, color, sex, religion and so forth.

11 One of the ways we have attempted to reconcile
12 the laws is to adopt regulations, which we did on June
13 19th of this year. These regulations are consistent
14 with the federal regulations and, in fact, they are
15 almost identical to the federal regulations with the
16 exception of the language dealing with the statutory
17 differences.

18 Our definitions, our interpretations and
19 applications of our law are, as I said, almost
20 identical to those found in the regulations governing
21 the ADA.

22 And I think that makes life a lot easier for
23 the employers who have to comply with the two laws, as
24 well as those of us who have to enforce the two laws

16
1 here in Delaware.

2 But if you were to look at our regulations you
3 would think that you were reading the ADA regulations
4 and they invited us to use those as much as we could.

5 The only other problem we have begun to
6 encounter in enforcing the law in both the private and
7 public sectors here in Delaware is EEOC's typically
8 unreasonable attitude towards the local agencies.

9 And I am not talking about our office, our
10 local office. I am talking about the national office.

11 Despite the fact that they are not paying us
12 to take these cases or investigate them, they have
13 already begun to bark out their orders as to how the
14 cases are to be handled.

15 I don't mind if they make suggestions, but
16 when they tell us, as they did earlier this week, that
17 not only are we to take them and treat, and handle
18 them for free, but we are to complete some of them
19 within a hundred twenty days of filing.

20 Well, I have a backlog of 255 other cases that
21 were filed before some of these cases and the other
22 255 are going to be handled first. We handle cases on
23 a first come first served basis.

24 And basically I guess I would just like to

17
1 tell National EOC to take a reality pill, that we will
2 get to them when we get to them, and if they don't
3 like it they can do it themselves.

4 But we plug along, understaffed and
5 underfunded as most government agencies are. We got
6 hit hard last year with early retirements and with
7 layoffs.

8 At one point I was down to two investigators
9 for the entire state, with a backlog of 408 cases.
10 Nonetheless, we have managed to cut into the backlog.
11 We are down to 255 cases now.

12 We have recovered some of the lost staff, and
13 we are hoping in the next fiscal year's budget to
14 recover another one of the lost positions and to
15 hopefully open some offices in Kent and Sussex County,
16 which we have never had in the history of labor law
17 enforcement, which goes way back to 1915 when the
18 Child Labor Law was passed.

19 So that's where we are, and I would be happy
20 to answer questions after others have completed their
21 presentations.

22 THE CHAIRPERSON: Thank you very much.

23 Ms. Kunkle?

24 MS. KUNKLE: Thank you, Mr. Chairman. I

17
1 would like to thank the members of the Delaware
2 Advisory Committee to the United States Commission on
3 Civil Rights for this opportunity to share my
4 experiences in implementing the Americans With
5 Disabilities Act and the services programs and
6 activities of the State of Delaware.

7 My name is Kathy Kunkle and I am the ADA
8 Coordinator for the State of Delaware government.

9 In this capacity I have gathered resource
10 materials, worked with an advisory committee,
11 developed self evaluation formats and conducted
12 training for the employees in the State of Delaware.

13 I have a package of materials I would like to
14 leave with you today which details many of the
15 activities I will mention.

16 In planning ADA implementation in state
17 programs there has been a driving philosophy, keep it
18 simple, and to take it to the lowest level possible.
19 If we can have each receptionist and front-line
20 employee recognize a request for an accommodation ADA
21 implementation will be successful. We have to build
22 ADA into the regular way of doing business in state
23 government.

24 On November 7th, 1991, Governor Michael N.

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1 Castle signed Executive Order Number 100, formally
2 setting up a process to begin the implementation of
3 ADA. That Executive Order assigned each state agency
4 with the responsibility for planning and carrying out
5 the requirements of the ADA in their programs,
6 services and activities.

7 In addition, an ADA Advisory Committee was
8 formed to advise me on the implementation of the ADA.
9 That committee was comprised of representatives of ten
10 state agencies and three Delawareans with
11 disabilities. Several other persons expressed
12 interest in the committee and were included in its
13 activities.

[]
14 With the ADA Advisory Committee input, the
15 ADA's grievance procedure was drafted and distributed
16 to all Cabinet Secretaries and Agency Heads on January
17 24th, 1992. A self evaluation format for program,
18 facility and employment policy assessment was
19 distributed to each state agency in April. And self
20 evaluations and transition plans were substantially
21 completed by July 26th, 1992.

[]
22 An ADA contact person was identified in each
23 state agency as my primary contact. I am still in
24 contact on a regular basis with many of those

17
[
1 individuals.

2 The self evaluation process resulted in
3 hundreds of pages of reports and facilities surveys.
4 I am in the process of developing and planning a data
5 base to allow for the summarizing and prioritizing of
6 the information provided.

7 Since spring of this year my involvement in
8 training was focused first on my ADA contact
9 persons --

10 SECURITY PERSON: Excuse me. We had the
11 media out here that said that you all knew they were
12 coming.

18
[
13 MS. FLEMING: Media.

14 THE CHAIRPERSON: Go forward.

15 MS. KUNKLE: I will do this quick. So my
16 training at first was focused on my ADA contact person
17 so the self evaluation process would be handled as
18 consistently across state line, agency lines as
19 possible.

20 I have also developed training and conducted
21 presentations for state agencies which is tailored to
22 the individual needs of that office. Just some of the
23 agencies for which I have conducted training sessions
24 include:

18
1 Department of Health and Social Services
2 Annual Managers Conference; Department of Natural
3 Resources Division of Parks and Recreation; Department
4 of Administrative Services, all managers, and for the
5 Division of Professional Regulation; Department of
6 Public Instruction, including individual school
7 district personnel administrators and building and
8 grounds administrators; Commissioner of Elections and
9 the Director and Deputy Director of each county office
10 of elections; Department of Transportation and their
11 ADA committee; Annual Conference of Judges in the
12 States Court, State Courts of Chancery, Common Pleas,
13 Family and Supreme Court; Department of Labor,
14 Division of Employment and Training.

15 Public notice advertisements of the
16 availability of ADA self evaluations and transition
17 plans for review and comment were published in July in
18 both daily newspapers in the state. The state's
19 quarterly employee newspapers featured two stories
20 about the new responsibilities created by the ADA and
21 last year's story explained the use of a TDD.

22 I have developed an informal network with some
23 officials of local governments. A lot of that type of
24 activity occurred earlier this year as we shared

18
1 resources and made best guesses of what Title II might
2 actually mean for our own governments. As the July
3 26th deadline for preparing transition plans
4 approached, that type of context seemed to drop off.
5 In my own case, it was just the need to focus time and
6 resources in meeting our deadlines.

7 In the past few weeks my department has
8 processed purchase orders to obtain auxiliary aids
9 which will make it easier to effectively communicate
10 with some persons with disabilities. That equipment
11 includes portable public address systems with headsets
12 for persons who are hearing impaired. The system is
13 also compatible with many ears aids. Portable
14 handheld magnifying cameras which will allow a
15 visually impaired person to magnify on a TV screen
16 material currently in a printed format, high quality
17 tape recorders for the preparation of audio cassette
18 tapes as an alternative to print, and video training
19 tapes on how to use a TDD. This equipment will be
20 available for use by state agencies without charge.
21 A small amount of the appropriation still remains will
22 be to provide better signage at high volume state
23 buildings.

24 The procedure developed for handling ADA

18 []
1 grievances is relatively uncomplicated. The major
2 steps are, one, upon receipt of a complaint the ADA
3 Coordinator will make all parties aware of the
4 allegation and will attempt to resolve the complaint.
5 Two, if needed, the ADA Coordinator shall schedule a
6 meeting and attend the meeting with all parties
7 involved. The State agency would have 15 working days
8 to answer the complaint in writing.

9 Three, if a claimant is not satisfied with the
10 state determination, the claimant shall be referred to
11 state agency designated to mediate such claims. The
12 ADA Coordinator shall also make available to the
13 claimant information regarding federal claims
14 processes.

15 This very basic grievance procedure was
16 developed to attempt to quickly solve ADA-related
17 concern at as low a level of government as possible,
18 with minimal red tape, while preserving the rights of
19 the claimant to other state, federal or civil
20 mechanisms.

21 In the past year I have personally received no
22 formal ADA grievances. Persons I have talked with who
23 have concerns about their rights under ADA, and I
24 believe there have been about five cases, have chosen

18
1 to work informally and not use the formal process.
2 Other individuals in the past called me as a source of
3 information.

4 My personal opinion is that the number of
5 formally filed grievances will increase over time, as
6 the population as a whole comes to better understand
7 the broad responsibilities local governments have
8 under ADA.

19
9 I just want to add that Diane Treacy, the next
10 panelist, has been on the road a lot with a lot of
11 training and materials, so I didn't want to attempt to
12 steal her act. And I don't.

13 THE CHAIRPERSON: Thank you. Miss
14 Treacy.

15 MS. TREACY: Mr. Chairman, Committee, I
16 would like to thank the people who came today to hear
17 these presentations. These are a lot of the people
18 who are real strong advocats in the State of Delaware
19 for disability rights.

20 I am Diane Treacy, the Executive Director of
21 the Governor's Committee on Employment of People With
22 Disabilities.

23 Our parent organization is the President's
24 Committee on Employment of People With Disabilities.

19 []
1 And a lot of the work that I do is public
2 relations and out reach work. The Governor's
3 Committee is part of the Department of Labor, the
4 Division of Vocational Rehabilitation. We have 21
5 members on our committee, appointed by the governor,
6 and our mission is to promote the employment potential
7 of people with disabilities.

8 We do this through a lot of activities. We
9 have employer breakfasts, we have job fairs. We have
10 awards that we give to employers and employees at an
11 annual luncheon every year to motivate people to do
12 more hiring of people with disabilities.

[]
13 And there are two people right here in this
14 room who are two of our award winners. Wayne Carter
15 was one of our employees of the year and Bill Mennella
16 out here was one of our employees of the year. Bill
17 will be speaking later on.

18 I would like to get into the, what the
19 Governor's Committee is doing in the involvement with
20 the Americans With Disabilities Act.

21 I was very involved with the grassroots
22 advocacy for the passage of the law. I was a part of
23 the national task force for passage to try to get
24 signatures and interested people, people of all

19
1 different types of disabilities and all different
2 advocacy groups, to write letter for formal passage of
3 the law. And we had a lot of support in Delaware.

4 We proactively, the Governor's Committee
5 proactively worked after passage of the law in July of
6 '90 to January of '92 to give presentations and to try
7 to inform people in the State of Delaware about the
8 law.

9 We were greatly helped with the media and we
10 did have a lot of media exposure before the law was
11 implemented and will continue to have media exposure
12 from the News Journal, which is our major paper here
13 in Delaware, the Millford Chronicle, the Dover Post,
14 State Chamber Publication, the Delaware Business
15 Review, and an advocacy newspaper in Delaware called
16 Handi, H-A-N-D-I.

17 I have brought copies of some articles that
18 have been in newspapers in Delaware for the Committee
19 to keep.

20 I have also brought an annual report of the
21 Governor's Committee so that you can see some of our
22 activities and specifically in conjunction with the
23 Americans With Disabilities Act.

24 Also, the Division of Vocational

19 []
1 Rehabilitation published, has printed a short overview
2 of the Americans With Disabilities Act, and I will
3 leave a copy of that for you.

4 For awhile we were able to give a lot of these
5 away for free and now we are just charging a minimal
6 cost to cover the cost of our printing.

7 I have done a lot of training which has
8 involved disability advocacy groups, consumers,
9 businesses, nonprofits, and educators.

10 People in post secondary education are
11 interested in the Americans With Disabilities Act as
12 far as it affects job placement of their students.

13 And I brought a list of the number of, all the
14 different places where I have done presentations.

15 Basically, I am real involved with information
16 and referral. I provide direction to people who call
17 me and ask specific questions.

18 I do not, I do not provide real specific
19 answers. Sometimes that is a concern of attorneys or
20 EEOC or that type thing. What I do is steer them in
21 the right direction.

22 I have given people phone numbers of the EEOC,
23 the Department of Justice, the Mid-Atlantic Center,
24 who is the federal recipient in our region to provide

19
1 specific information about the ADA.

2 I give a lot of business to Karen Peterson in
3 the Labor Law Enforcement. And people call me up with
4 specific situations and they want to go on for 20
5 minutes explaining to me what the situation is, and I
6 tell them in the beginning that they are going to have
7 to call Karen's office, and they do.

8 And also I have referred business people to
9 Labor Law Enforcement just to find out if they have a
10 potential discrimination situation. And her staff and
11 I have gotten much closer than we were before this
12 law.

13 I just like to give two examples of the types
14 of questions that I have received.

15 One was from, and I would like to say, I say
16 this when I give my presentations, people think that I
17 am more of a disability advocate, and I am always
18 going to be on the side of the disabled person rather
19 than on the side of business, and I try to just give a
20 reasonable explanation of the law, and if one or the
21 other is right or wrong just state that.

22 I had one woman in Human Resources who told me
23 about a situation where a public, public relations
24 director had a stroke, a very severe stroke where he

20
1 she told him from the beginning she could only work an
2 an eight hour shift. She had a doctor's note to
3 support this. And he still said either work a 12 hour
4 shift or leave or we will fire you.

5 So I told her to specifically ask for
6 reasonable accommodation. She said that she had
7 talked with the employer. I advised her to put this
8 in writing.

9 And she gave me a lot of yes, buts, it
10 wouldn't work, she knew this employer wanted to get
11 rid of her.

12 But still she listened to what I said. And
13 she put her request in writing, and she wanted a
14 reasonable accommodation, she attached a doctor's
15 note.

16 And about a few days later I got a message on
17 my voice mail and she said thank you very much, Mrs.
18 Treacy, victory was mine. She now only had to work an
19 eight hour shift.

20 I get a lot of calls about technical
21 assistance and I give phone numbers out for people in
22 our state who do technical assistance. Wayne Carter's
23 group with the Delaware/Maryland Paralyzed Veterans
24 provide a lot of seminars about accessibility and

20
1 provides some answers to technical assistance.

2 We also have a Delaware assistance technology
3 initiative which is doing a lot of work with that, and
4 we have a couple of other people in Delaware, Steve
5 Blatchford and Larry Field, who are doing a lot of
6 private consultation and helping people to come into
7 compliance through accessibility surveys.

8 I have also started to get requests for
9 sensitivity training. Employers are trying to come
10 into compliance with the Americans With Disability Act
11 and they want to be more sensitive on job interview
12 questions and in dealing with people in the work
13 place. So this has become important new area.

14 When I do this training I bring in disabled
15 speakers to do the training. I don't do most of the
16 training myself. So they will hear from someone who
17 is is a wheelchair user. Wayne has been one of my
18 speakers. Someone who is blind and someone who is
19 deaf.

20 I would like to give kudos to Wilmington
21 College. I teach there part-time and they asked me to
22 design a course about disability issues because they
23 wanted to broaden their horizons and cover all aspects
24 of minorities.

20
1 Also one of our nonprofits in Delaware who is
2 doing an excellent job is the YMCA, and I would like
3 to use them as an example later on when we do
4 presentations, because we get a lot of concerns,
5 frustration from nonprofits wondering where they are
6 going to come up with the money for some of these
7 accommodations.

1
8 I am part of the ADA Coalition, which stresses
9 collaboration among all of the people concerned who
10 are involved with implementation of the ADA. This was
11 an idea advised by Justice Dart, the Chairman of the
12 President's Committee, when he came to visit Delaware
13 in March of 1992. And Bill Mennella will talk a lot
14 more about that when he speaks.

15 The problems that I have encountered in doing
16 my presentations and in listening to the questions
17 over the phone are mostly from nonprofit agencies who
18 feel that they don't have responsibilities under the
19 law.

20 I must specify, they feel like they are in
21 compliance with physical accessibility and that should
22 cover the range of disability.

23 When it comes to some other disabilities like
24 deafness or blindness that becomes more costly and

1 they feel that they do not have the funds to cover
2 those costs.

3 The biggest complaint is the cost of sign
4 language interpreters, and we do not have enough sign
5 language interpreters to fill our needs. So if there
6 is any way that this Committee can help us in
7 advocating for more training of sign language
8 interpreters, that would be a real help.

9 In the future I am scheduled to do a training
10 for the Delaware Association of Nonprofits, and I hope
11 that will lead to more contacts and more education in
12 that area, and we plan to continue with media and with
13 training. Thank you.

14 THE CHAIRPERSON: Thank you very much.
15 Appreciate that. I have some questions. I don't know
16 whether any others have?

17 MR. BINKLEY: Go ahead, you are chairman.

18 THE CHAIRPERSON: One of the aspects of
19 the ADA that of course I am interested in is the legal
20 profession's response.

21 And I note that in the law there is a
22 provision for attorney's fees for suits being brought.
23 I have several questions regarding that, one of which
24 is can not the state and/or federal government make as

1 part of any settlement, or whatever they do in
2 resolving these matters, obtain fines or fees,
3 attorney's fees or otherwise with regard to those
4 settlements?

5 MR. WEAVER: I can answer with respect to
6 the federal role in that. Attorney's fees are
7 recoverable through the administrative processing of
8 complaints within the EEOC for ADA, as well as all the
9 other statutes, and they are also recoverable in
10 court.

11 THE CHAIRPERSON: I was interested that,
12 Ms. Peterson's comment that there were no funds
13 available for the work that they were doing. I was
14 wondering whether the, if you excuse the expression,
15 guilty parties ought to be funding this for the state.

16 MS. PETERSON: We cannot recover
17 attorney's fees under our statute. It would take a
18 change in the statute to allow for that.

19 Our law simply says that the review board, if
20 a case goes before the review board, can simply make
21 the person whole again, but they have not included
22 attorney's fees as part of that making the person
23 whole.

24 THE CHAIRPERSON: What about as a

1 deferral agency for EEO under the contract that you
2 now have?

3 MS. PETERSON: Well, that's why I was
4 saying earlier that we encourage complainants to opt
5 for the EEOC coverage rather than ours because of
6 those benefits under the federal law we don't have
7 under our law.

8 THE CHAIRPERSON: You are the deferral
9 agency; are you not?

10 MS. PETERSON: Yes, we are.

11 THE CHAIRPERSON: And, therefore, if you
12 pursue a claim under the ADA you would be able to
13 obtain funding in that way?

14 MS. PETERSON: If they, the charging
15 party elects to have the case waived to EEOC and EEOC
16 picks it up and goes with it, yes.

17 But under our statute, our remedy is to take
18 the case before our Equal Employment Review Board and
19 to get, to seek a court order in the Court of Chancery
20 to enforce the board's order.

21 But if you look at what the board is empowered
22 to do, they are not empowered to award anything except
23 back pay, basically.

24 MR. WEAVER: I think I understand the

1 thrust of your question. You are suggesting that if
2 the Delaware state agency acts as a representative of
3 the charging party in pursuing an ADA complaint,
4 through this memorandum of understanding, that they
5 should then be able to recover their costs through an
6 award comparable with attorney's fees?

7 THE CHAIRPERSON: Exactly.

8 MR. WEAVER: An interesting concept. I
9 don't know that that's provided for, either the
10 administrative aspects or in the statute.

11 The relationship between state agencies and
12 the EEOC is spelled out in the statute and I don't
13 know that it envisions the kind of thing that you are
14 suggesting. But there may be something that may be
15 worth looking into. An interesting idea.

16 MR. DARDEN: Could I pursue that just a
17 minute? I thought state agencies, in order to be
18 deferral agencies, needed what was substantially
19 equivalent laws at the state level so that they could
20 function much as the EEOC would.

21 If in this area you are not substantially
22 equivalent how is it possible for you to have the
23 relationship?

24 MS. PETERSON: Well, we just became

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[]
1 unsubstantially equivalent I guess upon the passage of
2 the Civil Rights Act of 1981. That's where a lot of
3 the benefits came from.

4 Prior the EEOC was pretty much in the same
5 boat we were, they could make the persons whole again,
6 so they could get attorney's fees and we couldn't, so
7 there was a minor difference at that point.

8 Now there is a major difference. Our law
9 doesn't provide for damages. Theirs does. We don't
10 go to trial, we go to the review board. There are
11 some big differences.

12 MR. BINKLEY: Point of information, Mr.
13 Chairman. I think Mr. Darden is referring to the
14 housing law which requires substantially equivalent
15 operation at the state level.

16 MR. DARDEN: I think it is the same.

17 MR. BINKLEY: I don't think the EEOC,
18 State Labor Department, has that same requirement.

19 MR. WEAVER: There are standards for
20 determining when a state agency --

21 MR. BINKLEY: Sure.

22 MR. WEAVER: -- the code under Section
23 706 of the statute, when they, when they meet the
24 requirements to qualify for contract basically with

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1 matter of fact, I am sure we have litigated cases in
2 the district court down here.

3 THE CHAIRPERSON: And when there is this
4 waiver that Miss Peterson is talking about does that
5 mean that you are then going to pursue it out of the
6 the Philadelphia office? I don't know that you have
7 an office here in Wilmington.

8 MR. WEAVER: We do not have an office in
9 Delaware. The Philadelphia office handles all of the
10 State of Delaware. If a complaint is taken by the
11 Delaware Department of Labor, forwarded to us, then it
12 is investigated out of the Philadelphia office.

13 THE CHAIRPERSON: Does that help on your
14 investigation problem?

15 MS. PETERSON: No, it doesn't. We will
16 go ahead and investigate those cases. We will
17 complete the investigation and we will attempt
18 conciliation.

19 It is when conciliation breaks down that the
20 charging party has to make a decision as to whether to
21 proceed under state law or ask that the case be waived
22 to Philadelphia to proceed under the Civil Rights Act.

23 So most of the work is done at that point in
24 terms of the investigation. All of the investigation

2
1 the EEOC to share processing of the workload.

2 I can't tell you what the status of the
3 Delaware Commission is with respect to that because
4 that's not what I do, that's not a part of my function
5 in the office. And whether or not that is currently
6 being reviewed or whether or not the state is trying
7 to -- I can't comment on that.

8 There is a method for qualifying for that, but
9 I can't tell you exactly how it works.

10 I can tell you that as far as I know all state
11 agencies are having to undergo this process with
12 respect to ADA.

13 While they may have contracts with EEOC to
14 work share Title VII complaints, age complaints, it is
15 a new ball game with respect to ADA because in many
16 instances there are significant differences between
17 the divisions of the federal statute and state statute
18 that all have to be worked out.

19 THE CHAIRPERSON: It has been my
20 experience that when there is a age or sex or race
21 claim in Delaware it is brought by the Department of
22 Labor. I don't think I have ever seen EEO actively
23 pursue a case in Delaware. Do they?

24 MR. WEAVER: Oh, yes. Oh, yes. As a

2
1 is finished.

2 THE CHAIRPERSON: So you do the scut work
3 and they get the glory?

4 MS. PETERSON: No, they do give us credit
5 for substantial work completed on those cases.

6 MR. DARDEN: I have a question. If a
7 charging party decides to go to EEOC with their
8 complaint are there any additional burdens that the
9 party incurs? Do they have to travel to Philadelphia?
10 Is there any expense involved that wouldn't otherwise
11 be involved because there is no office in Delaware?

12 MS. PETERSON: No, we take the claims
13 here at the Delaware Department of Labor. The
14 charging party does not have to go to Philadelphia at
15 all. They can come to our office, file their
16 complaint and request that the case be waived
17 immediately, and we do that on a routine basis, waive
18 it to Philadelphia, and all we have done is the intake
19 and forward it to them.

20 MR. DARDEN: Once it has been waived,
21 then is the party ever called to Philadelphia?

22 MR. WEAVER: I assume you are addressing
23 that to me?

24 MS. FLEMING: Yes.

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MR. WEAVER: They would be called to Philadelphia if, if we elected to conduct a fact finding hearing, what we call a fact finding conference, which is part of the investigation, those are almost always conducted in our offices.

Now, if we were talking about a complaint that arose in south Delaware or far from Philadelphia, then we can hold those hearings in the post office or any federal facility or state facility, neutral territory, if you will.

There generally are not expenses that charging parties have to bear because the complaint is being processed in Philadelphia, unless they are going to call the office to inquire about the status of the complaint and incur long distance toll charge.

Our office will communicate generally with the complainant. We will initiate the contact. If there are interviews to be done generally our people will come out and do those.

The situation for people in Delaware is no different than the situation for people in, for example, Scranton in Pennsylvania, which is a considerable distance from Philadelphia, or Harrisburg where we don't have offices, and where we conduct

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1 discharge or enforcement responsibilities for all of
2 the statutes.

3 MR. DARDEN: So have you gotten any
4 requests for opening an office in Delaware or is it
5 just no problem at all?

6 MR. WEAVER: I don't know. I don't know
7 whether we have gotten requests to open an office in
8 Delaware.

9 THE CHAIRPERSON: If there is a waiver,
10 as Miss Peterson suggests, and you decide not to
11 pursue the matter, do you issue a right to sue letter
12 or is there a different procedure under the ADA?

13 MR. WEAVER: No, the procedures under ADA
14 are going to be virtually identical to the procedures
15 that we follow on Title VII, so that if we elected
16 not, for some reason not to pursue a complaint
17 generally the reason would be of nonjurisdiction, we
18 would then issue a notice of right to sue to the
19 charging party.

20 THE CHAIRPERSON: You would not bump it
21 back to the state?

22 MR. WEAVER: No.

23 MS. FLEMING: Then the person has an
24 option whether they want to go through the Department

3
1 of Labor or go through EEOC?

2 MR. WEAVER: The person has the, has the
3 option at the point that they elect to file a
4 complaint whether they want to file it with the state
5 agency or the federal agency.

6 MS. FLEMING: Okay.

7 MR. WEAVER: I am assuming they can file
8 them both places.

9 MS. PETERSON: Or both, and most opt to
10 file both.

11 MS. FLEMING: I want to say, they have an
12 option?

13 MS. PETERSON: Yes.

14 MS. FLEMING: Okay.

15 MR. BINKLEY: Mr. Chairman, are you
16 through?

17 MS. FLEMING: Yes.

18 MR. BINKLEY: I would like to ask Mr.
19 Weaver another question or clarification of something
20 you said. Did I understand you to say that
21 relationship with the State of Delaware and previously
22 arranged deferral programs are funded but the ADA
23 isn't?

24 MR. WEAVER: I --

3
1 MR. BINKLEY: Is that the way --

2 MR. WEAVER: I am not sure.

3 MS. PETERSON: We have a contract with
4 EEOC to complete a certain number of Title VII cases
5 within the year. For each of those they pay us \$450
6 for each completion.

7 For intakes where we just do the intake and
8 the charging party requests it be waived to EEOC or
9 the charging party comes in beyond our 90 day statute
10 of limitations, but still within the 300 day statute
11 of limitations under federal law, we will waive that.
12 For those services EEOC pays us \$50 per intake.

13 Congress apparently didn't appropriate any
14 money for contracting with fair employment practices
15 agency under the ADA so there is no funding for
16 contracts at all. There is no reimbursement.

17 THE CHAIRPERSON: Do you feel feel put
18 upon?

19 MS. PETERSON: Well, in the beginning,
20 no, because Congress did fund staff positions for EEOC
21 and we thought that would be fine because we would
22 simply waive the cases to EEOC where they would have
23 12 additional investigators, as originally planned.

24 Now I understand that that's been cut and they

3
1 are not going to get any additional staff positions,
2 so I think both agencies are feeling put upon at this
3 point.

4 MR. WEAVER: I would concur with that.

5 MS. PETERSON: And it is typical for
6 Congress or the General Assembly to pass a new law and
7 not fund the enforcement of it.

8 And we have had a history of that over the
9 years. We have gone from five laws to 22 laws, and
10 there for awhile with no increase in staff at all over
11 the years to accommodate the additional laws.

12 THE CHAIRPERSON: Is there any pressure,
13 I assume there is, to try to parallel the Delaware
14 laws, which appear to be a little older and out of
15 step, with the present federal laws?

16 MS. PETERSON: We have done that with the
17 regulations. That was a step in that direction.

18 In terms of rewriting the statutes, I
19 inherited the discrimination unit just two years ago
20 and while that's on the list of things to do, my first
21 priority was to dig out from under the tremendous
22 backlog of cases.

23 So eventually, yes, that would be a goal of
24 our agency but not right this minute.

4
1 THE CHAIRPERSON: Miss Kunkle, I had a
2 question. Mr. Hartman, when he made his initial
3 presentation, read to me from a very interesting
4 document which was the Board of Bar Examiners
5 application that seems totally rampant with violations
6 of the ADA. Would you agree?

7 MS. KUNKLE: I couldn't disagree with
8 that, not at all.

9 THE CHAIRPERSON: Is that an agreement?

10 MS. KUNKLE: That's an agreement.

11 THE CHAIRPERSON: Have you discussed that
12 with Chief Justice Veasey?

13 MS. KUNKLE: No, not directly, because I
14 only learned about that specific instance a day or two
15 ago when I spoke with Brian about it.

16 I have, although, discussed many concerns with
17 the Division of Professional Regulation, and for the
18 state agencies, that are regulated or tested or
19 certified by the State of Delaware, gone to other
20 states and national groups to try to clarify
21 standards, and the Attorney General's Office has
22 reviewed ways of looking at a whole Delaware Code for
23 places.

24 THE CHAIRPERSON: Is that application

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1 typical of the applications that are submitted to most
2 professional boards in the state?

3 MS. KUNKLE: I don't know because I
4 haven't seen the applications. Delaware Code does
5 give some, the way the code is written it does give
6 some leverage to each board and commission in
7 determining standards and criteria that are
8 appropriate for the practice of whatever they govern.
9 However, ADA would supersede anything.

10 THE CHAIRPERSON: You agree with federal
11 pre-emption?

12 MS. KUNKLE: That's clear in the ADA, no
13 doubt.

14 THE CHAIRPERSON: Is this something that
15 the state is looking towards dealing with these
16 various applications and other documents?

17 MS. KUNKLE: Yes. I will be honest and
18 say that the more I learn about ADA, the more anybody
19 learns about ADA, the more we don't know.

20 It is such a broad law and comes into so many
21 areas, every time I think I have a handle on
22 something, I am shown something else that hadn't been
23 considered before.

24 THE CHAIRPERSON: Does the state have

4
1 sovereign immunity in dealing with these matters?

2 MS. KUNKLE: No, we can be sued.

3 THE CHAIRPERSON: Does it create any
4 problem, either for the state or the federal agencies,
5 to be bringing suits against private employers where
6 it appears that there may be violations even within
7 the state as it exists?

8 MS. PETERSON: We don't have any problem
9 enforcing the law against either the state or, private
10 or public sectors.

11 We don't bring suits, though we take suits
12 before the Equal Employment Review Board and they
13 issue a decision and then we only seek court
14 enforcement of it. So we are not actually bringing
15 suit against employers.

16 THE CHAIRMAN: Okay.

17 MR. WEAVER: Speaking for EOC, the EEOC
18 is a law enforcement agency.

19 MS. FLEMING: The EEOC can, right, right.
20 That's what I was saying.

21 MR. WEAVER: I would assure you, we have
22 no problem in bringing lawsuit against any employer
23 that we found to be in violation of a law that was not
24 willing to correct the violation through the

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1 administrative processing of a complaint, whether that
2 employer be private or public.

3 Actually, we would have to make a referral to
4 the Department of Justice in the case of public
5 employers. We would do our investigation, make our
6 finding and make a recommendation that a lawsuit be
7 brought against the public employer if we were not
8 able to achieve compliance through our administrative
9 processing.

10 But for private employers the EEOC has the
11 authority to bring its own lawsuit.

12 THE CHAIRPERSON: To your knowledge --

13 MS. FLEMING: It is more direct.

14 THE CHAIRPERSON: Um?

15 MS. FLEMING: I feel it is more direct
16 because the, in the other instance you have to go
17 before a review board and in many instances it is
18 reconciled at that level. And the party is
19 discouraged in some instances from carrying it
20 farther. This I know. That's the reason I was
21 interested in the option.

22 MS. SKINNER: How would you handle
23 private contractors that have contracts with the state
24 to provide services for those with disabilities?

4
1 MR. WEAVER: Are you asking?

2 MS. SKINNER: You.

3 MR. WEAVER: We would treat them as any
4 other private employer who is covered by the act. If
5 they have 25 or more employees now then they are
6 subject to all of the Title I provisions. If they
7 have 15 or more employees beginning in 1994.

8 So I mean the fact that they are contractors
9 with the state doesn't make any difference to us. It
10 might for state purposes, but it has no impact at all
11 for federal processing.

12 THE CHAIRPERSON: Is there, I guess this
13 would be for Miss Treacy more than anyone, any
14 centralized office or liason that if a person has a
15 question in Delaware and they don't know who to go to
16 or who to talk to that they can come to?

17 MS. TREACY: That they can call?

18 THE CHAIRPERSON: Yes.

19 MS. TREACY: I have press releases here
20 about the ADA Coalition and there is an 800 number
21 established. It is 1-800-344-9900, extension 121.
22 And the Veterans Commission in Dover has given us that
23 free number, toll free number.

24 THE CHAIRPERSON: Is that number in

5
1 Dover?

2 MS. TREACY: Yes.

3 THE CHAIRPERSON: And they are familiar
4 with the various resources in the state?

5 MS. TREACY: Yes, yes. So if someone
6 calls that number with a question, their question will
7 be given out to an appropriate person to answer, given
8 an answer.

9 MR. BINKLEY: Question. I would like to
10 clarify something about the State of Delaware's
11 administrative setup. Ed may know this from talking
12 with you folks, but I would like to ask a couple of
13 questions.

14 Miss Kunkle represents the Department of
15 Administrative Services or works for them?

16 MS. KUNKLE: Yes.

17 MR. BINKLEY: And you are the coordinator
18 for ADA?

19 MS. KUNKLE: Yes.

20 MR. BINKLEY: From what you say you have
21 given training and have worked with divisions or
22 departments within that department?

23 MS. KUNKLE: And the whole state.

24 MR. BINKLEY: And the whole state.

5
1 MS. KUNKLE: Other state agencies.

2 MR. BINKLEY: Including the Department of
3 Labor, Employment and Training, and HHS?

4 MS. KUNKLE: Yes.

5 MR. BINKLEY: That's part of the role of
6 Administrative Services, to provide training and
7 liason work with other departments?

8 MS. KUNKLE: The Americans With
9 Disabilities Act, yes.

10 MR. BINKLEY: The Department of
11 Education, for example, didn't have a coordinator for
12 ADA like you are for AS?

13 MS. KUNKLE: Well, I don't -- each agency
14 has set up people that they think make sense for
15 whatever they do.

16 In the case of the Department of Public
17 Instruction I have one primary contact person who I
18 use as my point of contact if I have a concern or a
19 question or see a need that needs to be addressed.

20 In addition, they have a person in their
21 Office of Civil Rights who is out there formally doing
22 additional training, contractual reviews and follow-up
23 in that area. She was with the Attorney General's
24 Office, I believe.

5
1 MR. BINKLEY: How large is your staff?

2 MS. KUNKLE: Here I am.

3 MR. BINKLEY: How large is your staff,
4 Miss Treacy?

5 MS. TREACY: Me. I have volunteer
6 workers.

7 MR. BINKLEY: Miss Peterson, you said you
8 were down to two investigators or has that been
9 increased?

10 MS. PETERSON: That's been increased.
11 All together for all 22 laws we enforce I have 17,
12 includes child labor, minimum wage, prevailing wage, a
13 whole laundry list of laws that we are responsible
14 for.

15 But for that particular function we are back
16 up to five now, five investigators.

17 MR. BINKLEY: The investigators are sort
18 of assigned to types of complaints?

19 MS. PETERSON: That's correct.

20 MR. BINKLEY: Thank you.

21 MR. DARDEN: I have a question. Do you
22 have any interaction with local governments or do you
23 have any idea what part local government might play in
24 this whole enforcement scenario? For the whole panel.

5
1 MS. KUNKLE: Well, I would like to say
2 that I have informal contacts with local governments,
3 Lynnette Glover from New Castle County, I spoke with
4 Faith Street from the City of Wilmington. I don't
5 know if somebody is here.

6 Some of the smaller governments down state
7 went to different types of training and we shared
8 resource information.

9 But as far as enforcement goes, no. We are
10 pretty much on our own.

11 MR. WEAVER: I would say that all aspects
12 of society have a role to play in enforcing ADA.

13 State and local governments need to make sure
14 that the services that they provide are accessible to
15 people with disabilities. They need to make sure that
16 their employment practices are in conformance with the
17 Title I and Title II requirements.

18 They can play a role in disseminating
19 information, through public hearings, making
20 information available in the normal course of their
21 business.

22 I have in the course of discharging my, what I
23 consider my communication or prosamatizing role spoken
24 to a variety of officials and representatives of state

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1 and local governments, and answered questions, briefed
2 them, gave them the same briefing that I give to
3 private employers, and provided them with the
4 information that we have available and answered their
5 questions.

6
6 The questions that come from public officials
7 are frequently different than the questions that come
8 from private employers because of the difference in
9 role and the difference in the source of the funding
10 that makes the operation go.

11 I sometimes kid public employers in telling
12 them that they probably will find it very difficult to
13 argue that providing any accommodation would pose an
14 undue hardship, that's a defense for not providing the
15 accommodation, simply because they have deep pockets,
16 they simply just go out and raise taxes in order to
17 raise the money to fund the accomdations. They didn't
18 think that was so funny.

19 But it is a distinction between the public and
20 the private sector that the private sector has
21 constraints that the public sector doesn't have, but
22 the public sector has obligations that the private
23 sector doesn't have. And I have discussed those where
24 I have been invited to do so.

6
1 THE CHAIRPERSON: A question has arisen
2 about this funding of EEO and its relationship to
3 Delaware. Is the decision to pay the money that Miss
4 Peterson talked about for certain Title VII
5 investigations and not to pay for the ADA
6 investigations a line item from a congressional
7 statute or is it a decision that was made by EEO in
8 Washington, or Philadelphia for that matter?

9 MR. WEAVER: It is not made in
10 Philadelphia, I can assure you of that.

11 I don't know, frankly, whether it is a line
12 item in budget or whether it is an administrative
13 decision that is made in Washington.

14 I suspect it is a line item and that it is a
15 decision that has to be made in conformance with the
16 statutory language.

17 In Title VII there is a provision for
18 recognizing state agencies, as I said before, to share
19 in the processing of complaints that are brought in
20 areas where we share jurisdiction, and there are
21 contractual divisions negotiated and contracts entered
22 into that administer all of that, including --

23 THE CHAIRPERSON: We know contracts don't
24 descend from heaven, they are made between people of

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1 process of negotiations.

2 MR. WEAVER: And those contracts are made
3 in Washington.

4 THE CHAIRPERSON: And I guess the real
5 question, or thrust of it is, is ADA being given short
6 shrift as a result of decisions being made in
7 Washington or is it being given short shrift because
8 of a line item budget, because clearly it is not being
9 given the accommodation in funding that it ought to be
10 given.

11 MR. WEAVER: I am going to say that I
12 don't know, but I will speculate it is a line item
13 because I can assure you that we did not get the money
14 that the president requested in, for the budget for
15 EEOC operations.

16 The Congress decided in the conference to
17 appropriate an amount that I believe was something
18 like 13 million dollars less than was requested by the
19 president, ergo we don't, we did not pick up 220
20 additional staff people to handle the anticipated
21 increase in our workload because of ADA and so on.

22 THE CHAIRPERSON: Just as a matter of
23 interest to me, did Congress exempt itself from this
24 law?

6
1 MR. BINKLEY: No.

2 MR. WEAVER: No, I don't believe it did.

3 MR. BINKLEY: But the executive is
4 exempted.

5 THE CHAIRPERSON: Oh, really?

6 MR. BINKLEY: Yes. It is in the material
7 here.

8 THE CHAIRPERSON: Just something I hadn't
9 focused on until I was talking about the funding.

10 MR. BINKLEY: That's an interesting
11 exemption because it is the other way around with
12 Title VII and other Civil Rights Acts, Congress has
13 exempted itself is but includes the executive, it is
14 revested.

15 MR. WEAVER: Although I believe in the
16 '91 Civil Rights Act congress is in fact covered.

17 MR. BINKLEY: Yes, you are right.

18 MR. DARDEN: The rest of the panel needs
19 an answer about local contact with the government.

20 THE CHAIRPERSON: The question has been
21 raised as to the other members besides Miss Kunkle as
22 to relationships or liason with local governments. I
23 don't know, I guess Mr. Weaver would not really be
24 part of that discussion. Miss Peterson?

6
1 MS. PETERSON: Our only connection with
2 local governments is if a claim is filed against one
3 of them or if they ask us to come out and to talk to
4 their people about the enforcement of the ADA.

5 But we are a complaints-driven agency and we
6 survive on complaints only, and we get them, against
7 the state government and local governments.

8 THE CHAIRPERSON: Okay. Miss Treacy?

9 MS. TREACY: My connection would be, is
10 that these people are aware of my services and we do
11 out reach and we, I have a good relationship with
12 Lynnette Glover, who is an HR person with New Castle
13 County, done some training there. And I believe
14 that's the only relationship that I have had.

7
15 THE CHAIRPERSON: I do note that
16 employers are required to post certain types of
17 statutory language, especially with minimum wage and
18 certain other types of things. Is there a requirement
19 to post one's rights under the ADA?

20 MS. KUNKLE: There is a new poster out by
21 the EEOC that is called the ADA, Something for
22 Everybody. It puts everything all in one poster.

23 I will admit to having difficulty myself
24 getting copies of it from the EEOC. It is available

7
1 if you call a Washington, D. C. number and you can ask
2 for it and they will send you one.

3 THE CHAIRPERSON: Is it mandated that it
4 be posted?

5 MS. KUNKLE: Yes.

6 MR. WEAVER: It is required that the
7 poster be posted. The poster, that is the poster
8 that's been updated to add ADA to the other statutes
9 that were on the old poster, and I will be happy to
10 send you a copy.

11 MS. KUNKLE: 200. One or two hundred.

12 MR. WEAVER: I can't do that.

13 MS. KUNKLE: That's why I don't get them,
14 I need 200.

15 MR. WEAVER: Those of you who might want
16 small quantities --

17 MS. KUNKLE: I will take 20.

18 MR. WEAVER: Let me give you my number.
19 Please feel free to call me. I will see you get them.
20 I am at 215, 656-7064.

21 A VOICE: Can I make a comment?

22 THE CHAIRMAN: Okay.

23 MR. STALLS: I am Jim Stalls. I am on
24 the panel later in the afternoon. I represent the

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1 Better Business Bureau.

2 And you brought up a topic that's been very
3 sore with us right now because of the fraud involved
4 in the poster requirements. The companies that do
5 mass mailings to businesses all over this country --
6 this country were threatening and using scare tactics
7 to sell you this package of posters that must be at
8 exorbitant cost.

9 THE CHAIRPERSON: The question I was
10 going to ask, this seems to be typical of the federal
11 requirements, that you require something and then make
12 it virtually impossible to accomplish it.

13 MR. WEAVER: Let me say this about that:
14 The poster is required to be displayed in a place that
15 is, in an employment office where people, the public
16 can see it, in places within a work place where other
17 kinds of notices will be posed.

18 In conducting investigations one of the things
19 that our investigators look to see is whether or not
20 the poster is displayed. If the poster is not
21 displayed simply because the employer could not get
22 the poster I can assure you you will not be cited for
23 a violation.

24 THE CHAIRPERSON: We can cite you on it.

7
1 MR. WEAVER: You can quote me on it. So
2 you ought not to expend an exorbitant amount of money
3 for bogus poster.

4 I would go so far as to say you ought not to
5 spend an exorbitant amount of money to purchase all of
6 this mountain of material that appeared very suddenly
7 after the passage of the Act to tell you everything
8 you ever needed to know about ADA.

9 The federal government, I mean this is just a
10 small sample of the stuff, has good material that is
11 available free of charge or at a very modest cost, one
12 of the best of which is our Technical Assistance
13 Manual. This is my copy. You can't have this.

14 This includes the regulations under Title I.
15 The Justice Department has something similar for the
16 other statutes. It includes explanations and
17 interpretations and examples. There is a resource
18 directory in the back of it. This publication sells
19 for \$25, from the government printing office.

20 For \$25 you get a booklet, plus you go on a
21 mailing list that gets you updates to the statute for
22 the next two years free of charge. You get them in
23 the mail.

24 You can pay \$25 for this or you can contact

7
[]
1 the fly-by-night consulting outfit and pay three or
2 four thousand dollars and get stuff that results in
3 calls that I get to my office frequently.

4 I am sort of the answer person for ADA. I get
5 a person who calls and says, well, we had our
6 consulting company or our law firm modify our
7 employment applications and we thought we would give
8 you a call to see whether or not they now meet the
9 requirements of ADA, and they tell me what is on the
10 application and they are still asking illegal
11 questions.

12 They have already paid. Why didn't they call
13 me first? I don't know.

14 THE CHAIRPERSON: Because we have to eat
15 too. Is this particular, and I assume I am looking at
16 the same thing you are, which is called Title III
17 Technical Assistance Manual --

18 MR. WEAVER: No, this is the Title I
19 Technical Assistance Manual.

20 THE CHAIRPERSON: Title I.

21 MR. WEAVER: You are looking at the
22 Department of Justice's manual.

23 MR. BINKLEY: That's accommodation.

24 THE CHAIRPERSON: Sure, that makes it

8
1 clearer.

2 MR. BINKLEY: Mr. Chairman, which hat are
3 you wearing right now?

4 THE CHAIRPERSON: I am an advocat.

5 MR. WEAVER: Mr. Chairman, there are five
6 titles to ADA. Title I deals with employment.

7 THE CHAIRPERSON: Right.

8 MR. WEAVER: Title II deals with the
9 provision of public services. Title III deals with
10 public accomdations. Title IV I think deals with
11 communications and transportation. And Title V
12 contains some kind of miscellaneous provisions
13 implementing all the other ones.

14 There are several agencies that have
15 enforcement responsibility for the different titles,
16 just as there are several agencies that had
17 responsibility for enforcing the different titles on
18 the Omnibus Rights Act in 1964.

19 EEOC has enforcement responsibility for Title
20 I. Department of Justice has responsibility for
21 enforcement of Titles, parts of Titles II and all of
22 Title III. EEOC will handle the employment aspects of
23 Title II as it deals with public employers. And then
24 other agencies have other parts of it.

8
1 So we are all publishing our manuals and our
2 assistive devices and our publications, because it, in
3 trying to achieve compliance, I think the decision or
4 the realization was achieved early on that one of the
5 best ways to do that, in fact, as with any other law,
6 is to get voluntary compliance and, therefore, if you
7 can give people the information they need to know so
8 that they know what is required and can make the
9 modifications and adjustments, then our role is simply
10 the sort of fail safe, when everything breaks down and
11 the person is in fact still being discriminated
12 against or believe they are being discriminated
13 against they can come to the law enforcement agency
14 that has responsibility for that, file a complaint,
15 get an investigation and get an objective
16 determination.

17 THE CHAIRPERSON: Mr. Figueroa?

18 MR. FIGUEROA: I have a question for Miss
19 Peterson. The way I understand you are working
20 together with Human Relation Commission to
21 investigate.

22 I am one of the commissioners in the
23 commission. In Kent County we have trouble in
24 language problem with Hispanics.

8
1 Many time I refer Hispanic to the commission
2 or to the department and no one can speak Spanish.
3 These people cannot explain it to them because they
4 have a problem because they don't speak English.

5 I believe your department should get together
6 with the director of the commission to get some
7 bilingual assistance in those areas, because many of
8 them come back to my office that they were turned down
9 because there is no bilingual worker in the area.

10 MS. PETERSON: I don't have anybody in
11 Kent or Sussex. Human Relations Commission does our
12 intake there for a fee.

13 MR. FIGUEROA: And they don't have
14 anybody?

15 MS. PETERSON: I guess not. I have
16 somebody on staff here in Wilmington. If you will
17 call me and let me know, I will send my staff person
18 to them and we will take the claim that way. I can
19 make arrangements. I do have bilingual staff people.

20 MR. FIGUEROA: You will have the person
21 come to Delaware?

22 MS. PETERSON: I can do that.

23 MR. FIGUEROA: That's good. I like that.
24 Thank you.

8
1 MS. PETERSON: But, excuse me, you need
2 to let me know. If you will make the contact directly
3 with me, I will make those arrangements.

4 MR. FIGUEROA: Okay, I get in touch with
5 you, yes, ma'am.

6 THE CHAIRPERSON: It is noon, which is
7 the time that we had scheduled to break. If there are
8 no other commission questions from the staff, then I
9 appreciate everyone's being here with us and putting
10 up with us, and we enjoyed what you provided to us,
11 extremely educational. Thank you very much.

12 MR. DARDEN: We will reconvene --

13 THE CHAIRPERSON: For those of you who
14 are coming back, we will reconvene at 1:30.

15 MR. DARDEN: Here in this same room.

16 (Lunch recess taken.).

17 MS. SKINNER: Good afternoon, everyone.
18 I am Helen Skinner and I am the moderator for the
19 advocats, I am happy to say.

20 Our objective is to ascertain the status of
21 the ADA implementation in Delaware from public
22 officials. And we are happy to have two panelists
23 here to assist us with this.

24 We have Mr. William A. Mennella, who is

8
1 chairperson of the Delaware State Coalition for the
2 ADA. Nice to have you with us.

3 MR. MENNELLA: Thank you.

4 MS. SKINNER: And Mr. James Stalls,
5 President of the Better Business Bureau of Delaware.
6 We are very happy to have you with us too.

7 Would you like to start, Mr. Mennella?

8 MR. MENNELLA: Sure, I would be
9 delighted.

10 To introduce myself, I am William Mennella,
11 and I am the, actually I am the co-chair of the
12 Statewide Coalition for ADA, and I emphasize that
13 point because as I begin to describe how and why the
14 Coalition came to being, the importance of that, that
15 prefix will become rather self-evident.

16 Perhaps if we could close the window. I know
17 it might be a little warm, but I can't really project
18 much more than I am right now.

19 MS. SKINNER: Thank you.

20 MR. MENNELLA: Back in March of this year
21 Justin Dart, as you have heard earlier today, made a
22 state tour to encourage the implementation of ADA and
23 to lend some suggestions and recommendations and to
24 emphasize certain key points in the process.

9
[]
1 At that time there was across the state a very
2 sincere interest in some of the points that he raised
3 and a concern certainly on the part of the public and
4 private sector about the expense and the various
5 inconveniences and so on that that was, which was
6 currently a serious concern.

7 From the Disability Committee we were hearing
8 a lot of voices of mistrust and confusion about the
9 extent and purpose of the law, and in general there
10 was a overriding lack of information and good deal of
11 misinformation being disseminated through the press
12 and through the various networks across the state.

13 Numbers of people from across the state
14 attended a luncheon and a forum here in Wilmington
15 when Mr. Dart came and addressed us, and he I suppose
16 you would say raised our consciousness and stimulated
17 a good deal of interest, and out of that interest,
18 under the initiative of Darryl Dobbins, who was then
19 Director of the Division of Vocational Rehabilitation,
20 at his invitation we met, oh, I would say there were
21 35 or 40 people invited to attend a meeting around the
22 issues of ADA.

23 They reflected quite a broad base of interest
24 groups. There were representatives of Better Business

9
1 Bureau, I am sorry, of Chambers of Commerce, there
2 were disability advocats, there were businessmen.
3 There were a lot of representatives of the state
4 agencies and state functionaries.

5 All in all, we spent about four hours at the
6 office in Smyrna hashing out what our concerns were,
7 what the issues were.

8 I recall vividly that day the fact that I
9 walked into the room with an article I had just seen
10 in the Physical Therapy Journal and it was a
11 consulting firm's offering for ADA training and it
12 advanced all kinds of qualifications and credentials,
13 and to this day I have been unable to verify any of
14 them.

15 And there was a good deal of concern about
16 that. Some of the discussion that is taking place
17 here today reveals a similar concern.

18 In general there are no experts in ADA. There
19 are experts in certain facets of ADA, and there are
20 certain experts on the various issues as they relate
21 to business, as they relate to the public sector and
22 certainly as they relate to issues of disability.

23 But there doesn't seem to be any one
24 credentialling organization or one credentialling

9
1 process.

2 And that, that vacancy or that vacuum was one
3 of the things that really kicked off an interest in
4 coalescing from the different points of view, from the
5 different perspectives that needed to be addressed.

6 At that meeting we were able to identify three
7 discrete sectors of the community that are directly
8 impacted by ADA, that have the vested interest in
9 compliance and issues of compliance, and that also
10 maintain or are able to maintain a variety of
11 resources that are required if we are to comply with
12 ADA effectively.

13 Those three sectors of course naturally was
14 the private sector, businesss and industry; the public
15 sector, agencies educators and so on; and disability
16 community itself.

17 And bearing that in mind, we organized a
18 co-chaired, co-led coalition. I keep saying the word
19 "co" because we do these things in unison and we
20 really try to emphasize that aspect of what we are
21 doing.

22 Perhaps the strongest raison d'etre for such a
23 coalition is to reduce and eliminate vibes and avoid
24 the various scams and the flurry of consultants that

9
1 just naturally always convene on federal legislation
2 of this nature.

3 But particularly in the area of disability,
4 where there is issues of such intense sensitivity and
5 where the expertise and the professional and
6 sociological issues of disability come so heavily into
7 play, in compliance, in sectors that are not
8 necessarily well versed in those issues, the idea that
9 we needed to eliminate misinformation effectively and
10 quickly is the key factor.

11 In addition to the misinformation issue is the
12 issue of the appropriate dissemination of the accurate
13 information that is available.

14 And so the Coalition established a mechanism,
15 a network, if you will, for information, education,
16 and just the appropriate dissemination of materials
17 and information.

18 The third objective of the Coalition which we
19 believe can only be carried out through the Coalition
20 process is the effective education and training of
21 very diverse sectors of the community as regards to
22 ADA responsibilities.

23 For example, on behalf of the Coalition I have
24 personally trained over 200 individuals. That ranges

10 []
1 from the Delaware Safety, I am sorry, Delmarva Safety
2 Association, which is a, primarily a business
3 oriented, industrial oriented organization in lower
4 Delaware, to the Sussex County Library Association
5 where we trained over 90 individuals who are frontline
6 and trustees in the various libraries throughout the
7 county.

8 Without the support and the organization of a
9 coalition and the credibility that a coalition of
10 diverse groups coming together sharing information,
11 sharing resources and monitoring one another, okay,
12 without the kind of credibility that affords that
13 would not have been possible.

14 Another unique aspect of the coalition is that
15 it affords us an increasing network. I am sure you
16 have all noted that there is an awful lot that is
17 being done on ADA. There is no doubt about that.

18 State agencies, individuals, organizations
19 have all developed their ADA initiatives in all
20 different directions. The coalition affords us a
21 mechanism to coordinate and to share those resources
22 in a way that doesn't exist otherwise.

23 And so we have enjoyed a good deal of
24 credibility and we have been able to pull a rather

10
1 vast body of resource, both technical and
2 sociological, political resource, legal resource, and,
3 in this, support, which is a key aspect of any civil
4 rights legislation, this support of diverse
5 communities.

6 I guess that's about all I need to say right
7 now.

8 MS. SKINNER: Okay. We will hold the
9 questions until we are finished with Mr. Stalls.

10 Thank you very much. Mr. Stalls?

11 MR. STALLS: Good afternoon. My name is
12 Jim Stalls. I am President of the Better Business
13 Bureau of Delaware. I have been Manager and CEO of
14 the Bureau for about 16 years. I have been in the
15 Better Business Bureau for a little better than 20
16 years.

17 I appreciate the opportunity, I thank you, the
18 Chairman, Mrs. Skinner the moderator, for the
19 invitation for me to share some of my thoughts with
20 you today representing my constituency.

21 One thing I would like to share with you is
22 the fact of the ribbing I have taken since I walked in
23 the door when they saw my name as representative of
24 the Better Business Bureau listed as an advocat for

10
1 the disabled people. And I think you all know what I
2 am alluding to.

3 But I do appreciate the opportunity. I have
4 no problem with my name being listed under the Panel
5 B.

6 I would like to read a brief statement to you
7 and then kind of share some thoughts off the top of my
8 head.

9 The Better Business Bureau of Delaware has a
10 member, I am sorry, has as members more than 1500
11 small and mid-sized businesses, virtually all of which
12 will be affected by the Act.

13 The majority of these smaller businesses are
14 independently owned and most are without legal
15 departments or other responsible, affordable sources
16 of technical advice and assistance.

17 From restaurants to motels, from barber shops
18 to dry cleaners, they are types of businesses listed
19 in the Act as ones considered to be public
20 accomdations. And they in particular depend upon the
21 Better Business Bureau for leadership, information and
22 guidance.

23 We feel we can meet this need by having
24 available materials and resources to help these firms

1 find easily understood answers to questions concerning
2 compliance with ADA.

3 For example, the council of Better Business
4 Bureau's foundation, in conjunction with the
5 Disability Rights Education and Defense Fund, DREDF,
6 has produced six industry specific guides entitled
7 Access, Equals, Opportunities. These guides provide
8 an overview of Title III of the Act and are specific
9 for car sales and service, fun and fitness centers,
10 grocery stores, medical offices, restaurants and bars,
11 and retail stores.

12 I did bring you a set that you can put in your
13 files or can share with you. As I say, each is
14 industry specific and I can talk about them a little
15 bit later.

16 As an addition to our member business advisory
17 service the council of Better Business Bureaus has
18 produced a brochure entitled How to Avoid Scams and
19 Schemes Related to the Americans With Disabilities Act
20 of 1990, this particular brochure.

21 And the reason I spoke up this morning when
22 Mr. Weaver made the comment about the posters, that is
23 one of the prose that we get calls about on a regular
24 basis, for instance, the availability of those posters

11
1 through companies who are charging fees for something
2 that should be available on a lesser fee or no cost,
3 but they use the scare tactics, the implied threats of
4 costly litigation if you don't have these posters, et
5 cetera S.

6 The Better Business Bureau of Delaware, along
7 with the Better Business Bureau System and the Council
8 of Better Business Bureau's Foundation, are promoting
9 efforts to develop an alternative dispute resolution
10 program that will be acceptable to all parties
11 affected by ADA.

12 Title IV, Section 513 of the ADA, addresses
13 the use of alternative dispute resolution, ADR, such
14 as mediation, conciliation, fact finding and
15 negotiation, where appropriate.

16 The drafters of the act must have recognized
17 the potential advantages of encouraging a dialogue
18 between the disabled community and others directly
19 affected by ADA.

20 The Better Business Bureau strongly believes
21 there is an equitable alternative to lengthy and
22 costly litigation to ensure compliance.

23 By and large alternative dispute resolution
24 provides people with disabilities and covered entities

11
1 an opportunity to discuss a mutually acceptable
2 resolution of compliance issues without compromising
3 the legal rights accorded by ADA.

4 To implement the ADA as fully as possible we
5 strongly, we strongly feel that we must realize that
6 more than a one time effort is necessary.

7 Implementation can only succeed through
8 continuing education and training in the community.
9 Business and community leaders must be, excuse me,
10 must be informed and implementation efforts must
11 reflect the interests of all affected groups.

12 That's one of the reasons why I have been
13 involved and was invited to be involved with the
14 statewide coalition, because of those efforts.

15 In addition, on a local basis we have worked
16 with our staff in being sensitive to ADA issues,
17 particularly through my complaint staff, the intakers,
18 when we get calls, normally on a consumer problem, is
19 trying to determine if there is more involved than it
20 being a consumer issue, is there the possibility that
21 it is a sensitive issue under ADA.

22 We also are working with our staff to become
23 better acquainted with available resources, both
24 private and public, for information and referral

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1 agencies for issues concerning ADA.

2 We also make available and work with
3 organizations in trying to put together programs and
4 speakers. I have used Diane Treacy from her position
5 to speak at groups.

6 We feel that the best thing we can do on
7 behalf of the business community is to get the message
8 out there so that people are not scared and are
9 standing back and waiting to say, well, I am going to
10 see what they are going to do to me.

11 I appreciate the opportunity for sharing these
12 thoughts with you. I would be more than happy to
13 answer any questions.

14 MS. SKINNER: Okay. Thank you very much.
15 As an advocat, I have been an advocat for a long time,
16 as a parent of an autistic son who is now 23, and I
17 also spent time in Washington when we were going
18 through the deliberations for the ADA, and it was a
19 very exciting time to have such a composite of people.

20 But some of the issues that you have just
21 addressed certainly were part of the whole community,
22 and what we are trying to achieve I believe through
23 this act is cooperation and really recognition of the
24 individual and the individual needs of that particular

11 1 disability.

12 2 So I feel that we have some advocats here
13 3 today and this is an opportunity for advocats to ask
14 4 questions of both of you with regard to what you see
15 5 as needs within the state. Some may have already been
16 6 met, some may not have been.

17 7 Sometimes we just need dialogue between groups
18 8 to better help us understand the needs that are a part
19 9 of this Act.

20 10 And let's all focus I think on the fact that
21 11 this Act came into being because people felt that they
22 12 needed to be recognized, needed to have an outlet, and
23 13 needed to be seen as an individual with particular
24 14 interests and special needs.

15 15 So are there any questions that people might
16 16 have? Henry?

17 17 THE CHAIRPERSON: Well, the Act talks
18 18 about reasonable accommodation, sort of what I call a
19 19 weasel word.

20 20 Obviously, different people will have a
21 21 different interpretation of what reasonable
22 22 accommodation means.

23 23 Mr. Mennella, did the Coalition have a concept
24 24 of what reasonable accomodation means?

12
1 MR. MENNELLA: If that question were
2 posed to me as a Coalition, you know, in the normal
3 course of business of the Coalition, I will tell you
4 how I would answer. I would refer them to the law and
5 I would pull out my copy and I would read the wording.

6 Essentially reasonable accommodation involves
7 a variety of considerations. It involves, first of
8 all, which title you are protected under, okay. vary
9 slightly from title to title.

10 But in general the basic considerations are
11 the expense and convenience of the accommodation, and
12 whether or not any accommodation will provide the
13 person, the person with the disability, either access
14 to or engagement in the activity at issue. Public
15 accommodation.

16 And there are certain specific, certain
17 specific language under the law that discusses issues
18 of, for example, in the very often asked question on
19 sign language interpreters, it is fairly specific
20 language regarding the nature of the communication,
21 and so if a guy who owns a deli in Rehoboth Beach
22 wants to know does he need to hire a sign language
23 interpreter, when I tried to work with him what I
24 tried to work through with him is an understanding of

12
1 the nature of his communication and what will affect
2 adequate and appropriate communication for someone who
3 is deaf to come into his shop and buy a ham sandwich,
4 or to ask a question about, you know, where the pay
5 phone is. Okay.

6 On the other hand, if it is a dentist or an
7 attorney comes to me and says do I need to hire a sign
8 language interpreter, the nature and the scope and the
9 complexity of the communication that needs to take
10 place is the key consideration.

11 And that's actually, that's actually discussed
12 in the content of the law. So that's our nature of
13 our question. Accommodation, the reasonableness of
14 the accommodation hinges on a variety of items, not
15 the least of which is the nature of the activity to be
16 involved or that is involved.

17 Does that clarify for you?

18 THE CHAIRPERSON: Well, it -- well, Mr.
19 Stalls, do you have a feel for reasonable
20 accommodation?

21 MR. STALLS: I really don't have a feel
22 because I never tried to put myself into a position to
23 interpret what the law itself means.

24 If someone asks me what do they mean by

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1 reasonable interpretation I sort of put the monkey
2 back on them, can you be realistic in how you can
3 accommodate that person who other than the fact that
4 he may have a disability will serve your purpose,
5 whether it is employment, or have access to your
6 accommodation or to your place of business.

7 What comes to mind was, and you may have all
8 heard the experience, was an individual who wanted to
9 hire an individual who happened to be in a wheelchair.
10 Felt he was very capable. His concern was, a small
11 operation, that he would not be able to use the
12 current work station facilities because of the desk.

13 He made a reasonable accommodation by putting
14 it up on blocks so that the wheelchair could
15 comfortably slide under the desk, as well as the
16 typing table that was attached to it. So that would
17 be the way I would have to approach something like
18 that.

19 THE CHAIRPERSON: The problem that I have
20 as a lawyer is that it seems that this law is designed
21 to be interpreted by the courts because it is
22 obviously open to multiple interpretations and
23 subjectivity.

24 People seem to find that leaving the process

12
1 to a case by case analysis leaves a lot to be desired,
2 and lawyers and the judicial system I think take an
3 unreasonable hit for being the fall guy for a lack of
4 ability to be able to articulate what people want.

13
5 I don't really know that the answers you have
6 given me, if a client came to me, even the
7 delicatessen man you described, and said to me what
8 must I do, not what should I do, what could I do, but
9 what must I do, that I would have any ability under
10 the basic interpretations or regulations to give him
11 any guidance other than give it a shot and see what
12 happens, inviting him for lengthy, protracted and
13 expensive litigation. And that does not strike me as
14 an appropriate way to implement a law.

15 Now, this ADR you talked about --

16 MR. MENNELLA: Can I just suggest, first
17 of all, my disability activism and my disability
18 rights involvement goes back almost 25 years, and
19 during that process what came repeatedly to the
20 surface in trying to establish the language of this
21 particular legislation was that there is a different
22 tier from other civil rights legislation in that there
23 is a certain technical issue here.

24 There is a technology of equality for people

13
1 with disabilities. There is a certain almost
2 professional intervention mandate, if you will, when
3 it comes to issues of disability and equality.

4 And I think the language and the case by case
5 resolution of that issue covers that base very nicely
6 because it permits the kind of and the most expert
7 intervention, and permits us to share the technology
8 of access with the one who needs to use it, the one
9 who needs to make available to himself because he is a
10 shopkeeper or because he is a business operator, the
11 technology of access.

12 One of the things that I do when I am not
13 doing this is that I am the coordinator for the
14 Technology Resource Center, which is part of the
15 Delaware Assistive Technology Initiative in Sussex
16 County.

17 And what we have appointed ourselves to do
18 there, at least in part, was to be a resource to the
19 business community in making "reasonably" a more
20 well-defined term.

21 Reasonably. We discussed this earlier when
22 the Commissioner discussed superstitions. You know,
23 in 1560 it was reasonable to say the world was flat.
24 In 1992 it is ridiculous.

13
1 There are reasonable changes with our
2 technology and our ability to manage information and
3 the information that we have to manage.

4 THE CHAIRPERSON: Well, I understand what
5 you are saying, but Mr. Stalls, for example,
6 represents this small delicatessen owner who may be a
7 marginal business, he can't afford to be the test case
8 to determine the meaning of reasonableness or the
9 technological abilities to conform to some as yet
10 undefined or amorphous term.

11 I mean do you agree with that?

12 MR. STALLS: I agree with you.

13 THE CHAIRPERSON: Or do you think you are
14 appropriate for that purpose?

15 MR. STALLS: No, I don't think we are
16 appropriate for that purpose.

17 My question would be that are we going to be
18 concerned about that court determination of what is a
19 reasonable accommodation or do we need to look at the
20 reasonable accommodation to accomplish the goal of the
21 law or the legislation was that deli can serve that
22 constituency from the disabled community, and that's
23 where I would have a concern.

24 MR. MENNELLA: Let me add to that, again,

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1 in the body of the legislation the term good faith
2 effort stands out.

3 THE CHAIRPERSON: But good faith to whom?

4 MR. MENNELLA: Good faith effort on the
5 part of a business or an employer to comply.

6 THE CHAIRPERSON: Blanche?

7 MS. FLEMING: No, I wanted to ask a
8 question. Of the 1500 small businesses that you say
9 that are represented in BB, what seems to be the most
10 general complaint or barriers as they see to coming in
11 compliance with the ADA?

12 I know it may run the gamut, but what seems to
13 be maybe the five that pop up in your mind?

14 MR. STALLS: Well, I wouldn't even be
15 able to be specific.

16 The thing that I get the most is the confusion
17 as to what is appropriate. And again, we may be
18 getting back to what the Chairman is leading up to, is
19 you get one person whose interpretation is this can,
20 and, depending on where you get your technical
21 assistance or advice from, it may mean something else,
22 and he is confused.

23 And that's the reason I think from the
24 business community we are seeing a stand back

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1 situation and wait and see what is going to be the
2 first heavy hammer hit as far as litigation and cost
3 before a lot of them are taking a step and finding out
4 what is going to be a reasonable situation.

5 And what I am referring to is for the deli,
6 who may have one step up to the delicatessen, and
7 somebody told him, well, you are going to have to
8 completely redo your entry, put a ramp, you know, from
14
9 the side and all this type of stuff, and here is a mom
10 and pop deli who can see 15- \$20,000 worth of
11 remodeling cost and he is going to step back.

12 Where, from what Bill is saying, that there
13 could possibly be a reasonable accommodation, rather
14 than the total restructuring of his entry. And there
15 is a --

16 MS. FLEMING: Yes, I see that as a
17 structural barrier. What other barriers do they
18 bring?

19 MR. STALLS: Well, most of them would
20 come, from that aspect, from ours, most of our
21 constituency would be, as I say, the small
22 businessman.

23 We are looking at a company with mom and pop
24 operation, maybe up to eight, ten, 12, so we are

14 []
1 looking primarily Title III which is going to be a
2 real accommodations issue.

3 MS. FLEMING: What about employment?

4 MR. STALLS: See, we really aren't going
5 to get a lot of those questions because the larger
6 employers that we do represent, we have about 1500
7 members who have less than 15 employees.

8 MS. FLEMING: Okay.

9 MR. STALLS: When they get over to that,
10 and my point is when they get over to that they
11 usually have access to legal advice, professional
12 departments to handle the situations, or you get into
13 your major employers who have 500, 5,000, et cetera.

14 MS. FLEMING: I am not talking about
15 majors, no.

16 MR. STALLS: So I think your main
17 thrust --

18 MS. FLEMING: Is physical barrier.

19 MS. KUNKLE: -- Is going to be under
20 Title III, accommodations.

21 MS. FLEMING: Okay.

22 MR. BINKLEY: Mr. Chairman, Madam
23 Chairman, excuse me.

24 MS. SKINNER: Yes, go right ahead.

14
1 MR. BINKLEY: Let me interrupt to say,
2 wouldn't you say that the main objection or concern is
3 financial, is not whether it is accommodation, whether
4 they can up a ramp, but there is going to be an
5 expense?

6 MR. STALLS: And I think the reason is
7 that they have gotten misinformation, and I think
8 that's a point Bill was trying to say, is that the law
9 is not written to put anybody out of business, but to
10 accommodate that disability, and that if you put your
11 mind to it there are a lot of reasonable ways to
12 accommodate that disability, particularly with the
13 deli or whatever.

14 MR. MENNELLA: When we formed the
15 Coalition there were numbers of people who were more
16 business, and what became very apparent is that
17 businesses had a lot of very legit questions, what is
18 it going to cost me, what do I have to do.

19 They wanted to comply, they were not refusing
20 compliance, they were very eager to be in compliance,
21 but they really needed answers.

22 And on the other side of the table are all
23 these experts in the field of disability, and we
24 needed a mechanism to get that expertise delivered to

14
[]
1 people who are not expert.

2 They were expert at making a sandwich or
3 delivering hotel services or manufacturing widgets,
4 but they are not experts in disability and they are
5 not experts at accommodations for disability, and
6 that's the kind of resources that we need to tap and
7 we need to disseminate that kind of information
8 thoroughly in the business community, as well as
9 thoroughly in the public sector, okay, and that
10 expertise doesn't develop out of those sectors
11 independently. There has been to be a germ, there has
12 to be a seed planted.

[]
13 Some of the very large corporations, the
14 DuPonts and Baltimore Trusts and those kind of guys,
15 they have developed, at great expense, I might say,
16 some expertise in the area of accommodation.

17 But, frankly, I have reviewed a lot of that
18 kind of work and it is not any, it is not anymore
19 expert than what we could have offered them either at
20 no cost or very little cost.

21 MR. BINKLEY: Well, if I read the law,
22 there is tax opportunities, you can get tax breaks for
23 expenses.

[]
24 MR. MENNELLA: You should mention that.

14
1 MR. STALLS: See, that's where my point
2 is that we have got to be able to have available these
3 types of resources and information so that that person
4 is getting, that businessman is getting the right
5 information to make those decisions.

6 And we have approached it in getting calls and
7 types of things. I mean we are looking at a whole new
8 market, I mean, you know, when you take in the figures
9 that this law comprises from the disability community.

10 There is a lot of things that can be turned
11 around to be positive. You are absolutely right,
12 small businessman looks at dollars, what is it going
13 to cost him to do some renovations to accommodate if
14 he is getting some bad information.

15 So he has got an alternative, do I hear the
16 other side of the coin, do I wait to see what it is
17 going to cost me in litigation to have a suit or a
18 charge filed against me from the Civil Rights
19 Commission or Department of Justice or whatever the
20 case would be.

21 He is confronted constantly from both sides of
22 the coin with dollars.

23 THE CHAIRPERSON: Ed, do you have a
24 question?

15
[]
1 MR. DARDEN: Yes. Commissioner
2 Redenbaugh described a kind of hierarchy of disability
3 with some being more acceptable, apparently, to
4 nondisabled people than others.

5 If that's the case, and if you agree with it,
6 does that mean that there are certain kinds of
7 disabilities that are going to have a more difficult
8 time in making the ADA real for them, and, if so, what
9 are they and what should we be watching out for?

10 MR. MENNELLA: Well, you know, there are
11 no statistics in yet. It is kind of early in the
12 game, Ed.

[]
13 ; Frankly, you know, the history of disability
14 suggests that people with obvious visible and
15 well-defined mobility impairments cause the least
16 amount of attention in nondisabled people.

17 Okay. That's very consistent with what the
18 Commissioner cited.

19 The more disfigurement, the more deformity
20 that that mobility impairment has attached with it,
21 the greater disturbance or the greater attention that
22 one finds.

[]
23 And I think the rest of the hierarchy that he
24 described is also what we might expect. What we are

15 []
1 seeing is there was a tremendous rush to accommodate
2 mobility impairments, and really there is very little
3 being done to accommodate hearing impairment or visual
4 impairments.

5 And at this point we are not getting a lot of
6 complaints. And again, we have to be very cautious
7 how we measure these items because the lack of
8 complaints, as I am sure you well know, is not a
9 measure of what is happening necessarily out there in
10 the field.

[]
11 We are not seeing a lot of complaints, but
12 what we hear in the grapevines and what we see out in
13 the community is that people that are hearing impaired
14 or visually impaired are kind of getting short shrift.

15 MR. STALLS: See, I think it is
16 important, again, we get back to this education
17 process and information, and one of the things, for
18 instance, that the DREDF and our foundation was trying
19 to accomplish with the industry specific, for
20 instance, the guide on restaurants and bars will touch
21 on all phases, the deaf, the blind, the wheelchair
22 bound.

[]
23 But a car salesman, he is not going to be
24 concerned about a blind person and wanting to test

15
1 drive a vehicle.

2 So you are trying to disseminate the
3 information that is best going to be suited to these
4 particular needs of the industry to accommodate
5 hopefully all areas of the disability community.

6 MS. SKINNER: Did you have a question you
7 wanted to ask?

8 MR. MENNELLA: I wanted to add, and the
9 hierarchy continues into the emotional and mental
10 disturbances kind of situation, where there is any
11 kind of emotional or psychiatric disorder, and then on
12 into substance abusers.

13 ADA, people with a history of substance abuse
14 are protected. I think they are at the bottom of the
15 hierarchy. They are pretty much going to have a hard
16 time being assimilated into the process.

17 MR. STALLS: And that is another issue
18 right there. Diane and I at a recent joint speaking
19 engagement had an individual businessman who owns a
20 local residential garbage and trash pickup, and his
21 concern is where does he stand as far as his
22 responsibility to potentially hiring an alcohol or
23 drug addicted person to drive a pickup truck into a
24 residential neighborhood with kids on the street.

15
1 He is not getting the right answers as to how
2 he should be concerned about those things.

3 MS. SKINNER: Did you have a question?

4 MS. CAROL-LEE HURLEY: Why isn't he
5 getting the right answers?

6 MR. STALLS: Diane, maybe --

7 THE CHAIRPERSON: There aren't any.

8 MS. TREACY: No. In the meeting there
9 was, like I said in my presentation, there is more
10 acceptance, and Bill said, for someone in a wheelchair
11 and then it goes down the hierarchy.

12 The least accepted group I have heard are
13 substance abusers. They don't see why they were
14 included in the law, they shouldn't be covered by the
15 law, and people feel, a lot of people feel very
16 strongly about that. And AIDS is the other one.

17 THE CHAIRPERSON: Oh, really?

18 MR. MENNELLA: A big overlay of moral
19 issues there that come in and it is difficult to
20 tackle that.

21 MS. SKINNER: Okay. Thanks.

22 THE CHAIRPERSON: I would like to get
23 back to the dollars, because I think that's what
24 interests the businessman, and I was intrigued by your

15 1 concept of the ADR and various formats.

2 Initially I would like to know are they
3 binding. That's the first question.

4 And then, secondly, I would like to know if
5 they are not why aren't they, because that seems to me
6 a far more cost advantageous mechanism of determining
7 the boundaries of reasonableness than going through
8 the litigation process.

16 9 MR. STALLS: Our, let me, and I know Bill
10 has been involved in this and he and I have had some
11 discussions, the binding aspect has been a very touchy
12 topic in all of the meetings I have attended with all
13 of the various organizations and agencies that are
14 involved.

15 And right now I think when any group, whether
16 it is the Better Business Bureau or these private ADR
17 providers are steering away from the binding aspect of
18 it and they are also steering away from a specific
19 area of arbitration.

20 And I think in going back into the area of the
21 law itself that allows for some type of ADR. It seems
22 to be mediation that may be the most acceptable
23 possibility or avenue for an ADR attention to the
24 resolution of getting some compliance.

16
1 I think that gets back to, again, as to what
2 is the question or if you want to say charges or
3 whatever being brought, what is the purpose?

4 I mean is the individual willing to, say, go
5 after somebody, if you want to use that term. Under
6 the terms of the law, as you said, being specific,
7 what is he going for? Is he going for some type of
8 damages or is he going to be going after somebody in
9 order to have that place to become accountable to
10 being, you know, say accessible for all phases of this
11 thing or not.

12 Again, we are widening --

13 THE CHAIRPERSON: Does he have an
14 attorney?

15 MR. STALLS: Who?

16 THE CHAIRPERSON: This person you are
17 talking about.

18 MR. STALLS: Which individual?

19 THE CHAIRPERSON: The person he is
20 talking about who is going to bring charges. Because
21 if he is going to bring charges against somebody and
22 he wants to hire an attorney, he has got two choices I
23 would think, either to go for the damages and the
24 attorney's fees under the statute or fund it out of

16
1 his pocket. Now, what choice do you think most people
2 are going to take?

3 MR. STALLS: Well, I think most -- I
4 think we are putting the burden back on the person to
5 be realistic. Is he going to go after damages and
6 charges, is it going take him ten years, or is he
7 going to be able to go out into that shoe store and
8 help himself, help pick out him or her a pair of
9 specially dyed shoes.

10 MR. MENNELLA: Not to mention the
11 strength of his case as he perceives it. Very often
12 someone thinks they have a case but the strength of
13 the case is questionable, as an attorney --

14 THE CHAIRPERSON: Always, and most of
15 these cases the attorney isn't going to take the case
16 if he doesn't think he is going to get paid at the end
17 of the day. If he doesn't win, he is not going to get
18 paid. He is not going to take the marginal case.

19 MR. MENNELLA: What case is marginal?

20 THE CHAIRPERSON: Um?

21 MR. MENNELLA: What case is marginal?

22 How would an attorney determine that?

23 THE CHAIRPERSON: Start on case by case
24 basis. What you will find, it will start picking and

16
1 pecking, eventually you will find some ill-defined
2 border of what is clearly one thing and what clearly
3 is not, and some gray area will start to shrink until
4 some other comes in.

5 MR. STALLS: I think the important factor
6 is who is filing the complaint. Is it going to be
7 advocacy group wanting to make an example of somebody?
8 We are not going to be involved in that.

9 But if we have an individual like Bill who
10 calls the Bureau and says can you help me, I tried to
11 go into the deli, and there is no ramp, I couldn't
12 even get up in through the door, I think that is going
13 to be an important factor too at an intake type
14 situation.

15 What are we looking for, what is the
16 individual or what is the group looking for to
17 accomplish by this particular type of action.

18 MS. SKINNER: That's what you would say,
19 reasonable accommodation, then in a sense.

20 MR. STALLS: I think that would fit in
21 that term.

22 MS. SKINNER: In a sense we are all
23 trying not to create anxiety within groups or within
24 individuals too. We are trying to see this as a

16 []
1 mechanism of incorporating people into society and
2 allowing them to have every, share in what everyone
3 else is able to do.

4 MR. STALLS: That's the point I have
5 picked up and I have been trying to share with my
6 constituency in all the sessions I have been attending
7 for a little over the last year, in being able to meet
8 the various segments of the disability community, that
9 their intent is not to put anybody out of business but
10 to be able to go into that deli or be able to go into
11 that restaurant and have a meal.

12 Those are the types of things. I think that's
13 what, if we have that opportunity to make the business
14 community aware of the fact that Bill only wants to be
15 able to go into that department store and comfortably
16 be able to get something that he wants or needs in his
17 day-to-day life, just like you or I have, then that's
18 what he is entitled to.

19 And I think the business, the reasonable
20 businessman is willing under that reasonable
21 accommodation to accept it from that approach.

22 MR. MENNELLA: We have spent 30 years of
23 our lives advocating on issues of disability and we
24 have always struck adversarial kind of positions. It

17
1 was us against them. It was the special interests
2 versus the other special interests.

3 Throughout the history of this legislation
4 that's evident. Okay. In fact, quite to the day it
5 was signed it was evident. Tell you the truth, it is
6 still evident under several conditions.

7 You know what we need now, we need a different
8 kind of -- we have mastered the technology or the
9 social technology of confrontation and adversarial
10 negotiation. You know what, we need to master the
11 technology of cooperation.

12 And that is, I think if there is any one thing
13 that ADA demands of our society is developing that,
14 that social skill, to a new height.

15 You know, you asked earlier, Mr. Heiman, what
16 is reasonable. Reasonable is what we all agree to.
17 Reasonable is what we can negotiate and arrive at a
18 consensus on. Reasonable is what is not going to
19 cause unnecessary injury to you or to I and will still
20 accomplish our mutual and beneficial goals. That's
21 what reasonable is.

22 THE CHAIRPERSON: Well, if that can be
23 accomplished that is certainly devoutly to be desired.

24 I think the problem comes when one person's

17
1 interpretation of what that is does not overlap
2 another person's interpretation of what that is, and
3 then you have conflict.

4 So I don't know. I understand what you are
5 saying, and I wish it were true.

6 MR. STALLS: We talk dollars. I think if
7 we key in on that particularly, the term, and put it
8 back into a very positive situation, if you can talk
9 to the small businessman and you can talk to him about
10 tax credits and tax advantages available in addition
11 to the potential opening of a new market, for
12 instance, a restaurant who may get a tax break for
13 ramps or redoing the entry, enlarging the doors, et
14 cetera, you are going to see dollars, you know, and
15 that's, you hate to be materialistic, but that's one
16 way of accomplishing what we are trying to accomplish,
17 particularly in Title 30.

18 MR. MENNELLA: I think we need to expand
19 those tax incentives. If there is anything that would
20 be helpful that would be it.

21 I think we also need to look into means of
22 message for funding organizations like the one we are
23 trying to maintain here in Delaware, which is that
24 coalition concept where information that is accurate,

17
1 up-to-date, that is technologically sound and
2 unbiased, is disseminated evenly, and that the
3 resources of the community are well disseminated, and
4 that we known by experience, as quickly as possible
5 through that mechanism.

6 I think those kinds of organizations certainly
7 need to be looked into as a new method for arriving at
8 a definition of reasonable, instead of the old method
9 which, of course, originates out of conflict and ends
10 up in litigation.

11 MR. STALLS: We talked in here this
12 morning, the government agencies, we get back to
13 another situation where you get laws passed but no one
14 takes into consideration how you are going to get
15 those laws implemented when it comes down to dollars
16 and staff and all these different aspects of
17 implementation.

18 MS. SKINNER: That's right. Ed?

19 MR. DARDEN: That's a perfect
20 introduction to my question. I was going to ask
21 you -- yes, come right in, is it your position, either
22 of you -- I will get it for you -- that state and
23 local government in Delaware is doing everything that
24 it could be and should be doing and so, therefore, you

17 1 have no recommendations on what they need to be doing?

2 MR. STALLS: I don't know if I want to
3 touch that one.

4 MR. MENNELLA: I wouldn't touch that one
5 with a ten foot pole.

6 MR. STALLS: I think it gets back to some
7 of the comments there were this morning. I think they
8 are doing what they can with what they have to do
9 with. I don't know if that answers your question.

10 (Committee Member Lynn D. Wilson now
11 present.)

12 MR. DARDEN: What does that mean?

13 MR. MENNELLA: I think what he is saying,
14 the resources that are being allocated to respond to
15 ADA are limited and given those limitations we are not
16 doing a bad job.

17 Whether or not we are willing to or going to
18 be prepared in the longterm future to continue to
19 accept such limitations is another issue.

20 I think we, you know, I know when I answer
21 Title II entity groups I make a real strong point that
22 what is deemed undue hardship now, what is deemed
23 unreasonable now, may not be deemed that way next year
24 after your next budget has been determined, after you

18 []
1 have established your next set of priorities.

2 Okay. That when you propose your next year's
3 budget, you know, accommodation may have a much more
4 exaggerated position in your line items than it did
5 this year.

6 And if it doesn't, that may be seen -- you
7 know, the status quo cannot continue, is the bottom
8 line.

9 Jim only discussed that this is a process,
10 this is an ongoing process that's not only in
11 education, it is also in compliance. Okay.

12 So in terms of the state and local government
13 doing enough now? Well, given today's resources,
14 given today's allocations, perhaps. In some sections
15 they have done better than in others. In some
16 divisions they have done better than in others.

17 Is that being coordinated? Not terribly well.
18 That would need improvement. We need to tune-up our
19 resource coordination.

20 Will today covenants stand next year? I doubt
21 it. I seriously doubt it.

22 MR. STALLS: I think another issue that
23 may be affecting this too at this time of the year,
24 and possibly for the three or four months prior and

18
1 for the next few months, is, from the government's
2 point of view, and I am not speaking from a government
3 advocacy, but I found it, I attended, summit I
4 attended on the President's Committee on the
5 Employment of Disabilities, it seems to me a wait and
6 see view.

7 How is the new administration going to feel
8 about enforcement and implementation of this, how is
9 it going to feel. How are local governments going to
10 feel.

11 I think they are kind of waiting to see some
12 input from their leaders as to, hey, do we go after it
13 or do we accept we don't have funds.

14 So it is not a priority type situation and
15 that doesn't help us.

16 MS. SKINNER: That doesn't help the
17 advocats either.

18 MR. STALLS: No, no, it doesn't help any
19 aspect.

20 MR. MENNELLA: Certainly doesn't solve
21 any questions either.

22 MS. SKINNER: No.

23 MS. FLEMING: Aside from your seminars,
24 training session and literature that you have

18
1 disseminated, are there any other resources that are
2 needed to make your work more efficient?

3 I am talking now of the legal aspect. When
4 you have your seminars or workshops do you have
5 somebody who can at least sit in and listen and
6 sometimes help people to couch a question? In order
7 to get some answers you have to be able to ask the
8 question.

9 MR. STALLS: For instance, Mr. Weaver, I
10 took the opportunity to talk to him for a few seconds,
11 and whenever we put together anything with our
12 constituency I do not hesitate to make sure that
13 hopefully all gamuts of the discussion that will come
14 up will be covered, and he gave me his card and he
15 said if you ever put together anything that may
16 involve Title I, either I or somebody from my staff
17 would be accessible to be a part of that group. So we
18 look for those types of things.

19 I do not pretend to be an expert in ADA.
20 There are a lot of, there are a lot of resources that
21 through, for instance, through this coalition we all
22 have to be able to pull together to suit your
23 individual needs as to what you are trying to
24 accomplish for implementation of.

18

1 MS. FLEMING: Very good.

2 MR. MENNELLA: I am being prompted. I
3 hate to interject so overly, but I am being prompted
4 that there were three basic tax incentives in
5 existence for compliance with ADA.

6 One is a tax credit for small businesses that
7 are businesses with gross receipts of less than
8 \$500,000. Certainly covers my business, I will tell
9 you that. And that is for hiring a person with a
10 disability. That is \$2300 per person. And there is I
11 think a 15- or \$20,000 cap on that, something like
12 that. Or there may not be a cap, I am not really
13 sure.

14 There is also a tax credit, I am sorry, a tax
15 deduction for architectural barrier removal.

16 And there is also the Targeted, Targeted Jobs
17 Tax Credit, which is a percentage of the disabled
18 employee's salary for the first year. Okay.

19 And they are all substantial incentives. We
20 need a lot more of them. We need to see those things
21 expanded. The TJTC was just reauthorized.

22 MS. TREACY: No.

23 MR. MENNELLA: It was not?

24 MS. TREACY: So it is not in existence.

18
1 A VOICE: It is. It is.

2 MR. MENNELLA: Well, you see about
3 information.

4 MS. SKINNER: Do we see that the
5 coalition needs to be expanded, though, as far as
6 encompassing more groups from a standpoint of
7 expertise?

8 MR. MENNELLA: Absolutely. One of our
9 major missions for this year is to expand membership
10 and really solidify our membership

11 We believe, I mean the basic concept behind
12 coalition is that your members are your resource. We,
13 we have taken great pains to identify and to engage
14 people in the various sectors that have various levels
15 of expertise and all kinds of expertise, attorneys
16 and, for example, the Disability Law Project out of
17 Georgetown is an active part of our coalition. They
18 didn't call us. We called them. We sought out their
19 participation.

20 Jim was, actually Jim did call us, but, you
21 know, the kind of things we are doing with Jim and DBB
22 is important to us. That's a tremendous expansion of
23 our resources.

24 One of our resources, not so obvious on the

19
1 surface, is the Library Association and the Delaware
2 Division of Libraries, which affords us tremendous
3 resources, meeting rooms, technical information,
4 journals, telephones, you know, all kinds of in kind
5 support that we would not be able to operate without.

6 In Sussex County we have over 15 libraries
7 that offer us 15 training sites. When we want to do
8 training, if we can't find a site at some reasonable
9 expense, I can go to the Library Association and get a
10 free reading room in any library in the county.
11 That's a tremendous asset when your mission is to
12 disseminate information and to educate and so on.

13 MS. SKINNER: John has a question.

14 MR. BINKLEY: Mr. Mennella, does the
15 Delaware Coalition -- I should preface this to say we
16 are certainly concerned about what is happening in
17 Delaware, and especially the Delaware Committee, but
18 some of us are from Washington and having projects in
19 other states, and we are concerned about the
20 implementation of ADA nationally as well.

21 MR. MENNELLA: Of course.

22 MR. BINKLEY: I am wondering if the
23 coalition you are associated with is replicated in
24 other states.

19
1 MR. MENNELLA: That's a good question.
2 When I, in August I was attending the ADA training
3 offered by DREDF and IRU, in conjunction with EEOC and
4 DOJ, and at that session, at that training there were
5 about 200 people who were with disabilities and/or
6 advocats who were involved in the training and they
7 were drawn from around the country. We had people
8 from Alaska Hawaii and all over the country.

9 During those five days we had ample
10 opportunity to meet each other and to gather that kind
11 of information.

12 I don't know of any other state or any other
13 locality right now that has a coalition organized and
14 operating at the level we are at right now. And that,
15 I mean that's an unofficial sampling certainly based
16 on a very specific source of input.

17 But I think it was reflective of what is
18 happening in the disability community and I think it
19 was really reflective in the general terminology.

20 MR. STALLS: I get the same feedback Bill
21 does in the groups I attend, D. C., and through our
22 national group and participating with other bureaus,
23 and I referred to a statewide coalition, you know,
24 what is that, what is going on.

19 []
1 I think too we have to be realistic. Delaware
2 is a unique situation. You have three counties. You
3 can pull together a lot of agencies and organizations
4 and business people and accomplish a lot. Where a
5 state like Texas or California, you know, a statewide
6 coalition is going to be practically impossible.

7 But I think even if it is not a statewide that
8 somewhere, somehow, again, we get back to this
9 education and an ongoing process that coalitions of
10 some nature, whether it is county wide or large
11 metropolitan areas or whatever, and that was a
12 consensus that came out of this President's Committee
13 on the Employment of Disabilities early part of
14 December.

15 The representation that was there was that
16 same concern. And I mean these were disability
17 advocats. These were business people. These were
18 nonprofits represented. A large gamut of the things.

19 And I found, it was a very large meeting, they
20 all had a lot of information to share, but they didn't
21 have time to share it in a summit type situation,
22 because, they were frustrated, when they get back to
23 their geographical areas they have got to start
24 pulling from here, maybe so and so might be able to

19
1 help me answer this question, and those types of
2 things.

3 MR. BINKLEY: I had a similar question of
4 you. The pamphlet that you have for these specific
5 industry areas, are those also being distributed in
6 other states of the United States? Are they as well
7 organized as you appear to be in the Better Business
8 Bureau here in Delaware?

20
9 MR. STALLS: These particular runs are
10 available to all Better Business Bureau industries in
11 the country. There are 177 Better Business Bureaus
12 throughout the country. We have all had access to
13 these.

14 It depends, and, again, we get back on the
15 situation of where an individual situation, a Better
16 Business Bureau, Chambers of Commerce compels,
17 nonprofit, where your interest may lie in the position
18 you have to take in ADA type concerns.

19 We have, for instance, we have made these
20 available to our members for the last two months. I
21 just recently bought another supply of them that after
22 the first of the year I am going to do a media release
23 so that any business in the State of Delaware will
24 have access to this information by contacting the

20

1 Bureau.

2 So, again, it depends. And again, that's
3 unfortunate. You got a national organization, but
4 each bureau is independent, and you may have a bureau
5 manager who says I don't want to touch ADA with a ten
6 foot pole because I have got members out there who
7 fought against ADA and they don't want to look like,
8 as I referred earlier, an advocat of this type of
9 thing.

10 So it is unfortunate, but there are a number
11 of bureaus, such as myself, that are very much
12 involved and feel that there is a need to serve not
13 only in the business community but in the local
14 community as well.

15 We have, if you look at a bureau as a bureau,
16 we have a commitment, we are a business organization.
17 My sole operating budget comes from the support that
18 we get from the business community.

19 However, the business community supports a
20 Better Business Bureau for the public. The little
21 bureau in Delaware responds to between 6- and 7,000
22 telephone calls a month.

23 And we feel that that's an ideal situation for
24 us to use, for instance, with legislation such as ADA,

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20
1 when we make our intake people sensitive to this type
2 of situation, particularly when it comes to a
3 complaint area, but also from the businessman's point
4 of view, when he calls and wants information as a
5 resource center.

6 MR. BINKLEY: I have another question
7 both of you may wish to comment upon.

8 If a business makes clear or has changed its
9 policy to accommodate people with a disability, do the
10 disability advocats then give clear-cut public support
11 to that business? Do they go to that business, do
12 they trade with that business?

13 Kind of a reverse boycott, positive support to
14 show --

15 MR. MENNELLA: One of the great
16 incentives, you have to ask why would a corporation,
17 why would a small company, want to have anything to do
18 with us. They can afford an attorney. If they get
19 sued they will deal with us. What would be their
20 incentive to do that.

21 Well, one of the major incentives to share the
22 resource with us and to be involved with it in the
23 coalition is just that very idea that we can
24 acknowledge good and appropriate compliance. We can

20
1 acknowledge extra efforts.

2 It gives us a mechanism for making it known to
3 the public and within the business community who is
4 doing good works and who is not. It is real simple
5 kind of thing.

6 MR. STALLS: A good example of what Bill
7 is saying, and I know there has been a lot of
8 discussion in the coalition, for instance, you take, I
9 can only speak from a local situation, you take the
10 Wilmington Convention and Visitors Bureau, all, the
11 package they now put together to send all over the
12 country to organizations who are considering doing
13 their conventions, et cetera, in the Wilmington area,
14 when you get to the motels and hotels specifically
15 states which hotel is totally accessible, has TDD
16 services, accommodation for all the particular
17 services, and all the restaurants, the hotels and all
18 these types of things.

19 And that's part of the package and that's part
20 of the promotion of what I think, from what you are
21 saying, again, we are getting back to dollar signs.

22 MR. BINKLEY: Right.

23 MS. SKINNER: That's a very positive
24 aspect. Boston did a very fine job of that.

20
1 MR. MENNELLA: One of the projects we are
2 exploring now is providing small businesses with some
3 visible identification, almost like Good Housekeeping
4 Seal of Approval.

5 It is a little tricky, there were some
6 considerations, so the plan is not currently underway,
7 but we are looking into that sort of thing, with the
8 idea in mind that people should be acknowledged for
9 their compliance, for their good will in the
10 community.

11 We see ADA as a community concern, not just a
12 piece of legislation to be complied with. And I think
13 we have been very successful in the business sector,
14 certainly, establishing that orientation to the law.

15 I think it started out with this adversarial
16 thing and I think it is beginning to evolve into
17 something else, and I think that's at least in part
18 due to our efforts.

19 MR. STALLS: I think we have to be very
20 concerned of that approach, and that's one of the
21 reasons I feel very comfortable with this coalition
22 and representing more than 2,000 businesses in the
23 state, that in Delaware this coalition is not going
24 after business on an adversarial situation.

1 And I think that if the law is approached on
2 that aspect you are going to find a much more
3 receptive attitude coming from the business community,
4 particularly when we go back to, we keep referring to
5 dollars, and if a businessman can see his advantages,
6 whether or not through tax incentives, tax breaks,
7 whatever potential new market he may be opening
8 himself up to, the bottom line is we may be
9 accomplishing implementation.

10 If that's not the right way to go about it, it
11 is at least a way to accomplish it.

12 MR. MENNELLA: Before you ask a question
13 let me raise one more quick comment.

14 The last time I saw Eugene Weaver we were
15 presenting at Delaware Technical Community College in
16 Georgetown for some business people who requested an
17 ADA overview, and after the meeting a gentleman
18 approached me who actually works for an architectural
19 firm that owns one of the very prominent and very
20 large and very successful pairs of shopping malls in
21 Rehoboth Beach.

22 And he said, gee, you know, you guys were
23 great, I really was interested, we would like to have
24 you come down and do a onsite kind of walk through our

1 malls and give us some feedback on our accessibility
2 and so on.

3 And as it turns out they have done a lot in
4 that direction. And what we are working on now is
5 doing that and doing that because they are very proud
6 of their access and they see that as a wonderful piece
7 of public relations.

8 That will be a wonderfully easily and zero
9 cost piece of fantastic 6:00 o'clock news footage
10 about these two malls. They are going to get a lot of
11 free publicity. It is going to be exceptionally
12 positive.

13 It is going to make them look good on several
14 different levels. Okay. People will want, they will
15 be happy to shop there because of these guys, because
16 of what they have done. They have widened a few
17 doorways, they have really done kind of an average
18 job, but they are very proud of themselves. And to
19 tell you the truth, I am very proud of them too
20 because there are malls in the city that didn't do
21 that, and these guys deserve recognition.

22 MS. SKINNER: Ed, did you have a
23 question?

24 MR. DARDEN: Yes. I wanted to ask a

1 question about work force participation.

2 Do you see that the ADA is going to now result
3 in a wave of people with disabilities applying for
4 jobs where they hadn't been before or is this a
5 situation where there might need to be some
6 recruitment in order to prime the pump?

7 MR. MENNELLA: One of the great
8 difficulties in disability is that you become isolated
9 when you are disabled, that you become alienated from
10 the mainstream of society, for a lot of obvious and
11 not so obvious reasons.

12 I think that particular factor lends itself to
13 a lack of information on the part of the disabled
14 community. It means we need to really expand our out
15 reaches.

16 And incidentally, the coalition uses the Handi
17 Network News, which we discussed earlier today, as one
18 of our main organs of information into the disability
19 community.

20 We have, there are over 7,000 addresses on
21 that mailing list, many of them with multi, I don't
22 know, receivers.

23 I think as we begin to disseminate the
24 information more effectively you will see an increase.

1 I certainly wouldn't expect waves.

2 I think as the whole process of viewing
3 accommodation and disability and the personhood of the
4 job applicant differently evolves, you will see
5 significant increases.

6 MR. DARDEN: What kind of time frame?

7 MR. MENNELLA: It is hard to say. I
8 would say in a lot less time than it would have taken,
9 a lot less.

10 Within five years. I don't know. I would
11 suggest within five years or so you will see
12 significant increases on job applications by severely
13 disabled people.

14 MR. DARDEN: Are there groups that are
15 actively recruiting to place disabled people in jobs?

16 MR. MENNELLA: Well, you know, there are,
17 there have always been groups that do that. There is
18 the Division of Vocational Rehabilitation and Division
19 of Impaired. There are a lot of other advocacy
20 groups.

21 You see, all those kinds of people have been
22 doing that for decades. There is no mandate to do out
23 reach under ADA. ADA does not require that business
24 or employer do any unusual out reach to recruit or

2
1 actively seek out disabled employees. And I think
2 that was a wise thing.

3 I think what we need to do is we need to
4 educate the community as a whole. We need to educate
5 the business community to the fact that it is the
6 skills that you are purchasing, not the person's
7 flesh, and that if his flesh is impaired, as long as
8 you are going to provide the skills, you are required
9 under this law to hire this person. Okay. I think
10 that's the orientation we need to strike.

11 MR. STALLS: I think that we are seeing,
12 I know because I have received a call, we recently ran
13 a job ad, help wanted ad for an incoming telephone
14 receptionist or entry level telephone, a very good
15 friend of mine who happens to work for an employment
16 agency called me because she wanted to know the
17 specifics of the job itself to see whether or not she
18 had any qualified persons, because she is working with
19 the disabled community and specifically promoting that
20 pool of people that are now available, and it becomes,
21 I hate to say it, it may be becoming the thing to do.

22 We get into a situation, and particularly with
23 a larger company who is able to get a disabled person
24 into a mainstream work force much quicker, much

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1 easier, much more cost effective than a company that
2 only has five, ten, 15, 20, but they are not covered
3 by the law, you get into 20, 25 employees, I think
4 from that aspect we may see more of it because your
5 larger companies are able to do it on the basis of,
6 okay, well, I need to do that for this community. Or,
7 again, the thing to do, unfortunately.

8 Whether it does it or not for the thing to do,
9 it is going to accomplish what we are trying to do.

10 MS. SKINNER: They already have built in
11 support systems too in the larger companies, so that
12 is very helpful.

13 MR. STALLS: I know we are getting over
14 time. I wanted to make one quick comment of a very
15 good example when we talk about government agencies or
16 whatever and I mentioned it at lunch.

17 Our bureau in Miami recently worked with their
18 members in the contracting industry because of the
19 large amounts of government funds going into Miami
20 area and South Florida area for reconstruction of
21 businesses.

22 No one was making these businesses very much
23 aware of the requirements for new construction under
24 ADA, but yet the government is giving out this money.

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1 And it is a scary situation, again, to go
2 back, to be afraid of the fact that we have a law that
3 was signed in July 1990, be put on the shelf and we
4 are letting it sit there.

5 MR. MENNELLA: That's a need to
6 coordinate our efforts in.

7 MS. SKINNER: That's right.

8 MR. MENNELLA: That's really it.

9 MS. SKINNER: Okay. Any more questions?
10 We are going to have to move on to our next panel.
11 Thank you so much, both of you.

12 THE CHAIRPERSON: We are going take a
13 five minute break at this time and we will reconvene
14 at 2:50.

15 (Recess taken.)

16 MR. WOLTERS: May I call the third
17 session to order?

18 I am Raymond Wolters, a member of the Delaware
19 Advisory Committee, and we are here now for the third
20 and final of our panels for today, Panel C, on small
21 business and nonprofit agencies.

22 We have two panelists, Susan Cycyk, the
23 Executive Director of Independent Living, and Drew
24 Hastings, the Executive Director of Delaware

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1 Association of Nonprofits.

2 There may be a third panelist, but I am not
3 sure, of a Richard Heffron of the Delaware State
4 Chamber of Commerce will be here.

5 Anyway, would Miss Cycyk and Mr. Hastings care
6 to take a seat right up at the cross table there? We
7 have a sign, your name tag in front of you.

8 We have one more member of the Delaware
9 Advisory Committee who was in Family Court this
10 morning and arrived a half an hour or so ago, Lynn
11 Wilson, over here to my left.

12 Well, without further ado, let me introduce
13 Susan Cycyk of the Independent Living.

14 MS. CYCYK: Thanks. I really appreciate
15 the opportunity to come and speak before you. It
16 really is quite an honor.

17 I work for Independent Living and we serve
18 people with disabilities, people with all sorts of
19 disabilities, but I am really here today representing
20 Madeline Warns, the Executive Director of United Way,
21 and representing all the member agencies and
22 affiliated agencies of United Way.

23 And I only have a few comments. The first one
24 is that an awful lot of the nonprofits in Delaware are

3
1 in compliance, to begin with, from our agencies and
2 the rehabilitation agencies, that I can tell, on the
3 whole our employee population is very diverse,
4 culturally, racially, with disabilities.

5 It is the kinds of folks that work with us and
6 we were incorporated and designed to be service
7 providers.

8 There is a great deal of willingness to comply
9 with the ADA. Doesn't seem to be any kind of conflict
10 like that, and we already have a lot of training in
11 the law.

12 The United Way did training earlier this year,
13 I believe, and there has been some other
14 opportunities. So I don't think we need a whole lot
15 of education. We don't need to be convinced to do
16 what we all believe we should do.

17 We probably do need some technical assistance,
18 more of the implementation, the how, the how to, more
19 than anything, and perhaps since nobody knows what
20 this will really mean, perhaps some financial
21 resources.

22 Most of the nonprofits, like small businesses
23 in Delaware too, don't pay a whole lot of money and
24 don't have very rich employee benefit packages or a

3
1 lot of money in that area of training and personnel
2 and adaptation. So there may be some minor need for
3 assistance in that end, but I don't think a whole lot
4 of training.

5 I think that the technical assistance type of
6 training we could probably get here in Delaware very
7 inexpensively, if not free through the Delaware
8 Association of Rehabilitation Facilities.

9 I called their executive director yesterday
10 and that's what she said we could do. So I think it
11 would be a fairly easy matter for us to tackle.

12 MR. WOLTERS: Thank you.

13 MS. CYCYK: Those are my suggestions.
14 Thank you.

15 MR. WOLTERS: We will put some questions
16 to you, but I will hold the questions until after we
17 have heard from Mr. Hastings of the Delaware
18 Association of Nonprofits.

19 MR. HASTINGS: Agencies, but that's fine.

20 I would like again also to thank the members
21 of the Committee for this opportunity to address you
22 today.

23 As was stated, I am the Executive Director of
24 the Delaware Association of Nonprofit Agencies. DANA

3
1 is a coalition of nonprofit agencies and organizations
2 formed to provide a mechanism to enhance the quality
3 of human services by helping our members save money,
4 share skills, and participate in public and private
5 policy making.

6 Delaware's nonprofit sector, for those of you
7 who are not familiar, is comprised of approximately
8 2,000 nonprofit agencies and they provide critical
9 services to the Delaware community.

10 While a formal study of the impacts, of the
11 sector's impact on the state has not been conducted
12 recently, a recent study by the National Center for
13 Nonprofit Board sheds some light on the nationwide
14 impact of the nonprofit sector.

15 As stated in the NCNB study, if the United
16 States nonprofit sector were a nation, its estimated
17 annual budget of \$389 billion would rank at sixth
18 among the nations of the world. The nonprofit sector
19 is a vibrant and critical component in virtually every
20 single corner of our nation, and addressing its needs,
21 addressing the needs of our sector is of great
22 importance.

23 There is a great level of awareness, I would
24 like to echo what Miss Cycyk had to say about the ADA,

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1 and the knowledge of its specific guidelines is
2 surprisingly acute among our members, but there are
3 areas where improvements need to be made.

4 Nonprofit executives and their staffs are a
5 unique lot by and large. Give us a lemon and we will
6 produce a ton of lemonade. The nonprofit sector is
7 used to working with very little and leveraging it to
8 the hilt.

9 Some of the concerns of the law are not as
10 prevalent in our sector as they were in the private
11 sector because many of our nonprofit members have been
12 serving individuals with disabilities for a number of
13 years.

14 In fact, many nonprofits were founded
15 specifically to address the needs of the handicapped
16 and have become nationwide models in their hiring
17 practices and developing resources for the
18 handicapped. Nonprofits have for many years been at
19 the forefront of being accessible to those with
20 disabilities.

21 As in the private sector, many initial
22 criticisms by the nonprofit sector of the ADA turned
23 out to be red herrings. The costs of compliance on a
24 macroeconomic scale, for instance, have turned out to

3
1 be far less than expected.

2 A study conducted by the Dole Foundation found
3 that 85 percent of the changes needed to accomodate
4 people with disabilities will cost less than \$500.

4
5 But as is the case with any program of this
6 scale, however, there have been some problems with
7 individual agencies, both large and small, and some
8 latent anxieties have continued to plague the sector
9 as a whole.

10 One concern facing nonprofits is coming into
11 compliance with its physical plant. Capital
12 campaigns, by and large, tend to be some of the most
13 difficult and time consuming to undertake for your
14 members.

15 This is particularly true with those agencies
16 that rely on only one or two sources for their income.
17 Whether by design or happenstance, those organizations
18 that have placed all theirs eggs in one basket have
19 difficulty budgeting in these costs because their
20 budgets are set up well in advance and locked in for
21 the fiscal year.

22 The same is true for agencies relying upon
23 government entities for a lot of their funding. Some
24 of them have questions whether government in this age

4
1 of cutbacks will be able to step to the fore and
2 provide additional moneys for capital improvements.

3 But there are ways to conquer fear, avoid
4 frustration, and overcome adversity, and this is most
5 readily accomplished by information.

6 The United Way has done a lot of training
7 exercises, and in response to a lot of our members'
8 inquiries what DANA has established is a sample bank.

9 This bank is designed to save nonprofits time
10 and money by providing resource materials on topics of
11 vital importance to our sector. Included in DANA's
12 sample bank are a variety of source materials related
13 to the ADA from the Delaware Department of Labor.
14 Also included will be a variety of source materials
15 including articles on the law, interview techniques,
16 and foundations and organizations that provide
17 information and funding to nonprofits that help them
18 comply.

19 In fact, there is a national consortium of
20 foundations that has been trying to be established to
21 get \$500,000 of seed money to help study ways for
22 nonprofits to come into compliance.

23 Also, we are also including the Texas
24 Governor's Self-Evaluation Checklist, which was

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1 developed by the Texas Governor's Committee for
2 Disabled Persons, and I think this is a great example
3 of what government can do.

4 It is simple, it is direct, and free of the
5 legalistic clutter often found in a lot of government
6 documents.

7 And I think this which is also provided by our
8 local Department of Labor here is a great tool for a
9 lot of our member agencies.

10 On a more proactive scale, DANA is also going
11 to be working with the Governor's Committee on
12 Employment of People with Disabilities to set up a
13 workshop, open to all nonprofits, that will explain
14 the law, its guidelines and what nonprofits need to do
15 to comply.

16 Unfortunately, all the information in the
17 world is not going to be able to tell any one of us
18 what the effects of this law will have on the courts.

19 Many agencies realize that the burden of
20 compliance is balanced by reasonable accommodation.
21 The unknown is who and what determines an undue
22 burden. No legal precedents have been set, and many
23 organizations, both public and private, are holding
24 their collective breath.

4
1 Nonetheless, I look upon the ADA as a very
2 strong step in the right direction and see this law as
3 a great opportunity. It is my opinion that most, if
4 not all, agencies share my view that all of us want to
5 be as inclusive as possible and to make this law work
6 in every way we can. In fact, I think if you were to
7 undertake a study today that you would find nonprofit
8 agencies with the highest level of compliance.

9 In Japan the word used for opportunity and for
10 problem are the same. I think our mission from our
11 perspective at DANA and here today is to convince
12 those that have not already been converted that the
13 immediate problems that they might face in their
14 compliance will provide them with greater
15 opportunities in their future, and to the future of
16 those who for too long have been denied the
17 opportunities that they so richly deserve. Thank you.

18 MR. WOLTERS: Thank you, Mr. Hastings.
19 Are there any questions?

20 THE CHAIRPERSON: Nonprofit organizations
21 obviously are unique in their funding problems.
22 Because their fundings come from the rest of us,
23 obviously you don't produce anything in terms of a
24 salable commodity, so any modifications or changes or

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1 whatever you do is going to obviously have to come out
2 of scarce resources.

3 Could it not be argued that the resources that
4 you are going to put into the modifications in dealing
5 with ADA will have negative aspects, that is that you
6 will be not doing somethings that you might otherwise
7 do, and we would then end up in this conflict of
8 special interests' tug of war?

9 MR. HASTINGS: Well, I just think as a
10 whole, again, a lot, I would say that more of our
11 agencies are already in compliance so as, in terms of,
12 in terms of money that is going to be needed for it, I
13 think they are going to be far less than a lot of
14 people might say.

15 THE CHAIRPERSON: I don't know how you
16 can say you are in compliance when we don't know what
17 the law is.

18 MR. HASTINGS: Just because a lot of, the
19 fact that our agencies, like Independent Living, were
20 set up specifically to deal with the, you know, with
21 the needs of the handicapped and those with
22 disabilities.

23 THE CHAIRPERSON: But that is their
24 product, not their people. You have to differentiate.

5
1 I mean they deal with those people, that's
2 what they deal with. It doesn't tell me whether the
3 nurse they are going to hire has to be dealt with in
4 an ADA way, or whether they have to have ramps
5 accessible for the salesman that comes in to talk to
6 them, or whether it has to have a hundred other types
7 of things, or if somebody comes in and has a hearing
8 problem must they deal with it in a certain fashion.

9 None of these things are known, as far as I am
10 aware they are not known, and I am concerned that
11 scarce resources in nonprofit agencies may be
12 disproportionately going to one situation because of
13 this as opposed to other demands that may be made of
14 equal importance on the same agency. And I don't know
15 how you feel about that.

16 MS. CYCYK: I would like to say that one
17 of the problems for us in dealing with our resources
18 is so much of the money that we all operate with is so
19 restricted.

20 I don't know if any of the money we have
21 really even could be used to, you know, bring into
22 compliance with ADA because of the strings that are
23 attached to it.

24 So that is a problem for us, not just the

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1 scarcity of resources, it is the flexibility and to
2 use the resources that we do have.

3 I would like to comment that in a lot of
4 organizations there are already a fair number of
5 persons with disabilities hired. So we have, in a
6 nonprofit community we have made a lot of
7 accommodations. We certainly probably haven't made
8 them all and probably have more to make, but we have
9 done those kinds of things for many, many years. It
10 is part of our culture.

11 And that is why I think we are probably
12 further along than some other places might be.

13 MR. DARDEN: Can I ask a question on
14 that? Then why is it that there is a concern among
15 nonprofit, and that is I guess a general term, is
16 there some segment of the nonprofit field that doesn't
17 participate in the culture that you are describing and
18 that may in fact have a different outlook on complying
19 with the ADA?

20 MR. HASTINGS: Well, I think there is
21 some technical aspects of the law that aren't known.

22 As I was reading through it I don't know how
23 many -- for instance, I know some organizations that
24 do have to comply that I know probably don't realize

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1 it are like day care centers that are based in
2 churches. There are for profit activities.

3 I see that as a potential stumbling block
4 right now simply because I am sure if an executive
5 pastor or whatever of a church was reading it and
6 said, oh, I don't have to comply with it because it
7 says here in black and white the church, clubs don't
8 have to comply, but they might not read that fine
9 print, take the time and find out that maybe that day
10 care center they are running in there does have to
11 comply. I see that as one potential stumbling block.

12 In terms of also the moneys, I mean nobody has
13 to be reminded of the current economic climate we are
14 living in right now has been difficult, and especially
15 with nonprofits.

16 And we are, everyone is facing, from top to
17 bottom, money problems in terms of getting those
18 moneys from foundations, donors. There is all sorts
19 of studies conducted in terms of the level that goes
20 down with the economy.

21 But I see there are some technical aspects of
22 the law that are going to take some time to get out
23 there and information known for a lot of our agencies.

24 MS. CYCYK: I would agree with Mr.

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1 Hastings. I don't think we have as much, you know,
2 fear or that there is a whole -- I don't think there
3 is a whole lot of nonprofits out there that are
4 terribly negative and don't want to comply.

5 But when we get into the technical issues
6 there is some lack of understanding and how to
7 implement.

6
8 MS. FLEMING: Let me try and ask it this
9 way: Have you had any complaints brought directly to
10 you of what was termed as unfair practices or
11 complaints relative to ADA? Whether it be hiring or
12 structural?

13 MS. CYCYK: No.

14 MS. FLEMING: That's what I wanted to
15 know.

16 MR. HASTINGS: No.

17 MS. FLEMING: That answers it.

18 MR. HASTINGS: The other thing, just
19 getting, one other point with the cost aspect of it
20 too is that there are a lot of creative and common
21 sensical ways to also come in compliance.

22 I think a lot of our members, we can help them
23 know about that, might enable them to come in
24 compliance.

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1 I know a lot of agencies, the first thing is
2 with agencies is we are in a sense, you know, we
3 always look at the money aspect in terms of where we
4 can go and what we can fulfill in terms of our
5 services.

6 But there are ways that, for instance, if they
7 need to raise a desk, instead of buying a new one,
8 putting it on a platform or two by fours instead of
9 having to buy a whole new desk, or instead of buying a
10 new drinking fountain, installing the plumbing, buying
11 just a simple water tower that is lower, and things of
12 that nature.

13 I think there needs to be ways that, you know,
14 that organizations can find that they can -- they
15 don't take a lot of money. As I said in that one
16 study, 85 percent of the costs for compliance are
17 under \$500.

18 But with some agencies, you know, with budgets
19 of less than \$50,000 that can be quite prohibitive at
20 times.

21 MR. WOLTERS: Do we have a question or
22 comment from over on the side?

23 MS. TREACY: I have had contact with
24 nonprofits throughout the state. One of the prominent

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1 nonprofit agencies in Delaware, I would rather not
2 mention the name, has told me specifically that they
3 will not be able to provide sign language interpreters
4 for public workshops, they will look at it, but they
5 do not see how they can come up with the money because
6 a lot of the workshops are free and things like that.
7 So that's a concern for me.

8 MR. STALLS: I was going to kind of
9 follow up on Mr. Darden's question. And what we find,
10 we are nonprofit, I think there is a misconception or
11 a poor conception on the word nonprofit.

12 I think it is important to know the tax
13 classification from IRS is a very important factor in
14 that overall term of nonprofit.

15 Many of us know that Wilmington Medical Center
16 is nonprofit, but we sure don't believe that they
17 don't make any money out there. So I think that's an
18 important issue in trying to justify compliance for
19 nonprofits. You have got to get more involved than
20 just a title of nonprofit.

21 MR. BINKLEY: What is the code, 501
22 (c)(3)?

23 MR. STALLS: 501 (c)(3) is charity, and
24 that's what most nonprofits that you know and I think

6
1 we are referring to here --

2 MR. HASTINGS: Right.

3 MR. STALLS: -- fall under. For
4 instance, we are a nonprofit. We come over 501
5 (c)(6).

6 THE CHAIRPERSON: 501 (c) generally is
7 nonprofit. There are various aspects of it.

8 MR. HASTINGS: Right.

9 THE CHAIRPERSON: Why do we hear so much
10 about nonprofits having problems with the ADA?

11 Because otherwise we wouldn't have asked you
12 here today to talk about it. That's what we have
13 heard. We have heard that nonprofits are specifically
14 and particularly having problems.

15 And you are telling me they are not. You are
16 telling me we are way, you are way in the forefront of
17 the dealing with the problems, and that's contrary to,
18 at least to my knowledge, of what I have been hearing.

19 MR. HASTINGS: Well, I think I am just
20 saying in terms of the forefront some of the agencies
21 that have been set up, for instance, the ARC of
22 Delaware and others which is for the rights of
23 individuals with handicap, that's what I am talking
24 about in terms of leading the forefront in a lot of

6
1 these programs.

2 I don't disagree that there are, as I said,
3 there are still some problems out there, and I think
4 they are mostly financially and money driven, and I
5 think there are going to be some needs to be
6 addressed.

7 As I said with capital campaigns, for
8 instance, people undertake these over the course of
9 years at a time, and in terms of coming together and
10 developing their facilities and to then add on to
11 these costs in terms of their building up their
12 physical plant is difficult, and I think it is going
13 to be difficult for the future for these agencies in
14 terms of providing the same level of services.

15 There is going to have to be in some respects
16 areas where somebody is going to have to pick up the
17 slack in some ways because I think there are agencies
18 that are going to have to make a choice between do we
19 come into compliance with ADA or do we drop off the
20 level of service we have been normally providing to
21 the community.

22 And I guess the thing is are we going to have
23 to take a short view or a long view with it, and
24 really come down hard on non, and on those nonprofit

7
1 agencies, or are we going to try to bring them up for
2 it.

3 As it is, I mean, there is really no legal
4 precedent. What is an undue burden?

5 For instance, one example given in this one
6 article says according to the law there is, so long as
7 there is no significant loss of -- there is no loss of
8 profit or loss of efficiency of operation. Since a
9 nonprofit is not going to have a profit how do you
10 then determine whether it has to remove that barrier
11 or not?

12 THE CHAIRPERSON: Well, efficiency, what
13 was the --

14 MR. HASTINGS: States significant loss of
15 profit or loss of efficiency of operation. I mean it
16 kind of puts into that, but --

17 THE CHAIRPERSON: Where do you see your
18 agencies today? Are they standing back waiting to see
19 where the lines will be drawn or are they taking the
20 proactive, culturally correct stance that you are
21 suggesting that is appropriate and abiding by the ADA
22 standards?

23 MR. HASTINGS: Just to take a for
24 instance, one member of our organization, they don't

7
1 even have -- they have only four employees, but they
2 are moving into a new facility and they basically
3 asked when they were, they had to, when they were
4 revamping the entire program, they basically asked
5 their contractor and he was able to tell them exactly
6 what they needed to do to come into compliance, so
7 that even though they didn't know the technical
8 aspects of building a ramp which they needed to build
9 for access to it, to the facility, their contractor
10 knew it right away.

11 MS. CYCYK: I think people are making the
12 active effort to get the information that they need.
13 How much action and what steps each organization is
14 taking I don't think I could comment on, but, except
15 that they all work together.

16 Where there is 2,000 of us, but we are still a
17 pretty small community, and we work with one another
18 all the time, and there is a lot of free advice that
19 goes back and forth to help us get our job done. So
20 that's what is happening.

21 I don't know about a whole lot of movement or
22 changes. I don't know about that really.

23 MS. WILSON: Have you ever done a more
24 formal survey of the nonprofits to see if they are in

7
1 compliance or if they do have problems?

2 MR. HASTINGS: Our organization has not,
3 but, as I said, we are planning on working with the
4 Governor's Office to develop something along those
5 lines and trying to -- I mean our organization deals
6 with all the issues in terms of the running of the
7 nonprofits, legal aspects, accounting and everything,
8 and we see our role as helping, helping in any way we
9 can to fulfill that mission.

10 As I said, with our sample bank of materials
11 any organization that calls up and says can you give
12 me information on the ADA, we will be able to supply
13 it for them or direct it to those proper agencies they
14 need to get in touch with.

15 And then also through our newsletter, through
16 our workshops, quarterly workshops we sponsor. We are
17 more than willing to get this word out to help give as
18 much technical assistance we can as possible.

19 MS. WILSON: Have you ever seen a kind of
20 sample survey that's been put out by any of the
21 organizations that are dealing with ADA?

22 MR. HASTINGS: No.

23 MS. WILSON: Would that be helpful?

24 MR. HASTINGS: It would be helpful, but

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1 with 2,000 agencies there is a cost into that. I
2 mean, you know, it would in terms of --

3 MS. WILSON: That's why I was thinking of
4 reducing it by using -- I would think there are just
5 certain questions you could ask and that might have
6 been standardized somewhere.

7 MS. CYCYK: But there are some things
8 that have happened and our agency and I believe all
9 the agencies that contract with the Division of
10 Alcoholism and Drug Abuse and Mental Health, we had to
11 respond to a survey and come up with a plan to rate
12 our compliance.

13 So I am assuming that that information is
14 getting in, and I would assume if there was a problem
15 with our compliance in my agency I would have heard.

16 So there is those kinds of things that are
17 already going on, already being part of what we do.

18 MS. WILSON: It is not just compliance.
19 It is also some other things that you might want to
20 survey.

21 MR. STALLS: Can I say something else? I
22 think it is interesting, what I am hearing here,
23 because it really distinguishes again that overall
24 umbrella, nonprofit.

8
1 For instance, we are nonprofit and the
2 nonprofits that we deal with have totally different
3 concerns than what we are hearing from this group
4 here.

5 Of course, I am primarily dealing with 501
6 (c)(6). We work with all the trade organizations, the
7 business organizations, the engineering groups, et
8 cetera, et cetera.

9 And we have taken an approach that we have to
10 look at ours as a small business. And in some
11 respect, unfortunately, this person that we think of
12 as the 501 (c)(3) has got to realize they have to
13 operate as a small business when it comes to ADA.
14 They are not going to make a distinction, you are a
15 nonprofit, and that, again, we are back in that area,
16 Mr. Binkley referred to it earlier, dollars.

17 I know from the 501 (c)(6) that's the first
18 thing we look at is budget, you know, and until you
19 get into enough knowledge and expertise as to really
20 what you can do and what is going to be priorities
21 and, again, from the Chairman, are we waiting to see
22 priorities when somebody is sued, when a nonprofit is
23 sued, whether it is a (c)(3) or (c)(6) or a (c)(9) or
24 whatever the case may be.

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THE CHAIRPERSON: Question?

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MR. DARDEN: Question. A lot of the (c)(3)s I imagine have fewer than 25 employees. Are they behaving now as if they were, you know, are they preparing now to comply with the ADA or are they waiting for the next level of coverage?

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MR. HASTINGS: I don't know definitively on that, but your figures are right. I think the latest nationwide statistic is something like 14 percent of the agencies have more than 25 employees as a whole across the country.

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So we are talking, not talking about every single agency in the state. It is a fairly small percentage.

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But in terms of formal saying definitively, giving you an answer saying I know for a fact 65 percent are in compliance or coming into compliance, I don't know that.

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But I think, but I think -- but let me just qualify that in the sense I think, as we have stated, everybody in the nonprofit sector, I don't think anybody is against it. I think they want to be as inclusive and as positive about it as they possibly can, within their means. I don't think anybody is

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1 throwing up road blocks before it.

2 MR. DARDEN: That's what I mean. Once
3 the coverage drops down to I think it is like 15 and
4 you pick up many more of the smaller nonprofit
5 organizations who have the smaller budgets, do you see
6 that that is going to create an issue or a problem at
7 that point in time because of the scale?

8 MR. HASTINGS: I think the one thing you
9 always have to be mindful of, the smaller the
10 organization, the less resources they have to explore
11 various programs.

12 They don't have a legal department. They
13 don't have the advantages of a huge corporation.
14 Executive directors, they might be the janitor, the
15 teacher and everything. And for them to sit there and
16 throw a pile of papers on their desk and say here is
17 the ADA, start complying with it, they will never get
18 to it.

19 I think it is just, it is just like, for
20 instance, this checklist is just a great idea. Even
21 if they just have this at least this way it is
22 something they could go down and say, okay, I have got
23 that, I have done that, oh, maybe I don't know.

24 It is something that is simplified, that gets

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[]
1 the ADA down to its essence, is really important, and
2 I think as you pare down to smaller and smaller
3 agencies it is going to become more and more difficult
4 for them to realize all the ramifications that they
5 have to deal with.

6 MR. DARDEN: Is that getting down to them
7 now, that sort of thing? Is your organization
8 disseminating it?

9 MR. HASTINGS: We are just in the process
10 right now of our own organization trying to get our
11 sample bank together of all the related materials.

12 Not only with this issue, I mean there is a
13 whole range of issues that we have to deal with. I
14 mean accounting principles, maintaining 501 (c)(3)
15 status is a whole conundrum in and of itself.

16 What we are trying to do with this sample bank
17 is to get as many materials together as possible so
18 that when an organization has a question we are the
19 one stop shop for them, so they can have it all there
20 for them, be it the information on how they have to
21 comply, organizations that are supplying funding money
22 for it, you know, sample interview techniques,
23 questions you can and cannot ask.

24 So we are trying as best as we can, with the

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1 limited resources that we ourselves have as well.

2 MR. BINKLEY: May I ask a question, Mr.
3 Chairman?

4 MR. WOLTERS: Sure.

5 MR. BINKLEY: Are you familiar, are
6 either of you familiar with a gentleman named William
7 Mennella, who is the co-chairperson of the Delaware
8 Statewide Coalition for ADA?

9 MR. HASTINGS: No.

10 MR. BINKLEY: He appeared here earlier
11 today. The name of the organization is the Delaware
12 Statewide Coalition for ADA. They provide services
13 and assistance. I heard you say earlier you have some
14 plan to do something with one of the Governor's
15 offices. And Miss Treacy over here, do you know her?

16 MR. HASTINGS: Treacy, yes, she has been
17 very helpful.

18 MR. BINKLEY: What I am leading up to,
19 there is a lot of resources you can tap, doesn't cost
20 you anything, a little time probably but that's a part
21 of your job, the way I understand it, to assist the
22 associations, maybe not necessarily yourself,
23 necessarily Miss Cycyk, but certainly Mr. Hastings in
24 terms of the being the director of this association

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1 DANA.

2 MR. HASTINGS: Right.

3 MR. BINKLEY: I was going to ask you
4 also, I assume that DANA is replicated in other
5 states?

6 MR. HASTINGS: Yes. We have about 18
7 sister organizations and about 12 others that are
8 pending in states across the country.

9 MR. BINKLEY: And do you have a national
10 organization, you go to conference or convention
11 annually or once in awhile?

12 MR. HASTINGS: Right, the NCNA, which is
13 the National Coalition -- National Council of
14 Nonprofits Associations.

15 MR. BINKLEY: When did it meet last?

16 MR. HASTINGS: It met last September.

17 MR. BINKLEY: Did you attend the meeting?

18 MR. HASTINGS: I had been hired about a
19 week prior to it so I was unable to attend.

20 MR. BINKLEY: Did you see the agenda?
21 Again, what I am leading to is did that organization,
22 has that organization put the subject of the
23 implementation of ADA before its members and tried to
24 give them assistance?

9
1 MR. HASTINGS: As of this point I can't
2 say with any definitiveness yes or no, whether they
3 have. They might have done it in '91 or what have you
4 or in that past conference.

5 MR. BINKLEY: Well, I might suggest --

6 MR. HASTINGS: Right.

7 MR. BINKLEY: -- you draw that to their
8 attention.

9 MR. HASTINGS: Sure.

10 MR. BINKLEY: Use these resources.

11 MR. WOLTERS: I have a question. How
12 many complaints have there been in the last year about
13 the enforcement of this law in the nonprofit agencies
14 in Delaware?

15 MR. HASTINGS: Well, since I have been,
16 only been with DANA now for almost three months I
17 haven't received any calls during my tenure.

18 Diane Treacy might be able to give you a
19 better answer on that since I know she has expressed
20 some concerns and had some complaints on it.

21 MS. TREACY: I know of two specific ones.

22 MS. CYCYK: I know of none.

23 MR. WOLTERS: Thank you.

24 THE CHAIRPERSON: What were the nature of

9
1 the complaints?

2 MS. TREACY: Excuse me?

3 THE CHAIRPERSON: What were the nature of
4 the complaints?

5 MS. TREACY: That sign language
6 interpreters would cost too much money and that making
7 a workshop accessible was a pain in the neck.

8 THE CHAIRPERSON: Well, focusing on the
9 first for a minute, who, can you tell us what agency
10 it was?

11 MS. TREACY: No, I would rather not.

12 THE CHAIRPERSON: What was the upshot of
13 it?

14 MS. TREACY: The agency is now run by new
15 management and they said they would be working on it.

16 THE CHAIRPERSON: Lynn?

17 MS. WILSON: Would complaints normally
18 come to DANA or would they go to the, directly to the
19 nonprofit agency probably? Would a disabled citizen
20 know to --

21 MR. HASTINGS: No, I don't think they
22 would know to go to DANA. I think they would probably
23 go to a state agency, something along the line of the
24 EEOC.

9
1 MR. STALLS: Can I say something else? I
2 think what, and again now I am putting this all under
3 the umbrella of nonprofit, I think one of the things
4 that I find, particularly the (c)(6)s are very
5 sensitive to, and I am sure the (c)(3)s are too, we
6 have a twofold problem.

7 We have limited funds, but we have an
8 obligation to our constituency to be sure that our
9 constituency is in compliance with ADA, for instance,
10 the people they provide services to, but also then
11 have to operate myself for compliance as a business to
12 be sure that the organization itself, which is either
13 a (c)(3) or a (c)(6), is in compliance.

14 And when you are trying to disseminate funds
15 to serve both needs the bucket gets shallower and
16 shallower.

17 MR. BINKLEY: That's why you have to
18 share information.

19 MR. STALLS: That's it.

20 MR. BINKLEY: Ideas, assistance.

21 THE CHAIRPERSON: Well, I think it goes
22 beyond that. If you have a specific objective or an
23 agency like Delaware Lung, which may or may not be one
24 of the representative agencies, they have a specific

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1 mandate and a specific agenda that deals with certain
2 specific and very specific diseases. If money that is
3 given to them to deal with those things has to be used
4 for something else, that's a problem.

5 MR. BINKLEY: Well, Mr. Chairman, I have
6 had a secondhand experience with a few nonprofit
7 organizations. What was that sign that said we didn't
8 intend to be a nonprofit organization but
9 unfortunately we are.

10 THE CHAIRPERSON: But we are.

11 MR. BINKLEY: Seriously, I have had
12 friends and family who work for nonprofit
13 organizations through the years and they always have
14 in a grant or in a approval of a proposal for
15 contractor or grant overhead, and that overhead would
16 be a part of like the rent and everything else.

17 And if it is to comply with a law, you comply
18 with the law through part of that, and that needs to
19 be -- if they have to instead of taking ten percent or
20 whatever it is off the top for overhead and operating
21 expenses, then they have to take 12.

22 THE CHAIRPERSON: Right. Let me ask
23 this --

24 MR. HASTINGS: Let me just comment on

10
1 that. Nonprofits as of late have been hit hard by
2 various crises.

3 Let's be honest. I mean there has been, some
4 of them have been our own doing, but some of them have
5 not.

6 And I think the thing, one of the major things
7 is that people, as a donor we all donate in some way,
8 shape or form to some type of cause that we ourselves
9 believe in, and when we do that donation we want to
10 make sure that as much of that dollar goes to that
11 cause that we want to support.

12 People are going to have, from a donor's
13 prospective people are going to have a greater problem
14 if they realize, oh, God, I am going to give you \$10
15 but if I know more, a greater chunk of that money is
16 going to capital improvements that are not serving or
17 doing anything to serve our members --

18 THE CHAIRPERSON: I agree.

19 MR. HASTINGS: -- the cause is going to
20 be difficult. And because of that I think this -- I
21 mean we don't know. I am not saying that it is going
22 to happen, but it might have an effect on our ability
23 to raise moneys from the general public.

24 THE CHAIRPERSON: I would like to ask

1 Miss Cychy a question. Have you been through the
2 United Way interrogation process for grant?

3 MS. CYCYK: Yes.

4 THE CHAIRPERSON: It is not quite as
5 simple as you go over and you say, gee, let me have
6 some money, right?

7 MS. CYCYK: Right, right.

8 THE CHAIRPERSON: You got to put a budget
9 together and you have to explain where every dollar is
10 going to go, don't you?

11 MS. CYCYK: Right.

12 THE CHAIRPERSON: If they don't like
13 where it is going to go they cut you?

14 MS. CYCYK: Correct.

15 MS. FLEMING: Or deny it.

16 THE CHAIRPERSON: Even if they say, gee,
17 you really deserve this money but everything is going
18 to take a hit this year so we are going to cut
19 everybody ten percent or whatever, then you got to
20 decide where it is coming from, is it coming from the
21 capital improvement to meet the physical disability
22 requirements under ADA or is it going to come out of
23 your budget for doing your mandated purpose.

24 Now, I don't know how you deal with this. I

10
1 just suggest that that's a problem.

2 MR. HASTINGS: Right. And there are two
3 things that have to be brought into the balance.

4 THE CHAIRPERSON: Well, except the thing
5 is ADA is the law.

6 MR. HASTINGS: Right.

7 THE CHAIRPERSON: So you don't have an
8 awful lot of choice about one side of this equation.

9 MR. HASTINGS: Exactly, right.

10 THE CHAIRPERSON: I think that's part of
11 the problem.

12 MS. CYCYK: Maybe we have a choice,
13 though, as far as enforcement. Mr. Hastings and I
14 were talking before we started about timing, how long
15 you give a place to comply and what is the extent of
16 the compliance. That's important. Those kinds of
17 things will matter for us a lot.

18 MR. HASTINGS: I mean there is a fine
19 line between lenience and patience. I think some
20 would need more, a bit more of patience in just
21 saying, look, we have, our budget process is such, in
22 such a way that we have to go at a certain time and we
23 are not going to get money no matter how much you bang
24 on our door.

10
1 THE CHAIRPERSON: Well, are the proactive
2 people giving you the time? Obviously, at least in
3 Delaware they obviously are because nobody is
4 obviously beating down the doors to force you into the
5 level of compliance might otherwise be required.

6 MR. HASTINGS: Delaware has the benefit
7 to, we should also mention, our foundation grants and
8 a lot of the donors in the Delaware area are very
9 strong and have a very great belief.

10 We have a very strong nonprofit community, and
11 we are lucky in the fact that in terms of capital
12 improvements, although they are difficult and time
13 consuming and take quite an effort, unlike other
14 states, capital improvement programs are pretty well
15 supported in the state, unlike others.

16 So I don't see it as a -- again, I see it as a
17 sense of timing and getting in compliance.

18 MR. BINKLEY: Mr. Chairman, may I make
19 some discussion along the line you were talking about
20 of sharing the income or the grants, the contributions
21 with need to comply with ADA in a nonprofit agency? I
22 would like to ask Mr. Stallings, Stalls? Excuse me.

23 MR. STALLS: Stalls.

24 MR. BINKLEY: We discussed earlier that

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1 the law provides that in compliance, I wouldn't
2 attempt to go into details, but to make a short cut, a
3 business can take a tax break, they can get deduction
4 or something like that.

5 Now a nonprofit organization doesn't have
6 taxes, but are you familiar enough with the law to
7 know whether or not the IRS will give them some sort
8 of assistance?

9 MR. STALLS: Our attorneys for our
10 classification of 502 (c)(6), the attorneys with our
11 national organization has pursued that through IRS,
12 because we, as any nonprofit, we have, like you say,
13 your classification review is coming all the time, you
14 get audited and all this stuff.

15 To answer your question, we have been advised
16 with our attorneys with our national organization
17 there is no accommodation through that. So there is
18 not that, there is not that edge as a small business.

19 And that was my point earlier, that we are in
20 a twofold situation because we need to serve our
21 constituency and help them comply, and whether it is
22 providing services or working with the business
23 community, but at the same time we don't have the
24 advantages they have in order to have some type of

11
1 available resources to try to accomplish some of these
2 things.

3 THE CHAIRPERSON: For a profit making
4 organization there is a carrot and a stick. For
5 nonprofit there is just the stick.

6 MR. HASTINGS: Just the stick.

7 THE CHAIRPERSON: And which end you get.

8 MR. HASTINGS: And the money. From my
9 understanding I think, what is it, the first time you
10 don't comply it is \$15,000.

11 THE CHAIRPERSON: That's reasonable.

12 MR. HASTINGS: For the nonprofit
13 community, when you consider the size of the agencies,
14 that's a, that's a huge chunk of money.

15 THE CHAIRPERSON: It is ridiculous. Who
16 is going to pay it?

17 MR. STALLS: Not only that, that's the
18 potential fine, what is it going to cost you to have
19 your attorneys attempt to defend you? That's going to
20 put many nonprofits out.

21 MR. HASTINGS: Right.

22 MR. STALLS: If you get down to where the
23 Chairman was coming from earlier waiting to see do you
24 go after the action, go after the hammer? There is a

11
1 danger of putting out of the business more nonprofit
2 than there is small businesses. Where would this
3 country be without the nonprofit segment of our
4 day-to-day --

5 THE CHAIRPERSON: Go defunct and turn
6 around the next day and start up a new one. You are
7 not losing anything. What is the difference?

8 MS. SKINNER: I was going to say, go out
9 of business.

10 THE CHAIRPERSON: Is that too simplistic
11 an answer? They don't have any carry forward, as I
12 know of.

13 MR. HASTINGS: Right.

14 THE CHAIRPERSON: They have money this
15 year, they spend it this year, next year they will
16 look for some more.

17 MR. STALLS: Still if you form the new
18 organization, you still aren't in compliance, you are
19 going to have that hammer over your door.

20 THE CHAIRPERSON: Eventually they will
21 get tired.

22 MR. STALLS: What are we trying to
23 accomplish with ADA?

24 THE CHAIRPERSON: I don't know.

11 []
1 MS. FLEMING: But I also think your
2 public, your resources for funding would be most
3 amenable to see that their increase in contribution
4 would help you to put forth compliances with ADA,
5 because the people from whom you get your resources
6 are of that kind of mind or else they wouldn't be
7 funding you every year.

8 I know of some instances where I work that
9 have, depending on what your mission is and what your
10 prioritizing is this year, and this is a new boy
11 coming on the block, and you explain it and you put
12 out your one, two, three, and you might find that that
13 would increase in their giving as opposed to
14 incentives coming from this end saying I don't think
15 there is any need to look for incentives coming from
16 the government, so you have to build up the other end.

17 THE CHAIRPERSON: You can look awfully
18 hard.

19 MR. WOLTERS: Any more questions?
20 Comments? Well, I want to thank you for coming. We
21 have had a fairly lengthy day here. We started with
22 an interesting talk and we have had three panels since
23 then. Thank you very much.

24 (Discussion off the record.)

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12

1 THE CHAIRPERSON: Could I add to the
2 record, please, let the record reflect that Blanche M.
3 Fleming was in fact here throughout the entire day.

4 MS. FLEMING: Yes, yes.

5 THE CHAIRPERSON: And the Chairman wishes
6 to express thanks for her endurance and shared
7 enjoyment. Thank you.

8 MS. FLEMING: And shared with her your
9 little thoughts.

10 (Proceedings conclude at 3:45 o'clock,
11 p.m.)

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1 State of Delaware :
2 New Castle County :

3
4 CERTIFICATE OF REPORTER

5 I, Eleanor J. Schwandt, Registered
6 Professional Reporter and Notary Public, do hereby
7 certify that the foregoing record, pages 1 to 216
8 inclusive, is a true and accurate transcript of my
stenographic notes taken on December 17, 1992, in the
above-captioned matter before the Delaware Advisory
Committee to The United States Commission on Civil
Rights.

9 IN WITNESS WHEREOF, I have hereunto set
10 my hand and seal this 28th day of December, 1992, at
Wilmington.

11 
12 Eleanor J. Schwandt