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UTAH ADVISORY COMMITTEE
TO THE
U. S. COMMISSION ON CIVIL RIGHTS
FACTFINDING MEETING
ON
EMPLOYMENT DISCRIMINATION IN UTAH

BE IT REMEMBERED that on the 9th day of
December, 1993, the factfinding meeting of the Utah
Advisory Committee to the U. S. Commission on Civil
Rights was taken before JACKIE MAIR, a Certified
Shorthand Reporter and Notary Public in and for the
State of Utah, commencing at the hour of 9:00 a. m. of
said day at the Red Lion Hotel, 225 South West Temple,
Salt Lake City Utah.



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A P P E A R A N C E S

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Polynesian Affairs

Ms. Junko Shimizu

Mr. Mark Maryboy
San Juan County Commissioner

Mr. Michael Martinez

Ms. Malee Craft, staff
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Mr. William F. Muldrow
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Ms. Betty Gillespie

Ms. Darlene C. Hutchison
Commission member

Mr. Abe Guss
Chairman, Utah Governor's
Committee for Unemployment
of People with Disabilities

Mr. William A. Thorne, Jr.

Ms. Marcia J. Galli

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P R O C E E D I N G S

1
2 MS. RICHARDS: The meeting of the Utah
3 Advisory Committee to the U.S. Commission on Civil
4 Rights shall come to order. For the benefit of those in
5 the audience I shall introduce myself and my colleagues.
6 My name is Mary Stovall Richards and I am the chair of
7 the Advisory Committee, and we will now have the members
8 of the committee introduce themselves starting with Mr.
9 Louie Tong.

10 MR. TONG: Lou Tong with the State of Utah
11 Office of Asian, Polynesian Affairs.

12 MS. SHIMIZU: Junko Shimizu, a homemaker.

13 MR. MARYBOY: Mark Maryboy, San Juan County
14 Commissioner and Tribal Counsel.

15 MR. MARTINEZ: Mike Martinez, citizen.

16 MS. CRAFT: Malee Craft, staff, Commission on
17 Civil Rights.

18 MR. MULDROW: And I'm Bill Muldrow with the
19 U.S. Commission.

20 MR. COHNE: Bruce Cohne, citizen, member and
21 senior attorney in the law firm of Cohne, Rappaport and
22 Segal.

23 MS. GILLESPIE: I'm Betty Gillespie and I'm
24 from Ogden.

25 MS. HUTCHISON: Darlene Hutchison, member of

1 the commission.

2 MR. GUSS: Abe Guss, Chairman, Utah Governor's
3 Committee for Employment of People with Disabilities.

4 MS. RICHARDS: We are here to conduct a fact
5 finding mission for the purpose of gathering information
6 on issues concerning employment discrimination in Utah.
7 Participants in this fact finding mission meeting will
8 provide information, observations and recommendations on
9 this topic. The jurisdiction of the commission includes
10 discrimination or denial of equal protection of the laws
11 because of race, color, religion, sex, age, handicap or
12 national origin, or in the administration of justice.

13 The proceedings of this fact finding mission
14 which are being recorded by a public stenographer will
15 be used along with other information collected through
16 interviews and correspondence with individual agencies
17 and organizations in the development of a written report
18 with findings and recommendations for the committee
19 which will be released and distributed to the public.

20 I want to remind everyone present of the
21 ground rules. This is a public meeting open to the
22 media and the general public, but we have a very full
23 schedule of participants to fit within the limited time
24 we have available. The time allotted for each session
25 must be strictly adhered to. 25 minutes have been

1 allocated for remarks from each presenter which would
2 include 10 minutes for dialogue with the committee. To
3 accommodate persons who have not been invited to make a
4 presentation but who wish to make statements, we have
5 scheduled open periods on our agenda this evening from
6 7:00 p.m. to 8:00 p.m. and on Friday from 3:00 p.m. to
7 4:00 p.m.. Anyone wishing to make a statement during
8 those periods should contact a staff member for
9 scheduling. Written statements may also be submitted to
10 committee members or staff here today or by mail to the
11 U.S. Commission on Civil Rights, 1700 Broadway, Suite
12 710, Denver, Colorado, 80290. The record of this
13 meeting will close on December 24, 1993.

14 Though some of the information provided here
15 may be controversial, we want to make sure all invited
16 guests do not unfairly or illegally defame any person or
17 organization. In order to assure that all aspects of
18 the issues are represented, knowledgeable persons with a
19 wide variety of experience and viewpoints have been
20 invited to share information with us. Any person or any
21 organization that feels defamed or degraded by
22 statements made in these proceedings should contact our
23 staff during the meeting so that we can provide a chance
24 for public response. Alternatively such persons or
25 organizations can file written statements for inclusion

1 in the proceedings. I urge all persons participating to
2 be judicious and factual in what they say. The Advisory
3 Committee appreciates the willingness of those who have
4 agreed to participate and share information with us.
5 Now Mr. Muldrow will share some remarks with us.

6 MR. MULDROW: I would just like to second the
7 welcome that our chair person has given to each of you.
8 We do appreciate your interest in this issue and
9 participation of those who agreed to provide information
10 to the committee. I would like to point out a couple of
11 things. The committee which has just been introduced is
12 a bipartisan committee. They're all residents of Utah.
13 By law no more than half of the committee can belong to
14 any one political party. We are a research agency, not
15 an enforcement agency. The purpose of the forum today
16 is to obtain information on the topic of our project
17 which is to explore issues related to employment
18 discrimination in Utah.

19 I would like to point out that in addition to
20 persons whose names appear on the agenda there will be
21 opportunity for other persons who wish to provide
22 information to the committee to do so at the open
23 session periods. Anyone wishing to provide information
24 during those periods should schedule themselves to be
25 heard at that time. If you will give your name to our

1 secretary at the back of the room -- would you stand up,
2 Evelyn, so everybody can see you -- she will receive
3 your name and we will schedule for a period during the
4 open session.

5 We are glad also to receive information,
6 written information during this fact finding meeting or
7 for a 10 day period following the meeting. This
8 information will be included in the record which will be
9 used to compile a written report later on. All of you
10 who attend this meeting or participate, if you register
11 with your mailing address, will automatically receive a
12 copy of the final report, and if there are other persons
13 who would like a free copy we'd be glad to have their
14 names also. I think that's all I have to say, and
15 except that to underscore what Mary has said, we have a
16 very tight schedule. We will do our best to remain on
17 time so that we can accommodate those persons who
18 rearranged their own schedules to appear before us
19 today. I think that's all I have to say. We're a bit
20 early, so I think that's good if we can get started with
21 the first presenter.

22 MS. RICHARDS: Well, our one slight hangup is
23 our first presenter is not yet here.

24 MR. MULDROW: Maybe the second person.

25 MS. RICHARDS: Is representative Frank

1 Pignanelli here? No. Okay.

2 MR. MULDROW: Let's take a five minute recess.

3 (Recess.)

4 MS. RICHARDS: Since our speaker has arrived,
5 we will resume our proceedings, and our first speaker
6 will be K.S. Cornaby, and we will invite you, Mr.
7 Cornaby, to come to the mike, barely get time to get sat
8 down before involved here, and we'll let you introduce
9 yourself and make your statement, and then there will be
10 approximately 10 minutes afterwards for questions from
11 the committee.

12 MR. CORNABY: Thank you, Madam Chairman. My
13 name is K.S. Cornaby. I am the or was the chair of the
14 Governor's Task Force on the Utah Anti-Discrimination
15 Division of the Industrial Commission, and I have been
16 requested to appear before you this morning and give you
17 information concerning the task force's activities, it's
18 findings and recommendations. Let me express
19 appreciation to you for the invitation and the
20 opportunity to present these findings to you. I believe
21 you have a copy of our report. It has been provided to
22 you.

23 The task force was formed in December just a
24 year ago now, December of 1992, by Governor Norman
25 Bangerter, and the purpose of the task force was to

1 review allegations of inefficient processing of
2 discrimination claims under Title 34, Chapter 35 of the
3 Utah Code which is the Utah Anti-Discrimination Act.
4 Following his taking office in January of 1993, Governor
5 Mike Leavitt concurred in the formation of the task
6 force and in its composition. To my knowledge none of
7 us who are on the task force, and you have I think a
8 listing of our composition, none of us on the task force
9 requested the appointment, ~~and~~ it having, as I say, come
10 from the Governor.

11 The task force consisted of eight members
12 representing various interests and the public. Very
13 briefly the task force members were retired Judge
14 Raymond Uno, State Representative Phil ~~Uipi~~ ^{Uipi}, Greg
15 Coronado who is the EEO director at Thiokol, Pat Draw,
16 Senior Attorney at the Questar Corporation, ~~Marian~~ ^{Mary Ann} Wood
17 who is an attorney. She has represented both sides in
18 discrimination cases. Leanne Schl~~a~~ ^ager, public member,
19 and Kathleen Mason, also a public member.

20 In our letter of appointment from Governor
21 Bangerter we were asked to do five things. Those five
22 were to, number one, ascertain whether a time lag
23 problem existed, and by that, had to do with time lag
24 problems in processing complaints, if you will, with the
25 division. Second, lead a review of the investigative

1 procedures used by the division, and thirdly, to examine
2 current law with respect to the legal representation of
3 claimants. Fourth, to determine the status of
4 compliance with state and federal law, and then fifth,
5 to make recommendations. We as a task force did not
6 review individual case files on file with the anti-
7 discrimination division because of the expectation of
8 privacy which was held by parties involved in the case,
9 that is to say the privacy of both the claimants and the
10 respondents. In addition, provisions of the Government
11 Records Access and Management Act, and as we understood
12 it EEOC rules, prohibited disclosure of the contents of a
13 case file.

14 We held as a task force some 10 open and
15 public meetings from January through, if memory serves
16 me correctly, June of this year. Two of those meetings
17 were dedicated solely to receiving public comment, and
18 we advertised, if I can use that term, in the press and
19 the media to invite all those from the public who had an
20 interest in presenting information to us to appear at
21 those meetings. In addition, we requested and received
22 additional written comments from the public and from
23 those who were interested concerning our mission, and I
24 have a list of the various meetings and what was
25 discussed. If you have an interest in having that in

1 writing I can provide that to you.

2 On July 27th of this year our final report was
3 adopted. The report was signed by all of the task force
4 members, and one of the members indicated that she would
5 be submitting a minority report. Our findings were
6 generally as follows: ^{first} We found that a time lag problem
7 did exist.

8 Secondly, with respect to investigative
9 procedures the task force heard testimony that the
10 division's investigators perform a thorough
11 investigation of cases. There was testimony to the
12 contrary which was also received. Suggestions for
13 improvement included more onsite investigations and fact
14 finding conferences by the division; ~~contract~~ attorneys
15 assisting in reducing the backlog, and investigator
16 caseload should be maintained at reasonable levels, ~~and~~
17 the problem, of course, we found was that there had been
18 a substantial increase in filings and there was not a
19 concomitant increase in numbers of staffers to process
20 those cases.

21 Number three, legal representation of
22 claimants, our findings ^{can} ~~included~~ that judicial
23 enforcement of cause findings would be necessary. We
24 also found that claimants may be unable to obtain
25 counsel for private enforcement of a cause finding.

1 We found also that the division and Utah Law
2 are in compliance with Federal Law.

3 We found that the division was understaffed,
4 as I indicated earlier, and that there was a backlog of
5 cases on file with the division.

6 We found also that the number of no cause
7 determinations in Utah is not out of line with other
8 states, and we found also that the division was taking
9 steps to become more accessible to its constituency.

10 Number nine, misunderstandings and unmet
11 expectations have aggravated criticism of the division.
12 These misunderstandings and unmet expectations include
13 the distinction between unfair, but not unlawful,
14 treatment versus illegal discrimination; and enforcement
15 does not mean the same thing as litigation; and that the
16 success of the division is not measured by the number of
17 cause findings.

18 We also found an early resolution of disputes
19 was favored, of course, and as I mentioned earlier also
20 there has been a substantial increase in number of
21 filings in recent years.

22 Our recommendations included, number one,
23 enhancement and utilization of current division
24 resources. The task force specifically recommended the
25 following changes in the division. Hire additional

1 clerical investigative and legal staff for the division,
2 ~~and~~ we said that recognizing ^{the fact} that the division's budget
3 is not within its control to determine how much money it
4 receives from the legislature. Develop standard
5 operating procedures within the division. Develop
6 educational outreach programs for the division's
7 constituency, emphasize mediation, conciliation and
8 similar resolution techniques, and ~~to~~ provide education
9 and training for staff to insure competent handling of
10 cases.

11 With respect to procedural and administrative
12 recommendations, we recommended the following changes to
13 the processes of both the commission and the division:
14 To implement a process to identify and process meritless
15 cases early-on; adopt and implement effective dispute
16 resolution practices; make appropriate use of early
17 onsite investigations and fact finding conferences; and
18 adopt reasonable deadlines for the submission of
19 information and materials; ^{ok,} ~~and~~ ~~to~~ grant continuances
20 only for good cause shown.

21 Number three, we made a recommendation as to
22 enforcement. We felt that the need for judicial
23 enforcement of the findings of the division was an
24 imperative, and as a result we made a legislative
25 recommendation.

1 Our staff counsel to our task force was George
2 Danielson who served at our request and who is now a
3 General Counsel to the Department of Commerce within the
4 state government. I had worked with George a number of
5 years when he was staff counsel to the legislature, and
6 so George came to us intimately acquainted with the
7 legislative process and what would be required for
8 legislative enforcement. Consequently, we requested
9 George to draft a piece of legislation, a bill, which
10 would call for enforcement of the judicial enforcement
11 of the cause findings of the division.

12 We determined that the division under the
13 Administrative Procedures Act, which is presently in
14 place in the State of Utah, that the division under that
15 act presently has the right, has the option to proceed
16 under that act to enforce cause findings. We felt that
17 it would be beneficial if the state were required to
18 follow through with judicial enforcement of those
19 findings, and that was the thrust of the bill which we
20 had prepared.

21 You must understand that behind that decision
22 lay the fact that we, after hearing from a number of
23 parties, including representatives of EEOC in Phoenix,
24 that the previous practice of referring cause findings
25 to Phoenix to the EEOC for enforcement, ^{the} (judicial

1 enforcement necessary) did not appear to be working. We
2 found that those submissions were going to Phoenix and
3 were being processed but nothing seemed to happen; and
4 so we felt strongly that there should be some sort of
5 enforcement procedure within the state.

6 Now, reasonable people can differ. We
7 understand that one can take the position that since
8 judicial enforcement is optional under the Utah
9 Administrative Procedures Act, the division would have
10 the right to proceed at its discretion under present
11 law, either proceed with a case, or to refer it to
12 Phoenix after all. Our recommendation was that
13 enforcement under the law in Utah be mandated. We
14 presented our findings to the Governor this fall, and
15 then to an interim committee of the state legislature, I
16 believe it was in October, and they have the matter with
17 respect to that bill presently under advisement. As a
18 matter of fact, I received notification yesterday or the
19 day before that it was on their schedule, Business Labor
20 Committee, for consideration at the next interim
21 committee meeting on the 15th of December, which would be
22 the last interim committee meeting day for this year
23 before the opening of the session in January.

24 We also recommended several other items for
25 consideration by the governor and/or the legislature,

1 feeling that these items were outside the scope of our
2 call, but that it would make sense to have those looked
3 at and reviewed. Those included the creation of a
4 division advisory council, ^{and} the creation of a human
5 rights commission to enforce civil rights laws in Utah;
6 and I might state in connection with that, that there is
7 a governor's commission presently in existence called
8 the Martin Luther King, Jr. Human Rights Commission that
9 has human rights in its title. That commission has been
10 in existence for some three years and has begun ^{what} I regard as
11 very successful efforts to raise the consciousness of
12 Utahns with respect to discrimination within the state
13 and with respect to the recognition of the rights of
14 minorities. My personal feeling is that that commission
15 could well form the basis or the genesis of such a human
16 rights commission should the governor or the legislature
17 choose to use that as a vehicle.

18 We also recommended to the legislature that
19 the Utah Anti-Discrimination Act be amended to bring it
20 in line with the 1991 Federal Civil Rights Act. There
21 are several provisions, and I'm sorry I don't have those
22 before me, which were adopted by Congress in 1991, and
23 we felt that those changes ought to be incorporated in
24 the Utah act. There you have it basically. If I can
25 respond to questions I'd be happy to do so. If I've

1 overstayed my welcome I'll silently steal away.

2 MS. RICHARDS: You're fine. We thank you
3 very much. Now we'll open the time to questions from
4 the committee.

5 MS. GILLESPIE: Mr. Cornaby.

6 MR. CORNABY: Yes.

7 MS. GILLESPIE: What is the role of the Martin
8 Luther King Commission, Human Rights Commission? How
9 does it in any way relate to employment, and what
10 enforcement powers does it have?

11 MR. CORNABY: That's a very good question.
12 The commission, and I'm a member of that commission,
13 does not have enforcement powers. The purpose of the
14 commission, as I indicated earlier, is to raise the
15 awareness of Utahns with respect to rights of minorities
16 and potential discrimination practices within the state.
17 The purpose of the commission was and is to do that by
18 educational means, bringing it to the attention of
19 public groups, civic groups, governmental groups. For
20 example, a year ago commission members undertook a trip
21 through Southern Utah to meet with some city councils
22 and other civic groups through Southern and Southwestern
23 Utah in furtherance of that objective. The commission
24 also structures observances for Martin Luther King,
25 Jr.'s birthday which is an official state holiday, as

1 you know, and the commission was instrumental this past
2 summer in having the Salt Lake City Council add the name
3 of Martin Luther King, Jr. Boulevard to Sixth South, the
4 major off-ramp into Salt Lake City; and we are presently
5 raising funds for signage on the freeways to let people
6 know coming into the city that that Boulevard exists.
7 Did that answer your question?

8 MS. GILLESPIE: Except the part about relating
9 to employment discrimination in the State of Utah.

10 MR. CORNABY: Well, as I say, we have no
11 enforcement authority. We're doing what we can by means
12 of persuasion, and we are, as all commissions are,
13 part-time and uncompensated, and so we have had to
14 prioritize our activities as we've moved along with
15 respect to the charge that we have.

16 MS. SHIMIZU: *In your Task Force work, did you find any*
17 *evidence that because the judicial enforcement is optional under the*
18 *Utah Administrative Procedure Act that UADOD has chosen not to enforce*
19 *enforcement or not, that they have not taken any*
20 *findings but rather to pass them on to EEOC in Phoenix?*
21 *enforcement position?*

22 MR. CORNABY: I don't have personal knowledge
23 of that. I do know that as the task force held its
24 meetings and as these problems became evident through
25 the hearing process, ~~and~~^{is} became also evident I think that
the commission, that is the task force, was interested
in making recommendations along the lines of the

1 problems which had been shown, it appeared to us that
2 the commission and the division were very ready to take
3 immediate action to correct many of the problems which
4 we had identified. We heard frequently from the
5 division with respect to new actions and procedures that
6 they were implementing which seemed to us to follow
7 along with some of the findings that we were making.

8 What has happened since the presentation of
9 our report in July to the governor with respect to
10 implementation by the task force, or, excuse me, by the
11 division, I don't have information on that.

12 MR. MULDROW: One of your recommendations was
13 to implement procedures which would enable judicial
14 enforcement. Hasn't that been available all along, and
15 how would that work? Would the individual claimant have
16 to take it to court? Would the UADD take it to court
17 for the claimant? Just how would it work, and hasn't
18 this been available all along?

19 MR. CORNABY: That's a fair question, and I
20 apologize, is my counsel here with me? George, pull up
21 a chair. This is George Danielson. While I am an
22 attorney, I do not practice in the field, so I had to
23 learn all this new terminology and all of these
24 procedures much as a number of other members did. We've
25 found that prior to this year, prior to our report, that

1 there were apparently two procedures available for
2 enforcement. One was to have a cause finding referred
3 to Phoenix and the EEOC for enforcement there, and the
4 second one was for the petitioner and claimant to obtain
5 a -- what do you call that letter, George?

6 MR. DANIELSON: Private Action.

7 MR. CORNABY: Private Action Letter, Right to
8 Sue Letter, which would enable then the claimant to take
9 that cause finding to a private attorney and enforce
10 that as a private right of action in court. What was
11 interesting to us is that until we made our
12 investigation we were unaware, and I think everyone else
13 was unaware, in fairness, of the fact that under the
14 Administrative Procedures Act of the state the division
15 and the department did have the option of enforcing that
16 judicially within the state. I don't think anybody had
17 realized that before, so we found that.

18 That brought then a third option. As I
19 indicated earlier, what we had determined then was that
20 there may be some advantage to in effect saying to the
21 division that under this proposed bill the division
22 would be mandated to bringing enforcement action on
23 behalf of a claimant for those cause findings. So that
24 the question at this moment is should the division have
25 the option of bringing it or presumably referring it

1 down to EEOC, or be required to bring the enforcement
2 action here within the state on cause findings that they
3 can't otherwise enforce.

4 I should add that there are a number of other
5 enforcement activities or procedures available to the
6 division short of legal action. When I talk about legal
7 action, ^{it is} sort of a last ditch, the last effort available.

8 MR. MULDROW: If the division brings the
9 action on behalf of the claimant, do they pay the court
10 costs? And I mean is there an attorney that proceeds on
11 the case, or does the claimant also have to retain an
12 attorney?

13 MR. CORNABY: My understanding is if the
14 division brings the action the claimant would not have
15 to retain an attorney, that action would be taken care
16 of by the division.

17 MS. RICHARDS: We have time for one quick
18 question.

19 MR. COHNE: What consideration was given to
20 the adoption of the formal ADR procedures in order to
21 streamline the whole process when a cause case was found
22 to exist?

23 MR. CORNABY: I'm reminded that this is one of
24 those areas where the division began to take action with
25 respect to streamlining those procedures upon

1 determining through our ^{hearings} ~~areas~~ that there were problems.
2 We did not make specific recommendations as to exactly
3 what ought to be done in each case for a couple of
4 reasons. One is shortness of time, and our
5 understanding that the division understood that what we
6 were about, what had to be done and were taking steps to
7 streamline those procedures, so we felt that that was
8 going to be accomplished, ^{or in the} process of being accomplished
9 and will be accomplished in due course.

10 That's also a problem in part with respect to
11 funding, and one of the reasons that we wanted to make
12 strong recommendations as we did was to bring it to the
13 attention of the legislature that this is not an area
14 where, (having been up there I don't know how the system
15 works,) you accept the report, file it and that's the
16 last you see of it. My colleagues here, I hope here,
17 but we wanted to make sure that didn't happen. It's
18 clear to us I think that while we recognize that all of
19 the agencies are in short funding, short stick as far as
20 funding is concerned, that this is one of those areas
21 that really does need an additional infusion.

22 MS. RICHARDS: Thank you very much, Mr.
23 Cornaby, Mr. Danielson.

24 MR. DANIELSON: Yes.

25 MS. RICHARDS: Thank you very much. Our next

1 presenter is Representative Frank Pignanelli, and we
2 will let you introduce yourself.

3 MR. PIGNANELLI: Okay. Thank you. My name is
4 Frank Pignanelli. I currently serve the Utah House of
5 Representatives for District 24. I represent the
6 Capitol Hill, the avenues, the Guadaloupe, the downtown
7 residential area and parts of Rose Park and parts of
8 Glendale.

9 The last several years I've made it one of my
10 causes of the legislature, because it's one of the
11 reasons why I ran, was to become interested and become
12 of assistance to those who want to increase the
13 capability of society dealing with those who don't
14 believe in civil rights ranging from hate crimes to
15 employment, and to that effect I was contacted about two
16 years ago by some individuals who felt that they had
17 been cheated and had been abused by the process, by the
18 state, by the system that was supposed to help them out.
19 Either the cases had dragged on too long and had caused
20 them not only personal damage, but inflicted damage on
21 their careers and on their family life. What was
22 interesting, not only were the calls and the letters
23 coming in from certain special interest groups, coming
24 from individuals independent of each other without
25 knowing each other, so I knew there was a problem along

1 with other legislatures, other interested people.

2 Last year at about this time, as you heard,
3 Governor Bangerter appointed the task force to help deal
4 with this problem. Unfortunately, I thought the task
5 force needed to be more comprehensive, have more people
6 who have problems with the system to be on the task
7 force. The task force did meet, heard from those people
8 on a regular basis, and the task force, as you know,
9 came up with several recommendations. The two that I'd
10 like to talk about are two that I'm going to be dealing
11 with in legislation in the 1994 session.

12 Perhaps the greatest flaw in the system
13 dealing with the anti-discrimination division,
14 notwithstanding the problems of the workload, caseload,
15 and the backlog, has been in my opinion the inability of
16 people who are frustrated, parties who feel like
17 nothing's happening, to go talk to someone. Now,
18 although the Industrial Commission's doors are always
19 open, we have to be honest that industrial commissioners
20 can be intimidated and people who are having a hard time
21 in the process, and like the workers comp division of
22 the Industrial Commission or the unemployment or job
23 security division, the anti-discrimination division did
24 not have an advisory council. There really was not a
25 liaison, and I think the first and foremost way to

1 resolve the problems you've heard about and you're going
2 to be hearing a lot more about, I don't want to get into
3 too much detail, to set up a permanent system so that
4 people who are having problems with the
5 anti-discrimination division have a place to go, knowing
6 that the concerns will be taken to the Industrial
7 Commission.

8 When I first discussed the possibility of an
9 advisory council last session of the legislature there
10 was some opposition, and then I put that matter to be
11 studied along with enforcement provisions in the interim
12 sessions of the legislature to be studied by the
13 Business Labor Economic Development Committee, and the
14 task force made its report which had as one of its
15 recommendations that an advisory council be established.

16 There at first was some concern by the
17 Industrial Commission, but Commissioner Colton came back
18 with an interesting idea. In fact, it's an idea that
19 has caught the imagination of almost anyone who's been
20 involved in this, and I'd just like to digress for a
21 minute. That is I think Commissioner Colton has been
22 the target of a lot of attacks and the concerns raised
23 by people, but I have found her to be very open and very
24 willing to deal with this problem, and although I've
25 disagreed with her on several occasions, disagreed with

1 her on the enforcement provisions, I've found her to be
2 very open and I appreciate that. She's not here today,
3 but when I've held meetings with special interest groups
4 she's been there, invited and no problem about being
5 there.

6 She came up with the two-tier approach. One
7 would be an advisory council that would be established
8 in statute. I'll get to the details in just a minute,
9 and that would be something that would be appointed by
10 the governor. Then there would be an advocates group.
11 These would be volunteers, any number of them, any
12 special interest group, any group representing any of
13 the protected classes. Anyone who wanted to be part of
14 the advocates group would be selected by the Industrial
15 Commission to be so, and they would be trained, and they
16 would be individuals who would be on a list that could
17 provide assistance and guidance and counseling to those
18 people who feel like the system is not taking care of
19 them, that those who follow the complaints and feel
20 their cases are backlogged or to find some other
21 resources, I think this is a great first step to
22 resolving it.

23 The second one, and, excuse me, the advocates
24 group, the one I just talked about, would be established
25 by rule by the Industrial Commission. This would be

1 established by rule, would not need legislation for
2 that. The commissioner believes that would be done in
3 the next several months. She is looking forward to that
4 and quite excited about it and so are we.

5 The next one would be the statute that we
6 asked the legislature to pass that would set up an
7 advisory council that would be that the governor would
8 appoint a small business representative, an employer
9 representative, a labor representative and a
10 representative of the state bar, and along with
11 representatives of the protected classes, race, color,
12 national origin, gender, religion, age, and persons with
13 disabilities.

14 We'd ask the governor appointed chair and that
15 the chairman of the anti-discrimination division to be
16 an exofficio non-voting member, but to provide staff
17 support to this advisory council, and the advisory
18 committee would offer advice on issues brought to them
19 by the commission or brought to them by the legislature
20 saying we would ask you to study this, and, more
21 important, they would discuss and advise the commission
22 on issues that were brought to them by the advocates
23 group, by other interested parties saying this is a
24 problem with the anti-discrimination division, you need
25 to look into this and in your monthly meetings and make

1 a recommendation to the Industrial Commission. That
2 means there's something in place. There is something
3 that's in the statute that provides a way for people to
4 address their concerns. What I've learned with
5 someone's career and with their employment, something
6 more personal than that, feel they've been cheated in
7 that regard. You need a place for them to air their
8 concerns and this will provide that and that way a piece
9 of legislation I'll be sponsoring.

10 At this time I'd like to thank the groups that
11 have worked with me. We've had several meetings where
12 we've had the commission, we try to come up with the
13 competent lines with the commission of these groups, the
14 hispanic groups, Coalition of La Raza, Utah Women's
15 Lobby, NAACP, Community Action Program, and you'll be
16 hearing from Robin and from Julie Davis, and those are
17 two individuals that have really pushed a lot of the
18 issues here before us and they deserve some credit.
19 They're the ones who first got ahold of me and they've
20 been a part of the process too.

21 Now having said that, what I anticipate
22 happening next week at the interim meeting of the
23 Business Labor Economic Development, both Commissioner
24 Colton and I will stand up and say that there are the
25 groups that are concerned, along with Robin and Julie

1 and others who have been interested, we've come to a
2 compromise on the advisory committee and this is what we
3 think the legislature should do, and hopefully the
4 committee will pass that out and the legislature will
5 pass that.

6 Unfortunately in January I will not be able to
7 say we've come to agreement on enforcement. The
8 Industrial Commission at this time believes that we do
9 not need to change the enforcement provisions of the
10 anti-discrimination code, and it's my belief and the
11 belief of many other groups that we do have to put some
12 legislation into effect, and it's interesting that the
13 task force discussed this and even as late as September
14 and October Industrial Commissioner Colton was talking
15 about legislation dealing with enforcement, and she and
16 her staff drafted some legislation, but apparently feel
17 that's no longer appropriate. However, I intend on
18 sponsoring, along with several co-sponsors and, of
19 course, bipartisan Republican, Democrat, sponsor
20 legislation to deal with the enforcement issue, and
21 while, yes, currently there are things that the agency
22 can do, at this point in time people believe it needs to
23 be spelled out in greater detail, needs a greater
24 emphasis and a greater incentive to enforce cause
25 findings and things of that nature.

1 Now, what that piece of legislation looks like
2 we don't know at this point in time. We have about five
3 different drafts. One of the drafts that we came up
4 with in a meeting we had last week was to go back to the
5 pre 1985 language. It's interesting to note that some
6 of these charts will be passed out to you, a lot of our
7 problems with the backlog, increased caseload came after
8 1985, after the statute was changed, and what we're
9 thinking about is perhaps maybe the pre 1985 language
10 had a lot of merit, and one of the possibilities is to
11 put parts of that back in place along with some other
12 items to help with the enforcement, but there's a lot of
13 different approaches to it amongst those groups and
14 those individuals representing the protected classes,
15 and, therefore, we have to work that out.

16 One thing I've learned about legislation, the
17 compromising, the discussion, most of it doesn't occur
18 during the legislative session. It occurs beforehand,
19 and I think we can come up with a pretty good proposal
20 for the advisory council and come up with a very strong
21 proposal for enforcement. With that I'm open for any
22 questions, Ms. chairman.

23 MS. RICHARDS: Thank you, Mr. Pignanelli.

24 MR. MARTINEZ: I appreciate your being here
25 today. I know how busy your schedule is and I know

1 you've been an advocate of a lot of people who haven't
2 been able to have something on their own behalf. Let me
3 see if I understand your proposal. As I understand from
4 the report and the minority report that was issued, from
5 Senator Cornaby's comments, one of the problems is that
6 there was no enforcement, that there is a lack of
7 staffing, that the budget is not adequate and there's a
8 backlog of cases. If I understand you correctly, please
9 correct me if I'm wrong, your partial solution to this
10 is to get a volunteer, non-paid, non-enforcement
11 advisory group that's hand picked that's going to
12 volunteer all their people's time to help people already
13 frustrated work with a group that has too many cases.
14 Is that your solution?

15 MR. PIGNANELLI: Well, the paid staff people
16 who are dealing with the cases, obviously, you know,
17 they're the ones that actually do the investigation.
18 You have the advisory committee and you have the
19 advocates group. The advocates group would be
20 volunteers from any of these groups who are interested
21 in the discrimination that would come from the protected
22 classes, would have individuals, hopefully many
23 individuals who would be trained by the Industrial
24 Commission, so they become advocates. So if someone
25 said, look, it's taken a long time for my case, I feel

1 the investigator is non-responsive, they can have
2 someone go, that knows the system that's not part of the
3 system, go to someone who has no problem going to the
4 Industrial Commission or going to the advisory committee
5 and saying you've got a problem with this investigator
6 or you've got a problem with this rule that you have.
7 There's some independence to it.

8 Now, I'm not saying this is going to solve the
9 backlog to any great degree. What I think this is going
10 to do is that I feel there is a vacuum of communication
11 between those who are frustrated and those who have
12 legitimate concerns and the Industrial Commission.
13 There's no real channel there. That's what I think the
14 advisory committee does and the advocates group does. I
15 don't intend to profess it's going to solve the backlog.

16 MR. MARTINEZ: Could I ask you, on the
17 advisory committee side, would they have any policy, any
18 budget, any ability to implement any new statutes or
19 regulations or recommend them, other than be advisory?

20 MR. PIGNANELLI: They would be advisory, would
21 have staff support through the anti-discrimination
22 division. I'll be honest, it would be great if they
23 could make policy. Unfortunately, the political
24 realities are such that, number one, the governor's
25 office is I don't want any policy making committees

1 right now, I want to keep that where it belongs in the
2 various commissions.

3 Secondly, to be honest, business law meetings,
4 a very concern about the bill, just the way it's written
5 now, I think this policy making the way it is structured
6 we'd have a difficult time passing. I agree with you
7 that I'd love to have it in a different format in a lot
8 of ways. I just think the most important thing at this
9 point in time is we get something in place. It's
10 different from the advisory council for the workers comp
11 and for job security. I think those advisory councils
12 have done some good things, but I think their structure
13 has been employee, employer have been at loggerheads.
14 This is much more, if you look at the structures, much
15 more tilted in favor of the protected classes, so I
16 think you'll see some more worthwhile discussion.

17 MR. MARTINEZ: Let me ask, I apologize, I just
18 have one more question.

19 MR. PIGNANELLI: That's fine.

20 MR. MARTINEZ: Since we're dealing with more
21 than employment discrimination, we're dealing with an
22 attitude, a reaction in some cases, this is what this is
23 all about. Looking at other avenues of redress, it
24 wasn't long ago that there was a legislator from Kearns
25 who made public statements to a national group, sort of

1 a xenophobic reaction saying all gang members should be
2 sent back to the country of their origin. I know that
3 this was in debate and certainly you should be credited
4 for coming out, saying that those kinds of comments are
5 meritless and should not even be given any credibility,
6 but there was never any statement made after that as to
7 what kind of action the legislature took to dispel that
8 as something that the legislature as a whole was
9 against. In fact, I think that issue died quite
10 quickly, and I'm wondering if you can just inform us
11 today, because I'm sure you agree that a xenophobic
12 reaction against immigration leads to employment
13 discrimination, especially since in states that tried
14 English as a primary language, legislation came up
15 twice, was defeated both times soundly by the
16 legislature, but that kind of talk, especially by a
17 policy making legislature, how did the legislature deal
18 with that, and how do you think that affects employment
19 discrimination?

20 MR. PIGNANELLI: I think you bring up a good
21 issue. I had a difficult time with the hate crimes. I
22 think you've seen recently with Governor Leavitt who has
23 basically said I don't understand what's going on with
24 the Hispanic community, you know, please educate me. I
25 think to his credit he's done that. I believe that the

1 legislature needs a full education process, that the
2 representative talked about sending people back to their
3 country, you need to also know he talked about Italians
4 being in gangs, so it caught my attention very rapidly.
5 I met with him and I said you need to understand I feel
6 a little concern, and he explained to me what he meant
7 was aliens, foreigners who were starting gangs in
8 California, and he said that to the speaker, he said
9 that to me.

10 MR. MARTINEZ: So we should send them back to
11 California?

12 MR. PIGNANELLI: No, those from other
13 countries, like the Chinese gangs, something like that.
14 They were not residents of the country. They were not
15 citizens. I'm not here to excuse them.

16 MR. MARTINEZ: Sometimes in a leadership
17 position you're put in a very uncomfortable position.

18 MR. PIGNANELLI: It is a tough spot.

19 MR. MARTINEZ: What did the legislature do
20 about it?

21 MR. PIGNANELLI: That brings up a very good
22 issue. I've talked to the speaker about this. I'm
23 going to talk to him again. I'm not one for touchy
24 feely things, but I think the time has come that the
25 legislature has to look at -- and looking at it during

1 the session or afterwards the speaker and I can work it
2 out and he's agreeable to it -- sensitivity training,
3 and I've talked to Janetta Williams, NAACP. I've talked
4 to James Gonzales about this when we had the other
5 representative doing this. First it met with some
6 resistance, but I think the legislature has to make an
7 affirmative action just like Governor Leavitt is doing
8 right now to find out what is going on with the minority
9 community, with the women's issues and things like that,
10 because I have to agree with you that there is some
11 insensitivity up there, but I think there's a
12 willingness to try to overcome that.

13 MR. MARTINEZ: Mr. Pignanelli, in 1988 there
14 was a piece of legislation in the house. It was
15 requested through that legislation that the Industrial
16 Commission expand their advisory boards to include a
17 cross section of minorities, gender representation,
18 handicapped people. Do you remember that legislation?

19 MR. PIGNANELLI: Uh-huh.

20 MR. MARTINEZ: Did you vote against it?

21 MR. PIGNANELLI: I'm sure I supported it.

22 MR. MARTINEZ: I think you voted against it.
23 I'm bringing up the issue because it seems that your
24 solution, if I can get clarification, your solution then
25 and your solution now is not to empower anybody to do

1 something about it, but to get some kind of change
2 through a personal response, is that right, so the
3 government doesn't have^d to get too involved?

4 MR. PIGNANELLI: The purpose of the advisory
5 committee legislation that I have is to create a way for
6 people to address their concerns and relate those to the
7 Industrial Commission. Right now there's nothing there,
8 there's absolutely nothing. If someone has a complaint
9 about their investigator or things of that nature
10 there's nowhere for them to go. This at least is
11 providing structure. I'm certainly not saying it's an
12 answer to all the problems, but I'm saying it's a start,
13 and having been up at the legislature, just because we
14 have reached a compromise between many groups, the
15 Industrial Commission, the battle is nowhere near won.
16 I agree it's tough, and if I voted against that
17 legislation, I don't recall, but it might have been part
18 of a big bill, or might have been a battle between labor
19 and management that I don't know about, but there is a
20 perception in the legislature, to be honest with you, I
21 saw with the hate crimes bill, that there's not a
22 problem with our minority community, whether it's racial
23 minorities, religious minorities or gender minorities,
24 and that is something that leadership, both Republican
25 and Democrat, has to deal with. That's why I'd like to

1 see us make an affirmative action outside of legislation
2 dealing with individual legislators. There's a lot that
3 all of us can learn.

4 MR. MARTINEZ: I appreciate your efforts. In
5 the leadership position you're put in uncomfortable
6 situations a lot of times.

7 MS. RICHARDS: Thank you. Let's take a
8 slightly different tactic. Ms. Gillespie?

9 MS. GILLESPIE: Yes, I have a question. Who
10 within the State of Utah has the power to enforce the
11 Utah Anti-Discrimination Act in Title 7 of the Civil
12 Rights Act in 1964 as amended?

13 MR. PIGNANELLI: Well, that's been an issue of
14 debate. Obviously we would hope that the agency would,
15 that the commission would. There's been some discussion
16 should it be them or should it be the Attorney General's
17 Office, and, of course, an individual has the right, if
18 they have a right to sue letter with the EEOC they can
19 go and enforce their rights there too. It is my feeling
20 that the Industrial Commission needs to have involvement
21 in that. Although there's going to be a concern and
22 will be raised about a conflict of interest, every other
23 agency of state government will have a hearing before
24 them, and if, for example, the insurance commissioner
25 may have a hearing, a hearing officer conduct a hearing,

1 but once that order is signed, even though the insurance
2 commissioner may have been an interested party in the
3 hearing, it's up to the insurance commissioner to
4 enforce that order.

5 Now, if that is indeed a conflict of interest,
6 that needs to be dealt with all across the board in
7 every state agency, but while every state agency has
8 that conflict we should exempt the Industrial Commission
9 simply because they say they've got that conflict. The
10 Industrial Commission should be part of enforcement of
11 any order that they issue.

12 MS. RICHARDS: I have one question for you.
13 You mentioned the difference between the wording in the
14 1985 law and subsequent laws essentially said that part
15 of the problem comes from the change in wording, is the
16 problem because too many people are now bringing cases,
17 and so we want to make the law more restrictive, or
18 exactly what is the purpose of the change?

19 MR. PIGNANELLI: I wish I could answer your
20 question directly. It was brought to my attention just
21 in a meeting last week. Mr. George Lopez who was very
22 knowledgeable on the subject, I asked him, I said what
23 would you do to enhance the enforcement provisions. He
24 said the thing I noticed -- and even he doesn't know the
25 correlation -- the problem started occurring up to 1985

1 when the statute was changed, and he said there's some
2 correlation there, and he didn't go into the details,
3 but the facts bear that out, that after the statute had
4 been changed is when we had many of the problems. So he
5 thought that if we at least look at going back to 1985
6 language as a basis for enforcement provisions that may
7 be helpful.

8 MS. RICHARDS: And so those are more stringent
9 and fewer people can apply?

10 MR. PIGNANELLI: They're more detailed, not so
11 much apply, just in terms of enforcement.

12 MS. GILLESPIE: At their own expense, the sue
13 letter is at the expense of the individual?

14 MR. PIGNANELLI: Right.

15 MS. GILLESPIE: Who has no money and is
16 seeking a job.

17 MR. PIGNANELLI: Well, that's on the right to
18 sue. We're talking about the enforcement by the
19 Industrial Commission.

20 MS. GILLESPIE: A law has no meaning
21 whatsoever if no one enforces it. Now, the other aspect
22 of anti-discrimination, for example, workers
23 compensation, all of those provisions, all of those laws
24 are enforced, except the anti-discrimination law. What
25 good is a law if no one enforces it? Why doesn't the

1 law say who enforces it?

2 MR. PIGNANELLI: That's a good question, and
3 that's what I'm trying to resolve, is to take care of
4 the enforcement problems that have been brought to my
5 attention and other legislators' attention by those who
6 have been cheated in the system or those who represent
7 the protected classes.

8 I'm not going to state I think the enforcement
9 provisions are anywhere where they need to be right now.
10 I'm getting conflicting statements, to be honest, from
11 the Industrial Commission. What they said several
12 months ago, what they say now are different, so
13 obviously something needs to be in the law to clarify
14 that. They have every right to change their minds, but
15 those individuals who feel that the system hasn't been
16 appropriate and protected them have brought out a lot of
17 good points, have said it needs to be changed.

18 What I'm trying to accomplish, as I did with
19 the legislation on the advisory council, is get a census
20 among those groups, those individuals who are very
21 knowledgeable about this, even more so than many
22 attorneys who practice anti-discrimination, but what
23 would it take to have enforcement on the books. My
24 personal opinion is that the Industrial Commission, just
25 like any other state agency, their order should be

1 enforced by them or someone else just like any other
2 state agency.

3 MS. RICHARDS: We're almost out of time, but
4 we have two very quick questions.

5 MR. COHNE: The question I have is in your
6 enforcement provisions, in order to expedite hearings,
7 have you addressed the issue of either arbitration on a
8 mandatory basis and on a binding basis and mediation
9 procedures?

10 MR. PIGNANELLI: Arbitration we've talked very
11 little. We have discussed a lot about mediation. I
12 know some of that is in place. The Industrial
13 Commission is using some of that right now. That's been
14 discussed as part of the language, but we have not come
15 up with anything yet in final draft.

16 MR. COHNE: Wouldn't that expedite hearings if
17 there was an arbitration procedure?

18 MR. PIGNANELLI: As opposed to mediation or
19 together in conjunction?

20 MR. COHNE: One is binding and one is
21 voluntary, one or the other.

22 MR. PIGNANELLI: I don't know. I'm not going
23 to profess to speak for these individuals that I'm
24 trying to talk with because they are much more
25 knowledgeable than I am about that. I don't know if

1 arbitration would be more effective. I know it works in
2 civil litigations more expedient.

3 MS. RICHARDS: Ms. Craft?

4 MS. CRAFT: Mr. Pignanelli, do you know if the
5 anti-discrimination division has ever enforced a ruling
6 at all?

7 MR. PIGNANELLI: Enforced a ruling?

8 MS. CRAFT: A cause finding ruling, have they
9 ever enforced one in the State of Utah?

10 MR. PIGNANELLI: I don't know. I mean I've
11 heard a lot about how they haven't. No one has said to
12 me that this is what they have done, is how they've
13 enforced it, and our discussions center around the
14 non-enforcing it. I'm not saying they haven't, I just
15 don't know of any personally.

16 MS. CRAFT: They haven't presented information
17 that they have?

18 MR. PIGNANELLI: My answer to that would be
19 when I've talked to Commissioner Colton it's been about
20 them not enforcing it. I have not asked her when she
21 has enforced. I don't have any personal knowledge to
22 that effect.

23 MS. RICHARDS: Mr. Maryboy has a quick
24 question, then we'll let you sit down.

25 MR. MARYBOY: Representative Pignanelli, first

1 of all, I want to complement you for the things that you
2 are doing for the minority population. My question is
3 in your work on these various activities, how much
4 native American involvement do you have in working on
5 these legislations? If not, I would recommend that you
6 include some native Americans to hear their viewpoints
7 in your legislation.

8 MR. PIGNANELLI: I'd love to do that. In
9 fact, if you can send me the name of a contact person
10 I'd love to include them in the discussions we're having
11 for legislation.

12 MS. RICHARDS: Thank you very much,
13 Representative Pignanelli. Our next presenter is
14 Representative John Valentine, and we will let you also
15 introduce yourself.

16 MR. VALENTINE: Thank you very much. I'm
17 Representative John Valentine. I represent District 58
18 which is down in Orem, Lindon and Pleasant Grove. I've
19 been asked by speaker Rob Bishop to come today to
20 present just a slightly different tact that we wanted to
21 make certain we got into the record.

22 The purpose of my discussion today is to talk
23 to you about who should be the ones to handle employment
24 discrimination, specifically should the federal
25 government mandate some policy changes? Should the

1 federal government mandate a mechanism for enforcement
2 of employment discrimination, or should the states be
3 allowed to continue as experimental laboratories to come
4 up with methods and policies to handle discrimination?
5 It is my personal feeling that the State of Utah has
6 made progress for its employment discrimination.

7 You've heard in some of the testimony this
8 morning of some of the stumbles, some of the attempts
9 that were not successful, and hopefully before your
10 hearings are conducted and completed you'll hear of some
11 of the successes as well. I personally do not know of
12 that entire set of successes. I do know of some cases
13 that have been successfully resolved.

14 I also note the State of Utah has made some
15 legitimate efforts to address a broad range of
16 discriminatory actions. Some of those efforts have
17 included the following bills: The 1992 Session, House
18 Bill 7 dealing with Utah Federal Housing; House Bill
19 111, Hate Crimes Bill, which you heard Representative
20 Pignanelli refer to; Senate Bill 2, Special District
21 Policies Dealing with the Composition by Minorities and
22 other Affected Persons; Senate Bill 85, Classification
23 Positions for Grievance Amendments, Gender Balance;
24 Senate Bill 92; Senate Bill 189 for Civil Rights Cases;
25 Senate Bill 218, Workers Compensation Rate Filing

1 Amendments; House Bill 422 in the 1993 Session, Dealing
2 for Housing Amendments; Senate Bill 284. Those
3 different types of approaches are being mirrored by
4 other states similar to Utah to respond to
5 discriminatory actions by people within states.

6 No one appreciates actions upon another based
7 upon their race, creed, gender, sexual orientation or in
8 any other classification. No one appreciates that more
9 than I, having been the subject of that myself in
10 another state. What can Utah do in the future? Utah
11 can do the following in the future to address
12 discrimination in employment: Utah needs to reemphasize
13 and renew the ability of the commission to seek judicial
14 enforcement of its rules and impose a duty on the
15 commission to commence a civil action following a
16 determination within a reasonable time for their has
17 been a cause.

18 Secondly, I agree with Representative
19 Pignanelli, an anti-discrimination advisory council
20 needs to be formed, not for purposes of enforcement, but
21 for purposes of direction of some of the meritorious
22 policies that need to be looked at by the Industrial
23 Commission. It is advisory nature. It is the
24 conscience of the state that can speak. It is not a
25 form of enforcement.

1 Lastly, Utah needs to amend its
2 anti-discrimination act to mirror the 1991 Civil Rights
3 Act. These amendments permit private right of action
4 that include the ability to cover compensatory damages,
5 punitive damages and attorney's fees. Utah presently
6 does not have that. It does have the common law rights
7 of action, but does not have a statutory right of action
8 similar to the 1993 Civil Rights Act.

9 Again in summary of the position that I would
10 like you to consider, since this is the United States
11 Commission of Civil Rights, don't mandate to the states
12 a policy or a mechanism because that would have the
13 tendency of being costly and being ineffective. Let the
14 states work as laboratories. Let the states reflect how
15 we can solve problems in the local levels, and with that
16 I'm open to questions.

17 MS. RICHARDS: Thank you. Yes, Mr. Muldrow.

18 MR. MULDROW: Just one correction,
19 Representative Valentine, this is not the U.S.
20 Commission on Civil Rights. This is an Advisory
21 Committee to the U.S. Commission on Civil Rights.

22 MR. VALENTINE: I apologize.

23 MR. MULDROW: There's a very important
24 distinction there. Secondly, we have no power to
25 mandate anything. We are strictly a research fact

1 finding agency that has the power to make
2 recommendations but no power to mandate that the states
3 do anything.

4 MR. VALENTINE: I appreciate that.

5 MR. MULDROW: I wanted to clarify that.

6 MR. VALENTINE: If I may respond to that for a
7 moment, we feel it's important to have within your
8 record going back to the United States Commission itself
9 from this advisory council testimony to the effect that
10 federal mandate would not be appropriate. I did not
11 anticipate that this particular group would be one that
12 actually mandated it. I did anticipate though that that
13 could come into the record at some point and that needed
14 to be in the record. I do appreciate the clarification.

15 MS. RICHARDS: Mr. Cohne?

16 MR. COHNE: It's interesting that you comment
17 about the states being a laboratory. Usually
18 laboratories do research and the Guinea Pigs suffer.
19 What happens during this period of time for those people
20 who have grievances and who are subject to
21 discrimination who have no real recourse and are subject
22 to this long ongoing insensitivity from the state while
23 the state's in the lab in experimental process?

24 MR. VALENTINE: Your question presumes the
25 answer. Obviously, Bruce, your question presumes, first

1 of all, that there is a major set of problems with the
2 states attempting to enforce the policies of the
3 society. If you have that assumption and that
4 orientation to start with, of course, your answer is
5 that the states should never have any rights, that the
6 federal government should impute all rights to the
7 state. As you and I both know, that's not the way this
8 society was built. This society was built upon a
9 constitutional principle that the states gave the power
10 to the federal government. If that is the basic
11 premise, then with that premise we allow these states to
12 try to reflect what is the policy of society, and then
13 we try to look at the constitutional principles
14 overriding those general policies of the society. So I
15 guess it depends upon what orientation you're coming
16 from to see what answer you derive from the question.

17 MS. RICHARDS: Yes, Mr. Tong?

18 MR. TONG: Two questions, Representative
19 Valentine. One is if you can search back in your memory
20 and talk to me a little bit about Senate Bill 284 that
21 dealt with a unique area that was dealing with
22 discrimination for people based upon age and
23 specifically long-term care facilities. We had a
24 problem in the State of Utah that had virtually no
25 address which is how a person who is in a long-term care

1 facility could address gripes, grievances, complaints,
2 and there was really no mechanism and no educational
3 process. What Senate Bill 284 did was this: It amended
4 the duties and powers and added a long-term care
5 ombudsman which required long-term care facilities to
6 display an ombudsman information poster, required that
7 ombudsman to seek and obtain permission before reviewing
8 a resident's records, and authorized disclosure of
9 complaint information to other agencies for action
10 against the long-term care facility. That ombudsman was
11 the only link to many of the patients in long-term care
12 facilities. It did not directly affect employment
13 discrimination, but was part of the overall response on
14 discrimination the last two years in the State of Utah.
15 The other question, are you satisfied with the Hate
16 Crimes Bill?

17 MR. VALENTINE: It's interesting that Frank
18 Pignanelli and I should be the ones making the
19 presentations today, but at least as far as the press
20 was concerned Frank and I were the ones that were on
21 opposite sides and then joined together on the same
22 side. One of the things that I was concerned about with
23 the original proposal on the Hate Crimes Bill, which
24 Frank and I also debated in two different media
25 presentations, was that it could end up being

1 unconstitutional, end up with no enforcement because of
2 that. As it turned out, the United States Supreme Court
3 last year struck down a provision that was very close to
4 the initial proposal and said in the dicta that a
5 proposal similar to the one that was actually passed was
6 one that would be constitutional, but one that was going
7 to be based upon the character of the victim could
8 suffer from constitutional defects.

9 The thing that I was concerned about was the
10 original bill dealt with the issues of based upon the
11 status of the individual upon whom you commit the
12 offense depends on what kind of offense you have, and
13 that has always been a real difficult issue for me
14 because if in fact a person creates a crime on one
15 person and it's one type of crime, but creates a crime
16 on another person and it becomes a different type of
17 crime, that type of status offense becomes one that is
18 very difficult to draw lines on and really suffers the
19 problems of constitutional vagueness.

20 The present statute has its own defects, and
21 it goes back to the issues that you were speaking of
22 earlier with Representative Pignanelli when it comes to
23 employment discrimination issues, and that is the
24 ability of enforcement. It's on the books, and as Betty
25 observed, even if it's on the books, if it's not being

1 enforced it's not much benefit. I don't see it being
2 enforced by much of our police agencies. I don't see
3 them charging it, and that I don't know the answer to be
4 able to actually cause them to do that. We can make the
5 law stricter, make the law have a heavier punishment,
6 but still if it's not enforced by the local agency who
7 brings the action to begin with it's not of much
8 benefit. I don't know if that answers your question or
9 not.

10 MR. TONG: No, it doesn't. My question is are
11 you satisfied with the Hate Crimes Bill?

12 MR. VALENTINE: As it's presently drafted I'm
13 satisfied with it. I'm not satisfied with its lack of
14 enforcement.

15 MS. RICHARDS: Ms. Gillespie, then Mr.
16 Muldrow.

17 MS. GILLESPIE: I heard from you a plea for
18 the federal government not to impose anything on the
19 State of Utah, and I'm thinking that we are 30 years
20 downstream from the Civil Rights Act of 1964, Title 7.
21 It's been amended and embellished and discussed many
22 many times. I mean we don't have anybody here who knows
23 who enforces the Utah Anti-Discrimination Act. When
24 does Utah plan to start enforcing the law?

25 MR. VALENTINE: I believe that's also a

1 question that presumes the answer as well. That answer
2 presumes that the Industrial Commission makes no
3 enforcement at all at this point. Right now statutorily
4 the Industrial Commission has initial enforcement
5 responsibility. Secondly, individuals have common law
6 right of action, but what I'm proposing is that we
7 extend that with the three proposals that I made earlier
8 so that we have not only enforcement mechanism there by
9 the private right of action and put teeth to the private
10 right of action in the form of compensatory punitive
11 damages and attorney's fees, and in addition to that we
12 need to have the Industrial Commission take care of the
13 responsibility that it was given.

14 I don't know if you have yet heard from the
15 Industrial Commission. I am certain that they are going
16 to have to make presentations for all of us, whether
17 it's myself in budget hearings, whether it's to this
18 commission or this advisory commission at this point.
19 That is something that they are responsible for to all
20 of us. To presume that there's been no enforcement for
21 30 years, I can't accept that presumption.

22 MS. GILLESPIE: You see, what concerns me is
23 the fact that when you have an employment problem you
24 probably have money problems, and it seems to me that
25 people should not have to go to court if you have

1 somebody there to enforce the law on their behalf.

2 MR. VALENTINE: That is one of several options
3 for enforcement. I would like to see options for
4 enforcement rather than a mechanism that this is the
5 only way you can enforce, because you are correct that
6 many times a person has difficult circumstances
7 financially and that's why he or she was seeking the
8 enforcement to begin with, but reflective also is the
9 fact that sometimes you have people who want to change
10 the system rightfully so and who can bring those
11 actions, and that ought to also be there so it's not
12 foreclosed.

13 MS. RICHARDS: Mr. Muldrow?

14 MR. MULDROW: I understood the chair of the
15 Governor's Task Force on the UADD to say one of their
16 recommendations was the establishment of an independent
17 commission on human rights which I understood would
18 replace the powers of the UADD. Is this recommendation
19 being considered by the legislature, and what is your
20 view of it?

21 MR. VALENTINE: That's two questions. First,
22 was it being considered, second my personal view. As to
23 the first one, nothing is being considered obviously
24 until January 17th when the legislature starts. The
25 task force recommendations were given to the Business

1 and Labor Committee, as you heard Representative
2 Pignanelli and former Senator Cornaby state. Those
3 recommendations then by process go into the legislature
4 in the form of a bill request by an interested
5 legislature. Once the bill request comes out and
6 numbered and becomes a bill, at that point they concur
7 on the bill itself, so the short answer is I don't know
8 because I don't know yet what bills have been filed in
9 that area. I do know there have been, the last count,
10 729 bills filed of all different sorts, and most of
11 those we don't know what the subject matters are yet.

12 Secondly, as to my personal opinion on it, I
13 read the proposal very briefly. I'm not certain I
14 understand it all. There were a lot of things in it
15 that were not answered to the complete takeover of that
16 area of enforcement could be valid, but the Industrial
17 Commission oftentimes is in a unique position to be able
18 to see a case when the person doesn't even realize they
19 have a case, and so I'm somewhat hesitant to try the
20 pass-off of this particular area of discrimination to a
21 new council without actually having a chance to see how
22 it would work. If in fact we were going to do it, my
23 personal opinion is that we ought to try it as a pilot
24 program with concurrent jurisdiction for awhile to see
25 again how that process works and see if we're having

1 better success. If we're having better success with it
2 then the pilot program is expanded, but for us to jump
3 and to do a whole new type of enforcement without any
4 type of testing in the laboratory, then I'm a little bit
5 nervous about just passing it off without more than just
6 an idea.

7 MR. MULDROW: Thank you.

8 MS. RICHARDS: Yes.

9 MR. COHNE: One followup. According to both
10 the minority and majority task force reports, there's
11 been virtually no enforcement by anybody of UADD for
12 cause cases until they go get the for suit letter, go to
13 private action, and then there's complaint that they
14 can't find attorneys to work on contingent fees because
15 the amount of money involved is negligible. The
16 question is that since there has not been enforcement
17 either by EEOC out of Phoenix or by the Industrial
18 Commission in Utah, what is a person who is
19 discriminated against supposed to do if they can't hire
20 an attorney? Where is their redress today?

21 MR. VALENTINE: Under the present system?

22 MR. COHNE: Under the present system.

23 MR. VALENTINE: You've correctly identified a
24 defect in the present system.

25 MR. MARTINEZ: Is my understanding correct

1 you're on the Budget Committee?

2 MR. VALENTINE: That's right.

3 MR. MARTINEZ: One of the things that was
4 identified in both the minority and majority report that
5 was done is that neither one of them was able to
6 determine if all of the money that comes from the
7 federal government for enforcement of our
8 anti-discrimination law actually reaches the UADD.
9 Being on the Budget Committee, can you explain to us how
10 that money is allocated, if you know?

11 MR. VALENTINE: I do not know.

12 MR. MARTINEZ: Okay. Would it be possible to
13 find out, let us know? I think that would be valuable
14 for us to know if all the money from the federal
15 government actually goes to the enforcement through the
16 UADD, or if it's put in a general account and then the
17 Industrial Commission or the legislature can allocate it
18 to other agencies other than employment discrimination
19 enforcement. Is that possible? I don't want to give
20 you something you can't do.

21 MR. VALENTINE: It's not only possible, I
22 would be more than glad to do that, supplement my
23 testimony today with a letter to the supervisory
24 commission if that would be acceptable.

25 MR. MARTINEZ: Thank you very much. If

1 possible, since you're doing that, if maybe you can tell
2 us for let's say the last five years how much money has
3 come in for the 706 agency contract and if all of it
4 went to the UADD, or if it goes to a general budget and
5 goes elsewhere, and then we'll know. I think that tells
6 us if we have to have money out there coming in that we
7 can use for enforcement in the future. Thank you.

8 MR. VALENTINE: I think that's a fair request.
9 I'll see what I can do through my resources. Madam
10 Chairman.

11 MS. RICHARDS: Thank you very much,
12 Representative Valentine.

13 MR. VALENTINE: Thank you very much for your
14 time.

15 MS. RICHARDS: We now have come to that part
16 of the program where we have a short break and we will
17 convene promptly at 10:50, and we'll see you then.

18 (Recess.)

19 MS. RICHARDS: Okay. Our committee is now
20 back from its break. Our first presenter was Lieutenant
21 Governor Olene S. Walker, and I think the lieutenant
22 governor is not yet here, so if either Mr. James
23 Gonzales or Mr. L. Zane Gill is here we can proceed with
24 their comments.

25 MR. GILL: I'd appreciate it because I need to

1 drive to Price for a hearing.

2 MS. RICHARDS: Mr. Gill, what we've been doing
3 is just asking our presenters to please introduce
4 themselves just for the record if you would, please.

5 MR. GILL: All right. My name is L. Zane
6 Gill. I'm an attorney in private practice here in Salt
7 Lake City. I've been practicing law for about 12 years,
8 and prior to being a lawyer I was a school teacher, also
9 a language professor, so in my background and training
10 I've become somewhat sensitized to cultural differences
11 prior to becoming a lawyer. When I wound up in the law
12 practice I accidentally wound up getting involved in
13 employment related issues, including discrimination,
14 quite by accident. It is not something I planned to do,
15 just a coincidence of time and circumstances.

16 Early on in the development of employment law
17 I handled a number of cases that have kind of put a
18 stamp on my practice that I'm still trying to shake. I
19 don't seek these cases. I have become involved in them,
20 and, frankly, in the last few years I've been trying to
21 get out of this practice because of a lot of the things
22 that you're looking at having to do. I heard some
23 comments earlier about the Industrial Commission and
24 enforcement, that sort of stuff, and that's one of the
25 reasons why I chose to try to change my direction of

1 practice, because handling discrimination cases is
2 extremely labor intensive and very difficult to make a
3 living doing and the fee soliciting statutes don't work.
4 Even if they are on the books, and even if there is a
5 prodigal of enforcement behind it, they do not work,
6 enough of an inducement for attorneys. There are many
7 easier ways to make a living, so unless you are
8 dedicated to the idea of litigating these cases for the
9 social purpose that it serves, there really is very
10 little monetary incentive to get.

11 That's not what I came here today to talk to
12 you about. I have a case that is of some importance to
13 you, apparently judging from the fact you invited me to
14 come and talk to you today about it. It involves a
15 group of native American employees of San Juan County in
16 Utah. For those who are not native Utahns, don't know
17 the geography very well, San Juan County is the
18 southeastern most county in the state, very sparsely
19 populated county, about as far from the seats of
20 government power in Utah as you can get and still be in
21 the state, a long way from Salt Lake City, and I think
22 that has a lot to do with the way the county employees
23 are treated down there.

24 I've been involved representing -- actually,
25 right now I have a case involving two brothers who are

1 Navajo Ute. We are at the point procedurally of
2 settling one of two cases involving these two gentlemen,
3 and, frankly, by tomorrow there should be documents and
4 checks passed between attorneys to settle the UADD
5 portion, the Utah Anti-Discrimination Division portion
6 of this controversy. There is still pending a federal
7 court case that will be litigated.

8 Essentially the facts are that, well, I'm not
9 going to get to specifically the facts of these two
10 gentlemen. What has turned out to be a systemic
11 problem, as I've investigated this case, is something
12 that's quite alarming. I learned as I got involved in
13 the early phases of the case that there was an
14 allegation that the county commission had seen to it to
15 hire a new supervisor over the county road crew. Mr.
16 Maryboy can vouch for much of this because he's a member
17 of this county commission I'm talking about. The county
18 commission prior to Mr. Maryboy's tenure hired a new
19 supervisor over the county road crew, and privately in
20 conversation apparently between members of the county
21 commission and this new supervisor told him to be their
22 hatchet man to do whatever he could to get rid of the
23 Indian employees in the county.

24 Now, I wouldn't make this kind of a claim
25 likely if I didn't have some evidence to back it up.

1 It's not just an allegation. When I found out about it
2 I went to Monticello and Blanding and the area down
3 there where these gentlemen worked, and I interviewed a
4 co-supervisor of the fellow who supposedly was hired as
5 a hatchet man to do this job and talked to him. He at
6 one point had been very closely associated with the
7 hatchet man, had been in his confidence, and this
8 gentleman had told him directly that that was why he was
9 hired and that was his mandate of being hired, among
10 obviously doing the technical job of supervising the
11 road work that had been done.

12 So this fellow that I interviewed had been
13 asked by the hatchet man to keep records, daily records
14 on what was going on with the native American employees.
15 He made these statements to me under oath and I tape
16 recorded his conversation and then turned it into the
17 anti-discrimination division in the complaint that we
18 filed there, and largely as a result of that we won the
19 case through the investigation stage, and the county
20 chose not to challenge the cause determination the
21 anti-discrimination division gave us, and that is the
22 portion of the case that we're about to settle.

23 Although these same facts will become very
24 very pertinent in a federal lawsuit which is still
25 pending and being further developed, I find that

1 extremely upsetting that there is an allegation that the
2 members of the county commission themselves would be
3 involved in such an overt and apparent violation of law.
4 Now, grant you there, in all fairness to the parties
5 involved, the person who is alleged to be the hatchet
6 man has not yet given testimony under oath, and members
7 of the county commission who are alleged to be involved
8 in this conspiracy have also not given testimony under
9 oath, so at this point the information I've given you is
10 born out by the person who heard these representations
11 made to them. Of course, in discovery we have asked for
12 records, and it turns out that there were daily records
13 being kept by this person which appear to be directed
14 towards making a case against native American employees
15 in the county.

16 Taken in isolation, I think that's alarming
17 enough, but the overall pattern of what's going on in
18 San Juan County is even more disturbing. This is one of
19 a number of civil rights oriented cases now pending
20 against the county. There's one involving the school
21 district. It's been resurrected after many years. I
22 read about it. There's also a very serious case
23 involving misuse of native American trust funds by local
24 government officials dealing with oil revenues off of
25 reservation lands.

1 Aside from that, if you get into these cases
2 and start looking into the files and the material, there
3 is an appalling double standard, has been for a number
4 of years. I think until just the last decade the
5 officials in San Juan County have basically felt that
6 they were insulated from accountability for what had
7 always gone on in that county. Even though I think they
8 were aware that the law required them to act
9 differently, things had always been there was a very
10 paternalistic attitude prevailing in the dealings with
11 the native American going back a hundred years, and in
12 the last several years now there have been cases brought
13 which have been shocking in their facts, alarming. You
14 would not think that in the 1990's in the United States
15 that you would find basically an equivalent of a partite
16 in one of the 50 states. So I can say this, in the
17 three years that I've been involved in this litigation
18 things have changed. They're beginning to change in San
19 Juan County much to the credit of those who are
20 responsible for making the changes, and Commissioner
21 Maryboy is one of those.

22 There is a lot of work that needs to be done
23 to bring things into balance. If you look into those
24 cases you will notice, for example, just as a matter of
25 neutral fact, that the majority of the maintenance funds

1 that are spent through San Juan County to maintain
2 roads, highways in that county are spent in the white
3 sections of the county, although statistically the
4 largest number of miles of highway that need to be
5 maintained are in the reservation areas of the county.
6 The best equipment, the best crews, the priority work is
7 done in the white portions of the county and always has
8 been, just as an illustration. That summarizes my
9 involvement in that case. For your information if you
10 want to ask me some questions I'd be glad to answer
11 them.

12 I have one comment to make about the
13 enforcement issue that you were talking to Mr.
14 Pignanelli and others about from my perspective in these
15 cases. I would lobby those who are going to be making
16 the decisions on any changes in the statute very heavily
17 to give the enforcement authority to the Industrial
18 Commission, the same as many of the other agencies of
19 state government in Utah such as the tax commission.
20 They should have their own enforcement authority. They
21 should be funded and staffed at a level where the
22 enforcement is a practical option rather than just a lip
23 service on the books.

24 I do believe that complainants should be given
25 an option to either allow the Industrial Commission to

1 enforce its orders or to take the case into litigation
2 privately, and I would strongly support some effort to
3 strengthen the availability of damages beyond just lost
4 wages in these cases, and one of the reasons why I think
5 it would be good for the Industrial Commission to have
6 that enforcement authority is that my clients that come
7 up through this system are in many cases effectively
8 frozen out because they are out of a job, out of pay,
9 and many of them are low paid in the beginning to start
10 with. So the system that forces people into the
11 litigative posture is already from very good though
12 slanted against the people who need the protection the
13 most. So it makes much more sense to allow the state
14 agency to have the authority and the ability to enforce
15 these things. It would also keep people like me out of
16 the system which is not a bad thing. We don't really
17 need to be involved in these cases. They don't require
18 that level of expertise, and they shouldn't be
19 complicated by the involvement of attorneys, but the
20 system as it sits right now needs to have attorneys
21 involved to keep the balance where it needs to be.
22 Thank you.

23 MS. RICHARDS: Thank you, Mr. Gill. We'll now
24 turn the time over to the committee. I think Mr.
25 Maryboy has a question.

1 MR. MARYBOY: Mr. Gill, I want to thank you
2 for coming here and to explain the situation in my
3 county. I just want to tell you how much I appreciate
4 the work you've done for the people. I know that the
5 language was extremely difficult. A majority of your
6 plaintiffs could barely speak English, and sometimes I
7 just don't understand how you can communicate with them,
8 but you were able to present a case for them, and, as
9 you indicated, you were successful in that, and I think
10 through your work with the county it has opened a lot of
11 doors for us, and being so far away from the central
12 government here in Salt Lake a lot of times we don't
13 know the avenues, we don't know the legal procedures,
14 and I think what you've done was an educational
15 experience for everybody. So in that way we appreciate
16 that, and I do hope that the advisory committee will
17 take this under consideration, that real communities are
18 left out and many times they're victims and there is
19 really hardly anybody to speak for them, so again I just
20 want to thank you, Mr. Gill.

21 MR. GILL: All right.

22 MR. MULDROW: Mr. Gill, apparently the UADD
23 was involved in this in the San Juan County case and
24 found the issue a cause finding, but still it went to
25 private litigation to enforce there. Could you comment

1 on the procedures, how effective they were in this
2 particular case?

3 MR. GILL: Sure.

4 MR. MULDROW: In terms of the operation of the
5 UADD and the aftermath.

6 MR. GILL: There is a bit of a misperception.
7 There are two parallel cases involving the same person.
8 The UADD case dealt with the general discrimination in
9 the workplace. The federal case which is parallel
10 involving the same person has to do with being fired
11 after we brought the UADD case. After we won the UADD
12 case he was fired, and so we are litigating what we
13 consider to be a wrongful discharge and violation of the
14 civil rights act in relation to the firing as a separate
15 portion of the overall situation.

16 As to what UADD did, I have many friends at
17 UADD. I've worked with them over the years, and I
18 really very much respect the hard work they do and how
19 tough the job is, given the funding they have. This
20 case came up prior to Anna Jensen being the director of
21 the anti-discrimination division and prior to the
22 painful scrutiny that's been given to the division
23 through the press and through the legislature, so on, so
24 forth.

25 This is one of the old cases. I had to

1 threaten to embarrass the people who had the file to get
2 them to investigate the case. This is an obvious case.
3 It does not take a mental giant to figure out the
4 problem in the facts and how it applies to the law, and
5 at the time it came up through the system they were so
6 overworked and so understaffed they were more concerned
7 about the pending closure deadlines than they were about
8 what went into the file. That was my perception, and I
9 had to get the investigator on the phone. She told me
10 she was going to close the case, no cause, and I asked
11 her have you done this, this, this in the investigation,
12 and essentially she had done next to nothing in the
13 investigation, so I opened my files to her and gave her
14 the interview tapes. I gave her the documents that I
15 had. I outlined inquiry topics that she needed to
16 follow up, and she took that then, went down, confirmed
17 as much of it as she could, and on the basis of that
18 then found cause. She was within a week of closing the
19 case, no cause. I don't fault the particular person
20 either. The workload is just unbelievable. They could
21 not at that time -- I don't know what their numbers are
22 now, but I still suspect they are vastly overworked, but
23 at that time it was almost a joke, and so I told her in
24 no uncertain terms that if she closed the case no cause
25 that I would go public with it and she probably better

1 do something more to investigate the case and give us a
2 real determination on the facts, which she did and we
3 came out with that.

4 MS. RICHARDS: Mr. Gill, have you had any
5 experience with the UADD since the changes that have
6 been implemented?

7 MR. GILL: Yes.

8 MS. RICHARDS: How do you perceive the
9 differences? Are they helpful? Are they working?

10 MR. GILL: Well, I was so jaded by my
11 experience prior to the new regime, and keep in mind
12 these folks are my friends and I'm not criticizing the
13 quality of the work that they did when they could do the
14 work. I'm just saying that the system was bound. It
15 was high bound, but there is a very very discernable
16 difference. Because I was so jaded before, I have a
17 tendency to be a little bit too flowery in my praise of
18 what's happened since. I'm trying to tone that down a
19 little bit. I see a definite difference in the
20 promptness of getting these cases, getting the party to
21 the table which is one of the most important steps.

22 I think Anna Jensen and her crew over there
23 have done a wonderful job in pushing these things to
24 resolution conferences almost immediately. That serves
25 a number of purposes. One is to impress upon the

1 respondent the seriousness of the situation and put some
2 pressure on them immediately to deal with the case, get
3 it ready, confront the issues, whether it can be settled
4 or it has to be litigated.

5 Secondly, it gives the complainant a sense of
6 accomplishment. It's a tough decision to file a
7 complaint for discrimination, an honest complaint for
8 discrimination, and when a person does that and then
9 sees nothing being done they begin to question that
10 tough choice that they had to make initially. So to see
11 some action taken immediately is very very positive from
12 the person who is going through that personal trauma to
13 get the case going, and then it does get the parties
14 together to approach things. Some of the people that
15 they have handling the resolution conferences are
16 masters of mediation. They really are doing a very fine
17 job. There is some serious arm twisting going on in
18 those meetings.

19 MS. RICHARDS: Okay.

20 MS. CRAFT: Mr. Gill, do you know in the last
21 year or the last few years, are you aware if the UADD
22 has ever enforced a cause finding?

23 MR. GILL: I've never seen them do it, but the
24 percentage of cases in my total workload is probably
25 about 15 percent or less, so that's not to say that it

1 doesn't happen.

2 MS. RICHARDS: Two questions here, Mr. Muldrow
3 then Ms. Gillespie.

4 MR. MULDROW: Just a quick followup on the San
5 Juan case. After the UADD found cause in the situation,
6 what was the next step, that the person had to seek an
7 attorney and bring it and to litigate it, or did the
8 UADD assist in any manner in the followup?

9 MR. GILL: I was involved in the case from the
10 point of its filing, so I was there, as I mentioned,
11 saying try this, do this, in the background trying to
12 move the case along. Procedurally after the cause
13 determination came out then there was no enforcement.

14 Maybe I can talk to you about that for just
15 one second. That's as of right now we are still dealing
16 with the lack of enforcement. Even though we've reached
17 a settlement on the case, the county has a right under
18 the Utah Code to initiate administrative appeal of the
19 cause finding. In this case they did and then we
20 responded and then the county backed off. For some
21 reason, I'm not real sure why, but they decided to let
22 the ruling become an order, and normally there is a
23 whole process of hearings that go on before you get to
24 the point of that cause determination becoming an actual
25 order, and until it becomes an order it is not

1 enforceable. It has to be the final appealed, settled
2 issue of the Industrial Commission before it can be
3 enforced by anybody, but over a year ago this case
4 became a final order.

5 I didn't know what to do. I'm sitting on an
6 order, which is the goal of all litigation, you have a
7 ruling, you have something that you're supposed to be
8 able to enforce. I have not been in court. I've just
9 done this through the administrative agency, so my
10 strategy was to go back to the agency and ask them to
11 conduct a fact finding hearing on the issue of damages.
12 The issue of liability is now resolved. It's beyond the
13 appeal point. The county acquiesced in it, but the
14 issue of damages has not yet been established. We don't
15 know how much back pay, attorney's fees. We don't know
16 everything else, every component. It's never been
17 litigated, never been proven. I made a motion to the
18 Industrial Commission to set a fact finding hearing and
19 it was never scheduled for a hearing.

20 In the meantime the UADD apparently through
21 some internal calendaring system went back to the EEOC
22 in Phoenix. EEOC had been sitting back waiting for UADD
23 to complete the work on this case. UADD apparently told
24 the EEOC that this case is not resolved. I don't know
25 whether it was because of time lines or what. I can

1 only guess why, but they basically gave the case back to
2 EEOC. So I'm sitting here with a case that's finished
3 except for calculating the damages, and then all of a
4 sudden EEOC shows up out of Phoenix and says let's
5 litigate this case, and obviously I don't want to
6 litigate the liability issue, it's done, at least under
7 state law, not necessarily under federal law. So we
8 tried to sort this all out.

9 Eventually we reached terms of settlement to
10 deal with these damage issues. They've never been
11 tried, never been proved, but we're going to take it to
12 the federal court and finish the work. We're settling
13 for a token amount at this point just to get the UADD
14 portion of it out of the way, and we still have the
15 damage aspect of the case alive in federal court. It's
16 been extremely frustrating for lack of enforcement, and
17 simply to the people at UADD, I'm not sure they know
18 what to do with a case like this, especially with EEOC
19 coming in and out from behind the curtain. I don't know
20 what they thought they were supposed to do.

21 MS. CRAFT: What I'm hearing you say, does it
22 appear that also there is maybe not well communication
23 between the UADD and the Industrial Commission?

24 MR. GILL: Well, they are one in the same.

25 MS. CRAFT: And the same or --

1 MR. GILL: That's a division of the Industrial
2 Commission.

3 MS. CRAFT: Also the question I have is I
4 guess from a lay person I've heard people say the
5 Industrial Commission more so than the UADD. You're
6 saying they're one in the same?

7 MR. GILL: The Industrial Commission is a
8 state agency that has responsibility over workmens
9 compensation, workplace safety, OSHA type issues and
10 discrimination, among other things, and then UADD is the
11 division of the Industrial Commission which has the
12 specific assignment of civil rights and other things.

13 MS. CRAFT: So I guess the question I'm asking
14 too is so the UADD specifically handles a complaint up
15 to a point, and then it goes to the Industrial
16 Commission which is the administrative part of it, or
17 there are two --

18 MR. GILL: Essentially --

19 MS. CRAFT: -- pieces there?

20 MR. GILL: UADD investigates. UADD is in
21 coordination with the Federal EEOC. They have a
22 contract with Federal EEOC to do the initial processing
23 of all complaints that fall under these particular
24 categories in Utah. Their function is to investigate
25 and reach a cause determination. From that point on

1 then it's kicked upstairs to the Industrial Commission
2 because the Industrial Commission has the authority and
3 the mechanism to handle the hearings, to deal with the
4 appeals and the fact finding beyond the investigation
5 stage. What we need is some change in statute that
6 would give UADD the authority to essentially take the
7 case that they have said there is just cause to believe
8 discrimination has occurred, and then become the
9 advocate of the person for whom they have just found
10 cause.

11 MS. RICHARDS: I think we're just about out of
12 time. If we can have one quick question here, Betty and
13 then Mike.

14 MS. GILLESPIE: Is it true that under this
15 contract you just mentioned, EEOC with
16 anti-discrimination, that anti-discrimination is paid a
17 specific amount of money for each case that is closed?

18 MR. GILL: I believe that is the case. I'm
19 almost positive that that has been the case in the past
20 and I believe it still is.

21 MS. GILLESPIE: Could this be the reasoning
22 why they close the cases and take on another one, rather
23 than following one such as the one in San Juan County
24 through to its logical conclusion?

25 MR. GILL: For those of us who are in the

1 trenches, that was the obvious perception. I don't
2 ascribe to that theory any more.

3 MR. MARTINEZ: I think there is a point of
4 clarification for those of us who don't quite understand
5 this, but both reports at different points use
6 synonymously the word fact, in the fact finding
7 procedure, cause finding or no cause and order, and the
8 proposed legislation from the committee is that the
9 commission be able to enforce their orders. Maybe you
10 can explain to us the difference between -- and you just
11 did -- but how much harder it is to get an order that
12 you can enforce, as opposed to a cause finding, because
13 I know a lot of people are running around saying I've
14 got a cause finding, but that isn't an order.

15 MR. GILL: That's correct.

16 MR. MARTINEZ: Can you explain how much harder
17 it is to get an order so that we fully can comprehend
18 how much more work is involved for the commission as a
19 whole to issue an order that they can enforce?

20 MR. GILL: Right. Both parties to one of
21 these controversies has the right after the issuance of
22 a determination, not an order, a cause or no cause
23 determination, to appeal. Now, from my standpoint, if
24 the employee gets a no cause determination that has been
25 thoroughly investigated, I advise them to go away

1 because it's just a real tough thing to overcome that,
2 so I normally am only involved in cases where there has
3 been a cause finding based on the investigation.

4 Then the employer of the respondent has the
5 right to request reconsideration. That's the first
6 step. Then they have the right to request an appeal
7 review which is a de novo review. You try the case from
8 scratch. You basically ignore the investigative
9 results, start all over. From that level then they have
10 the next, the last level of administrative appeal to the
11 Industrial Commission itself. So you have the
12 investigation, you have reconsideration. Then you have
13 a new administrative trial that's presided over by an
14 administrative law judge under the auspices of the
15 Industrial Commission, and then you have an appeal to
16 the Industrial Commission itself. Then you go into the
17 courts, and in Utah you will take that then to the court
18 of appeals and maybe even to the Utah Supreme Court. So
19 you can see you've got five or six times that you have
20 to handle this case before you can get it to the level
21 of finality.

22 Now, you get an order from the Industrial
23 Commission at the point where the respondent does not
24 appeal, or at the point where if the respondent does
25 appeal the case goes to the administrative trial with

1 the administrative law judge and then up to appeal
2 before the Industrial Commission and it is affirmed by
3 the Industrial Commission. Only at that point do you
4 have an order, but at that point then obviously the
5 losing party still has a right to appeal it into the
6 courts, so it can take five, six years.

7 MR. MARTINEZ: When you say courts, you don't
8 mean a trial court, you mean an appellate court?

9 MR. GILL: Appellate court.

10 MR. MARTINEZ: So that a person in Utah
11 alleging discrimination cannot under Utah Law go to a
12 trial court and just have their case heard and get a
13 determination?

14 MR. GILL: Absolutely not. There are common
15 rights. There is a preemption under state law any claim
16 for discrimination must be tried through this format up
17 to a certain level. You don't have the option of just
18 immediately going right into court on these things. You
19 do have to go through this administrative process.

20 MR. MARTINEZ: So that in Utah then the only
21 way to get your grievance heard from discrimination, as
22 the practitioner that you are, knowing the system as
23 well, is to go to the UADD and allow them to handle it
24 for you, you cannot in any other manner circumvent that
25 and go to court yourself if you want to?

1 MR. GILL: On Title 7, yes.

2 MR. MARTINEZ: But that's going through the
3 federal courts.

4 MR. GILL: ADA is different, age
5 discrimination is different, slightly different, but
6 each federal statute has its own enforcement or
7 administrative process that you go through, but Title 7,
8 generally speaking, which includes sex, race, national
9 origin, religion, those sorts of things, the big basket
10 of discrimination claims, that's definitely true. You
11 have to exhaust the administrative remedies. Then from
12 the Federal EEOC Office you'll eventually get what's
13 called a right to sue notice, and you may take your case
14 into court at that point.

15 MR. MARTINEZ: Let me ask, your case in San
16 Juan seems to be a case that would be right for some
17 kind of systemic investigation, that is policies or
18 practices that are engrained within the system that
19 discriminate. Under the statute, the UADD, their charge
20 is to eliminate discrimination. Do you see any ability
21 that they have to assist you in some kind of a systemic
22 investigation, or to take that as a systemic case on
23 their own?

24 MR. GILL: Yes. I think they have the
25 authority under the statute to do that, and I would

1 recommend that representatives of UADD, if they're
2 interested, contact the Federal Voting Rights Commission
3 and coordinate an investigation with them. There is
4 also a voting rights case that has been litigated down
5 there, and one that is still in some procedural stage
6 short of completion. I would also recommend that there
7 be a joint involvement of the Navajo Nation and their
8 legal branch, and, frankly, OSHA should take a look at
9 what's going on down there with these county workers,
10 the safety issue involved with the native American
11 county workers, but succinctly, yes, I think you would
12 have the statutory authority, obviously don't have the
13 staffing and funding to do it.

14 MS. RICHARDS: Thank you, Mr. Gill. We
15 appreciate your answers to the committee here. We are
16 slightly out of order here, and we will now invite our
17 Lieutenant Governor, the Honorable Olene S. Walker, to
18 address us, please, and we're asking, Lieutenant
19 Governor Walker, if you would make your own introduction
20 to the committee.

21 MS. WALKER: I'm delighted to be here. I see
22 many individuals that I know well, and so it's a double
23 pleasure, but for you that are from Denver, we certainly
24 welcome you to our state. We're proud of our state and
25 we're delighted that you're here, and it's a real

1 pleasure for me to address you on this topic today.

2 ~~I feel that~~ during my sojourn in Utah I've
3 looked at discrimination from many different angles. I
4 have been an educator, a business owner, a member of the
5 executive branch of government, a former legislator^{er},
6 and I was ^{state} ~~division~~ director of the ^{Division of} community and Economic
7 development, so I have had some experience ^{dealing with} ~~in terms of~~
8 discrimination. ^{issues} I certainly believe that this
9 background has given me a chance to look at
10 discrimination ^{over a number of years} ~~from many angles and over a number of~~
11 ~~period of years, and~~ ^{different} to say that we have no
12 discrimination in Utah would be ridiculous, but to say
13 that we have made many strides, many positive strides, I
14 think would be accurate.

15 I recall an example not long ago ~~is~~ when I
16 entered the University of Utah to get my Ph.D. At that
17 time I had six children and had been out of graduate
18 school from Stanford for about 10 years, ~~and~~ a professor
19 said, "why don't you just take a few fun classes?" we have
20 found that women who have been out of the education
21 arena for 10 years really don't do very well. ["] ~~which~~ I
22 don't think you would find ^{this to be the case now} ~~that today~~. In fact, I can
23 guarantee you will not find that kind of attitude today.

24 It doesn't mean that discrimination does not happen in
25 Utah. It does not mean that ^{there is no discrimination involving} minorities, women, ~~on~~ age, etc.
^{old}

1 ~~we don't have cases,~~ but as a general environment I've
2 seen a remarkable ~~change~~ ^{progress} in terms of ~~discrimination~~ ^{diminishing} in
3 our state.

4 I'm here to give you the governor's philosophy
5 as well as my own, and I believe that one of the things
6 ~~that~~ we are committed to ^{is} that every individual in our
7 state is treated with dignity and equality. We want to
8 educate people to both the overt and subtle aspects of
9 discrimination. We ~~want to work~~ ^{have worked} with our agencies, and
10 ~~we hope that we have worked~~ ^{will continue to work} with our agencies to ~~see~~ ^{ensure}
11 that they are committed to this philosophy. We believe
12 ~~that~~ we can eliminate discrimination. We ~~believe that~~
13 we have a commitment to eliminate discrimination, and
14 ~~that~~ we certainly want to enforce the laws in this area.
15 We gave a charge to all state agencies to be responsive
16 to customers, citizens and individuals, and many
17 agencies, I believe, have responded very positively to
18 this charge. ~~and~~ and I particularly want to focus in on the
19 Industrial Commission's response to this charge.

20 ~~Just as we were going in~~ ^{when} the task force was
21 appointed, ~~and~~ I followed very closely their findings,
22 their hearings, ~~and~~ some of the recommendations, ~~they have~~
23 ~~come up with, and I have certainly followed the~~
24 ~~and the~~ procedures which have been implemented in ~~this area of~~
25 the Industrial Commission, specifically the

1 anti-discrimination department, and I would like to give
2 you a few examples of some of the changes ~~that~~ we have
3 seen ^{take place} ~~occur~~ in the past. I understand, and if I'm wrong
4 correct me, but the chairman of that task force, K.
5 Cornaby, has already testified. ^{Is that} ~~is that~~ correct? ~~is that~~
6 I don't wish to reiterate any of his testimony, but
7 since ^{didn't hear his} ~~I don't know what his~~ testimony ~~was~~, I will
8 ~~probably just~~ ^{just} give you a few examples, assuming that he
9 has given you clear definitions of all the procedures
10 that have been changed.

11 ^{discuss} One solution that I would particularly like to
12 ~~refer to~~ is the procedure known as the alternate dispute
13 resolution process. This was implemented by the
14 anti-discrimination division in May of this year, ~~and~~
15 ~~this was done~~ in response to the (identified problems) by
16 the task force as well as the governor's charge to
17 reinvent government ^{by being} ~~and be~~ more responsive to customers
18 and clients.

19 The result of this resolution process exceeded
20 ~~I believe~~ everyone's expectations and has proven to be
21 very successful. ^{Both my office and the agency} ~~and certainly we~~ have received ^{many compliments} letters
22 ~~and the agency has received letters complementing them~~ ^{regarding this process.}
23 ~~on that~~ I'd like to ~~have just~~ ^{excerpts} read ~~one part~~ of a few of
24 ^{these} letters, ~~well~~ first, one from Litton. "I attended a
25 hearing conducted by you." This was addressed to Ms.

1 Gura, ~~by you~~¹¹ on Thursday, June 17, 1993, and I want to
2 express my feelings about this new procedure which the
3 Industrial Commission has adopted. I think this is a
4 very positive forum allowing the employer and the
5 employee to settle any misunderstandings before an
6 investigation takes place. I'm sure that others will
7 find this as positive an experience as I did. I found
8 the meeting to be non-threatening for both sides, and
9 you certainly remained the impartial facilitator,
10 keeping the conversation on track. We were able to
11 reach an understanding and resolve the issue without
12 taking any further steps, and I think this is very
13 positive and something that was needed to be done." ~~and~~
14 I'm very proud that we were able to implement that
15 through the agency.

16 ~~Also another portion of a~~ *The following* letter *came* from
17 Northwest Pipeline where the resolution wasn't ~~so~~ *as*
18 successful. They write, "While we did not reach a
19 resolution, I did want to let you know that I was
20 pleased with the resolution process. I found that the
21 conference on June 23rd was handled in a professional
22 and facilitating manner. As I told you over the phone,
23 the most encouraging aspect of the process is that it
24 causes a charging party and a respondent to talk to one
25 another." It *continues* ~~goes on further~~, but I'll skip ~~a great~~ *to the*

Conclusion

1 ~~S.1. It concludes~~ "I feel confident that the
2 resolution process will be an effective aid in avoiding
3 litigation and prolonged conflicts." ~~I~~ I think that
4 we've seen changes, and I would be the first to admit,
5 needed changes, ~~and~~ *but* I'm certain that we haven't reached
6 perfection and we'll certainly look for input from you,
7 ~~and we~~ we will continue to ~~look~~ *observe* and analyze the Industrial
8 Commission, specifically the anti-discrimination
9 process, to see that these new procedures are
10 facilitating the process *and that they are handled fairly.* ~~as well as being fair.~~

11 In addition, I want you to know as a business
12 owner~~y~~ and employer, I hope ~~that~~ we never have to go
13 through a litigation process. However, I recognize that
14 if we do have such discrimination charges, ~~there~~ I feel
15 ~~that on both sides that~~ we can get a fair hearing, *on both sides* ~~and I~~
16 ~~hope, I feel that~~ this process has greatly enhanced the
17 procedures for both individuals, *making claims as* ~~the claimant and as~~
18 well as their employer, *defending claims* ~~I think that~~ we have seen a great
19 improvement in consumer service in ~~terms of~~ the
20 anti-discrimination agency, ~~and~~ as you know, Utah is an
21 interesting state because ~~of~~ a large percentage of our
22 population resides *along* in the Wasatch Front, *but we* ~~and as yet many~~
23 ~~of our citizens still need services in rural areas~~ *also have many people living in* ~~and~~
24 ~~I might add that in Utah we also have remote areas. We~~
25 don't have *the type of* rural areas *one finds in* ~~in the true sense of~~ Nebraska or

1 even Colorado, but we do have some very remote areas in
2 Utah.

3 We believe that ^{it is a benefit to all parties to extend} we must extend our services
4 ^{into the rural areas of the State; therefore} ~~beyond the Wasatch Front, and~~ the agency has recently
5 provided resolution conferences ^{beyond the Wasatch Front in areas such} Logan, Price, ^a
6 Richfield and St. George, ~~and we believe that it is a~~
7 ~~benefit to all parties to extend it into the rural~~
8 ~~areas, and I think that we~~ need to continue to look in
9 that direction to make certain that all parts of the
10 state have the opportunity to be involved in the
11 ~~resolution conflict.~~ ^{resolution process} ~~as~~ an educator I'm especially
12 pleased to note the education outreach efforts that have
13 been ^{used} ~~going on~~ by the anti-discrimination division. It
14 is ~~certainly~~ my belief that one of the best ways to help
15 eliminate discrimination ^{and avoid litigation} is to educate everybody
16 regarding the laws and the responsibilities ^{that follow.} ~~so that we~~
17 ~~avoid litigation.~~

18 ~~During the past year~~ I'm told that the staff
19 of UADD ^{during the past year} has conducted over 45 seminars and training
20 sessions that have reached approximately 650
21 individuals. Most of these are employers who, in turn,
22 ^{influence} ~~impact a great~~ many other individuals within their
23 ^{organizations} ~~employment,~~ ~~certainly~~ I would like to note that we've
24 ^{also positive} had responses from many employers, ~~and~~ I recall one
25 letter, and I think I've ^{quoted} ~~written~~ enough from letters,

1 but a letter from Woodbury Corporation, ^{states} where ~~they~~
2 ~~recognized that in their industry, the hotel industry,~~
3 ~~there were many situations~~ where discrimination might
4 exist, but as a result of the education that they ^{received} were
5 ^{they were} far more aware of their obligations and
6 responsibilities.

7 ^{Owing the first} ~~For the past~~ years I ^{worked} ~~have been working~~ with
8 community and economic development, ~~and~~ it ^{became} ~~was~~ very
9 apparent to me that we have to ^{eliminate} ~~have a state where~~
10 ^{discrimination in our State.} ~~discrimination is eliminated.~~ We found most employers
11 believed Utah ^{to be} ~~was~~ a good place to live, a good place to
12 do business, and a ^{place which provides a} good work environment.

13 Discrimination was seldom an issue in ~~these~~ discussions
14 with respective employers. I believe, as evidenced by
15 the number of new companies that have recently relocated
16 in Utah and by ^{the} in-migration of over \$20,000 people, that
17 Utah is a good place to live.

18 Often the question ^{arises regarding} ~~comes up about~~ religious
19 discrimination in Utah. ^{historical} ~~Certainly our background,~~ ~~our~~
20 ~~history~~ would indicate that ^{this might} ~~that~~ be a problem, but
21 ~~I'd like to indicate to you that from the~~ figures ^{show} that
22 ~~we have that you will find that the percentage of~~
23 religious discrimination is extremely low. ~~the~~ ^{number of} ~~involved~~ ^{religious}
24 ~~percentage is~~ only 2.8% of the total ^{discriminati} cases. You've
25 probably ^{been given} these figures. I will reiterate

^{already received}

1 them. Sex and gender, 20 percent; sexual harassment,
2 12.1; maternity, 5.4; national origin, 9 percent; race,
3 color, 7 percent; religion, 2.8; age, 17.7;
4 disabilities, 18.4; retaliation, 6.0, and equal pay,
5 1.5. So you can see from ~~these~~ ^{These} figures that ~~the~~
6 religious discrimination ~~as it appears in the cases~~
7 ~~before the anti discrimination division~~ is a very small
8 percentage. ^{of the total cases that are brought before the anti-}
^{discrimination division.}

9 MR. MULDROW: Are those figures for one year
10 or over what period of time?

11 MS. WALKER: They are ^{from} ~~the~~ October 1, 1992
12 through September 30th of 1993, ^{so they cover one year} ~~so they are very current.~~

13 ~~and they are for one year, but they are the most~~
14 ~~very current figures~~ We found that Utah has a good
15 working environment, and ^{a great deal of diversity} ~~we feel that we remain a very~~
16 ~~diverse state,~~ for in Utah we have ^{a substantial number} ~~the largest number~~ of
17 individuals ^{who speak} ~~speaking~~ foreign languages, ~~of any other~~
18 ~~state.~~ ^{Actually,} ~~Utah has the highest~~ ^{a higher} percentage of population of ^{bilingual}
19 ^{citizens than} ~~any state in the nation, that speaks another language~~

20 I believe we also have ^{a greater amount of cultural} ~~an~~ appreciation ^{than} ~~of~~
21 ~~different cultures that extends beyond that of~~ many
22 other ^{states} ~~states~~ because ^{so} ~~many~~ of our citizens have lived
23 abroad and worked with ~~other~~ people from other
24 countries. This, however, does not mean that we do not
25 have ^{any discrimination problems in our state.} ~~problems in our state in terms of discrimination.~~

1 I would be the first to say that, ^{like} ~~as in any~~ other states,
2 we need to be diligent. We need to make certain that
3 our system works well. We need to look at our system
4 and ^{decide} ~~say~~ what do we need to do to ^{improve it and to ensure} ~~enhance it and to make~~
5 ^{that} ~~certain~~ the process is timely, fair, and ^{that} justice is
6 provided.

7 I do believe that we are making great strides
8 in that direction, and I hope that continuous progress
9 is better than delayed perfection, ~~and~~ I doubt if we ^{will}
10 ever reach absolute perfection, but I certainly hope
11 that through education, through adequate protections,
12 through an orderly legal process, through conflict
13 resolutions and other means that we can provide a fair
14 system to every individual.

15 We've already seen evidence in ~~our~~ agencies ^{such}
16 ^{as} community ^{and} economic development, the Attorney General's
17 Office, ^{and} the Industrial Commission ^{of people} ~~where they are all~~
18 working together, ^{and removing barriers.} ~~and one of our great thrusts has been~~
19 ~~that we are the barriers that~~ ^{are} ~~we are~~ working across agency
20 lines to ^{stop} ~~make certain that~~ discrimination ~~does not~~
21 ~~happen~~ in our state, ~~and~~ especially within state
22 agencies, and we're very conscious of the ^{continued} effort that we
23 ^{must make to guarantee} ~~and to make again~~ that every individual is treated with
24 dignity in the State of Utah.

25 I'm very open to questions and would be

1 delighted to answer any.

2 MS. RICHARDS: I'll just remind you we have a
3 little less than 10 minutes for questions.

4 MR. COHNE: Lieutenant Governor, since you
5 recognize the fact there are elements of discrimination
6 on occasion, and based upon the prior respondents that
7 we've had today indicating that the only recourse an
8 individual has if there is a claim of discrimination is
9 through the UADD, would you and the governor support a
10 change in the law to have the Industrial Commission
11 obligated to enforce its orders so that individuals
12 would not have to seek remedies through the courts and
13 would not have to seek suit letters, but rather than the
14 administrative process is forced upon people, could be
15 handled by the agency enforcing its own orders which it
16 presently does not do?

17 MS. WALKER: We have looked at that very
18 closely. ~~So we've been looking at it further but~~
19 our current recommendation is that we work through the
20 Attorney General's Office. *We've had*
significant increases
21 ~~well, from 1990 to 1993 we have gone from a hundred and~~
22 ~~forty-six FTE's in the Attorney General's Office to 200,~~
23 ~~and I believe it's 42, so we've had a horrendous increase~~
24 in the numbers of ~~FTE's~~ *FTE'S* within our Attorney General
25 staff, *so, believe the enforcement can be handled through the*
We have talked to them. I think that we've
office in a timely manner.

We have

1 worked out a reasonable working relationship for the
2 enforcement obligation *with that office.* ~~to be assumed by the Attorney~~
3 ~~enforcement can be worked out in the~~ *Some*
4 ~~General's Office. I know that there are some that are~~
5 ~~orders given to the employer. The ideal is~~
6 ~~still not certain that that is desirable, but it seems~~
7 ~~compliance with the order at that level,~~
8 ~~that we would like to try that to see if that is~~
9 ~~but recognize litigation is often necessary.~~
10 ~~workable. I think that we recognize there needs to be~~
11 ~~some process for the enforcement, but as we look at the~~
12 ~~staffing of these two agencies it would seem probably~~
13 ~~that there would be a more appropriate manner. Now, I~~
14 ~~think that we can work out some enforcement as a matter~~
15 ~~of the orders being given to the employer, and if~~
16 ~~they're complied with fine, then maybe we need to look~~
17 ~~at just the procedure, but if it goes to litigation~~
18 ~~beyond that we feel that we ought to at least try~~
19 ~~working through the Attorney General's Office.~~

16 MR. COHNE: Is there a statute that empowers
17 the Industrial Commission or UADD to have the Attorney
18 General's Office enforce those orders?

19 MS. WALKER: We have looked at that, and we
20 have not been able to determine that there is any such
21 prohibition. We can't find where it's prohibited, and we
22 can't find where it would not be allowed. There are
23 certain individuals that would rather have the staff
24 increased at the Industrial Commission to encompass
25 that, and I guess at this point I can't tell you whether

1 that is a better procedure than working with the
2 Attorney General's Office, but because we have the
3 attorneys there, and certainly the staff has increased
4 significantly over the past year or two, we feel that
5 they may be more capable of handling that than ~~through~~
6 the Industrial Commission. In fact, we have been given
7 an estimate of how many cases they think they would have
8 to litigate, and we think ^{that} ~~it's within the capabilities~~
9 with the additional staff funding that we're ^{allocating} ~~giving the~~
10 ^{its} ~~Attorney General's office~~ ^{within the capabilities of the} ~~that to see~~ ^{We may be able} ~~I think legal~~
11 ~~perhaps that to issue the orders of compliance to the~~
12 ~~companies with maybe a brief indication of~~
13 ~~enforcement maybe can be worked out~~ ^{to work} with the Industrial
14 Commission, but I think ^{to design a system of issuing the compliance orders to the} the litigation we would really
15 like to see go through the Attorney General's Office.

16 MS. HUTCHISON: I think I'm a little confused
17 about the term the litigation. I can understand having
18 to go through an attorney. I assume that what we were
19 talking about, once the order has been issued then the
20 enforcement of that order, and it would seem as though
21 that does not have to be an attorney that does that. If
22 that's the case, then wouldn't it be more economically
23 astute to be able to have the Industrial Commission be
24 able to have the enforcement of the orders, as opposed
25 to an attorney which you say has a higher salary?

perhaps some perspective on the commission of enforcement

1 MS. WALKER: I guess we need to define what we
2 mean by enforcement. I think it's well within the realm
3 of the Industrial Commission to send out the order to
4 the employer, that this has been the official rendering
5 and there should be a compliance date and compliance
6 should be there. I think it's well within the realm of
7 the Industrial Commission to analyze whether that order
8 has been carried out or if it has not, and I think if it
9 has not, then you're going to have to get into
10 litigation, and at that point I think that's where we
11 see the Attorney General, because if the order isn't
12 complied with, then further litigation is obviously
13 going to have to take place. Maybe a second letter is
14 in order, but ultimately you're going to have to go to
15 some kind of litigation to resolve it.

16 MS. HUTCHISON: We really want to avoid
17 litigation because that's a very costly way of doing it.

18 MS. WALKER: And we understand that.

19 MS. HUTCHISON: So if you can keep it with the
20 Industrial Commission and on that level and have the
21 enforcement have a little bit more teeth.

22 MS. WALKER: And, you know, maybe we need to
23 look at it to give them more teeth, but I think
24 generally to take it beyond where the employer has
25 refused to comply ^{with} ~~the~~ the decision that you're probably

1 back to litigation. You know, it's not a criminal
2 offense where you go lock them up. It's an offense
3 where you're going to have to go back to court and
4 impose fines, ~~and~~ etc. / ~~So I think~~ unfortunately, that's
5 true, ~~but I think that certainly you can put all the~~
6 ~~pressure,~~ ^{but} I think ^{that} we can maybe extend the pressure ~~you~~
7 put on the employer from the Industrial Commission, but
8 ~~I think~~ eventually if you have someone that refuses to
9 comply ~~that~~ you're going to have to seek additional
10 ^{redress}
~~regress.~~

11 The tax commission is a little different
12 because you quickly enter into a criminal litigation and ^{the}
13 withholding of taxes and fees and penalties ~~that~~ are
14 clearly defined, so I think you can say there's some
15 comparison there, but there are some differences also.

16 MS. RICHARDS: I think we've got time for one
17 very brief question, Mike.

18 MR. MARTINEZ: First is a request for
19 information. I really appreciate the numbers you've
20 had. We haven't had any numbers presented yet on the
21 types of numbers of cases and if you can make those
22 available, not just those, I was going to request that
23 maybe you can supplement the record with those numbers
24 for the last four or five years just to give us an idea
25 of the increase of the caseload.

1 MS. WALKER: I certainly can. I will leave
2 this chart and the numbers I have with you, and I'll see
3 that additional numbers are sent to you.

4 MR. MARTINEZ: I appreciate it, and the second
5 request for information is you made a statement that you
6 believe the ADR is very effective as it's implemented,
7 and I'm wondering if maybe you can provide us with the
8 information as to the number of mediations or ADR's that
9 they've had and the results so we can get an idea of the
10 numbers settling and the dollar amounts they're settling
11 for or what the remedies are.

12 MS. WALKER: I will be happy to do that.

13 MR. MARTINEZ: Thank you very much.

14 MS. WALKER: I don't have that with me. I
15 will leave these two charts which give distribution of
16 the cases and the chart also showing the cases.

17 MR. MARTINEZ: I appreciate it.

18 MS. WALKER: In the last year. You have to
19 recognize that the conflict resolution process is
20 relatively recent.

21 MR. MARTINEZ: Oh, I understand.

22 MS. WALKER: And so that you won't get a great
23 deal of longevity comparisons.

24 MR. MARTINEZ: But it will tell us the amounts
25 they're settling for?

1 MS. WALKER: Right.

2 MR. MARTINEZ: We know that leadership has a
3 lot to do with what transpires in government and
4 government has always been a leader in employing the
5 disenfranchised. Can you name me a department head of
6 the government that's appointed that's minority?

7 MS. WALKER: Yes.

8 MR. MARTINEZ: Who?

9 MS. WALKER: Karen Covy.

10 MR. MARTINEZ: Other than Karen?

11 MS. WALKER: Lynn ~~Cogen~~, ^{Cogan} ~~are~~ ^{are} both [≡] minorities.

12 MR. MARTINEZ: Asian.

13 MS. WALKER: And I can name ~~you~~ a lot of *members* *of*
14 commissions and boards that we have appointed.

15 MR. MARTINEZ: I was trying to stick to policy
16 levels, people who have budget and supervision policy.

17 MS. WALKER: We have a Hispanic, Chavez, in
18 Human Services, a Deputy Director of Human Services. We
19 have several that are division heads that are
20 minorities.

21 MR. MARTINEZ: I think that's great. Do you
22 know about how many overall the governor appointed, not
23 just minorities but how many appointments he has
24 overall?

25 MS. WALKER: I will tell you when we went in

1 we appointed 11 new department heads. Six of those were
2 women. I can give you that figure. Of the appointments
3 that the governor has made to boards and commissions,
4 and I guess I keep track of that more closely because we
5 run them through our office, we are running at a rate of
6 ~~about~~ close to ten percent minorities in the state which
7 is ~~a little above, well, it's~~ several percentages ^{points} above
8 the ^{statewide} minority population. In terms of women we're close
9 to 40 percent women, so we're below on the figure of
10 women but slightly above on the number of minorities
11 that we appoint to boards and commissions.

12 MR. MARTINEZ: Thank you.

13 MS. RICHARDS: Thank you very much.

14 MS. WALKER: It's been a pleasure.

15 MS. RICHARDS: Thank you for being here.

16 MS. WALKER: I'll see that you get further
17 information.

18 MR. MARTINEZ: Thank you very much.

19 MS. RICHARDS: Thank you. We have now Mr.
20 James Gonzales who will be addressing us. We appreciate
21 your willingness to switch times, and ask you if you
22 would like to induce yourself to the committee as well,
23 please.

24 MR. GONZALES: My name is James Gonzales. I'm
25 the Executive Director of the Utah Coalition of La Raza,

1 an organization that serves as an umbrella for
2 approximately 16 Hispanic affairs organizations and
3 minorities organizations in the State of Utah. Our
4 principal job is advocacy on behalf of the Latino
5 Hispanic community and where possible advocacy for the
6 minority community in conjunction with NAACP and other
7 organizations with that interest.

8 I'd like to talk not so much in terms of the
9 technical details of UADD. I'm not an attorney. I've
10 been involved in this process only for the last year or
11 so. Since the governor appointed his task force, I've
12 watched the imaginations and histrionics surrounding
13 this for that period of time and have come to some
14 conclusions based on that, in addition to some other
15 general conclusions about the state of the civil rights
16 in the State of Utah.

17 It becomes clear for a lot of us that the
18 public attitudes that are expressed every day in this
19 state are generated from institutions. They begin there
20 and they move down, and rarely, however, occasionally do
21 they move from below and come up. We see that behavior
22 of institutions such as has been represented here in
23 terms of the legislature, the state government. You'll
24 find it in city governments, statements that are made to
25 the press by those organizations, and actions that they

1 take in legislative forums and policy making forums
2 often set the tone for what occurs in private
3 enterprise. For instance, if a municipality or a county
4 government can be seen by its residents as allowing
5 discrimination to exist, it's not unusual or
6 unreasonable to expect that private enterprise and
7 private behavior in that county or in the surrounding
8 areas would reflect that sort of attitude.

9 You'll see that sort of attitude being
10 manifested in public comment by individuals who don't
11 hold public position who will stand up in a hearing and
12 will say things related to -- I was in a meeting last
13 night and a young man stood up and he just could not
14 understand why ADA was so important to people with
15 disabilities, why business should be compelled to do the
16 things required in ADA. He couldn't understand. I mean
17 it's probably as much my responsibility to inform him as
18 to why that's important as it is his own to go out and
19 find out, but he's getting that from somewhere. It's
20 not an innate sensibility given at birth. It's given
21 from somewhere else.

22 In addition to that, we see the public being
23 led by efforts such as the English Only Bill that was
24 put forward earlier which on occasion will give people
25 reason to believe that it's okay to discriminate based

1 on language and clearly it's not.

2 In the course of doing what I do for a living,
3 my job basically is as it's been described to me this
4 last week, is to sit in my office and answer any
5 questions that anybody has relating to Hispanic affairs
6 as the telephone rings. I think that may be an
7 ambitious job, but what I do get on frequent occasion
8 are questions regarding employment discrimination, and
9 they don't come by and large from licensed engineers.
10 By and large they don't come from college educated state
11 employees, and they don't come from people who make ten
12 dollars an hour. Even rarely do they come from licensed
13 union carpenters. By and large the questions that I get
14 and have been getting most recently within the last six
15 months have come from people who are seasonal workers,
16 people who work in institutions like the one we're
17 holding this hearing in today, in hotels and in
18 restaurants, people who work at the lower levels of
19 government who are making, four, five, six dollars an
20 hour.

21 I think the best way to illustrate this to you
22 is to envision yourself in Central Utah or Southeast
23 Central or Central Eastern Utah in Ephraim on a turkey
24 farm in July. You've just been fired for speaking
25 Spanish in the course of conducting your duties of

1 slaughtering turkeys. You've been warned five, six
2 times you're not to speak Spanish while you're doing
3 your job, but for lack of terms beyond good morning, how
4 are you, where is the exit, how do I get to the bank,
5 your English capabilities are not horribly profound, but
6 you've been fired for speaking your native language.
7 It's July. It's 105 degrees. You're in Central Utah.
8 You make four dollars an hour, five dollars an hour, or
9 you work by the piece. You have four children. You
10 live in a shack that's owned by the person you work for.
11 Where do you go and what do you do? The truth of the
12 matter is you plead for your job and maybe you get it
13 back. Through all that I've seen in the last year
14 relating to this issue that person in Central Utah, or
15 that hotel worker in Park City, or that janitor here in
16 this building has yet to be represented in the
17 discussion. I do not see, nor do I anticipate seeing
18 the political will from the people who have come before
19 you this morning to address that issue. I would wake up
20 tomorrow in euphoria if I thought that that were going
21 to occur, but I don't believe that it will. The
22 Realities as I view them based on my discussions with
23 individuals at the UADD, based on discussions with the
24 legislative leadership and executive office leadership
25 is that that is not a priority, and politically it won't

1 become a priority. I think that point more than
2 anything is one that I need to drive home to you all
3 because my constituency, the people that pay my bills
4 and for whom I maintain an office may never be up here
5 to talk to you. They may never come up here and tell
6 you that someone considers speaking English an essential
7 aspect of their job clipping roses in a warehouse in
8 Sandy. Furthermore, they may never be up here able to
9 explain to you that the reason that they don't come to
10 UADD, the reason they don't come here to file a claim
11 with UADD is because for those language minorities by
12 and large who are not born here, who are naturalized
13 citizens, or who are here illegally, legitimately or
14 otherwise, generally fear for their well being and fear
15 for their ability to make a living if they are to raise
16 an argument and a person that employs them, even if it's
17 a legitimate argument. Many of those individuals view
18 government from a historical and cultural basis as not
19 the place for resolution of problems, but as the place
20 where problems often come from. Many of these people
21 from Central America and El Salvador, some from Latin
22 America, from Chile, from Argentina are definitely
23 afraid of coming to government agencies for help because
24 where they come from you don't get help from government
25 agencies, government agencies kill people in the night

1 on occasion. I don't want to set a stereotype, but it's
2 a reality that sticks in their heads. For many of us
3 who had the good fortune to be born here, who have had
4 the good fortune to be educated here, we understand very
5 clearly some of the issues that are being brought up
6 before you all today. We know that the UADD is being
7 perceived as not doing its job. Despite the best
8 efforts of Anna Jensen, despite the best efforts of
9 Coleen Colton, the perception remains that it's not
10 doing its job. One of the complicating factors in that
11 seems to be something that you're coming to grips with
12 here this morning. You've watched the transitions from
13 the polite questioning to some rather hard questions of
14 late, the definition of the term enforcement, and in a
15 recent meeting, I believe it was last Wednesday, a
16 discussion of enforcement ensued with Representative
17 Pignanelli, with Commissioner Colton, with Anna Jensen,
18 Tim Funk, a number of other people. Person after person
19 got up, said, Commissioner Colton, you're not enforcing,
20 there is no enforcement. In 30 years you have not
21 litigated a case, there is no enforcement. Commissioner
22 Colton got up and by her perception of the term
23 enforcement was able to say, rightfully so, ladies and
24 gentlemen, we do enforce. Now, there is a chasm there
25 that must be resolved. If the community as a whole is

1 to accept that enforcement as existing and there must be
2 a joint definition of the term enforcement, because if
3 enforcement on one hand is we follow the regulations,
4 therefore we are enforcing, if that's the perception
5 that the commissioner has, and enforcement on the other
6 end is you're not enforcing unless you litigate, then
7 those two are never going to come together unless
8 there's a joint understanding of that, and furthermore,
9 this issue will become even more complicated as it goes
10 to legislative committees and there's argument on
11 Capitol Hill, because I know as well as anybody who was
12 up here when you go to the legislature and you try to
13 argue issues of civil rights you're going to face a
14 hurdle because they're afraid of business, but if you
15 can't state the case clearly and getting conflicting
16 messages from the two combatants that are arguing before
17 you, you're not going to do anything, and that's a
18 problem. So again I would urge you to broaden your
19 perspective of what you're dealing with here, because if
20 you expect social problems to go away you have to deal
21 with economic problems while you're dealing with social
22 problems. You can't do that unless your perspectives
23 change. Now, Anna Jensen and Commissioner Colton have
24 done some things with which many of us would not have
25 perceived likely a year ago in terms of their mediation

1 efforts, in terms of accepting the idea of advisory
2 councils and of advocacy councils. I would not have
3 anticipated that a year ago, and they're moving in some
4 directions and we're not getting everything we want.
5 I'm talking about the coalition that's trying to work in
6 that direction. They are working in that direction, but
7 I think in order for them to be successful that mind set
8 has got to change. I don't mean to slight Commissioner
9 Colton, but when I met with her one of the first times,
10 well, look what we've done, here's a pamphlet in
11 Spanish, has all the legal materials correct in Spanish,
12 but anyone who is an attorney in Latin America who comes
13 here to live generally has a knowledge. They go to law
14 school, take care of those things. They don't need me
15 to argue their case. Somebody else will argue their
16 case for them. There is a difference, however, in terms
17 of someone who comes here for clearly and strictly
18 economic reasons. If they can't make a living in their
19 country and then they come here and try to make a living
20 in this country and they're discriminated against,
21 they're going to need somebody, and giving them a
22 pamphlet to read I don't think will fit the bill. One
23 of the worst and most complex situations that I've had
24 in 10 months or 11 months, this person who was working
25 in a gardening warehouse, in a greenhouse, came into my

1 office and said I've got a problem, I've been fired for
2 speaking Spanish. Out of 40 employees in this place,
3 there are 20 of them who are Latino or Chicano. Of that
4 number roughly 80 percent don't speak any English. We
5 talked a little bit more and came to discover that his
6 working papers had expired. Now, I'm told that that
7 doesn't matter, that his working papers can be intact or
8 expired, firing him on the basis of language is still
9 illegal. The second I raised that issue to this nursery
10 80 percent of those people are placed in immediate
11 jeopardy because there is no enforcement, there is no ax
12 over the employer's head to act justly. So the question
13 before myself and the young man in front of me is do we
14 file your claim and endanger the livelihoods of 80
15 percent of that work force, or do we brush it off and
16 get you a new job? My practical solution was until you
17 can get a concensus from those 80 people, I'm afraid
18 you've got to brush it off and get a new job. I'm
19 powerless until there's enforcement. I can make all the
20 noise in the media. I think I've demonstrated that in
21 the last few weeks. I can be as ugly as I want in the
22 press, and I can do all these horrible things to people
23 who may or may not deserve them trying to get attention
24 to these issues, but until a clearly defined procedure
25 for enforcement, possible litigation, until all of that

1 exists, there's nothing I can do, and there's nothing
2 that these people that I'm trying to represent are going
3 to be able to do.

4 Aside from that, there's one other issue that
5 I promised Dr. Juan Majilla that I would bring up here,
6 and Dr. Majilla works more closely with the South
7 American, Central American residents here than I have
8 been able to. One of the issues that he brings up is
9 repeatedly through his office he's coming across people
10 from Latin America who have fully credentialed in
11 engineering, in medicine, not in law because the systems
12 are different, but in a number of credentialed
13 professions who can work successfully here, but for the
14 fact that there are no reciprocity agreements between
15 the United States and some of these Latin countries on
16 credentials to work here. There are civil engineers who
17 are sweeping floors. There is a doctor in Clearfield
18 who keeps medical files for another doctor. There are
19 any number of qualified people of this nature who are
20 being discriminated against because these reciprocity
21 agreements do not exist. So if that's an adjunct to
22 what we're talking about, please address that to
23 whomever you need to address it to. I'd be happy to
24 answer any questions as best I can.

25 MS. RICHARDS: Thank you, Mr. Gonzales. We

1 have just a few minutes here for questions.

2 MS. SHIMIZU: *You gave an example of a person who was fired*
3 *because he spoke Spanish in his work place. How would you as an organization*
4 *called La Raza help such a case? Is there a mechanism set up in your organization*
5 *to help him, or is there an avenue that you can help? This*
6 *is the Asian Civil Rights. Anywhere in there the*
7 *by the United States Commission on Civil Rights as a report in February 1992 titled*
8 *employment discrimination area deals with glass ceiling*
9 *Civil Rights Issues Facing Asian Americans in the 1990's. It has a section on*
10 *as well as language rights in the workplace,*
11 *Employment Discrimination and discuss such topics as Glass Ceiling, Racial*
12 *discrimination based on accent, English only rules in*
13 *Rights in the workplace, Discrimination Based on Accent, Employment Tests as*
14 *the workplace and things as such. In your situation*
15 *English-Only Rules in the Workplace. I am sure some topics of concern apply*
16 *because you work with these kind of people, these*
17 *to the Hispanic communities. To what extent these problems exist in Utah in*
18 *things do they exist in Utah, and to what extent and*
19 *your estimation and what are you doing to help combat such sometimes subtle*
20 *what kind of a background to combat that?*
21 *and sometimes blatant discriminations as an advocate organization?*

22 MR. GONZALES: All of those opportunities
23 exist for the plaintiffs and the people that the
24 plaintiff is working around. In this situation the
25 gentleman that I worked with, the only way that he came
to the conclusion that I could help him was to help him
find another job because he was not willing to endanger
those other individuals. In terms of what you've talked
about, sure, all those things exist. They stand on the
books, but, as Attorney Gill represented earlier,
there's only one path. Eventually there's only one
path, and that path has got to be clarified. I know
that we are undertaking an effort with the Utah
Coalition of La Raza to establish a non-binding advisory

1 council that will try to address specifically those
2 Spanish Language issues and other broader issues, but
3 again I can't stress to you enough that until that clear
4 definition and that clear road is established there is
5 not a hill of beans we can do to help that guy, other
6 than find him a new job. We do as best we can.

7 MR. MARTINEZ: I think you've given us another
8 definition of enforcement which I can appreciate and
9 that is more pro active enforcement for those people who
10 are not in a position to advocate for themselves because
11 they put others in jeopardy. I guess most agencies,
12 OSHA, the tax commission, criminal enforcement,
13 enforcement agencies traditionally I guess you're saying
14 go out and find these things and correct them.

15 MR. GONZALES: It's odd I was sitting in the
16 back listening to Representative Valentine talk about
17 the fact that there are civil remedies available in this
18 case, but, you know, there are civil remedies available
19 in most crime situations, and this is a crime. I mean
20 bottom line this is a crime. We all wouldn't be here if
21 this wasn't a crime. You don't ask a rape victim to go
22 out and make their own case. You don't ask a rape
23 victim to be the principal prosecutor in their case.
24 Why in God's name would be expected to do that here?
25 There's an enormous jump in logic and in expectation.

1 This is a crime as is anything else a crime. A
2 prosecutor, the Attorney General's Office, the county
3 attorney, the city attorney, there's somebody there on
4 every crime who prosecutes but this one, and it's
5 another one of those confusing signals, but, yeah, I
6 think pro active, they ought to be out there looking for
7 those things. I can probably give them three or four
8 files full, but for the fact that there's no confidence
9 in the system yet.

10 MR. MARTINEZ: The numbers that we received
11 from Lieutenant Governor Walker showed last year
12 national origin which encompassed Spanish speaking
13 individuals there were 81 complaints that were filed
14 which is nine percent of their caseload. First of all,
15 I would like you to comment on that, but before you do,
16 I guess you're familiar with the staff at the UADD. Do
17 you know if anyone on that staff right now speaks
18 Spanish?

19 MR. GONZALES: I do not have personal
20 knowledge of the individual, but I'm told that there are
21 bilingual people on that staff.

22 MR. MARTINEZ: Are any of them Spanish sir
23 name?

24 MR. GONZALES: I don't have personal knowledge
25 of that.

1 MR. MARTINEZ: Do you know of any Spanish sir
2 name down there?

3 MR. GONZALES: I don't have any personal
4 knowledge of that. I don't have any knowledge of it.

5 MR. MARTINEZ: You don't know the staff down
6 there?

7 MR. GONZALES: I don't know the staff as well
8 as I will need to. I know Anna, some of the people I've
9 talked to, Mr. Danielson and the commissioner. I think
10 you might want to refer those questions to George Lopez
11 who will be coming through here. I think George and
12 Robin and Ms. Davis would be able to answer those
13 questions a lot better than I would.

14 MR. MARTINEZ: What about your comment on the
15 81 national origin?

16 MR. GONZALES: I have to tell you for a number
17 of years people in the Latino community, unless it's
18 against American Express, you know, you're maybe a
19 middle of a manager, or if it's against the State of
20 Utah and you're complaining about an upgrade from a
21 level 14 to a level 15, I mean these are college
22 educated people who are coming before here and making
23 these claims by and large, and even that number has I'm
24 sure slowed down. If only nine percent of the
25 complaints are Latino at the UADD, and we are the

1 largest minority group in the State of Utah, work the
2 numbers out. There's still a problem there, you know,
3 it doesn't go away. I mean it's not gone. For some
4 reason the number is not bigger, and I really believe
5 that the number, if it were representative of what's
6 occurring outside these walls, that number would be
7 bigger. So I can't explain why, except for maybe some
8 of the cultural and some of the community perception
9 issues that we talked about a little bit.

10 MS. GILLESPIE: Only five percent of the labor
11 force though?

12 MR. GONZALES: Right.

13 MS. GILLESPIE: So the nine percent that you
14 speak of would be significantly higher than the
15 representation in the work force?

16 MR. GONZALES: I believe that in terms of
17 protected classes we represent, I'm not sure of the
18 figure, I'm sure we represent a significantly higher
19 percentage of those. I'm sure the representation is
20 under.

21 MS. GILLESPIE: But all of the cases also
22 include women minority and non-minority?

23 MR. GONZALES: Sure.

24 MS. RICHARDS: All right. Mr. Gonzales, we
25 thank you very much for being here in front of the

1 committee.

2 MR. GONZALES: Thank you for your time and
3 indulgence.

4 MS. RICHARDS: We thank you for your
5 indulgence, appreciate that. We have a short break for
6 lunch and we will resume promptly at 1:00 p.m.

7 (Lunch recess.)

8 MS. RICHARDS: We'd like to welcome you all to
9 the afternoon session of the Utah Advisory Committee to
10 the U.S. Civil Rights Commission, and we are conducting
11 a fact finding meeting on employment discrimination in
12 Utah. Our first presenter this afternoon will be Mr.
13 John Pace, and we will let him introduce himself to the
14 committee, and we hope that we will have more members of
15 our committee come in as you are speaking.

16 MR. PACE: Thank you very much. My name is
17 John Pace. I'm an attorney at the Utah Legal Clinic
18 along with Brian Barner. We are of counsel for the Utah
19 Civil Rights and Liberties Foundation, Inc.. I want to
20 thank you very much for inviting me to speak. I think
21 there is an appreciation among most people to pay
22 attention to these type of issues, that Utah, while it
23 is a pretty great place, tends to be the home of some
24 form of discrimination. I don't think there is any sort
25 of animus or intentional purpose behind any of this. I

1 believe it has to do very much with the fairly
2 homogenous type of culture in which we live. A lot of
3 people just assume that we're on the same wavelength or
4 we share the same moral values. A lot of the people are
5 not used to confronting people with different
6 backgrounds, heritage, nationality.

7 MR. MULDROW: Could you just say a word about
8 your organization? I don't want to take a lot of your
9 time.

10 MR. PACE: I will. Utah Civil Rights and
11 Liberties Foundation, Incorporated is a legal
12 organization dedicated to representing people in
13 lawsuits in which they allege discrimination or
14 oppression. Senior counsel is Brian Barner. He's been
15 doing civil rights litigation now for almost 20 years.
16 We are a private, non-profit organization. We receive
17 funds from government organizations. In fact, we're
18 usually suing government organizations. Some examples
19 of lawsuits we have either recently concluded or in the
20 midst of litigating include, number one, Pelt, et al.,
21 versus the State of Utah. That is a lawsuit brought on
22 behalf of five named plaintiffs, all of whom are Utah
23 Navajo Indians living in San Juan County.

24 The State of Utah since 1933 has been in
25 charge of administering a multi-million dollar trust

1 fund of which more than \$60,000,000 has passed through
2 since that time, mostly since the middle 1950's, and an
3 audit conducted by the state's own auditor, Legislative
4 Auditor General, uncovered numerous examples of fraud,
5 waste, self-dealing conflicts of interest and a complete
6 lack of any accountability placed upon those it was
7 giving money. Indeed some of those people were just
8 criminally indicted by Federal Grand Jury. We have
9 filed a lawsuit on behalf of those people against the
10 State of Utah. That was a year and a half ago. We have
11 been involved with numerous procedural motions and games
12 by various parties on the other side. In a year and a
13 half we still do not have an answer to our client.
14 That's an example of how this litigation is going. This
15 is the type of litigation we do because nobody else is
16 willing to undertake such huge tasks.

17 Another lawsuit recently concluded was one of
18 Binette versus the Utah/St. George Elks Lodge in which
19 we forced the Dixie Lodge to admit women or forego their
20 license to dispense and sell liquor. They pretty much
21 ignored the Utah Supreme Court's decision on that, and
22 we have recently filed another lawsuit to try and force
23 them to end gender discrimination.

24 Another one is TEP versus Leavitt which on
25 behalf of several people with HIV disease we sued the

1 state to force them to take off the books a law that
2 prohibited people with HIV disease or AIDS from getting
3 married, and in fact would end any such marriage if a
4 person was discovered to be HIV positive during the
5 marriage.

6 That being said, I do have a statement that
7 outlines in a little bit more detail what we do and goes
8 into a little bit more detail about our involvement with
9 employment discrimination as well, but that I'll hand to
10 the committee when I'm done here. With regard to
11 employment discrimination, we have represented numerous
12 people alleging employment discrimination based on
13 Rehabilitation Act, Title 7, 64 Civil Rights Act and
14 various states civil rights laws.

15 Additionally, Mr. Barner and myself conduct
16 approximately 18 or more formal legal consultations per
17 week where we meet with people who have questions about
18 their legal rights. An extremely large number involve
19 employment discrimination, people that are still
20 employed and have questions, people who are no longer
21 employed and have questions. Our goal at that time is
22 not to drum up lawsuits. Our goal is strictly to inform
23 these people what their legal rights are at that time.
24 Through those consultations and cases that we take we do
25 keep a pretty good finger on the pulse of what's going

1 on with the workers in the State of Utah.

2 My bias, and I'll state this right up front,
3 is that there are few things more important to a person
4 than their job. Their job has to do not only with
5 ability to support themselves and their family, it has
6 to do with their self worth. It has to do with how they
7 function in society and how other people view them.
8 This is not to say that in my opinion employers or
9 managers should be forced to compensate or pay fines or
10 take actions if the law does not require them to. It is
11 to say, however, that I am very much in favor of
12 enforcing the laws we have on the books, and I will
13 mention some changes which in our opinion might
14 favorably serve the rights of the people who have lost
15 jobs or who are facing employment discrimination,
16 specifically with regard to the UADD, of the Utah
17 Anti-Discrimination Division.

18 I'd like to start out saying Anna Jensen, the
19 director, in my opinion, has done an extremely good job
20 the last year. She has attempted to reach out to many
21 different groups in the community. With regard to
22 lawyers, both plaintiffs and defendants, she's taken
23 suggestions. She's returned phone calls. I believe
24 she's done a very good job. I suspect that others who
25 are members of the Industrial Commission may not be so

1 willing to reach out and to entertain new ideas.

2 Again, I don't attribute any sort of evil
3 animus or anything of that nature. The fact is I
4 believe most people appointed or selected for positions
5 of authority in the Industrial Commission have been
6 appointed at least the last ten years by governors who
7 have very close ties to the business community who are
8 in fact successful businessmen themselves, and I am not
9 underestimating the threat of claims of employment
10 discrimination faced by businesses, especially small
11 business people. It's an extremely expensive and time
12 consuming task dealing with such claims.

13 However, at an Industrial Commission meeting
14 that I attended last Friday where various members of the
15 bar were invited to attend, an Industrial Commissioner
16 made comments at the end where she expressly voiced her
17 opinion that the agenda before your commission today was
18 very slanted or tilted, being towards the side of
19 employees and not employers, and an administrative law
20 judge, one of the more competent ALJ's that the
21 Industrial Commission has, said that in his opinion when
22 a claimant appears before him without counsel it's an
23 indication that the claimant's case is very weak. That
24 is that he was not able or she was not able to convince
25 an attorney to take the case on a contingency basis.

1 That in my opinion reflects an extreme ignorance of the
2 way the system works. By definition complaining parties
3 are almost always unemployed and broke for reasons
4 including things such as after acquired evidence which
5 is something I'd like to discuss just in a few minutes.

6 Plaintiffs' attorneys must be extremely
7 careful and extremely selective in the cases that they
8 take because they are looking at anywhere from a two to
9 three or longer year period, tens of thousands of
10 dollars they're willing to invest in a case, and if they
11 have it on a contingent fee basis they're hoping,
12 they're gambling that three or four years down the road
13 they're going to win, that the judge will award them
14 attorney fees, and that the judge will do more than
15 judges usually do in the Federal District Court here
16 which is award attorneys approximately one half to two
17 thirds of what they claim. That represents a huge
18 gamble, and for somebody to show up without an attorney
19 by no means means that their claims are no merit.

20 Specifically regarding procedures at the UADD,
21 they're fairly bizarre. The investigator, at this
22 initial stage where employment discrimination claims are
23 heard, is forced to wear about five different hats. I
24 am not in any way disparaging investigators. They do a
25 very good job, considering what they're charged with

1 doing. It's not a job I would want. They have to act
2 as investigator trying to get facts from the parties.
3 They have to act as a mediator in a formal sense at the
4 very beginning when there is an alternative dispute
5 resolution conference, and throughout the entire
6 process. They act as an educator when people come
7 before them and don't know precisely what their rights
8 or proper defenses are in advising a person what their
9 rights might be, and what rights may be more
10 successfully asserted and which rights may not be more
11 successfully asserted. They become an advocate. They
12 are dispensing legal advice to one of the parties in an
13 adversarial process, and ultimately they become a judge.
14 They decide who wins and who loses. Although they make
15 a recommendation, a recommendation that is not timely
16 appealed becomes the final order of the Industrial
17 Commission which is then enforceable in the District
18 Court of the State of Utah.

19 During the process there are procedural
20 irregularities. Myself and others have suggested that
21 the UADD attempt to make formal rules that would
22 regulate the process, that would give people notice of
23 how the process works. These procedures may seem
24 somewhat trivial, but when you're attempting to assert
25 somebody's rights they become very important. These

1 procedures involve deadlines. For example, when you get
2 a finding of cause or no cause from the UADD
3 investigator you are told in big bold print you have 10
4 days in which to seek conciliation, and then another
5 strictly defined time in which you may request an
6 evidentiary hearing before an administrative law judge
7 of the Industrial Commission.

8 We are representing a gentleman who came to us
9 with a favorable recommendation from the investigator
10 that had been rendered weeks and months before. He had
11 received no notice of any request for conciliation. He
12 had received no notice of a request for evidentiary
13 hearing. Therefore, we took the case, assuming that we
14 were faced with the prospect of merely getting this very
15 large industrial employer to pay what the investigator
16 had said that they had to pay because they had not
17 timely made any appeal or any effort to protect their
18 rights.

19 We found out later that the counsel for this
20 large industrial employer had been contacting the
21 investigator ex parte, that is without any notice to the
22 employee, securing numerous deadlines. At least three
23 or four of these were secured after, not before, but
24 after the previous deadline had expired. This leaves
25 the claimant, who assumes that he has an enforceable

1 judgment, in an extremely disadvantageous position. In
2 other words, he doesn't know what's going on with rights
3 that he thinks he has and he should have because he has
4 won at the UADD level.

5 Suggestions with regard to the UADD that
6 myself and Mr. Barner have are, number one, to attempt
7 to formalize some of those procedures, and those should
8 be done through the Utah Administrative Procedures Act
9 so that they are published, the people have a chance to
10 comment on them, and that they are known to everybody.
11 I would suggest that the UADD in its sort of quasi,
12 formal quasi process currently evolve towards a
13 conventional process. There are different forms
14 available, mediation being slightly more informal,
15 arbitration being slightly more formal, but if there
16 were an actual process with procedures set forth, then
17 at least the investigators would be able to go back to
18 maybe just two hats, that is investigating and
19 mediating.

20 In combination with that, and apparently this
21 is the subject of some proposed legislation in the Utah
22 State Legislature, although my efforts today to find out
23 exactly where that stood have been unsuccessful, the
24 state should provide some means whereby complaining
25 parties are provided legal representation or some sort

1 of advocacy. Without that they are essentially left at
2 the good will of the investigator. If the complaining
3 party comes in and says, well, I think I've got a gender
4 discrimination case, there are about three different
5 types of gender discrimination cases this person could
6 possibly be asserting or more. Unless the investigator
7 is well educated and is willing to step over that line
8 to actually become this person's legal representative,
9 that complaining party has no recognition of what his or
10 her rights are.

11 At the early mediation meeting, which in
12 general I believe is a good idea that the UADD has
13 implemented within the last year, if that complaining
14 party is up against an attorney or a fairly savvy human
15 relations person, the complaining party is at a huge
16 disadvantage. By providing a person with some sort of
17 advocate, then again at that mediation the investigator
18 can remain neutral, can do his or her job, doesn't have
19 to stop and say, well, you know, I think you have these
20 rights, and, well, I don't think these other ones are
21 very strong, but these other ones might be pretty strong
22 and that sort.

23 There are obviously some administrative and
24 complex burdens that would go along with any such
25 proposal. However, in conjunction with the more

1 structured ADR alternative dispute resolution procedure,
2 those costs could be minimized because perhaps we can
3 keep the UADD and Industrial Commission process from
4 going on for months and perhaps years, and instead
5 compress it into a time of weeks or perhaps months.

6 Suggestions I have heard proposed, for
7 example, at the Industrial Commission meeting last week
8 which was attended primarily by defense attorneys,
9 include proposed procedural and financial barriers. For
10 example, people have suggested that claims be screened
11 more selectively at the very beginning. That is a
12 horrible idea. I know as an attorney who practices in
13 this area that until you have a chance to ask a lot of
14 questions, to do a lot of research, you're not going to
15 have even a well informed opinion as to what a person's
16 legal rights are. If some of the horrible cases I've
17 decided to keep in my office is any indication, I've
18 probably let some very strong cases go out of my office,
19 and I don't think an investigator screening cases who
20 has even less time and resources at her or his disposal
21 is going to do much better of a decision making job than
22 I have done. If a person thinks they have a complaint
23 they need to be allowed to file.

24 Another suggestion that has been proposed by
25 others is to have sort of a pre-finding finding. That

1 is if you go past the initial mediation stage, conduct
2 some discovery and investigation, and if the
3 investigator is leaning one way or another, perhaps the
4 investigator could sort of reveal which way they're
5 leaning and allow the parties to respond again. All
6 that is going to do is induce yet another level of very
7 contentious adversarial discovery gathering and
8 argument. If four months into the process the
9 investigator tells Kennecott that they think my client
10 has a claim, Kennecott's not going to sit there and go,
11 oh, well. Kennecott's going to pay their very very
12 talented legal staff to mount another wave of legal
13 argument, research memoranda, and that's just not a good
14 idea, and when you're dealing with the other side being
15 broke and without a job, that's going to deprive them of
16 their fair right to be heard and due process.

17 Another suggestion made to presumably weed out
18 meritless cases is to impose more fees. It doesn't take
19 much to imagine that higher fees are going to weed out
20 meritorious claims as well as unmeritorious claims.

21 One other procedure that's been suggested is
22 that at certain points of the process an employee or the
23 worker, the complaining party, be prohibited from opting
24 out to federal court as is now their option with certain
25 limitations and guidelines. If I've been in the UADD

1 process for a particular amount of time, or if it looks
2 like the UADD process is going nowhere, I can say, well,
3 enough with this, we're going to go to federal court.
4 For various reasons, many of them financial and complex,
5 that is often an extremely important right for the
6 worker to have.

7 It's been suggested that somehow after the
8 employer puts in all its hard work and effort into the
9 process, the employer deserves some sort of result
10 before that evolves into a federal court case. I can
11 understand that sort of subjective need to get some sort
12 of feedback and validation, but that should not override
13 a person's right to seek federal court access to enforce
14 federal constitutional rights.

15 That being said, I'd like to just perhaps
16 mention one issue that's of slightly greater, it has
17 much greater effect on workers' claims in general, and
18 that is something called the use of after acquired
19 evidence. To the extent that this panel has any
20 influence or power to make suggestions to influence
21 legislation or EEOC guidelines, anything of that sort,
22 it should be aware of what's called after acquired
23 evidence which hangs like a sword above the neck of
24 every person attempting to assert a civil rights or an
25 employment discrimination claim.

1 What after acquired evidence is is if I've
2 applied for a job 10 years ago, I've been working with
3 no complaints whatsoever about my performance for 10
4 years, I am fired because of my age or my race or my
5 nationality and I file a lawsuit based on that. No
6 matter how much discrimination the employer has engaged
7 in, that employer can go back, look at my employment
8 application, find out anything that I may have misstated
9 or misled him or her on on that application, and justify
10 its firing based on that, although it had no knowledge
11 of that at the time.

12 After acquired evidence should not be confused
13 with what is called a mixed motive. A mixed motive is
14 specifically dealt with in the 1991 Civil Rights Act,
15 and that is where if I am fired and my employer at the
16 time I am fired has both legitimate reasons and illegal
17 reasons to fire me, then the 1991 act takes care of
18 that.

19 The courts so far are the only ones who have
20 addressed the issue of after acquired evidence. The
21 basic concept arose in a very egregious case. It was a
22 case involving State Farm Insurance where they had an
23 employee who had admittedly falsified hundreds of
24 documents. On appeal to the Tenth Circuit Court of
25 Appeals in Denver the court quite rightly said, well,

1 yeah, even if State Farm has discriminated against this
2 person, we don't want to have to force State Farm to
3 rehire him, so the court said he really had no right to
4 that job in the first place, no matter how badly State
5 Farm discriminated, and they assumed for the purpose of
6 this decision that State Farm had discriminated based on
7 age and religion. They said because this person had
8 lied in the past, he was entitled to no relief
9 whatsoever, and it kind of confirms that bad facts made
10 bad law because those are extremely egregious factual
11 situations.

12 It's a horrible law. It's been used in
13 reported decisions here, for example, to justify
14 Hercules' termination of a woman who misstated the ages
15 of her children and said that she had not before applied
16 at Hercules, even though she had filled out an
17 application several years before. It was used in a case
18 that my office handled for a time in which a woman who
19 admittedly had an extreme anxiety disorder who put her
20 psychoactive drugs on the application, who put the name
21 of her psychiatrist on the application, was then offered
22 the job, was then discriminated against, and in our
23 opinion based on her disability the other side said,
24 wait a second, she's entitled to no relief because she
25 said, yeah, she has been a hundred percent disabled. In

1 the past she says a psychiatrist, she takes these
2 anti-anxieties, but never said she had depression.
3 Based on that after acquired at the time, they had no
4 knowledge at the time they discriminated against her,
5 the judge very likely, if his prior remarks are an
6 indication, will throw her out of court, regardless of
7 how egregious the discrimination against her was.

8 There was a Supreme Court case pending in
9 which the Supreme Court had agreed to hear this issue.
10 Because circuits are widely split on how they handle it,
11 with the Tenth Circuit, of which Utah is a part, being
12 the very most conservative, denying a victim of
13 discrimination, all relief based on after acquired
14 evidence, other circuits saying, for example, and the
15 EEO publishing an opinion saying that if they discover
16 after acquired evidence perhaps that can be used to
17 prohibit or restrict future relief such as
18 reinstatement, but should not be used to restrict past
19 retrospective relief such as back wages.

20 MS. RICHARDS: Mr. Pace, let me interrupt you
21 just a minute. We have sort of a time deadline here, so
22 --

23 MR. PACE: Okay. Let me just say that case
24 before the Supreme Court was settled. Therefore, while
25 it was still pending, while argument was still pending,

1 therefore, it's still an open question. Going back just
2 very briefly to the decision I make as a plaintiff's
3 attorney as to whether or not to represent someone on a
4 contingent fee basis, knowing that an employer,
5 especially a large employer, is going to comb through
6 that person's records of every sort, nature, no matter
7 how private, confidential, no matter how long ago the
8 records occurred, and knowing that some judges in Utah
9 are going to allow that, I'm extremely hesitant to take
10 employment cases. That's an issue that needs to be
11 addressed, if not by Congress, then by somebody it needs
12 to be addressed, and those are my prepared remarks.

13 MS. RICHARDS: Thank you very much. We have
14 just a few minutes for questions from the committee, Mr.
15 Pace.

16 MR. MULDROW: Could you expand a little bit on
17 what you mean by lack of formalized procedures by UADD?

18 MR. PACE: There are no published formal
19 procedures. They may have some internal ones. When I
20 am in state court, federal court, I can open up the
21 Rules of Civil Procedure and I know what rules everybody
22 is playing by. Whether I'm for the UADD, the statute is
23 fairly -- I mean it's very broadly worded. I looked at
24 the Utah Administrative Code, and it doesn't give me any
25 suggestions with regard to what happens if one party

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1 wants to have an ex parte communication with the
2 investigator, communication by themselves, when that's
3 appropriate, when that's not appropriate and why
4 extensions of time might be granted, whether or not an
5 extension of time must be -- the other side must be
6 given a notice of such an extension so they can either
7 complain, or at least at the very least know the
8 extension was granted, those types of procedures whereby
9 the rules of the game are spelled out and everybody
10 knows the rules by which they are playing.

11 MS. RICHARDS: Any other questions for Mr.
12 Pace? Thank you very much. We certainly appreciate
13 your statements.

14 MR. PACE: Thank you very much. I appreciate
15 the opportunity.

16 MS. RICHARDS: Our next presenter is Margaret,
17 and I hope I'm pronouncing your name correctly,
18 Grochocki.

19 MS. GROCHOCKI: Yes.

20 MS. RICHARDS: And we will let you introduce
21 yourself as well.

22 MS. GROCHOCKI: My name is Margaret Grochocki.
23 I'm currently Senior Employment Program Manager for Salt
24 Lake County Division of Aging Services. Our program,
25 and I'll briefly describe it, is one of employment. We

1 basically provide opportunity for employment through
2 training, support services and community awareness of
3 persons age 65 or older. When Ms. Craft talked to me,
4 ~~I~~ ^{she} pointed out ^{that} I'm fairly new at this position, and in
5 this field, I ~~says~~ ^{said}, well, I'll give it my best try, ~~and~~ I
6 thought there'd be plenty of information out there for
7 me to find and to put together and compile to provide to
8 you. I have found out there is not.

9 I have contacted numerous people who provide
10 services to the elderly. I've been to libraries. I've
11 researched ~~out~~. There is not information specifically
12 for Utah on age discrimination. Talking to
13 professionals that I deal with, they say no one really
14 wants to admit there might be this problem in Utah,
15 hence, no studies have been done on it. I briefly have
16 given you the description of my job, what we do in Salt
17 Lake County.

18 I mentioned to you, and you've probably heard,
19 that Utah is experiencing a positive economy basically
20 compared to the rest of the nation. Because of our
21 unemployment rate, it's basically stated that our
22 discrimination may be of a less severe nature than in
23 other strong economies. Unlike other forms of
24 discrimination, age is not something that always is
25 based on hate, but on misconceptions. Employers assume

1 that the older worker will have more illnesses and
2 accidents. Employers also assume that these workers are
3 too old, and the adage you can't teach an old dog new
4 tricks is applied.

5 Recently one of our clients came in the office
6 the other day, and she has good computer skills, better
7 than mine. She finds that when she goes out and applies
8 for a job a lot of employers do not think someone of her
9 age is capable of learning a computer or having these
10 skills, and it made me reflect back on my statements. I
11 often say, gee, I'm surprised at my age I know the
12 computer, ~~and I have to~~ and it concerned me that even
13 ~~though~~ I was having those kinds of thoughts in reference
14 to me.

15 Salt Lake County Senior Employment Program
16 clients have several specific profiles. One, initially
17 they are sometimes retired with a pension and looking
18 for an outlet for their skills and energies. Second,
19 may be a former employee, a victim of recession, often
20 worked 25 years and never had to look for work. Seventy
21 percent of our clients are unmarried females with little
22 work experience, if any, or if they had it's very
23 sporadic.

24 My staff working with employers in Utah found
25 four concerns with the older workers. One is they'd

1 lack the skills needed for today's industries as
2 referenced with the previous case of a lady who found
3 out no one believed she had computer skills. Employers
4 say they have found older workers to be inflexible, that
5 they have a hard time having younger individuals as
6 supervisors. Three, they do not follow instructions.
7 They feel that these people may say, well, I know
8 better, I've had more experience than you have, and
9 fourth is illness.

10 It's interesting Utah differs from the
11 national priorities which tend to be illness, too slow,
12 and cannot follow instructions, so Utah is a little more
13 tolerant with some of the things ^{such as} ~~as being~~ illness as ^{being}
14 number one nationally, but it's number four in Utah.
15 Sometimes the older worker or job seeker promulgates
16 these misconceptions. As part of Salt Lake County
17 Senior Employment Program we offer classes in technical
18 assistance and support for these individuals.

19 The older worker has evolved a culture which
20 supports the ideas of strict interpretation of tell the
21 truth. My staff in their presentations have found that
22 many employers, especially those with a small number of
23 employees, plus the people coming in for jobs, have no
24 idea what the current laws are and what is proper for
25 application processes, and an older worker tends to

1 feel like in the past when someone asks you a question
2 you tell them the whole truth, nothing but the truth.
3 They don't understand that you don't have to answer the
4 age question any more.

5 The older worker sometimes has a great respect
6 for authority. If you are asked a question by somebody
7 who has power over you you usually answer it, and there
8 are some problems with the older worker who assumes that
9 because you're older you may be treated a bit
10 differently by those who are younger, ~~and sometimes~~

11 ~~this~~ ^{this} seems to be a problem specifically in Utah with ^{respect}
12 ~~culture~~ ^{to age.}

13 I've attached for the committee a percentage
14 of change of Utah population, ^{seniors} gained two percent a year
15 so far in statistics, also some forms in our office that
16 we have developed to guide our clients through some of
17 these processes. I don't know if I have any answers for
18 you, but it did concern me I couldn't find anything out
19 there, and I learned that our library has a new research
20 system that I wasn't aware of and had to learn some new
21 skills myself finding out this information, but you will
22 note my statement Salt Lake County last year recognized
23 the need for more programs for seniors to find
24 employment. They took the one allocation Aging Services
25 was given for an employee and put it into the Senior

1 Employment Program. Salt Lake County feels it's
2 extremely important, and we are working hard to work
3 with employers to open up this field.

4 There are some positive things to point out
5 about the University of Utah Hospital, and they have a
6 program where they have four managers who feel that the
7 older worker is a very good asset to their programs.
8 These people come in on time. They're a great example
9 to the other workers, and, of course, they're a good
10 balance, and in our culture which we tend to maybe lose
11 ~~our~~ touch ^{with} the different generations, they have found
12 that this has put a positive atmosphere to the workplace
13 having the different age generations in one place. I'm
14 done.

15 MS. RICHARDS: Thank you very much. Does
16 anyone have any questions of Ms. Grochocki?

17 MR. MULDROW: Just from your experience, how
18 would you assess the degree to which age discrimination
19 is a problem in Utah? According to the figures we have
20 here, and in terms of complaints filed with the Utah
21 Anti-Discrimination Division, almost 18 percent of the
22 complaints filed last year were age discrimination.

23 MS. GROCHOCKI: I guess if I would maybe
24 clarify your information a little more on age
25 discrimination, basically those people who had been

1 working and got replaced because it's much easier to get
2 rid of one person than two people, younger, lower paid
3 than the ^{one} higher paid person. We have found that with my
4 program specifically we're out to find jobs for these
5 individuals. We have few grants. We work with
6 employers, that these people are willing to work with
7 us, and so I have no information. I think the attorney
8 probably has a better view for you.

9 MR. MULDROW: To what degree do older people
10 utilize the services of the Utah Industrial Commission
11 to resolve their problem in terms of discrimination in
12 employment?

13 MS. GROCHOCKI: Again, I think I'm out of my
14 league. As I said, my office doesn't really deal with
15 that side of it.

16 MR. MULDROW: Are you aware of the procedures
17 of UADD and the role that it plays in employment
18 discrimination?

19 MS. GROCHOCKI: I am aware ^{of this as} ~~from~~ a person who
20 has read newspapers and so forth that ~~on the side~~ they
21 don't have much teeth, and I've ^{not} been ~~not~~ pleased with
22 the processes ~~and has~~ to deal with all the numerous
23 sides of discrimination, not specifically age, ~~and that~~
24 ^{this issue came} ~~has come~~ to play approximately a year ago in the state.
25 I believe ^{this issue} ~~it~~ really came ^{to view} through. I believe a news

1 reporter or something has followed ~~me~~ up on that. That
2 had me concerned. I understand ^{there was an} independent ~~there was a~~
3 commission to study this issue. I'm aware that it is
4 not what we would like it to be, but that's not as a
5 professional, but as a citizen.

6 MS. HUTCHISON: Professionally your
7 responsibility is to help people find jobs, not to find
8 out why they left the last employment?

9 MS. GROCHOCKI: No. If I did find problems in
10 why they ended up leaving the last job, then it's my job
11 to refer them to proper places to get help they need.

12 MS. HUTCHISON: I too have heard quite a few
13 complaints about people who have been in jobs for a long
14 time, and then when they were getting close to
15 retirement age they were let go to save money and for
16 other kinds.

17 MS. GROCHOCKI: There's numerous cases. One
18 of the main problems with one of the older workers too
19 is it is very hard for them to reconcile the current
20 existing income situation. No matter what age, people
21 who are let go from a job now very often will not find
22 something comparable to what they've had before and will
23 have to take that pay, and this is extremely hard for
24 individuals that in a lot of cases they'll have kids in
25 college and certain things, and for them to be out

1 looking for a job and not even get paid for what they're
2 worth, that's heart breaking to me.

3 MR. MULDROW: If somebody you were trying to
4 help obtain employment and counsel encountered
5 discrimination because of their age, what would you
6 advise them to do?

7 MS. GROCHOCKI: Seek legal help.

8 MR. MULDROW: Get legal help you say?

9 MS. GROCHOCKI: To help us with these things
10 we have Outreach. We have the resources in Salt Lake
11 County to direct these people where they need to get the
12 help. To me, I'd be highly upset and work my tail off
13 to make sure justice was done, but that's --

14 MS. RICHARDS: I understand that you said 70
15 percent of your clients were unmarried women, so I
16 assume these are displaced homemakers who have not been
17 in the workplace prior to this point?

18 MS. GROCHOCKI: Basically, ^{we also} ~~or we have not~~
19 ~~numerous, but~~ ^{have} two to three referrals from the homeless
20 shelter. We've recently had a lady come into our
21 program, which is the Title 5 side which provides a
22 stipend like \$4.25 an hour until we get them proper
23 training, who had a basic job background, but basically
24 needs something right off the bat and a little bit of
25 training^{to} get used to the Utah job market. She wasn't

1 from here, and we've now placed her into the sheriff's
2 department, and they have assured me that when an
3 opening comes up that she'll have first dibs at it, so,
4 yeah, she's divorced. Sometimes they're displaced, some
5 have no skills. We've got several ladies who have never
6 seen a copy machine before. So our program takes those
7 who have some skills, move them, or we try to provide
8 some ~~group~~ work experience, allow them to develop some
9 skills, learning to fill out time sheets, resume
10 training, plus some case management. We have several
11 individuals who are clinically depressed, and we work
12 very hard to get them proper professional service that
13 they have so they can get on with life and have a
14 happier life.

15 MS. RICHARDS: But you're essentially
16 acclamating people, not taking people who have been in
17 the work force, finding them new jobs necessarily?

18 MS. GROCHOCKI: Not at this point in time. I
19 have a vision and goal of what I'm going to do. Next
20 year will be different, but currently our focus has been
21 to try to retrain, and we do have the services
22 available to help people who have lost their jobs get
23 the job training, job application skills they need to
24 learn how to interview after 25 years not having to
25 worry about a job. We have those resources available

1 and will be concentrating on providing them. That's my
2 goal for six months.

3 MS. CRAFT: Following up on that question of
4 resources that you provide people who were in the work
5 force, is that another component or is that another
6 program? Say you have someone who worked 25 years, 15
7 years, they come to you and they are looking for another
8 job. Would you help them, or would they go to another
9 component or another program to get those services?

10 MS. GROCHOCKI: Well, we work in conjunction
11 with Salt Lake County, so there's a lot of interaction
12 between the two. *I have only been* two months into the program, we're not
13 that far yet. I see that as my long range goal, as to
14 the fact that the commission did give me an additional
15 employee to expand these services. Right now we've been
16 grant base funded, and this wasn't really the intent of
17 the program, but if you'll read why we got that extra
18 allocation for the additional employee, that is our
19 goal, to be able to help more and more people who are
20 maybe not income eligible, but who need that extra
21 little help to learn how to do their resume, or how to
22 handle an interview in today's world.

23 MS. CRAFT: So what happens to those people
24 that they don't fit the JTPA requirement based on
25 income? Where do those people go?

1 MS. GROCHOCKI: Okay. We do have some
2 referrals, Job Service, and things like that, and I will
3 be strengthening that. I've only been in ^{this position} ~~it~~ two months.
4 The program had a transition in managers over the last
5 year, and so we have fallen down in a few places, but
6 that will change.

7 MS. CRAFT: So ^{they} may be referred to Job Service
8 or whatever. As part of your intake information
9 process, do you talk to your clients about what their
10 employment rights are?

11 MS. GROCHOCKI: That's part of the training.

12 MS. CRAFT: Do you counsel them on what
13 questions can't be asked, what can be?

14 MS. GROCHOCKI: Yes. Notice on the end of
15 this is provided in one of our workshops what in the
16 State of Utah are acceptable questions and information.

17 MR. MARTINEZ: What kind of wages are we
18 looking at for these kinds of jobs that you're placing
19 them in?

20 MS. GROCHOCKI: Average is probably about
21 \$5.25 an hour with benefits. To me benefits for this
22 population, the senior, is extremely important. On our
23 Title 5 we run through our Salt Lake County payroll
24 system they're allowed the health benefits that Salt
25 Lake County provides its employees, ~~DEHP~~ ^{DEHP} and those kind

1 of things. We provide a physical at the beginning. We
2 had a gentleman who had extremely high blood pressure.
3 We immediately made sure he got into the hospital, got
4 that checked. Those kinds of services are provided to
5 those clients. A lot of times we have discovered some
6 health problems that they were not aware of because they
7 could not afford these kinds of services, so we feel
8 very proud, even though the wage is \$4.25 an hour, we
9 provide some health benefits. They get FICA and that
10 stuff taken out, so it is low, yes. It's not the best.
11 I hate to say it's better than nothing, but with some of
12 the benefits it's a great asset to these individuals.

13 MR. TONG: Are there some financial
14 qualifications?

15 MS. GROCHOCKI: For the two grants that I
16 have, the federal grants, the income eligibility, one is
17 a hundred 25 percent of poverty, JTPA, a hundred percent
18 of poverty, so a single individual can have coming into
19 the home \$726 per month. Most of our clients I see \$500
20 social security checks. At that point in time we also
21 talk to them about eligibility for food stamps, and my
22 goal is to look at the total client and do a complete
23 case management, that we will eventually be able to tie
24 them into the programs they need to be tied into, and if
25 they need medical help they can shift them that way. If

1 they need to have some help in nutrition we provide the
2 training. Tomorrow we're going to have a gentleman come
3 in and talk in an upbeat way of how to survive the
4 holidays being older and quite often alone, plus we'll
5 also provide some training in resumes, so we're trying
6 to look at the whole approach for dealing with age
7 discrimination. It's not quite there yet, but we are
8 aware of it.

9 MS. RICHARDS: Thank you very much. We
10 appreciate your coming, and good luck on your job after
11 two months.

12 MS. GROCHOCKI: Thank you very much.

13 MS. RICHARDS: Our next presenter is Mr.
14 George A. Lopez, and I will ask you also if you would
15 introduce yourself to the committee.

16 MR. LOPEZ: My name is George Lopez, and I'm
17 currently a private consultant on employment relations
18 and civil rights. I'd like to thank the Civil Rights
19 Commission and the committee for this opportunity to
20 speak today during this forum. I commend you in putting
21 together this forum. I believe that discrimination
22 continues, particularly in the area of employment
23 discrimination in the State of Utah. Briefly, I read
24 the other day in the Salt Lake Tribune that Utah was
25 finally funded by the Department of Housing and Urban

1 Development with regards to its Fair Housing Act, and it
2 didn't surprise me to see that we were the last state in
3 the country to obtain this type of funding pursuant to
4 that type of legislation. I think we've had our Fair
5 Housing Act now on the books for about five years.

6 I would like to address the employment side of
7 discrimination because that's been my background. I'm a
8 former investigator with the Utah Anti-Discrimination
9 Division of the State Industrial Commission, and as you
10 heard from Mr. Pace, there are considerable procedural
11 problems that I will try to steer clear from as far as
12 addressing.

13 I think the thing I would like to address
14 today is the fact that Utah has been experiencing a
15 facade, if you will, of civil rights enforcement when
16 it comes to employment discrimination. Picture, if you
17 will, a situation where you're on the job perhaps a
18 dozen or so years, maybe less, maybe more. You may be
19 over the age of 40. You may be female. You may be of a
20 racial or ethnic minority. You feel all is well.
21 You're just now working into a position where you can
22 support the cost of owning a home. You have children.
23 You walk into the job one day and you are fired in
24 essence because of the very thing that you happen to be
25 that you can do nothing about, that is because of your

1 being over the age of 40, your being female, your being
2 black, your being Hispanic, your being of a religious
3 minority, whatever the case may be. You have no power
4 to do anything about that at that particular moment.

5 You've heard of the anti-discrimination
6 division. You've talked to some people. They tell you
7 gather your facts and information, maybe you should go
8 see an attorney, take your complaint to the
9 anti-discrimination division, they will help you.
10 You take that complaint to the anti-discrimination
11 office. You're told that they will do an investigation
12 and that they will determine the merits of your claim
13 and find out whether in fact you really were
14 discriminated against based on those reasons.
15 Suppose that they in fact do that. I won't address
16 right now the amount of time that it might take.

17 Let's get to the point where they actually
18 confirm the allegations that you in fact were
19 discriminated against. They hand you what they call a
20 letter of determination, credited^{ing} your complaint. Your
21 expectations are high. You've gone to the state. The
22 state now has told you we have a law that prohibits^e
23 that, we're funded by a federal agency in order to
24 enforce ^{that} ~~the~~ statute. Just at the point where you figure
25 the state is going to now take some action, they are

1 telling you there isn't anything they can do, you have
2 to go and see an attorney, or you have to take your case
3 to another governmental agency, the EEOC, and you ask
4 them I thought the EEOC funded you to do this, I thought
5 that we had a state law that said that it was illegal to
6 do this, and I also thought that if I convinced you that
7 I in fact was discriminated against this way you, not I,
8 would take up this case and support it in formal
9 proceedings in an effort to bring about compliance with
10 your law, and they'll all concede that that's the case,
11 but they still will tell you there isn't anything they
12 can do.

13 Today there have been some overtures of change
14 after 30 years. They're now looking to provide some
15 enforcement. I understand that now there may be four
16 cases that are docketed for some type of judicial
17 enforcement of the order in support of these complaints,
18 but we've gone ~~by~~^{to} 30 years now since the 1964 Civil
19 Rights Act was enacted and the Utah 1965 Civil Rights
20 Act was enacted. There have been victims like that who
21 have come and gone during those 30 years with very
22 little to show for it besides the fact that they were
23 told yes, you have been discriminated against, and as
24 Mr. Pace indicated earlier, it is very arduous for an
25 individual in that situation to be able to obtain legal

1 counsel and afford the cost to take on what really is
2 the obligation of the state, particularly if we're
3 talking about cases that are systemic in their nature,
4 that is where the discriminatory problem is so prevalent
5 in the community or in the particular industry that
6 we're talking about the chance of that individual to be
7 able to take that kind of a task on and succeed with it
8 is very slim.

9 The 30 years that have expired did not go
10 unnoticed by other states. More of the states in this
11 country actually represent their orders in subsequent
12 judicial proceedings to bring about compliance with
13 their anti-discrimination legislation. It's 1993, going
14 on 1994, 30 years since Dr. Martin Luther King
15 challenged the nation to create a national protection
16 against discrimination, and Utah is still blowing in the
17 wind. We haven't found our way yet, and we still debate
18 today whether we should even have a specific statute
19 that prohibits this kind of discrimination and actually
20 enforces it once we find it.

21 It is argu^{ed}~~ment~~ that we can find administrative
22 enforcement in the Administrative Procedures Act, that
23 we don't need to make that clear^{ly} ~~ly~~ statute or that
24 statutory expression in the anti-discrimination act. I
25 doubt that that will be the case. I think you really

1 need to have clarification in the Anti-Discrimination
2 Act. The procedures are one thing. Those can be taken
3 care of by those charged to manage that office and
4 fulfill the obligation of that statute.

5 Over the last 20 years particularly those same
6 individuals have not hesitated to bolster enforcement
7 legislation in the sections of the labor code over which
8 they also have authority. In fact, in 1988 the
9 commission went to the legislature, as they do almost on
10 an annual basis, and said we need teeth in the wage and
11 hour section of our labor code and they got it. They
12 got ~~penal~~ ^{penalty} provisions. They've always been able to
13 docket the wage and hour claims with the Salt Lake
14 County Attorney or the respective county attorney and
15 they would pursue the employer violator, and let me say
16 again I'm talking about employers who in fact have been
17 confirmed to be in violation of these statutes.

18 It's not my crusade or campaign to go after
19 businesses in general. In fact, I feel that the process
20 that we are looking at today is a duplicative process,
21 and if we can cause the state to change this we can
22 eliminate the duplication of state and federal
23 involvement in these cases, but getting back to it, in
24 1989, in fact in 198⁷ and 1989 there was a move to
25 eliminate enforcement language from the

1 anti-discrimination act during the very same time they
2 were bolstering the wage and hour act. Why not civil
3 rights?

4 I challenge that it's been no accident that
5 for the last 30 years we have not had agency enforcement
6 of the state's anti-discrimination legislation, not when
7 you look across the table and you find that consumer
8 protection has clear unequivocal enforcement, when you
9 see that the tax commission has clear unequivocal
10 enforcement, wage and hour, safety and health. The
11 Industrial Commission that has responsibility to enforce
12 the anti-discrimination act did not hesitate to assign
13 one of its attorneys to represent the case involving a
14 failure of a company to keep its boiler up to
15 inspection, but yet they wouldn't take a case on
16 involving a woman who had been victimized in the form of
17 sexual harassment. I think what would be more
18 impressive perhaps is to bring forth the number of
19 victims who have been given cause findings and didn't go
20 anywhere because they didn't have a state that actually
21 supported those findings.

22 A hundred years ago Supreme Court Justice
23 Harlan questioned the court's reasoning in the "civil
24 rights cases" when they disallowed congress's intrusion
25 into the state's territory, if you will, with regards to

1 a national anti-discrimination policy. Justice Harlin
2 felt that after eliminating slavery that it would be
3 important and necessary to go further and compel the
4 states to comply with the anti-discrimination
5 legislation on a national basis. Seventy years later
6 Dr. Martin Luther King challenged the nation to do just
7 that. President Kennedy answered his challenge, and
8 Congress enacted, put together ~~the~~ Title 7 of the 1964
9 Civil Rights Act. One of our own distinguished
10 professors of law at BYU and practitioner of law Mary
11 Ann Wood has characterized that statute as being the
12 single most significant civil rights legislation in the
13 history of this country, and I agree with her and so do
14 many others.

15 That legislation has been amended now several
16 times, most recently with the 1991 Civil Rights Act that
17 provides for compensatory damages and punitive relief,
18 attorneys' fees, jury trials. We foresaw these things
19 happening as a state, but again today we're not in
20 company with the nation or other states that are
21 matching their statutes with the national legislation.
22 I would ask that the Civil Rights Commission challenge
23 its sister agency, the EEOC, that funds the Utah
24 anti-discrimination agency, to conduct an audit to
25 determine whether or not the funding that they have

1 provided the state has in fact gone to proper
2 enforcement.

3 The EEOC has guidelines and enforcement
4 principles that all state agencies that contract with
5 them have to adhere to. They are fairly clear and
6 unequivocal. You have to be able to seek ~~your~~^{or} grant
7 relief if you initiate cause findings. You have to show
8 you take steps to bring about ^{compliance with} those cause findings.
9 Excuse my anxiety, ~~when~~[≡] I get on a subject like this
10 that's so close to my heart, I get a little disturbed
11 in recalling some of the injustices that we have ^{done} some
12 of the people that I met personally, and I'm a little
13 ^{upset} ~~suspect~~. I question whether or not the light at the end
14 of the tunnel that I'm pursuing is in fact the light of
15 day or other oncoming trains of opposition.

16 I challenge the Civil Rights Commission to in
17 turn challenge the EEOC to really do the kind of review
18 that they're supposed to, and question why is it we've
19 been paying you all of this money over the last 20 some
20 odd years since 1972, ~~when~~[≡] EEOC itself was given the
21 power to sue violators. ~~why~~[≡] is it we haven't seen even
22 one employer that's been confirmed to be in violation of
23 the statute pursued by ~~this operation of~~⁹ the Utah
24 Anti-Discrimination Division? Not one, and that's not
25 been an accident as I advocated earlier.

1 I would now like to take some time to address
2 perhaps some recommendations that I have that maybe
3 others have said or talked about earlier and will yet
4 talk about before this forum concludes. I thank you. I
5 did have a paper prepared. I would like to turn that
6 into you later, along with a civil rights paper that
7 I've also prepared.

8 MS. RICHARDS: Thank you very much. We'll now
9 turn the time over to the committee, and I think Bill
10 has a question.

11 MR. MULDROW: Mr. Lopez, specifically what
12 would you recommend in the way of statutory or
13 procedural change for the UADD in terms of what happens
14 after a cause finding is issued?

15 MR. LOPEZ: I think procedurally the act used
16 to make that question a moot question. It was clear
17 that the commission would take the case and petition the
18 court, if necessary, to enforce its order, and I think
19 that, at the very least, is what it should continue to
20 do today. In fact, it would be my proposal that the
21 legislature restore that clause that was in the act for
22 20 years. Even though it was never complied with, there
23 were two specific provisions. One was that the case in
24 support of the complaint would be represented by an
25 agent or an attorney appointed by the commission. That

1 is, that at the formal hearing that was talked about
2 earlier, instead of having that individual alone there
3 without counsel, in essence you would have the
4 commission's counsel on behalf of the agency's case,
5 much like you have in other administrative proceedings
6 once they have concluded violations *were committed.*

7 MR. MULDROW: It's our understanding that a
8 cause order itself is not something to enforce. It has
9 to be an order. A cause finding is not something that's
10 enforced, but it's an order by the commission after the
11 appeals process which may take two or three years after
12 the finding for cause. Are you suggesting the
13 commission should represent the claimant through that
14 appeals process and then enforce the final order that it
15 issues?

16 MR. LOPEZ: On the contrary. I think the
17 commission should not have personal representation of
18 the complainant in this issue. I think the commission
19 has an obligation to represent the investigatory
20 findings or cause finding, if you will, by its
21 investigatory agency; *that* it take on that case much like you
22 would see the Department of Consumer Protection taking
23 on the case, having confirmed that indeed there is a
24 violation. In fact, the Department of Occupational
25 Safety and Health, which is also under the Industrial

1 Commission's authority and obligation to manage, does
2 exactly that. They have a complaint brought to them.
3 It's a request for agency action. Investigation is
4 undertaken. There is confirmation that in fact there is
5 a safety violation. There is an attempt to conciliate
6 that. That failing, it will be then moved to an
7 attorney representative of that case, an attorney for
8 the commission, and that attorney then will represent
9 that case in the subsequent formal hearings and if
10 necessary in the subsequent judicial proceedings. It
11 makes sense. It's cost effective.

12 What we have now is we have ^{only} a cause finding.
13 ^{the} Both business person and the complaining party have been
14 burdened by this entire process in hopes of some type of
15 closure and finality, and that process at the earliest
16 is about a six month process. It's not uncommon for ^{it}
17 ~~them~~ to last up to four years, ~~two years~~, but, suppose
18 they go through that, they get just to the point where
19 they hope they're going to get some finality, and
20 they're told now you get to deal with the EEOC, another
21 governmental agency, duplicate the cost, duplicate the
22 time delays, duplicate the stress along with that.

23 Again, I say if we can implement a procedure
24 in the system, in the state system, and there's a lot of
25 room for clarification, it really has to be done. Mr.

1 Pace is correct that there hasn't been the kind of rule-
2 making that really ought to be there, but if we can do
3 that, one of the things I would advocate is that we
4 actually provide parity of remedy in the State of Utah
5 so that you would eliminate people opting out and going
6 into the federal system, because that is a cost to both
7 the state and the business person that's impacted by
8 these claims, and it ~~should~~^{would} be unnecessary if we ~~have~~^{had} a
9 valid and anti-discrimination statute that's on par. I
10 know some people would say that will never happen
11 because we can never reach that type of parity. The
12 alternative would be then allow individuals who bring
13 these claims to the state to walk out of the state
14 system and into state court. If the Industrial
15 Commission doesn't want to be burdened with these
16 particular cases, why send them into the federal system?
17 Why not allow these individuals then to take their case
18 into the state court system? Again, that's if the
19 Industrial Commission itself were to issue a right to
20 sue letter.

21 MR. MARTINEZ: Just two brief ones. Sometimes
22 to get through to the truth you go through innuendo and
23 verify it or discard it. I've read about and I've heard
24 this morning about this enforcement provision that used
25 to be in the statute but no longer is. You recommended

1 that they should put it back in. Do you know why it's
2 no longer there or how it got out?

3 MR. LOPEZ: I think it actually was taken out
4 effective 1985. There was, to the best of my
5 understanding, a push by certain constituents in the
6 community that worked with the administrator of the
7 anti-discrimination at the time to in fact neuter the
8 act, and again, I mentioned that that was being done at
9 a time when the national trend was to bolster civil
10 rights protection.

11 MR. MARTINEZ: So you're telling us that the
12 agency itself took the initiative to take that provision
13 out of the statute?

14 MR. LOPEZ: I believe so.

15 MR. MARTINEZ: To your knowledge?

16 MR. LOPEZ: That's correct.

17 MR. MARTINEZ: The second one is, we've read
18 and heard about the fact that the agency received some
19 money to do enforcement. Now and then the rumor is, if
20 you have any information on it, that the agency gets
21 paid per case that it finds no cause or settles. Do you
22 know how that works or if that's even true?

23 MR. LOPEZ: It is true. The agency does get
24 paid I think on average of \$450 per case that the agency
25 completes. If those cases were to move over to the

1 federal agency they wouldn't get that type of funding.
2 They might get, I believe it's something like \$50 for an
3 intake of the case, but having handled that case for an
4 average of six months or longer, as I indicated earlier,
5 often these cases are dumped on the federal agency
6 anyway, so they're paying the state to in essence do
7 what they end up having to do in the final analysis.

8 MR. MARTINEZ: Was there any incentive for you
9 as an investigator to try and close the case or get rid
10 of the case to make a budget or earn money or anything
11 like that? Is there any truth to that?

12 MR. LOPEZ: I recall when I was an
13 investigator there was considerable pressure to simply
14 close the cases. I think I was charged at one time with
15 having an obligation to close 15 cases a month, and the
16 national average was something in the neighborhood of
17 seven cases a month. Actually investigators were rated,
18 their performance evaluations entertain how many cases
19 they closed in a particular month, so there is that
20 inducement to worry about closing cases, as opposed to
21 worrying about the justice of the case.

22 MR. MARTINEZ: Mr. Dedios, in his testimony
23 that he gave to the Utah Task Force, points out that it
24 takes what he calls a seasoned investigator to write a
25 determination, to do an investigation, but I understand

1 from reading the commentaries that the UADD has in the
2 past hired attorneys right out of law school with no
3 experience to write these determinations in closed cases
4 or assist with a backlog. First of all, if that's
5 correct, in your opinion is that one way that a lot of
6 cases are just closed?

7 MR. LOPEZ: In my opinion that was correct I
8 think on two counts. One, it was correct that an
9 attorney^{and} recent law graduates were hired on contract, to
10 write determinations on ~~these~~^{those} cases, having little or no
11 background in employment civil rights, little or no
12 training, little or no understanding in terms of what
13 the whole picture involved in terms of civil rights
14 enforcement, and I do understand that many cases were
15 determined by these individuals during that period of
16 time, most of which ~~are~~^{were} no cause.

17 The State of Utah I think has had less than
18 somewhere in the neighborhood of five percent of all the
19 charges filed with them end up as being cause findings,
20 and studies that I have reviewed and undertaken
21 represent that there's at least a 25 to 30 percent cause
22 finding ratio in most civil rights agencies, so it does
23 suggest that there has been an expediting of cases and
24 also writing of no cause for purposes of recovering
25 federal funding.

1 MR. MARTINEZ: Now, in the task force report
2 it says that 66 percent or so of the cases were found to
3 be no cause. Conversely, that would lead one to
4 believe, but it doesn't state in the task force report,
5 that a third of those are cause findings. You're
6 telling us now that it's much lower than a third. What
7 other reasons does an investigator have for closing a
8 case other than finding cause or no cause? Are there
9 reasons such as a person moves or doesn't want to
10 pursue? Would that account for that differential
11 between five percent and a third?

12 MR. LOPEZ: That's correct.

13 MR. MARTINEZ: What are the other reasons?

14 MR. LOPEZ: The other reasons are failure to
15 contact or locate the complaining party. The
16 complaining party asks for a waiver or transfer of their
17 case to the Federal EEOC so that EEOC may pick it up
18 from there. They simply ask to withdraw the complaint.
19 That happens frequently. They are able to resolve their
20 mutual differences on their own. That's pretty much *the*
21 ~~that~~ gist of other reasons, ^{which} would be working there to
22 cause complainants not to reach the final threshold
23 where they are determined on their merits.

24 MR. MARTINEZ: In your opinion just what's the
25 biggest reason that there was a failure for enforcement

1 then?

2 MR. LOPEZ: I think the biggest reason there
3 was a failure of enforcement was because we had -- two
4 reasons really because one basically relied on the
5 other. Initially the administrative appointees, if you
6 will, I don't believe had an interest in enforcement to
7 begin with. I don't think they had a civil rights
8 cause, because if that were the case, I doubt that we
9 would be discussing this today.

10 Secondly, they in turn relied on the fact that
11 the statute no longer contained the provision that they
12 had to enforce. It was a rather shocking revelation a
13 few weeks ago to find out that the commission now admits
14 that they could have enforced all along, ^{viz-a-viz} ~~visa-vee~~, the ^{Administrat}
15 procedures act, indicating that they simply chose not
16 to. Notwithstanding the specific contract that they
17 undertake with EEOC, and notwithstanding Title 29, Code
18 of Federal Regulation, Section 1601.10(78) specifically
19 requires all state agencies that undertake contracts
20 with the feds to enforce ^{against} ~~again~~ these types of
21 discriminations; to seek or grant relief. so, I think that
22 ^{reason} one[^] begot the other: ↑

23 (The appointees were not favorable to the
24 enforcement of the anti-discrimination act and then
25 neutered the act in 1985, and then again in 1990 took

1 out a clause that said that the agency could petition
2 the court for enforcement of its orders, two simple
3 clauses. Those clauses actually mirrored the model
4 anti-discrimination act that was advanced in the early
5 60's. Many states incorporated that legislation and
6 have not backed off of their obligation to enforce that
7 statute. We did ~~not~~ ^{here,} during a time we were bolstering
8 other areas of law. I'm being redundant, I understand
9 that, but, again, I can't overemphasize the fact that
10 without enforcement, ladies and gentlemen, you have no
11 civil rights.

12 MS. RICHARDS: Thank you very much, Mr. Lopez.
13 We appreciate your presentation to the committee. Our
14 next presenter is Mr. Mani Seangsuwan. We will ask you
15 if you would introduce yourself to the committee.

16 MR. SEANGSUWAN: My name is Mani Seangsuwan.
17 I lived in ~~Banaroff~~ ^{Bangkok nearly} ~~for~~ 30 years and then come here and
18 live in the United States. I am here today representing
19 the Asian Association of Utah, and I am the Program
20 Coordinator of the Pre-employment Training and Adult
21 Education Program, ~~where~~ ^{where} I have been working with the
22 agency for over eight years and over ~~look~~ ^{see} different types
23 of programs with this organization.

24 ~~Of course~~ our agency is a community based
25 organization which has been operating since 1977, and

1 our mission is to advocate equality of Utah Asian
2 Americans in employment, social adjustment, education,
3 and other social services. We ~~do~~ have ^{many} ~~more~~ programs to
4 work to serve our community members. It should be noted ^{that}
5 the agency also works very closely with other
6 organizations which we have to use bilingual stuff to
7 work with them; namely, Cambodian, Chinese Society,
8 Laos, Korean American Society, Philippino American
9 Association, and more with other communities such as the
10 Tongan ^{and Samoan} ~~community~~ ^{in Utah}. We have worked with job employment
11 for many years since the beginning of the agency in
12 1977. Through working with those organizations I have
13 mentioned we ^{help} ~~work with~~ immigrants and refugees; ^{which} ~~teaching~~ ^{the}
14 job skills, ~~counsel for American culture~~.

15 We utilize volunteers of the organization to
16 work with our staff and board members in helping to work
17 with our clients. ~~Then~~ ^{we} outreach with job hunting and
18 problem solving. Our staff, by working with them, it is
19 not quite easy because of using many languages in our
20 ^{community} ~~agency~~. From time to time different organizations call
21 us, can you help me, can you help us with ^{Asian} ~~this~~ languages.
22 Sometimes we have to say no because there are just too
23 many to handle. For 17 years the Asian Association of
24 Utah or AAU has been providing bilingual services to
25 serve ^{Asian refugees} ~~liberty~~ and immigrants. The majority of refugees

1 come from Asia, However, we have the contracted person
2 to work with refugees from Russia ~~sometimes~~ and also
3 Hispanic if ~~they~~ ^{ad} need it.

4 The problem about employment that is very
5 hard, you know, when we train our clients in our agency
6 we do have a classroom training, all kinds of
7 information relating to the American job market we have
8 to give to our clients. At least one client receives ^{the}
9 ^{training from} ~~for~~ three months, ~~even so long~~ ^g to one year, to find
10 out, to see if they can be placed to work in the right
11 place.

12 The thing that we are really concerned about,
13 helping the refugees, those who come to America who have
14 been in trouble in ^{the} ^{Camps} ~~refugee~~ ^{comes} for many years. For
15 example, one Asian boy lived in ^{his} ~~this~~ country when he was
16 nine years old and ^{then he came to} ~~this~~ day ~~refugee~~ ^{and} ~~can mean~~ Thailand ^{and}
17 ^{line there for} another five years and then ^{went} ~~go~~ to Philippines another
18 ^{one} year, and ^{Came} ~~coming~~ to America when he reached ~~to~~ 15 years old.

19 A boy 15 years old doesn't have enough, even his old
20 native ^{language} ~~language~~ from ~~stay in~~ Thailand and then ~~stay in~~
21 Phillipines, basic English ^{was} ~~was~~ taught to this ^{young} ~~refugee~~. ⁱⁿ
22 ^{America, a} ~~when~~ 15 years old, ^{has to be placed} ~~come here~~ in junior high school.
23 Think about ^{this} ~~even~~ your own children. How can ~~these~~ ^{this} boys
24 who never ^{had} ~~have~~ enough education and then place ^{him} ~~them~~ in
25 junior high school and the boy has to walk around and

*in school for
nothing.*

he can only

1 around ~~his~~ he doesn't know what to do, ~~and look at him,~~
2 smile. Even though he had been trying very hard to get
3 a job but still no luck. However, because of the AAU
4 program can help ~~them~~ ^{him} with vocational counseling
5 program, sit down with ~~them~~ ^{him}, screen ~~them~~ ^{him} again and see
6 any possible way to help ~~them~~ ^{him} to get through, at least
7 get something to do.

8 We don't want our young people to be involved
9 with gangs, but how many times on T.V., newspaper have
10 you heard of Asian gangs involved in the community?
11 Even now from California those gang members need
12 vacation, come to Utah, quiet place to be around, but
13 whenever come across to the agency that we can help them
14 and serve them we are willing to do so. We come across
15 with the program that we have to serve, quite simple
16 JTPA proposal, require that those who will be eligible
17 to be in our program ^{must both grade reading/math} pass, see how can immigrants from
18 Asia come here and read English and pass for JTPA. <sup>requirement
segment</sup>
19 However, but because we would like to find out what can
20 we do, how can we serve, we have to go around and get
21 support from different resources, different people,
22 finally come down to ^{3rd level} ~~well, even though why don't try~~
23 ~~third grade reading or first grade.~~ It's still hard,
24 hard to get the people to enroll into the program. We
25 have to work again, get all the reasons, present them

1 the idea, and then come to the level that we can serve
2 the people. That's the effort that agency tried to do
3 in helping people to get the thing done.

4 Why we just only think that helping them to
5 get a job immediately and we cannot give them the basic, ^{ESL}
6 the thing that they can stand for, even learning English
7 in order to help them to see where to find a job. of
8 course, we use bilingual, Chinese, Korean, Cambodian,
9 but when they go to the job, to the marketplace, to the
10 place that they have to do for long term, and then come
11 to the point that they can work only six months or three
12 months and be laid off without understanding what
13 happened, what's going on, and later find out because of
14 ~~your~~ ^{limited} English, because of your educational background,
15 not enough to work with our company, our agency, that's
16 sad, but, however, our agency has been trying very hard
17 in order to help these new immigrants and refugees. ~~of~~
18 ~~course,~~ they have to take care of their own family, like
19 all of us. AAU has been a good network.

20 Many are not adequately aware of their rights
21 under the Immigration Reform and Control Act of 1986.
22 Over the past five years the labor movement has been in
23 the forefront of the fight to get equal employment
24 opportunity for all documented workers. Being
25 unfamiliar with this country, they are afraid to face

1 employers because of the lack of information, hard to
2 complain or they are afraid to talk to the employer or
3 supervisor. They do not fully understand the rights and
4 responsibility under this law. Again, we try to help
5 them to understand where even though you are from
6 another country but you are here, we have equal
7 opportunity, the same right to do so, but it's still
8 hard for them to feel free and be happy.

9 Many problems that we have to work with our
10 clients, such as they have enough skills to work but
11 limited English, and then the employer just says that,
12 well, no, we need you to speak better English in order
13 to continue to work with us, or they prefer our clients
14 to work part-time instead of full-time, just temporary,
15 not permanent. Sometimes they look at us and hire, just
16 only give the full-time job but no benefits because it's
17 harder to give them all the information. *These are the*
18 information that *I present* ~~can be sent~~ to you today. Thank you.

19 MS. RICHARDS: Thank you very much. Does the
20 committee have any questions? Mr. Martinez?

21 MR. MARTINEZ: You've raised a very
22 interesting point. In order to be employed you must
23 have other services at your disposal, education, health,
24 types of services to get you to the point that you're
25 considered employable, and you're the first one that's

1 raised that. I think that's a good issue. There have
2 been a lot of studies done about refugees having anxiety
3 and depression based on traumatic experiences that
4 they've had, especially refugees that don't speak the
5 language and come directly from Southeast Asia, and I
6 think the latest studies, the numbers I've seen in Utah
7 were getting a large influx of that kind of person. Do
8 you see the services available to these people as
9 adequate, or do you see a failure of the services,
10 mental health, medical, educational services as not
11 reaching these people or not being able to deal with
12 their specific problems? How do you see the services?

13 MR. SEANGSUWAN: Well, ~~of course~~ at this
14 point I can see that the federal or the state agency had
15 been trying very hard in order to ~~have support~~ ^{serve this group}, for
16 example, Job Service, that they do have the bilingual
17 or refugee unit. We do have a mental health agency,
18 that the bilingual start working with the agency, but
19 some of the other agencies, of course, I understand that
20 they cannot hire ~~the employees, you know, who speak~~ ^{all bilingual}
21 different languages. ^{in our community} As an immigrant ~~country~~ ^{community} like our
22 ~~country~~ ^{Country} here, we have more Russian, Czechoslovakian,
23 European refugees. ^{live here} The government, ~~you know~~ or the
24 state agency cannot provide all of that to us. That's
25 why, ~~it is like an agency like~~ ^e the Asian Association of

1 Utah ^{has been} ~~to~~ try^{ing} to serve them.

2 MS. CRAFT: Sir, I'd like to ask, does the
3 Asian Association, or have you ever acted as an advocate
4 for clients who may have experienced employment
5 discrimination? Have you ever gone in as advocate for
6 any of your clients to employers?

7 MR. SEANGSUWAN: Well, mostly I will try and
8 keep quiet and then talk to a friend, to relatives and
9 come across to the client, but we bring the subject to
10 our staff meeting and see what we can do to help them.

11 MS. RICHARDS: Any other questions? Thank you
12 very much, Mr. Seangsuwan. We appreciate your
13 presentation to the committee. Our next presenter will
14 be Ms. Jeanetta Williams. Okay, we will wait just a
15 couple of minutes and then we may need to take our break
16 now. We've got a break coming up, and then take Ms.
17 Williams next. In fact, why don't we do that, take
18 about a 10 minute break and see if Ms. Willilams is
19 here, then we'll continue with her presentation.

20 (Recess.)

21 MS. RICHARDS: We will go ahead and get
22 started. I am informed that Ms. Jeanetta Williams is
23 unable to be with us this afternoon, and Mr. Lenores
24 Bush of the Utah Opportunity Industrialization Center
25 will now address us, and we will ask you if you would

1 introduce yourself, please.

2 MR. BUSH: Okay. My name is Lenores Bush, and
3 I'm the Executive Director for the Utah Opportunity
4 Industrialization Center which is a private non-profit
5 cooperation that's been doing business here in the local
6 community going on 21 years now. I have been with that
7 agency for some 18 years, and as to Executive Director,
8 for 17.

9 Utah Opportunity Industrialization Center is a
10 program that serves the seriously disadvantaged and on a
11 scaled population on the Wasatch Front south, and
12 helping those individuals become self-sufficient, and in
13 removing multi-barriers would provide an alternative
14 educational program which is basic skills, GED, and the
15 high school completion program. We provide vocational
16 training. We provide job placement. I need to talk
17 about both agencies to talk about this area that we talk
18 about, employment discrimination.

19 Back in 1975 the NAACP and my agency made an
20 agreement. NAACP is a civil rights organization. OIC
21 is a direct service organization, but they both come out
22 of the civil rights movement. NAACP was on the
23 forefront because primarily the mass was not being
24 included in the remedy for discrimination, and that is
25 as those doors must be opened by NAACP, many of our

1 citizens were not able to take advantage of those
2 opportunities because they haven't got the skills, the
3 ability, a way to get through those doors to take
4 advantage. That was our primary purpose, was to do
5 that, and I say that primarily for one reason. In 1980
6 I went to NAACP and became the chairman in the regress
7 committee in the local community, and for years and
8 years we pumped cases into the anti-discrimination
9 division, as well as the EEOC, and we just came to the
10 conclusion to my administration that it was not working,
11 and it was not primarily because the business was not
12 doing anything. It was primarily because government,
13 states, cities, and counties did not take a lead in
14 enforcing anti-discrimination, civil rights enforcement,
15 so no one did.

16 A few years later OIC came around to be one of
17 those agencies to assist businesses and in reaching
18 their unutilization rates and bringing up those
19 unutilization rates. If you look on the Utilization
20 Rate Handbook by Job Service you can see us as one of
21 five agencies as listed in the back of that book to
22 assist employees in doing that, and we just felt that it
23 came to a point where we just needed to work out
24 something that worked a little bit better than what UADD
25 and EEOC and everybody else was doing. We came up with

1 the conclusion that through my administration that as
2 long as we sit down with the business, we talk to them
3 personally about the complaint, we took that complaint
4 on face value at our agency, and we took 30 days to
5 resolve it before we went to anti-discrimination, EEOC
6 or UADD, we had a better chance to solve a case at that
7 level, get some remedy that the complainant would be
8 much more satisfied with than going through all the
9 restraints that we would do with the agencies and
10 nothing really happened.

11 We have right now about 37 cases in one year
12 that go back to 1987 that there has not been a cause
13 finding, there has not been anything, but no one can
14 tell us whether they had been closed, had not been
15 closed. We thought this is part of this 400 and so
16 cases that was closed out, but we can't determine that
17 yet.

18 I personally, and this is just my opinion,
19 this is not NAACP's opinion, it is not OIC, I think the
20 agency has lived its length, unless it's willing to do
21 the job that it has set out to be done. That is if
22 they're not willing to enforce the act as it is or as it
23 were, then we need to stop putting resources into those
24 agencies and let's disband them, and then we will let
25 the lawyers take over because we will take it to court

1 on the wrongful discharge and we will sue as a criminal
2 matter, and we can go for punitive damages and we can go
3 for lawyer fees, and we don't have to worry about
4 whether you can get those remedies under Title 7, and we
5 can all go home and we won't have to worry about this no
6 more.

7 I think when the lawyers get rich that there
8 will be some positive constructive change to answer some
9 of these issues, because I personally feel that the only
10 reason I stayed here is because of race, not because of
11 any other thing in the civil rights act. It is the most
12 difficult portion of that act to enforce, okay?

13 Everyone else has a more simple way of demonstrating
14 discrimination than race, and with race we can't prove
15 it, so we might as well get out of the game, and I think
16 for a Civil Rights Commission, if you look at a state
17 who doesn't have a civil rights law, who has never had a
18 civil rights law, and if you think that I'm telling you
19 what you read, the new diversity plan for the State of
20 Utah which does not even come up to the level of the
21 federals, fair civil rights act why we have the problems
22 that we have. Okay, thank you.

23 MS. RICHARDS: Would you entertain a question?
24 Ms. Williams has come, so we don't want to impinge on
25 her time.

1 MS. CRAFT: Mr. Bush, how many clients do you
2 see per year, and of that number how many have
3 employment problems, and how many do you advocate for,
4 how many people on an annual basis?

5 MR. BUSH: I serve in OIC approximately 500
6 people a year. 80 percent of those I put into full-time
7 employment, less than two percent of those loads into
8 government jobs, although goes into the private sector
9 because we have a real hard problem dealing with another
10 form of discrimination which I call institutional racism
11 and not Title 7, and that's the biggest problem that we
12 have to deal with here.

13 MS. CRAFT: Okay, and so would you say 80
14 percent of the people you place in private with private
15 employers, and then of that number how many would you
16 say you have to do some advocacy work on their behalf?

17 MR. BUSH: On the client's behalf?

18 MS. CRAFT: On the client's behalf.

19 MR. BUSH: I would say less than one percent.

20 MS. CRAFT: And you had indicated that many
21 times you're able to solve those conflicts within OIC
22 rather than going to UADD or --

23 MR. BUSH: Yes. We have a strong industrial
24 value council that was set up back in 1975. When there
25 is a complaint and I pick up the phone and say we have a

1 complaint against your company, they are willing to sit
2 down and discuss that. If there is a remedy that's been
3 set up by that complainant to deal with, we can deal
4 with that without going through all of the other stuff.
5 When they go into become a formal complaint then it
6 becomes much harder to solve for me.

7 MS. CRAFT: Thank you.

8 MS. RICHARDS: Thank you very much, Mr. Bush.
9 Ms. Jeanetta Williams of the NAACP is here, and we will
10 have your presentation at this point, and we're asking
11 all our presenters if they would please introduce
12 themselves for the committee.

13 MS. WILLIAMS: Okay. I'm Jeanetta Williams,
14 President of the Salt Lake Branch, NAACP. I have a
15 statement that I'll first read, and for some of you
16 first that don't know, maybe want to be a little bit
17 more familiar about NAACP, we have national offices in
18 Baltimore, Maryland. We have over 500,000 members and
19 2,200 branches. We're in the Region one, and there's
20 seven regions in the NAACP, and our regional offices in
21 Los Angeles, California.

22 We were founded in 1909 also, so we're the
23 oldest civil rights organization in the country. The
24 intentional job discrimination that the NAACP Salt Lake
25 office receives on a daily basis is treatment of

1 employees because of race. We receive normally in any
2 one day roughly about five to eight discrimination
3 complaints. We see people of color denied employment
4 opportunities at a higher rate, and when investigating
5 retention after hiring, we find that promotions are very
6 rare. We see white males as corporate leaders with
7 their friends and relatives being placed or notified of
8 higher profile jobs, eliminating again people of color
9 being hired.

10 Because past discrimination restricted
11 representation in the work force on all levels of people
12 of color, it is non-minorities hearing about the job
13 openings. This is a national problem when people are
14 getting frustrated when there seems no recourse. We
15 have complaints of practice ignoring requests of
16 transfers or assisting to advance people of color into
17 better paying jobs.

18 An employer should provide working conditions
19 for employees to be free of discriminatory intimidation,
20 but too often our calls are from people where derogatory
21 statements are being made directly by the supervisor or
22 in front of the supervisor and no disciplinary action is
23 taken to improve these conditions. Racial jokes or
24 slurs directed at or in the presence of people of color
25 are not to be tolerated as a condition for employment.

1 This type of harassment must be addressed because just
2 as sexual harassment causes undue mental distress so
3 does discrimination. Common practice of stereotyping
4 must not be tolerated. For the most part labor unions
5 of the workplace have bargaining contracts that hold
6 them liable.

7 Because of the changing laws, discharging
8 individuals because of race will never be noted as a
9 factor so as to avoid a lawsuit, therefore, employers
10 would find other ways that the employee did not measure
11 up to the responsibilities of the business, and
12 therefore we see a lot of dismissal on that basis.

13 Our complaints are from individuals that
14 employ in all sectors ranging from corporations, small
15 businesses, as well as hotels. One example is where
16 positions are being eliminated and those jobs are being
17 held by people of color. We have our legal redress
18 committee investigating these complaints, and our legal
19 redress committee consists of, we have four pro bono
20 attorneys and three that are normally seeing these
21 cases. These investigations are reviewed and addressed
22 and in a very timely manner after written background of
23 alleged discrimination is received, a discrimination
24 claim form to NAACP Salt Lake branch. We require
25 everything in writing. They are also advised to report

1 complaints to the Utah Anti-Discrimination Office. For
2 the most part they are always reluctant to do so because
3 of prior backlog cases, but we do urge them that one of
4 the things that they should do is to report any type of
5 discriminations.

6 Some of the recommendations that I would like
7 to see here in the State of Utah and elsewhere would be
8 more sensitive workshop training, mandatory training to
9 corporate leaders, posting of businesses that are not
10 complying to regulations, and I think those postings
11 should be as well in places where people of color shop,
12 all grocery stores, all businesses. Anywhere that
13 people can see the things they should be posted so
14 people will know exactly, you know, who is
15 discriminating and for what reasons.

16 Some of the things as far as the cases that we
17 receive on people that are discriminating against, we
18 have quite a few from a lot of the hotels, and some of
19 those are because they've been in supervisory job
20 positions, and then those jobs are being eliminated so
21 that puts that person of color back on a waiting list to
22 work themselves back up, and some are job
23 discriminations here within the State of Utah, and some
24 places do have unions that they can go to, but some
25 don't, and so we do get a large percent of

1 discrimination complaints.

2 MS. RICHARDS: Thank you very much. Do we
3 have questions for Ms. Williams?

4 MS. CRAFT: Thank you for being here today.
5 How many cases, you said you have three pro bono
6 attorneys on your legal redress committee?

7 MS. WILLIAMS: Yes.

8 MS. CRAFT: How many cases do they deal with
9 on an annual basis? Can you give us an estimate?

10 MS. WILLIAMS: On an annual basis, ones that
11 they actually look at?

12 MS. CRAFT: Yes.

13 MS. WILLIAMS: I would say roughly close to --
14 because not everybody that gets the complaints, I mean
15 everyone that we send a complaint form out to because it
16 has to be in writing, sometimes we don't get them back,
17 but the ones that they do see I would say in any year
18 roughly, you know, 200.

19 MS. CRAFT: That's a pretty significant
20 number.

21 MS. MULDROW: Of employment discrimination?

22 MS. WILLIAMS: Employment discrimination.

23 MR. MULDROW: 200 a year your agency gets?

24 MS. WILLIAMS: At least I would say.

25 MR. MULDROW: And you advise all of those to

1 file a complaint with the UADD?

2 MS. WILLIAMS: Yes.

3 MR. MULDROW: And what percentage of those
4 would you estimate follow through in filing a complaint?

5 MS. WILLIAMS: I don't know which ones do.

6 MS. CRAFT: What happens with the complaints
7 that you get that the attorneys, I guess are bonified
8 complaints or whatever? Do your pro bono attorneys, do
9 they do advocacy work for these people in addition to
10 representing them, or what role does NAACP play in some
11 of these particular cases?

12 MS. WILLIAMS: What the pro bono attorney
13 would do would be to look into whatever allegations that
14 whatever the discrimination might be. If they can
15 resolve it in sending a letter going out and talking to
16 the businesses then they will do that, and if it can't
17 be resolved because of any differences the individual
18 can obtain their own attorney.

19 MS. CRAFT: Do you all keep numbers of how
20 many cases, say, your pro bono attorneys have
21 represented and how many they've been able to solve?

22 MS. WILLIAMS: Uh-huh. They keep track of
23 that and the hours also that they donate.

24 MS. CRAFT: Would we be able to get a copy or
25 get some statistics on what those hours are and how many

1 complaints are resolved?

2 MS. WILLIAMS: Yes, we can get that to you.

3 MS. CRAFT: Okay, because I think that would
4 be helpful.

5 MS. RICHARDS: Do you have any sense of gender
6 place or role as well? In other words, are African
7 American women discriminated against doubly on the basis
8 of both race and gender?

9 MS. WILLIAMS: We're seeing more males being
10 discriminated than the women, but there's women that
11 are, but we're seeing more African American men being
12 discriminated against.

13 MS. CRAFT: I have one other question. What
14 are you seeing in reference to individuals? Are you
15 seeing more concerns with people trying to get a job?
16 Are there more discrimination problems with people who
17 have jobs and have been terminated or whatever or
18 demoted?

19 MS. WILLIAMS: We're seeing more
20 discrimination complaints that are the ones that are
21 already working and they're having problems either on
22 the job or they've been dismissed for any type of
23 reasons, and we do have quite a few that call in for
24 jobs, and we have the job postings that we get from
25 different companies throughout the Salt Lake areas, so

1 we get both.

2 MS. RICHARDS: Thank you very much, Ms.
3 Williams. We appreciate your time. Our next presenter
4 will be Mr. John Flores.

5 MR. FLORES: I prepared a ^{written} ~~witness~~ statement
6 for ~~you~~. ^{the record} I also prepared an outline, ^{because} ~~so~~ I think this is
7 a very important issue you're dealing with.

8 MS. RICHARDS: We do ask you to introduce
9 yourself.

10 MR. FLORES: My name is John Flores. I'm an
11 old civil rights activist and have been very concerned
12 about this agency for the last 30 years, and fought from
13 the inside and the outside, from all sides. I was
14 formerly one of the industrial commissioners here as
15 well, ~~but also~~ ⁱⁿ 1980 and ~~also~~ 1982 I was the staff
16 person to Senator Hatch when he was chairman of the
17 labor committee that had oversight responsibility
18 including the EEOC, and we had extensive hearings on the
19 equal employment opportunity issues

20 One of the things we found out, ^{during the Senate} ~~often~~ ^{hearings} ~~times~~ ^{that} the
21 ^{EEO} ~~commission~~ ^{commission} settled the complaints when they shouldn't
22 have settled ^{them.} ~~the complaints~~. They were so quick to
23 resolve complaints that they found quick remedies, and
24 also ~~they~~ held ~~the~~ employers hostage until they came up
25 with something, though they didn't believe there was
^{even}

*of equal opportunity at
the University of Utah,*

1 discrimination. So my background really ~~is~~ ^{goes for} back. ~~here~~
2 ~~and~~ I was also chairman of this illustrious body here
3 years ago and very much involved in it, and ~~we~~ ^{while director} had the
4 first approved affirmative action, ~~so that's kind of my~~
5 ~~background.~~ ^{young man} Also X worked with the National Coalition
6 during the riots trying to deal with all these issues,
7 and I see in this room some of my colleagues that fought
8 the good battles in the 60's, the Gillespies here and
9 the ~~new guy~~, Lenores Bush.

10 Let me tell you I was totally frustrated ^{with} this
11 morning's ^{hearing} because what came to my mind was the old
12 statement ^{that} of freedom is not a state of tranquility. The
13 rights that we won in the 60's, we think they're won all
14 over, but they're not. It's deja vu all over again.
15 It's like nothing has happened within 30 years with this
16 agency. 30 years ago we were raising questions about it
17 ^{and no one was} taking the complaints seriously. At that time nothing
18 really happened, and I was pretty well insulted when I
19 heard the comment that we need to study it, we need to
20 add another bureaucracy, another study, another
21 commission, and we need to have ~~the~~ sensitivity sessions.
22 My point is this. If an agency can't solve a complaint
23 we don't need it, we can't afford ^{it}. These are tough
24 times, and if we can't resolve complaints we should
25 eliminate. That's the bottom line. As far as I'm

useless bureaucracies

1 concerned I think the agency is exactly that ^{type of} agency.

2 Let me tell you that the recommendations that
3 I've heard and have come out of the committee, ~~what I~~
4 ~~was~~ I would compare ^{them} ~~it~~ to rearranging the chairs on the
5 titanic. The problems are structural problems ^{and} of
6 leadership. You can talk about changing procedure here
7 or the platitudes that I heard about staff here, you
8 know, we've got to get along, those are tough issues.
9 The reality is there.

10 I think it's a very important charge for this
11 commission, that the Utah Anti-Discrimination is ^{the} a sole
12 agency that ought to be dealing with employment
13 discrimination. You really ought to focus on employment
14 discrimination, and under Title ^{VII} ~~7~~ of the Civil Rights
15 Act of 1964 the EEOC was established at that time
16 because poor people couldn't go out and get their
17 discrimination claims handled. There was an attempt to
18 go out and take complaints and look at them, investigate
19 them, and if there's a finding of discrimination, ^{to resolve it} ~~in~~ 1972
20 amendments ~~it~~ gave EEOC the power to take people to
21 court to get the whole remedy.

22 Another key part ~~of this is~~ ^{is} Section 706, ^{of the} Civil
23 Rights Act 1964. At that time Congress said there's no
24 need to duplicate services. If there is an established
25 agency in the state to deal with discrimination ~~we~~ ought

^{the federal agency}
185

1 to defer. ^{to the state} It just makes sense that you didn't have to
2 have two agencies to deal with ^{two agencies} ~~this~~ employers still
3 have to deal with ^{two} universities have to deal with five
4 or six different ^{agencies} ~~forms~~ to resolve ^{cases}, but in 1972 it gave
5 the EEOC the power to investigate, find probable cause,
6 and if they felt there was a case of discrimination, to
7 take it to federal court.

8 Under the 706 section ^{The EEOC} ~~it~~ said if there is an
9 established agency that can follow the guidelines and
10 procedures established under our guidelines we would
11 defer to them and we would pay them a lump sum if they
12 handle a complaint. It just made sense and I was an
13 advocate of that, that Utah ought to be able to solve
14 its own problems, that people ought to be able to go
15 downtown and have their problems solved, and if a
16 complaint is against an employer, he or she ought to be
17 able to go down ^{town} rather than go to Washington because
18 Washington EEOC, as far as I'm concerned, they simply
19 get lost, and I can tell you that from the six days of
20 hearings that we had ^{in the Senate} ~~that~~ we found in that agency was
21 they couldn't even manage their own affairs. They had
22 \$30 million in ^{unliquidated} obligations, and they were only concerned
23 about big class actions, ^{rather than} finding complaints and
24 resolving ^{individual} complaints of discrimination.

25 So it's ~~a key~~ that we have an agency here to
^{important}

1 resolve complaints, to have the power to enforce it, and
2 if you don't have that ^{power} I think you're playing games with
3 people. I think it's short of being a sham. I think
4 it's ^{too} costly to the taxpayers. The employers are
5 harassed and we simply don't need that. It's a very
6 serious issue, and if we don't straighten out this
7 agency and make some recommendations then we ought to ^{eliminate} ~~be~~ it.
8 ~~moving to something else.~~

9 We simply don't need another bureaucracy.
10 What we have right now is wasteful. It's not efficient,
11 and it's not resolving anything, and I don't agree with
12 Representative Pignanelli that we ought to just have
13 another commission to study this or another one to
14 advise us. We don't need that. I think it's an affront
15 to the minority community to have someone say that we
16 need to have another study, that we need to have an
17 advisory council, that we need another sensitivity
18 program. The serious issue is there that we have on the
19 book that says we should not discriminate employment on
20 the basis of race, national origin, sex, and the agency
21 to enforce that is the EEOC who is deferred to Utah
22 Discrimination Act.

23 I really believe what we have now is
24 complacency. Our elected officials think something is
25 being done and nothing in fact is being done. ^{In} ~~is~~ really

a major problem
1 is one of leadership. I would not leave ~~it~~ *the agency* under the
2 Industrial Commission. I think the Industrial
3 Commission, *is unmanageable with three commissioners* ~~and I say, and I toyed with this with my~~
4 *where decisions are made by a trika where* ~~colleagues, what we have there is~~ nothing ever gets
5 done. You don't have anyone that is sensitive to the
6 issues. I had to fight that agency to get sex
7 discrimination guidelines passed, *and* had to fight to get
8 handicap guidelines. *passed* I had to threaten to get them to
9 have open meetings, and if we have that kind of
10 leadership in that agency I think it's endemic to the
11 organization, not to the individuals, ~~that~~ I think it's
12 *unproductive* ~~endemic~~ when you have three people with equal powers
13 trying to make decisions, no decision ~~being~~ *are* made, and
14 there's no accountability.

15 I think if we're serious about *eliminating discrimination* ~~this what~~ we
16 *should* ~~will do is we'll~~ establish a separate agency, and I
17 think Representative Valentine's recommendations were
18 timely, because he's saying we ought to establish the
19 agency and give it the power consistent with the 1991
20 Civil Rights Act and also with the ADA Act.

21 One of the things that came up was a question
22 of the money that is reimbursed. *by EEOC* What drives a system ~~x~~
23 the anti-discrimination is that reimbursement. When I
24 got over there I found out that they ~~did a good job of~~
25 *handled* ~~handling~~ age discrimination complaints, sex

1 discrimination complaints, and race, national origin, *but*
2 did ^{not} handle handicap complaints. You know why? Because
3 they didn't get reimbursed. They didn't get reimbursed *by*
4 *the* federal government. *The handicap law* ~~It~~ was only ~~the~~ Utah Law that was
5 in place, *where* ~~and~~ there were no guidelines, no regulations,
6 no reasonable accommodation made under that act. What
7 has happened is lack of leadership, lack of interest.
8 *The UADD* ~~it~~ was a stepchild of that agency, and to continue
9 having that is to ~~doom~~ *doom* it to fail, so my recommendation
10 ~~is~~ *is* that we take it out of there. If we can take it out
11 of there, renew it, and have it as a separate agency,
12 ~~have~~ *give* it an advisory council with the power to review and
13 make recommendations ~~in a~~ *and* report on an annual basis to
14 the governor and to the legislature as to how effective
15 that agency is dealing with discrimination. I'd like to
16 now answer any questions.

17 MS. RICHARDS: Thank you. Any questions for
18 Mr. Flores?

19 MR. MARTINEZ: In reading some of the studies
20 that you talked about, John, I notice that there's
21 always a section there on the complex impact of
22 employment discrimination on the different communities
23 that are most affected. Can you talk a little bit about
24 what those studies have shown as the complex impact?

25 MR. FLORES: I'm not sure I understand your

1 question.

2 MR. MARTINEZ: Well, if people don't work,
3 they don't make money, they don't spend it in their
4 community. Can you talk about that aspect of
5 discrimination, since you've been involved with a lot of
6 those studies?

7 MR. FLORES: Yeah, not only impact, but I
8 think it ^{creates} ~~is~~ workplace atmosphere that exists, ^{and} lack of
9 productivity in ^{the work} ~~that~~ place. Many of the lawsuits have
10 been based on initial selection, ^{where} ~~and~~ likes select likes,
11 and under the affirmative action we have what is called
12 affirmative action policy which states an agency will
13 not discriminate and take affirmative action to assure
14 non-discrimination, and that means looking at all of its
15 policies.

16 What we have, and let me put ^{it} in perspective:
17 by the year 2000 one third of the new network force is
18 going to be Hispanic. It's a young work force. America
19 is in a work force ^{crisis} and we have ^{an aging} ~~national~~ work force, ^{and} a
20 shrinking work force. The new work force, according to
21 the work force 2000 statistics that came out of
22 Washington, D.C., was the new work force going to come
23 out ^{of} ~~four new~~ pools, women, minorities, ^{the} disabled and
24 immigrants. That is our new work force, and ^{it's} ~~that's~~ a
25 new dynamic work force that we ought to be ^{moving} ~~moving~~ ^{developing.}

1 ~~towards~~ If we don't we're not going to be competitive
2 in this country. What we're going to have is, and
3 especially with the ADA Act, ^{three} forces driving our economy,
4 technology, demographics, ^{and globalization} ~~and if we don't take advantage~~
5 ~~of that~~ Q the anti-discrimination division can play a
6 significant role, not only in dealing with individual
7 discrimination, but also dealing with patterns and
8 practice. ^{cases} The anti-discrimination agency has never
9 taken on a pattern and practice case, although it ~~has~~ ^{should}
10 ^{have the} responsibility, ^{and} the authority, the ability to do so.
11 ~~What was your question though?~~

12 MR. MARTINEZ: The question goes to the impact
13 on the immediate community when they're underemployed.

14 MR. FLORES: True.

15 MR. MARTINEZ: You've worked at the
16 university ^{and} ~~You work~~ for state government. You work
17 for federal government. I'm interested in your view.
18 We've heard a lot about underemployment and
19 discrimination, and with the agency cause and no cause
20 and a lot of terminology, but being a commissioner, if I
21 can take advantage of your experience there for, I can't
22 remember how many years you were there.

23 MR. FLORES: Two years.

24 MR. MARTINEZ: Two years. You've probably had
25 the opportunity to see the attitude of the staff and how

1 they handle cases in that agency, and I'm wondering,
2 just for background so we'll understand, I would hate to
3 believe that the agency has a staff that just says we're
4 closing cases to make money. I don't believe that
5 that's probably the case. Maybe you can explain that to
6 us so we have a better understanding of what conditions
7 they work or how they feel about it.

8 MR. FLORES: In reality what you have are
9 three commissioners who have ^{different} portfolios, one to see
10 OSHA, one MSHA, one to see workers compensation, one to
11 see anti-discrimination, and all of ^{us} ~~that's~~ kind of
12 muddled around unemployment service which is another big
13 black hole which is a tax ^{burden} ~~issue~~ to employers in the
14 state. What you have then is theoretically each
15 commissioner ^{who} ~~then~~ has a portfolio to see an agency, but
16 we also have co-equal powers to oversee ^{all agencies} ~~that~~.
17 So while, I as a commissioner, ^{had} ~~have~~ responsibility for
18 OSHA, another one has responsibility for
19 anti-discrimination, ^{found} ~~and if I found~~ something wrong ^{with OAC} ~~over~~
20 ^{it was} ~~there it's~~ hard for me to go tell another commissioner
21 you have a ^{problem} ~~stupid thing~~ ^{on} going over here, ~~and~~ ^{also} ~~more~~
22 importantly, you ^{also} have an executive director overseeing
23 that ^{unit} ~~so~~ you don't really need three commissioners to ^{administ} ~~do it~~
24 ^{one agency} ~~that~~. We're just muddling and ^{tripping} ~~mushing~~ over each other,
25 and, more importantly, what you're doing is you're

1 really giving three different messages to a director.
2 What you really needed was someone who gave that
3 director the authority and gave him or her the training
4 and resources to do that. What you had was staff who
5 was trying to respond to three different commissioners
6 and that poor guy was going crazy. How do you really
7 run an agency in that manner? Just trying to pass
8 sexual harassment guidelines was a big fiasco because I
9 had to get the support of these other commissioners who
10 didn't understand it, who had no interest in it, who had
11 been over here talking about something else, but yet I
12 had to get their support to do that. The employment
13 services is another example of the same thing, but you
14 do have some dedicated staff. What they needed was some
15 direction. *and leadership.*

16 *it gives* The other thing that happened ^S in that agency *is that*
17 ~~was we gave~~ false impressions that any minority that
18 came in or any woman, we're going to solve his or her
19 problem. What *is lacking is that they seldom* ~~you needed, there was never the~~
20 perfect ~~complaint~~ *the complaint* which *is required* ~~the requirement~~ under
21 EEOC when you're making a case of discrimination: time,
22 place *and* circumstance. What ~~we did~~ *they was to take* ~~is take~~ a complaint,
23 ~~send~~ *send* it on to the employer who got it. He or she didn't
24 know what the complaint was about in order to come *to the* ~~in~~
25 ~~the~~ *perfected* and then you had no ~~complaint~~, so there ~~wasn't~~ *were not* any
discrimination office

for handling the complaint.
1 timeliness ~~in this thing~~. There was no structure.

2 There are no guidelines, no procedures to investigate
3 the case. You do have some dedicated people in that
4 system, *but each direction.*

5 MS. CRAFT: Do you feel in your opinion
6 presently -- because I know you were a commissioner, I
7 don't know what years, how many years ago.

8 MR. FLORES: ~~I am~~ *four years ago.*

9 MS. CRAFT: But do you feel presently that the
10 UADD -- I guess is still in the same situation that
11 they're trying to answer to three commissioners, or
12 because one of my personal concerns is I'm trying to
13 look at it from a lay perspective, and say if I'm a
14 person out there that has a complaint, that in many
15 instances you hear Industrial Commission, you don't hear
16 UADD, and so I think maybe from a lay perspective people
17 are getting maybe mixed messages out there. Is it the
18 UADD that's supposed to be doing this or the Industrial
19 Commission? Was is your perspective currently as far as
20 the situation is right now?

21 MR. FLORES: Well, you're exactly right. My
22 whole point is that agency, the director ought to have
23 the responsibility to administer that and be able to
24 establish guidelines consistent with the EEOC. They
25 currently don't. They're not in compliance, as I would

1 see it, with the EEOC requirement ~~to~~ how to investigate
2 and resolve a complaint. So what you really have over
3 here is this amorphous commission that is kind of like
4 God like, that we come down and make these decisions,
5 but we really don't, and what it gets right down to is a
6 poor executive director who takes it in the chin when
7 things fail, not the commission. *and not following the
Utah open meetings law
and*

8 What we've had in that commission are
9 commissioners who met without open meetings, who made or
10 did not make decisions and were only forced to make
11 decisions when a crisis came about. Case in point, the
12 workers compensation, I mean that still is in trouble.
13 That was an \$80 million deficit funded they were
14 running, and that really wasn't brought to light. *until I got there* There
15 was never any legislation that was really pushed except
16 for the years that I was over there, and I did it at the
17 expense of not getting along with other people.

18 MR. MULDROW: John, your central suggestion to
19 us is that what is needed is an independent agency with
20 the power to enforce the law. Now, we have asked this
21 question this morning. One of the representatives
22 advocated concurrent commission of this nature be set up
23 to phase into an independent agency if it was feasible.
24 My question to you is is it realistic to think that
25 there would be the support in this state for

1 establishing an independent enforcement agency funded to
2 do the job?

3 MR. FLORES: Yes, I really do. I just think
4 it has to be so in the proper manner. I really took
5 affront to the idea of having this other phasing in.
6 Things are always different when it comes down to
7 minorities. These things take time. Well, we're going
8 to have another committee to study this, or we've got to
9 phase this thing in. You sure as hell don't see the
10 business community trying to phase things in. If it
11 wants to get done it gets done immediately. The Salt
12 Palace here was built with HUD money, community
13 development over in here, but we don't have more housing
14 in our community and we don't have more jobs which was
15 the intent of the legislation. The same is true when it
16 comes down to dealing with discrimination. We want to
17 have another committee. We want to study it some more.
18 We want to phase it in. We've been phasing this thing
19 in for 30 years. I don't have the patience and,
20 frankly, I don't have the graciousness to sit here and
21 listen to the ^{promises} ~~BS~~ any more.

22 MS. GILLESPIE: The anti-discrimination
23 division, is that solely a complaints processing
24 operation? What I'm asking you is whatever happened to
25 affirmative action as an efficient or cheaper way?

1 MR. FLORES: I think, first of all, your
2 wording is correct, it's processing. It's what happens
3 in the federal government ^{and state} public administrations. We're
4 more concerned about how things get done than if they
5 get things done, and we don't have the luxury of the
6 private sector's competition, ~~and~~ ^{All we say is we} need more ^{of} and more ^{the}
7 same thing. They're two distinct things, employment
8 discrimination and affirmative action. The agency is
9 solely responsible for eliminating discrimination, and
10 the other thing it can do and ought to do is to
11 eliminate discrimination by issuing commission charges
12 by looking at pattern and practice. ^{discrimination} If you find one
13 case there may be others and you ought to look into it
14 and make that finding. Affirmative action means that
15 employers will make good faith effort to reach out and
16 hire minorities and people with disabilities under the
17 new ADA Act. That's a separate issue than the
18 anti-discrimination. Yes, ma'am.

19 MS. SHIMIZU: ^{According to the UADD statistics it} ~~For instance, UADD do kind of~~
20 ~~claims a large percent of mediated resolutions like 70-80 percent or could~~
21 ~~bring to resolution, for now I would say about 70, 80~~
22 ~~percent, very few go into a non resolved situation. You~~
23 ~~are talking about the entire thing, eliminating~~
24 ~~system. With the increased conscious effort on the~~
25 ~~everything, the anti-discrimination division to be~~
~~part of UADD for efficiency and faster resolutions~~
~~abolished, meaning those people who are being helped,~~
~~demonstrated in recent months, is it necessary to take~~
~~resolution has taken place, are quite a percentage of~~
~~such a measure at this time. Will you clarify further~~
~~on your stand?~~

1 ~~them.~~

2 MR. FLORES: There are two issues I think you
3 brought up. First of all, is I'm saying we need a new
4 agency with new procedures and new mandate, a new
5 mission and new authority, new responsibilities to carry
6 that out, but your point where you see 70 percent of
7 resolution of those complaints is one of the things that
8 I'm concerned about. If you go in there, you say I've
9 been discriminated and ~~an~~ ^{seek} back pay. I mean I've been
10 discriminated because there's a white male over here
11 that's doing my job and I've got a hundred dollars a
12 month less, and the whole idea of making people whole,
13 and that's a responsibility of the agency, is to put you
14 in place where you ought to be had you not been
15 discriminated. So if you're alleging that they owe you
16 \$15,000 because for three years they have been
17 discriminating against you, then that's ~~a~~ ^{the} make whole
18 remedy.

19 What happens with administrative agencies and
20 I think what drives the system is they'd rather bring
21 you in right away and say you resolve it, we'll give you
22 \$5,000 and you're on your way, when in fact you should
23 have gotten \$15,000. You were cheated out of \$10,000
24 simply because ~~it~~ ^{the UIADD} wants to get the three or four hundred
25 from the EEOC, so they're not making you whole, but rather,

for closing a complaint

*Simply trying 198
to meet their quota
with the EEOC.*

1 The other thing that they do is, and EEOC, I
2 don't know if they do this now, but there's that
3 intimidation where they bring the employer in the room
4 and say, look, if you don't do this we're going to
5 continue to investigate this and we'll find other cases,
6 such and such, and we'll raise all these questions. If
7 you're a small employer you don't have the time or the
8 confidence or the understanding to do that, so they're
9 going to say, well, let's resolve it. So what you're
10 seeing is resolution of these complaints without making
11 people whole. I think that's a danger that we have, and
12 I think we have a responsibility to enforce that law and
13 make people whole if they have been discriminated. What
14 would have happened had they not been discriminated?
15 What is the remedy? I think it's a critical issue.

16 MS. GILLESPIE: One of the problems though is
17 no remedy at all.

18 MR. FLORES: That's right.

19 MS. GILLESPIE: You know, \$5,000 looks pretty
20 good in the face of zero.

21 MR. FLORES: But that's my concern about this
22 agency. What you have right now is an employer may get
23 sued on one ~~form~~ ^{forum} and then sued ⁱⁿ another. You heard one
24 case here today where they thought they had it resolved.
25 In the meantime EEOC said huh-uh, it ain't resolved,

1 we're going to come after you. When I was at the
2 University of Utah I had a case, well, several cases of
3 discrimination, and we were not only harassed by one
4 agency, we were harassed by four agencies. At the
5 university we had the anit-discrimination on our case.
6 We had the ~~OFCCP~~^{OFCCP} on our case, had office of civil rights
7 on our case. All had different standards. Tell me if
8 that's any way to go and if that's very efficient in our
9 society. Is it any wonder that people are upset and
10 discouraged with discrimination, not only the victims,
11 but the business community in this country?

12 MS. RICHARDS: Thank you, Mr. Flores. We
13 appreciate your presentation before the committee.

14 MR. FLORES: Thank you, very important job you
15 have to do. I hope you do well.

16 MS. RICHARDS: We will hear from our next
17 presenter, Ms. Dora Van, from the Native Civil Rights
18 Project, and we'd ask you if you would introduce
19 yourself to the committee as well.

20 MS. VAN: My name is Dora Van. I'm the
21 executive director and vice-president of the Native
22 Civil Rights Project, and we're an exclusively Indian
23 organization based here in Salt Lake. I have a written
24 statement that I would like to read to you. First of
25 all, I want to make something really clear here. Indian

1 issues are different because the tribe, the people are
2 different. They have their own customs, their own
3 culture, but there are some basic things that are common
4 to all tribes, and that's what we're going to talk
5 about.

6 This organization, NCRP, was organized and
7 created five years ago by members of the Uintah mixed
8 blood youth of the Uintah Reservation located in Eastern
9 Utah. Our purpose was to investigate and research the
10 intent of the Ute Termination Act of 1954 and its
11 effects on the lands people, natural resources of the
12 Ute Tribe, to develop and establish a service oriented
13 program focused on economic development and assistance
14 programs that would provide jobs and job training for
15 American Indians, where members of the group of 490
16 Uintah Utes that were designated under the act as mixed
17 blood members of the Ute Tribe. Part of our function
18 has been to relate our findings to others, other members
19 and agencies and interested parties. The purpose and
20 intent of this material is to be as neutral as possible
21 and objective, and to present an overall view of the
22 results of our research and what we perceive are a few
23 of the major causal factors that help create the
24 negative attitudes our native people encounter in many
25 aspects of their every day living in the State of Utah.

1 Utah has a wide range of subtle policies that
2 constitute discrimination. For instance, in order for
3 you to go to a club here you have to be a member which
4 in itself is discrimination. If there is a fee charged
5 for that membership, and there is, that constitutes an
6 economic discrimination. The laws and policies are not
7 always used just as deterrents to crime or social
8 incorrectness. The state legislature is exclusively
9 influenced by the hierarchy of the Mornon Church, so the
10 issue of discrimination in Utah is wide and varied as a
11 matter of church state control over the citizenry. As a
12 matter of personal opinion, we find this condition to be
13 offensive and detrimental to the overall social and
14 economic health of the state. Unless the underlying
15 causes are recognized and addressed, discrimination in
16 the workplace or in any other aspect of an individual's
17 life will never culminate in a positive solution. In
18 this regard I would like to take this few moments and
19 address a few of the concerns we have arrived at from an
20 objective viewpoint.

21 Indian tribes are unique legal and political
22 entities with extensive powers of self-government.
23 Their sovereignty relate the United States Constitution
24 setting apart the Indian tribe as the state government.
25 Tribes exist as domestic dependent nations sovereign and

1 self-ruling unlike states, yet dependent. Unlike the
2 federal government, states have almost no jurisdiction
3 over Indian tribes and their lands. This complex legal
4 status paired with the issue of Indian sovereignty makes
5 daily interaction between tribes, Indian communities,
6 Indian organizations and states problematic.

7 There are approximately 20,000 American
8 Indians living within the State of Utah. Approximately
9 6,000 reside permanently on reservations. There are
10 seven tribes which accounts for less than one percent of
11 the total population of the state. Utah Indians are
12 faced with many of the same social and economic issues
13 affecting other tribes and ethnic minorities across the
14 country. Native tribes have historically been
15 characterized by mistrust and misunderstanding from both
16 sides, state and tribal.

17 Utah Indians have been historically isolated
18 with most reservations located a considerable distance
19 from the seat of government. This physical isolation
20 has been compounded by language and cultural
21 differences. There is a continuing need for
22 coordination. The state tribes and Indian communities
23 and organizations need to accept responsibility for
24 creating a positive working relationship. Both tribes
25 and state have legitimate grievances and interests.

1 Once the state and tribes recognize the legitimacy of
2 one another's issues, both sides may begin to find ways
3 of accommodation through open communication and sincere
4 negotiation efforts.

5 State jurisdiction is recognized in Indian
6 country in matters that do not conflict with federal
7 statutes, and state law generally applies to Indians
8 outside of Indian country where they are then identified
9 as urban Indians. It is extremely difficult for native
10 citizens to have much of a voice in the legislative
11 branch of government in Utah because the Utah Indian
12 population is not great enough to command a senate or a
13 house seat. Therefore, solid representation in the
14 executive branch is crucial. American Indians have
15 participated in the judicial branch by taking problems
16 to the courts. However, many of the legal decisions
17 which favor the Indians have not been enforced because
18 Indians have little representation in the other two
19 branches of state government.

20 Indian participation would make a difference.
21 For example, the State of Utah collects taxes from the
22 reservation lands in the form of severance tax and other
23 taxes. This tax revenue is returned to the counties in
24 which the reservations are located through a state
25 governmental process to fund community and complex

1 development programs within the various counties, but in
2 the past the Indian tribes and Indian communities were
3 not participating in the use of these funds. Thus, in
4 1991 a State Legislative House Bill 394 was introduced
5 and passed into law. It was designed as a mechanism for
6 a new native civil citizens voice in the relationship
7 between the state and its Indian citizens. This bill
8 increased the number of seats guaranteed by law to the
9 native population of the state.

10 Through the Utah Division of Indian Affairs
11 the UDIA is the governor's contact with the Indian
12 constituents of the state and is part of the state
13 executive branch under the governor. The concept behind
14 House Bill 394 was also to provide a mechanism in which
15 a portion of the state tax dollars for health, education
16 and economic development programs could reach the Indian
17 tribes and urban Indian communities and organizations
18 within the state by returning these tax dollars to these
19 communities as requested.

20 However, the following year in the 1992 state
21 legislative session another house bill was introduced
22 and passed, House Bill 455, which removed a large
23 segment of the Ute Indian population from participation
24 in this program. This group of Indians resides both on
25 the reservation and in the urban areas of Salt Lake

1 City. They were specifically removed by name.
2 Consequently, their representatives have never been
3 notified or invited to attend the planning meetings
4 arranged by the UDIA, even at request, nor has the urban
5 Indian phase of this bill, House Bill 394, ever been
6 organized or initiated by UDIA since passage in 1991.
7 This is a wonderful example of reactionary legislation,
8 mass political indifference and discrimination at the
9 highest level, and why a government to government
10 relationship with all facets of Indian citizens is
11 crucial. Communication and education is the key to a
12 more informed state legislative body and is paramount
13 when drafting meaningful bills for its state citizens,
14 no matter what the race or culture.

15 American Indians have cultural and political
16 misgivings about involvement in state tribal
17 organizations. Organizations can without realizing it
18 operate in a way that raises cultural barriers to
19 participation. In some cases membership is chosen by
20 the governor, as is the case of UDIA and not by the
21 tribes. Some tribes feel that the Indians chosen to
22 represent them by the governor at the state level are
23 not representing tribal interests, particularly if they
24 are urban Indians. In doing so, the state can
25 potentially undermine tribal members' ability to work

1 with their native tribes. Both tribal and urban leaders
2 should be representative for a well rounded effect as
3 the urban sector feels the hand picked representative
4 does not necessarily understand the needs of the urban
5 Indian or their interest.

6 Indian state organizations have difficulty
7 recruiting and retaining community leaders as members.
8 Tribes are racial minorities and often are
9 geographically isolated from the state center of
10 government. Also because of their general poverty and
11 their limited voting potential some state leaders do not
12 perceive Indians as important constituents. Public
13 support can counter this attitude and encourage
14 participation. Oregon's Commission on Indian Services
15 as part of the legislative branch of the state
16 government, this senate based organization gives added
17 weight in resolving and working on Indian issues. The
18 governor's participation and interest and public support
19 of Indians and Indian issues gives added legitimacy and
20 strength when trying to find solutions.

21 Increased communication can remove obstacles
22 between native Indians and the State of Utah, including
23 the attitudes and expectations held by some members of
24 both governments, the public, the press and the legal
25 profession which are directly and perhaps exclusively

1 shaped by the emphasis on conflict in Indian state
2 relations. The lack of communication between the state
3 and its Indian citizens may arise from each government's
4 lack of clarity between their own goals and mission.
5 Both state and tribes tend to idealize themselves and be
6 harshly realistic, if not pessimistic, about the other,
7 but when the goals of each are compared they are often
8 found to be complementary or compatible. Both the
9 tribes and the state are bound to their respective
10 constitutions, so communication makes it clear why
11 certain things are carried out in certain ways. State
12 and tribes often lack current knowledge on who to
13 approach to initiate communication or who to approach to
14 find solutions to a problem. Indian representation at
15 the state level through the use of an Indian advisor or
16 Indian desk would be one way to improve communication.
17 The UDIA has not been this entity. All levels of
18 government can benefit from knowing the nature of each
19 other's goals. Representatives should be designated
20 from the urban Indian community, state and tribe at the
21 leadership agency and program level in order to
22 establish and foster communication in specific areas of
23 common ground, including employment, education and
24 health. These specific representatives should then be
25 accountable for the successes or failures in

1 establishment of a functional relationship.

2 Executive responsibility insures collaboration
3 between all sides and each director or counterpart in
4 tribal, state and federal governments. These executives
5 should be required to articulate the reasons for failure
6 of coordinated efforts. Historically tribe and state
7 have split loyalties. The lack of minority people in
8 public office is a manifestation of mistrust. In the
9 course of time relations break down and both bodies
10 lose. The process of restoring trust most effectively
11 starts when promoted at the highest level. This can
12 only happen when both sides become open and honest. If
13 there is a bad attitude about Indians at the
14 gubernatorial level it trickles down and nothing works.
15 There has to be an attitude, natural change within the
16 institution of government, and then to reenforce the
17 attitude, natural change there has to be an
18 understanding as to the history of the relationship.
19 Problems of the past need to be recognized, however, not
20 in the context that would allow these problems of past
21 racism to destroy the operation of the future, the
22 cooperation of the future.

23 As tribes relearn self-government and
24 self-sufficiency the state can only benefit economically
25 and socially, however, both sides need to learn the

1 functions, limits, concerns and cultures of the other.
2 Both sides have a limited understanding of the other and
3 are unsure of where to start at finding common ground.
4 Both state and tribes are polarized to the point where
5 it is difficult to find ways of coming together.

6 Having said all of this, in seeking a cure to
7 an ailment one has to first identify the symptoms before
8 they can prescribe a remedy. Economic development has
9 become a commonly used phrase that is frequently abused
10 when used as a metaphor describing changing conditions
11 for American Indians. This phrase was meant to mean
12 economic growth generated by income from jobs created by
13 the private sector. A major step in building a
14 reservation and urban economy is to develop human
15 resources. The most effective program for finding work
16 for Indian people in this century was known as the
17 relocation program, but out of which grew the Employment
18 Assistance Program of the Bureau of Indian Affairs.
19 However, this program also developed the migration
20 pattern of American Indians from reservations to cities
21 and back again to the reservations. What this program
22 has not encouraged is the economic development of the
23 reservation and urban community in areas of business and
24 job development programs. The program has relied on the
25 urban sector and their Indian community to absorb this

1 influx of people looking for work without at the same
2 time preparing and developing an urban Indian economic
3 development package to provide jobs and absorb the
4 impact. Without a job the people have no alternative
5 but to return to the reservations where the condition of
6 joblessness is why they had to leave in the first place.
7 This condition is extremely costly to the state and
8 tribes. Tribes and in state government must recognize
9 that the Indian people involved in this cycle are all
10 one of the same. At some point of time, generally three
11 to twelve month cycles, they will be in one place or the
12 other for the same reason, jobs.

13 Any proposed economic development program must
14 address the reservation in the urban sectors of the
15 cities as if they were one in terms of problems to
16 overcome. As a result of poor education, lack of direct
17 on-the-job training, systems that discourage employment,
18 job discrimination, cultural and language barriers and
19 general misinformation, these problems must be addressed
20 by the tribes and state before the labor component can
21 contribute substantially to the formula of economic
22 development. Approximately one half of the nation's
23 total Indian population do not live on reservations.
24 When the Indian people are forced into the migratory
25 pattern and have to leave an area for legitimate reasons

1 such as lack of employment opportunity, then tribes and
2 the Federal Government must begin to recognize that the
3 tribal government is ultimately responsible for the
4 welfare of their people. As they leave the reservations
5 they then become the dual responsibility of the tribes
6 and the state. Tribal government's responsibility
7 should not stop at the reservation boundary, and the
8 state's responsibility should not stop at the governor's
9 office.

10 Factors that account for the lack of
11 integrated economies are racism from surrounding
12 communities, lack of entrepreneurial encouragement and
13 business climate or lack of it. Tribes must begin to
14 put their capital to work to establish businesses on the
15 reservations or under tribal ownership off the
16 reservation, one possible remedy in accordance with
17 present federal policy of Indian self determination,
18 establish a sound government to government relationship
19 between state government, tribes, Indian communities on
20 and off the reservations and Indian organizations,
21 develop a formal long-term planning system throughout
22 the state Indian communities based on the identifiable
23 needs of the people in each county affected.

24 For many years federal economic development of
25 Indians has been focused on reservations and it has

1 failed to produce meaningful advances to the people's
2 general economic security. A part of this advancement
3 process should be reversed and focus should center
4 around urban Indian development of enterprises. Future
5 concentrated effort of advancement should focus on
6 programs, services, business opportunities and
7 development that can filter on to the reservations
8 through Indian established and managed organizations and
9 businesses generating from the urban sector with
10 emphasis on Indian participation and manpower. This
11 process could eventually lend to a sound economic
12 development process from both sectors of reservation and
13 urban Indian community and both governments would
14 benefit economically.

15 This completes my statement to this advisory
16 committee. There are not concrete statistics readily
17 available in the general Indian population of Utah that
18 we're aware of. The views that I've stated are from our
19 five years of research and from a lifetime of experience
20 and observation. I thank you.

21 MS. RICHARDS: Thank you.

22 MR. MULDROW: What kind of a native American
23 population existed in the Salt Lake City metropolitan
24 area?

25 MS. VAN: The study that we did, there's

1 between ten to twenty thousand native Americans that
2 live along the Wasatch Front.

3 MR. MULDROW: In this urban area?

4 MS. VAN: Yes.

5 MS. GILLESPIE: The metropolitan area, what
6 does it include?

7 MS. VAN: The metropolitan area?

8 MS. GILLESPIE: The standard metropolitan
9 area, not so standard any more.

10 MS. VAN: It's not so standard, but along the
11 Wasatch Front which encompasses anywhere from Brigham
12 City clear down to Provo, you have at least --

13 MS. GILLESPIE: That includes Ogden.

14 MR. MULDROW: We've heard some special
15 concerns mentioned about the San Juan County, Southern
16 Utah because of its proximity, geographical isolation.
17 Do you have any observation about discrimination
18 problems in that area in particular?

19 MS. VAN: I'm really the wrong person to ask.
20 You should ask Mark. He's from that area.

21 MR. MULDROW: Is your organization located in
22 Salt Lake City?

23 MS. VAN: Yes, we are, but we primarily work
24 with the eastern tribe, the Ute tribe, which is the
25 largest land based tribe here in the state.

1 MR. MULDROW: Do you have any advisory goal
2 for people who have problems with discrimination? What
3 is your advice to them?

4 MS. VAN: When we have people that come into
5 our office, it depends on what they tell us. We're very
6 careful what we do advise people because sometimes
7 people come in with a lot of frustration and really all
8 they want to do is vent that frustration. It has really
9 no substance to it, but if they do have legitimate
10 concerns then we do send them to other agencies that are
11 better equipped than we are.

12 MR. MULDROW: What other agencies
13 specifically?

14 MS. VAN: We also have the Utah Discrimination
15 Agency, we do send them there. We also have a couple of
16 attorneys, that if the job is just to write a letter or
17 to look into a matter they will do it pro bono, but if
18 it becomes something legal, then that's up to the
19 person.

20 MR. MULDROW: Do you get any feedback from
21 these referrals? Do you follow through or monitor them
22 in any way?

23 MS. VAN: Yes, mostly because what we find is
24 that Indian people, if you don't follow through, a lot
25 of times it gets lost in the system. They become

1 afraid. They may not pursue it. We don't do it for
2 them, but we do monitor what they are doing.

3 MR. MULDROW: What do you find as a result of
4 the process that they enter into with the UADD or other
5 agencies?

6 MS. VAN: I think that basically what we find
7 is that most of them are just afraid. Indian people
8 have lived under a lot of discrimination for a lot of
9 years and a lot of that is pre-conditioned reactions
10 that they have to what is going on. Sometimes we've had
11 to even approach an employer or a landlord or like that
12 with the person to just go and listen. We have acted in
13 that capacity. They're unsure of what they know to be
14 true. They're not sure that that's really true.

15 MR. MULDROW: Do you have any feel for the
16 degree of success that they have in remedying their
17 problems? Is it a usual thing to come out
18 satisfactorily for those that pursue the matter?

19 MS. VAN: Not always.

20 MR. MULDROW: Is it a rare thing?

21 MS. VAN: There again, it depends on what the
22 issue is. We have a lot of success in sitting down and
23 saying to the employer Indian tribes -- let's go back a
24 couple of steps. We have seven Indian tribes here in
25 the State of Utah. There is a difference in the

1 language, their culture, their customs as night and day.
2 They are not the same, so when you talk about Indians,
3 which Indians are you talking about? Indians are an
4 interesting minority group because they don't view
5 themselves as being minorities, and this is kind of a
6 problem, but if you think about it, they really aren't a
7 minority in the sense that you define a minority. They
8 have a land base. They have natural resources. They
9 have a means of economic development if they use it
10 right. Other minorities don't necessarily have that,
11 and that's why Indian people don't see themselves as
12 being minorities. They're discriminated against as much
13 as any other minority. Their ability to develop
14 themselves and their communities is equally as
15 comparable to every other minority.

16 MS. RICHARDS: Let's take a couple of other
17 questions.

18 MR. TONG: I have one question. You talked
19 about Utes paying royalty tax to the state.

20 MS. VAN: Yes.

21 MR. TONG: Is that any different than an oil
22 company would be paying royalty taxes?

23 MS. VAN: Indian people do not pay taxes.
24 They are federally tax exempt. The taxes that the state
25 collects from the reservations are from the oil

1 companies that have contracted to go in there and drill.
2 They do have to pay a severance tax.

3 MR. TONG: It's an in lieu payment.

4 MS. VAN: Yes.

5 MS. GILLESPIE: Is that true of urban Indians
6 also?

7 MS. VAN: Urban Indians, there are taxes that
8 they have to pay. They do have to pay employment taxes,
9 yes.

10 MS. GILLESPIE: So you're talking about the
11 reservation?

12 MS. VAN: The reservation, yes. They're very
13 different.

14 MS. GALLI: I appreciate your being here,
15 Dora, and I think Indian people often get forgotten
16 because there are not enough of them I guess. I should
17 say not enough of us since I am one myself. Ten
18 thousand to twenty thousand Indians in the Wasatch Front
19 area, how many tribes are we talking about? You said
20 seven tribes in the State of Utah.

21 MS. VAN: There's seven.

22 MS. GALLI: But how many of the urban Indians
23 are from those seven tribes?

24 MS. VAN: That's a hard number to come up
25 with.

1 MS. GALLI: Approximately.

2 MS. VAN: I would say probably another
3 hundred, maybe fifty to a hundred tribes, other tribes.

4 MS. GALLI: Represented?

5 MS. VAN: Represented here.

6 MS. GALLI: Which then would really compound
7 the problem.

8 MS. VAN: Yes.

9 MS. GALLI: Of dealing with them.

10 MS. VAN: Yes, definitely, because without an
11 urban organization, a basic urban organization, the
12 Indian people, the urban Indians are out there floating
13 around on their own and that's it. That's one of the
14 reasons why we organized and why we want to put an
15 organization in here to represent urban Indian
16 interests, because they are part of a reservation, but
17 as soon as they leave that reservation the tribes say
18 you're not part of us any more, and until they go back
19 they are under state law, so they have some problems.

20 MS. RICHARDS: Thank you very much, Ms. Van.
21 We appreciate your presentation to us.

22 MS. RICHARDS: Our next presenter is Ms.
23 Kathleen Mason, President of the Utah Women's Lobby. We
24 would like to ask if you would introduce yourself as
25 well.

1 MS. MASON: Thank you. Director Muldrow and
2 Chairman Richards and committee members, I was pleased
3 to be invited to speak, and I admire your stamina. I
4 have not directly been involved in a case of
5 discrimination that necessitated taking it to a higher
6 tribunal, but as chair for six years of the Governor's
7 Commission for Women and Families, I had a number of
8 people call and ask for some assistance, and they were
9 dealing with cases and trying to pursue their legal
10 rights through the anti-discrimination division. Short
11 of making a few phone calls and trying to gather some
12 information, we never did come to a place of really
13 being of much assistance to people in that, a listening
14 ear to a point and pretty feeble attempts to help.

15 After my eight years on the Governor's
16 Commission for Women and Families expired, I became a
17 member of the Utah Women's Lobby, and this is my second
18 year as president of that organization. It's a
19 non-partisan organization that seeks to promote
20 education, legislation and other remedies to help in the
21 areas for women and families in the state.

22 The requests and calls that I have received as
23 chair of the Governor's Commission for Women and
24 Families continue in my position as chair of the Women's
25 Lobby. There are many people wanting someone to help

1 and assist them, and I must confess that initially the
2 first few people that told me their stories, I really
3 didn't believe them. I mean some of them were at that
4 point extremely emotional, and I really had some
5 question about it, but I heard many stories and I came
6 to feel like we do have a problem and we needed some
7 procedures and some help for these people, and as
8 president of the Women's Lobby we decided after having a
9 number of people call us, we decided to try to do this
10 in a little bit more of a structured way, and we had two
11 open forums for individuals who were interested in
12 discussing their experiences in this area, and we also
13 passed a resolution as a lobby asking for an
14 investigation of the anti-discrimination division, a
15 legislative audit, and to have this really looked at to
16 see if there isn't a way of helping in the cases.

17 Subsequent to that the governor's task force
18 to look at the anti-discrimination division was
19 organized, and initially there were two places on that
20 for people who had been through cases with the
21 anti-discrimination division, and one of the people
22 declined to be on that that was chosen and there was an
23 open position. Our lobby recommended several people who
24 had had cases who had cause findings who had litigated
25 their cases and would be supposed winners in the system,

1 but they were rejected by the commission because it was
2 felt that they were too biased against the
3 anti-discrimination divisions.

4 I was asked to serve on that task force, which
5 I did, feeling not as much an expert as the people I
6 would have liked to have seen, people who had been
7 through the situation, but having had some background
8 from hearing from many people, we also had written
9 testimony from people, as well as the people who came to
10 the two open forums, so I had some background, and I
11 must confess somewhat of a bias to try to help these
12 individuals. I did go in with a bias feeling there
13 needs to be something done to help individuals.

14 I served on the task force, and I felt the
15 task force was made up of very fine people. I did feel
16 frustration in the fact that I felt it was not an
17 independent task force. The staff person was an
18 attorney who was hired by the anti-discrimination
19 division for that purpose. All of the meetings except
20 two were held at the anti-discrimination division which
21 was somewhat intimidating I think for people to feel,
22 you know, they had complaints about a system and their
23 feeling, well, there is a body now, a task force to look
24 at it, but it's being held there, and the person they
25 had to call to be on the agenda was hired by the

1 anti-discrimination division. The commissioners were in
2 attendance which I think was intimidating for the
3 investigators who we were told there weren't any
4 investigators who wanted to talk to us. Then I heard
5 from other people that there were some who did, but they
6 didn't feel comfortable talking with their bosses there
7 about the division.

8 So I think that we did, we tried to do a good
9 job on that, but I had reservations, and because of that
10 I wrote a minority report and I believe you have copies.
11 I gave a copy of the report that I submitted to the
12 governor, and as you can see in my cover letter, I
13 really felt like the report itself, you can read the
14 report and really have no feeling for the testimony of
15 the community, of the pain, of the problems, or why we
16 came up with recommendations. It basically to me felt
17 like a pretty one-sided kind of report, that it quoted a
18 Mr. Dedios from the EEOC. It quoted the commission. It
19 said things that the commission is now doing which I am
20 glad. I'm glad to the fact that there are things, there
21 have been some good steps taken, and I think Anna Jensen
22 is working very hard as a new director there, and there
23 are some changes and steps being taken. There's some
24 unanswered questions and there's some guidelines, some
25 concrete legislation that I think needs to be in place

1 so that we don't have problems in the future with it,
2 and if you haven't read the report I hope that you will
3 do so.

4 One of the recommendations is for an advisory
5 council, and I think if there had been an advisory
6 council in place I don't think the citizens' complaints
7 and problems, they would have felt like there was no
8 place to go with it. I feel like if that's in place
9 then you've got a can do it between the commission and
10 the citizens, and that the input could be valued and
11 that they can make suggestions, and since the report
12 I've been meeting with a group of, coalition of citizens
13 groups and we've been trying to come down to what's our
14 bottom line we feel is really important for legislation.

15 We've also met with Commissioner Colton and
16 Anna to try to go with a unified, and there's still a
17 division from the last meeting even on the advisory
18 council. Commissioner Colton is willing to have
19 legislation proposed or to have a council, but wants to
20 be the person who appoints the advisory council, and to
21 me that is again having the staff person again from the
22 Industrial Commission be a person hired by them, be the
23 staff person who investigates or looks at it. Even
24 though I know that you'd be capable and the other
25 commissioners of appointing good people, still it just

1 wouldn't have that sense of separation and be advisory.

2 Her other stipulation was that the director,
3 Anna, the director of the anti-discrimination division,
4 be the chair of that committee, and to me again it would
5 seem that that's going to be just wasted. People are
6 going to tell you what you want to hear. Now, the usual
7 appointment procedure, the governor makes these
8 appointments and I am on his appointment committee, and
9 I also was a part of developing the leadership registry
10 for the Women's Commission which helped to get women's
11 names forward to be accepted. So I know that divisions
12 have great input even if the governor appoints. They
13 still have great control, or not control, but a great
14 deal of influence who is appointed to them, and, you
15 know, all the divisions try to get as many people that
16 they feel go along with what they want exactly
17 appointed, but you've still got that possibility of
18 getting more input from the community so that perhaps
19 it's wider and more open, and so I would like to see
20 that happen, and I'm hoping that that's the direction.

21 I know you heard from Representative
22 Pignanelli who is trying to work on compromise
23 legislation this morning. I wasn't able to be here. I
24 work in special education, and it's difficult to leave
25 the children, so that's one area. The other, of course,

1 is the enforcement, and I'm sure you've heard this, and
2 I'm probably very repetitive, but one of the
3 recommendations of the task force was that there be
4 sure enforcement of cases where there is not mediation,
5 where there is a cause finding, where a company, a
6 business refuses to follow, that there needs to be an
7 enforcement of the orders. In our meeting just this
8 last week again that's something that Commissioner
9 Colton at least did not want to see happen.

10 After the first report was given to us I
11 submitted most of my suggestions for a second report and
12 none of them were included in the report, and when it
13 came to the last meeting, that report I felt was even
14 weaker than the first report, and we did not as a
15 committee discuss that report at all. We started with
16 recommendations and just discussed the recommendations,
17 and then it in two hours was up and the meeting was
18 called, and we never really discussed the report which
19 was my reasoning for sending -- I didn't want to submit
20 a minority report, but I really wanted to have some
21 input, and it was closed out because we didn't discuss
22 that, and one of the issues in the report, suddenly in
23 the report that appeared, was the fact that the
24 commission had discovered that by talking to the
25 governor's office and the AG's office that they had

1 discovered that low and behold they could enforce all
2 the way along. We didn't really discuss that, but it
3 appeared in our report, and I guess the commission said,
4 well, we can enforce with what we have, we don't need
5 legislation, but as I understand in 30 years there has
6 not been one case that they have litigated on behalf of
7 the prevailing party. That has not happened. I
8 understand there may be one or two now that are moving
9 that direction, but I feel like it can't be
10 discretionary.

11 I'm glad that more cases are mediating. I
12 think that's one of the recommendations we made early
13 on. I'm glad that's happening and more cases are
14 settling, but I don't want to feel like people have to
15 settle because if they happen to win and go on and
16 there's a refusal there's no stick. There's no big
17 stick at the final, so you settle here for whatever
18 because there's no sure enforcement of it. I'm afraid
19 that that would happen. We will enforce this case,
20 we're not going to enforce this case, I don't want that
21 to happen. I think that it needs to be fair.

22 I also don't want to see our cases go
23 duplicate. I don't want them to go through the courts
24 here and go through the EEOC. I don't want to see
25 duplication. I'd like to see our laws match federal.

1 I'd like to see them handled here in the state and
2 handled appropriately here.

3 I also would like to see, and I may be way off
4 base on this, but one of the questions that I did ask
5 when Mr. Dedios came from the EEOC, I did ask whether it
6 was mandatory that money that comes collected for
7 closing cases, whether that money had to be spent in the
8 anti-discrimination division, or whether it could be
9 spent in other areas of the Industrial Commission, and
10 he told me, he answered that he didn't know the answer
11 to that question, and that, you know, we'd have to
12 contact further. Well, I never did get an answer to
13 that question. He said his feeling was that it should
14 be, and I'd like to make sure that, I feel like if the
15 money is collected in there that it should be spent. I
16 would have liked to have seen an audit which was beyond
17 what this volunteer citizens group could do at that
18 point, because a lot of the complaints centered around
19 the fact that there were not investigations done. It
20 was the respondent who sent material and that was
21 accepted face value, that there were not onsite
22 investigations, the reason being that there was not
23 money for investigators. When the citizens groups
24 became very interested and there was a lot of publicity
25 at that point there was money for a computer system

1 which they hadn't had, for a new phone system, for new
2 brochures, for new investigators, for a part-time public
3 relations person, and when I asked about that I was
4 told, well, it's because now we're mediating and that
5 saves early steps and that saves money, but the
6 computers in some of these in spending happened before
7 that was in place, so, you know, it may be fine. Maybe
8 it's okay that it be spent in other areas, maybe it
9 wasn't, but it's unanswered in my mind, and I'd like to
10 be assured that that doesn't happen because I think that
11 that's important where the monies in respect to that go.

12 We also as a task force are unable to look at
13 any of the files because in order for us to look at the
14 files, not only did the claimants have to give
15 permission -- and many of them did, many of them begged
16 us to look at their files -- but also the respondents,
17 and when they were contacted by the staff person none of
18 the respondents gave permission for us to look at any of
19 the files, so we never did really look at that. So
20 seeing all of this I'd like some other directions.

21 Personally I do not like a three person
22 commission. I think it's too easy to shift
23 responsibility, blame, whatever, but I would like to see
24 one person that's the head of this. I'd also like our
25 state to really seriously look at, as I'm sure you've

1 heard from other people, consider possibly a human
2 rights commission that pulls the anti-discrimination
3 functioning out of the Industrial Commission and group
4 it with the issues that it fits with. I think that, of
5 course, needs some time to look at.

6 In the meantime I do want to see an advisory
7 council that has representation from the protected
8 classes and from minority groups. I'd like it to be as
9 open as an appointee. I'd like to see them elect their
10 own chair, and at the last meeting I think I had to come
11 to a compromise that the governor would appoint the
12 chair. On our women's commission the chair is and was
13 elected, and having been elected chair, I think that's
14 the wonderful way to go, but I don't think I can, you
15 know, I don't think I can prevail in that one. I think
16 there's the feeling that there won't be an advisory at
17 all unless the governor can appoint the chair, and I
18 suppose I'd compromise on that, but I can't compromise
19 with really feeling comfortable about the commission
20 appointing the task or the advisory board. I have a lot
21 of faith in more of a wide representation from the
22 community.

23 I really don't think I have anything else to
24 add. I've probably forgotten the things I wanted to
25 say, and I probably said more than you wanted to hear,

1 so I will ask you to read the reports from the committee
2 and if you have any questions. Yes.

3 MS. SHIMIZU: You said that some people asked
4 *to look at their cases, but when the UADD sent out*
5 *you ¹ look at my cases, and when the Industrial*
6 *the letter to get their permissions, they refused.*
7 *Commission sent out the letter and tried to get the okay*
8 *is that correct?*
9 *and they refused?*

7 MS. MASON: I don't know if they sent out a
8 letter. I think it was a phone call. I don't know.

9 MS. SHIMIZU: *But* ~~so~~ it was told to you that they
10 refused.

11 MS. MASON: They were told that they refused,
12 yes.

13 MS. SHIMIZU: *Are you sure that those people who*
14 *said that you could see their cases were the ones that UADD*
15 *you could see were the ones that they contacted?*
16 *contacted for their permissions?*

15 MS. MASON: Oh, no no. It was the ones who
16 wanted us to look at the files, were the people who were
17 filing cases. The ones who didn't want that, we were
18 told would not allow it, are the ones they were filing
19 against. They did not want the files reviewed. The
20 people who were trying, who were wanting their cases
21 heard were ones who asked, please, I'll give, you know,
22 I've given permission. It's public document now, but we
23 did not do that as a task force. I'd like all good
24 faith changes. I'd like it in concrete, so when the
25 commissioners change you know things are in place, and

1 not just for the complainants but the respondents. It's
2 difficult for them also. I mean some of them are repeat
3 offenders and try to play the system and tire a person
4 out by going on and on, but there are others that I
5 think could be really helped with good education and
6 real exact procedures.

7 MS. CRAFT: I wanted to ask a question about
8 the files. Was it the intent of the task force to look
9 at procedure, you know, when --

10 MS. MASON: Yeah.

11 MS. CRAFT: When the information presented had
12 been investigated, was it ever asked whether they could
13 like lock out, you know, like they do some cases, they
14 camouflage?

15 MS. MASON: Yeah, that suggestion was made.
16 Basically the answer was, well, still too much is
17 recognizable even with that, so we did not. Again, I
18 think the task force, you know, really did try to do a
19 good job and very fine people I think, and I just felt
20 like we really didn't do the justice on our report. I
21 think our recommendations were good. Yes.

22 MS. SHIMIZU: *Will you tell us* who wrote the final reports?
23 *write it* Did the task force?

24 MS. MASON: No. I believe as far as I know it
25 was the staff person, George Danielson, who is an

1 attorney who was hired by the UADD.

2 MS. SHIMIZU: By the UADD?

3 MS. MASON: Uh-huh, and, as I say, my
4 recommendations, none of them are included, and then
5 there was not time to discuss it in our last -- we just
6 didn't, so that was my feeling on the report.

7 MR. MULDROW: Who are or what body is
8 responsible for the next step? I mean it was a
9 governor's task force. Is the governor going to respond
10 to the report of the task force?

11 MS. MASON: Well, I understand that the
12 governor's office, several people tried to obtain a copy
13 of the report from the governor's office, and they said
14 they'd have to get it from the Industrial Commission and
15 they were not able to get the report from the governor's
16 office. The task force is completed and is no longer
17 working.

18 MR. MULDROW: I've heard some indication that
19 at least one or two of the recommendations are being
20 followed up.

21 MS. MASON: Yes.

22 MR. MULDROW: Advisory council.

23 MS. MASON: That's again a community coalition
24 of groups who would like to see some of these
25 implemented, and that does include La Raza.

1 MR. MULDROW: No responsibility for looking at
2 the recommendations and saying should we implement this
3 or --

4 MS. MASON: As far as I know the Industrial
5 Commission has copies, and they have implemented some of
6 the changes being made and there have been some of the
7 recommendations implemented.

8 MR. MULDROW: Some of the recommendations were
9 outside of their purview?

10 MS. MASON: Right.

11 MR. MULDROW: So just lying out there?

12 MS. MASON: It's all of the people in the
13 various groups, like George represents one of the
14 groups, several people. It's hard because, you know,
15 we all have jobs. We all have families. We all work,
16 and this is not our only concern. It's a major concern,
17 especially the people that have been through it, but for
18 us it's hard to stay on top because we're doing this all
19 as volunteers, but there's real passion for getting
20 something accomplished that's better for our state and
21 better for the people.

22 MS. RICHARDS: Is your minority report given
23 out in conjunction with a copy of the rest of the
24 committee's report if someone asks for a copy of the
25 task force committee?

1 MS. MASON: I assumed that it was at the
2 governor's office. A reporter called me for a copy and
3 I directed her to the governor's office and said, you
4 know, that's where it was submitted, so I assumed that
5 she could get one there and she was unable to get it, so
6 I think that's not the case. I guess what's available
7 is the majority report is available from the commission,
8 and other than that it's not available.

9 MR. GUSS: What do you think prompted the
10 state, the Industrial Commission to go ahead and
11 organize the task force to review these things? I mean,
12 like you say, it's been going on for years.

13 MS. MASON: It was of a great deal of interest
14 at that point by the press. There were a number of
15 articles in the newspaper, radio, television. People
16 had gotten to the point of frustration feeling like
17 there was nowhere to go, and also there were a number of
18 groups contacting the governor's office and other
19 entities, so I believe that's why the response at this
20 point.

21 MR. GUSS: They were probably told do a few
22 positive things here so it will look like we're trying,
23 sugar coated or something?

24 MS. MASON: I think it became apparent, and I
25 think there's good faith attempt to do in some respect.

1 I think to some extent to me in looking at some of the
2 most knowledgeable people, have been through the system
3 and are a little bit hostile towards the
4 anti-discrimination division, so it's hard for them to
5 listen to people that are pretty hostile towards them,
6 but they have a lot to offer I think. They're not easy
7 issues.

8 MR. GUSS: But the resistance you found within
9 the commission, for example, to making a change?

10 MS. MASON: Well, that part --

11 MR. GUSS: Changes the procedure or whatever?

12 MS. MASON: That part I do not understand, the
13 resistance of the advisory, you know, I don't understand
14 that at all, so you'd have to ask them. I don't
15 understand that. To me there was a great deal of
16 discussion about how enforcement is the -- you know,
17 enforcement, well, if you mediate and if you
18 investigate, that's enforcement, I mean and that was
19 written in our report, and I felt very stupid because
20 most of the committee were attorneys. There were only
21 three of us who weren't attorneys on that. There were
22 five attorneys, and I'm thinking here I'm a lay person,
23 but to me enforcement is not the same as investigating
24 and need mediation, and I can't accept that. I think
25 that it's got to be judicial means. Yes.

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who actually initiated this
MS. SHIMIZU: ~~Now, in that who initiated this~~
task force idea? According to Commissioner Colton,
~~task force? According to Commissioner Colton, she said~~
it was she who initiated it because of the many
~~that because of these things were in the public that she~~
concerns expressed in the public on the UADD.
~~initiated~~

MS. MASON: Uh-huh.

MS. SHIMIZU: *And asked the governor to*
~~the governor to conduct this~~
create a task force. That was my understanding.
~~task, create a task force, and that was the thing that~~
is that correct?
~~was communicated to me.~~

MS. MASON: I think that's probably true, and
it came, but that came also in response to a great deal
of community input and pressure. It's like the old
saying that if you're being run out of town, get in
front and lead the parade, and, you know, it's a
difficult task. I'm not here to say that they're not
working. I just think it's going to take more of us,
and as much open communication as we can get and
advisory help people.

MS. RICHARDS: I think we've got one last
question here.

MS. MASON: Yes.

MR. MARTINEZ: I've read your report several
times. I commend you on it. That's a great deal of
work, a great deal of study.

MS. MASON: You're right. I didn't choose
this issue, it chose me.

1 MR. MARTINEZ: But I am concerned in your
2 study there is a great deal of discrepancy between a lot
3 of your numbers that are handled and the task force
4 study in terms of numbers, in terms of no causes, in
5 terms of causes. There's discrepancies in information
6 as to what EEOC actually investigates or doesn't
7 investigate, what the percentages are. Am I right in
8 reading it that way?

9 MS. MASON: Yeah, I think there are some
10 differences. I tried to reflect the fact that there
11 were differences, and, you know, I didn't feel like we
12 had the solid answers on it. I think figures were
13 collected in different ways, and I tried to reflect that
14 in that, and, you know, I don't know, I am not positive.
15 I tried to reflect what came in I think from a more open
16 point of view.

17 MR. MARTINEZ: So to your understanding now
18 what happens is that EEOC in Phoenix does not review no
19 cause findings. They only review cause findings, but
20 they don't litigate all cause findings, they only review
21 them; is that correct?

22 MS. MASON: They can litigate, and we were
23 told by Mr. Dedios that they did litigate in behalf of
24 all cause findings and he told us in the meeting, and
25 then he was challenged by a person who had a case and he

1 sent back a letter saying that he was mistaken, that he
2 had given us inaccurate information, that indeed they do
3 not, so what we were told at the meeting when he was
4 challenged by somebody who had been through and had
5 begged them to litigate in behalf and also knew other
6 cases where they had not, then a letter came saying that
7 he had been mistaken in that.

8 MR. MARTINEZ: Would you be able to make your
9 numbers that you use for your report available to us so
10 when we get the official numbers from the commission we
11 can look at the two and see maybe what the discrepancy
12 is?

13 MS. MASON: Yeah.

14 MR. MARTINEZ: The other question I have is
15 that it is a quantum leap to say an advisory committee
16 may assist in the situation to saying a human rights
17 commission is necessary, and in between they are saying
18 the three member commission doesn't work. Your
19 recommendations go from one extreme to the other. Do
20 you really think an advisory committee is going to make
21 any difference?

22 MS. MASON: It may not. It may. I've been on
23 -- you know, it depends on the people involved. I mean
24 I have served on some that are much more effective than
25 others, but that's what I'd like to see now. I don't

1 think there's any hope for a Human Rights Commission
2 anytime soon. I'd like to see this and it may. I mean
3 it's my best hope.

4 MR. MARTINEZ: So what you're saying out of
5 frustration, out of lack of being able to do anything,
6 you would settle for that now just to try and move it?

7 MS. MASON: I think that's a step better than
8 we have, and I really think it would serve the
9 Industrial Commission well too. I think there's got to
10 be a change in perception as well as reality, and I
11 think that that would help. I think it's a step.

12 MR. MARTINEZ: But your statement that you do
13 not trust the commission itself to select the members,
14 and really don't have a lot of confidence in the fact
15 that the governor would pick the chair and I guess the
16 chair would set the meetings and time of the meeting
17 dates, does that really speak for how you feel this
18 would work?

19 MS. MASON: I think it's a step better than we
20 have. I'm saying that it may. It may be there may be
21 excellent appointments. I'm not saying that they
22 wouldn't, but you'd still have the perception that these
23 are people that were -- you know, that there's no
24 openness to it, these are people that they appointed to
25 say what they want and do what they want, so you've got

1 that perception. I don't know that the appointment
2 would be better, and some work very well.

3 MR. MARTINEZ: Could you tell us what you
4 would do if you could? After all this study, how would
5 you fix it? Instead of saying I settle for this, what
6 would you do?

7 MS. MASON: Well, I would really do further
8 study as far as the human rights, and look at the cost
9 and study that and look and see if that is really the
10 way to go. I mean just a general look. To me it looks
11 like it would work, that it's possible. I think that
12 that needs to be, but in the interim I'd like to see the
13 enforcement. I'd like to see our laws match the
14 federal. I'd like to see an advisory board, and we're
15 not going to change three commissioners probably. I
16 would like to see that as one, but right now we're
17 working on the advisory board and the enforcement.

18 MR. MARTINEZ: So without considering the
19 political roadblock that you would have to hurdle, your
20 recommendation would be the Human Rights Commission,
21 taking this out of the Industrial Commission would be
22 preferable to you?

23 MS. MASON: I believe so. I would like to see
24 that at least studied, yes.

25 MR. MARTINEZ: Thank you.

1 MS. RICHARDS: Time for one quick question,
2 Ms. Gillespie.

3 MS. GILLESPIE: I just wanted to say that the
4 problem with advisory boards is no one is compelled to
5 take your advice, and so what you mostly have is the
6 same situation that you have now, and it doesn't matter
7 who the chair is because they don't have to take your
8 advice unless it is a policy making board.

9 MS. MASON: Yeah, and we discussed that point,
10 and, of course, some of us would like to have a policy
11 making board, but in the reality an advisory board is
12 probably more realistic.

13 MS. GILLESPIE: We've been studying for some
14 30 years now and we pretty much know what the problem
15 is.

16 MR. TONG: I have one really quick question.
17 In your mind are you satisfied that Commissioner Colton
18 called for the task force? Did I hear you say that?

19 MS. MASON: I think she called in response to
20 community pressure, yes. She called for it in response
21 to articles in the press, resolutions from groups.
22 Yeah, she did call for it in response to I believe the
23 community input that was happening.

24 MS. RICHARDS: Thank you very much, Ms. Mason.
25 We appreciate your time. Our next presenter, Sherry

1 Repscher, has called and said she is ill and unable to
2 appear before the committee, so we will now hear from
3 Mr. Mario Blanco. He is here. Mr. Blanco, would you
4 please introduce yourself to the committee?

5 MR. BLANCO: Thank you. My name is a Mario
6 Blanco. I am the Utah Department of Transportation
7 Office Civil Rights Manager. I want to thank this
8 committee for giving me the opportunity to be here
9 today, tell you a little bit about our program.

10 My office is responsible for administering the
11 external civil rights programs in the Department of
12 Transportation. We have a program that addresses
13 employment in all our federal aid highway construction
14 projects. My office is responsible for monitoring and
15 enforcement of those employment goals. Employment goals
16 for female employment are 6.9 percent at each level.
17 Minority representation varies anywhere in the state
18 from 2.4 percent to ^{12.6}~~11.6~~, depending upon the
19 geographical location of those federal aid projects.

20 One of the things that we do as a positive
21 thing to assure contractors ^{comply with}~~complete~~ these employment
22 goals is that we have a district EEO officer in each one
23 of our districts. The State of Utah has four districts,
24 and these people, along with the representatives from my
25 office, ^{attend}~~attempt~~ what we call pre-construction

1 conferences. Anytime we award a federal^{aid} contract, prior
2 to that contract^{or} going to work we hold a
3 pre-construction conference where we discuss the various
4 specifications ⁱⁿ ~~on~~ the contract, one of those being the
5 civil rights program and our employment goals. Those
6 employment goals are monitored very closely.

7 We also have training specifications that call
8 for the contractor to provide training for minorities
9 and females ^{on} our projects. That is the primary
10 emphasis of ^{the training} special provisions. Before the contractor
11 can go to work he must ^{submit} ~~come~~ to UDOT and to our project
12 engineering^a training programs^{on} how he proposes to comply
13 with the training specifications. We review it. If we
14 feel^{it is} acceptable we approve it. If not, we ask the
15 contractor to go back and revise^{the program} ~~that~~.

16 One of the things that we have found that is
17 very successful is our visibility with the contractor on
18 the project. We visit those projects as regularly as
19 possible to see how the contractors comply with the
20 contract specifications. Our district EEO officer^{makes a visit} on a
21 monthly basis, or more often as the need calls for, will
22 visit those projects and see how a contractor is doing,
23 also to assist our project engineer with any questions
24 he or she may have. We do have a female project
25 engineer, by the way, and she's doing a very fine job.

1 One of the things that we do is we encourage our
2 contractors to comply with our specifications. We work
3 very closely with them, and we feel that cooperation by
4 both parties is being very successful in meeting our
5 contract specifications. We feel that we have a
6 partnership with the contractors. We don't use a
7 process of gotcha. We're out there visibly on site. We
8 do schedule contract compliance reviews of our ^{Contract}
9 contractors to assure that they are complying with ~~those~~
10 specifications.

11 Part of our contractors' responsibility is to
12 disseminate the EEO information to all the employees on
13 the project. We feel that this is a very good system
14 because it requires contractors to disseminate ^{EEO information} to their
15 employees and to document their good faith efforts to
16 assure that they disseminate what their contractual
17 obligations are in terms of employment for minorities
18 and females in terms of training and also to disseminate
19 their recruitment procedures.

20 In addition to that we require all of our
21 contractors to assure that they disseminate their
22 obligations regarding harassment, coercion and
23 intimidation, that they provide an environment free of
24 harassment ^{at} ~~in~~ all sites. To assure that this is done we
25 ask a contractor to document that and maintain a signed

1 roster of all people who are in attendance. We cross
2 check that against certified payrolls to make sure that
3 this effort is being carried out. It works out quite
4 well. We feel that our efforts are very good and very
5 result oriented.

6 I have some statistics. I hate to bore you
7 with ~~it~~^{them}, but I'd like to present them to you anyway
8 because this validates that our efforts are functional
9 and they are working and operating. Every year for the
10 month of July we run a study of all employees on the
11 work force on all federal aid projects in the State of
12 Utah. For example, in the year 1993 we had ~~six~~^{sixty} active
13 federal aid projects that amounted to \$178,731,000. Our
14 work force representation during this time amounted to
15 2,082 employees. We had a total of 366 females or 17.5
16 percent of the contractor's work force. We feel that's
17 very good.

18 The State of Utah, and I'd like to take a
19 little credit, our program as administered and handled
20 makes ^{for} a good working relationship ~~that we feel we have~~
21 with employers ^{that is} a little bit above the national average.
22 17 and a half percent is very good, very commendable
23 when the contractor is required to maintain 6.9 percent.
24 Now, I might add that 6.9 percent is at each level in
25 each craft. Some of the crafts we do struggle meeting

1 that 6.9 percent, but in others we exceed it. For
2 example, in some crafts, iron workers, that is a very
3 difficult and tough job. A lot of women try that
4 because of its physical characteristics. ^{but the success ratio is low.} It takes a
5 very special type of a person. ^{to work in this craft} It's very physical.

6 Our minority representation, during this time
7 element we ~~have~~ ^{had} 398 minorities that would include
8 females and females who are of a minority race or male
9 minorities, 19.1 percent of our work force in the State
10 of Utah. I believe that our minority representation
11 averages somewhere around eight. ^{percent}

12 In our training requirement that we assign to
13 our federal aid contracts we assign training, depending
14 upon the geographical location of the project, the type
15 of contract it is, the availability of opportunity for
16 the contractor to train. We review those assessments
17 prior to advertising and assign those goals. The dollar
18 value of the contract is one factor. The location of
19 the project is another factor, and during the month of
20 July as we assessed our work force for this year a
21 hundred and 13 apprentices were working on our federal
22 aid projects. Of that number 48 were female or 42.4
23 percent. We have 59 minorities or 52.2 percent of our
24 work force, and here again our minority apprentices,
25 some of them could have been female.

1 We have what we call also on-the-job trainees.
2 That's where the contractor trains individuals to reach
3 a journeyman status, and on-the-job training is a person
4 that does not require any type of formalized education,
5 like an apprentice, apprentices have to go to school
6 during the off season and maintain certain class
7 standards. Our on-the-job trainees, we had 23. 11 were
8 females, ~~males~~ or 47.8 percent. We had six minorities
9 or 54.5 percent.

10 Our program also involves the subcontracting
11 opportunity for minorities ^{and women}. In 1993 for the first three
12 quarters of ^{the} ~~this~~ year our total federal aid ^{dollar} ~~order~~
13 contracted amount ^{was} \$65,184,000. We are required by law
14 to assure that ten percent of our dollar value
15 contracted is available for minority contractors to
16 participate in. I might add that the DBE stands for the
17 Disadvantaged Business Enterprise Program which consists
18 of minority owned contractors or women owned
19 contractors. We have at the present time 65 certified
20 DBE contractors. A DBE contractor in order to satisfy
21 our goals must be certified by Utah first. We do not
22 have reciprocity with any other state agency or any
23 other state, the reason being that our requirements to
24 comply with federal aid with the Federal Highway
25 Administration are very very unique and some of the

1 other agencies who do certify may not meet our criteria.
2 Out of our 61 firms we have 48 that are Utah resident
3 firms or 79 percent. We have 13 out-of-state firms.
4 Our total number of male minority owned firms amounts to
5 44. We have one minority women owned firm, and we have
6 60 white ~~BE~~^{DBE} firms. There are only four out-of-state
7 firms that are active at the present time in our federal
8 aid system.

9 Part of the process that we have to assure the
10 success of our minority owned contractors is that we
11 have what we call a Supporting Services Program. This
12 Supporting Services Program assists our minority
13 contractors with any technical assistance they may
14 require. We have all kinds of engineers in our
15 department ~~and~~ⁱⁿ whatever area of discipline they may
16 need. We also have management capability to assist them
17 in better managing their companies. We provide them
18 with access to free plans for the bidding purposes. The
19 technical assistance that is provided also assists them
20 in interpreting plans and bidding, if necessary. That
21 ~~was very~~^{is as} brief, but informative as I can make in ~~a~~^{the} short
22 period of time *allowed to me.*

23 MS. RICHARDS: Thank you. Betty?

24 MS. GILLESPIE: This is a what if. I am an
25 engineer with the Department of Transportation. How

1 would you count me, as a woman, as a minority or as
2 both?

3 MR. BLANCO: Both.

4 MS. GILLESPIE: You are never going to get to
5 100 percent that way.

6 MR. BLANCO: Pardon me?

7 MS. GILLESPIE: I said you're never going to
8 go to 100 percent that way. In other words, women, you
9 said minorities and that includes women.

10 MR. BLANCO: Only if you are a member of a
11 minority race you are considered a --

12 MS. GILLESPIE: A minority, women are not the
13 minority, they are in fact the majority.

14 MR. BLANCO: That is correct, if you want to
15 look at national statistics, yes.

16 MS. GILLESPIE: This is also true in the State
17 of Utah, both in the population and the labor force,
18 we're talking about 52 percent or above.

19 ~~MS.~~ ^{Mr.} BLANCO: Right, but the law designates in
20 our program ^{a woman} as a legitimate minority, as long as ^{they are} ~~you are~~
21 a member ^{of} an ethnic group

22 MS. GILLESPIE: If you are a member of an
23 ethnic group, right?

24 MR. BLANCO: Also in ^{the} ~~a~~ disadvantaged program
25 the law also designates you as eligible to participate

1 in the DBE program if you are not a minority but you are
2 a female.

3 MS. GILLESPIE: In your disadvantaged program?

4 MR. BLANCO: Yes, ma'am.

5 MS. GILLESPIE: Specifically what is that?

6 MR. BLANCO: The Disadvantaged Business
7 Enterprise Program is a program that is made up of
8 minority owned firms and women owned firms.

9 MR. MULDROW: If a minority employee on a
10 federal aid contract alleges that he's discriminated
11 against because of his race, what recourse does he have?

12 MR. BLANCO: Okay. As part of our
13 requirements the contractor must post a bulletin board
14 on the project site that tells you what your rights are
15 under the law and what your complaint process is. Part
16 of the regular EEO dissemination is that he hold
17 periodic meetings, and we encourage our contractors to
18 do that on a weekly basis, along with their tool box
19 meetings to let you know what your rights are under the
20 law. If you feel you have been discriminated against
21 the contractor by contract specifications must have a
22 company EEO officer. That individual can go to, if he so
23 chooses, go to that individual. *to file a complaint*

24 MR. MULDROW: Every contractor has an EEO
25 officer?

1 MR. BLANCO: He must have one, yes, sir.

2 MR. MULDROW: Is that true for subcontractors
3 also?

4 MR. BLANCO: Absolutely, as long as his
5 contract amount is \$10,000 or more.

6 MR. MULDROW: Okay.

7 MR. BLANCO: In addition to that, the
8 contractor has to post on its bulletin board what the
9 complaint process is. Those avenues are the avenues
10 that are available to him within the company, UDOT's
11 project engineer, my office, the Utah Division of
12 Anti-Discrimination and EEOC.

13 MR. MULDROW: Any of those?

14 MR. BLANCO: And the complainant may choose to
15 go file his complaint at any level he so chooses. We
16 encourage the contractor to disseminate in such a
17 fashion that all complainants feel comfortable in going
18 to their immediate supervisor to solve that problem. My
19 experience in the many years that I have been involved
20 with this program tells me that anytime you can resolve
21 a problem at the lowest level that's the best way to do
22 so.

23 MR. MULDROW: In the past year have you had
24 any complaints of discrimination?

25 MR. BLANCO: I personally have not. They have

1 not come to my office, but some have gone directly to
2 the employer and they have been able to resolve that.
3 Some have gone directly to the Utah Division of
4 Anti-Discrimination, and I don't know what the outcome
5 of that is.

6 MR. MULDROW: If they come to you can you
7 resolve them and prescribe an enforcement remedy?

8 MR. BLANCO: I have administrative discretion.
9 One of the things I have been very successful in doing
10 is immediately, as soon as I hear of a complaint, I give
11 that priority. My experience is the sooner you address
12 a problem the better off you are. I would interview
13 that individual, he or she, either on the job site or in
14 ~~coming to~~ my office, and then I would request their
15 permission, his or her permission, to immediately hold
16 and call the contractor in and individuals so that we
17 can sit and discuss the problem, and through persuasion
18 ~~of~~ ^{and} negotiating meetings I have been very successful ⁱⁿ ~~to~~
19 ~~solve~~ ^{Solving} those issues to the satisfaction of both parties.

20 MR. MULDROW: All right. Let's say that
21 you're not able to do that, just theoretically, and you
22 find that the employee was indeed discriminated, after
23 you investigate it can you prescribe a remedy and
24 enforce it?

25 MR. BLANCO: If I can't resolve it and the

1 contractor is not receptive to resolving it, I would
2 take that assessed on its merits, in all cases I advise
3 the complainant what my administrative discretion is,
4 and he ought to also file with the Utah Division of
5 Anti-Discrimination or EEOC, in the event I am unable to
6 resolve that problem.

7 MR. MULDROW: So beyond they have to go one of
8 those two routes?

9 MR. BLANCO: Yes.

10 MR. MULDROW: If you're not able to resolve it
11 you cannot prescribe a remedy and end it there?

12 MR. BLANCO: No, but you as a contractor, an
13 employer, I find that you are violating your contract
14 specifications, I have the power to issue you a show
15 cause notice and place you in non-compliance for
16 violating contract specifications. When I issue you
17 that show cause notice, okay, you're in non-compliance
18 until a court of law tells me that you are in
19 compliance, if you wish to challenge my findings, or you
20 can negotiate a corrective action plan by which you will
21 rectify your deficiencies. Now, in the meantime if you
22 choose to go to court and challenge what my findings
23 are, you remain in non-compliance and you can no longer
24 continue ~~meeting~~ ^{bidding} on a Utah ^{Federal aid} project.

25 MR. MULDROW: So in a sense you can enforce

1 your finding?

2 MR. BLANCO: Oh, yes, but it's administrative.
3 A court of law could overturn my finding.

4 MR. MULDROW: Your ruling can be appealed by
5 contractor to court?

6 MR. BLANCO: Absolutely.

7 MR. MULDROW: What if you find no cause in
8 terms of the complaint of the employee? He can appeal
9 then to the UADD or EEOC?

10 MR. BLANCO: Absolutely.

11 MR. MULDROW: That's the route he would have
12 to take?

13 MR. BLANCO: Yes, sir, absolutely.

14 MS. GILLESPIE: What is your relationship with
15 the Office of Contract Compliance of the Department of
16 Labor?

17 MR. BLANCO: We do not work closely together.
18 It's a separate federal agency. My relationship is in
19 response directly to the Department of Federal Highway
20 Administration.

21 MS. GILLESPIE: Which is a federal agency?

22 MR. BLANCO: It's a federal agency, yes.

23 MS. GILLESPIE: But you are now talking about
24 contractors, people holding government contracts?

25 MR. BLANCO: Yes.

1 MS. GILLESPIE: In private firms?

2 MR. BLANCO: Yes.

3 MS. GILLESPIE: So they go under the Office of
4 Anti-Discrimination?

5 MR. BLANCO: Yes.

6 MS. GILLESPIE: They cannot go directly to
7 EEOC without going through there first?

8 MR. BLANCO: You mean a complainant?

9 MS. GILLESPIE: Uh-huh.

10 MR. BLANCO: They can go directly to EEOC.

11 MS. GILLESPIE: Without coming through the
12 state?

13 MR. BLANCO: If they so choose to do so, yes,
14 they have that right. Now, whether or not EEOC will
15 refer them back to Utah Anti-Discrimination, I'm not
16 sure. EEOC may refer that back to anti-discrimination
17 for possible solution first. I have not had that take
18 place during the many years, *that I have worked for UDOT.*

19 MS. GILLESPIE: I thought there had to be an
20 administrative procedure somewhere in between.

21 MR. BLANCO: Not with the UDOT, no.

22 MR. MARTINEZ: I think what you're getting at
23 is your program that you've just described to us is
24 mandated by federal regulation, isn't it?

25 MR. BLANCO: Yes.

1 MR. MARTINEZ: Is that what you're getting at?
2 And the second part of that is these same contractors
3 are under the jurisdiction of the Office of Federal
4 Contract Compliance Program, right?

5 MR. BLANCO: Uh-huh.

6 MR. MARTINEZ: So if you don't do it they'll
7 do it anyway?

8 MR. BLANCO: Yes. In fact, we do have some
9 degree of working relationship with OFCCP ^{On} occasions
10 they will ~~come~~ ^{call}, say, Mario, we are thinking of reviewing
11 this contract, are you going to do it, and if I'm not
12 going to do it then they will proceed and do it.

13 MR. MARTINEZ: How many show causes have you
14 issued that you were telling us about?

15 MR. BLANCO: One year I issued 50 percent.

16 MR. MARTINEZ: 50 percent what?

17 MR. BLANCO: I placed half of the contractors
18 in non-compliance several years ago.

19 MR. MARTINEZ: For non-compliance?

20 MR. BLANCO: This year ^{of all} ~~I don't think~~ the
21 contractors that we reviewed I issued one show cause.
22 One was found to be in non-compliance.

23 MS. GILLESPIE: When you say 50 percent --

24 MR. BLANCO: About approximately I believe
25 there ~~was~~ ^{were} 6 out of 12, but this was several years ago.

1 There was a time, in fact, it's been quite a number of
2 years ago when President Reagan came into office, there
3 was a feeling that ~~the~~ civil rights was on its way out.
4 If you remember Attorney General Edwin Meece, he was not
5 exactly a gentleman supporting civil rights, and at that
6 time we really struggled and had to work extra hard.
7 Our contractors felt, well, this is history, we no
8 longer ~~had~~ ^{have} to comply, what's in the contract doesn't
9 really mean what it says, and that was a time when we
10 struggled. Right now I'm very happy to say that our
11 contractors are doing a very good job.

12 MR. MARTINEZ: How many manager department
13 heads are there at UDOT?

14 MR. BLANCO: How many --

15 MR. MARTINEZ: Department heads.

16 MR. BLANCO: A lot, depends on what level.
17 For example, we have four districts. One district we
18 call the southern region that is made up of three
19 districts, has three district directors and a regional
20 director, Salt Lake one district director, Ogden one,
21 Orem one. Headquarters here in Salt Lake has our
22 director of transportation with many division
23 administrators at different levels. I am one of those.

24 MR. MARTINEZ: Other than yourself how many
25 are minority?

1 MR. BLANCO: Division administrators?
2 MR. MARTINEZ: Yeah.
3 MR. BLANCO: I believe I'm probably the only
4 one.
5 MR. MARTINEZ: How many are female?
6 MR. BLANCO: There's quite a few.
7 MR. MARTINEZ: Quite a few?
8 MR. BLANCO: Uh-huh.
9 MR. MARTINEZ: But minorities you're the only
10 one out of all those people you described to us?
11 MR. BLANCO: As a division administrator, yes.
12 MR. MARTINEZ: About how many division
13 administrators are there so we have an idea of what
14 percentage you constitute? Would there be more than
15 ten?
16 MR. BLANCO: Yes.
17 MR. MARTINEZ: More than 20?
18 MR. BLANCO: Well, depends on what we call
19 division administrators.
20 MR. MARTINEZ: You're defining it, I'm not.
21 MR. BLANCO: Okay, this is true.
22 MR. MARTINEZ: Take the level that you're at,
23 that seems to be pretty high.
24 MR. BLANCO: Okay. At the level that I'm at I
25 am the only one.

1 MR. MARTINEZ: How many others are there at
2 your level?

3 MR. BLANCO: Gosh, the department is very very
4 large. We have approximately 1,600 employees.

5 MR. MARTINEZ: Who determines if UDOT is doing
6 anything on affirmative action?

7 MR. BLANCO: That's our human resource
8 director who is responsible for the internal civil
9 rights program.

10 MR. MARTINEZ: Now, does UDOT have an
11 affirmative action plan they file with the federal
12 government?

13 MR. BLANCO: Absolutely. They must do that in
14 order to receive funding. My programs have to be
15 submitted to the Federal Highway Administration and
16 approved before UDOT can continue receiving the funding.

17 MR. MARTINEZ: But the affirmative action plan
18 UDOT submits goes to seeking compliance from
19 contractors, doesn't it?

20 MR. BLANCO: Absolutely, yes.

21 MR. MARTINEZ: UDOT itself follows the state
22 affirmative action plan, doesn't it? The agency, UDOT

23 --

24 MR. BLANCO: Yes.

25 MR. MARTINEZ: The Utah Department of

1 Transportation follows whatever affirmative action plan
2 the state has, right, for their hiring of state
3 employees?

4 MR. BLANCO: Yes.

5 MR. MARTINEZ: So that's not federally
6 governed?

7 MR. BLANCO: No.

8 MR. MARTINEZ: That was my next question. Do
9 you know if the state has an affirmative action plan? I
10 hear hecklers, but do you know?

11 MR. BLANCO: UDOT has to have an affirmative
12 action plan filed with the Federal Highway
13 Administration for their approval, but the State of Utah
14 itself, I do not know.

15 MR. MARTINEZ: Okay, so UDOT itself doesn't
16 have any mechanism to command any kind of compliance
17 with affirmative action or hiring procedures itself that
18 you're aware of, you only handle your program which
19 OFCCP and highways tells you to do, and that's how you
20 get funded?

21 MR. BLANCO: ^{yes}~~Yeah~~. The department does have
22 its affirmative action plan that is monitored by Federal
23 Highways to make sure that they hire at different levels
24 minorities and females, okay, but the state as a state,
25 State of Utah, I am not aware that we do have an

1 affirmative action plan.

2 MR. MARTINEZ: UDOT itself does not have any
3 state obligation to do affirmative action hiring, right?

4 MR. BLANCO: To my knowledge I don't believe
5 so.

6 MR. MARTINEZ: Thank you.

7 MR. BLANCO: Other than our obligations that
8 we have directly.

9 MR. MARTINEZ: You don't impose something on
10 contractors that UDOT itself doesn't follow?

11 MR. BLANCO: We don't have employment goals,
12 okay, the State of Utah at any level, and I'm not aware
13 that any state agency in the country has employment
14 goals they have to satisfy within themselves.

15 MS. RICHARDS: Now I'm confused because I
16 thought you just said that UDOT had to do that for
17 federal regulations. You're just talking about outside
18 contractors, not UDOT itself?

19 MR. BLANCO: That is correct.

20 MS. RICHARDS: Okay. Thank you, Mr. Blanco.
21 We appreciate your presence here.

22 MR. BLANCO: Thank you very much for the
23 opportunity.

24 MS. RICHARDS: Thank you very much. We are
25 now at the end of our afternoon session and we will have

1 a break. It's now 5:25. We will have a break until
2 7:00 at which our open session will begin, and for
3 anyone who wants to appear during that open session,
4 please remember that you do need to sign up. Evelyn is
5 here. She is the person with whom you need to sign up
6 prior to that session, and so we will now stand
7 adjourned until 7:00, if we can all be prompt, please,
8 in returning at 7:00.

9 (Recess.)

10 MS. RICHARDS: We would like to call this open
11 session of the Utah Advisory Committee to the U.S.
12 Commission on Civil Rights. If there is anyone else in
13 the audience who would like to address the committee,
14 please note that you will need to sign up prior to
15 addressing the committee, and we have two people who
16 will address us. They will each speak for seven to
17 eight minutes and then entertain any questions from the
18 committee if there are any. The first is ~~Erik Demillard~~^{Eric DeMillard},
19 is that correct?

20 ~~DeMillard~~^{DeMillard} MR. ~~DEMILLARD~~^{Eric}: Yes. Hello, my name is ~~Erik~~^{Eric}
21 ~~Demillard~~^{DeMillard}, and I used to work for the State of Utah. I
22 was a state employee out at the Utah State Prison at
23 Draper. I was a Social Service Worker out there, and I
24 had received ~~accomodation~~^{commendation} awards for my work out at the
25 prison while I was a Social Service Worker. I went back

1 to graduate school at the University of Utah in October
2 of 1991, and I found out ~~that~~ I had bitten off more than
3 I could chew in terms of trying to go to graduate school
4 full-time and trying to hold a full-time job at the
5 prison, ~~not~~^{on} only 15 to 20 hours a week, and I've had a
6 mental disability for quite a number of years now. I've
7 had a problem with depression, and I've been diagnosed
8 with Post Traumatic Stress Disorder because I've been a
9 victim of violent crime, and I was a child abuse victim
10 for many years, and I've also been diagnosed with
11 Obsessive Compulsive Disorder which sometimes causes me
12 to work slower and maybe study not as well as some other
13 people who haven't been diagnosed with OCD, okay?

14 So I was under a lot of pressure in the 1991~~x~~
15 1992 school year and I started to have more symptoms of
16 my mental disability, and I asked the University of Utah
17 and the Department of Corrections for accommodations.
18 They refused all accommodations, and when I told the
19 Department of Corrections about my mental disability on
20 June 4th of 1992 all they wanted to do is fire me.
21 That's all they wanted to do. They wanted to get rid of
22 me. They didn't want me working out at the prison any
23 more. They didn't want me working for the Utah State
24 Prison any longer, even though I had done the job just
25 fine for years, and I was dismissed from my job on March

1 30th of 1993 by Lane McCotter who is the Executive
2 Director of Corrections, and I appealed my termination
3 to the Career Service Review Board. Michael Martinez
4 sitting right over there was the hearing officer for the
5 Career Service Review Board. I had four days of
6 hearings. Michael Martinez kept telling me over and
7 over again, "we have no jurisdiction over the ADA," you
8 know, "we cannot consider your symptoms of mental
9 disability as an explanation for why your work
10 performance deteriorated," and so I was fired, and it was
11 upheld by Michael Martinez because I was having symptoms
12 of ^{ml} mental disability, and I tried to explain to him over
13 and over again for four days of hearings to please give
14 me some consideration. He absolutely refused. He said,
15 "we have no jurisdiction over the ADA, you have to deal
16 with the UADD," and, of course, the UADD is a completely
17 useless organization.

18 I filed my complaint ^{of discrimination} against the Department of
19 Corrections in July of 1992. It's been over 16 months,
20 nothing's been done. Absolutely nothing has been done
21 to enforce Title one of the ADA. Now my unemployment
22 insurance has run out two weeks ago. I have five
23 children to support. My youngest son is only 13 and a
24 half months old and I started a job making minimum wage.
25 I'm making minimum wage from a Grade 21 Social Service

(upheld) →

1 Worker, and I don't even know how much longer I'm going
2 to be able to make it financially because I could not
3 afford to pay one half the cost of the transcript, the
4 preparation of a written transcript. Bruce Jones who is
5 the chairman of the Career Service Review Board sent me
6 a letter stating that because I couldn't afford to pay
7 over \$2,000 for one half the cost of the written
8 transcript of the hearing, I defaulted. He said I
9 defaulted on my appeal with prejudice. I don't have the
10 money. I can't afford to pay \$2,000 because I have to
11 support my family, and my unemployment insurance has run
12 out, and I think it's incredible that the State of Utah
13 totally stacks the deck against ex-state employees.
14 This is a copy of the Order Dismissing Appeal and Final
15 Agency Action merely because I don't have the money to
16 pay for one half the cost of the transcript. Steve
17 ~~Stacey~~ of ~~Stacey~~ and Associates Court Reporting/^{Service}told me
18 it would cost over \$4,000 to get the transcript in
19 written form to appeal it to the Career Service Review
20 Board and the Utah State Court of Appeals.

21 Now, when I was working out at the prison in
22 the 1991-1992 school year I was put on corrective
23 action. ^{The} Department of Corrections' ^{own} policies and
24 procedures state when an employee is on corrective
25 action there will be no reduction in hours under 40

1 hours a week and there will be no demoting, there will
2 be no lessening of job responsibilities. I was demoted
3 and I was not allowed to work full-time. The Department
4 of Corrections violated its own policy^{ies} and procedures
5 in terms of my corrective action. In fact, Kim
6 Thompson, he's ^{the} director of Institutional Operations,
7 told me he would not allow me to work full-time at the
8 prison, and he said we will not allow you to get a
9 part-time job off prison property. In other words, he
10 told me I could not work full-time.

11 MR. MULDROW: Mr. ^{DeMillard} ~~Demillard~~, could I ask you a
12 question --

13 MR. ^{DeMillard} ~~DEMILLARD~~: Sure.

14 MR. MULDROW: -- before you give us any more
15 information. You were advised I understand to file a
16 complaint with the UADD regarding your situation, and
17 did you file a complaint?

18 MR. ^{DeMillard} ~~DEMILLARD~~: Yeah, I filed it July 30th of
19 1992, and after about 13 months I had to drop my
20 complaint and transfer it to the Equal Employment
21 Opportunity Commission.

22 MR. MULDROW: What response did you have?

23 MR. ^{DeMillard} ~~DEMILLARD~~: None. They said we're
24 overloaded. Anna Jensen said we are booked, we are
25 totally buried in cases, we can't help you, we can't

1 deal with your case. They said drop it and let the EEOC
2 in Phoenix, Arizona deal with it, and that's where it is
3 now, but I don't have hundreds of thousands of dollars
4 to force the State of Utah to abide by Title I of the
5 ADA. I don't have the money.

6 MR. MULDROW: Your complaint was forwarded to
7 the EEOC?

8 MR. ^{DeMillard}~~DEMILLARD~~: Yes, in Phoenix to Antonio
9 ^{Dios}~~Dedes~~.

10 MR. MULDROW: Have you heard from the EEOC?

11 MR. ^{DeMillard}~~DEMILLARD~~: No. I typed them a letter
12 December second, last week, and I asked Mr. ^{Dios}~~Dedes~~,
13 please do something about my case because I've run out
14 of unemployment insurance and I have a family to
15 support, and I gave a copy of ^{the}~~a~~ letter to your
16 commission right in here.

17 MR. MULDROW: All right. We will write a
18 letter to the EEOC inquiring about the status of your
19 complaint and perhaps we can get some answer as to what
20 the status of it is. Otherwise, we're not a body, as I
21 think I explained to you, that can resolve your
22 complaint ourselves. We appreciate your coming forward
23 to provide us with an example of a person who has a
24 problem and the difficulties you're having in getting it
25 resolved. We will try to at least find out the status

1 of your complaint by writing to the EEOC and inquiring
2 about it.

3 MR. ^{DeMillard}~~DEMILLARD~~: And I'd like to make one final
4 comment, that at an administrative hearing on March 8th
5 of 1993 and at my Career Service Review Board hearing
6 with Michael Martinez, all of Ralph Adams's witnesses --
7 Ralph Adams is an Assistant Attorney General for Jan
8 Graham. Jan Graham did everything she could to make
9 sure I couldn't get my job back, and Ralph Adams, every
10 one of his witnesses except one lied under oath, and I
11 will be going in front of a grand jury next month
12 through Third District Court to get these people
13 indicted for felony perjury because I'm out of a job
14 because of discrimination and because of felony perjury,
15 and I am not going to lose a job because people lied
16 under oath, so I will be addressing a grand jury next
17 month.

18 MR. MULDROW: These facts may be relevant to
19 the complaint that you have filed, and hopefully it will
20 be considered, and we wish you well. I wish we could be
21 of more direct help to you, but at least we will try to
22 follow through and help you find what the status of your
23 complaint is.

24 MR. ^{DeMillard}~~DEMILLARD~~: I'd just like to let you know
25 that the State of Utah refuses to abide by the ADA law

specifically

1 ~~by~~ Title I and Title II, and perjured testimony was used
2 to fire me from my job. I asked Michael Martinez to
3 please consider my symptoms of ^amental disability. He
4 said he could not. He refused because he said he had no
5 jurisdiction over the ADA, and it's a catch 22 because
6 the UADD does nothing to help you out. They do nothing,
7 so it's pretty frustrating.

8 MR. MULDROW: We'll inquire about the status
9 of your complaint and get back to you, inform you of
10 what we find out, okay?

11 MR. ~~DEMILLARD~~ ^{Demillard}: I've prepared this written
12 material for your panel, and I'd like to know who I can
13 turn it in to.

14 MR. MULDROW: I'll be glad to receive that.

15 MR. ~~DEMILLARD~~ ^{Demillard}: Thanks a lot, appreciate it.

16 MS. RICHARDS: Thank you. Our next speaker is
17 Samantha ~~Byrd~~ ^{bird}.

18 MS. ~~BYRD~~ ^{bird}: Good evening. I hadn't really
19 planned on talking with you today, so I hadn't prepared
20 any speeches, or I've got a few notes I scribbled down
21 here, but maybe what I say will come more from the heart
22 than instead of some kind of rehearsed speech. I am
23 mainly here because Coleen Colton, Commissioner Colton,
24 I'm sure is going to include my case as one of her
25 successes and positive numbers that she's going to give

1 to you on what UADD had accomplished in the year 1992.
2 I was one of 29 cause findings for the entire year of
3 1992. I believe they had somewhere between six and
4 seven hundred cases filed and only 29 received a cause
5 finding and I was one of those few findings, but yet
6 even though she's going to show me as a win in a
7 positive column, I'm here to tell you I have not gained
8 anything by this win, except it's cost me \$5,000 for my
9 own attorney to get this far in the system.

10 It's been two and a half years since I
11 originally filed the complaint, and it is now sitting
12 with the EEOC in Phoenix probably dying a slow death.
13 The employer is still discriminating, has been fighting
14 it every turn of the way, and I'm without a \$50,000 a
15 year job. Fortunately, I didn't need that pay check to
16 pay the rent, but I'm one of the very few people in this
17 state who does not need their pay check to pay the rent
18 and do other things with. So even though there are
19 going to be some positive numbers that may be given to
20 you by Commissioner Colton, they don't amount to
21 anything constructive when you get right down to was the
22 wronged person made whole again? Has the employer been
23 given notice to quit discriminating, and has the
24 employer ceased then because of whatever it is that the
25 anti-discrimination division has done? None of those

1 things have happened.

2 I am not a unique case. It was 321 days from
3 the day I filed until I got my cause finding, not
4 because they investigated for 321 days. It took them
5 about 310 to get to it, and at that point I became upset
6 and a little more pushy, and I asked to speak to the
7 then acting director Karen ~~Cobby~~ ^{Suzuki-Okabe}, and it wasn't until
8 310 days into the system that I first learned they had
9 no enforcement power. For 310 days nobody mentioned it,
10 nobody told me. I had three different investigators, it
11 was never brought up, so at this meeting finding this
12 out I asked for advice. I said, okay, what can EEOC in
13 Phoenix do for me then? Basically I was told that
14 Phoenix would do no more for me than Utah would, and, if
15 anything, they would take much longer to do it as they
16 have thousands of cases where Utah only has hundreds,
17 that I might be required to fly often to Phoenix if they
18 needed me for something, so it was better off that I
19 stay in Utah. I talked to them for about 45 minutes, I
20 would say, and no less than three times in that 45
21 minutes was I encouraged to withdraw from their system
22 and file in the federal courts. I remember them saying
23 your case is so good why don't you just sue, and my
24 reply was always my case is so good, why can't you help
25 me? Sure, if I would have withdrawn, if I would have

1 said I take your advice, I'm not going to Phoenix, it's
2 too far, take years to see any result, you can't help
3 me, I'll pull out, they would have gotten their \$450.
4 It would have shown up as another case that they have
5 gotten rid of, they settled, and I would then have to
6 come up with \$30,000 for a trial.

7 I did get an attorney. I had to have an
8 attorney to go through the appeal process and to get to
9 the point where I am now. You cannot do it without an
10 attorney. I had some litigation background at my
11 employer. In fact, that's what I did for the last five
12 years, was oversee litigation cases for this employer,
13 so I had some savy to do some of it myself. Your
14 average ordinary citizen is like throwing them to the
15 wolves if they walk into that agency without ~~an~~ attorney
16 representation. I have spent \$5,000 to get this far. I
17 don't know if I would have used an attorney from the
18 beginning, it could have been eight, nine, I'm guessing,
19 somewhere of that nature. I'm no better off now than I
20 was before, I'm worse off, but I still intend to fight
21 it and hang on because I fortunately have the financial
22 means to be able to do it, but I'm one of the very very
23 few in this state that can do that.

24 My experience with UADD was not unlike many of
25 the people that I heard testify before the governor's

1 task force that have experience with UADD. If anything,
2 my case was very mild. I was at the legislative
3 committee hearing when the task force presented their
4 report, and it was like two witnesses to the same auto
5 accident, all of those people, there must have been 20
6 of them, they got up to the mike and told their tale.
7 Well, all of them had nothing good to say. They were
8 horrendous tales of people not calling back, years of
9 fruitlessness and expenses, but none of that showed up
10 in a report. What was sent to the governor was that
11 there were some minor things that needed to be fixed,
12 and so their idea of fixing the system was to get a new
13 phone system that would enable you to leave a message
14 for your investigator automatically, perhaps some new
15 pamphlets, and to better school their receptionist to
16 turn people away who didn't have a very solid or good
17 claim to begin with, something that they couldn't help
18 them with, so let's teach the receptionist how to get
19 rid of these people. That was the recommendation that
20 came down the line.

21 MS. MULDROW: Ms. Byrd, could you just kind of
22 summarize the highlights of your situation? You filed a
23 complaint with the UADD and that remained in their
24 purview for how many days?

25 MS. ^{Byrd}~~BYRD~~: From the day I got the decision,

1 321.

2 MR. MULDROW: And then it was suggested to you
3 that you file it at the EEOC?

4 MS. BYRD: Well, that was -- back up two
5 weeks. Two weeks before I got the decision I went in
6 and demanded to talk to somebody.

7 MR. MULDROW: UADD made a decision?

8 MS. ~~BYRD~~^{BIRD}: Right, but two weeks before they
9 did I went in and had my conversation with Mrs. ~~Suzuki~~^{Suzuki}
10 ~~Cobby~~^{Okabe}.

11 MR. MULDROW: Who was that?

12 MS. ~~BYRD~~^{BIRD}: She was the then acting director of
13 UADD, the director at the time, and it was then that I
14 expressed all my dismay at the length of time, what it
15 was costing, and then she also said, well, once you get
16 through with this there is nothing we can do. Through
17 that entire process I was encouraged to withdraw and
18 sue, and never once, not one time did they ever say we
19 can mediate, we can suggest arbitration, we can be a
20 force for conciliation.

21 MR. MULDROW: Then two weeks after that --

22 MS. ~~BYRD~~^{BIRD}: Then I got the cause finding.

23 MR. MULDROW: A finding of cause?

24 MS. ~~BYRD~~^{BIRD}: Yes, sir.

25 MR. MULDROW: And what did you do then?

1 MS. ^{Bird}BYRD: I didn't have to do anything. My
2 employer appealed.

3 MR. MULDROW: Okay.

4 MS. ^{Bird}BYRD: It's still in the appeal process.

5 MR. MULDROW: Are you represented by an
6 attorney in the appeal process?

7 MS. ^{Bird}BYRD: Yes.

8 MR. MULDROW: How long has that appeal process
9 been going on?

10 MS. ^{Bird}~~BYRD~~: It was September of 1992 when the
11 cause finding was heard.

12 MR. MULDROW: All right, and what is the
13 status of it right now?

14 MS. ^{Bird}BYRD: EEOC in Phoenix is "looking at my
15 case" to see if it has enough support for them to pursue
16 it in a court on my behalf.

17 MR. MULDROW: Have you gotten a final word
18 from EEOC?

19 MS. ^{Bird}BYRD: I called them in May of this year
20 finally. I realize it takes a while to get a case there
21 and someone has to look at it. They in essence
22 responded, said, yes, we have your case, but we're
23 looking into it and don't call us, we'll call you, and
24 that was May of 1993.

25 MR. MULDROW: And nothing since then?

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Bird
MS. ~~BYRD~~: Nothing since.

MR. MULDROW: Now what do you intend to do?

Bird
MS. ~~BYRD~~: Well, I'm not sure. If I want to sue in federal court my attorney says it's going to cost approximately \$30,000 to go to trial together. That's not counting his time once the trial begins, but to get it to trial.

MR. MULDROW: Are you paying the attorney, I mean if you go through this, or would you take it on a contingency basis?

Bird
MS. ~~BYRD~~: I don't know what kind of testimony you've heard, but being connected with the litigation through my job for all those years I had a pretty good inroad to litigation attorneys here in the state, and I talked to over ten of them myself and could not find one who would take this case or any case like this on contingency.

MR. MULDROW: So if you pursue it you'll have to pay the attorney out of your own pocket?

Bird
MS. ~~BYRD~~: I would say nine people out of ten would be forced to pay by the hour. A hundred ten dollars is about the going rate.

MR. MULDROW: Have you contacted EEOC recently in writing to ask about the status of your case?

Bird
MS. ~~BYRD~~: Yes.

1 MR. MULDROW: Have you gotten any response?

2 MS. ~~BYRD~~^{BIRD}: I take that back. No. Last time I
3 checked with them it was, well, we'll call you. I did
4 call and leave a message. A couple of my witnesses were
5 going to be leaving for the summer for some overseas
6 vacation, to get them now would be a good time if you
7 wanted to get them.

8 MR. MULDROW: So what do you intend to do now?

9 MS. ~~BYRD~~^{BIRD}: I don't have high hopes of EEOC
10 doing anything for me either. In this task force
11 testimony it was represented that EEOC has sued on
12 behalf of an employee who received a cause finding in
13 Utah. I believe it was one time in the last five years,
14 so both agencies functionally have no impact on what
15 goes on. Now, it may have been one in four. It may
16 have been two cases in six years, but the numbers are
17 very low and very limited for that scope, so at this
18 point I don't know. I was totally amazed when
19 Commissioner Colton sat before the Business and Economic
20 Interim Legislative Committee and said, how about that,
21 all those years we just found a law, that we could have
22 been enforcing it all these 30 years, we just didn't
23 know we could, and I don't mean to sound flip, but that
24 was exactly the way she put it, we didn't know we could,
25 but I guess we can.

1 My other point along that same line is that I
2 have two acquaintances who also work for the same
3 employer who could not be here tonight because that
4 employer has given everyone in the state something
5 written that says they are not to communicate in any way
6 with the media on any subject relating to that employer,
7 so they were afraid to come, but I have given you
8 written permission, and I have their names and their
9 UADD case numbers both in here. You're going to hear a
10 lot about the new and improved version of UADD since all
11 of this pressure came on. You're going to hear about
12 how much faster they do cases now and how they've got
13 four cases out there in the wings that they're getting
14 ready and thinking about adjudicating, doing something
15 about.

16 One of my acquaintances had his case enter the
17 system about nine months ago. I would say about three
18 months ago he was called, he got his finding in the mail
19 and he did not get a cause finding. He called up his
20 investigator and said what happened, why didn't I have a
21 more positive case? The investigator told him, he said
22 I did not interview one witness you gave me on the phone
23 or otherwise. I did not interview any witnesses that
24 your employer gave me. I did not visit the scene. I do
25 not have enough time to interview anybody. All I did

1 was take written permission from you, the original
2 written permission from the employer, and I made my
3 decision. I do not have time to interview witnesses.
4 This particular gentleman went out and did the
5 investigator's job and got affidavits from witnesses,
6 turned them in and he did grant, get granted
7 administrative law here.

8 I went with him last month to the pretrial on
9 the administrative law hearing. The administrative law
10 judge spent most of his time apologizing saying I am
11 really sorry that I don't know more about your case. He
12 said I used to. He said before I would have a pretrial
13 I would have already contacted both sides, urged some
14 kind of mediation, urged the two of you to sit down and
15 talk to each other, put some pressure on. I would have
16 already gotten your list of witnesses, but he said I
17 don't have time for that any more, and he actually
18 alluded and said that the commission has doubled our
19 caseload lately, and he said none of us can keep up, so
20 I am really sorry, but I can't do the things the way I
21 normally do them, so I apologize, and let's start at the
22 beginning and what are you going to do and who are you
23 going to call. So I have no doubt they're a lot faster
24 in investigating their cases and that number is going to
25 be given to you, but how much faster? They're closing

1 them quicker, faster, you bet, but are they closing them
2 any better? That's the key, and I really don't think
3 they are. They're getting off the hot seat is what
4 they're doing.

5 The second person who went through the system
6 here recently received a cause finding about four, five
7 months ago, and he did sit down and get some mediation
8 going. They didn't come to any final agreements, and to
9 make a long story short, the very next day the employer,
10 who happens to be State Farm Insurance, is going to be
11 popping up a lot in this, sued this man and the State of
12 Utah UADD for coming up with their cause finding. This
13 was maybe two months ago. ^{They} ~~He~~ sued ^{him} ~~them~~. The same
14 gentleman was in the same litigation end of the business
15 as I was with State Farm, so right away we know a
16 Summons and Complaint when we see one. We know when
17 we're a named defendant. He calls the state and the
18 state says we can't represent you in this answer. You
19 must answer this for yourself. We're going to answer it
20 because we too are served and are being sued by your
21 employer for having the nerve to come up with a cause
22 finding, but we're not going to represent you. He had
23 to go out and get his own attorney at that point, and
24 motions are flying back and forth and memorandums,
25 objections and orders for dismissal, you know how it

1 goes. It's still sitting in the Third District Court.
2 He spent \$1,800, when all he did was filed an action,
3 filed a complaint under federal protected act, but the
4 state isn't going to pay for it, also sent him a letter
5 which I saw that says not only will we not give you an
6 attorney or answer for you, we will not pay for any
7 attorney you choose that is going to do this answering
8 for you. So I find it very hard to believe that the
9 same agency that tells you that they have picked four
10 cases which they are really thinking about adjudicating
11 sometime in the near future, cannot even come out six
12 days ago and answer a simple Summons and Complaint by
13 the employer for somebody who just got a cause finding.
14 This isn't the old way, ^{they're} going to tell you it's been done
15 away with. This is the new improved version.

16 MR. MULDROW: Ms. Byrd, we're rather limited
17 on time. I don't want to cut you off. We do appreciate
18 very much, especially the example of your own case. We
19 would appreciate it if you would inform us of
20 developments as they occur in your case. Would you be
21 able to do that?

22 MS. ^{Bird} ~~BYRD~~: Probably won't be much to inform,
23 but I'll be happy to. Would I send it to you in Denver
24 or --

25 MR. MULDROW: Yeah, and we will be

1 corresponding with you.

2 MS. ^{Bird}BYRD: Again, not just my case, these
3 people could not come, but their case numbers are in
4 here should you be willing to check, verify, whatever.
5 Thank you very much.

6 MS. RICHARDS: Were there any other questions
7 from other members of the committee?

8 MS. CRAFT: Could I ask one question? I just
9 want to get a clarification. Your case is at EEOC?

10 MS. ^{Bird}BYRD: Yes, ma'am.

11 MS. CRAFT: Is your case also at the
12 Industrial Commission administrative level also now, or
13 is it not there?

14 MS. ^{Bird}BYRD: No. My guess would be that I'm
15 going to be under the column of one cause finding, and
16 then there's another column where it says cases referred
17 to EEOC, and my number is going to fall in that area as
18 well.

19 MS. RICHARDS: Thank you very much. Our next
20 presenter is Barbara Toomer who will be addressing us.

21 MS. TOOMER: I appreciate the opportunity to
22 come and speak here. I am a little disturbed about the
23 way I had to take this opportunity. I belong to the
24 Disabled Rights Action Committee. We ^{testified}~~testify~~ quite
25 extensively with the anti-discrimination task force, and

1 yet we did not even get a notice of this meeting, not
2 even an invitation to come tonight. I found out about
3 it through what might be called the back door. The only
4 thing that I can think of is that there seems to be an
5 avoidance by the Industrial Commission because I assume
6 that you got a lot of your names from the Industrial
7 Commission, that they really are avoiding the grass
8 roots community organizations.

9 I noticed from your agenda that you did hear
10 from La Raza and you did hear from the NAACP and the
11 Women's Lobby. There were no disabled community
12 organizations represented at all, and yet we are the
13 ones who are affected by the Americans with Disabilities
14 Act. We're the ones that it was put into effect to try
15 and protect. We're the ones that are being affected,
16 and yet you didn't notify anybody who was a grass roots
17 community organization dealing with strictly disabled
18 access, and I think it's unfortunate that somehow along
19 the line we got dropped from all of this.

20 People as a general rule, and I include
21 business, I include the disabled, I include everybody,
22 they do not know what the American with Disabilities Act
23 that was passed in 1990, went into effect, mostly into
24 effect in 1992, they don't even know what it's about.
25 Let me give you an example. Last summer we had an

1 individual who came to us and said, you know, there's a
2 bar up there opposite the Federal Building, and I went
3 in there to get a drink and they wouldn't serve me and
4 they told me they wouldn't serve me because I used a
5 wheelchair, and so we didn't really believe it. We
6 couldn't believe that this happened. So we sent two of
7 our friends in who used wheelchairs, and one of them
8 threw a 20 dollar bill on the bar and said I'll stand
9 the first round. The young lady pushed it back into his
10 lap and said no, you won't, we don't serve folks like
11 you here. He said wait a minute, you can't do that.
12 She said you use a wheelchair, that's the policy, so we
13 filed in federal court and we got it straightened out,
14 ~~magically~~ there was never a policy like that. It was
15 so far in the wrong, but discrimination is alive and
16 well in the State of Utah, and I can only pinpoint it
17 because people do not know, people are sitting with this
18 umbrella of satisfaction over their heads saying that
19 all is well in Zion. It's not. If you're disabled, you
20 heard from Eric, it's not okay. You've heard from
21 women, it's not okay. You're now hearing from disabled
22 folks, it is not okay.

23 I'd like to know, and I think you should ask
24 the question of the State Industrial Commission, why are
25 they not pushing for a state American with Disabilities

1 Act Law to be enacted in the State of Utah so we don't
2 have to go to Phoenix? You might ask the Industrial
3 Commission, and I did hear that they -- I mean I was
4 there so I know, they testified a little bit, but it
5 seems to me that the Industrial Commission should get
6 some funding for a Fair Housing Act. We waited four
7 years before we got funding for an office and then it
8 was a minimal amount, and because we have Karen Sheppard
9 back in Washington she pushed a little bit, and we now
10 have a Fair Housing Act that is in compliance with the
11 federal law, but it's appalling. Why don't they push?
12 They're supposed to do things like that. That's what
13 they're supposed to be doing.

14 Now, I also am here as a representative of the
15 Martin Luther King Human Rights Commission. I am a
16 member of that commission. I understood when I called
17 Denver to find out why the Community Organization of
18 Disabled Rights Action Committee was not invited, why
19 the Martin Luther King Commission was not invited, and
20 the person I talked to assured me that they were. I
21 talked to the chair this afternoon and he did not know
22 about this meeting. This is a state commission under an
23 executive order. We've been in effect for two or three
24 years and yet we did not hear about this. There is
25 something wrong. Somehow along the line people have got

1 to know what people are doing, somewhere, and I don't
2 know who is to blame, but somebody is, but the chair did
3 want me to relay this to you. He said that the Martin
4 Luther King Commission, along with other community
5 organizations, share a great concern that the State Hate
6 Crimes Bill is not strong enough. He said even with a
7 lot of evidence that would prove that a crime was
8 against the Hate Crimes Bill, there have been no
9 prosecutions whatsoever, and he recommends that the
10 State of Utah put some more teeth in the law and also
11 somehow they drop their antagonism towards words sexual
12 orientation. People are people, and if they're the
13 result of a hate crime because of their disability,
14 their color, their sexual orientation, their gender, no
15 matter what it is, people are being discriminated
16 against, and this state is allowing it to happen. I'd
17 like to thank you very much for listening to me. I hope
18 I added something to take back and think about. Thank
19 you.

20 MS. RICHARDS: Thank you. Before you leave,
21 would you like to comment about employment
22 discrimination among the disabled particularly?

23 MS. TOOMER: My organization, I can only tell
24 you about the few that have come to our knowledge
25 because my organization has made a decision to deal with

1 access and housing and health care, and we're a
2 volunteer organization. We have very little funding, so
3 we can't, but I can tell you that as far as I'm
4 concerned personally, this state spends a lot of money
5 in their vocation rehabilitation in putting disabled
6 people up on the hill, getting them good degrees, and
7 yet when they go out to look for a job -- I have a
8 friend who is blind with a master's degree and she's
9 spent years in federal information switchboard, and so
10 the glass ceiling is in place for disabled folks, only
11 lower, so if they do get a job, and people don't tell
12 you that it's because of your disability it's
13 unfortunately that you're just not qualified enough.
14 That's what happens to the older workers, you know, and
15 it's difficult to prove an EEOC case if you've been told
16 I'm sorry, but we decided to get somebody else in line,
17 but I have no basic figures except those things that I
18 know, but discrimination is alive and well. You can't
19 have 95 percent finding for the employer in this state
20 and not have discrimination. It just doesn't work that
21 way.

22 MS. RICHARDS: Thank you. Any other
23 questions? Thank you very much. Mr. Funk, I believe?

24 MR. FUNK: Good evening. It's amazing you
25 have this much endurance being here since 9 o'clock this

1 morning, and you're still willing to listen to us and
2 willing to listen to me especially. My name is Tim
3 Funk. I work for an organization called The Community
4 Coalition of Utah for a project at Crossroads Urban
5 Center, and we serve kind of a mixture of disabled
6 people, older people and low income people.

7 I've worked as an advocate for so called
8 disenfranchise for over 20 years, and I've had some
9 experience with discrimination. In fact, I feel
10 discriminated against myself sometimes. I'm non-Mormon
11 in a Mormon state. I'm over the age of 40, getting to
12 feel it more and more. I'm sighted. I'm half blind and
13 getting blinder, and I know something about not being
14 able to get things done because of discrimination.

15 I've had an employer who has had a
16 discrimination suit filed against his organization. I
17 have family members who have gone through the complaint
18 process with the state anti-discrimination division, and
19 without getting into the particulars of that, I can tell
20 you I have some current experience with that because of
21 my family.

22 I have the distinguished experience of having
23 worked with Senator Francis Farley on getting disability
24 and age in the state law back in 1978, was a major
25 victory at that time for those people and for us, and I

1 think that it's a shame that we come here today with as
2 much question as we have about how well we're doing with
3 discrimination and enforcement against it. I don't
4 think we're doing very well at all, and I think that
5 because I have taken a very low profile role in
6 listening to and watching and sort of monitoring the
7 complaints that have come forth really since the
8 beginning or the middle of last year, primarily driven
9 by the Utah women's political groups, many of whom, by
10 the way, are conservative, many of whom are Republicans.
11 They're not bleeding heart liberals. They're real
12 people who have gone through hell on an individual basis
13 and still do to this day.

14 The governor, the then Governor Bangerter felt
15 compelled because of the complaints that were coming
16 that he should form a task force, and I think the
17 Industrial Commission to its credit responded and helped
18 do that. I think if you want some more inside
19 information that you should access for yourself the
20 governor's transition report. The transition report
21 which is done usually when you change administrations is
22 a report, as you probably know, that describes the
23 status of state government and the organizations in it.
24 I talked to one of the authors of the transition report
25 for the Industrial Commission, and it was not a great

1 story. The things that you've heard today, concerns
2 about enforcement, concerns about public awareness and
3 credibility, all of those things are raised in that
4 report. I have not read that report. We tried to get
5 copies of that report. We were not allowed to see the
6 report. We were told there was an internal document,
7 and under the state public access laws we were not
8 entitled to see that report. I think you would find
9 that it sort of echoes many of the things you've heard
10 today.

11 I have participated, since the governor's task
12 force on anti-discrimination released its report, in
13 negotiations with especially Commissioner Colton on
14 legislation that might address some of these problems,
15 in particular the enforcement legislation and the
16 advisory council legislation. I can tell you we were
17 somewhat dismayed as late as Wednesday of last week when
18 we met with the commissioner again. Many people have
19 met more often with her than I have, but the conclusion
20 was we're not too hot on this advisory council idea, but
21 that's a maybe, and on the enforcement go to hell.
22 That's where we were left after many months of I think
23 good faith negotiation and discussion with her. I don't
24 think that she has -- I think the Industrial Commission
25 to their credit has made an effort to at least

1 internally improve things. My God, what else could they
2 do but try to improve things? If you really get a
3 baseline description of where things were a year ago it
4 was only up from there.

5 Some of these people are my friends, the
6 people that I'm talking about, and I have a real hard
7 time being publicly critical of them, but if they
8 deserve it they deserve it and in this case they do.
9 You have the opportunity as an advisory committee and as
10 an advisory council to really have an impact on this.
11 There are three things that I think we would like to see
12 happen. We would like to see that advisory council put
13 into effect. That advisory council can either be put
14 into effect statutorily or through the rule making
15 process, but what it really needs to have is some
16 independence, some autonomy and some real mission in
17 terms of helping the Industrial Commission and the
18 anti-discrimination division do a better job.

19 The second thing is we need to clarify the
20 enforcement law in this state. I mean you've heard
21 about this time and time again today. Bless her heart,
22 the Lieutenant Governor stood before you today, and if
23 she could give you an answer she would have, but she
24 couldn't tell you whether the state had an enforcement
25 power or not. It doesn't. In effect they say they have

1 it in rule, but they don't have it in law. If it's good
2 enough to be in rule and it's the most important thing
3 you've heard about today, it's good enough to be in law,
4 and you've heard time and time again from at least the
5 non-state employee witnesses that that's the right thing
6 to do.

7 The third thing I would do if I were in your
8 shoes, I would very very much support this thing about
9 bringing the state law up to equivalency with the
10 federal ADA law. It's beyond me why we've had two
11 attempts in the past two legislatures, and, you know, I
12 had some of this clarified with Tom Carlson tonight, and
13 I understand the story a little better and I think he's
14 supportive of this, but bringing the ADA state law up to
15 at least equivalency with the federal law. I mean if
16 it's nothing more than symbolic, by God, the disabled
17 people in this state, one of the things that you say in
18 your circular, is are people aware of their rights in
19 the complaint process. If you're a low income disabled
20 person in this state you're not aware of your rights in
21 process under ADA or with the state agency. I've got a
22 little background on that one. One of the reasons you
23 don't hear more about disabled people and their
24 discrimination complaints is they don't have a job. We
25 just did a state-wide survey on accessible housing, and

1 some of the questions we asked were demographic
2 questions about education, income and employment. Well,
3 here's how it breaks down. I mean it's almost
4 axiomatic. If you're disabled you're unemployed. If
5 you're unemployed you're low income. If you're low
6 income does that mean you're not educated? No. In our
7 survey the average age of the people we surveyed was
8 just a little less than 40 years old, and this is a
9 state-wide survey of 150 people. They had their
10 disabilities for over 15 years. Their unemployment rate
11 was 75 percent. Their education was close to 13 years
12 equivalency, and their incomes, four out of five of
13 those people are low income, and better than three out
14 of five of those people have families. They live with
15 their spouse and their children or their other family
16 members. So tell me that something doesn't need to
17 happen in terms of making people and employers, by the
18 way, aware of, you know, the employability and the
19 desirability of hiring disabled people.

20 Finally, you've heard some comment, some
21 referral tonight about the prospect of establishing a
22 Utah Given Rights Commission, and that's really I think
23 what many of us in our hearts think is the ultimate
24 solution here. It's not a question of whether the Utah
25 Industrial Commission is trying to do a good job or a

1 better job. It's a question I think of whether their
2 organizationally and structurally composed in the right
3 way. I am more and more convinced, day after day I
4 become more convinced of this, that the
5 anti-discrimination and the fair housing are in the
6 wrong place. They need to stand alone. You have an
7 excellent start here with this Alabama publication I
8 just read 15 minutes ago. That's how smart I am, and
9 the start is to set something up. I don't even think it
10 has to be as extensive as the recommended legislation in
11 the back of that book, but it came out of an advisory
12 council hearing just like the one you're holding today,
13 and so as your first step after this step I would
14 reconvene yourselves as soon as you can after the state
15 legislature, see what the results are, and if anybody
16 feels that their wounds have been healed by legislative
17 process, and if not we'll come back to you and we will
18 present you with 20, 25, 30 qualified witnesses who can
19 tell you the merits of the state human rights commission
20 and you'll hear some give and take. There are people
21 who don't support that, but there are a lot of us who
22 do, and if there is anything that comes out of this it
23 needs to be the structural change. If we don't have a
24 human rights commission, then more recommend that it be
25 taken out of the Industrial Commission, set aside with a

1 strong advisory committee, and made an executive office
2 of the governor, give it some credibility. We have no
3 credibility on anti-discrimination in this state.

4 Thanks.

5 MS. RICHARDS: Thank you very much, Mr. Funk.
6 Are there any questions of Mr. Funk? Thank you very
7 much. We have finished the people who wanted to make
8 presentations at this open meeting, and therefore we
9 have finished our business for today. We will be
10 adjourned until tomorrow morning at 9:05. If there are
11 any people who want to address the open session tomorrow
12 afternoon which will run from 3:20 until 4:00 p.m., if
13 you will please see Evelyn over here in the corner and
14 sign up with her previous to that. We have a full
15 schedule tomorrow as well, and so we would like to get
16 started promptly at 9 o'clock in the morning.

17 (The meeting was adjourned.)
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C E R T I F I C A T E

STATE OF UTAH)
 :
 COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the Factfinding Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights, was taken before me, JACKIE MAIR, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, residing at Salt Lake City, Utah.

That the Factfinding Meeting was reported by me in Stenotype, and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said meeting so taken and transcribed is set forth in the foregoing pages numbered from 2 to 296, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 24th day of January, 1994.

Jackie Mair

 JACKIE MAIR, C.S.R.
 Utah License No. 234

