

ORIGINAL

*Corrected Version*

cc,  
3  
NIE  
25  
Y.

*Library (D.C.)*

BEFORE THE UTAH ADVISORY COMMITTEE

TO THE

U.S. COMMISSION ON CIVIL RIGHTS

\* \* \*

IN THE MATTER OF:

THE CIVIL RIGHTS MEETING  
(RE: Factfinding meeting  
on employment  
discrimination in Utah).

Volume II

\* \* \*

Transcript of proceedings, taken at the Red Lion Hotel, 225 South West Temple, Salt Lake City, Utah, on the 10th day of December, 1993, at the hour of 9:15 a.m., heard before the Utah Advisory Committee to the U.S. Commission on Civil Rights, before DONI L. SCHAEFER, a Certified Shorthand Reporter, holding Utah License No. 26889, Registered Professional Reporter, and Notary Public in and for the State Of Utah.

\* \* \*



Associated Professional Reporters  
10 West Broadway / Suite 200 / Salt Lake City, Utah 84101  
Phone (801) 322-3441

A P P E A R A N C E S

1  
2 CHAIRPERSON: Mary Stovall Richards

3  
4 COMMITTEE MEMBERS: Louie Tony  
5 Junko Shimizu  
6 Mark Maryboy  
7 Michael N. Martinez  
8 Malee Craft  
9 William F. Muldrow  
10 Bruce G. Cohne  
11 Bettye B. Gillespie  
12 Darlene C. Hutchison  
13 Marcia J. Galli  
14 Abe Guss

15 \* \* \*

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

I N D E X

<u>Speaker</u>	<u>Page</u>
Opening remarks by Ms. Richards	4
Rick J. Sutherland	5
Ken Mayne	28
Kim Marquardt	45
Colleen Colton	60
Rick Wyss	92
Richard Gomez	115
Julie Davies	128
Floyd Astin	145
Charles Burtner	169
Irene Mee	191
Robin Kaelin	205
Susan Valdez	212
Robert Wilde	218
William Gonzalez	225
Nathaniel Johnson	229

\* \* \*

1 FRIDAY, DECEMBER 10, 1993, SALT LAKE CITY, UTAH

2 9:15 A.M.

3  
4 MS. RICHARDS: We'd like to welcome you to this  
5 second day of meetings for the Utah Advisory Committee to the  
6 U.S. Commission on Civil Rights, where we are holding a  
7 factfinding meeting on employment discrimination in Utah.

8 And today our session will go from now until 4:00.  
9 We have an open session scheduled from 3:20 to 4:00, and I'm  
10 making this announcement, I think, to three people, but  
11 anyway, a couple of whom have already heard this.

12 If you would like to address the open session,  
13 please register with Evelyn, who is the secretary. She will  
14 need to take your name prior to the session. We are going to  
15 adhere as closely as we can to our schedule because we know  
16 that everyone's time is precious and we want to adhere as  
17 closely to that as possible.

18 Our format, the presenter is giving approximately a  
19 ten-minute presentation, followed by approximately ten  
20 minutes or so of questioning from the committee. And we will  
21 therefore begin.

22 Our first presenter is Mr. Rick J. Sutherland of  
23 Sutherland & England, Attorneys at Law.

24 And Mr. Sutherland, we're going to ask you to  
25 please introduce yourself to the committee.

1 MR. SUTHERLAND: Dr. Richards, and Director  
2 Muldrow, and the Commission, I am Rick Sutherland. I'm an  
3 attorney here in Salt Lake. I've been practicing for a  
4 number of years, and since, I would say, probably early 1983,  
5 I've been heavily involved in discrimination and wrongful  
6 termination cases and employer/employee disputes.

7 Originally my involvement commenced as a  
8 representative solely of employees, that is, individuals who  
9 had some form of dispute with their employer, and I  
10 represented their interests in attempting to resolve that  
11 dispute with the employer. I probably continued  
12 representation to employees until about 1990.

13 And commencing in probably about 1984, I started  
14 representing employers. So for a period of about six years I  
15 was doing both. Since 1990 I have been representing  
16 exclusively employers.

17 So for a number of years I did employees, for a  
18 number of years I've done employers, for a number of years  
19 I've done both. So I've kind of seen these issues from both  
20 sides of the fence, and I'll attempt to address my remarks  
21 from that perspective, if I may, today.

22 In my experience, I have categorized discrimination  
23 charges in three categories. This is just for my benefit in  
24 facilitating my ability to deal with charges. But those  
25 three categories are first: A case where discrimination or

1 discriminatory conduct is present and the employer has  
2 conducted himself somehow inappropriately or in violation of  
3 the law.

4           The second category is kind of the other extreme,  
5 and that's the category where the employer may have an  
6 employee who is a member of some minority or otherwise  
7 protected category. That minority -- or that individual who  
8 is a minority has engaged in unsatisfactory work performance,  
9 or created a disruptive environment in the employer's work  
10 setting, otherwise causing the employer substantial problems;  
11 however, threatens the employer and says, "If you do anything  
12 to discipline me or terminate me or take any sort of action,  
13 I'll file discrimination charges, and I'll do this, that and  
14 the other."

15           In that second category, it's the employer that  
16 needs protection, whereas in the first category, it's the  
17 employee that needs the protection.

18           The third category that I've identified over the  
19 years is a category that I've called the poor communication  
20 category, and that is where the employer, for whatever  
21 reason, was not clear in indicating to the employee why the  
22 disciplinary action was being taken.

23           For example, I had one situation where the employee  
24 was simply told, "It was a decision that came from higher up.  
25 I didn't have anything to do with it. You've been a

1 wonderful employee. There haven't been any problems. If it  
2 was up to me, you'd still be here, but it's out of my hands,"  
3 when in fact that particular employee was being terminated  
4 for misappropriation of company funds and theft of property.  
5 Obviously it created a very messy situation.

6           Now, the problem stems with -- or originates with  
7 how does the UADD or EEOC deal with these diverse factual  
8 settings it's presented with? Obviously it's objective is to  
9 attempt, somehow, to weave through the morass of factual and  
10 legal allegations and come to a determination as to which  
11 cases are meritorious and which are unmeritorious.

12           In that process, I think there are few problems  
13 that I observed over the years that may help, hopefully, in  
14 making that process easier.

15           The first problem I think originates with the  
16 original charge of discrimination, the form that the EEOC has  
17 generated by which claimants actually submit their original  
18 charge.

19           Now, for the employee or claimant's prospective,  
20 that charge limits the abilities of the claimant to proceed  
21 with judicial relief after the administrative proceedings.  
22 So in other words, what's contained in that charge forms the  
23 basis for any subsequent litigation that may arise.

24           However, in most cases the claimant really doesn't  
25 have sufficient exposure to the legal process. The claimant

1 may not have sufficient information about his or her legal  
2 rights in order to allow the claimant to properly complete  
3 that charge of discrimination and protect the claimant in the  
4 necessary areas.

5           As a result, the claimant may be jeopardizing some  
6 of his or her legal rights in some subsequent litigation.  
7 I've had cases brought to me like that where claimants have  
8 narrowed the original charge to the point where I was unable  
9 to pursue certain claims in the subsequent litigation.

10           There are procedures for dealing with that. There  
11 are, of course, amended charges and other things. But in a  
12 minute I'll suggest what I view is perhaps a way to deal with  
13 this.

14           The original charge presents a problem for the  
15 employer as well. I've noticed that over the years the  
16 charges have tended to become routine. They've tended to  
17 become -- not in all cases, but certainly in many cases -- a  
18 "form charge," if you will. You check the box, I was  
19 discriminated on this basis, you fill out the discrimination  
20 statement -- it's preprinted in some cases -- a very brief  
21 factual setting to try to individualize the case, and then  
22 off it goes to the employer.

23           Well, as a representative of the employer, when I  
24 receive a charge like that, it's very difficult for me to  
25 respond to it. I don't have sufficient information. I'm



1 expected to file some sort of a response or attend a  
2 reconciliation conference when I really don't what this case  
3 is about. So that original charge presents problems for both  
4 sides, I believe.

5           The second problem I see is -- it's very closely  
6 related to the first -- and that is what is the proper role  
7 of the UADD here in Utah, or the EEOC? Obviously, at least  
8 in my estimation, the UADD or the EEOC must be independent.  
9 It must conduct a neutral investigation. If it fails to be  
10 independent or neutral, I don't see how they can ever hope to  
11 reach a reconciliation, or attempt to resolve cases short of  
12 litigation.

13           On the other hand, it would be very helpful if  
14 someone could provide some guidance to the claimant to help  
15 the claimant weave the claimant's way through this morass of  
16 legal and factual issues that have to be dealt with in a  
17 discrimination setting.

18           In my experience in the past, I have seen many  
19 cases where the UADD investigator has attempted to provide  
20 that kind of guidance, consulting services, if you will,  
21 guidance and assistance to the charging party. I found in  
22 those situations that it becomes virtually impossible to  
23 resolve the case through some sort of a reconciliation at the  
24 administrative level. The investigator tends to take sides  
25 and it becomes just an impossible situation to deal with.

1           I know that some people believe that the system  
2 favors the employer. I disagree with that. I've been on  
3 both sides of this for many, many -- well, for ten years, at  
4 least. I think that the situation where it appears to be  
5 one-sided arises from the fact that the employers routinely  
6 seek legal counsel, whereas the claimants are often in a  
7 position to obtain legal counsel. As a result of that  
8 dilemma, as I alluded to earlier, many investigators have  
9 felt compelled to fill that role, which I believe is  
10 inappropriate.

11           I think the way to handle the situation would be  
12 for the UADD or the EEOC to explain to the charging party  
13 exactly what the situation is and, further, indicate what the  
14 legal rights are, the legal issues are, instruct them that  
15 they can and probably should obtain legal counsel, but go  
16 beyond that and provide them with the ability to obtain legal  
17 counsel somehow, maybe identify programs with the local bar  
18 association, perhaps point them in the direction of some  
19 legal aid societies or legal services that they may obtain.  
20 Explain how they qualify for it, who to talk to.

21           I believe that if the claimants were to have that  
22 kind of guidance that it would enable the EEOC or UADD to  
23 remain neutral and conduct the investigation properly, which  
24 would put it in a position to be more successful in  
25 attempting to reconcile the matter.

1 I've thought, at one time, that it may be helpful  
2 for the UADD or EEOC to actually set up a separate consulting  
3 individual within the agency, an individual who has nothing  
4 whatsoever to do with the investigation, has nothing  
5 whatsoever to do with the finding or any further  
6 administrative proceedings, but the sole task of that  
7 individual or that group of individuals or that figure would  
8 be to provide consulting services to parties involved in  
9 discrimination charges.

10 The third problem that I see with the employment  
11 discrimination procedure is the process itself. Throughout  
12 all of the years when I represented employees, I never ever  
13 would allow a client to go completely through the  
14 administrative procedure in the state of Utah.

15 I feel that it's not in the best interest of a  
16 claimant to go completely through that procedure because it  
17 didn't afford the kind of appropriate safeguards that are  
18 necessary to protect the claimant's interest, nor does it  
19 allow for sufficient -- well, I should say at this time I was  
20 doing all the employer claims -- it didn't allow for  
21 sufficient enforcement of an agency's determination.

22 I'm aware that numerous changes have been made to  
23 the statute in an attempt to resolve some of those concerns.  
24 I'm not completely convinced that those changes do satisfy  
25 those concerns.

1 I'm not entirely comfortable with the fact that an  
2 appeal must go to the Court of Appeals or Supreme Court. I  
3 believe that a very strong argument could be made that a case  
4 could be taken, if someone knew how to work their way through  
5 the Procedures Act, to District Court and do a trial de novo.

6 Given that sort of unanswered instability in the  
7 system, I believe that it still, even today, is not in the  
8 best interest of a claimant to allow the charge to completely  
9 go through the administrative process in Utah.

10 My practice in the past was to use the  
11 administrative process to obtain as much information as I  
12 could about the case from the other side, whether I was on  
13 the employer's side or the employee's side, in appropriate  
14 cases to seek a resolution, in cases where it was a  
15 completely one-sided matter, to prepare the case for court,  
16 seek a right-to-sue letter, if I was on the claimant's side.

17 In my experience with the UADD most recently, I  
18 would like to point out that I believe the new process they  
19 implemented this past year concerning the use of the  
20 resolution conference has been very successful. And I don't  
21 necessarily mean successful in resolving cases by settling  
22 them, but successful in moving cases along. The resolution  
23 conference is an opportunity to have both sides come in  
24 informally and attempt to state their positions and see if  
25 there's grounds for resolution.

1           I have attended many of those since they've started  
2 happening, and in most cases, I found that all of the  
3 resolution conference cases resolve much quicker, whether it  
4 be a dismissal of the charge, a no-cause finding or through  
5 conciliation or whatever. But I believe the resolution  
6 conference is a good idea.

7           The one problem I have with it is that it appears  
8 to me that the UADD routinely processes the charge through  
9 its system, and that the resolution conference is set quickly  
10 in each case. In some cases that's entirely appropriate. In  
11 cases not extremely complex, the issues are focussed and  
12 narrow, then a quick resolution conference would be  
13 appropriate.

14           However, in other cases, the charge is sufficiently  
15 ambiguous or equivocal it becomes very difficult to respond  
16 to that kind of charge in the time frame given. So my  
17 suggestion would be that the charges be screened by someone  
18 at the UADD before the resolution date is set so that the  
19 employer could be given sufficient time to respond.

20           According to my watch, I'm beyond my time, so I'll  
21 stop with that. If there are any questions, I'd be happy to  
22 reply.

23           MS. HUTCHISON: Yesterday we heard Representative  
24 Pignanelli talk about a proposal they were making, a new  
25 agency, to have an advocacy group that would be comprised of

1 representatives from the different entities, the women, the  
2 different groups that are concerned mainly with  
3 discrimination.

4           The idea would be, I think, in my mind anyway, I  
5 was liking it to the Juvenile Court where they had the  
6 liaison person who will help a juvenile through the system.  
7 Do you feel that that might be an answer to what you're  
8 talking about, to have an advocacy person help them get  
9 through the system? Is that something that would be  
10 reasonable?

11           MR. SUTHERLAND: I think something like that needs  
12 to be done. I have a little concern about that particular  
13 proposal because, as I understand it -- and I'm not very  
14 familiar with it -- but as I understand it, the groups that  
15 would sit or the representatives that would sit on that  
16 advocacy panel, or whatever it's going to be called, are  
17 groups that all have certain self-interests that they would  
18 be interested in advancing.

19           I have seen those kinds of groups use individuals  
20 as pawns to advance the interest of the group, and I would  
21 hate to put someone in that sort of a situation. I think the  
22 individual's interest needs to be looked at, not the group's  
23 interest, in this particular context.

24           And therefore, I would be more supportive of a  
25 proposal that would put knowledgeable individuals in that

1 sort of an advocacy situation that had no interest at heart  
2 other than the interest of the claimant that they were asked  
3 to consult with.

4 MR. MULDROW: Mr. Sutherland, thank you so much for  
5 coming. We've had a little problem getting the viewpoint of  
6 employers because they don't, I think, want to appear to be  
7 involved in this kind of a controversy. We're very  
8 appreciative of your coming to present some of the points of  
9 view of the employers.

10 There are a couple of things in your remarks that I  
11 wish you would have carried a little further. You indicated  
12 a need for some kind of advisory consulting or legal  
13 representative on the part of the complainants early on. The  
14 problem, of course, is that these complainants, as you well  
15 know, most of them are without jobs or have no way to pay for  
16 this. Where would the resources come to provide this kind of  
17 help to the complaining party? And you also indicated that  
18 you don't feel the complainants would go through the  
19 investigatory procedure, is that -- did I understand you  
20 correctly on that?

21 MR. SUTHERLAND: That may have been when I was  
22 referring to the fact that as counsel for complainant, I  
23 never allowed the charge to go all the way through the  
24 administrative procedure. I utilized the investigation  
25 process to obtain information, because I had to determine,

1 for myself, how meritorious this particular charge was.

2           And so I would go through the investigation  
3 process, but then I would seek a right-to-sue letter and go  
4 to the court.

5           MR. MULDROW: And the third thing is how can the  
6 appeal -- or the appeal process being limited, as you  
7 indicated, would be desirable? I mean, aren't there legal  
8 problems with that, constitutional problems, that would make  
9 that impracticable?

10           MR. SUTHERLAND: I don't have a good answer for  
11 that one. That one's one that has been addressed. I can  
12 remember discussing that with UADD people, with John McGee  
13 and George Lopez back in the early '80s. It's been a problem  
14 for many years, and there have been some attempts made.

15           I think the concerns I have could be clarified or  
16 remedied through some legislative redrafting, but I'm not  
17 sure that's the answer to --

18           MR. MULDROW: That is a definite problem. I mean,  
19 some of the problems that have been mentioned here, that is  
20 one, because that appeal process can be dragged on for years,  
21 and so the complainant, you know, devastates his or her  
22 resources and loses. I mean, it has a definite chilling  
23 factor on the desire of the complainant to even begin the  
24 process because it just seems like an impractical thing to  
25 do.



1           MR. SUTHERLAND: The only -- I don't have an answer  
2 to that. The only bandaid, if you will, that I have for it  
3 is going back to the advocacy group concept, and that goes  
4 back to your first question of how do we fund something like  
5 that. There are certain things in place already, legal aid  
6 society, the bar's pro bono program, things like that where  
7 if the UADD were made aware of those programs and the  
8 criteria for qualifying for it, they may be able to send some  
9 people that direction.

10           With respect to the remainder of individuals, I  
11 know that for many years I was on a referral list at the  
12 UADD, with a number of other attorneys, and occasionally  
13 people would call me and ask me if I'd represent them and I'd  
14 ask them where they got my name from, and they'd say from the  
15 UADD. So it would be possible for them to refer individual  
16 attorneys who look at it as well.

17           The third would be the kind of concept  
18 Ms. Hutchison was addressing where some sort of a group is  
19 set up legislatively, funded.

20           MR. MULDROW: We're told very few attorneys will  
21 take these cases unless their clients have the resources to  
22 pay for it. One lady last night in our open session, you  
23 know, said her attorney told her it would cost \$30,000 to  
24 carry it through the process, which is impractical for most  
25 people, and you state problems with the advisory group, and

1 so it seems like that legal representation advice is a major  
2 stumbling point in the whole process.

3 MR. SUTHERLAND: I think it is. You probably heard  
4 from numerous people before me, and probably will hear it  
5 again from others after. I don't have a good answer for it.  
6 I'm sorry, but it's something that needs to be addressed.

7 MS. SHIMIZU: One person said early resolution with  
8 a conference usually does not address the wholeness, the  
9 whole restitution, ~~and usually partially, and they, the~~ *but only the partial restitution and most*  
10 ~~claimant, agree to it. You probably have attended these~~ *often the claimants agree to it. You probably*  
11 ~~things.~~ *have attended those conferences, haven't you?*

12 MR. SUTHERLAND: Yes, I have.

13 MS. SHIMIZU: In that situation ~~I guess mutually~~ *both parties agree*  
14 ~~to the term, so that's all right. Yet yesterday a participant~~ *to the term, so that's all right. Yet yesterday a participant*  
15 ~~agrees, so that's all right, and yet some yesterday claimed~~ *agrees, so that's all right, and yet some yesterday claimed*  
16 ~~claimed that often the claimant is coerced to take~~ *claimed that often the claimant is coerced to take*  
17 ~~that usually the claimant is coerced to take whatever the~~ *that usually the claimant is coerced to take whatever the*  
18 ~~whatever the employer gives. Have you ever~~ *whatever the employer gives. Have you ever*  
19 ~~employers give. What are -- One situation is that do you~~ *employers give. What are -- One situation is that do you*  
20 ~~witnessed such a situation?~~ *witnessed such a situation?*  
21 ~~see? Did you witness those things?~~

22 MR. SUTHERLAND: I don't believe that coercion  
23 would be an appropriate description in any of the cases that  
24 I've been involved in. I think, without exception, all the  
25 resolution conferences I've been to the investigators  
explained the process, explained the procedure, has asked the  
claimant to present claimant's concerns and issues and then  
asked the employer to do likewise, and then asked the  
claimant to express what sort of a resolution the claimant is

1 seeking and then asked the employer to respond.

2 In some cases, a response has been given right  
3 there. In other cases, there have been some sort of  
4 parameters set for response, but I think if there -- if some  
5 of the claimants feel that they are coerced, I think it would  
6 be from a -- right back to the first problem, lack of  
7 representation. They don't have a complete understanding of  
8 what their options are or what their remedies are, and  
9 although my experience with the UADD has been very good about  
10 explaining that this is complete relief, they may say that  
11 involves back pay. Well, a claimant has no idea in most  
12 cases what back pay means or how you go about calculating  
13 back pay. They may say it calls for reinstatement, and I  
14 don't think they're entirely clear on what that means.

15 So I think it's a process of -- or the problem  
16 originates with just a lack of understanding. But I haven't  
17 seen any type of coercion. I think the UADD has been very  
18 good about being very neutral in those particular resolution  
19 conferences I've been to.

20 MS. CRAFT: Mr. Sutherland, would you say -- based  
21 on some of your comments, would you say that one of the  
22 reasons are -- you talked that you would not allow your  
23 clients, the claimant, to go through the administrative  
24 process. Can you be specific -- I think I kind of heard you  
25 say that one reason may be because it takes so long. Is that

1 the main reason why or do you think that part of the process  
2 is just not effective at all, or why specifically have you  
3 not allowed your clients to go through them?

4 MR. SUTHERLAND: There were two reasons at the  
5 time, other than just the length, at the time that I was  
6 doing those, which was prior to the recent amendments. And  
7 the first reason was that there was really no way to enforce  
8 what the UADD did. If they did find that there was cause in  
9 a case, it was still trial de novo in the District Court.  
10 You started all over anyway. So that was one of the reasons.  
11 In other words, it was a long process that didn't end. It  
12 just started over again.

13 The second problem was that -- on only one occasion  
14 that I can ever remember -- I was asked to represent an  
15 employee at the time he was at the first appeal where you  
16 have an administrative law judge at a hearing. So I was  
17 dealing with -- I was very limited in what I could do at that  
18 point of the proceeding.

19 I went into that proceeding, and I felt that the  
20 administrative law judge did not have an understanding of  
21 discrimination law. He was a workmen's compensation  
22 administrative law judge, and he tried to handle the case  
23 like it was a workmen's compensation case. He wanted to talk  
24 about doctor's statements and physical injuries and those  
25 sorts of issues, which are rarely present in a discrimination

1 case, and I just felt like it was an exercise in futility,  
2 and it was waste of time, energy and resources and had no  
3 outcome, had no result.

4 Now, that has been partially changed, but I don't  
5 believe the statute is entirely clear on when you go to the  
6 District Court for a trial de novo and when you have to  
7 appeal to the Supreme Court on the record.

8 I think that that could be manipulated by anyone  
9 with any degree of skill, and they could take it to the  
10 District Court and have a darn good argument as to why that  
11 was appropriate. So I don't think the statute totally  
12 answers that question.

13 MS. CRAFT: One other question. Could you tell us  
14 why you represented claimants and now you represent  
15 employers? Why you made that change?

16 MR. SUTHERLAND: Because the employers that I sued  
17 for the claimants hired me to represent them the next time,  
18 and eventually it just got to the point where, you know, you  
19 can't -- well, at one time in about 1985 when I started  
20 making the switch, I had cases in the Utah Supreme Court on  
21 both sides of the same issue, one for the employer and one  
22 for employee. Different cases, but I thought what happens if  
23 I have to argue on these cases on the same day? So I decided  
24 it's time to switch.

25 MS. CRAFT: Would you also agree that one of the

1 reasons you switched -- we've heard over and over that a lot  
2 of attorneys it's just not cost-effective for them to  
3 represent claimants because it takes so long. Is that part  
4 of the problem in your consideration?

5 MR. SUTHERLAND: That's part of the problem. I  
6 think that -- how do I phrase this tactfully. I believe that  
7 the employers, in the state of Utah particularly, have become  
8 much more sensitive to discrimination claims and that they  
9 are much more aware of the issue and have taken legitimate  
10 steps to avoid those sorts of problems. I don't think that  
11 the real egregious discrimination case is very common in the  
12 state of Utah anymore.

13 I know with the employers that I work with they  
14 have gone to great lengths to avoid any type of  
15 discrimination or harassment in the work place, and I think  
16 that's more and more common in the state of Utah, and as a  
17 result -- and at the same time we have more cases being  
18 filed -- or claims, at least -- then there was ten years ago.

19 And as a result, there are a larger number of  
20 unmeritorious claims, and so attorneys where ten years ago  
21 would maybe go through two or three cases to get one that  
22 really had some good merit now may have to go through 20 or  
23 30 cases to find one with merit. So I think that's part of  
24 the problem.

25 MS. RICHARDS: We have time for one more question.

1 MS. SHIMIZU: The issues that we have been <sup>addressing</sup>  
 2 ~~is for the UADD to have the enforcement power, if~~  
 3 ~~addressed have been to have -- for the UADD to have~~  
 4 ~~possible by the legislative mandate. Since you~~  
 5 ~~enforcement power, if possible by legislature mandated. When~~  
 6 ~~you have served both sides and presently, you are~~  
 7 ~~representing the employer's side, will you tell~~  
 8 ~~us what would this mandate do. Would it make~~  
 9 ~~the employer more responsive? Would that be a -- on the business~~  
 10 ~~side a threat? Could you address that,~~  
 11 ~~to the employer? Would you address this point.~~

8 MR. SUTHERLAND: I can see it backfiring, if you  
 9 will. In other words, if I'm representing an employer and  
 10 the UADD has the final word, I'm going to represent it much  
 11 more aggressively at that level than I ever have before.  
 12 Now, I view the UADD as a forum where some information can be  
 13 exchanged and an attempt can be made to resolve the case,  
 14 short of formal proceedings.

15 If the UADD were given complete power over the  
 16 thing, I wouldn't approach it that way anymore. So I think  
 17 that people ought to look at both sides of that issue and not  
 18 say, well, okay, it's going to benefit the claimant, but it  
 19 may not. It may completely backfire because the employer is  
 20 going to be forced to litigate their case from the UADD. So  
 21 it's a two-sided coin.

22 MS. RICHARDS: But there's no enforcement now. So  
 23 I mean, the employer essentially is -- the employer likes the  
 24 system right now, isn't that true?

25 MR. SUTHERLAND: Well, the employer has no option.

1 He can't remove it from the system. That's entirely up to  
2 the claimant, but from the prospective of the employer, I  
3 certainly have no problem. I go through the investigative  
4 process. If that doesn't work out, I appeal it. If that  
5 doesn't work out, I appeal it again. I go through the whole  
6 process.

7           If I feel that there's a serious problem, I may  
8 attempt to take it to the District Court on a trial de novo.  
9 And you'd have to evaluate that at the appeal process,  
10 because that's where the argument comes in as to whether you  
11 have to go to the Supreme Court or whether you can take it to  
12 the District Court. I've never had to deal with that issue.  
13 Any case that has any merit usually ends up with an attorney  
14 and is removed and taken to Federal Court.

15           MS. RICHARDS: Okay. All right. I think we're  
16 just about out of time. Do we have one quick question?

17           MS. HUTCHISON: One quick question. Yesterday one  
18 of the attorneys indicated that he often supplied  
19 investigative reports to the UADD. We had a report on the  
20 minority court indicating that in many cases the  
21 investigation is done by the UADD and given to the attorneys.

22           In your situation, which do you find is the more  
23 common? Did you do your own investigation or did you rely on  
24 the reports from the agency?

25           MR. SUTHERLAND: When I was representing the



1 claimants, most of the time I would provide "shadow  
2 representation," if you will. In other words, they would  
3 come to me and say here's where it is, and I'd say here's  
4 what you do. And then they would go do it, and the UADD  
5 would conduct the investigation entirely, and the information  
6 I would get would be from the UADD.

7 In some cases, the people would come to me with  
8 their right-to-sue letter, and I would go and review the UADD  
9 file.

10 The only time I provided information to the UADD is  
11 in response to a request from the UADD to do so. On either  
12 side. So I never voluntarily provided investigation to  
13 them.

14 MS. RICHARDS: We've got one last question.

15 MR. GUSS: You mentioned that if the Division had  
16 enforcement powers you would become much more aggressive  
17 right up front in defending your employer, if that were the  
18 case, to resolve it, since it had to be done within the  
19 framework of that Division.

20 Would that also, then, cause the whole system to  
21 speed up, if you will, to also recognize the fact that it had  
22 to be done within the Division because they talk about cases,  
23 backlogs, going on for years till something happens, and if  
24 all the attorneys for the employers became more aggressive,  
25 then something would have to happen to match that and these

1 cases could get resolved much quicker than the system as we  
2 understand it today, which allows it to be drug on and on and  
3 on.

4 MR. SUTHERLAND: Arguably, that's true, but the  
5 other side of that coin is if the employers become more  
6 active in it, it will likely generate considerable more work  
7 for the UADD. By becoming more active, I mean, doing a much  
8 more in-depth investigation, providing not only factual bases  
9 for why this should not proceed to a for-cause finding, but  
10 also legal arguments. Now you're going to be hitting the  
11 poor UADD investigator with not only facts but legal  
12 arguments that the UADD right now is not in a position to be  
13 able to deal with.

14 MR. GUSS: What would be in the best interest of  
15 the claimant, though? The bottom line, which is what it's  
16 all about anyway, not just to make a -- file a claim and then  
17 get rid of it in the system or the process.

18 MR. SUTHERLAND: I think that the claimant is in  
19 the best position the way the system is structured because  
20 the claimant gets to choose, Do I stay with administrative  
21 agency or do I go to court? Now many claimants don't know  
22 they have that choice. They're not clear on it. But they  
23 have the ability to remove it from that administrative  
24 procedure at any point in time.

25 MS. GILLESPIE: That's not what we heard yesterday.

1 They have to go through that -- and they said they couldn't  
2 get to court without going through the administrative  
3 procedure.

4 MR. SUTHERLAND: Well, under Utah law, there's a  
5 provision that begins -- but I'm not really sure how it would  
6 work, but it says you have to exhaust the administrative  
7 remedies. However, in my experience, the UADD has been very  
8 willing to withdraw the charge and seek a right-to-sue letter  
9 from the EEOC. The EEOC has been willing to grant those.

10 Now, if that situation has occurred -- again, it's  
11 been a few years since I've been doing the employee's side --  
12 but if that situation occurs, I'm unaware of it. To my  
13 knowledge, the UADD will still -- will routinely grant  
14 right-to-sue letters.

15 And to the extent they're willing to do that, yes,  
16 you can remove it and take it to Federal Court. The state  
17 statute says that if it goes to the Federal Court, then the  
18 state proceedings are all done. They're over with. But  
19 yeah, if you want to take it to state court, you've got a  
20 problem. I agree with that. And I've never seen anybody  
21 take one to state court. That would be a mistake, the way  
22 the system's set up right now.

23 MS. RICHARDS: Mr. Sutherland, we thank you very  
24 much. We have presumed on your time much longer than you had  
25 anticipated, and we appreciate your presentation before the

1 committee.

2 MR. SUTHERLAND: Thank you.

3 MS. RICHARDS: Our next presenter is  
4 Mr. Robert Michael Archuleta. I hope I'm pronouncing it  
5 correctly. Mr. Archuleta is not here.

6 Is Mr. Ken Mayne here?

7 MR. MAYNE: I am here.

8 MS. RICHARDS: We'll move on to Mr. Mayne.

9 Thank you, Mr. Sutherland.

10 Mr. Ken Mayne is Director of Apprenticeship of the  
11 Carpenters Joint Apprenticeship and Training Committee of the  
12 AFL-CIO.

13 And we'll ask you also if you would introduce  
14 yourself.

15 MR. MAYNE: Thank you. I will. First of all, let  
16 me say, when I walked in here, I'm sure the first thing that  
17 all of you noticed is that I'm a male, and the second thing  
18 is that I'm white, and that I'm about 29 years old. That  
19 wasn't a joke. But at any rate, I am Ken Mayne. I am the --  
20 I am here representing organized labor. My real job is that  
21 I am the Director of Apprenticeship for the Carpenters Joint  
22 Apprenticeship and Training Committee.

23 When I first received notice to come here, it was  
24 on my answering machine to call back to this office, the  
25 office of --

1 MS. CRAFT: Commission on Civil Rights.

2 MR. MAYNE: Thank you. Commission on Civil Rights.  
3 My first reaction was to head for Canada, because I thought  
4 that somebody had left. I was pleased to hear that it was to  
5 come and talk to you folks.

6 I'm very much humbled by being here. I feel like  
7 it's a great responsibility, as well as a great opportunity.  
8 Responsibility to try and get across the message that in Utah  
9 we do have some problems, and also a responsibility to see  
10 that we can have at least a small part of trying to correct  
11 them.

12 I'll try and make my comments here very brief and  
13 then we can get on to some questions. As I thought through  
14 what to do here today, I decided to go out and talk to some  
15 people and see if what I believe is going on in Utah is in  
16 fact what is going on. And I found that I really had some  
17 misgivings.

18 I talked to, I believe, a pretty good cross section  
19 of the people of Utah, of educational backgrounds, of  
20 economical backgrounds, blue collar, white collar, minorities  
21 and females as well. And I tried to get some real depth, gut  
22 feelings of what's going on, not the pat answers of "Are you  
23 prejudiced?" Everyone says "No." But all of us do have some  
24 prejudice. It's how we act on them is what counts.

25 The one incident that comes to my mind right off

1 the bat is in our apprenticeship class last week we got into  
2 a discussion about this very subject, and it turned out to be  
3 about an hour and half, with some very passionate feelings  
4 coming out.

5 In this class we had minorities, we had females, we  
6 had older workers. I believe a pretty good cross section of  
7 what the populous of Utah is.

8 There is some very definite prejudice, if you will,  
9 that came across, particularly against females. Two of the  
10 older workers that were in there that were probably in their  
11 late 50s was very, very adamant of the fact that females  
12 should not be in the construction industry. It's okay for  
13 them to be in the work force, and there is a place for them  
14 in the work force -- stuffing envelopes and waitresses and  
15 secretaries -- and they felt very, very strongly against  
16 this.

17 They do work in an industry where people are  
18 promoted by seniority, and they had some females working with  
19 them and "They just don't have the body strength," and so on.  
20 All the things we've heard.

21 I did challenge him to arm wrestle with one of the  
22 girls and he declined. He's not much of an arm wrestler. At  
23 any rate, we tried to explain to him that the same laws that  
24 are protecting the females and the minorities are also  
25 protecting him as an older worker, and that was okay. But

1 they still felt very strongly.

2           So I went to another class, and I brought a young  
3 woman out of the class that belongs to an organization called  
4 Women In Construction, to have her kind of defend our cause,  
5 if you will. And interestingly enough, one of the persons in  
6 the class is a 27-year-old male who is now Mr. Mom. He's  
7 taking care of the kids; the wife is the breadwinner. So he  
8 was very defensive -- or he defended the women's issue very  
9 strongly.

10           So we had a very, very deep discussion, and I  
11 believe that when we finally got through, the two older  
12 gentlemen actually did soften a bit. I don't think we  
13 changed their mind-set completely, but they did soften. And  
14 I believe that is one of the answers that we need to do is  
15 that we need to get to people to educate them to what the  
16 laws really mean.

17           As I went on I talked to some employers about their  
18 feelings about minorities and females, particularly, coming  
19 into the industry that I deal with, which is the construction  
20 industry. On the surface they say they have no problem at  
21 all with these people in our work force, but when you really  
22 get down to the issue, they do have some concerns.  
23 Minorities seem to do pretty well in this industry. They're  
24 pretty well accepted.

25           Females is a whole other issue that we're dealing

1 with. Some of the reasons or excuses that most employers  
2 came up with was, first of all, the inability of them to be  
3 able to do the work because of the physical strength that is  
4 needed, females aren't dependable, and that it is a  
5 distraction to the other workers.

6 Also we found that they really had some resentment  
7 about being forced to take these people into their work  
8 force, and, "We'll take them when we have to," this kind of  
9 attitude. We also found that even though initially they had  
10 taken these people into their work force, we find that when  
11 layoff time comes, it is the minorities and the females that  
12 are laid off first. So we have some definite problems right  
13 here in our fair city.

14 We, as a labor organization, we do profess and we  
15 do make attempts to promote and have the policy that everyone  
16 is employed under an equal basis. We haven't done our  
17 homework completely either. With a collective bargaining  
18 agreement -- in all of our collective bargaining agreements,  
19 we do have paragraphs in there against discrimination. So we  
20 have some laws within our own ranks. Laws don't seem to be  
21 the answer. It's attitudes that we need to change.

22 We also found in talking to some of the people, of  
23 white-collar-type people, even those with Ph.D.'s, that the  
24 primary thing females have been saying "I have to work at  
25 least twice as hard to get past these initial paradigms that



1 are in the way." Just as when I came in here you made some  
2 determinations of who I am, how qualified I am. It's a  
3 knee-jerk reaction. It's going to happen.

4           As we find minorities and females coming into the  
5 work force, they have to overcome those biases in the  
6 beginning. I really didn't believe this until recently. I  
7 really believe it is true. They do have to work at it much,  
8 much harder to initially get employed and to stay employed.  
9 I also find that after they're employed, even they may be a  
10 very competent employee, very dependable employee, the first  
11 time there's a mistake, the first time they drop a tray of  
12 glasses or the first time they don't show up for work, or the  
13 first time they're children are ill and have to stay home  
14 with them, the "I told you so" comes up.

15           I think myself, belonging to labor organization and  
16 working for a labor organization, I've also found some  
17 discrimination with that in Utah. The "U" word keeps coming  
18 up, "You belong to a union? You work for a union?" And  
19 there is some ideas there of what that's all about, you know,  
20 we're wife beating, beer drinking, blue collar, Mafian-type  
21 people, and to a certain extent maybe that's true.

22           But at any rate -- oh, another factor that we did  
23 find in Utah was some very deep convictions as to religious  
24 background. It's not spoken, but nevertheless there is some  
25 real prejudice against religious organizations. If you belong

1 to some, you're going to do better than if you don't. And  
2 this certainly isn't a witch-hunt towards any particular  
3 group, but nevertheless, it is there.

4           So I think in conclusion, the summary is, yes, we  
5 do have discrimination in Utah. Yes, it is much more  
6 difficult for a female or a minority to get into the work  
7 force, stay in the work force, be promoted within the work  
8 force, and we are doing some things about it. I had one  
9 other point I wanted to make.

10           We recognized a few years ago that we do have some  
11 problems particularly with females coming into the  
12 construction industry. We formed a committee. It's known as  
13 the Advocates for Apprenticeship Opportunity. In that  
14 committee we have representations from the Department of  
15 Labor, Office of Federal Contract Compliance, the Bureau of  
16 Apprenticeship and Training. We have postsecondary people  
17 and secondary. We have human services, labor and  
18 turning-point organizations, female organizations, as well as  
19 minority organizations.

20           And through this organization we have attempted to  
21 target certain groups and promote them into apprenticeship  
22 opportunities. Presently we're targeting single, head of  
23 household, single parents.

24           We're finding there are some very, very dedicated  
25 people. We're operating this committee on a budget of zero,

1 but yet we're finding people who are more than willing to  
2 serve on the committee. We're able to get training done.  
3 We're able to get transportation. We're able to survive just  
4 on people volunteering different materials and particularly  
5 their time. So it's possible to be able to do some creative  
6 things without having to grant budget to make it happen.  
7 There really are some people out there that care.

8           With that, I'd like to turn it over to any  
9 questions.

10           MS. HUTCHISON: Help me understand. In your  
11 particular assignment, your role in the union, the union has,  
12 by seniority, it promotes by seniority, by union law. When  
13 you place somebody on a job, don't you have a list, and so  
14 the people who, regardless of what their race or sex or  
15 anything, they would be at the top of the list by their own  
16 seniority, so there would not be any chance of  
17 discrimination. Is that --

18           MR. MAYNE: That is partially true, and it depends  
19 on the industry. It depends on collective bargaining  
20 arrangements. We have a hiring-hall procedure within the  
21 carpenters, that, yes, people are sent out off that list on  
22 first-in, first-out basis, but they're also allowed to go out  
23 and solicit work. Also the contractor is the sole judge of a  
24 person's capabilities. In other words, when it's layoff  
25 time, he can choose. Other industries -- I guess we could

1 name them -- Kennecott, Geneva Steel, yes, they run on a  
2 seniority basis.

3           And in those incidents, we find people being  
4 promoted maybe not because of ability, but they have filled  
5 slots, and then in trying to fill slots, they have moved some  
6 people into some of these positions, and I guess I'm talking  
7 primarily about females in the positions. Maybe this isn't  
8 what their really life-long dream is is to be a bricklayer,  
9 but it's a higher paying job then where they were, so they'll  
10 take it. And it kind of creates some resentment. And in  
11 some cases, through affirmative action, people have been  
12 promoted because of race or gender, and it causes some  
13 resentment, I think, within the ranks.

14           Within our own organization, though, it is a little  
15 more difficult to discriminate because we do have -- not a  
16 ranking system, but we have a first-in, first-out.

17           MS. HUTCHISON: Yes. If someone might be a member  
18 and they felt that there was some discrimination or that they  
19 had been treated badly, would they come to your organization  
20 and would you work with UADD or how -- what would be their  
21 course of action?

22           MR. MAYNE: Within our apprentice program, and also  
23 within the local unions -- well, particularly within our  
24 apprenticeship program, we're registered with the Department  
25 of Labor, and under CFR2929, it spells out what we have to do

1 in order to be a registered program, and one of the things is  
2 to have a complaint procedure.

3           There's an exact complaint procedure they go  
4 through. They go through the process of initially trying to  
5 work this out with the individual, then it goes into a local  
6 committee, to a state committee, and from there, to the  
7 Department of Labor itself. And we are required by law, and  
8 we do furnish everyone that comes into our office, a copy of  
9 this complaint procedure. So --

10           MS. HUTCHISON: That's handled internally through  
11 the union?

12           MR. MAYNE: Initially it is, and then it moves from  
13 there to the Department of Labor, and the Department of  
14 Labor -- the Bureau of Apprenticeship and Training would be  
15 the final say, the final judge of what is going on there.  
16 And I suppose there are some -- we've never had to do it,  
17 so --

18           MS. HUTCHISON: You've never had any discrimination  
19 that --

20           MR. MAYNE: Not towards us particularly. We have  
21 towards contractors before, but not towards us.

22           MS. HUTCHISON: I guess that's what I mean. If the  
23 claimant is a member of your union and they have a complaint  
24 against a contractor, would the union handle it or would it  
25 go to Utah in that situation?

1           MR. MAYNE: Yes. We're required to follow up on  
2 that. We're required to follow through with it up to the  
3 point of trying to resolve it within house. After that  
4 point, then it is turned over to an attorney to be handled  
5 either through the Labor Commission or through whatever the  
6 procedure is. There again, we haven't had to do this, so  
7 it's really not familiar --

8           MS. HUTCHISON: So do you offer protection as far  
9 as if a person has to have an attorney? I'm thinking of  
10 teachers associations. They have attorneys that they have  
11 that represent for these kinds of conflicts. Do you do that  
12 or would you turn it over to the state agency?

13           MR. MAYNE: Yes, we do have an attorney on  
14 retainer, so we'll at least do an initial assessment, and  
15 then advise from that point there. So we do have some legal  
16 services as well.

17           MS. HUTCHISON: So you haven't had any particular  
18 experience with going through the state system?

19           MR. MAYNE: No, we haven't. We've been very  
20 fortunate.

21           MS. GILLESPIE: You do go through the -- ultimately  
22 you're going to end up where everybody ends up, and that's  
23 within the state system.

24           MR. MAYNE: Yes. Yes. Ultimately that's where you  
25 end up. We try and get everything ironed out on the

1 first-level basis first, and we have had problems before.  
2 We've always been able to resolve them. With the collective  
3 bargaining agreement, they're out of compliance with their  
4 contract if they're discriminating. So usually we can take  
5 care of it within house -- or we have been able to take care  
6 of it within house. It's never had to go past that point  
7 before. Employers don't want to go to court, for one reason  
8 or another, so they're willing to work out the problems.

9 MS. GILLESPIE: You see, one of the problems, I  
10 think, has been that just a few years ago women and  
11 minorities were available and they were qualified but they  
12 were not hired, and therefore, you see, the seniority system  
13 is going to work against them. They're not going to have the  
14 time or the seniority of those persons who were hired then.

15 MR. MAYNE: And I'm sure that's true in a lot of  
16 cases. I can say, within our own organization, we don't have  
17 a seniority system, and so we can move people -- through  
18 affirmative actions, we can move people into positions if  
19 we're underutilizing them.

20 And then as -- you know, after we move them into  
21 the positions, they're on their own. They've got to prove  
22 themselves. And that's one of the points that employers was  
23 making is, "Gee, if I hire a minority or female, I can't ever  
24 get rid of them no matter how incompetent they are." That  
25 isn't true. They still have to be there under the same --

1 they better be sure to cover their bases when they terminate  
2 them, but we view it as once a person has been placed with an  
3 employer, they've got to prove themselves.

4           And I don't see minorities and females as any  
5 different than any group. We get some that are very  
6 ambitious and some that aren't. And I believe that employers  
7 should have the choice of who they employ, and certainly they  
8 do need to keep within their EO guidelines.

9           MS. RICHARDS: Mr. Mayne, do you have any  
10 statistics, how many of the construction workers are  
11 unionized in Utah?

12           MR. MAYNE: I don't have an exact number. We're  
13 somewhere between 15 and 20 percent.

14           MS. RICHARDS: So a relatively small portion?

15           MR. MAYNE: It is small, uh-huh.

16           MS. RICHARDS: Do you have any idea how many of  
17 those are minority and how many are women unionized  
18 construction workers?

19           MR. MAYNE: Within our organization, we have --  
20 we're hitting about five percent female and around ten  
21 percent minority. So we're underutilizing on females, but  
22 we're just about on-line with minorities, as far as the  
23 requirements go. And this is through a very hard recruiting  
24 effort of trying to bring females into the industry. I spend  
25 probably a third of my time on recruitment.



1 MS. RICHARDS: Are women concentrated in certain  
2 areas? Are there more carpenters, for example, than  
3 bricklayers, or exactly where to women fall at in terms of  
4 different trades?

5 MR. MAYNE: Operating engineers is running at about  
6 25 to 30 percent female, but when we understand that most of  
7 the work that they do is federal work where they have a  
8 female minority requirement, and so they're very high. Also,  
9 it's a craft that females seem to be more comfortable with.  
10 It doesn't require physical strength that they think they  
11 don't have. They do have it.

12 MS. HUTCHISON: It may be a profession of choice.

13 MR. MAYNE: Certainly it is. It is a choice. I  
14 know within the program that I work for, we have much better  
15 success in getting them into carpentry than we do into mill  
16 rights, because mill rights is more of a mechanical, and when  
17 you say it's mechanical, they have their own paradigms, you  
18 know, that they've been brought up with as well, "Oh, I can't  
19 do mechanical things, but I know I can saw and hammer." And  
20 so we have some homework to do there as well.

21 MS. SHIMIZU: One thing you mentioned was the  
22 subtle religious discrimination. It's almost like a  
23 whispering campaign, and it's never been dealt with. ~~that~~ are  
24 there some specific cases that have ever been brought to  
25 *Your attention to be dealt with?*  
~~solve such problem?~~

1 ~~We hear religious because of predominant religion~~  
 2 ~~because of the so called "Predominant Religion" in Utah.~~  
 3 ~~and all of those things, and it's just like it's kind of~~  
 4 ~~It is kind of hard-to-grab-type of expression to me.~~  
 5 ~~there but never dealt with.~~

6 MR. MAYNE: It's kind of a shadow, the fact that we  
 7 don't really look at it. I don't know of any test cases  
 8 that's happened. It would be very difficult.

9 MS. SHIMIZU: But if you don't have <sup>any specific</sup> ~~then it's~~  
 10 ~~Cases, then it is almost like an excuse. Somehow, at~~  
 11 ~~almost like an excuse, that's but somehow, some point we~~  
 12 ~~some point you need to bring cases to forefront,~~  
 13 ~~need to bring to forefront, otherwise, it's like a gossip, you~~  
 14 ~~otherwise, it's like gossiping. How do you feel about it?~~  
 15 ~~know. How do you feel about it?~~

16 MR. MAYNE: I certainly do agree with you. And  
 17 when I was talking to these people, I tried to let them know  
 18 that I wanted some real feelings of -- you know, we're not  
 19 looking on a witch-hunt or anything, just some real feelings  
 20 of what they've been through, and that was probably the most  
 21 prominent comment that came out was some religious, you know,  
 22 "I don't belong to the prominent religion, and I have been  
 23 denied certain access to places."

24 MS. SHIMIZU: So it's ~~underlying~~ <sup>there</sup> but <sup>you</sup> can't <sup>pin</sup> <sup>it.</sup> ~~point~~

25 MR. MAYNE: Yeah, and I think it's kind of the  
 26 unspoken. Like I say, if we were to poll everyone here and  
 27 say "Do you have any prejudice?" we would all say "No. No, I  
 28 don't." But we do. We do. Whatever it be, towards blacks  
 29 or whites or Hispanics or homosexuals, we all have some  
 30 prejudice. It's how we deal with it that I think counts. I

1 feel like strangling my kids sometimes but never have.

2 MS. CRAFT: Mr. Mayne, can you tell us briefly what  
3 types of initiatives your organization has taken maybe to  
4 better sympathize your membership as far as working with  
5 women who are fairly new to the construction industry and  
6 also minorities? Have you put any programs in place to deal  
7 with that issue?

8 MR. MAYNE: Yes, we have. The one is this AAO that  
9 I mentioned earlier. Another thing that we have tried and  
10 seems to be working pretty well is doing a preapprenticeship  
11 training to bring -- targeted mainly for females coming into  
12 the industry, seeing as that seems to be the hardest group to  
13 start attracting. But in this preapprenticeship it is using  
14 it as an introduction into the craft, into the construction  
15 industry, per se, and then we do some specific kind of  
16 training into our own craft, carpentry.

17 We put them through a 40-hour course. We do some  
18 job site visits. We do some hands-on use of power tools and  
19 hand tools, a little bit of math training. Get them  
20 familiarized with some of the materials so that we can place  
21 them out with employers, they're a little more comfortable.  
22 Typically, the last one that I ran, we had 15 females in it,  
23 and by Friday we had three. And I felt like that was a  
24 success because we found three that were really genuinely  
25 interested in doing it.

1           So there was, what, nine people that thought this  
2 is what they wanted to do and, you know, they were very  
3 quickly discouraged, that it's not what they wanted to do.  
4 So that's really what we're looking for is this handful that  
5 this is what they really want to do.

6           In the past, it's been typical to bring -- I keep  
7 going back to females, because that seems to be a big  
8 issue -- is to bring them into the industry and they find out  
9 it isn't what they thought it was and have them drop back  
10 out, again, within sometimes days, sometimes within just a  
11 short time. We haven't served anyone in that way.

12           So this program is mainly set up -- and please  
13 don't take this wrong -- but it's to discourage them out of  
14 it. To see if this is really what they want to do, and if  
15 they go through and they see it isn't all glamour that it was  
16 portrayed to be in the Miller beer ads, but it is an industry  
17 they can make a good living at, then we can place them with  
18 the contractors, and they seem to be doing better.

19           We do outreach -- constantly doing outreach to  
20 minority groups, to female groups, making presentations,  
21 trying to attract those people, and we are doing a little  
22 better. We have a long ways to go, but we are making some  
23 strides.

24           MS. RICHARDS: Thank you very much, Mr. Mayne, for  
25 your presentation. We appreciate your time.

1           We've now come to our first break. It seems like  
2 we just began, but we do have a little break scheduled here,  
3 and we can resume promptly at 10:35.

4           (A recess was taken.)

5           MS. RICHARDS: The time has come to resume. The  
6 court reporter has asked that we all speak very loudly for  
7 her benefit so that she can hear what we're saying.

8           Our first presenter will be Kim Marquardt, the  
9 Director of Corporate Human Resources and Management and  
10 Training Corporation.

11           MS. MARQUARDT: Thank you. I want to say first of  
12 all that I'm real happy to have been asked to come and have  
13 this opportunity to talk to you. This is an area that our  
14 company has been concerned about for a long time, and I was  
15 pleased when Joe gave me a call and let me know that this  
16 opportunity was coming up.

17           I don't know how familiar very many of you are with  
18 Management and Training Corporation, but we are headquartered  
19 in Ogden, Utah. We're a nationwide company. And our primary  
20 business is running job corps centers. We employ about 4500  
21 people throughout the country, and those people are all  
22 working at about 40 different locations.

23           We don't have too many employees in Utah, just  
24 about 600, with our corporate office and the Clearfield Job  
25 Corps Center. But our corporate office is growing, as our

1 business is growing. We run these job corps centers for the  
2 U.S. Department of Labor, and we also run prisons for the  
3 states of Arizona and California, minimum security prisons,  
4 and we don't take any business in the prisoner rehab that  
5 doesn't also have an educational component, because we are an  
6 education company.

7 We are interested in training youth and adults in  
8 the work force. So that's our primary mission. We also have  
9 some business with GSA to provide the facility management of  
10 federal buildings, courthouses and post offices in California  
11 and Texas. So that in a nutshell, that's kind of what we do.  
12 We are a government contractor throughout.

13 As the corporation's human resources director, I'm  
14 responsible for ensuring that we have the policies that we  
15 need to provide for a discrimination-free working environment  
16 for our employees. Because we're a federal contractor, I  
17 also oversee our Affirmative Action Program.

18 About 12,000 unskilled, disadvantaged youths are  
19 trained at MTC-operated job corps centers every year. Our  
20 goal is to place those students into jobs when they complete  
21 the job corps program, or when they finish the educational  
22 component, place them into a college or university to  
23 continue their education.

24 About 75 percent, as you can imagine, of those  
25 students are from minority groups. Nationwide, about 50

1 percent of MTC's 4500 employees also represent minority  
2 groups. About half of our student population and half of our  
3 staff population are female. So we're about half female and  
4 half male.

5 Our challenges are somewhat unique. With our  
6 student population being so heavily minorities, for our  
7 program to be successful we have to employ minority role  
8 models at every level of our organization. Students are  
9 looking to staff to present that model that they will then  
10 follow. And we have -- so consequently, we employ, in almost  
11 every area that we do business, a higher percentage of  
12 minorities' than are locally available.

13 In Utah this has, in a way, been sometimes very  
14 difficult for us to do, as minority groups are not well  
15 represented in the local recruiting area. Even when we're  
16 successful in our efforts to recruit and relocate qualified  
17 minority applicants, many seem to have serious cultural  
18 concerns about moving to Utah and living and working here.  
19 While many of us who have lived here and worked here for a  
20 period of time know that those concerns are out there, nobody  
21 seems to do much about it. Okay.

22 It will take time I think, and the initiative of  
23 companies and government agencies working together to change  
24 that perception of Utah. As most of you know, our own  
25 state's Anti-Discrimination Division has had it's own set of

1 problems. And some initiatives have been established to  
2 revamp the UADD. It doesn't seem to be happening quickly  
3 enough for us. We're growing. We need to seek minority  
4 applicants, female applicants, people who are interested in  
5 moving to Utah, and there are not that many people  
6 interested.

7           With a state agency that doesn't rate efficiently,  
8 we have another problem as well. I think that both employees  
9 and employers in Utah have concerns that their rights aren't  
10 protected, because the UADD is a very painfully slow process  
11 for handling claims, and then also the Division's backlog.  
12 You know, when will they ever catch up? Who knows.

13           As an employer, with what we would consider very  
14 fair and consistent practices, MTC has always believed that  
15 work place disputes are best resolved at the lowest possible  
16 level and as earliest as possible. We find it's virtually  
17 impossible to repair the employer and employee relationship  
18 when a claim filed by a present employee drags on for a year  
19 or sometimes longer. The situation just disintegrates to the  
20 point of never being able to return to a productive one.

21           This slow process, I think, also adversely affects  
22 employees or complainants who are no longer working. They  
23 feel the need to resolve this before they move on to a new  
24 employer and pick up and continue with their lives and really  
25 focus on a new job.



1           The UADD, I must say, has been proactive in some  
2 cases and has begun listening to our message. Recently we  
3 were asked to participate in a pilot preresolution  
4 conference -- or precharge resolution conference, rather, is  
5 the new term for it, and I think a new term for everybody,  
6 but a mediator came out -- from the Division -- came out to  
7 our center and met with representatives from management and  
8 the employee who was interested in filing the charge, and  
9 that mediator assisted both parties in reaching an agreement.

10           I think they were able to repair the relationship,  
11 to reach agreement, and hopefully conditions have improved  
12 from the employee's standpoint and from the supervisor's  
13 standpoint. And both parties are now again working together.  
14 No claim was ever filed.

15           Granted, this process will not always avoid a  
16 charge being filed, and certainly employees should have the  
17 opportunity to continue with a charge if they continue to  
18 feel they're being discriminated against. But with some  
19 marketing -- and this is the key to employers and -- both  
20 employers and employees -- if a program like this were  
21 implemented, it would certainly reduce the number of charges  
22 eventually filed and speed up the processing time for those  
23 charges that are filed, giving the UADD a little bit more  
24 labor time to complete those. More importantly, I think it  
25 will give people who feel that they're being discriminated

1 against an opportunity to be heard soon after they have that  
2 feeling and companies an opportunity to address those  
3 concerns and renew that working environment and provide a  
4 working environment that's free of discrimination.

5 My feeling is that this kind of a program should be  
6 made a priority, implementation of this a priority within the  
7 UADD. I'm not sure that that's the case, but nonetheless, I  
8 think it should be. It should be made a priority.

9 As a company, we need to continue, and so we've  
10 established some of our own initiatives. No longer -- I  
11 don't think it's any longer acceptable to do only what is  
12 required as a federal contractor. You need to do more. And  
13 with our rapid growth over the last few years, recruiting has  
14 become a major issue. We attempt to bring qualified minority  
15 staff into the state and into the Job Corps program with a  
16 variety of programs that we've developed internally.

17 One of them is we do college recruiting on campuses  
18 with a large minority and female student population such as  
19 Spelman in Atlanta. Jeanetta Cole, the president of Spelman,  
20 who sits on the board of directors, has been very helpful in  
21 allowing us to recruit minority females, black females  
22 specifically, to come to Utah. We've been successful in that  
23 regard, and we will continue to do more of that because we're  
24 finding that's one of the ways we can help to change people's  
25 minds about coming here.

1           We've had gatherings of minority group leaders to  
2 increase their and the community's awareness of MTC and what  
3 we do, our mission. Very few people in Utah know about  
4 Management and Training Corporation. They know about the  
5 other MTC, but they don't seem to know about our MTC and what  
6 we're doing. And that's fine. We don't do a lot of  
7 advertising. We don't need to. We just advertise to the  
8 federal government for more business, but it's important that  
9 the community become aware of what we're doing so that we can  
10 bring in people.

11           We also offer several minority scholarships through  
12 an endowment that we've established at a local university.  
13 Often the scholarship winners are offered internship  
14 opportunities -- as has happened in several cases just in the  
15 last year -- at our corporate offices. Those internships  
16 usually lead to full-time employment upon graduation. That  
17 is one of the ways we've been most successful in bringing  
18 qualified minorities into our work force.

19           We also participate as a work experience site with  
20 the Clearfield Job Corps Center.

21           At our office in Ogden, we give students who are  
22 ready to graduate an opportunity for some hands-on  
23 experience. Frequently these students who, 75 percent of the  
24 time are minorities, are offered full-time jobs when they  
25 complete their work experience.

1           We recognize that for them to be successful, living  
2 in a community with an apartment and all the responsibilities  
3 that come with that, we need to provide something else, so  
4 we've established a mentor program. New student hires are  
5 matched with current employees, executives, or other  
6 employees who have been successful working for us, and the  
7 two are joined together in a mentoring program, and they work  
8 closely together, not just in the area that they work, but  
9 also on helping them to make decisions about buying cars and  
10 setting up bank accounts and all those things that go along  
11 with it. We felt that that has significantly increased their  
12 chances of success in just the working world.

13           To prepare our work force for upward mobility and  
14 promotion, once we recruit minorities, we need to take  
15 initiative to be able to give them opportunities to move up,  
16 and we've done a couple of things that address just that.  
17 First, we've developed an in-house, very unique experimental  
18 training program for potential and first time supervisors.

19           A special emphasis has been ensuring that female  
20 and minorities are given the opportunity to participate in  
21 these programs at an accelerated level. All staff are  
22 brought to Utah, even though they are based nationwide. We  
23 bring them here because we want them to look at the  
24 possibility of living in Utah. Our largest facility is here,  
25 and our corporate offices are here, and that's where the jobs

1 up the line are. We bring them here. We show them Utah. We  
2 try to introduce them to people in the community that they  
3 will relate to and feel comfortable with and really sell our  
4 community.

5           With over 150 of our 600 supervisors trained so far  
6 -- we just started this program in March -- we are already  
7 seeing really tremendous results. Our program completers,  
8 those who have gone through this supervisory training program  
9 in Ogden, are experiencing a much higher promotion rate than  
10 those who did not participate. We feel it's directly  
11 reflecting the opportunity we can provide to minorities and  
12 females in our work force.

13           In early 1994, next year, we will begin developing  
14 a follow-up training program aimed at training new managers  
15 to move into top-level executive positions. This has always  
16 been a need, and females and minorities will be given special  
17 consideration in the selection process, not only to address  
18 the glass-ceiling initiative and other initiatives that we  
19 have, but also to provide those valuable role models for  
20 students whose lives we're attempting to turn around through  
21 the Job Corps program.

22           It's our feeling that companies such as MTC working  
23 alone will not make the difference and cause the changes we  
24 need in Utah. Only when private industry gets together with  
25 the community leaders, individuals, and the government will

1 we see some change. It will take time, certainly, but maybe  
 2 by working together we can get there. That's essentially the  
 3 message I have for you today.

4 MS. RICHARDS: Thank you very much. We have some  
 5 questions, I believe, from the committee.

6 MS. SHIMIZU: *Have you ever invited some of the*  
~~I may not have heard everything what~~  
 7 ~~you said. Have you done a lot of private corporate~~  
*private corporate leaders in Utah to your place*  
 8 ~~leadership, to your place, to talk about these things, from~~  
*to talk about what you are doing at the MTC*  
 9 ~~Utah, throughout Utah?~~  
*and your future initiatives?*

10 MS. MARQUARDT: Corporate leaders in Utah?

11 MS. SHIMIZU: ~~No.~~ *Yes* Private corporate leaders.

12 MS. MARQUARDT: Probably not, no. We've talked  
 13 with minority leaders. We haven't talked with other  
 14 corporate leaders in Utah. We don't do a lot of business  
 15 with other companies in Utah because our main customers are  
 16 the government.

17 MS. SHIMIZU: ~~Because of your wanting to promote~~  
*Because of your desire to promote*  
 18 ~~minority groups, in order to do so you need to have the~~  
*minority groups into the private job market after the*  
 19 ~~regular corporate leaders to involve in such a thing, do you~~  
*completion of the training, I feel you need to*  
 20 ~~invite private sector corporate leaders as partners~~  
*feel, to educate them?*  
*in such endeavors and educate them. What is your feeling*  
 21 *about it?*

22 MS. MARQUARDT: Certainly. Yes, certainly I would  
 agree that --

23 MS. SHIMIZU: ~~Is that in your initiative in the~~  
*Is that concept included in your*  
 24 ~~future?~~  
*future initiatives?*

25 MS. MARQUARDT: Sure. I think it will be. Yeah.

1 That's a good idea.

2 MS. HUTCHISON: Did I understand that most of your  
3 clients are Job Corps? Is that your largest -- is that what  
4 you said?

5 MS. MARQUARDT: Our largest business is Job Corps,  
6 right.

7 MS. HUTCHISON: And would you explain again the  
8 applicants that you reach. Where do you recruit the Job  
9 Corps? Isn't that a --

10 MS. MARQUARDT: Students? Students that come to  
11 Job Corps?

12 MS. HUTCHISON: Aren't most of those -- haven't  
13 they had trouble with the law?

14 MS. MARQUARDT: Not necessarily.

15 MS. HUTCHISON: Okay. Then that's a misconception.

16 MS. MARQUARDT: Yes, I think that is. Not  
17 necessarily. Their disadvantaged, unskilled youth between  
18 the ages of 16 and 24, when they enter the program.

19 MS. HUTCHISON: And you recruit them mainly from  
20 out of state?

21 MS. MARQUARDT: Some of the students are recruited  
22 from out of state. Some are also from Utah. We have a  
23 nonresident population at the Clearfield center that commute  
24 to and from the center every day. They live at home with  
25 their families. Job Corps has been regionalized, so you

1 wouldn't necessarily have students here in Utah that were  
2 from New York City, per se. They would be from the western  
3 area.

4 MR. MARTINEZ: I've been at -- I've toured your  
5 facility. In fact, I've been a graduation speaker, and I'm  
6 very impressed with the job that you're doing. Do you have  
7 trouble recruiting staff to come to Utah if they are not  
8 familiar with Utah? And if you do, what are some of their  
9 perceptions of Utah that would give you that problem?

10 MS. MARQUARDT: Well, we have had a lot of problems  
11 with that. As our corporate offices have grown, we've wanted  
12 to bring individuals from our centers around the country here  
13 to work at our corporate office, a natural progression in  
14 promotion, and as we've asked them, "Would you consider  
15 relocating to Utah?" they say, sometimes, "Anywhere but,"  
16 sometimes they say, "Sure. I'd love to get out West. I'm  
17 tired of the rat race on the East Coast." But specifically,  
18 I think we've had a hard time with -- to be quite honest with  
19 you -- minority directors who were out in the field move into  
20 Utah because they feel that there will be some problems for  
21 their family.

22 Most of our employees travel a lot because our  
23 business is elsewhere. So we will move them here, promote  
24 them, and send them all over the place all the time. And  
25 they leave their family behind to make new friends, become



1 adjusted to the community. And they fear that they will be  
2 faced with prejudice in the schools, in the community, in the  
3 social activities that occur.

4 MR. MARTINEZ: They feel that they'll be prejudiced  
5 against because they're minorities?

6 MS. MARQUARDT: Uh-huh. Uh-huh.

7 MR. MARTINEZ: You have to say "yes" or "no" for  
8 the reporter.

9 MS. MARQUARDT: Yes. I'm sorry. That's right.

10 MR. MARTINEZ: And do you know where they come up  
11 with that thought from? People learn these things. Do they  
12 just hear it or are other people telling them that?

13 MS. MARQUARDT: I don't think that they hear it  
14 from people who have worked for us, because when we've been  
15 successful in bringing people in, they've been very happy  
16 here, and a lot have retired here. Once they establish  
17 themselves and become comfortable living in Utah, then they  
18 don't seem to have too much trouble with it. But there is a  
19 perception nationwide among our minority population about  
20 living in Utah.

21 MS. GILLESPIE: Have you sent any minority  
22 recruiters out?

23 MS. MARQUARDT: Minority --

24 MS. GILLESPIE: To recruit minorities to Utah?

25 MS. MARQUARDT: Yes. We have used several. We

1 have a vice president who is a minority female who's  
2 stationed in Atlanta, but she works for our corporate office.  
3 She doesn't want to move to Utah. She has helped us to  
4 recruit minorities to come to Utah, however. It's kind of --  
5 and we have tried that approach as much as we can, and we'll  
6 continue to, because certainly that would help us to be more  
7 effective.

8 MS. GILLESPIE: Was she at one time at Clearfield?

9 MS. MARQUARDT: No. No.

10 MS. RICHARDS: One last question here.

11 MR. TONG: You're asking for minority instructors  
12 for the -- to be on campus, is that what you're asking for?

13 MS. MARQUARDT: Uh-huh.

14 MR. TONG: Now, would you take someone who is not  
15 necessarily qualified as a teacher and train them if they are  
16 a college graduate in a different field?

17 MS. MARQUARDT: We have a generous educational  
18 assistance program that allows employees to work toward  
19 certification.

20 MS. SHIMIZU: <sup>Do</sup> you require a teaching credential?

21 MS. MARQUARDT: Yes. And that's a national Job  
22 Corps qualification.

23 MS. RICHARDS: Abe, Did you have a question?

24 MR. GUSS: Yes. My question was whether or not  
25 your type of program, and what you offer to both students and

1 your staff, does it attract physically disabled people? Do  
2 you have any number them involved in operation here in Utah,  
3 do you recall?

4 MS. MARQUARDT: There are two people that I can  
5 think of that I know are persons with disabilities that work  
6 for us in Utah. There may be more. I don't necessarily have  
7 that number at my fingertips. But with the ADA and the  
8 initiative that that brought about, Job Corps has had to go  
9 back and revamp -- and this is an off-the-subject thing --  
10 but most of the facilities at Job Corps centers are operating  
11 on are on former naval bases, former federal government  
12 facilities of some sort, who had their own facility issues.  
13 The government's kind of out of money to make a lot of  
14 changes, so they haven't necessarily done that, but every new  
15 center that has been opened, including one that I just  
16 visited this week in Alaska, is accessible to persons with  
17 disabilities, has dorm rooms, has rest rooms so we can employ  
18 teachers, and so I think they're moving in that direction.

19 MR. GUSS: Is that office -- is it functioning yet?  
20 Have you staffed it?

21 MS. MARQUARDT: We just started training the  
22 management this week.

23 MR. GUSS: So you do intend to have or expect to  
24 have disabled people attracted to find employment there or  
25 try to work for --

1 MS. MARQUARDT: Yes, because the facility is so  
2 well suited for that, as well as students will have that  
3 opportunity.

4 MR. GUSS: Then would you also say that the pool of  
5 people looking for that opportunity is out there once  
6 facilities are made accessible, and so it's the government  
7 that's sort of holding back from making that happen?

8 MS. MARQUARDT: Uh-huh, because all of the  
9 facilities are theirs, right.

10 MS. RICHARDS: Thank you very much, Ms. Marquardt.  
11 We appreciate your presentation to us this morning.

12 MS. MARQUARDT: Thank you for the opportunity.

13 MS. RICHARDS: Our next presenter is Ms. Colleen  
14 Colton. She is Commissioner <sup>of</sup> ~~with~~ the Industrial Commission  
15 of Utah ~~Anti-Discrimination Division.~~

16 We will ask you if you will introduce yourself to  
17 the committee as well.

18 MS. COLTON: Good morning. I'm Colleen Colton,  
19 Commissioner of the Industrial Commission of Utah, and as  
20 such, one of my direct responsibilities is the administrative  
21 oversight of the Utah Anti-Discrimination Division. I was  
22 appointed commissioner a year ago June, in 1992, and have  
23 been in this position since that time. I probably <sup>have</sup> ~~had~~ one of  
24 the distinctions of being appointed within a year's time by  
25 two separate Governors. So I consider that an honor.

1           It's a pleasure to be here today to address the  
2 task force in -- I'm not sure whether you call it the  
3 factfinding meeting. I understand that you've received a  
4 great deal of testimony in the past day and a half, and at  
5 this time I'd like to address, ~~currently,~~ several issues.  
6           *As long as*  
~~Ever~~ since there have been employers and employees  
7 there have been employment disputes. This is not something  
8 new, although we have definitely seen an increase in the  
9 numbers and an exacerbation of the employment problems *as*  
10 society and the work place ~~has~~ *have* become more complex.

11           As we have looked at many of these different  
12 disputes that are occurring, we find that they are becoming  
13 increasingly difficult to solve, because they also affect and  
14 reflect social issues as well as employment and practices of  
15 the employers.

16           As you might guess, whenever there is an employment  
17 dispute, both parties feel very strongly about the issues  
18 involved. Both of them become very emotionally involved  
19 usually, in fact, because they each represent a different  
20 point of view. They're each looking at it from their own  
21 perspective: the employee ~~is~~ *from* their perspective and what they  
22 see as an abuse or an unfair practice or an illegal act; the  
23 employer, believing that they're acting in the best interest  
24 of all employees, the company and others.

25           It becomes the role of the Utah Anti-Discrimination

1 Division to serve as impartial factfinder and mediator in  
2 attempting to resolve these employment disputes. Most of  
3 them are involving specifically cases of various types of  
4 discrimination, <sup>and</sup> ~~which~~ I'm sure you are well aware of the  
5 protected classes, and I won't go into that area.

6 It is not easy for an investigator or a mediator to  
7 ascertain exactly the facts that have occurred, sometimes  
8 over very long periods of time, sometimes for a very short  
9 duration. They must rely on numerous witnesses, support<sup>ive</sup>~~s~~  
10 documentation and information presented to them. If they do  
11 not have the information or if the facts are not presented,  
12 they have no way of addressing those issues.

13 Many of these <sup>issues</sup> ~~things~~ are resolved, obviously, at  
14 the work place. That is the desired outcome. We receive the  
15 charges from the charging party only when they become so  
16 difficult or complex or communication has broken down that  
17 they cannot be addressed at the work site itself. Therefore,  
18 there is usually considerable emotion, and events ~~that~~ have  
19 transpired before the agency ever enters into the picture.

20 We also operate under a very rigid set of federal  
21 and state rules and laws that we must abide by, both ethically  
22 and legally. We cannot exceed what the law says that we can  
23 do or cannot do. Therefore, we have to operate within ~~some~~  
24 guidelines, sometimes, that conscience and reason would tell  
25 you ~~that might be~~ otherwise. But <sup>we</sup> ~~we~~ must apply the law.

1 That is our charge and that is our position.

2 It's very difficult, oftentimes, when a charging  
3 party comes to our agency about a grievance of something that  
4 has happened in the work place, and in listening ~~to this~~, one  
5 of the ~~great~~ areas that we found of concern is the difference  
6 in understanding between what is an unfair labor practice and  
7 what is illegal discrimination.

8 Sometimes in our view, an employee may have been  
9 treated unfairly. The practice may not have been ~~probably~~  
10 the best of employment practice or the best as far as  
11 employment procedures, but in terms of interpreting the law,  
12 there has been no illegal discrimination, and that is a very  
13 fine point to distinguish and to try to explain to parties  
14 when they feel aggrieved, when they feel wronged, the  
15 difference between something unfair and the difference  
16 between being illegal.

17 As you can well know, this is complicated greatly  
18 by the differences in laws that are enacted and the new  
19 number of laws that are coming to us currently. Our  
20 procedures and our processes and our practices must be  
21 changed to reflect the laws as they are currently enacted.  
22 As an example, the Civil Rights Legislation of 1991, the  
23 Disabilities Act of 1992, currently, the Family and Medical  
24 Leave, all of those things impinge upon our practices and  
25 policies.

1 We must incorporate a number of new laws, and  
2 therefore, you will find many things in a constant change of  
3 flux. As you have heard over the past day, ~~I'm sure you've~~  
4 ~~heard that~~ many of the past practices of the  
5 Anti-Discrimination Division in the Industrial Commission *have*  
6 ~~and~~ it has reminded me, in fact, of the season and a story *changed.*  
7 that I read just this week, of Dickens' Christmas Carol. In  
8 ~~there, I think,~~ *the story* we are addressing at this time three ghosts:  
9 the ghost of Christmas past, Christmas present, and Christmas  
10 future.

11 I cannot address what is past, because what is past  
12 is gone. You have the facts. There are many others that  
13 have not been presented, and many of those things will be  
14 answered in written statements from the Commission to this  
15 panel.

16 However, what I would like to address primarily  
17 today is the present, UADD present and the ghost of our  
18 presence here.

19 We have found, in fact, that there were many  
20 processes that were occurring that simply made it impossible  
21 for us to do the task which we were assigned.

22 Would you please distribute the first handout.

23 I think the first thing that you can very quickly  
24 see from these charts I'm giving to you would be some of the  
25 information that I was faced with when I first came to the



1 Division. The people there were well aware of these  
2 problems; however, how to solve them was the real dilemma.

3 The caseload at the Division was increasing  
4 dramatically. If you will look at the numbers, you can see  
5 the number of cases filed, and in a very brief period of  
6 time, from about 1988 to 1992, the caseload ~~was doubling.~~ <sup>doubled.</sup>  
7 The cases were ~~becoming~~ not only increasing in volume, but  
8 also in complexity, with each charge maybe ~~representing~~ <sup>involving</sup>  
9 several charges.

10 As you can see, our resources of our agency did not  
11 increase during that period of time. Funding in the state of  
12 Utah is scarce. We have many needs and a lot of challenges.  
13 Our taxpayers do not want additional taxes any more than  
14 anyone else. We are given a set allocation and we must  
15 operate within the confines of budget. As you will note, our  
16 work staff remains <sup>ed</sup> comparatively constant during that period  
17 of time, and in fact, decreased <sup>by</sup> /one, but our caseload and our  
18 workload was in fact doubling.

19 As we looked at those issues, there were many  
20 problems that I was hearing about from many of the sources  
21 you've heard in these hearings. Many of these individuals  
22 had legitimate complaints, many of them had different views.  
23 The commission considered the issues and decided at that  
24 time -- in September of last year, we approached Governor  
25 Bangerter ~~at that time~~ and asked him if we <sup>could</sup> ~~can~~ look at the

1 issues from a fresh set of eyes and asked if he would appoint  
2 ~~then~~ a task force to look at the Anti-Discrimination  
3 Division, and perhaps through that process we could hear from  
4 many credible individuals and others as to what our problems  
5 were, and we could then begin to really find out what we  
6 needed to do in the way of solutions, ~~one of the problems~~  
7 ~~that have been identified.~~

8 I was concerned that we did not rush off and begin  
9 to implement things or to change without having the real  
10 knowledge base and make sure we were addressing the problems,  
11 not the symptoms. As a result of the task force hearings,  
12 that proceeded over a period of approximately five months,  
13 ~~during that time, as~~ the commission and our staff listened to  
14 the information offered by many, the problems became  
15 apparent, and almost -- I might say with some pride -- almost  
16 as soon as we identified a problem, some action was taken to  
17 address those problems that were within our jurisdiction.

18 In order to do this, we found very quickly that  
19 there were several things that we could do, and I would like  
20 to address a few of those today. One of those areas, the  
21 first that we consider <sup>ad</sup> to be most important, was the problem  
22 of timeliness that you just heard addressed by the previous  
23 speaker. It was taking too long, because we had, at that  
24 point in time, a Baskin-Robbins system: the last charge in  
25 took a number and had to wait for their turn to emerge to the

1 top of the ~~pile~~<sup>list</sup>. Consequently, all cases ~~that~~ that were  
2 being investigated were usually quite old by the time they  
3 ~~emerged, from the time they~~<sup>a</sup> were filed until they emerged to  
4 ~~the time of~~<sup>a</sup> investigation. This was simply not acceptable.

5 We implemented in May of this year an alternate  
6 dispute resolution process. We started scheduling them in  
7 May, and so as you might guess, the first conferences were  
8 actually held and results began to occur in June. Since we  
9 have implemented ~~these~~<sup>the conferences</sup>, we have, ~~at this point in time,~~<sup>9</sup>  
10 ~~between June -- actually~~ between May and the end of November,  
11 ~~we have~~ held over 430 dispute resolution conferences. And as  
12 a result of the conferences and the conciliation efforts,  
13 have recovered over a half a million dollars for charging  
14 parties during ~~these~~<sup>that</sup> periods of time.

15 As soon as the charge is filed with our agency, it  
16 is then immediately scheduled for a resolution conference  
17 within 30 days. This conference is voluntary, and I need to  
18 stress that it's voluntary on the part of both parties. ~~It~~  
19 when they come to the table, it is hopefully with the  
20 attitude of trying to resolve the issues at hand before they  
21 become untimely and ~~also~~<sup>in their positions</sup> more rigid/and also probably more  
22 emotionally charged.

23 We have ~~a~~ mediators, who ~~they~~ are all very well  
24 trained ~~now~~, and our mediators conduct the conference as an  
25 impartial mediator. This is not arbitration. It is not

1 binding. It is voluntary.

2 Currently, 80 percent of all of the letters that  
3 are sent out for mediation, ~~we do hold~~ <sup>conferences result in</sup> a conference. So 80  
4 percent of our parties are responding. Of that number, of  
5 the 80 percent, ~~our figures are currently~~ <sup>these</sup> about 75 percent of  
6 ~~the~~ cases are being resolved through mediation.

7 What this means to the individuals is that their  
8 cases are ~~are~~ very quickly heard, the issues identified and  
9 where possible, resolved. A little over two-thirds of our  
10 cases are now currently being resolved within approximately a  
11 30 ~~to~~ <sup>to</sup> 45-day time frame. We do not consider them resolved  
12 until both parties have signed off on the agreement, and if  
13 there's a monetary settlement, those checks are in hand. So  
14 until that time, the case is open.

15 Those that are not resolved ~~they~~ at that point in  
16 time, by the mediation process, are then scheduled for  
17 investigation, ~~and~~ <sup>then</sup> they have to wait their turn until an  
18 investigator can address that case.

19 What does the mediation involve? As we said, the  
20 negotiator or mediator is an impartial person. We try to  
21 advise parties to come prepared to identify what they are  
22 willing to settle for and what it is they are willing to  
23 offer. We set some guidelines for them prior to arriving at  
24 the conference. We try to discourage legal counsel where  
25 possible, because we find that the cases become increasingly

1 complex -- my apologies to our legal friends on the panel --  
2 but we ~~still~~ find that ~~they~~<sup>attorneys</sup> sometimes make the process far  
3 more complex than necessary. However, both parties have the  
4 option of bringing with them witnesses or other individuals  
5 to testify, or counsel, should they choose.

6 At this point, what are they asking for? Sometimes  
7 it's the opportunity to face the person that ~~you~~<sup>they</sup> believe is  
8 the perpetrator of some egregious crime across the table.  
9 Sometimes it's having ~~you~~<sup>their</sup> say, what ~~you~~<sup>they</sup> really wanted to  
10 say. Sometimes it involves monetary settlements, many times  
11 it does not.

12 Let me just give you a couple of quick examples to  
13 see if I can ~~set~~<sup>give</sup> a flavor of what these might be. Recently  
14 one of the cases involved an age discrimination charge. The  
15 company was suffering some difficult financial times, and  
16 found it necessary to -- in their terms, to downsize. And so  
17 they terminated several employees across ~~their~~<sup>the</sup> whole *Company.*  
18 ~~department.~~

19 One of the individuals was in an accounting  
20 position and was a person who was close to retirement age.  
21 She filed a discrimination charge, and when both parties  
22 attended the conference, in fact, it was successfully  
23 resolved. ~~And~~ <sup>=</sup> what it involved, as the issues became clear  
24 during the conference, ~~this~~<sup>was the</sup> woman, who was probably within a  
25 year of retirement age but did not currently qualify for

1 Social Security or retirement benefits was most concerned  
 2 about her benefits for health insurance and other benefits  
 3 being discontinued.

4 As the employer became aware of ~~the~~ <sup>the</sup> concerns they  
 5 voluntarily offered to continue to pay ~~those~~ <sup>the</sup> benefits until  
 6 such time as she was eligible for her retirement and Social  
 7 Security. She was pleased with that. The settlement  
 8 occurred, and the company then fulfilled its obligation in  
 9 writing to pay those benefits that she had asked for, and  
 10 both parties were satisfied. That's one example that ~~was~~  
 11 ~~not~~ -- I guess <sup>el</sup> you would call ~~it~~ <sup>not</sup> monetary or not, depending  
 12 on whether you want to determine <sup>benefits</sup> ~~that~~ as having value, which  
 13 ~~is~~ <sup>they</sup> obviously did to <sup>this</sup> ~~the~~ woman.

14 Many of the cases that we are now seeing involve  
 15 the Americans with Disabilities Act. We find that this is  
 16 quite new for employers. Many of them are not <sup>used,</sup> <sup>yet,</sup> to  
 17 the concept of accommodations. ~~was~~ sometimes the mediator in  
 18 this process can suggest logical accommodations that would  
 19 make sense, but the employer <sup>had</sup> ~~has~~ not thought of and <sup>we were then</sup> ~~was~~ able  
 20 to resolve <sup>the</sup> ~~these~~ issues.

21 At this point in time it is still a new process.  
 22 We are still refining as we go along. We're still clarifying  
 23 our forms and our paperwork. We are very pleased with the  
 24 results. We believe that it is truly a bright light. As a  
 25 result of that, you will also see that the age of the cases

1 within the agency has decreased dramatically, inasmuch as  
2 we're now able to address approximately two-thirds of those  
3 new charges coming in within about a 30-day time frame. So  
4 the average ~~length~~<sup>age</sup> of cases has decreased.

5           However, those that have been in the system for  
6 some time, were filed perhaps a year ago, may still be there,  
7 and you will hear from individuals with cases that have taken  
8 a long time and some of them may currently, depending on  
9 whether they are inclined to settle or <sup>to</sup> go through a very  
10 lengthy investigation.

11           One of the other comments that was brought to our  
12 attention through the task force was the lack of  
13 communication from our agency with ~~the~~ public, and ~~with~~  
14 ~~others~~. We have attempted to <sup>correct</sup> some of <sup>these</sup> things, ~~that we~~  
15 ~~can~~. I still find this to be a very consistent, ongoing  
16 problem. I have not yet found the means to communicate with  
17 all of the constituencies and all of the individuals through  
18 education <sup>or</sup> ~~and~~ other means to help to resolve some of these  
19 problems.

20           As a result, ~~however~~<sup>of</sup>, the things that we heard, we  
21 did resolve several issues by one, <sup>change</sup> our agency and the UADD  
22 receives over 70,000 phone calls or inquiries a year. All  
23 you have to do is put that in terms of numbers of how many  
24 phone calls could you answer a day if that was your only job,  
25 and how many people would it take.

1 We found a great deal of our investigators' time  
2 was being consumed by answering phone calls of inquiries.  
3 We, therefore, hired a receptionist, gave her the training to  
4 answer some of the routine questions and also the mechanisms  
5 to refer to others who could give answers. The receptionist  
6 reduced greatly the number of phone calls/<sup>for investigators</sup> and also the  
7 public's accessibility to the agency, rather than just ~~just~~<sup>a</sup>  
8 busy number all the time.

9 We also installed phone mail <sup>for</sup> ~~in~~ each of the  
10 employee's ~~boxes~~ so that individuals could have direct access  
11 <sup>for their</sup> ~~and do~~ inquiries. We also installed an 800 number, because  
12 we're finding that many people outside of this immediate  
13 metropolitan environment also have concerns. We have found,  
14 in fact, that <sup>the</sup> ~~that~~ line is constantly ~~being used,~~ <sup>is</sup>  
15 ~~constantly~~<sup>g</sup> busy, and we're going to request an additional  
16 line, hopefully in the near future, simply because we're too  
17 inundated on our 800 number.

18 We have also revised <sup>most</sup> ~~all~~ of our forms; the  
19 information that <sup>is</sup> ~~has to be~~ filed, and tried to make <sup>the forms</sup> ~~them~~ more  
20 user friendly. We have also printed the brochures in both  
21 Spanish and English to try to explain the processes and  
22 procedures to give people a more realistic expectation of  
23 ~~what they can expect from~~ the system. We have also conducted  
24 extensive training seminars and outreach education efforts,  
25 ~~with~~ <sup>we're</sup> this past year over 52 sessions ~~being~~ conducted that ~~is~~



1 reached over 1810 individuals.

2 We have tried to have satellite outreach through  
3 our Job Service offices that I believe you'll hear more  
4 about. We have tried to take our services to the public in  
5 other parts of Utah. ~~we~~ we have conducted our alternate  
6 dispute resolution conferences in Logan, Richfield,  
7 St. George, Price, <sup>and</sup> other areas of the state, so individuals  
8 did not have to bring their employees, employers and others,  
9 if they wish to testify, to Salt Lake City.

10 Whenever we ~~had~~ <sup>have</sup> charges filed and there's a  
11 sufficient number in an area, we will send our mediators to  
12 that area to conduct ~~the~~ mediations, ~~in that area~~ ~~and~~ while  
13 <sup>the mediators</sup> ~~they~~ are there, they also make it a point to try to do  
14 speaking engagements and educational seminars with others in  
15 that area.

16 We have also tried to implement as much dialogue as  
17 we could with all groups that may be impacted, and anybody  
18 wishing to speak with any of our representatives of the  
19 commission for the UADD. We have engaged in continuous  
20 dialogue over the past year, and I must tell you it is not  
21 easy, because you receive so many conflicting views. One  
22 group will have one opinion that you should be doing this,  
23 and when you take that idea to another group, they will be  
24 completely opposed to it. And again, our task becomes that  
25 of trying to serve ~~again~~ as a mediator between the groups,

1 and finding what is a reasonable middle ground to do <sup>and</sup> what the  
2 law is requiring us to do.

3 Other changes have also occurred as a result of  
4 some of the suggestions of the task force and some as a  
5 result of staff. <sup>We have implemented</sup> ~~Suggestions have been changed, massive~~  
6 changes in our investigative procedures.

7 Many of these are simply a result of personnel  
8 changes. We have had, ~~in~~ <sup>in</sup> the past year, ~~we've had~~ two  
9 ~~additional~~ directors since Mr. Medina left our agency. We  
10 have had many <sup>investigator</sup> ~~investigator~~ positions change. We have added  
11 contract attorneys to our staff, who do much of the legal  
12 review and some of our writing. We have tried to, ~~if you~~  
13 <sup>become</sup> ~~will~~ more specialized <sup>with</sup> some of the functions. So we have a  
14 mediation unit <sup>and</sup> ~~we~~ have an investigative unit. We have  
15 different functions that we think are making us more  
16 efficient.

17 We have had a great deal of ongoing training for  
18 all of our staff. This training has been <sup>provided by</sup> ~~received by~~ EEOC,  
19 by individuals, by the very best in the fields that we could  
20 find, for example, in our mediation. We have also  
21 implemented weekly staff meetings where we have at-length  
22 discussions on some of the problems that we see emerging with  
23 processes, how we can better improve. We are in a constant  
24 state of flux. What was last month is probably somewhat  
25 changed this month to reflect new problems that are targeted

1 as we have identified new areas.

2 We are finding, as a result of this, that it is  
3 difficult always to keep people informed as to what we are  
4 doing. So much of what you will hear ~~again, and~~ <sup>is</sup> evidence of  
5 ghosts of Christmas past, not what ~~they are~~ <sup>is</sup> currently <sup>happening</sup>. We  
6 are finding, for example, the issue of cause findings, ~~the~~  
7 ~~number~~ versus no-cause findings. That was one of the very  
8 major complaints that we heard initially. ↑

9 As ~~you~~ <sup>you</sup> ~~will~~ listen to some of the information that  
10 has been presented, and will be, you will find that ~~that's a~~ <sup>the number of cause</sup>  
11 very inappropriate, inarticulate way of describing the work <sup>finding</sup>  
12 of the agency, because there are ~~many~~ many ways of closing a <sup>is a</sup>  
13 case, many closure codes. For example, withdrawal with  
14 settlement; the cause and no cause reflects only those that  
15 go through the entire process and are not resolved prior to  
16 that time. In other words, those cases that are most  
17 complex, most difficult, or perhaps there really was not  
18 cause <sup>initially,</sup> ~~there~~ which would skew those figures and <sup>distort</sup> ~~disproportion~~  
19 ~~the numbers.~~ <sup>the numbers.</sup>

20 There are many things that need to be explained,  
21 but I will pass them over in the interest of time.

22 Recently one of our great focuses has not only been  
23 to increase our quantity of work but also our quality. We  
24 have many ~~issues~~ <sup>assurances</sup> in our systems of quality checks. Our  
25 cause findings are reviewed by the EEOC in our regional

1 office, and we are proud to state that we have received a  
2 99.9 percent acceptance rate of all of the determinations  
3 that are read and reviewed by that agency.

4 In addition, ~~that~~ recently, because of some  
5 confusion in statistics that are released when people try to  
6 compare inappropriate numbers, we received a visit -- which  
7 we were very pleased and happy to have -- from our district  
8 office, and at that time they reviewed all of our  
9 determinations, all of our cause findings, for about a year  
10 and a half.

11 We received many, many favorable comments from this  
12 individual who stated that these were probably the best and  
13 most well written determinations that he had ever seen in  
14 almost 30 years with the agency.

15 As we continually look at ~~all of the~~ others, we  
16 find that in many areas we are ahead of the other states, in  
17 doing a comparative analysis, simply because when you compare  
18 the numbers to other states, our caseloads are higher on our  
19 investigators, our results are more quickly produced. We  
20 also have many other things we're proud of that ~~that~~ I will  
21 *mention later* ~~submit to you in writing.~~

22 Will you give them the next chart.?

23 MS. RICHARDS: We do need to leave some time for  
24 questions.

25 MS. COLTON: As we look at the handicap law, since

1 Utah has ~~already~~ had a handicap law on the books for many  
 2 years, we found that we were ahead of the game when it came  
 3 to enforcing the ADA, because we had already had the  
 4 experience with the handicap law.

5 We are currently engaged <sup>in</sup> ~~with~~ discussions <sup>with our</sup>  
 6 legislature and others regarding refinement of the Utah law  
 7 that needs to occur. We also have many other legislative  
 8 issues pending. ~~Many of these that~~ we have been meeting in  
 9 groups and with legislators trying to address <sup>some</sup> ~~still~~ problems.  
 10 ~~that we believe, but we cannot enact other changes until we~~  
 11 ~~have the law changed in some areas.~~

12 ~~We have -- for example,~~ <sup>g</sup> I understand one of the  
 13 major issues has been the issue of enforcement. The  
 14 enforcement policy of the UADD, whether we do or whether we  
 15 don't, and what are the processes. I have given you one  
 16 chart that looks intimidating, and it is. It's difficult to  
 17 follow. A flow chart which would indicate which of the  
 18 general processes, according to the current law, ~~which~~ an  
 19 individual has the right to access.

20 Once a cause determination is written and issued by  
 21 our agency, there is a very strong misconception ~~that~~ that  
 22 means it's over, that our agency must then enforce that cause  
 23 finding.

24 However, by the law, there are many avenues of  
 25 appeal for either party. So if either party -- within the

1 30-day time after the order is issued, if either party  
 2 appeals, the action of the UADD is final and complete, but  
 3 the action <sup>of the Industrial Commission</sup> on the case is not. Each party has the right to  
 4 appeal ~~either~~ through our administrative law procedure in  
 5 Utah, <sup>the charging party has</sup> ~~or they have the right, then~~ to take it to the EEOC,  
 6 should they choose, to ask for action on the part of the  
 7 EEOC, ~~there they may ask the EEOC for action or, again,~~ they  
 8 may request a notice of a right-to-sue and withdraw and go to  
 9 the courts.

10 As you can see, if they follow the appellate  
 11 procedure established within the administrative law system,  
 12 they may appeal <sup>to</sup> ~~the~~ the ALJ for their ruling. Either party  
 13 then may, ~~from that point in time,~~ appeal to the Court of  
 14 Appeals, and then should they choose, they may go to the  
 15 Supreme Court.

16 This is why there is sometimes great confusion in  
 17 how long a case takes to resolve. The action of the UADD is  
 18 completed when the determination and order is written, but  
 19 the action on the part of the charging party and the employer  
 20 may not be completed, depending on how far they choose to  
 21 litigate the case.

22 I would stress strongly at this point in time, it  
 23 is the desire of our agency to do everything we can to  
 24 resolve and settle those cases prior to litigation, using  
 25 litigation only as a last resort. Following the issuance of

1 a cause finding and determination, the agency then -- if it  
 2 becomes the final order of the agency and no appeal is  
 3 instituted, then the agency will press for enforcement if  
 4 there is not a conciliation.

63-466-19

5 We do have the authority, under ~~6346B19~~, that is  
 6 under the Utah Administrative Procedures Act, to enforce our  
 7 orders as the law states, in addition to other remedies  
 8 provided by law, an agency may seek enforcement of an order  
 9 by civil enforcement in the district courts.

10 Now, we will do all within our power to attempt  
 11 conciliation with the parties. If we cannot effect that, and  
 12 if the order becomes final, then the commission currently --  
 13 and again I'm speaking of current -- will enforce our orders  
 14 with that law. Because of this question, ~~now~~ this again was a  
 15 new item that emerged as a result of the task force, ~~and~~ <sup>resulted</sup> in  
 16 discussions that our offices had with the Attorney General on  
 17 how we could do this, ~~what could be done?~~ In the past, ~~and~~  
 18 ~~and in that time frame,~~ the agency did enforce the orders by  
 19 court proceedings. ↑

20 Currently, one of our law judges has told me about  
 21 cases that he did litigate on <sup>our</sup> behalf <sup>by</sup> ~~and~~ representing the  
 22 file, ~~on behalf of the agency.~~ When the law was changed, the  
 23 statute that governs our agency, Chapter 35, that portion of  
 24 the law was deleted, and it was the impression ~~perhaps~~ of  
 25 those in our agency at that time that it was not the intent

1 of the legislature to formalize the litigation procedures,  
2 until we became aware of the UAPA provision, then we again  
3 ~~we~~ instituted the enforcement of the these laws.

4 In finding out exactly what that means, let me just  
5 make one additional point. As I attempted <sup>to determine</sup> what needed to be  
6 done in the area of enforcement, ~~we~~ -- if we needed law  
7 changes, in reviewing that law ~~and going back~~, I looked at  
8 all of the cause findings for the past year and a half.  
9 During that time frame of the past year and a half, those  
10 cases that were completely finally adjudicated, were no  
11 longer under appeal and had not been resolved by some means  
12 of conciliation, we identified three cases that emerged that  
13 could have been or should have been litigated. Now, keep in  
14 mind ~~that~~ <sup>in a</sup> that year and a half you're dealing with  
15 approximately 1200 charges filed. So many of those were  
16 resolved at some point in the process.

17 After the final determinations and orders were  
18 written, three of those could benefit from litigation, and  
19 they are currently in that pipeline at the present time with  
20 the concurrence of the Attorney General's office. So we have  
21 been working closely, <sup>with the Attorney General's office</sup> and I believe that is where we're at  
22 today.

23 The future, I can assure you, is one of change. We  
24 will continue to identify changes that need to be made. Yes,  
25 there are still problems. Yes, we have not found all of the



*As we identify problems we will as quickly as we can, based on resources, implement solutions.*

1 solutions for everything. There are still many <sup>problems</sup> that need to  
2 be addressed. [~~As quickly as we can identify viable~~ <sup>replace with</sup>  
3 ~~solutions, as we can identify a definite problem and have the~~ <sup>other language</sup>  
4 ~~resources to do so, that is our intent.~~] It will involve  
5 change. It will involve communications. It will involve  
6 continuing education on the parts of all parties. Thank  
7 you.

8 MS. RICHARDS: Thank you, Ms. Colton. We now, I'm  
9 sure, have a few questions from the committee.

10 MR. MARTINEZ: In the interest of time, I will  
11 dispense with a lot of the niceties. I won't ask you any  
12 questions. Let me make some observations on your numbers and  
13 some of your statements so others will have time.

14 First let me say, I understand fully, having been  
15 in a government supervisory position myself, that many times  
16 we must answer for the sins of your predecessors. I  
17 emphasize with you for being in your position.

18 If we look at your numbers, what you're telling us  
19 right now, Mrs. Colton, is that you're settling 75 percent of  
20 the cases in mediation now for an average of \$1,163 per  
21 claim. Using your figures of 430 cases mediated for half a  
22 million dollars --

23 MS. COLTON: Over half a million.

24 MR. MARTINEZ: That seems a far cry to me from a  
25 full, make-whole, really. Secondly, if you're answering

1 281 calls a day on a 20-day work month, you are greatly  
2 underrepresenting the people who are calling in and greatly  
3 underinvestigating or even trying to educate them with one  
4 secretary, and that was just recently started. I think  
5 somebody has mismanaged that division very badly.

6           Let me turn to your own numbers. Cases filed with  
7 UADD from 1985 to 1983 went up 90 percent. Case closures  
8 went up double, with the same amount of investigators during  
9 that period of time. The same number of people handled twice  
10 the number of cases and closed twice. So they were closing  
11 what was coming in the door, is what you're showing by your  
12 own numbers.

13           Now, you recently have added 2.5 more attorneys, or  
14 investigators. Contract attorneys, as we've learned from  
15 these hearings, are uneducated, new attorneys who are there  
16 to look at files for investigations that are usually  
17 mail-order investigations. Hardly something to base a legal  
18 opinion on, in my opinion.

19           Now, average time to process a claim has dropped  
20 considerably. We've seen such a disparity in numbers there,  
21 I would certainly appreciate all of the documentation which  
22 you used in reaching the average time to process a complaint.  
23 I have serious questions that that could be accurate unless  
24 you're mediating them for this \$1,000 per claim, which I  
25 would really be hard-pressed to believe that that's what

1 people consider "make whole," unless they're told, "If you  
2 don't settle it here, you're going to go through this chart,  
3 and it'll take you five years."

4           It seems to me there is a concern now over the last  
5 three months because issues have been raised to draw lines on  
6 a piece of paper, as someone said yesterday, maybe  
7 rearranging the lines on the Titanic.

8           I have some real problems --

9           MS. COLTON: Mr. Martinez, do <sup>you</sup> want me to answer as  
10 you go through or wait until you're finished?

11           MR. MARTINEZ: No. Those aren't questions. Okay?  
12 Those are observations of your own numbers. I'm just using  
13 your own numbers you just gave me.

14           MS. COLTON: I'm sorry. You misunderstood me.

15           MR. MARTINEZ: And I appreciate that, if I do,  
16 because I'm looking at them quickly. I would really like  
17 some information -- I think we could use information to  
18 enlighten us on your budget. If you're handling twice as  
19 many cases in eight years and you're closing twice as many  
20 cases, and you didn't increase staff, I would really be  
21 interested to know what percentage of the total Industrial  
22 Commission budget goes to the UADD for those years. You're  
23 handling twice as many cases, you're handling over 200 phone  
24 calls a day, you're closing twice as many, you're doing less  
25 than seven percent cause findings, and yet -- I would really

1 be interested in seeing how the budget commensurately went up  
2 with those cases coming in the door and the training of your  
3 investigators. I think that's really important to our  
4 understanding.

5 I also think that you made a very good point in  
6 saying that cause findings should not be indicative of the  
7 commitment. I think that's right, but I think the cause  
8 findings are indicative of the thoroughness of investigation.  
9 When you have such a low percentage, especially that go not  
10 from cause findings but to final orders, and it's the agency  
11 itself that lobbies to do away with their responsibilities to  
12 represent people, I think that cause findings indicates a  
13 lack of commitment to really look at these cases in depth and  
14 thoroughly.

15 Yesterday I was willing to give the benefit of a  
16 doubt to those numbers. After hearing you and looking at  
17 these numbers, I don't have such a big doubt anymore.

18 Let me make a couple of other observations. One  
19 is, you told us that the job of the agency is to remain  
20 neutral. Where in the statute does it say that? It does not  
21 say that. It says the job of the agency is to eliminate  
22 discrimination, not to remain neutral. And that may be one  
23 of the philosophies there that causes some of these  
24 problems.

25 Secondly, you say that in the last three months

1 a lot of things have been done, and I don't doubt that. The  
2 problem is, you're trying to justify three months of activity  
3 to overshadow 30 years of inactivity. You're trying to say  
4 don't worry about Christmas past and the thousands of  
5 complaints that have come in, and the thousands of people who  
6 thought they had a claim, and the thousands of people that  
7 got lost in the system, because today we've given you a  
8 chart. I don't buy that. I don't think those thousands of  
9 people should have to accept that. I don't think the people  
10 in the system now should have to accept that. I don't think  
11 the investigators should have to work under those conditions.

12

13 I say that not bad about you, but about your  
14 predecessors and the administration that has been there that  
15 has allowed that to happen by your own numbers.

16 I also want to say that dialogue is a two-way  
17 street. Toll-free line, there was a toll-free line there  
18 before years ago. It was taken out. Do you know why? Too  
19 many people called. Now you've reinstated it. What  
20 happens? People call. So what do you do about it? You hire  
21 somebody to answer the questions, and who answers it? A  
22 secretary. What do the people want to know? Their legal  
23 rights. Maybe, at that point you could interdict them and  
24 educate them about the difference between discrimination and  
25 unfair labor practices.

1           And what I'll say about unfair labor practices is  
2 that they may be discrimination. The people don't know,  
3 that's why they call. And who makes the determination? As  
4 you said, there is a big discrepancy out there because people  
5 do not know what may be an unlawful labor practice or  
6 termination as opposed to discrimination. I agree with you.  
7 That is really something that lay people don't know, let  
8 alone a secretary answering the phone. But I will tell you  
9 this, it's your investigators who decide what is unfair labor  
10 and what they'll accept as discrimination, and they're the  
11 ones that made the determination, and your numbers reflect  
12 that they're doing it to the closure of these cases.

13           I would really like to know who told you that those  
14 cases are the best written they've ever seen. I think we  
15 should have them here, have them explain that. If it's a  
16 person from EEOC, I'll write to the chairman of the EEOC and  
17 let him know that one of his district directors, I believe,  
18 said that, and I'd like him to investigate, because these  
19 numbers cannot reflect that.

20           Now, one more thing, please. Right-sizing and  
21 terminology like that really offends me. That's the '90s  
22 word. It's not right-sizing -- or downsizing. It's  
23 right-sizing. That's the latest euphemism for getting rid of  
24 people. "We're going to right-size our work force." Well,  
25 hell, if it wasn't the right size in the first place, why did

1 you have them? And then they say, "Well, to right-size it,  
2 we have to get rid of these people who are a little older and  
3 closer to retirement." That's who right-sizing hits.

4 If you accept those defenses as part of your  
5 dialogue with the people, you are perpetuating that kind of  
6 euphemism and discrimination in your own agency.

7 Now, understand what I said are statements, they're  
8 not questions. I would ask you to produce the budget request  
9 that I've asked for. And again, I apologize that you're in  
10 this position, but accepting that from the Governor,  
11 obviously you have to stand the heat. I would ask for  
12 documentation on these numbers.

13 I would also ask for this: I think that it had  
14 been made clear -- and you have decided to use 1985  
15 forward -- the years the statute had the language taken out  
16 that your agency would no longer represent individuals. I  
17 would like to know from 1985 forward, not just the budget,  
18 but who was in charge of making the policy decisions to  
19 implement that budget in the manner in which it was  
20 implemented, because I think that this hearing is going to  
21 show that mismanagement has occurred to the point that not  
22 just are these people being hurt, but the taxpayers of Utah  
23 have suffered greatly by the waste that has occurred.

24 MR. MULDROW: Before Commissioner Colton responds,  
25 I'd like to say those are a lot of observations, and we do

1 want to give you the opportunity to respond. If there's not  
2 time here today -- and I'm sure there won't be -- we will  
3 make it afforded to you not only the observations of Mike  
4 here, but things which may be of interest to you which have  
5 been brought up during the course of this hearing, and maybe  
6 you can respond.

7 MR. MARTINEZ: I think we should give her a copy of  
8 the entire proceeding out of courtesy.

9 MR. MULDROW: Well, we will highlight things that  
10 would be of interest for you to respond, and I personally  
11 appreciate the presentation which you've made, and I'm sure  
12 the Chair will allow you time now to respond to some of the  
13 things which have been said. I'm sorry that we do not have  
14 more time on our agenda to -- we scheduled a full day, but I  
15 want to assure you that you will be given an opportunity to  
16 respond to things that were said in this period as well as  
17 throughout the proceedings.

18 MS. COLTON: ~~Perhaps, what I can do, other than~~  
19 I made some of ~~the~~ notes, but I'm sure I missed many of the  
20 points. Maybe I can just make two observations in regard, <sup>to the</sup> ~~statements~~  
21 but it's not a point-by-point answer. ~~I'm sure~~

22 ~~But~~ I think ~~that~~ what you've seen is very obviously  
23 part of the heart of the problem, the problem of perception.  
24 The problem of perception is what goes on because of some  
25 isolated facts that are taken out of context of the entire



1 picture.

2           Anyone -- and you've heard the same thing -- can  
3 take a few statistics and manipulate them any way you choose.  
4 If you look at the entire picture in its totality, you will  
5 find a different thing. It's also very obvious that if you  
6 hear the same thing over and over ~~enough~~ from a few  
7 individuals or in the press, you begin to believe and accept  
8 that as facts when it may not be the entire picture.

9           Let me just comment on the budget portion, because  
10 I think that may be of interest. Each year in our budget we  
11 are allocated funding specifically for the UADD by the state  
12 legislature in an item appropriation. ~~So~~ the amount of money  
13 that is given to our agency from state funding is directly  
14 included. <sup>in our budget</sup> We estimate, at ~~that~~ <sup>the</sup> time <sup>of</sup> the budget process, what  
15 we anticipate receiving from federal funds, from our EEOC  
16 contract, ~~with them,~~ we anticipate ~~that~~ <sup>the amount</sup> and that is built into  
17 our budget, which is submitted to the Governor, of course,  
18 early on, and then to the legislature. They review that  
19 budget and approve it. All of our expenditures are within  
20 the framework of that budget.

21           If, in fact, during the ~~past~~ year we generate more  
22 dollars from our federal contract~~x~~ than we had allocated,  
23 then that is again submitted as part of the next budget  
24 process.

25           ~~So in fact,~~ all of the monetary details are a

1 matter of record, on the public record of the state budget,  
2 if one chooses to <sup>examine it</sup> We obviously have copies of that budget  
3 available. ~~so~~ all of our expenditures are controlled by the  
4 legislative appropriations.

5 If there are any other comments, I realize that  
6 we're over time.

7 MS. RICHARDS: We can have one more quick question  
8 and then we'll have to move on.

9 MS. HUTCHISON: I'm sorry. I thought she needed to  
10 give some answers to some of those allegations.

11 MS. RICHARDS: The problem is we're ten minutes  
12 over right now.

13 MR. MARTINEZ: I think she's a very important  
14 witness. I would be willing to motion that we continue with  
15 her if others have questions. That's why I rushed through,  
16 and I could have asked her questions on each one, but I would  
17 just as soon they ask her questions when we have Mrs. Colton.  
18 She's given us the opportunity to talk to her about it.

19 MS. RICHARDS: Okay.

20 MS. GILLESPIE: I have a question. You stated that  
21 employees sometimes were treated unfairly, but there wasn't  
22 necessarily discrimination, and my question is is there a  
23 commissioner who deals with unfair labor practices and other  
24 types of complaints other than discrimination based on the  
25 seven categories? Is there someone who deals with those

1 kinds of complaints?

2 MS. COLTON: Not within our agency. What we try to  
 3 do is ~~add~~ <sup>refer</sup> these. We do take the time ~~in responding to~~ <sup>to refer</sup>  
 4 the phone calls and ~~certain things~~ <sup>concerns</sup> to an investigator -- or  
 5 ~~one~~ <sup>to</sup> person I did not mention that is very critical, an  
 6 intake officer, which is another staff person who has been  
 7 added that is trained to do <sup>specifically</sup> this. Through this  
 8 process, we try to counsel the employer on perhaps what is an  
 9 unfair practice, ~~and so~~ <sup>even though</sup> ~~although~~ we cannot hold them  
 10 legally responsible.

11 Now, if they have violated some other laws in the  
 12 meantime, for example, in the wage and ~~labor, hour changes~~ <sup>hour area</sup>  
 13 that can be addressed either through the Bureau of Labor or  
 14 through ~~the~~ <sup>the</sup> Division of Labor in our division, which handles  
 15 the wage and hour complaints, <sup>we refer them on.</sup>

16 So depending on whether or not they have actually  
 17 violated the law, or ~~whether~~ <sup>for example, if</sup> it's requiring employees to wear  
 18 certain articles of clothing or requiring them to do  
 19 something else, that ~~is~~ <sup>is</sup> ~~in the~~ <sup>illegal</sup> ~~area~~ of termination.  
 20 we try to educate, first of all, through our process, through  
 21 our counselling with them, then there are times when we can  
 22 refer them to the Department of Labor or to others, ~~but not~~  
 23 ~~always~~

24 MS. RICHARDS: Ms. Colton, we thank you for your  
 25 time. In fairness to our subsequent speakers, we have to

1 adhere pretty much to our time schedule, but we appreciate  
2 your being here with us, and we would hope that you would  
3 feel free to give us any information that you feel would be  
4 of benefit for the record and to respond to Mike's  
5 questions -- or not questions but comments, and please feel  
6 free to give us anything that you think that we need to know  
7 to understand the situations.

8 MS. COLTON: We'll try to submit some additional  
9 documentation.

10 MS. RICHARDS: Thank you very much.

11 Our next presenter is Mr. Wyss, who is Division  
12 Chief of the Public Affairs Division of the Utah State  
13 Attorney General's Office.

14 And Mr. Wyss, we'll ask you to please introduce  
15 yourself as well.

16 MR. WYSS: Members of the committee, my name is  
17 Richard Wyss. I am the Division Chief of the Public Affairs  
18 Division in the office of the Attorney General. Accompanying  
19 me today are two attorneys from our office, Steven  
20 Schwendinman, is the attorney representing the Department of  
21 Administrative Services and Department of Human Resource  
22 Management.

23 I have asked Steve to accompany me, so he might  
24 talk briefly about some of the historical representation of  
25 the Attorney General's office provided to government entities

1 in the area of employment discrimination. He represents, as  
2 the attorney for the Department of Administrative Services  
3 and Human Resource Management, claims against the state for  
4 employment discrimination.

5 And I've also asked Tom Roberts, an attorney from  
6 our office, to speak today for a few minutes about the role  
7 that he has taken as the attorney to head up the civil rights  
8 enforcement that Jan Graham has recently established within  
9 the office of the Attorney General.

10 A little more than six months ago, Attorney General  
11 Jan Graham indicated her interest in organizing the office to  
12 deal with civil rights violations and enforcement of civil  
13 rights laws. To this end, she reorganized the Governmental  
14 Affairs Division, a division I used to head up in the office,  
15 and established, through this reorganization, the Division of  
16 Public Affairs.

17 As part of that division, she has established a  
18 section within the Public Affairs Division to deal with civil  
19 rights complaints and civil rights enforcement. The division  
20 now will emphasize the enforcement of public ethics and  
21 enforcement of civil rights laws, both within the public as  
22 well as the private sector.

23 She is working to provide staff. Due to the limits  
24 on our staff right now, this is requiring certainly  
25 reorganization in the office. So it is not moving as quickly

1 as we had originally hoped, but the staff is being realigned  
2 in the office to provide representation in this area. She is  
3 working to provide the staff to ensure that the civil rights  
4 laws in public accommodation, employment discrimination and  
5 elsewhere will be enforced.

6 To this end, the Attorney General has committed to  
7 assisting government agencies on both the state and local  
8 level in their enforcement of these laws. We also desire to  
9 help educate the public and the private sector, both  
10 individuals and businesses, I may add, regarding their rights  
11 and duties under the civil rights laws. We will also do  
12 independent enforcement of the laws as we are required by  
13 statute and where necessary.

14 As an example, when the Americans with Disabilities  
15 Act was passed recently, the Attorney General's office took a  
16 labor in helping to educate the public with respect to the  
17 interpretation and rights and duties under the Americans with  
18 Disabilities Act. We conducted seminars and participated in  
19 seminars around the state in this education and tried to make  
20 a concerted effort to reform both public and private sectors  
21 with regard to rights and duties under the new law.

22 With respect to employment discrimination, Attorney  
23 General Graham is committed to ensure that discrimination in  
24 the work place will not be tolerated. Her efforts in regards  
25 to establishing this Public Affairs Division, which has not

1 been done before in the office, is an example of her  
2 commitment in that regard.

3           Our goal is identifying ways in which the Attorney  
4 General's office can assist the Industrial Commission in the  
5 state of Utah in its enforcement efforts. In Utah -- as I'm  
6 sure you're aware after listening to one of the  
7 commissioners, just prior to myself -- you understand that  
8 the Industrial Commission has exclusive jurisdiction in this  
9 area, and they also have their own in-house attorneys. They  
10 have a legal staff.

11           In the past, the Attorney General's office has  
12 assisted where requested, but Attorney General Graham is  
13 dedicated to taking more of the labor in helping the  
14 Industrial Commission with their jurisdictions in this area  
15 to enforce claims, including the employment discrimination  
16 claims. Our office will work with the Industrial Commission.  
17 We will be more involved with them in their enforcement  
18 efforts.

19           Just briefly, you asked in your letter to indicate  
20 any efforts with regard to legislation. You are aware of the  
21 Governor's task force on employment discrimination. A bill  
22 has currently been put in draft form and a bill is being  
23 proposed based on the recommendations that came  
24 out of the Governor's task force.

25           Our office has been active in that legislation.

1 We're reviewing that legislation, making some suggestions  
2 with respect to the legislation that came out of the  
3 Governor's task force. The Governor's task force made two  
4 recommendations, first that there be mandatory enforcement of  
5 the Industrial Commission orders. Our office would take a  
6 laboring role in that area with the Industrial Commission.  
7 We would work together in making sure that those orders are  
8 enforced.

9 The creation of the advisory council also was a  
10 part of the recommendations coming out that task force, and  
11 again, we would work with them in providing legal  
12 representation.

13 I would like to give both Steve Schwendinman and  
14 Tom Roberts some time to talk with you, a historical  
15 prospective with what Attorney General's office has done with  
16 respect to representation from a defense standpoint of state  
17 agencies when there have been claims against the state  
18 agencies for employment discrimination, give you an idea of  
19 the number of claims in that area, and then Tom Roberts would  
20 speak for just a few minutes regarding the new civil rights  
21 section within with the Public Affairs Division. Thank you.

22 MR. SCHWENDINMAN: Members of the committee, I'm  
23 Steve Schwendinman, and I know a few of you. I have been  
24 with the Attorney General's office for 19 years, and for 16  
25 of those years have been involved with employment law and



1 representing state agencies.

2           During that time, I have advised, defended and  
3 resolved numerous personal matters, including many alleged  
4 discrimination cases. I openly acknowledge that there are  
5 from time to time situations in state government where there  
6 is discrimination. We're a large employer. It does happen,  
7 either intentionally or inadvertently. But I believe it is  
8 unfair to label statistical information as to how many cases  
9 are found in favor of the employer or employee as a gauge of  
10 whether there is a problem or a significant problem.

11           Each case must be based on its merits. Just last  
12 evening, I was watching the news and I saw a report of a  
13 former corrections employee that appeared before this  
14 committee. I'm not going to deal with his individual  
15 situation, but he was trying to paint a picture of a system  
16 out of control. All I can say, from what little I know about  
17 the case ask and having been involved to some degree, before  
18 you give credence to self-serving statements of many people,  
19 you have to understand the facts of the case as to whether it  
20 is discrimination or not.

21           In my years of representing this state, I can say  
22 that there are several things that I have come to conclusion  
23 as truisms in my mind, as an attorney representing them  
24 first. Regardless of how weak an employee believes his  
25 case -- or how strong or weak an employee believes his case

1 to be, if he thinks there's been discrimination, that  
2 employee's opinion will never be changed, even if the  
3 evidence, even through a hearing, determines that he does not  
4 have a case.

5           Second, if management is contemplating any action  
6 against a person in a protected class, the chances are about  
7 90 percent that there's going to be a joint filing with  
8 UADD. That has been our experience. The state has had this  
9 happen even when individuals have been terminated for  
10 stealing.

11           Three, there is an attitude among some, not all,  
12 that, quote, "I have nothing to lose if I file," or "If they  
13 take action against me, I will make life miserable for them.  
14 The agency has disciplined me. I will put them through their  
15 knocks."

16           Fourth, not all cases of actual discrimination go  
17 to EEOC or UADD. We acknowledge openly that we have  
18 determined, through our own internal investigations, that  
19 there have been discrimination matters and have resolved  
20 those. And we have resolved them because we are committed,  
21 as the state of Utah, to do what is right. That does not  
22 mean that we will agree with everybody that files a UADD  
23 claim or a claim of discrimination, because there are  
24 situations where we just totally disagree.

25           Five, the common citizen -- I think, Mr. Martinez,

1 you mentioned that as an acknowledgment, the average citizen,  
2 person that files a claim really does not know the nuances of  
3 the law relative to what is discrimination and what is not.  
4 This creates frustration for the system of people using the  
5 system. It even creates frustration with me sometimes  
6 because of what happens.

7           The problems that the state agencies have had over  
8 the years with the procedures implemented by UADD and used by  
9 them have been the result, really, of a lack of resources,  
10 and the inability to have had adequate investigations. I  
11 think Mr. Martinez mentioned that in his comments. That  
12 really is the result of a lack of investigators and a lack of  
13 ability and lack of funding to be able to adequately  
14 investigate.

15           I am convinced, from my experience, that not only  
16 state agencies but complainants simply want someone to  
17 adequately look at the situation and make an independent  
18 analysis of whether or not there is discrimination. And the  
19 state -- when these hearings and so forth, several months ago  
20 came out, when there was a statistic, I've heard three  
21 percent or seven percent cause findings, I said to myself,  
22 "Gee, that must be every case that the state has filed,"  
23 because we have had many cause findings against the state.

24           And so I would indicate to you that our frustrations  
25 as agencies -- and we have appealed some of those because we

1 have disagreed with them -- have really been based on the  
2 lack of the ability of the investigators to adequately take  
3 time to investigate, to interview, to make sure that the  
4 facts are there when they come with this either cause finding  
5 or no-cause finding, because that decision is binding on  
6 everybody, and then there has to be an appeal. Who wants to  
7 go through an appeal if there's an adequate investigation?

8 I personally do not see a system out of control,  
9 but I do see a system that needs to be helped. I have not  
10 seen that the state agencies have been treated favorably,  
11 nonfavorably. We have had our share of knocks. We have  
12 acknowledged our share of problems. I do see a system that  
13 needs more help, both in the education of the public so that  
14 they don't have a false sense of expectations, and many times  
15 employees that we deal with have a false sense.

16 Statistics are not an accurate reflector of the  
17 strength of actual cases, and in this area, emotions run very  
18 high, as all of you know. And feelings and emotions should  
19 not dictate whether or not a case is or is not  
20 discrimination, otherwise the law upon which it is based  
21 takes second place. We are committed in defending, to make  
22 sure that if we determine that there is discrimination we  
23 will resolve it, and we have done that.

24 That is a commitment the state agencies have.  
25 That's a commitment the Department of Human Resource

1 Management has. But it doesn't end there. Thank you.

2 MS. RICHARDS: Thank you.

3 MR. ROBERTS: My name is Tom Roberts. I've been  
4 with the Attorney General's office now for about four and a  
5 half years. Before going to the Attorney General's office, I  
6 had a private practice for about 12 years. I did a lot of  
7 criminal defense work, some civil claims work, and did some  
8 civil rights enforcement work as a private counsel.

9 This last spring Jan, in addition to some other  
10 duties I do for the office, appointed me and designated me as  
11 somewhat of a point person in the office with regard to civil  
12 rights enforcement. This was a very high priority. When she  
13 first assumed office, she made various announcements with  
14 regard to enforcement of civil rights and public ethics.

15 And the division that I'm part of, the Public  
16 Affairs Division, which Rick heads up, we do a lot of the  
17 work in that division. However, the commitment to enforcing  
18 civil rights and to helping agencies enforce civil rights is  
19 not just in our division. We use attorneys from around the  
20 division, from around the office, to assist agencies, and so  
21 even though it's just me who's designated as the lead or  
22 point person, there are individuals all over our office.

23 We've recently done extensive work in agencies when  
24 issue come up or present themselves, a notorious case  
25 involving the Department of Alcoholic Beverage Control with

1 regard to alleged discrimination in its membership policies.  
2 Our office spent a lot of time and effort, lawyers who  
3 represent the division there, helping them and assisting them  
4 in vigorously enforcing the civil rights laws and  
5 commandments of not discriminating.

6           This spring when I was appointed, it was after the  
7 Governor's task force had been appointed and was ongoing, I  
8 began attending those sessions and meetings. I met  
9 Commissioner Colton and the other commissioners, Anna Jensen,  
10 began talking with them, analyzing what their problems were,  
11 because as Rick has indicated, I'm sure you're aware, the  
12 Industrial Commission has its own lawyers. One of the unique  
13 agencies with the right to hire its own lawyers, and it does.  
14 Our office has usually not represented them, not been  
15 actively involved in doing their legal work. However, Jan  
16 specifically directed me to work with them, meet with them,  
17 help find out what their problems are, what their concerns  
18 are, and how our office can help.

19           I have continued meeting with them through the task  
20 force, afterwards, discussing matters with them. I've even  
21 gone out on some training seminars with Anna Jensen, to a  
22 private corporation to give instruction on sexual harassment,  
23 Americans with Disabilities Act, as part of the educational  
24 outreach.

25           There's been a lot of talk about enforcement and

1 concerns. I've been working with them trying to find out  
2 what their caseload is, what their needs are, what their  
3 problems are. One of the cases that's been talked about  
4 where there is a final order of the commission, there has  
5 been no further appellate work, the appeals have all been  
6 handled, the order is final, but it has not been complied  
7 with, the Industrial Commission, a couple weeks ago,  
8 forwarded, at least one of those cases, up to our office.

9           As I told Commissioner Colton today, we have agreed  
10 to begin enforcement efforts on that particular case, and we  
11 have. We don't have any formal protocols calls, formal  
12 agreement with regard to all of the caseload. We have to see  
13 now that happens and what that caseload is, what cases come  
14 up. However, I will indicate to you on their behalf, I will  
15 be directing out the letters to the employer in that case  
16 indicating that they must show compliance or we will initiate  
17 litigation in District Court.

18           Rick has indicated the different types of  
19 enforcement work that our office wants to do in terms of  
20 enforcement of the civil rights laws and making sure that  
21 they are enforced. The first one he mentioned is fairly  
22 critical for us, and that is to assist other agencies, other  
23 organizations and entities, in helping them to do their duty  
24 to enforce laws, to enforce the civil rights laws and to  
25 attempt to end discrimination.

1           The Industrial Commission has exclusive  
2 jurisdiction. We'll do everything we can to help them. And  
3 our budget means to help them enforce that law so that they  
4 can do fully their duty as they see fit, help out with other  
5 organizations, other entities of government. We are working  
6 with other executive branch agencies such as Alcoholic  
7 Beverage Control, on what I refer to as public accommodations  
8 civil rights issues, about equal access to facilities,  
9 nonemployment civil rights causes.

10           The Attorney General's office also has some  
11 specific enforcement duties under the statute. We are going  
12 to take those very seriously, and as cases come in -- and  
13 they're coming in more often now that the word is getting  
14 out -- we are investigating those, reviewing those, we'll  
15 take appropriate action when we find them.

16           Briefly, that is what our office is doing. This is  
17 somewhat new. Jan has started this new initiative. There  
18 are two areas, public accommodation and employment  
19 discrimination. We're trying to work in both directions.  
20 We're trying to help out other agencies and also to do our  
21 own work.

22           MS. RICHARDS: Thank you very much. We have just a  
23 few minutes for questions of these gentlemen.

24           MS. CRAFT: I have a question. Two questions. You  
25 indicated that the Industrial Commission has exclusive or is



1 one of the few agencies, I guess independent or whatever, and  
2 you referred that they have attorneys. Are these attorneys,  
3 are you talking about the investigators? Are these the  
4 people you're talking about, or are you talking about another  
5 group of people, as far as attorneys? I'm confused on that.

6 MR. WYSS: Our Supreme Court has ruled that --  
7 while the Attorney General is the chief legal office of the  
8 state of Utah, our Supreme Court has ruled that the  
9 Industrial Commission is not a divisional executive branch  
10 agency, and therefore they are entitled to hire their own  
11 legal counsel.

12 In the past, recently, we had assisted the  
13 Industrial Commission in handling certain cases, usually in  
14 Federal Court, but as to legal representation, they have  
15 their own attorneys.

16 MS. CRAFT: Are these different from the  
17 investigators?

18 MR. WYSS: Yes. I mean, that's a my understanding,  
19 these are in addition to their investigators.

20 MS. CRAFT: Okay. Then my question is what do  
21 those attorneys do? What are they doing?

22 MR. WYSS: What do the attorneys of the Industrial  
23 Commission do? I probably ought to turn that over to the  
24 commissioners to address, but they have -- they are  
25 administrative law judges, and they are in-house legal

1 counsel.

2 MS. CRAFT: My other question, it was mentioned, I  
3 think yesterday, that -- you know, about the enforcement  
4 issue, and that the Industrial Commission should enforce  
5 their orders. What is -- and I understand that you're trying  
6 to help the Industrial Commission. But can you tell me your  
7 opinion or the opinion of the Attorney General's office,  
8 since the commission is a separate entity or they've got  
9 exclusive jurisdiction, should they really be enforcing their  
10 orders or not? I guess I have -- I'm getting mixed  
11 information. Are they choosing not to and you're going to  
12 enforce it for them? Is that what's going on? Or is that  
13 kind of up in the air?

14 MR. WYSS: I'm going to let Tom address part of  
15 that, but my understanding is that there has never been any  
16 reticence to enforce the orders of the Industrial Commission,  
17 but this is a -- as far as numbers, you know, I'm not aware  
18 of numbers of orders that have volitionally not been enforced  
19 in the past. The orders are being enforced. I think that  
20 this was just something that was recently put in statute that  
21 the task force recommended that there be a statutory mandate  
22 to enforce the orders, taking away, I guess, any discretion  
23 that there may be in picking and choosing which orders to  
24 attempt to enforce.

25 Our role would be to work with the Industrial

1 Commission, because I think the statute is in alternative  
2 language: the Industrial Commission or the Attorney General  
3 will enforce those orders. Our intent is to work with the  
4 Industrial Commission to make sure the orders are enforced.

5 MR. MARTINEZ: There is no statute yet, it's just  
6 proposed?

7 MR. WYSS: It's proposed. Proposed legislation.

8 MR. MULDROW: Have there been orders which have  
9 been enforced?

10 MR. ROBERTS: Anti-discrimination orders, I'm not  
11 aware of any -- our office, to my knowledge, has not enforced  
12 any. I don't know about the Industrial Commission. The  
13 current enforcement mechanisms, under the Utah Administrative  
14 Procedures Act, which grants discretion to the commission to  
15 bring an action to enforce its orders. The statute says that  
16 the commission may bring an action to enforce its orders.

17 Obviously there are many orders that may not need  
18 be enforced. Those that are fully complied with. The issue  
19 as to the enforcement of the order, it's the commission's  
20 order, and so they get to decide whether or not it should be  
21 enforced.

22 But the particular case that recently was referred  
23 up to our office, requesting us to review and enforce, we  
24 will be acting as their attorney to bring that action on  
25 their behalf, presumably when they enforce the orders and the

1 lawyers, who represent the commission in court, if they chose  
2 to enforce that order.

3 MR. MARTINEZ: But, Tom, isn't it true that right  
4 now under the Administrative Procedures Act all the court can  
5 give you is fees, unless a statute specifically provides for  
6 another remedy?

7 MR. ROBERTS: Well, the way I read UAPA, you have  
8 the Industrial Commission board which will include an order  
9 and award attorney's fees in connection with that. The  
10 statute then indicates that the agency, here the Industrial  
11 Commission, may bring an action to enforce that order. If  
12 they fail to bring an action, the individual who is entitled  
13 to recover in the action, the claimant, can bring an action  
14 themselves, but they must give notice to the Industrial  
15 Commission and wait 30 days. They ask the Industrial  
16 Commission to bring an action, the Industrial Commission  
17 won't, then they can bring the action in District Court to  
18 enforce their order.

19 There's an issue as to attorneys fees, because UAPA  
20 does not provide for attorney's fees. However, the  
21 Anti-Discrimination Act allows for attorney's fees at the  
22 administrative level. The court may or may not, it's never  
23 been decided, allow attorney's fees in District Court based  
24 upon the allowance of attorney's fees at the administrative  
25 level.

1           MR. MARTINEZ: I guess I wasn't clear. Right now,  
2 as it stands, if they go to enforce an order, or you enforce  
3 an order, there is no statute which allows a court to give  
4 the grievant anything but fees unless a statute is passed  
5 specifically that says that they can get more than that.  
6 Right now, under the Administrative Procedures Act, that's  
7 all they get; right, but compliance with the order, the order  
8 says "Don't do this anymore."

9           MR. WYSS: As far as monetary, recovery --

10          MR. MARTINEZ: That's right. As far as --

11          MR. WYSS: But they would get the order enforced  
12 and --

13          MR. MARTINEZ: The order says "Don't do this  
14 anymore," and if you get attorney's fees, and that's all.

15          MR. ROBERTS: That is not my understanding. My  
16 understanding is that orders to enforce would include --  
17 could include, an award of back pay, back wages, lost wages;  
18 could include a ten percent penalty. It could include  
19 interest on those amounts, and so that order, including the  
20 monetary amount, could then be brought suit on District  
21 Court, a District Court judgment, and then enforced like any  
22 other District Court judgment. So you could get monetary  
23 damages in the District Court.

24                 If the applicant is entitled to lost wages until  
25 they're reinstated, and if you're in District Court for a

1 year, and they've never been reinstated, they're still  
2 entitled to all their lost wages.

3 MS. GILLESPIE: How else would they be made whole?

4 MR. MARTINEZ: Well, maybe Tom would be kind enough  
5 to give us a written opinion on that to tell us that that's  
6 the way it could work, because my understanding is -- and  
7 from the information we received from the task force itself,  
8 with the appendix to it, doesn't allow for that. And you're  
9 interpreting differently than I know, or that the Task Force  
10 report says. In enforcing their order, their order says  
11 "Don't do this anymore, and give us our attorneys fees." And  
12 if they calculated any money, that money is very limited,  
13 very finite.

14 MR. ROBERTS: The particular case that's come up to  
15 our office that we're dealing with includes an order for  
16 reinstatement, an order for lost wages plus a ten percent  
17 penalty, reasonable amount for attorney fees. The order --  
18 that would become District Court order that this individual  
19 is entitled to their lost wages and reinstatement. Lost  
20 wages would be all those wages up until the time they are  
21 reinstated.

22 MR. MARTINEZ: I think that's great.

23 MR. ROBERTS: That's the way I read UAPA, and  
24 because the order includes as monetary damages and so -- it  
25 sounds strange to say you don't get anything but an order of

1 reinstatement because you get those monetary damages.

2 MS. RICHARDS: I have one quick question for you.  
3 Why was this particular case chosen? Is it literally a test  
4 case? Is it a precedent? What was the basis on which this  
5 particular case was forwarded to the A.G.'s office and other  
6 meritorious cases were not?

7 MR. ROBERTS: Well, I can't address the actual  
8 procedures because I wasn't part of that. It's some of my  
9 understanding that Commissioner Colton, along with UADD, has  
10 been going through and looking at their backlog of cases,  
11 looking for cases where there's a final commission order that  
12 is not on appeal that has not been complied with. And there  
13 are very few of those cases, and this happens to be one of  
14 them. I don't know if it's the oldest or the first that came  
15 up or if this is the only case.

16 But those are fairly severe criteria, and it's my  
17 understanding if it's not the only one, there are very few of  
18 these in that category.

19 MS. RICHARDS: But you expect to receive more  
20 cases? You expect --

21 MR. WYSS: I think there have been more sent up  
22 already. There are others in -- Tom is not dealing with all  
23 of these. He has one. There are others elsewhere in the  
24 office.

25 MR. ROBERTS: The office has agreed to take this

1 case. We don't have any formal agreement or protocol about  
2 future cases. As those cases come up, we will be entering  
3 into some type of ongoing relationship, working relationship,  
4 concerning handling these cases, the scope of the workload,  
5 in matters such as that.

6 MS. CRAFT: I have a question. These cases that  
7 come in, and you're the -- as you said -- point person, will  
8 you be doing that? Are there attorneys that know employment  
9 discrimination law that are going to be assigned these or?

10 MR. ROBERTS: I will personally be handling this  
11 case. If we get a caseload, there are some people under me I  
12 can assign them to, maybe. But at this point, I will be  
13 handling this personally.

14 MR. MARTINEZ: Do you anticipate what your caseload  
15 will be in the next year?

16 MR. ROBERTS: That is really uncertain, you know.  
17 You'd have to ask the commissioners what they anticipate,  
18 then I could give you a good guess from that.

19 MR. WYSS: Jan has committed to provide the  
20 personnel necessary to handle the caseload. Right now, as  
21 Tom says, that is uncertain, but as the caseload grows, there  
22 will be attorneys assigned to handle them.

23 MS. RICHARDS: We are out of time, and we thank you  
24 gentlemen very much for your presentation. Mr. Wyss,  
25 Mr. Schwendinman, and Mr. Roberts, thank you.



1           Our meeting will stand adjourned until 1:00 p.m.,  
2 at which time we will resume promptly. That gives us very  
3 little time for lunch, but considering that our presenters  
4 have been given specific time periods, I think that it's  
5 incumbent upon us to come back here at 1:00 o'clock.

6           MR. TONG: Madam Chair?

7           MS. RICHARDS: Yes, sir.

8           MR. TONG: Before we dismiss for lunch, I'd like to  
9 make a statement.

10          MS. RICHARDS: Yes, sir.

11          MR. TONG: You have assembled here some very  
12 intelligent people. We had a very important person who was  
13 giving testimony of which this commission was charged to  
14 receive the testimony. The previous witness just now, of the  
15 seven or eight questions that was asked of him was asked by  
16 staff. The witness -- or the testimony before that, which  
17 involved Commissioner Colleen Colton, was some important  
18 questions that we had in our mind, that we never had a chance  
19 to ask.

20          A factfinding commission, the way I understand it,  
21 is here to gather facts of information so that we might make  
22 some recommendation. Now, staying on a time schedule and  
23 agenda is very important, and I realize that, but if staff is  
24 going to control this meeting, not allow the members of this  
25 committee to ask questions, what are we here for?

1 I suggest to you that gathering information is far  
2 more important than staying on a time agenda. That's all I  
3 have to say. Thank you.

4 MS. RICHARDS: Thank you. I think of -- one of the  
5 major considerations is that we have people with very limited  
6 time frames that have come to speak to us. We have one  
7 person who has a plane schedule that they have to meet, and  
8 so in that case we don't have as much freedom as we would  
9 like in hearing as much information as we need to.

10 MR. TONG: I appreciate the time schedules for  
11 everyone, but Commissioner Colleen Colton was probably the  
12 most important person here today.

13 MS. RICHARDS: Thank you.

14 (Lunch recess)

15 MS. RICHARDS: I'd like to welcome you all, first  
16 of all, to our afternoon session. This is the Utah Advisory  
17 Committee to the U.S. Commission on Civil Rights, our  
18 factfinding meeting on employment discrimination in Utah,  
19 even though I don't think this is relevant anyone, we will  
20 say it for the record, nevertheless, that we will have an  
21 open session from 3:20 to 4:00 p.m. this afternoon, and if  
22 anyone would like to address the committee at that point,  
23 they may sign up with Evelyn, who is over at the table, and  
24 she will be taking names for that period.

25 Our first presenter today is Mr. Richard Gomez who

1 is coordinator for the Educational Equity Section and Fair  
2 Employment Practices Officer, Utah State Office of  
3 Education. That's an impressive title.

4 MR. GOMEZ: Well, it's a lot of work, as my  
5 associate who's with me today can attest, and that's Marvin  
6 Johnson -- oh. You want me to stand at the mike. All right.

7 I'm Richard Gomez from the State Office of  
8 Education. I'm the Education Equity Coordinator and also the  
9 Fair Employment Practice Officer for the State Office of  
10 Education.

11 I have with me here today the director of our Human  
12 Resources Department, Mr. Marvin Johnson. And if there are  
13 any questions related to the specific policies and practices  
14 related to fair employment, he's here to address those  
15 specifically.

16 I have another agenda, and that's to deal with the  
17 fair employment practices involved for Utah School Districts,  
18 and some of the issues and concerns that we have become aware  
19 of as we monitor those activities in those school districts.

20 We have over 400,000 students in Utah public  
21 schools. 40 school districts, Granite School District being  
22 the fourth largest in area and number of students.

23 If you could envision the geographic area of the  
24 Wasatch Mountains over to the Oquirrh Mountains, and from  
25 approximately 33rd South, down to approximately 7200 South,

1 that's a pretty big geographic area.

2           And I'm going to address those concerns  
3 specifically as part of my presentation and ask Marvin  
4 Johnson if he would review current activities related to fair  
5 employment practices at the State Office of Education.

6           He did prepare a handout, and there are enough here  
7 so that we don't have to get into specific details, I hope,  
8 about what we do at the State Office of Education.

9           We're very cognizant of our role to set the example  
10 in fair employment practices with those 40 school districts  
11 as they affect the four hundred and seventeen thousand plus  
12 students that we have.

13           A couple of the issues that we are aware of as a  
14 result of our monitoring efforts are generated primarily  
15 through the kinds of fair employment practice complaints that  
16 my office receives of a year's period of time.

17           One of them has to do with how the districts  
18 perceive their fair employment practice role hourly, or what  
19 we call classified personnel. That's everybody who does not  
20 have a formal contract as would a teacher and above might  
21 have.

22           And one of the patterns that concern us, and has  
23 been a growing area of concern for us, is the practice of  
24 assuming -- ignorantly, I would say -- that hourly or  
25 classified people have no civil rights in the area of

1 Title VII, fair employment practice.

2 Many school districts believe that if a person does  
3 not receive benefits, such as health insurance, retirement,  
4 et cetera, that they don't have the same kinds of rights that  
5 people that do receive those benefits, and we'd like to  
6 present that as a question before the commission to clarify  
7 with our Anti-Discrimination Office at the state level.

8 Now, I'm talking about another office that's  
9 separate from the State Office of Education. We have our own  
10 fair employment practice section, and I work very closely  
11 with are human resource director. So we monitor those kinds  
12 of activities internally very closely. But when we get out  
13 to the school districts, as many of you know, each district  
14 is operated and directed independently by a separate Board of  
15 Education for each one. Therefore, their fair employment  
16 practices may vary and differ, depending on what kind of  
17 policies and practices their different boards adopt.

18 But, as again I indicated earlier, classified  
19 personnel have been developing a pattern as a group of not  
20 having the same kinds of fair employment rights as others who  
21 have formal contracts and receive full or partial benefits.

22 Let me give you a couple of examples. One  
23 district -- and I'll leave the names out because we need to  
24 deal with it as an issue rather than finger pointing -- is a  
25 large district that has an employee, classified employee

1 development program, whereby they will hire somebody  
2 hourly -- let's say on an hourly basis as custodian, with the  
3 objective being if this person can prove him or herself, they  
4 will move, then, into a classified full-time hourly position.

5           If they prove themselves (sic) (sic) at that  
6 level, then they are eligible to be considered for full time,  
7 with benefits, classified employment.

8           The problem is that in the process of moving from a  
9 part-time hourly up to that full-time hourly with the  
10 potential to move on to have full-time benefits is there's no  
11 consistent practice of evaluating the progress in development  
12 of appropriate work habits and productivity. It's always  
13 based on more or less a subjective and maybe a political  
14 basis.

15           So when we do receive complaints in those kinds of  
16 examples, our concern is that these people are not being  
17 allowed the opportunity to develop into that  
18 full-time-with-benefits position with appropriate performance  
19 evaluations all along the line.

20           And the question we present before the commission  
21 is, is that a fair employment practice that regardless of  
22 whether they're full-time hourly or full-time hourly with  
23 benefits that all classified personnel have. That's the  
24 question.

25           We'd appreciate a response to that at some point,

1 because it is a growing area of concern. As some of you may  
2 realize, many districts, because of inflation related to  
3 budget, have resorted to the practice of hiring hourly people  
4 without benefits because then they don't have to put out that  
5 expense. So there is a growing body of classified people out  
6 there who, for all intents and purposes, are not receiving  
7 what we interpret as fair employment rights under Title VII.  
8 So we'd appreciate a response to that area of concern.

9           The other question we present before the commission  
10 is related to the internal practice of what happens with  
11 affirmative action within a given school district as it  
12 relates to underrepresented classes, such as gender, race,  
13 ethnicity and disability.

14           We have had a pattern of complaints come into our  
15 office related to whether or not these individuals, by virtue  
16 of being an affirmative action hiring, are being given the  
17 full opportunity to develop as employees that can then be  
18 permanent as part of the regular school staff. And the data  
19 that we have kind of points out that area of concern.

20           We have had over the years a growing population of  
21 Hispanics in Utah. It's grown 47 percent in the last ten  
22 years. Salt Lake City, for example, has the highest per  
23 capita population of Pacific Islanders, predominantly Tongan,  
24 and Asian, mostly Southeast Asia, of any other inland western  
25 city, including Denver, Albuquerque, Las Vegas and others.

1           And what we're seeing as an area of concern is the  
2 lack of assertive affirmative action practices on the part of  
3 the districts to attract potential professional staff from  
4 these underrepresented groups.

5           Over the last ten years, the population of students  
6 and the general population of these impacted groups has been  
7 around eight to ten percent, depending on whose census  
8 figures you look at.

9           The area of concern for us is the employment rate  
10 of these groups has remained static between two point five  
11 and three percent, and it has not changed significantly over  
12 the last ten years, although the population for these  
13 impacted groups has grown.

14           So we're asking the commission also to give us some  
15 input regarding what are appropriate and successful  
16 affirmative action practices that these districts can begin  
17 implementing, and really have an impact on attracting  
18 employees from these impacted groups.

19           We raise the issue because in one area the district  
20 spends significant amounts of money going out of state to  
21 recruit people from these different groups, and with very  
22 little success, because Utah salaries do not compete with the  
23 surrounding states effectively. So we're looking at issues  
24 of how do we develop our own instate pool of applicants and  
25 develop then as an affirmative action, proactive step.



1           And I don't know what kinds of experience the  
2 commission has had in other hearings that they've had in our  
3 region, but that's one thing that we would like to pursue  
4 very actively, and that's developing an in-Utah pool of  
5 applicants and work with the districts to develop those  
6 individuals so when these opportunities as teachers or as  
7 administrators develop, they are there to be pulled in and  
8 placed in the position, not from a quota basis but from all  
9 other things being equal, we will actively pursue these  
10 individuals because they represent impacted groups in our  
11 state employment practices.

12           Now, those are the two main issues we would like to  
13 share with the commission and the committee here today. If  
14 you have any specific questions, we'd be happy to respond to  
15 them. You've all received a handout as to the practices of  
16 the State Office of Education. I can quickly tell you that  
17 although Marvin Johnson is the director of the Human  
18 Resources Department, all civil rights complaints related to  
19 Title VII, fair employment practices, come to this office so  
20 that he's not put in a compromising position, because he has  
21 to implement all of the policies and practices through the  
22 recruitment and retention, and ultimately, if needed,  
23 termination of any employee.

24           Are there any questions that you would like to ask  
25 us?

1           MR. TONG: Richard -- excuse me. I called him  
2 "Richard." We know each other. Do you see any of the  
3 districts hiring two part-time people so they don't have to  
4 pay benefits, rather than one full-time person?

5           MR. GOMEZ: Yes. I raised that concern earlier in  
6 my remarks. That is the general practice in districts today.  
7 So in response to that concern, we see a large number of  
8 impacted populations, underrepresented populations, if you  
9 will, by gender, race and ethnicity, in what we call the  
10 teacher-assistant ranks, working hourly for years and years  
11 without benefits, and actually doing the work of a full-time  
12 teacher because of the experience they gain.

13           MR. TONG: And then further, what authority or --  
14 you're with the State Board?

15           MR. GOMEZ: Yes.

16           MR. TONG: What authority do you have over the  
17 local school boards in regards to civil rights, human rights?

18           MR. GOMEZ: As I indicated earlier, the State  
19 Office of Education employs a monitoring role, but we have no  
20 compliance power over any of the districts related to their  
21 fair employment practices. We do, however, serve a role to  
22 facilitate those kinds of disputes or issues when they arise  
23 on an individual basis, if we're invited either by the  
24 complainant or the district in question.

25           MR. TONG: Now, you're receiving some federal

1 funds?

2 MR. GOMEZ: The State Office of Education, yes, we  
3 receive federal funds.

4 MR. TONG: With federal funds doesn't the  
5 responsibility of the civil rights come with that?

6 MR. GOMEZ: As a monitoring office, yes, but the  
7 compliance responsibility lies with the regional offices,  
8 Title VII, I believe, is Phoenix and the other -- Title VI  
9 area is in Denver, the region VIII office.

10 That's the question I raised with the  
11 Anti-Discrimination Office in the state of Utah. Because  
12 we're a monitoring office, we would assume that the  
13 Anti-Discrimination Office in Utah -- what do they call that?  
14 Yes, the Anti-Discrimination Division, what role do they  
15 play, if, for example -- responding to your question -- does  
16 it play if a complainant receives no affirmative action or  
17 satisfactory resolution to an employment complaint?

18 Since we're only a monitoring office, as I  
19 indicated to you earlier, what role does the  
20 Anti-Discrimination Office play with state education  
21 employees, since each district is autonomous in terms of its  
22 governing board?

23 MR. TONG: Since you're a monitoring group, when  
24 you find areas of discrimination within the districts, I  
25 would suppose that you notify the district of their failure

1 and then you also file a notification with UADD, and do you  
2 follow that notification to UADD up to see if they uphold you  
3 on the complaint?

4 MR. GOMEZ: The problem has been as we've referred  
5 those kinds of complaints, we cannot serve as a broker or a  
6 facilitator for their resolution, as it's been informal.  
7 We can submit those, but we're concerned about the formality  
8 with which the Anti-Discrimination Office may handle such  
9 complaints.

10 We do know, for example, it's our monitoring  
11 responsibility to advise the complainant if they do not have  
12 the satisfaction received as a result of their complaint at  
13 the district level, they can file with the office in Phoenix.  
14 But we also understand -- unless we understand incorrectly --  
15 that the first step is to go to the Anti-Discrimination  
16 Office at the state level and see what they can do with the  
17 issue.

18 MR. COHNE: When you file a notification, do you  
19 follow up with UADD to see if they have acted?

20 MR. GOMEZ: Yes.

21 MR. COHNE: Have they been responsive to your --

22 MR. GOMEZ: No.

23 MR. COHNE: And what reason do they give you for  
24 not --

25 MR. GOMEZ: I'm not sure that they clearly

1 understand what steps they can take with an education  
2 employee versus all other kinds of employees at government  
3 employment levels. That's the issue. I think it needs to be  
4 clarified between their office, the office in Phoenix and our  
5 monitor role. Directly responding to your question, no, we  
6 have not seen any formal follow-up one way or the other with  
7 those kinds of complaints, and I think it's, in the past,  
8 been based mostly on the unclear understanding of how  
9 districts work versus any other state or federal employment  
10 office.

11 MS. RICHARDS: How do your complaints break down?  
12 You talked a lot about the contract employees, the hourly  
13 employees, versus those people who are in the professional  
14 role. Where do you see most of the discrimination coming  
15 from?

16 MR. GOMEZ: Most of the discrimination complaints  
17 are three to one for classified employees versus the  
18 full-time contract person, because we've seen the pattern  
19 that full-time contract people that have full benefits, have  
20 the grievance process that is very formalized in the district  
21 level that they can follow, as we have at the State Office of  
22 Education level.

23 Now, we don't want -- we're not here to point a  
24 finger at the Anti-Discrimination Office, but frankly, we see  
25 a more clear role need to be defined in terms of how they

1 would handle, let's say, a classified employee complaint from  
2 the district versus some other state entity. I'm not quite  
3 sure they understand the assertive role that they can or  
4 cannot play with those kinds of complaints.

5 MR. COHNE: Has UADD ever offered to hold  
6 educational seminars with the districts or with the State  
7 Board of Education in order to bring to a level of awareness  
8 what is and what is not proper?

9 MR. GOMEZ: As far as I know, no, but maybe Marvin  
10 could clarify if there's -- a practice like that has been  
11 used in the past that maybe I'm not aware of. We communicate  
12 pretty closely, but maybe he'd like to come up and respond to  
13 that.

14 MR. JOHNSON: I'm sorry. What was that question  
15 again?

16 MR. COHNE: The question is has the UADD offered --  
17 or been asked, I suppose, to present educational seminars to  
18 the districts or to the State Board of Education as to what  
19 is and what is not appropriate conduct?

20 MR. JOHNSON: Not that I'm aware of. We've had a  
21 little bit of that from the State Department of Human  
22 Resources. Not too long ago there was suggestion that they  
23 hold a seminar for state agency people on alternative dispute  
24 resolution procedures.

25 MR. COHNE: Would it be helpful if you as the State

1 Board asked UADD to take affirmative position to help educate  
2 the district as to what is and what is not appropriate  
3 behavior?

4 MR. GOMEZ: We have asked for that in the past, but  
5 as you know, there was some terrible accusations for a couple  
6 of years, and we're not quite sure they are ready. We will  
7 ask again once we see that that office is functioning in the  
8 way that they've been asked to by the public. But yes, we  
9 will ask again.

10 But I still think, in response to the question,  
11 that we need some clarification even from the regional Title  
12 VII office out of Phoenix or even this commission as to what  
13 kind of role that office can play with education institutions  
14 that are separate and autonomous, 40 different ones  
15 throughout the state. And we will work actively with them to  
16 respond, as you have clearly indicated we should, as a  
17 partnership.

18 MS. RICHARDS: Mr. Gomez, I probably ought to let  
19 you know, we're just a factfinding committee, so we can't  
20 really give you pronouncements like you want from us,  
21 unfortunately. We're trying to ascertain the extent of  
22 employment discrimination in Utah and look at the remedies  
23 that are in place.

24 So at this point, we can't -- unfortunately, we  
25 have questions, but I don't know that we've got answers for

1 you.

2 MR. GOMEZ: Well, we wouldn't expect them today,  
3 but if this is a factfinding body, as I clearly understood  
4 that it is, I guess the transcripts will be sent to the  
5 appropriate offices that can then respond to these concerns.

6 MS. RICHARDS: Right.

7 MR. GOMEZ: Yes, we understand that. Are there  
8 any other questions?

9 MS. RICHARDS: Thank you very much, Mr. Gomez. We  
10 appreciate your presentation to us.

11 Our next presenter will be Ms. Julie Davies, the  
12 Public Relations Director of Utah Federation of Business and  
13 Professional Women.

14 And we will ask you to please introduce yourself.

15 MS. DAVIES: Thank you for the opportunity to  
16 provide testimony. My name is Julie Davies, and I have been  
17 asked to present to you the 1993-94 policy agenda of the  
18 National Federation of Business and Professional Women, I'll  
19 call them throughout my remarks BPW/USA; also the resolutions  
20 and policies that have come out of the Utah Federation of  
21 Business and Professional Women, which I'll call BPW/Utah;  
22 and also testimony regarding my own experiences with the UADD  
23 and the EEOC.

24 BPW/Utah is one of the many organizations that  
25 called for an investigation of the state's handling of



1 employment discrimination. Thank you for listening to our  
2 concerns and granting our request in having this factfinding  
3 conference.

4 I am proud to represent the oldest organization in  
5 America dedicated to the needs of working women. With  
6 members in 2,000 local organizations across the country,  
7 BPW/USA promotes full participation, equity and economic  
8 self-sufficiency for working women. For 75 years on the  
9 national level and 80 years in our own Utah Salt Lake local  
10 organizations, BPW has been a leader in the development of  
11 public policy affecting working women. We work at all  
12 levels, federal, state, and local government, within our own  
13 businesses; and in organizations and clubs to which we  
14 belong.

15 BPW sees our role as twofold: promoting women's  
16 status in the work force and helping businesses to adapt to  
17 the social and economic climate created by women's changing  
18 roles.

19 Securing equal employment opportunities for women  
20 has been, and continues to be today, a top priority for BPW.  
21 Our organization had direct involvement in the enactment of  
22 the legislative, administrative and judicial framework that  
23 secured important civil rights for women. The post-1964  
24 period clearly established the principle, if not the reality,  
25 of equal employment opportunity for women. Many women

1 benefitted from the enactment of legislation and the Supreme  
2 Court decisions which expanded civil rights protection as a  
3 class. Today women comprise almost half of the work force  
4 and their opportunities to participate in the labor force  
5 have expanded. Moreover, many employers now recognize that  
6 discrimination is bad business.

7           With women workers increasing in number, their full  
8 and equal contribution -- unhampered by sex-based  
9 discrimination -- is essential to our nation's economy.  
10 Yet discrimination against women continues to be a potent  
11 force that denies women the right of equal employment  
12 opportunity. BPW will continue to support legislation that  
13 affords women full protection under the law, and we will  
14 mobilize BPW members to advocate for legislation and policies  
15 which advance the causes of working women, both  
16 professionally and personally.

17           It is in this spirit that BPW has introduced  
18 "Modest Reforms with a Major Impact," our 1993-94 policy  
19 agenda. During our 75th anniversary year, BPW/USA is proud  
20 to advance these reforms that will aid immeasurably in  
21 improving the status of working women. Allowing gender to  
22 define occupational patterns and rewards sends the wrong  
23 message to millions of working women. Discrimination,  
24 whether intentional or unintentional, prevents working women  
25 from fully contributing their abilities and knowledge to the

1 productivity of our country. Working women want and deserve  
2 only what all workers want -- jobs that pay a living wage in  
3 a nondiscriminatory and family-friendly environment. These  
4 reforms are an effort to provide such<sup>a</sup> work place for millions  
5 of working women who are hungry, not for special  
6 treatment, but for work place equality.

7           Women continue to face numerous barriers to full  
8 participation of the work force and economic  
9 self-sufficiency. Women struggle to survive on measly  
10 paychecks resulting from historically discriminatory wage  
11 scales. Women continue to suffer from lax enforcement of  
12 equal employment opportunity laws. Older women, after years  
13 of caregiving for their families and years of service within  
14 their professions, often find their golden years tarnished by  
15 fear of not being able to afford the basic necessities of  
16 life. Discrimination, for both women employees and business  
17 owners, remains, all too often, simply the price of doing  
18 business.

19           Outright discrimination against women in the work  
20 place is already against the law. But policies and  
21 procedures continue to perpetuate discriminatory attitudes  
22 and behavior. We can no longer afford to ignore the real  
23 costs of discrimination. Discrimination in the work place is  
24 bad business, and allowing it to continue is bad public  
25 policy. Work place discrimination detrimentally affects not

1 only the lives of real men and women, but also has negative  
2 consequences on society as a whole.

3           American businesses face a dramatically different  
4 labor force today which underscores the importance of working  
5 women as a business resource. Businesses cannot afford to  
6 underutilize half of the available work force. They must  
7 draw on the full potential, creativity and energies of  
8 working women to remain competitive in today's work world.

9           Some policy innovations demanded by changes in the  
10 work force are as broad and extensive as the changes  
11 themselves. But significant work place reform can be  
12 realized with implementation of more modest changes. Our  
13 policy agenda, "Modest Reforms with a Major Impact," is of  
14 this latter category. It is an economic agenda. Its  
15 principles are simple. We are calling for Congressional  
16 oversight hearings on the Equal Pay Act; Congressional review  
17 of the Equal Credit Opportunity Act; enactment of the  
18 Hughes-Lowey Legislation; enactment of the Equal Remedies  
19 Act; and Congressional oversight hearings on the Equal  
20 Employment Opportunity Commission.

21           Now, the market rate for women's wages is  
22 disproportionately affected by discriminatory attitudes and  
23 practices that devalue women's contributions and  
24 experiences. As a result, the expansion of employment  
25 opportunities for women has not led to an equivalent

1 expansion of wages or advancement opportunities. Pay equity  
2 is the law but not the reality, and the majority of working  
3 women are suffering as a result.

4           In Utah, attempts by BPW and other organizations to  
5 have government officials review state wage scales in regard  
6 to pay equity has been an uphill battle. Legislative  
7 proposals have not, in most cases, even made it out of  
8 legislative committees for an opportunity to be considered.  
9 Pay Equity advocates in Utah are rallying behind two measures  
10 designed to bring pay equity in the state. The first is a  
11 resolution calling for private businesses to correct gender  
12 bias in their pay plan. The second is a bill mandating that  
13 the state pay plan be revised to eliminate gender biases  
14 through the initiation of gender-neutral job-classification  
15 study. We ask you to consider and support these legislative  
16 proposals with us.

17           BPW/USA calls on the U.S. Congress, specifically  
18 the Senate Labor and Human Resources Committee and the House  
19 Education and Labor Committee, to hold oversight hearings on  
20 the effectiveness of the Equal Pay Act and to investigate  
21 other means to secure pay equity and to promote women's  
22 advancement in the work place. BPW/Utah calls upon Governor  
23 Leavitt and the Utah Legislature to investigate  
24 discriminatory policies that affect wages in the state.

25           BPW aided in the fight to pass the Equal Credit

1 Opportunity Act of 1974 and its amendments in 1976. This law  
2 banned discrimination by creditors based on sex and marital  
3 status of any in any credit transactions. However, 20 years  
4 later, women are still experiencing discrimination in access  
5 to credit. This has especially serious repercussions on  
6 women-owned businesses. Remaining discrimination in the  
7 granting of commercial credit is inexcusable and must be  
8 stopped. Women are being asked to compete economically on an  
9 uneven playing field as business owners and as individuals.

10 BPW/USA calls on the U.S. Congress to hold  
11 oversight hearings on the effectiveness of the Equal Credit  
12 Opportunity Act and to investigate other means to promote  
13 women's access to credit.

14 Past discrimination in Social Security, pensions,  
15 pay, educational opportunities and other areas must not be  
16 allowed to condemn women who were discriminated against  
17 during their productive years to golden years of poverty. We  
18 cannot take back the discrimination, but where possible,  
19 action must be taken to correct the impact of inequities.

20 BPW/USA calls on Congress to swiftly pass the  
21 Hughes-Lowey Legislation to ensure the economic stability of  
22 older women within our Social Security system.

23 We are concerned about the disparity of remedies  
24 currently provided in employment discrimination cases. The  
25 provision of damage caps for victims of intentional

1 discrimination is unjust and the caps must be repealed. Laws  
2 should treat victims of intentional discrimination  
3 differently -- should not excuse me, treat victims of  
4 intentional discrimination differently, nor should they  
5 provide disparate remedies.

6 BPW/USA calls on Congress to swiftly pass the Equal  
7 Remedies Act to ensure that all victims of intentional  
8 discrimination are provided with full and equal remedies.

9 Today, 28 years after the establishment of the  
10 EEOC, employment discrimination remains a serious problem for  
11 millions of women and minorities in the work force. As the  
12 work place becomes increasingly diverse, in all probability  
13 the EEOC will face increasing demands. The agency, however,  
14 is not meeting its mandate to <sup>ensure</sup> ~~insure~~ nondiscriminatory work  
15 places for all workers. The EEOC is not fulfilling its  
16 mission and it is not effectively enforcing  
17 anti-discrimination laws. The fact that the EEOC is not  
18 litigating on behalf of all cause findings that fail  
19 conciliation is of particular concern. Significant reform is  
20 essential for this work place barrier to be removed.

21 As business and professional women, we must note  
22 that it is not only the plaintiffs that suffer losses through  
23 ineffective management of this problem. Our businesses spend  
24 thousands of dollars and hours wading through this system.  
25 Again, this is bad for business, and it's a poor use of tax

1 dollars. It is in the best interest of society as a whole to  
2 implement better procedures, tougher laws and sure remedies  
3 in matters of employment discrimination.

4 BPW/USA calls upon the U.S. Congress, specifically  
5 the Senate Labor and Human Resources Committee and the House  
6 Education and Labor Committee, to hold oversight hearings on  
7 the Equal Employment Opportunity Commission and to move to  
8 ensure that the EEOC is meeting its mandate to vigorously  
9 enforce existing civil rights laws.

10 Now, here in Utah, employment discrimination  
11 complaints are handled by the Anti-Discrimination Division of  
12 the Industrial Commission of Utah, many times nicknamed the  
13 UADD. In other divisions of this commission, such as  
14 Workmen's Comp, enforcement is mandated in the agency code.  
15 There is no question that the agency will provide remedies to  
16 workers found to have valid claims. Fines and penalties are  
17 also often applied. However, in the UADD, the agency has  
18 never in its history enforced the law in court when necessary  
19 due to conciliation failure.

20 ~~Now~~ the agency claims now to have recently  
21 introduced three cases in court, but none of them have  
22 emerged from judicial review. Enforcement of these and other  
23 cases is not sure. It does not make sense that employment  
24 discrimination charges are not given the same enforcement  
25 power as other violations to laws relating to the work



1 place, particularly when all these divisions are under the  
2 same administrative umbrella.

3           Furthermore, Utah law has not been updated to meet  
4 recent changes to federal employment laws, such as those  
5 found in the Civil Rights Act of 1991 and the Americans with  
6 Disabilities Act. The Industrial Commission has not proposed  
7 any such changes to Utah Legislature. This has been a  
8 historical pattern for this agency. An example of past  
9 problems in this area is found in the agency's treatment of  
10 the pregnancy discrimination in the state. The federal  
11 Pregnancy Discrimination Act of 1978 made employment  
12 discrimination based on women's pregnancy unlawful. In Utah,  
13 however, the Industrial Commission refused our pleas to  
14 update the state code to meet the federal protection. I  
15 believe Commissioner Carlson was at the meetings in 1988,  
16 where we had hearings on pregnancy discrimination. At that  
17 time, I called to their attention the problem with  
18 enforcement here in the state. We asked for them to  
19 introduce legislation, they did not, so a private coalition  
20 introduced legislation. The agency fought our private  
21 efforts to update the Utah code, but in 1989 -- and I want to  
22 emphasize here that in 1978 it was updated on the federal  
23 level -- it wasn't until 1989, by private effort here in  
24 Utah, that our legislative proposal was passed to meet our  
25 federal definition of unlawful treatment concerning pregnancy

1 discrimination.

2           Once again, the Industrial Commission is fighting  
3 the community coalition efforts to update Utah code to meet  
4 the federal provisions and ensure that these laws are  
5 enforced whenever possible in our own state. We are simply  
6 asking that the agency shall enforce cause findings that fail  
7 conciliation, in court, if necessary, rather than allowing  
8 this agency to choose whether it may or may not choose to  
9 enforce its findings, <sup>✓</sup> an agency that has not enforced a  
10 single finding in court during its entire history; an agency  
11 that recently admitted before the Utah legislative interim  
12 committee that it could have enforced the law all along, but  
13 claims now that it did not realize it could, and therefore it  
14 did not; an agency that has ignored the complaints regarding  
15 their policy of nonenforcement made by individuals and  
16 organizations like BPW for many years now.

17           It is important to note that this was the most  
18 significant recommendation that came out of the Governor's  
19 UADD Task Force report. We are asking that this enforcement  
20 provision be written into the specific agency code rather  
21 than relying on limited provisions in UAPA, the Utah  
22 Administrative Procedures Act. We ask that there be  
23 clarification regarding the type of remedy available to  
24 victims and the procedures that the agency will follow to  
25 investigate the complaint, conciliate the matter and enforce

1 the order. If the agency is truly serious about enforcing  
2 employment discrimination laws and fulfilling its mandate to  
3 eliminate these discriminatory practices, it should not be  
4 fighting these simple and straightforward reforms to Utah  
5 law.

6           BPW/Utah, individuals who have been through the  
7 system, and other community groups have repeatedly offered  
8 assistance and information to the Industrial Commission  
9 regarding employment discrimination. The agency has ignored  
10 our concerns and information, has fought our recommendations,  
11 has excluded us from discussions, and when the proposed  
12 changes seemed inevitable, they have implemented  
13 recommendations without any input from the sources of the  
14 proposed changes, and have consequently made costly mistakes  
15 in the application of the recommendations. The agency has  
16 denied contracts and jobs to individuals who have been  
17 through the system, and rather awarded contracts and jobs to  
18 individuals with little or no experience in the area.

19           The Industrial Commission is fighting legislative  
20 proposals for an advisory board for the UADD unless they're  
21 allowed to appoint board members and have the UADD director  
22 act as the chair of the board. Again, the UADD is unlike  
23 other agencies within the Industrial Commission right now in  
24 that there is no advisory board. Again, if the agency is  
25 anxious to complete its mission effectively and efficiently,

1 it should be more responsive to the community.

2           BPW calls upon Governor Leavitt and the Utah  
3 Legislature to pass legislation mandating in the agency code  
4 that the agency shall enforce cause findings in court when  
5 necessary due to noncompliance, to pass specific remedy  
6 provisions and procedures, to update Utah laws to match or  
7 exceed federal employment law revisions, to pass legislation  
8 that provides for a Anti-Discrimination Division advisory  
9 board that shall be appointed and directed from outside the  
10 agency, and to conduct an in-depth study of proposals to  
11 remove the UADD from the Industrial Commission and establish  
12 a human rights commission to handle discrimination matters in  
13 the state of Utah.

14           BPW challenges you to work with us to secure these  
15 reforms. They will significantly improve the status of  
16 working women.

17           Now, I was also asked to give you a little  
18 background on my case. Would you like me to do that? Okay.  
19 I have been -- nearly nine years ago I had a manager  
20 discriminate against me primarily because of my gender and  
21 pregnant condition. His abuse was brutal, in private and in  
22 front of others. There were witnesses willing to come  
23 forward and testify, and there was substantial written  
24 documentation of his unlawful treatment.

25           I endured the harassment for six months before

1 filing a complaint with the UADD and the EEOC. The UADD  
2 confirmed that my case had merit, then referred it to the  
3 EEOC in 1986.

4 In 1988 they determined that my employer had  
5 violated Title VII of the Civil Rights Acts of 1964, as  
6 amended. The EEOC, however, refused to litigate on behalf of  
7 the case when my employer ignored the conciliation terms.  
8 They dismissed themselves with a right-to-sue letter, and  
9 they made me pay for the small portion of the file that they  
10 didn't deny me access to, even though I had provided the  
11 majority of the information in the file, and they <sup>gave</sup> ~~give~~ me no  
12 assistance or further support.

13 I was fortunate to be able to contract with an  
14 attorney on a contingency basis, but here in Utah the  
15 plaintiff must also pay the fees as the case goes along, if I  
16 understand it correctly.

17 In 1991, after paying out more than \$20,000 in the  
18 matter, the defendants offered me a judgment against  
19 themselves. The amount of money offered did not cover my  
20 expenses, let alone my make-whole remedy, but my family and I  
21 realized that we could no longer pay and suffer through the  
22 fight, a fight that had nearly left us bankrupt emotionally,  
23 physically and financially. It was all the justice we could  
24 afford. This was not a settlement, I prevailed, and the  
25 company's guilt is on the record, in effect by their own

1 admission. But I have never received my make-whole remedy.  
2 Was justice served? Absolutely not.

3 I would like you to know that as bad as the  
4 discriminatory treatment and retaliation was, the system that  
5 I had to endure in order to try to remedy the abuses and  
6 losses was more damaging. The investigation took a  
7 ridiculous amount of time. The agency procedures were  
8 inefficient. The defendant was allowed to ignore or not  
9 comply with deadlines, document requests and other aspects of  
10 the investigation, and the commitment made to me throughout  
11 the process by the UADD and the EEOC that the government  
12 would enforce the law once they validated the claim was  
13 false.

14 My case is not the exception. I receive telephone  
15 calls several times a week from BPW members and other  
16 individuals and companies that repeat ~~the story~~ <sup>stories</sup> that are  
17 similar to my experience with the agency.

18 At the Governor's UADD Task Force public hearing, I  
19 made the following recommendations. I think I'd like to  
20 repeat them again. One, hold the Industrial Commissioners  
21 accountable for problems with the agency. Some of the  
22 commissioners have been in for a long time, and they have no  
23 excuse for not knowing about the problems with the agency.  
24 Reorganize the commission and the agencies.

25 Two, remove the UADD from the Industrial Commission

1 and set up a human rights commission. Commission members  
2 should represent protected classes and other parties involved  
3 in relevant actions.

4 Three, reinstate enforcement capabilities for the  
5 agency in the agency code. Arbitrate or litigate on behalf  
6 of valid claims that fail conciliation. Impose fines.  
7 Enforcement should be speedy, sure, and handled in an  
8 equitable manner. We should not throw more tax dollars at  
9 this problem until we throw more solutions at it.

10 Four, mediate before the investigation begin. If  
11 possible, make mediators available for companies to use  
12 on-site before or shortly after claims are filed. The sooner  
13 the problem is resolved, the less damage both sides incur.  
14 Use mediators that understand sound mediation techniques and  
15 understand the laws.

16 Five, create and make available educational  
17 programs regarding this issue, focusing mainly on prevention,  
18 and make them available to the entire community.

19 Six, although Utah receives funding from the EEOC,  
20 we should not rely on the EEOC to enforce laws for Utah  
21 citizens. We should create better, more effective and  
22 tougher laws, guidelines and procedures and penalties than  
23 are available on the federal level.

24 As you review the current status of employment  
25 discrimination in Utah, please consider these modest reforms.

1 They can have a major impact on our society.

2 Thank you again for allowing me to testify. Do  
3 you have any questions?

4 MS. RICHARDS: Thank you, Ms. Davies. We'll turn  
5 the time to the committee.

6 Questions?

7 My goodness, you've left us speechless.

8 MR. TONG: I have one question. I don't know that  
9 it goes to the lady there, but possibly one of our attorneys  
10 here could answer it. Doesn't the state have to be in  
11 compliance with federal laws?

12 There's about three attorneys here; no one  
13 answered.

14 MR. MARTINEZ: Only if they want the federal money.

15 MS. DAVIES: And we've been receiving federal  
16 monies, so we should have been in compliance with the federal  
17 laws.

18 MS. CRAFT: I have one question. You mentioned  
19 that according to your information the UADD has not  
20 litigated -- never enforced a ruling?

21 MS. DAVIES: In court.

22 MS. CRAFT: Is there documentation to that?

23 MS. DAVIES: They cannot cite a single case. We've  
24 given them ample opportunity.

25 Can you cite a single case?



1 MS. RICHARDS: Thank you, Ms. Davies. We  
2 appreciate your testimony.

3 Our next presenter is Mr. Floyd Astin, who is  
4 Administrator with the Utah Department of Employment  
5 Security.

6 Oh, Mr. Astin, We have asked everyone if they would  
7 please introduce themselves for the record.

8 MR. ASTIN: My name is Floyd Astin. I'm the  
9 Administrator for the Department of Employment Security. I  
10 know some of the members of the panel. Many of you I do not  
11 know. Thank you for the opportunity to appear before you at  
12 this time.

13 And to give you a little background information on  
14 us as an agency, and much of the information I'll give to you  
15 as was requested in my invitational letter to come here,  
16 deals with the things that we know of in our own agency, and  
17 that's why I'll be addressing it now in front of you.

18 Just to give you a little background so you'll know  
19 where we're coming from and why -- hopefully we'll have some  
20 reasons for having some opinions -- we are involved in three  
21 basic areas. We're involved in the placement -- or basically  
22 placement of individuals who are unemployed, labor market  
23 exchange-type of an operation and some related items that go  
24 with that. We also provide unemployment insurance benefits  
25 for those who are unemployed through no fault of their own

1 and meet the requirements of the law, and third, we have a  
2 labor market information analysis section who does a lot of  
3 gathering of materials, labor market information for Bureau  
4 of Labor Statistics, state of Utah, et cetera.

5           In our placement activities, we, last year,  
6 registered a hundred and ninety thousand eight hundred,  
7 approximately, individuals. We had job openings of about  
8 114,500. We had total placements of about 78,000.  
9 Individuals counseled, about 13,000; individuals tested about  
10 27,000; workshops, about 12,000; employer visits, about  
11 twenty thousand five -- -600; UI workers that received  
12 benefits, 39,900, and they received approximately \$122.3  
13 million.

14           Just to give you a little background so you  
15 understand a little about us, the labor market information  
16 maintains information on population, labor force,  
17 unemployment rates, occupations, labor demands, labor supply  
18 hours and earnings, job supply industry, payroll industry and  
19 programs and activities within the department.

20           We have approximately 700-plus employees throughout  
21 the state, located at 26 offices throughout the state in  
22 various locations, and we provide these services primarily to  
23 the public at these local office -- locations.

24           We are not a compliance agency. By that, I mean  
25 we're not responsible for enforcing any of the provisions

1 that we're concerned about here today. We do get actively  
2 involved with these operations.

3 I have brought the -- asked two individuals to join  
4 me today in case there are any questions you might have that  
5 might relate to information they specifically know.

6 JoAnne Campbell, from our department, who is our EO  
7 officer, among other hats she wears; and Lecia Parks  
8 Langston, who is our labor market economist. So if you have  
9 any questions in that area, she can help us.

10 As I mentioned, we are not a compliance agency, but  
11 we do offer a number of services, I very quickly outlined to  
12 you. With employers, we get involved, on a regular basis,  
13 through accepting these job orders from employers to help  
14 them to find employees they need. We screen the type of jobs  
15 we receive from them. If there's discrimination that we're  
16 aware of that may be involved, if the request has  
17 discrimination on the face of it, of course we answer those  
18 kinds of questions immediately and try to counsel with the  
19 employer and try to help the employer understand the  
20 obligations that they may have as an employer.

21 We did more activity in this area in the past than  
22 we have more recently. We think, or at least we hope, we are  
23 becoming more sophisticated in this area, and they're not as  
24 obvious in their discrimination.

25 In our recruitment, we help employers in meeting

1 their affirmative action goals, and we are able to work with  
2 them in this area to help them to get employees they are  
3 looking for that may help them to obtain the goal they  
4 desire.

5           We provide information in conducting lawful  
6 employment interviews. We find that a lot of employers are  
7 at a loss as to how to go about interviewing without being in  
8 violation of some of the laws that prohibit them from  
9 discriminating, and so we try to give counseling in that  
10 area. With many employer contacts, 20-some-odd thousand  
11 employer contacts we've made, we have our people describe  
12 some of these things to the employers if they ask them. We  
13 don't go into them unless they indicate they may have a  
14 problem or they have some questions and we try to help them  
15 identify those areas where they might get some help to get  
16 some answers to their questions.

17           We sponsor Job Service Employer Committee seminars.  
18 Now, these are committees throughout the state in most of our  
19 local office areas. They are composed of employers in that  
20 area, and they sponsor seminars on various issues, whatever  
21 may be the issue of the day.

22           Most recently most of our seminars have dealt with  
23 sexual harassment and ADA-type questions, which obviously  
24 they're concerned about because of recent enactments of these  
25 laws.

1           In dealing with our applicants, we have a complaint  
2 system in place, so they can lodge complaints with us  
3 regarding our service or concerns about employers. So that  
4 if we are doing something that they feel is discriminatory in  
5 any way, we have a system in place where they can formally  
6 file a complaint with us and it is reviewed by someone other  
7 than the person giving the service. And our employe<sup>e</sup>s are  
8 required to elevate those to the administration level so we  
9 can review those.

10           If we have complaints about employers, we try to  
11 informally resolve them as they occur so that it doesn't  
12 escalate any greater degree than necessary, and many of them  
13 are resolved at an informal level. If not, we do work within  
14 the complaint system to advise these individuals where they  
15 might go for the particular complaint they may have, whether  
16 it's the Industrial Commission, Wage and Hour, federal, state  
17 as well.

18           We also offer various special programs through  
19 special funding we may receive at any given time to older  
20 workers, the disabled, migrant or seasonal farm workers,  
21 refugees, et. cetera.

22           At the local office level, we have taken a very  
23 active role in the last few years. I think to an extent,  
24 through Anna Jensen and others in the Industrial Commission,  
25 to try to educate our local office people about the

1 individuals who come in contact with the clients we work  
2 with, to try to help them to better understand what -- for  
3 example, we give them special training of what constitutes a  
4 charge of discrimination so they can -- not be the expert  
5 themselves, but at least recognize if there's a problem there  
6 and where to refer them to and to help them to understand  
7 what's available to them.

8           We also have wage claim forms available in all  
9 these local 25 local offices where then can obtain that  
10 information, and also we're using our local offices now for  
11 mediation meetings, as a convenience both to employers and to  
12 the employee, for any complaints or problems they may have.  
13 This saves them, of course, as they have done in the past,  
14 required them to travel to Salt Lake City, now they can have  
15 a hearing or a reconciliation meeting closer to their homes  
16 because of our location of our local offices.

17           Our department has been tracking our own EEO  
18 efforts since 1975, so we've got quite a history of record of  
19 the information, both as to our internal staffing makeup, as  
20 well as the services we perform. We keep separate records on  
21 both of those areas. Our records show that we've  
22 consistently maintained a minority and female staffing level  
23 above the civilian labor force, as our own internal  
24 staffing. In addition, these groups represent all various  
25 occupational categories. We also serve a higher percentage

1 of minorities than appear in the civilian labor force. They  
2 consistently receive a higher level of service when compared  
3 to other applicants we work with.

4 I have a plan that outlines this information, and  
5 I'll leave it with you if you want. If anybody wants any  
6 more, certainly contact me and I'll be glad to supply them  
7 for you.

8 Again, this deals with our own internal staffing  
9 and service we provide to the protected groups.

10 I've been asked to specifically reference two  
11 areas. One area deals with the Native Americans, any  
12 obstacles, barriers or anything that we may have run into or  
13 encountered. In our own department, our records indicate  
14 that Native Americans represent 1.2 percent of the population  
15 in Utah, and they represent 1.4 percent of our applicant  
16 pool. By that, I mean those who come to us for service and  
17 and register with us to receive that service.

18 We place 23 percent of our total applicant pool, an  
19 average placement rate at five point -- at \$5.58 an hour. We  
20 place 26.6 of our Native American applicant pool, an average  
21 rate of \$5.73 per hour. Which indicates that within our own  
22 system, at least, we are serving them at a higher rate than  
23 the average applicant that comes into our office, and their  
24 wages are higher, which has not always been that way, but I  
25 was pleased to see this -- and these figures, by the way, are

1 for the year ending -- fiscal year ending July 1st of this  
2 year, '93.

3 MS. GILLESPIE: You're talking about a very -- much  
4 smaller number of people, are you not?

5 MR. ASTIN: We are, yes, and we're comparing  
6 them -- what we do is try to compare them in relationship to  
7 the numbers of the working population itself.

8 MS. GILLESPIE: Not within their own group?

9 MR. ASTIN: No, within -- comparing that group,  
10 whatever it is, I'm referencing here now the Native  
11 Americans, comparing that group with the work force in the  
12 work population of the state of Utah. And when I refer to  
13 1.2 percent of the population, that's what their population  
14 represents, 1.2 percent of Utah population, working  
15 population.

16 And the people that come to us for service, 1.4  
17 percent of them come to us. So a little more than the  
18 average citizen is coming from the Native Americans for  
19 service from our department, and then those who do come,  
20 we're servicing them on a higher scale, so to speak, then we  
21 are of the others on a percentage basis. Again, the numbers  
22 are small, acknowledged. That's all we can measure on.

23 However, having said that, it doesn't mean that  
24 there aren't barriers out there and there aren't problems.  
25 We recognize that too, certainly. We are aware of those



1 problems. In our Roosevelt, Vernal, Blanding offices,  
2 they're located near tribal lands. We try to work closely  
3 with the tribes to address the employment-related barriers or  
4 problems. Uinta County area, the managers of our two offices  
5 there are currently working with the Ute tribes, as we speak.  
6 They're involved in some committees there to help the tribe  
7 solve some of the employment problems that they've  
8 encountered.

9           This group has identified such problems as  
10 alcoholism, lack of driver's licenses, lack of skills,  
11 maintaining of the Native American culture in the, quote,  
12 "white man's world," et cetera. So there's no surprises  
13 coming up, but the problems are real and they do exist and  
14 we're trying to work them out and resolve some of these  
15 problems.

16           The other question I was asked to address at this  
17 group deals with the statistical figures covering the ADA law  
18 that's shortly coming into effect. So I just don't walk  
19 away, I'll leave a couple copies here of these for you.

20           In the state of Utah we have establishments,  
21 employer establishments, about 46,200-some. We have  
22 employment in the state of Utah of about almost 790,000. The  
23 numbers of these figures are rounded off. I have the exact  
24 numbers here, but approximately 790,000 employment.

25           Establishments with less than 15 employees, which

1 is the group that ADA will now be looking at, thirty-four  
2 thousand almost five hundred, are included in that group, or  
3 almost 75 -- 74.6 -- almost 75 percent of our establishments  
4 have less than 15 employees. However, the number of  
5 employees, number of employment, is much -- is a different  
6 picture. Of a total 790,000 employees, 147,000 are found in  
7 this group that are less than 15 -- employ less than 15  
8 employees, if you follow what I'm saying. Let me try that  
9 again.

10           What we're saying is that about 81, almost 82  
11 percent of the employees will be covered by the ADA in the  
12 state of Utah of the employees, but employers, only about 25  
13 percent of them will be covered. Does that make sense?

14           You've got the larger employers that have above 15,  
15 they employ a larger number of employees. We have more  
16 employers with smaller -- small businesses. These figures  
17 are as of March of '93. And as I say, I'll leave a couple  
18 copies of those for you to look at. If anybody wants further  
19 copies of these, I'll be glad to furnish them. My time is  
20 about up. If you have any questions, I'll be glad to try to  
21 address them.

22           MS. GALLI: Of the Native American population, the  
23 1.4 percent of your intake and placement, how many would you  
24 say, or what proportion are reservation Indians and what  
25 proportion would you say would be urban?

1 MR. ASTIN: We don't break that down. I'm sorry.  
2 We don't have that. It would be interesting to know, but we  
3 don't have that information.

4 MS. GILLESPIE: Were you talking population or  
5 labor force?

6 MR. ASTIN: I'm talking labor force.  
7 Just a minute. We include the population in our -- and  
8 those who are available to work, they may be unemployed,  
9 they're included in our employment statistics.

10 MS. GILLESPIE: They are?

11 MR. ASTIN: Uh-huh.

12 MR. TONG: I have a couple of questions. You  
13 talked about most of your clients -- or not  
14 most of your clients, excuse me -- a large percentage of  
15 your clients are minorities. Is that what I was hearing?

16 MR. ASTIN: No. What you're hearing is me say that  
17 of the people that come into our office, the numbers are  
18 about proportionate to what their representation is in the  
19 community. There is a difference there.

20 MR. TONG: Okay. When you have a client come in,  
21 do you evaluate or test or screen somehow to be able to put  
22 an evaluation on that client?

23 MR. ASTIN: You're asking do we do that?

24 MR. TONG: Do you do that, some kind of screening  
25 or testing?

1           MR. ASTIN: We do in some areas, yes. We don't in  
2 all of them, no.

3           MR. TONG: And then if a potential employer calls  
4 up and requests some employees to apply, how do you decide  
5 who to send?

6           MR. ASTIN: It depends what the employer is  
7 screening for. If they're screening for education, if  
8 they're for work experience, of years of work experience,  
9 skills. It varies from employer to employer what they may be  
10 looking for, what the job requires that they are hiring for.

11          MR. TONG: Well, if you evaluated a client or  
12 several clients, do you send ten? Do you send three?

13          MR. ASTIN: Again, we'll ask the employer what they  
14 want, how many they want us to send, and we'll try to screen  
15 them down to those who -- the top ten that meet the criteria  
16 the employer would like us to send out.

17          MR. TONG: So do you send the highest rank?

18          MR. ASTIN: Based upon the criteria they're looking  
19 for, that's correct.

20          MR. TONG: Based upon the criteria they're -- if  
21 they're asking for a typist?

22          MR. ASTIN: Then we -- most of the typists we do  
23 test, and based upon the higher score, we send out. Again,  
24 they may have some other skills they may want, which may be  
25 shorthand, it may be use of certain type of

1 computers, so those types of skills also would enter into it.

2 MR. TONG: The point I'm trying to get to,  
3 Mr. Astin, is that I think most of the minority people that I  
4 know would not score very high on most of the tests. And so  
5 they would be the first ones to be let go, the last ones to  
6 be hired, and if you are sending employees -- or if you're  
7 sending clients to an employer, probably that minority that  
8 you -- would be at the very bottom rather than in the middle  
9 or even at the top for a potential employer to look at.

10 MR. ASTIN: There might be a tendency to have that  
11 happen, but our own statistics show that through efforts  
12 we've made, that that's not happening. That actually we're  
13 placing more in the minority categories, and that will be  
14 found in the handout I give you, than the general population  
15 would indicate we'd normally be expected to hire -- or place,  
16 excuse me.

17 MS. SHIMIZU: <sup>Are</sup> Testing <sup>done</sup> ~~occurs~~ in the different  
18 languages or <sup>in</sup> English?

19 MR. ASTIN: It depends. We do have like-language  
20 available.

21 MS. SHIMIZU: <sup>You mean the</sup> Language assistance?

22 MR. ASTIN: Assistance available, yes. Language  
23 assistance available. Depends on the local office, where --  
24 you're going to have more Hispanics in certain areas, you'll  
25 have more Native Americans in certain areas, and so we try to

1 compensate for that. But we do have someone available -- and  
2 handicapped -- excuse me, disabilities in areas as well,  
3 we'll try to meet those needs.

4 MS. RICHARDS: Any other questions of Mr. Astin?

5 MR. MARTINEZ: For the record, Mr. Astin, you know,  
6 somebody's going to read this, we need to make sure they  
7 understand. Could you tell us how your agency is funded,  
8 where you fit within the Industrial Commission. And also,  
9 just for my own knowledge, is it fair to say that minorities  
10 in Utah have a higher unemployment rate when compared to  
11 their labor force numbers and if they're unemployed, for  
12 longer periods of time or would your study reflect that when  
13 we look at it?

14 MR. ASTIN: You gave me too many things at one  
15 time.

16 MR. MARTINEZ: You mentioned that the Native  
17 Americans were 1.2 of the labor force -- or 1.4, which I know  
18 is small numbers, but that would indicate a higher  
19 unemployment rate. Would it hold true for Hispanics and  
20 blacks --

21 MR. ASTIN: It doesn't necessarily reflect the  
22 unemployment rate. What we're saying is that that's the  
23 number of employees in the state that fall in those  
24 categories. Out of all of the employees we have in the  
25 state, you could expect 1.2 of them would be Native American.

1 MR. MARTINEZ: Right, but you said 1.4 of them  
2 are --

3 MR. ASTIN: We are serving -- placing 1.4, even  
4 though if we were absolutely doing by statistics, we would be  
5 expected to place 1.2 of them. So we're placing more in that  
6 category --

7 MR. MARTINEZ: That would indicate a higher  
8 unemployment rate, though, wouldn't it?

9 MR. ASTIN: Not necessarily. I'm not sure. Let me  
10 ask Lecia.

11 Lecia, is that true?

12 MR. MARTINEZ: I'm sorry. Could you give your  
13 name.

14 MS. LANGSTON: Lecia Langston. Yes, unemployment  
15 rates for minorities are higher.

16 MR. MARTINEZ: Than their work force numbers would  
17 indicate? So you service more minorities, but there's more  
18 minorities unemployed; right?

19 MS. LANGSTON: That would tend to be true, yes.

20 MR. MARTINEZ: And do they stay unemployed for  
21 longer periods of time?

22 MS. LANGSTON: Yes.

23 MR. MARTINEZ: About how -- do you know a  
24 percentage of length?

25 MS. LANGSTON: We don't really have any hard

1 statistics on that right now.

2 MR. ASTIN: As I mentioned, Lecia is our economist  
3 of the department.

4 MS. LANGSTON: I don't have any -- because of the  
5 nature of the surveys, we're not able to get down as far as  
6 we'd like into what minorities look like and what their  
7 duration of unemployment is, but they definitely do have a  
8 higher unemployment rate. Native Americans, when the census  
9 were taken, they had a 20 percent unemployment rate compared  
10 to five percent for the overall population. So you can see  
11 that there definitely is a problem.

12 MR. MARTINEZ: And for longer periods of time  
13 than --

14 MS. LANGSTON: Right.

15 MR. MARTINEZ: So they need more training or  
16 assistance from your agency; right?

17 MS. LANGSTON: Right.

18 MR. MARTINEZ: Now, who determines what numbers you  
19 gather to see if you can go down as far as you'd like to make  
20 determinations as to what you can do to assist them in  
21 getting employed faster?

22 MR. ASTIN: I'm not sure if I'm following you.

23 MR. MARTINEZ: Who makes the determination of what  
24 statistics you gather and how far you break it down?

25 MS. LANGSTON: Federal government?



1 MS. GILLESPIE: Bureau of Labor Statistics?

2 MS. LANGSTON: Right.

3 MR. MARTINEZ: Well, in the state of Utah, though,  
4 don't we have a bureau that would allow you to do that?

5 MR. ASTIN: No.

6 MR. MARTINEZ: Could the commissioners allow you to  
7 do that, from the Industrial Commission?

8 MR. ASTIN: If you would request funding for it,  
9 we'd be glad to do it.

10 MS. LANGSTON: It's very expensive. Right now the  
11 survey for Utah -- and this is where we get all of our  
12 unemployment rate information -- consists of 600 households.  
13 The data is really only reliable on an average basis, and  
14 it's -- we only get minority break downs for Hispanics  
15 because they're basically the largest minority population in  
16 Utah.

17 MR. MARTINEZ: If you were able to break it down  
18 further as to educational levels and geographic areas of high  
19 unemployment and the kinds of training that they would need,  
20 would you be able to provide a better service for the  
21 unemployed?

22 MR. ASTIN: I believe so. Some counties have asked  
23 us to do more in-depth type of surveying. They've come up  
24 with the dollars to do so, and we've -- certain areas. Now,  
25 this is an area that we have not done much in. Just like

1 Lecia said, it's very costly because it's very  
2 labor-intensive.

3 MR. MARTINEZ: But it is probable?

4 MR. ASTIN: But it is something that can be done,  
5 and it would be a help, and what you're saying --

6 MS. LANGSTON: And we do get it every ten years  
7 with the census, but I mean, here we are in '93 and we're  
8 just barely getting some of the census data out.

9 MR. MARTINEZ: Where would the funding come from if  
10 you were able to do this the way you'd like?

11 MR. ASTIN: We'll take it from anybody that will  
12 give it to us.

13 MR. MARTINEZ: Where do you get it from now,  
14 Mr. Astin?

15 MR. ASTIN: Right now it comes from -- most of this  
16 type of information we gather comes from the Bureau of Labor  
17 Statistics.

18 MR. MARTINEZ: So it's federally funded?

19 MR. ASTIN: Correct.

20 MS. LANGSTON: So what we need to do is increase  
21 the sample size large enough that it would be statistically  
22 reliable for our smaller population.

23 MR. MARTINEZ: Would it be fair to say that most of  
24 your funding is employer generated?

25 MR. ASTIN: Most of our funding?

1           MR. MARTINEZ: Yeah. Comes through the federal  
2 government through contributions from employers?

3           MR. ASTIN: Yes, but that's not necessarily true of  
4 the Bureau of Labor Statistics. It is true for other  
5 programs.

6           MR. MARTINEZ: I understand. The majority of your  
7 funding is generated through employer contributions?

8           MR. ASTIN: Okay. You're asking about the funding  
9 nature, the majority of our funding -- well, vast majority of  
10 it, 99 percent of it, comes from the federal government.  
11 There are two taxes on employers, one on -- that goes to the  
12 federal government, that comes back to us in the form of  
13 administration dollars; the other goes to a trust fund for  
14 the payment on insurance benefits. It's from those funds  
15 that operate -- administration funds that come back to us we  
16 operate the administration.

17           Bureau of Labor Statistics would be some different  
18 identified dollars, although it comes from the Department of  
19 Labor, they're still identified differently.

20           MR. MARTINEZ: So now playing devil's advocate, not  
21 knowing the answer, and just wondering out loud here, if I  
22 was an employer or had some control over your funding, and I  
23 didn't really have a labor force that I thought minorities  
24 would fit into well or they wouldn't operate well there, I  
25 could lobby not to have funds available to have certain

1 statistics available; right?

2 MR. ASTIN: I'm not sure if I'm following where  
3 you're going.

4 MR. MARTINEZ: Somebody controls your funding and  
5 they give you guidelines of what you have to offer --

6 MR. ASTIN: Employers have no control at all over  
7 our funding. As a matter of fact, the employers are very  
8 angry that the federal government takes as much from them as  
9 they do, and --

10 MR. MARTINEZ: I understand that, but the  
11 Department of Labor gives you your regulations; right?

12 MR. ASTIN: Right.

13 MR. MARTINEZ: And the Department of Labor's  
14 regulations come from where?

15 MR. ASTIN: Come from Washington, basically.

16 MR. MARTINEZ: Through oversight hearings?

17 MR. ASTIN: Through a variety of approaches. We  
18 also have state law, though, for splitting of the  
19 unemployment insurance dollars, but the unemployment service  
20 end of it, which primarily you're talking about in your  
21 discussion right now, comes from the -- the direction comes  
22 from the federal government.

23 MR. MARTINEZ: But the local level, the kinds of  
24 testing that you would implement, to answer the question  
25 here, the kind of testing you would implement as to what

1 tests people take, what language or interpreters are  
2 available, and how you refer out are controlled locally,  
3 aren't they? That kind of information.

4 MR. ASTIN: The funding is not controlled locally.

5 MR. MARTINEZ: You determine that kind of  
6 procedure, though, right?

7 MR. ASTIN: That is correct.

8 MR. MARTINEZ: So you determine how that works  
9 actually, to take a person from unemployment, through  
10 education, through testing and referral; right?

11 MR. ASTIN: Most of that's right, yes. The  
12 education part we don't get involved with.

13 MR. MARTINEZ: So if statistics show that there was  
14 testing going on and minorities were unemployed longer  
15 because they were not being referred out as fast, those  
16 procedures would be governed by your agency; right? The  
17 kinds of tests that are given, the referrals that are made?

18 MR. ASTIN: Well, no, not entirely, because the  
19 referrals are based upon the needs of the employer. We can't  
20 control what that employer asks for and what he needs.

21 MR. MARTINEZ: But you determine what names get  
22 sent?

23 MR. ASTIN: We determine -- based upon the criteria  
24 they give us, that's right.

25 MR. MARTINEZ: And you leave the criteria up to the

1 employer?

2 MR. ASTIN: We have no other choice.

3 MR. MARTINEZ: Some of that criteria may be  
4 illegally used criteria, can't it?

5 MR. ASTIN: If it's illegal, then we try to screen  
6 it and counsel the employer, and if not, that way we try to  
7 refer them to somebody that can take care --

8 MR. MARTINEZ: I understand, and I'm not  
9 insinuating any different. I know that you run a clean ship.  
10 I know that. But what I'm saying is they may not, and they  
11 may use criteria which is impermissible but hide it, and you  
12 wouldn't really know about it.

13 MR. ASTIN: I'm assuming that does go on. To what  
14 extent, I have absolutely no idea.

15 MR. MARTINEZ: Okay. It does happen. We all know  
16 it does. So your referral system in the kinds of tests that  
17 you give employees it's critical to make sure those employees  
18 are given the equal chance to be hired; right?

19 MR. ASTIN: The type of tests that we're giving  
20 now, we used to give quite a few tests, as you might have  
21 been aware of, the GATB test was used quite extensively by us  
22 and some other tests, but we have been restricted, because of  
23 court orders and regulations, to back off.

24 Mostly the type of testing we're giving now are  
25 your counseling type of tests that we can use to help people

1 to guide them into different careers and that, and also the  
2 type of testing for your speed on typewriters and basis type  
3 of testing. We'd like to get more into the assessment type  
4 of work and maybe we'll go that way. There's indications  
5 that maybe we're heading that direction.

6 MS. RICHARDS: Mike we'll, have to break here.

7 Mr. Astin, we appreciate your presentation, and I'm  
8 sorry, I've forgotten --

9 MR. ASTIN: Lecia Langston.

10 MS. RICHARDS: Ms. Langston, we appreciate your  
11 presentation as well.

12 MR. MARTINEZ: If I could put on the record just a  
13 statement that Ms. Langston did all of the numerical work --  
14 I don't know what else to call it -- for the Governor's year  
15 2000 study that was done in Utah, which has a lot of  
16 statistics and data on employment, unemployment, the future  
17 work force, through Mr. Astin's auspices. Just a wonderful  
18 document the committee may want to look at in terms of the  
19 future work force and how it's going to impact Utah. I  
20 thought that was a great job.

21 MR. ASTIN: She did considerable work on women in  
22 the work place as well.

23 MS. RICHARDS: Mr. Astin, before you sit down, we  
24 just have one other comment.

25 MR. MARYBOY: Going back to the Native Americans, I

1 imagine the majority of your statistics came from Salt Lake  
2 County, since that's the largest Native American population  
3 in the state of Utah.

4 MR. ASTIN: A good part of it would be, yes.

5 MR. MARYBOY: The question was raised why there is  
6 such a high percentage of unemployment. I think the problem  
7 is the location of the job security office. A vast majority  
8 of the work force is on the reservation, and most of the work  
9 activities is also on the reservation, where you have all of  
10 the oil production. And normally you have your trainings in  
11 Blanding, off the reservations, and a lot of these  
12 participants do not have the means to travel to Blanding on a  
13 daily basis for training.

14 I think the Navajo nation, the tribe has been  
15 asking to move the office on the reservation. Perhaps if  
16 that should become a reality, I think that might change the  
17 numbers. And are you doing anything to address that problem?

18 MR. ASTIN: We are -- our local office -- for those  
19 who are not aware, our office in that area is in Blanding,  
20 and we are working with the tribal groups down there and  
21 trying to resolve the problem you're talking about. The  
22 problem we have, of course, is where do we locate? If we  
23 take and close down Blanding, for example, we'd have some  
24 real serious problems, because that's probably the largest  
25 area down there population-wise.



1           As I understand, they are looking to some dollars.  
2 The tribe itself has some JTPA dollars for this type of  
3 operation. And as I understand, their looking to those  
4 dollars and see if they can be spent in this area. We don't  
5 have those JTPA dollars to spend on the reservations because  
6 the reservations chose to use those dollars themselves, if I  
7 understand correctly. So they're trying to see what they can  
8 do with resources to maximize the use of those. It is a  
9 problem that's being addressed down there.

10           MS. RICHARDS: Thank you, Mr. Astin. We appreciate  
11 that.

12           We were scheduled for a 15-minute break.  
13 Considering the time, we will take a stretch break and begin  
14 again at 2:30.

15           (A recess was taken.)

16           MS. RICHARDS: We are going to resume after our  
17 break. Our first presenter is Mr. Charles Burtner, Director  
18 of the Phoenix District Office of the EEOC.

19           Mr. Burtner, if you would please introduce  
20 yourself.

21           MR. BURTNER: Good afternoon. My name is Charles  
22 Burtner. I'm the Director of the Phoenix District Office for  
23 the Equal Employment Opportunity Commission. I have been the  
24 director there for approximately three and half years.  
25 Before that I was the Deputy District Director in the Chicago

1 District Office, and I have held a number of field positions  
2 for the last 21 years for the <sup>Equal</sup> Employment Opportunity  
3 Commission.

4           It is a pleasure for me to be here today to address  
5 the Utah Advisory Committee on issues concerning employment  
6 discrimination in Utah. I have specifically been asked to  
7 explain how the relationship between the United States Equal  
8 Employment Opportunity Commission and the Utah  
9 Anti-Discrimination Division works and how our workload is  
10 shared.

11           In addition, I have been asked to give you  
12 statistics on the number, type and disposition of employment  
13 discrimination complaints in Utah during the past five  
14 years.

15           While I do not have information available for the  
16 last five years, I do have statistical information which  
17 covers the last four fiscal years. That would cover a time  
18 period from October 1, 1989, through September 30, 1993.

19           First of all I would like to tell you a little  
20 about EEOC and the Phoenix District Office. EEOC, of course,  
21 is charged with the enforcement of the Title VII of the Civil  
22 Rights Act of 1964, which prohibits employment discrimination  
23 based on race, color, religion, sex, or national origin; the  
24 Age Discrimination and Employment Act; the Equal Pay Act; the  
25 Americans with Disabilities Act, which prohibits

1 discrimination against people with disabilities in the  
2 private sector and state and local governments.

3 EEOC also enforces prohibitions against  
4 discrimination affecting individuals in federal government,  
5 as well as enforcement of various sections of the Civil  
6 Rights Act of 1991.

7 The Phoenix District Office jurisdiction covers the  
8 states of Utah, Arizona and New Mexico. Our main office is  
9 in Phoenix. We also have an area office in Albuquerque,  
10 New Mexico.

11 When fully staffed, the Phoenix District has a work  
12 force of 87; 64 people in Phoenix, 23 in Albuquerque.

13 Currently we have administrative and clerical  
14 support staff consisting of approximately 21 employees. We  
15 have 45 staff who are primarily responsible for investigating  
16 and resolving individual and systemic charges of  
17 discrimination. Twelve employees, who are in our legal unit;  
18 two administrative judges and an equal employment specialist,  
19 who are primarily responsible for our federal hearings cases;  
20 and one employee who is coordinator of our Fair Employment  
21 Practices agencies.

22 For the past several years, the Equal Employment  
23 Opportunity Commission and the Utah Anti-Discrimination  
24 Division have entered into a work-sharing agreement each  
25 year, so that in those instances where the two agencies have

1 common or dual jurisdiction over a given charge, there is an  
2 agreement as to who processes the charge.

3           The work-sharing agreement, <sup>increased</sup> efficiency and  
4 eliminates duplication of effort in those instances where  
5 there is dual jurisdiction. The current work-sharing  
6 agreement essentially states that where there is a common or  
7 dual jurisdiction, a charge will be filed with both agencies,  
8 and thereby every charging party will have both state and  
9 federal rights.

10           The work-sharing agreement also states that any  
11 charge initially received by EEOC will be processed by EEOC,  
12 and any charge initially received by the Utah  
13 Anti-Discrimination Division will be processed by the  
14 Division.

15           The work-sharing agreement also provides that if a  
16 charge is not jurisdictional with one agency but is with the  
17 other, the first agency will refer the charge to the other  
18 agency. Typically EEOC receives charges from Utah under this  
19 provision when the charge is untimely with the Utah  
20 Anti-Discrimination Division but is timely with the EEOC.

21           During FY '90, EEOC received 43 charges directly  
22 from charging parties and 32 charges were transferred to us  
23 by the Utah Anti-Discrimination Division, for a total of 75  
24 charges.

25           In FY '91, we received 29 charges from charging

1 parties and 44 were transferred in from Utah, for a total of  
2 73 charges.

3 In FY '92 we received 36 charges from charging  
4 parties, and 122 were transferred in from UADD, for a total  
5 of 158 charges.

6 In FY '93 we received 28 from charging parties and  
7 67 were transferred in from UADD, for a total of 95 charges.

8 While we do not currently do any public advertising  
9 in Utah, every employer with 15 or more employees is required  
10 to post an equal employment opportunity poster. On each of  
11 these posters there is a toll-free number. This number  
12 connects directly with our office in Phoenix. In addition,  
13 our office telephone number is listed in the telephone  
14 directories of various cities throughout Utah.

15 As compared to fiscal year 1992, our pending  
16 inventory at the end of FY '93 increased 32.6<sup>percent</sup>. This occurred  
17 despite the fact that the Phoenix District maintained a high  
18 productivity level. Due to budgetary constraints, the  
19 Phoenix District has not been able to increase the staff to  
20 handle this increased workload, while the quality of case  
21 processing throughout the district is high, <sup>///</sup> The timeliness  
22 of case processing will be impacted by the <sup>great</sup> increase in the  
23 number of charges <sup>filed</sup>.

24 EEOC has taken steps to ensure that it carries out  
25 its civil rights enforcement responsibilities consistent with

1 available resources. However, EEOC is a comparatively small  
2 agency, and because we have been given other laws to enforce  
3 without an increase in staff or other resources, it has  
4 become increasingly difficult to process all the work that  
5 EEOC has received in as timely manner as we would like.

6 EEOC provides training to its staff to outside  
7 groups. In the Phoenix District, we provide monthly training  
8 sessions to keep our investigators up to date in the laws we  
9 enforce. During the past year EEOC has held a number of  
10 technical assistance visits throughout the country. In the  
11 Phoenix District, a technical assistance seminar was held in  
12 Phoenix during FY 1993.

13 Employers and others were invited to these sessions  
14 to learn about the laws we enforce. In addition, we have  
15 always been available to give speeches to groups upon  
16 request.

17 During FY '93 the Phoenix District office presented  
18 49 outreach activities to outside groups throughout the  
19 district. During the past year, the Phoenix District office  
20 also provided training to the Utah Anti-Discrimination  
21 Division in procedures in the laws we enforce. There was  
22 also a follow-up visit in this training in September which  
23 was given by one of <sup>our</sup> ~~the~~ supervising trial attorneys.

24 During the past fiscal year, Phoenix District  
25 office completed the following types of resolutions: There

1 were 742, or 29.6 percent administrative closures. These  
2 included such things as requests for rights to sue,  
3 dismissals for no jurisdiction, failure to cooperate in an  
4 investigation, or failure to locate a charging party.

5 The office also issued 1,368, or 54.5 percent  
6 no-cause findings, and 388, 15.5 percent, merit resolutions.  
7 Merit resolutions consist of conciliations, successful and  
8 unsuccessful; negotiated settlements and withdrawals with  
9 benefits.

10 During this same period the Phoenix District office  
11 also completed 40 presentation memoranda to the commission  
12 recommending litigation against respondents within the  
13 district. Also in FY '93, the Phoenix District obtained  
14 close to \$4 million in benefits.

15 In addition to the work-sharing agreement, EEOC  
16 also has a contract with the Utah Anti-Discrimination  
17 Division to process Title VII, age discrimination and  
18 disability charges which have been received by UADD. The  
19 purpose of this contract is to assist the EEOC in resolving  
20 the high volume of Title VII, age and disability charges in  
21 the state of Utah.

22 EEOC contracts with UADD for the satisfactory  
23 intake and resolution of Title VII, age and disability  
24 charges. A base amount for acceptable charge resolution is  
25 set by the EEOC each year, which is based upon the amount of

1 congressional appropriations.

2 In FY '93, the amount was \$450 a case, and in FY  
3 '94 it will be \$500 a resolution.

4 Each month UADD sends EEOC documentation on  
5 resolutions which have been completed. The documentation is  
6 reviewed and a determination is made as to whether EEOC  
7 should give substantial weight to the determination reached  
8 by UADD, and contract is given so that basis.

9 The Utah Anti-Discrimination Division is also a  
10 certified agency. To become a certified agency, the UADD had  
11 to be a designated agency with EEOC for four years. During  
12 that time, its work products had to meet all of EEOC's  
13 substantial weight standards and procedures with respect to  
14 every case, with at least a 95 percent acceptance rate.  
15 Prior to becoming a certified agency, for a period of ~~12~~  
16 ~~years, they also had to~~ 12 months they also had to meet at  
17 least a 95 percent acceptance rate.

18 In order to maintain a certified agency status,  
19 UADD has to maintain at least a 95 percent acceptance rate on  
20 the total number of charges which receive a substantial  
21 weight review each year.

22 UADD has been a certified agency for many years and  
23 continues to have a high ~~degree~~ ~~a high level of~~ acceptance  
24 rate on the charges which receive substantial weight reviews.

25 As a certificated agency, UADD is only required to



1 submit to EEOC certain documents from its charge files  
2 instead of having each file reviewed. Based on these  
3 documents, EEOC certifies acceptance of UADD's resolutions.  
4 However, every month EEOC selects on a random basis a certain  
5 number of charges, reviews the entire charge file and gives  
6 each a substantial weight review.

7 A substantial weight review consists of a thorough  
8 review of all the evidence in the charge file to ensure that  
9 the resolution is appropriate and supports the action taken  
10 on the charge. In addition to these reviews, every charging  
11 party is advised by the UADD at the time their case is  
12 resolved that if they wish to do so, they may request the  
13 EEOC to perform a substantial weight review of UADD's  
14 investigation. When we receive such <sup>a</sup> request, we obtain the  
15 file from UADD and conduct a substantial weight review on  
16 that entire file as well.

17 Most of the charges which are filed in Utah are  
18 filed with the Anti-Discrimination Division. In FY '90, the  
19 Utah Anti-Discrimination Division received 430 charges which  
20 were also dual filed with EEOC, in FY '91 they received 567  
21 dual file charges, ~~fy~~ <sup>737</sup> '92 they received ~~705~~ <sup>700</sup> such charges, and  
22 in FY '93 they received ~~703~~ dual file charges.

23 UADD's overall charge receipts for these years may  
24 vary because UADD may have jurisdiction over matters which  
25 are not within the EEOC's jurisdiction. For example, from FY

1 '90 through most of FY '92, EEOC did not have jurisdiction  
2 over disability charges.

3 For the time periods mentioned, EEOC contracted  
4 with UADD to resolve a total of 344 dual file charges in FY  
5 '90, 395 charges in '91, 589 in FY '92 and 546 charges in FY  
6 '93. The current contract for FY '94 is 547 dual file  
7 charges.

8 Of those charges resolved and submitted for review  
9 and accepted for contract credit in FY '90, there were 70, or  
10 24.6 percent, administrative closures; 55, or 19.5 no cause;  
11 and 159, or 59 percent, merit resolutions.

12 In FY '91, of those submitted and reviewed, EEOC  
13 gave contract credit for 83, or 31.9 percent, administrative  
14 closures; 93, or 35.8 percent, no cause, and 32.3 percent  
15 merit closures.

16 In FY '92, of those submitted and reviewed, EEOC  
17 gave contract credit for 74, or 23.1 percent, administrative  
18 closures; 161, or 50.3 percent, no cause; and 85, or 26.6  
19 percent, merit closures.

20 In FY '93 of those submitted and reviewed, EEOC  
21 gave contract credit for 53, or 16 percent, administrative  
22 closures; 176, or 53.2 percent, no cause; and 102, or 30.8  
23 percent, merit closures.

24 MR. MARTINEZ: May I interrupt, please, for a  
25 moment.

1 MR. BURTNER: I'm finished.

2 MR. MARTINEZ: Could we get that information in  
3 writing and maybe you could -- we could then take a look at  
4 it. It would probably be more useful. Since we have such a  
5 limited time, could you go to things that aren't statistical?

6 MR. BURTNER: I'm finished. I'm ready for  
7 questions. I'd be happy to submit this information.

8 MS. RICHARDS: Thank you. Questions?

9 MR. COHNE: Other than reviewing the case materials  
10 that you receive, the paper trail, what oversight do you work  
11 out, do you render to the Utah ADD? Do you have physical --  
12 do you have examiners or investigators who come up here and  
13 review their procedures to make sure they're complying with  
14 state administrative procedures law or the state law? How do  
15 you supervise this agency that you pay this money to?

16 MR. BURTNER: Most of the work products that we  
17 review are actually the case files. And we base most of our  
18 review on that. From time to time we will make a visit to  
19 Utah to do other sorts of reviews. Recently we completed one  
20 in which the deputy director looked at a number of the cause  
21 cases that were done in Utah over a period of a year and a  
22 half. And that was an on-site review in which <sup>he</sup> ~~she~~ looked at  
23 every one of the cases and talked with people who worked on  
24 those cases and answered questions and made suggestions.

25 MR. COHNE: Just one follow-up. Do you talk to the

1 claimants, the claimant's counsel or just to the UADD  
2 employees?

3 MR. BURTNER: We talk to the UADD employees.

4 MR. COHNE: But not to the claimants, the other  
5 parties, to determine if they felt they had been fairly  
6 treated?

7 MR. BURTNER: No, we do not do that.

8 MR. MARTINEZ: If I understand you correctly, then,  
9 you contract -- your agency contracts in advance for so many  
10 closures, so that there's a target of closures for the future  
11 year; is that right? Is that what you said?

12 MR. BURTNER: Yes.

13 MR. MARTINEZ: So that they would be looking this  
14 year to hit a target of closing 546 cases?

15 MR. BURTNER: Correct.

16 MR. MARTINEZ: So we know next year how many cases  
17 they're going to close to get paid; right?

18 MR. BURTNER: To some extent. Sometimes there is  
19 additional funding available because not every agency makes  
20 their goals. And so we might call and ask them if they think  
21 they can do additional work.

22 MR. MARTINEZ: More closures?

23 MR. BURTNER: More resolutions, yes.

24 MR. MARTINEZ: Yes. Okay. The second question is:  
25 As a certified agency, if I understand it correctly, that

1 means that you do not review their no-cause findings; right?

2 MR. BURTNER: No.

3 MR. MARTINEZ: What's it mean?

4 MR. BURTNER: It means that we only review a  
5 certain portion of -- it's a random sampling of all types of  
6 closures. So we review a certain amount of administrative  
7 closures, a certain amount of no-cause cases, a certain  
8 amount of conciliation, a certain amount of settlements, a  
9 certain amount of withdrawals with no jurisdiction, et  
10 cetera, et cetera.

11 Under the <sup>ADEA</sup>~~ADA~~, we review everything, no-cause  
12 cases.

13 MR. MARTINEZ: Would it be fair to say that the  
14 majority of cases, because they're a certified agency, do not  
15 get reviewed?

16 MR. BURTNER: Any certified agency, the majority of  
17 the findings will not be reviewed. It's only a statistical  
18 sampling of their cases. We do approximately 25 to 30  
19 percent.

20 MR. MARTINEZ: Okay. So if I put it together, you  
21 contract with them to close so many cases in the future, and  
22 the majority of those, when they close them to get paid, you  
23 will not review, so they are certain to be closed, stay  
24 closed and the investigation they did was sufficient?

25 MR. BURTNER: You've slightly put words into my

1 mouth. I said we review. You said we didn't review them. I  
2 said we review 30 percent of them.

3 MR. MARTINEZ: I said the majority of them.

4 MR. BURTNER: The majority of the cases that are  
5 Title VII, approximately 75, 70 percent are not reviewed.

6 MR. MARTINEZ: So 70 percent of the 546 cases that  
7 you have targeted for next year will not be reviewed and they  
8 will be closed based on investigation of Salt Lake?

9 MR. BURTNER: No, because we review every age  
10 termination, it would in fact be more than 25 to 30 percent.

11 MR. MARTINEZ: Okay. Will it be more than 50  
12 percent that won't be reviewed, other than age?

13 MR. BURTNER: It's in the future.

14 MR. MARTINEZ: But you know how many they're going  
15 to close.

16 MR. BURTNER: I know how many they think they can  
17 close, and we've contracted for them to close that number.  
18 If they don't meet that figure by a certain time during the  
19 fiscal year, then we downgrade their contract and we pay them  
20 less.

21 MR. MARTINEZ: So they do close that many or you  
22 downgrade their contract and take money from next year?

23 MR. BURTNER: No, from this year.

24 MR. MARTINEZ: So you penalize them for not closing  
25 that many?

1 MR. BURNER: If we contract -- we're a contractor.  
2 If you pay somebody to do work and they don't complete the  
3 work, then you can't pay them for not doing the work.

4 MR. MARTINEZ: That's all I wanted. Thank you.

5 MS. GILLESPIE: Are you aware that even after there  
6 is a finding of discrimination that there is no enforcement  
7 authority in the state of Utah?

8 MR. BURTNER: To become a designated agency, EEOC  
9 is contracting and having existing relationships with local  
10 as well as state governments throughout the country. The  
11 commission has established criteria on what an agency must do  
12 in order to become a designated agency. And there are three  
13 criteria that goes to enforcement: one is to be able to issue  
14 orders; one is to have the authority to try to get compliance  
15 with an act -- like a conciliation, and another one is to  
16 institute criminal proceedings.

17 Utah currently does -- has the authority to issue  
18 orders and has the authority to seek relief. And so based  
19 upon that, they meet that criteria to become a designated  
20 agency to do work for EEOC.

21 We, of course, from the federal standpoint, would  
22 like states and local agencies to adopt as much of our  
23 process as they can, but those are individual state and  
24 individual local community decisions, and we can't dictate  
25 that to them. We can set basic guidelines that apply ~~that~~

1 ~~and~~ to all, and try to enforce those.

2 MS. GILLESPIE: Who -- you say Utah has the  
3 authority to. Who in Utah?

4 MR. BURTNER: To seek relief?

5 MS. GILLESPIE: What agency in the state of Utah?

6 MR. BURTNER: UADD has the authority to seek relief  
7 through its conciliation process, mainly, right now, and as  
8 well as some of the other --

9 MS. GILLESPIE: But it has no authority to enforce  
10 this even when there is a finding of discrimination?

11 MR. COHNE: I think what she's saying is they have  
12 the ability to issue an order, they, by their own  
13 determination, have elected not to enforce the orders they  
14 issue.

15 MR. BURTNER: Okay. What I'm saying is that --  
16 let's say they didn't have the authority to issue orders, but  
17 they could seek relief from respondents by -- through  
18 conciliation. In other words, they have no judicial teeth.  
19 That is, as I understand it, that's the initial threshold to  
20 become a designated agency. So the federal government is not  
21 saying "you must enforce orders." We encourage states to do  
22 that, obviously, because that means more enforcement of  
23 Title VII.

24 MR. MARTINEZ: So that means your 706 contract with  
25 the state does not require that the state have the ability to



1 enforce its findings?

2 MR. BURTNER: I don't believe so. What I did in  
3 preparation for coming here is that I pulled out the  
4 regulations, I read the regulations, and I have them here. I  
5 can read them to you. It says you have to be able to issue  
6 orders, grant relief -- I mean, you know, seek relief, or  
7 institute criminal proceedings. Well, I look at what I'm  
8 looking at -- you know, what we receive from Utah on a  
9 continuing basis, and I say that meets those minimum  
10 guidelines.

11 MS. RICHARDS: Mr. Burtner, could you give us a  
12 copy of that? That would be very helpful. You could just  
13 send it to us.

14 MR. MULDROW: I have a follow-up question. If the  
15 UADD does not enforce their order, does the EEOC enforce it?

16 MR. BURTNER: I believe that such cases would then  
17 be referred to us. We would review that case and  
18 determine -- because it would be only at that point in which  
19 the case would be submitted for contract credit, and so we  
20 would look at that case. When we receive a case that has not  
21 been enforced or the charging party has elected to withdraw  
22 their cause finding with Utah and wants us to process their  
23 case, we send every one of those cases through our legal  
24 unit, and it receives a substantial weight review done by  
25 them.

1           We then determine whether additional investigation  
2 is needed or whether we can adopt the finding as it is, and  
3 then it goes into our process.

4           MS. RICHARDS: But I don't think that that  
5 necessarily answers Mr. Muldrow's question.

6           MR. COHNE: I think it does, but the question is  
7 can you cite one instance, one case, where EEOC has sought to  
8 enforce an unenforced order of the Utah ADD --

9           MR. BURTNER: Okay. We would not attempt to  
10 enforce your order. What we would do is issue our own cause  
11 finding, or adopt your cause finding and attempt to  
12 conciliate, and then we would make a recommendation to the  
13 commission to litigate the case.

14           Currently we have two cases filed in Utah in  
15 Federal District Court, and the probability is -- I can't say  
16 with a certainty -- the probability is that came from UADD. I  
17 mean, because I'm looking at they're taking about 800 cases,  
18 we're taking about 100.

19           MR. COHNE: Could you furnish us the information --  
20 without any breaches of right to privacy, could you furnish  
21 us both statistically and as much information as you can on  
22 cases that your office has determined where orders have been  
23 issued and not followed by the UADD and you have stepped in  
24 to cause enforcement?

25           MR. MARTINEZ: There shouldn't be very many.

1 MR. BURTNER: I don't know that based upon the  
2 information we have, in our case file, whether we could  
3 determine whether or not an order had been issued and not  
4 followed up on.

5 MR. MARTINEZ: No, what they're sending you are  
6 cases where they've found cause and then you review those  
7 cause cases, and then I think he's asking for those cause  
8 cases that you've undertaken enforcement on, under EEOC  
9 jurisdiction.

10 MR. BURTNER: Oh. Cases -- I could get the number  
11 for you of the cases, say, like in the last --

12 MR. MARTINEZ: Five years?

13 MR. BURTNER: I don't know if I can go back --

14 MR. MARTINEZ: As far as you can.

15 MR. COHNE: Four years would be fine. It would  
16 be --

17 MR. BURTNER: I might be able to go that far.

18 MR. MARTINEZ: Let me read you a statement out of  
19 the 706 agency contract --

20 MS. RICHARDS: Mike, Mike, Mike, we're out --

21 MR. MARTINEZ: I think this will clarify a lot --

22 MS. RICHARDS: Mike, Mike --

23 MR. MARTINEZ: In the 706 agency contract it says,  
24 "Has your" -- this is paragraph 3 out of your contract,  
25 okay? "Has your agency, the UADD, demonstrated its

1 willingness and ability to enforce its laws in such a manner  
2 that in fact the practices prohibited are compatible" --  
3 "comparable in scope to those practices prohibited under  
4 federal law?"

5           It is our understanding from the Task Force report  
6 and the Minority report that in 1992 Karen Okabe Suzuki, the  
7 then director, said that that was not true, and she signed it  
8 "No," that there was no enforcement and that the agency had  
9 not demonstrated a willingness or ability to enforce  
10 comparable state laws. Isn't that a criteria for the funding  
11 of that agency?

12           MR. BURTNER: When that question was answered "No,"  
13 it was also stated, "Currently the state of Utah is involved  
14 in the process of reviewing and redirecting the state law to  
15 include the foregoing provisions for compensatory and  
16 prospective relief."

17           We also asked whether there has been any major  
18 changes in the law from the previous year, and the answer to  
19 that was also "No." So we've contracted with them, with the  
20 state of Utah, on the basis of their being a designated  
21 agency with no changes, and since there was no changes, and  
22 they said it this way, they were still in compliance with the  
23 regulations.

24           MR. MARTINEZ: So what they're saying is, "No,  
25 we're not going to enforce it, but maybe we're going to work

1 on something that can be acceptable"; right? Because there  
2 was nothing enforced at the time she wrote that.

3 MR. BURTNER: I think it would be unfair for me to  
4 presume what was in the mind of the person who answered the  
5 question.

6 MR. MARTINEZ: Well, you authorized the contract,  
7 didn't you?

8 MR. BURTNER: Because we determined --

9 MR. MARTINEZ: You authorized it, didn't you?

10 MR. BURTNER: I personally? I recommended it be --

11 MR. MARTINEZ: Then on what basis did you recommend  
12 knowing that they said "No, but we're working on something,"  
13 on what basis did you recommend that?

14 MR. BURTNER: We recommended continuation of the  
15 contract because there had been no change in the law, and  
16 what they were doing before was in accordance with the  
17 regulations. The regulations state -- EEOC regulations  
18 state, <sup>FEP</sup> ~~FED~~ Agency Designation Procedures, Section 1601.7,  
19 Paragraph (A) (2):

20 "The state, a political subdivision, has  
21 either established a state or local authority  
22 or authorize an existing state or local  
23 authority that is empowered with respect to  
24 employment practices found to be unlawful to  
25 do one of three things: To grant relief from

1           the practice, to seek relief from the practice,  
2           or to institute criminal proceedings with  
3           respect to the practice."

4           It has been my understanding for the past years  
5           that we have had contracts with the state of Utah, with UADD,  
6           that they have been empowered to seek relief from the  
7           practice.

8           MR. MARTINEZ: Okay. That's all I want. Thank  
9           you.

10          MS. RICHARDS: Thank you, Mr. Burtner.

11          MR. MULDROW: Mr. Burtner, we may want to follow up  
12          with some questions in the mail. Is that permissible?

13          MR. BURTNER: Yes. Absolutely.

14          MS. RICHARDS: Thank you for your --

15          MR. BURTNER: And if you could include -- I'll  
16          start compiling the information as to what I recall, but I  
17          wasn't able to take notes, so if you could include those  
18          other things --

19          MR. MULDROW: If we could have a copy of your  
20          remarks, that would be helpful.

21          MR. BURTNER: Yes, I will send those.

22          MR. MARTINEZ: I think the record should reflect  
23          you came a long ways today for a short period, but very  
24          helpful.

25          MR. BURTNER: Thank you. I enjoyed it.

1 MS. RICHARDS: Thank you. You're a good sport.

2 Our last presenter is Ms. Irene Mee, who is the  
3 Regional Director, Office of Federal Contract Compliance  
4 Program, U.S. Department of Labor.

5 <sup>Ms</sup>~~Miss~~ Mee, if you would introduce yourself.

6 MS. MEE: Thank you. I realize we're running short  
7 on time, so I'll skip over a few of my comments. I'm going  
8 to give a copy of the prepared text to the reporter at this  
9 time.

10 I'd like to -- first of all, thank you for inviting  
11 us to testify before the commission. It gives us an  
12 opportunity to talk about what the Department of Labor's  
13 efforts have been in eliminating discrimination and promoting  
14 EEO in the work places that are funded with federal dollars  
15 in the state of Utah.

16 I'd like to first introduce to you Mr. Joe  
17 Gallegos, who is the district director here, and covering not  
18 only the state of Utah, but Joe also has responsibility for  
19 half of Montana and half of Wyoming.

20 And with him is our director of operations out of  
21 Denver. Her name is June <sup>Radtke</sup>~~Radke~~.

22 Let me tell you a little bit about who I am. I'm a  
23 newcomer to the West. I've been the director of the Rocky  
24 Mountain Region now for almost three years. Prior to this, I  
25 was one of those hated Washington residents you all talk

1 about. I was there for several years directing policy for  
2 OFCCP and before that I was the regional director in  
3 Philadelphia for this program for several years.

4 The OFCCP program deals strictly with federal  
5 dollars. Our jurisdiction is only over federal contractors  
6 and federal subcontractors. Companies doing business with  
7 the federal government sign contracts which contain clauses  
8 that require them to guarantee that they will practice EEO  
9 in their work places, that they will not discriminate in any  
10 of ~~the~~ <sup>their</sup> employment practices.

11 It is the responsibility of OFCCP, and specifically  
12 the Salt Lake City office, ~~to ensure as much as the~~ <sup>Within the limits of its</sup> resources  
13 ~~will allow~~, that contractors are ~~in fact~~ living up to the  
14 obligations of the clauses in their contract.

15 The Rocky Mountain Region covers a lot of  
16 geography. We cover not only the state of Utah, I mentioned  
17 Wyoming and Montana, we <sup>also</sup> cover the two Dakotas and the state  
18 of Colorado. We have two district offices in this region to  
19 cover that territory. The other district office is located  
20 in Denver. We also have in Denver a regional office, where  
21 I'm located.

22 It's the responsibility of the compliance officers  
23 in those offices to ensure that the federal contractors in  
24 all of their employment areas determine that ~~either~~ <sup>neither</sup>  
25 applicants nor employees are discriminated against based on



1 their race, color, sex, national origin, religion,  
2 disability, <sup>or</sup> ~~and~~ veteran status. We actually enforce several  
3 statutes and an Executive Order.

4 Companies that do business with the federal  
5 government, though, not only obligate themselves not to  
6 discriminate, they go much further. They must guarantee that  
7 they will take positive action to hire and promote members of  
8 the protected groups that I just mentioned.

9 Contractors that fail to comply with EEO and affirmative  
10 action provisions of their contracts are subject to  
11 sanctions. Those sanctions can go from remedying the  
12 deficiencies or violations that have occurred, to the  
13 ultimate -- disbarring the contractor. That disbarment can  
14 mean that we will pull all their federal contracts, and until  
15 a date in the future, prohibit them from bidding on any  
16 additional federal contract. That's in addition to  
17 rectifying whatever violations have taken place.

18 The statutes that OFCCP enforces are, first of all,  
19 the Executive Order, and that's Executive Order 11246, that  
20 prohibits the discrimination based on race, sex, color,  
21 ~~creed~~ <sup>religion or</sup> ~~or color~~, national origin, <sup>it</sup> ~~it~~ requires that  
22 contractors develop an affirmative action plan if they have  
23 50 or more employees, and if they have a contract of ~~50,000~~.

24 Those same requirements extend to Section 503 of  
25 the Rehabilitation Act, which we enforce and have enforced

1 since 1973, and also Section 4212 of the Veterans'  
2 Readjustment Assistance Act.

3 Coverage is invoked with a contract of \$10,000, but  
4 it takes the ~~50,000~~ <sup>the</sup> 50,000 and 50-employee standard in order for the  
5 contractor to be required to develop the affirmative action  
6 plan. We also have recently taken on ~~the~~ <sup>a new enforcement</sup> responsibilities.  
7 EEOC, as you know, has the main responsibility for the  
8 Americans with Disabilities Act; however, <sup>new</sup> OFCCP enforces the  
9 Americans with Disabilities Act in federal contractor  
10 establishments. Many peoples <sup>are</sup> are not aware of that. We have  
11 drawn a Memorandum of Understanding with the EEOC in order to  
12 ensure that there is no duplication of effort.

13 In addition, you heard Ken Mayne this morning  
14 talking about apprenticeship. We enforce, with the Bureau of  
15 Apprenticeship and Training, nondiscrimination issues in  
16 apprenticeship programs throughout the region. And finally,  
17 we also enforce certain section of the Immigration and  
18 Naturalization Act, ensuring that citizenship records <sup>on</sup> ~~are~~ new  
19 employees are available.

20 Compliance officers from the Salt Lake City office  
21 spend their time going out either on compliance reviews or  
22 complaint investigations. Those are the two methods that  
23 ~~initiate our action.~~ <sup>we use to determine compliance.</sup> One of the most important aspects of  
24 the review is whether or not the contractor is making the  
25 special efforts that are required in order to achieve EEO

1 through affirmative action. <sup>There's</sup> ~~That's~~ an important distinction  
 2 that many people aren't aware of, <sup>OFCCP regulations</sup> ~~that we're an agency not~~  
 3 ~~only dealing~~ with nondiscrimination, <sup>and mandate</sup> ~~but~~ affirmative action  
 4 ~~where~~ -- particularly where there is underutilization.

5           If there is underutilization in any job group that  
 6 has been identified by our compliance officers, contractors  
 7 are required to establish goals. Now, the goals are merely  
 8 that, they're target <sup>S</sup> ~~and what~~ we require the federal  
 9 contractor to do is take every good faith effort to attempt  
 10 to meet that goal. It's not a quota <sup>even though it is</sup> ~~A~~ sometimes called a  
 11 quota. It is purely a goal. It is a target ~~for~~ which  
 12 ~~they~~ the contractor -- is required to attempt to meet.

13           ~~During review~~ <sup>≡</sup> you might be interested in what  
 14 the compliance officer <sup>they conduct</sup> ~~does~~, because ~~it's~~ a very complete  
 15 review. They <sup>first</sup> analyze the affirmative action plan. They  
 16 compare what's in that plan to the actual employment  
 17 practices of the company. The investigator <sup>looks</sup> ~~looks~~ at  
 18 personnel, pay, all the personnel records, the interview  
 19 records, the applicant flow logs, who's been promoted, were  
 20 there minorities and females that should have been considered  
 21 if the promotion is outside the protected group. They look  
 22 at every aspect of the personnel and employment process. And  
 23 when contractors have fewer women or minorities than  
 24 expected, then if they haven't set goals, the compliance  
 25 officer requires that they do establish those goals.

1                    Let me say once more that failure to meet <sup>the</sup> ~~that~~ goal  
 2 is not a violation of the law. Failure to take affirmative  
 3 action or to make the good faith effort to attempt to meet  
 4 the goal is.

5                    When a review turns up problems, then what we try  
 6 to do first ~~of all~~ <sup>to</sup> is conciliate. ~~Now~~, we've been under  
 7 criticism for not (debaring contractors immediately), It's  
 8 not our objective to throw people out of work, ~~to pull~~ <sup>and that is what happens</sup>  
 9 <sup>when</sup> government contracts <sup>are cancelled</sup>. That's the last resort. ~~It is our~~  
 10 ~~we make~~ <sup>every</sup> ~~our~~ ~~efforts~~ ~~in attempting~~ <sup>we try</sup> to conciliate to get the  
 11 contractor to agree, ~~again~~, in writing, to take whatever  
 12 actions are necessary to remedy the violations in the  
 13 conciliation agreement.

14                    Now, if they ~~don't~~ <sup>won't</sup> do that and if conciliation  
 15 fails, we then refer the case to our ~~office of the~~ solicitor.  
 16 <sup>The Solicitor may file an administrative complaint</sup>  
 17 ~~And at that point these sanctions for the contractors begin to~~  
 18 ~~come into play, which, as I mentioned, can be losing their~~ <sup>are imposed</sup> <sup>contractors may lose</sup>  
 19 government work, ~~and having~~ <sup>have</sup> payments withheld or can be  
 20 debarred from government business.

21                    Our Salt Lake City office has a very small staff,  
 22 but during the past few years they've had some very  
 23 significant cases. Most recently you may have read in the  
 24 paper where the first debarment -- term ~~a~~ debarment; under  
 25 this administration -- was as a result of the work of the  
 Salt Lake City office, and that was the debarment of ~~the~~

1 ~~termed debarment~~ of Layton Construction Company. In this  
2 particular case, which was in the newspapers, the company did  
3 not abide by the terms of the conciliation agreement, which  
4 they had signed, to recruit women for craft positions. In  
5 fact, the compliance officer, when they went back to see if  
6 the company had done what it said it would do, was able to  
7 identify women who had applied for jobs, who were  
8 well-qualified and who didn't get hired, <sup>even though</sup> ~~and~~ there were  
9 openings.

10 So in addition to the debarment, the contractor was  
11 required to offer jobs to the women that had been  
12 discriminated against and pay them back pay from the point in  
13 time where the discrimination occurred until we reached a  
14 settlement.

15 This is only one example of some of the  
16 administrative enforcement that we have had. Right now there  
17 are two other cases, both in the construction industry, that  
18 are pending in Washington for enforcement, that have come out  
19 the Salt Lake City office.

20 This morning you asked Ken Mayne about how are we  
21 doing with women in construction in Utah. Well, I've got  
22 some figures for you to tell you how we're doing. These came  
23 out of the 1990 census, and I have to tell you that we're  
24 doing very badly. The federal goal is 6.9 percent for women.  
25 There is not a contractor that we have reviewed that ~~I know~~

1 ~~of that~~ is meeting a federal goal of 6.9 percent of women.  
 2 That's 6.9 percent in each of the trades.

3 Let me tell you what the 1990 census tells us. It  
 4 <sup>shows</sup> ~~says~~ that in the construction trades in the state of Utah  
 5 there are 29,182 males, and there are 745 females. Now, I'm  
 6 not very good in math, but I think it comes out to three  
 7 percent. The one trade that has more females than any other  
 8 is the paper hangers, and their numbers aren't very big to  
 9 begin with. Women run about 51 percent there, but I think  
 10 it's 35 women and 34 men. ~~So they aren't sound in numbers.~~

11 You might be interested that painters have eight  
 12 percent female and that is above the goal. However,  
 13 electricians have three percent, carpenters and plumbers are  
 14 two percent, and the rest <sup>are</sup> ~~were~~ too slight to mention. So  
 15 that gives you an idea of the kinds of problems that we all  
 16 face in attempting to open up the construction industry to  
 17 women and minorities.

18 The reason I'm focusing on women in my talk is not  
 19 because we don't look at both and aren't pushing for both, <sup>it's that</sup>  
 20 ~~because the goals we have also goals for minorities in the~~  
 21 ~~state the Utah.~~ <sup>non-traditional jobs</sup> Most of the <sup>federal</sup> goals for minorities that we  
 22 ~~have set, the federal goal is~~ <sup>are</sup> between five and six percent.

23 <sup>no P</sup> However, there are four or five counties down in  
 24 the southeastern part of the state that have a goal of around  
 25 12.1 percent. We're doing better in minorities in some

1 counties. *than others*

2 The Salt Lake City office has also conducted about  
 3 ~~200~~ <sup>200</sup> compliance reviews ~~during the last~~ ~~of 200, I'm~~  
 4 ~~sorry~~ during the last three years. A compliance review,  
 5 ~~as you can tell,~~ is a very extensive in-depth study. So it's  
 6 not ~~something~~ <sup>a situation where</sup> they can go in, <sup>to the workplace</sup> conduct ~~it~~ and get right out  
 7 again. <sup>The office has also</sup> ~~Also they have~~ conducted about 70 complaint  
 8 investigations. Nearly 80 percent of the ~~the~~ reviews conducted  
 9 by that office have come up with violations of some sort,  
 10 not always violations that are as extensive as being able to  
 11 identify discrimination, but certainly violations that have  
 12 shown the contractor wasn't taking affirmative action, may  
 13 not have been setting proper goals, or may have been having  
 14 what we call "technical deficiency" <sup>idp</sup> in their AAP.

15 ~~One of the priorities that~~ we have ~~actually~~ two  
 16 major priorities ~~that have been set~~ for this fiscal year.  
 17 One is to increase the number of women in nontraditional  
 18 employment. That would explain to you my focus on the  
 19 construction industry. However, nontraditional employment is  
 20 not merely construction. The other -- and I'm sure that  
 21 you've all heard about this too -- is to attempt to work with  
 22 industry in removing the glass ceiling.

23 ~~the~~ the Salt Lake City office also has conducted  
 24 several reviews that have been what we call glass-ceiling  
 25 reviews, and that will continue. ~~there~~ a glass-ceiling review

1 is ~~is~~ a normal compliance review plus. ~~And the plus is that~~  
 2 we look at all of the executive jobs <sup>the mix of women minorities,</sup> and how people got into  
 3 those positions, what kind of planning they have for moving  
 4 women and minorities up above what we call the glass-ceiling  
 5 level, <sup>etc.</sup> ~~and a lot of it is making~~ <sup>We make</sup> management aware that  
 6 discrimination is at every level within a corporation, and  
 7 ~~also~~ that affirmative action is a requirement at every level  
 8 within the corporation. <sup>up through the executive suite.</sup>

9           Although we have not, in the reviews they have been  
 10 done here in Salt Lake City, identified discrimination in the  
 11 glass-ceiling reviews, <sup>as yet</sup> we certainly have found that there has  
 12 been a lack of affirmative action. In order for us to  
 13 identify discrimination, we have to be able to show that  
 14 there are people in the pipeline that could be chosen and <sup>that</sup>  
 15 they are qualified. <sup>after we find</sup> When affirmative actions <sup>a has</sup> have not been  
 16 taken, what we find ~~is~~ that there's <sup>no women or minorities</sup> ~~nobody~~ in the pipeline. <sup>to be</sup>  
 17 ~~And so much of what we have been doing has been~~ <sup>We</sup> requiring  
 18 contractors to reassert their efforts of affirmative action  
 19 at those levels. <sup>consider:</sup>

20           Although compliance reviews and complaint  
 21 investigations are the major tools that we use in order to  
 22 determine whether or not there is compliance with the  
 23 programs and statutes that we enforce. We also use proactive  
 24 approaches. ~~And~~ Mr. Gallegos, who is the Salt Lake City  
 25 director, as I mentioned, has been very active in the



1 Salt Lake community and in Utah, in addition to the other  
2 states where he has responsibility.

3 Earlier today you heard Miss Kim Marquardt speak.  
4 Kim is the chairperson of ~~what we call~~ <sup>one of our</sup> an industry liaison  
5 group. We have, throughout the country, industry liaison  
6 groups which ~~really~~ are groups of employers coming together  
7 to try to develop strategies for eliminating discrimination  
8 and increasing affirmative action in their local community.

9 In the state of Utah we have not only the group  
10 that Kim chairs, but also one made of your major university <sup>is</sup>  
11 and another corporate group. ~~And with that~~ <sup>Since time is short</sup> I will, pause for  
12 questions. <sup>new</sup>

13 MS. RICHARDS: Thank you.

14 Questions from the committee?

15 MS. SHIMIZU: The other person, ~~didn't he say~~ <sup>said</sup> that  
16 he's trying very hard to solicit women to get into the  
17 construction type of employment, ~~and he's trying to, didn't~~  
18 ~~he say that? I can't remember that, but that the~~ <sup>But the</sup> tendency of  
19 the people in this area, the reluctance, may be the cause of ~~the~~  
20 low percentage.

21 MS. MEE: Well, you know, that's the way it was  
22 when we started out maybe 25 years ago in opening up white  
23 collar work places to women and minorities. We have some  
24 prejudices that have to be overcome, but I happen to know  
25 work places in the country that have very high percentages of

1 women, and I don't think that the women there are that  
 2 different from what they are throughout our region. I think  
 3 there's a lot that we can all do in making it okay for women  
 4 to work in the construction industry.

5 ~~I think that~~ construction contractors have got to  
 6 make very special efforts to make sure that the women are not  
 7 discriminated against, are not harassed, are not treated  
 8 badly. We <sup>have</sup> all heard horror stories, ~~and I'd like to tell you~~  
 9 ~~that we've~~ <sup>When we become</sup> been able to stop ~~them~~ <sup>them</sup> and we've eliminated them.  
 10 Unfortunately, I'm still hearing ~~them~~, and I'm sure you are  
 11 too. <sup>Complaints of harassment</sup>

12 ~~I think that we also~~ <sup>g</sup> one of the things that we  
 13 have found is that we've got to go back to the vocational  
 14 counselors in the schools and let them know that ~~it's okay~~  
 15 <sup>great opportunities</sup> for women to work in the trades too. There are many women  
 16 who would prefer to work for fifteen dollars an hour rather  
 17 than five. I think we've got a lot to do in order to tell  
 18 women that it is an occupation that's perfectly acceptable.

19 MS. HUTCHISON: May I ask, do you ever have any  
 20 complaints from the employee or do you just look at the  
 21 contracts that you have to make sure that they're  
 22 in compliance?

23 MS. MEE: Oh, no. No. A very large portion of our  
 24 business ~~is from~~ is generated through complaints, and we  
 25 accept individual complaints in all of our programs with the

1 exception of those filed based on race, sex, color, national  
 2 origin and religion, because ~~we have an~~ <sup>of our</sup> agreement with EEOC.  
 3 If we have an individual complaint in those areas, we refer it  
 4 to them, if it's a class complaint, we take it.

5 MS. SHIMIZU: What are ~~the~~ <sup>or</sup> typical prejudices <sup>in</sup>  
 6 ~~the construction business or the profession for women? What~~ *discriminations in the construction business that*  
 7 ~~do they say? What is the typical of the entire United~~ *women face? What do women say about them?*  
 8 ~~States?~~

9 MS. MEE: Well, I thought Ken did a really good job  
 10 this morning of talking about what the prejudices are -- you  
 11 mean among the women themselves?

12 MS. SHIMIZU: ~~So that it discourages them.~~ *What kind of obstacles or discrimination*  
 13 *discourage women to enter into the construction trade.*

14 MS. MEE: Well, there are some real problems.  
 15 There's the problem of day care, and we're trying some  
 16 experiments around the country -- and I urge you to maybe try  
 17 them here, using mobile day care centers -- because often  
 18 the job site may be in one place for a few months, but then  
 19 ~~because~~ <sup>in</sup> the construction industry you move from job site  
 20 to job site. Another is transportation, ~~in that a person~~  
 21 ~~you~~ <sup>Employees</sup> can't get <sup>to the worksites</sup> ~~there generally~~ by public transportation.

22 I don't think that women dislike working in the  
 23 rain any more than men do. I think that some of the problems  
 24 that women have in construction are the same problems that  
 25 men have. Now, they have the barriers of men feeling like

1 they shouldn't be there to begin with, not being treated with  
 2 a great deal of respect. Sometimes just being treated with  
 3 blatant discrimination.

4 ~~And what we have~~<sup>in</sup> our regulations, we recommend  
 5 that every construction contractor bring on two women so that  
 6 one woman isn't on the work site alone. And there is some  
 7 progress being made. We ~~are~~ have a long way to go.

8 MS. SHIMIZU: ~~I do have a friend who is a~~ *I have a friend who is a woman*  
 9 ~~contractor, woman contractor, but she does say that there is~~ *contractor. According to her, there are discrimination*  
 10 ~~in the trade. Even if she is the lowest bidder, her~~ *in the trade. Even if she is the lowest bidder, her*  
 11 ~~discriminations because when you bid for a project, and~~ *discriminations because when you bid for a project, and*  
 12 ~~competency is scrutinized harsher because she is~~ *competency is scrutinized harsher because she is*  
 13 ~~sometimes she is the lowest bidder, and yet the person who is~~ *sometimes she is the lowest bidder, and yet the person who is*  
 14 ~~a woman and sometimes the contract is awarded to~~ *a woman and sometimes the contract is awarded to*  
 15 ~~given the bid feel is she capable? How is the background?~~ *given the bid feel is she capable? How is the background?*  
 16 ~~a higher bidder. This kind of discrimination~~ *a higher bidder. This kind of discrimination*  
 17 ~~And oftentimes -- sometimes, oftentimes, the higher bidder~~ *And oftentimes -- sometimes, oftentimes, the higher bidder*  
 18 ~~frustrates her.~~ *frustrates her.*  
 19 ~~will get because she's a woman and she's not -- they do not~~  
 20 ~~feel comfortable -- competent.~~

16 MS. MEE: If it's federal work, they don't have  
 17 that kind of latitude. If it's nonfederal work, ~~they can~~  
 18 ~~make whatever decisions they want to make, but~~ *other rules may apply.*  
 19 ~~there are~~ *there are*  
 20 ~~always performance bonds and mechanisms that can be used to~~ *for sure*  
 21 ~~ensure that they get the work done. And you know, they don't~~ *The contracting officials*  
 22 know that the other one is going to be able to perform  
 23 either. It's the discrimination that exists and that we're  
 24 all here to try to overcome.

24 MS. RICHARDS: On that note, thank you very much.  
 25 We realize that you have to catch a plane.

1           MR. MARTINEZ: You should know that your staff in  
2 Utah is not only well known, but very active in the community  
3 and well respected.

4           MS. MEE: Thank you for telling me that. We're  
5 quite proud of them.

6           MS. RICHARDS: We now have time for an open  
7 session. We have five persons who have signed up to address  
8 the committee, and we ask them if they would please limit  
9 their remarks to five minutes each. Anyone who has not been  
10 able to sign up, we would let them know that we will receive  
11 information by mail. If the five minutes is not sufficient  
12 to give your entire case, if you would please give what you  
13 can in the five minutes, and then send us any additional  
14 information by mail. Those people who have not been able to  
15 be heard, we will also be receiving your information by mail  
16 as well.

17           Our first presenter is Robin Kaelin.

18           MS. KAELIN: I appreciate the opportunity to  
19 address you. I'm sorry my voice is so horrible. I don't  
20 know if the microphone even picks it up. I'm still fighting  
21 a cold. I'm Robin Kaelin. I've had 18 years of experience  
22 in the business community here in Utah, as well as businesses  
23 outside of Utah, for the last 12 of years of that time spent  
24 in management. I have a personal knowledge of  
25 discrimination, harassment problems, from the victim's

1 standpoint, as well as from the side of corporate management.

2 I have spent the last years working to educate  
3 myself and others, individuals and businesses, as far as some  
4 of the employment problems that are out there and better ways  
5 of trying to solve those problems.

6 Discrimination is not just a minority issue. The  
7 numbers -- a minority, female issue. The numbers you were  
8 given this morning reflect that age discrimination is one of  
9 the highest numbers of complaints here in the state of Utah.  
10 They didn't go into great detail about that, but that is  
11 white management, upper male -- upper management as far as  
12 those complaints are concerned. So it is something that  
13 affects all of us.

14 I'm here to give the UADD credit for having made  
15 some changes. I think -- I would also like to accept part of  
16 that credit or take part of that credit, because I'm the  
17 squeaky wheel that pushed for mediation, pushed for better  
18 understanding, pushed for reformed ideas at the UADD, and  
19 better lines of communication.

20 I was often ignored. I was ignored totally,  
21 really, for the most part, until some of these other  
22 commissions came out -- or the Task Force came out, and yet I  
23 felt after having gone through that system in 1989 -- I'm a  
24 very pushy, independent person, and I had difficulty  
25 believing that anybody had to face the kind of situation I

1 was facing.

2 I know that we have heard from many people today,  
3 many people yesterday, but those are not the people that  
4 we're here to talk about. I have some real concerns about  
5 these good intentions that have taken place because there's  
6 still a lot of work to be done. And I still see the door  
7 pretty much closed on communication.

8 Some of the concerns I have are we continue to  
9 debate this issue while the thousands of nameless faces will  
10 go through that department this year. You've seen on your  
11 figures again over 900 for last year. They're assuming it  
12 will be well over a thousand this year coming up.

13 These people are nameless and faceless as far as  
14 these hearings are concerned, but their pain is very real.  
15 They have families, goals, and heartache, and they continue  
16 to try to work through the problems. I have heard personally  
17 from over a hundred and fifty people at this point about some  
18 of the problems they've had.

19 They're people -- a young woman with a family of  
20 four -- that ended up losing her husband through divorce  
21 because of a situation she faced at work. Literally, her  
22 desk was outlined -- an area around her desk was outlined  
23 with yellow duct tape, and she was told except for a  
24 five-minute break in the morning and afternoon and lunch, she  
25 couldn't walk outside of that area. Her phone, on numerous

1 occasions, would be greased when she arrived in the morning.

2           This last little while I've been working with a man  
3 who is part American Native and part Hispanic. He was  
4 awarded just two months ago a top promotion as far as sales  
5 were concerned. When he went -- received the award in front  
6 of his peers, over 300 of his peers seated in the audience,  
7 the presenter, one of his top management people, gave a war  
8 whoop and danced around the stage like an Indian. He patted  
9 this man on the back and said "We really like him. He's our  
10 token Hispanic. He's our token Indian, and he's also an old  
11 man."

12           I don't need to tell you that those are things that  
13 we would all like to think happened hundreds of years ago and  
14 we've moved forward. We haven't moved very far forward, if  
15 that continues to happen. This man was commonly referred to  
16 as a chili bean, as a wetback, and as a halfbreed. It was  
17 always in a joking fashion and always laughing and slapping  
18 him on the back, like "Isn't that a funny joke," but my  
19 friend wasn't laughing, and I don't laugh when I hear these  
20 stories.

21           People suffer for years. This morning the Attorney  
22 General's office told you that everyone that's fired  
23 automatically files a complaint. That's not true. People  
24 suffer for years and years and years in the work place. They  
25 do everything they can to bury what's happening because they



1 want to keep their job. They want to remain productive.  
2 They want to keep working at the company and they know if  
3 they make waves that won't happen.

4 I really feel that after spending the years that I  
5 have on this issue that these numbers are reflective of some  
6 instances where it was unfair practices, unfair business  
7 practices, not illegal, but very definitely a large number of  
8 illegal acts.

9 I didn't bring copies of these for each of you, but  
10 I would like to give them to you to make copies. These are  
11 statistical data from UADD fiscal year 1991 and '92. These  
12 are right off of the computer, and they reflect the fact last  
13 year that of some 600 cases that were settled, 408 of those  
14 determinations -- they talk in terms you can't look at the  
15 numbers, and yet they continue to go back to the numbers --  
16 so I continue to go back to the numbers. Out of the 408  
17 cases that had determinations, 29 of those cases found cause,  
18 379 found no cause.

19 I make those points because if you just look at  
20 these figures, you know even from a random selection, the  
21 percentages are skewed in the wrong direction. Business sees  
22 that as a positive because they're winning. I've been  
23 working with businesses lately, trying to help them  
24 understand that that is also a losing situation. They are  
25 not winning, even though they see 379 determinations in their

1 favor. They are spending millions of dollars to defend  
2 themselves against those charges.

3 I'm trying to get businesses to see the importance  
4 of looking back inside, spending that money inside on better  
5 lines of communications, conflict management, alternate  
6 dispute resolutions and so forth. Ways of solving these  
7 things inside without having to go out to the UADD, and then  
8 using the UADD as a last resort.

9 I'm here to make a couple of recommendations.  
10 You've heard the good and bad. You've heard that everything  
11 is fine at the UADD, they've got problems, but they're  
12 solving them quickly. I'm afraid that they're solving them  
13 too quickly in some instances. I'm one that pushed mediation  
14 loud and clear for over four years, and yet I'm concerned  
15 that this mediation is not professionally handled.

16 It is -- the investigators that are working on  
17 mediation are doing a terrific job at being handed more and  
18 more responsibility, but they are not trained in the area of  
19 mediation. And I think we need to step back and take a look  
20 at some of these things and fine-tune them and evaluate them.  
21 I think too that the advisory council is absolutely necessary  
22 as far as working with the UADD actively to come up with some  
23 of these changes, to evaluate, to test programs, to look at  
24 alternatives, and then to iron out what will actually work.  
25 They were tasks to put their procedures in written form, and

1 they need help doing that, because the procedures they've  
2 used have not worked in the past.

3           Enforcement is absolutely critical. After a long  
4 period of time of not really talking much to the UADD, after  
5 the Task Force completed its business, I went back to Colleen  
6 Colton, Commissioner Colton, I said, "Couldn't we bury the  
7 hatchet and find a way to work forward in a positive way?"  
8 She said, "I'm glad to dialogue." I said, "There's got to be  
9 a better way of solving these things then continuing to  
10 fight." And she agreed to meet us part way.

11           I feel enforcement, through UAPA, which you've  
12 heard about for two days, Utah Administrative Procedures Act,  
13 is not the only thing that can be done. It has to be on the  
14 Utah Annotated Code. You, from an attorney's standpoint,  
15 those of you on the board, know that there are ways to get  
16 around those gray areas if they're left open. We have to  
17 send a clear message once and for all that we are no longer  
18 going to tolerate discrimination by putting it on the record.

19           The UADD backed off last week as far as  
20 enforcement. They were in agreement, and yes, they should  
21 have enforcement on the Utah Code. The Attorney General's  
22 office told you this morning there is a bill with that. The  
23 UADD's office has backed off on that, and I would like them  
24 to again join forces with us.

25           Just one final point, and that is on the Utah Human

1 Rights Commission. You've handed out a brochure that you  
 2 brought with you, "the Dream of the Sixties to the Vision of  
 3 the Nineties," from Alabama Advisory Council. It talks in  
 4 terms of the Human Rights Commission. Instead of the  
 5 battleground of confrontation and fights, move to a round  
 6 table of dialogue. Such a commission can be the facilitators  
 7 that will allow us to mediate our differences, while  
 8 establishing and preserving the harmony among races,  
 9 religions and genders of our state and its structure. These  
 10 things are critical, and I would like to see us actively  
 11 investigate the possibilities. Thank you for your time.

12 MS. RICHARDS: Our next presenter will be  
 13 Ms. <sup>Suesan</sup>~~Susan~~ Valdez.

14 I apologize if I'm not pronouncing it correctly.  
 15 If you'd introduce yourself to the committee, please.

16 MS. VALDEZ: As you said, my name is <sup>Suesan</sup>~~Susan~~ Valdez.

17 I came today because I just happened to see the article in  
 18 the paper. I didn't come prepared to say a speech, <sup>much less</sup> ~~to~~ give  
 19 one, ~~much less~~ however, I am happy to be here because I feel  
 20 that it is important that people are made aware of the  
 21 discriminatory acts that do go on every day in our lives.

22 Growing up and being born and raised in Utah has  
 23 not been an easy life, as many of you <sup>non LDS</sup> and minorities, are  
 24 aware, and ~~non LDS.~~

25 <sup>no P</sup> I don't like to speak badly of anybody; however,

\* corrected text, changes considerably here - please look at Mr. Valdez' corrected transcript,

1 it's been on numerous occasions that I've always tended to  
2 find myself in a position of self-defense, and it's really  
3 sad. \*I mean, I have held administrative positions for a  
4 great deal of my life. I have worked in high administrative  
5 positions. I've worked for housing. I've administered  
6 federal, state and local laws, administered programs that  
7 dealt with low and moderate income families, and I've always  
8 tried my best to make sure that those families were assisted.

9           And all too often I find that people in  
10 administrative positions but persons of minority nationality,  
11 and possibly women as well, are put in positions simply to  
12 fill a government quota, to fill a government requirement,  
13 and then they put them in those positions and they say,  
14 "Well, there. We've satisfied our responsibilities. We've  
15 but these people in a position." All right.

16           Then what happens is they control you so that  
17 you're not able to perform or do the responsibilities that  
18 they've placed upon you. Okay? Like I was in a position  
19 where I was hired to assist a minority -- a high minority  
20 area. I was accused of discriminating and helping minority  
21 people, and I says, "Why did you put me in that position,  
22 then, if you didn't want me to help these minorities?" I  
23 mean, my heck, they put me in an area that dealt with low  
24 income -- and that was the purpose of my position. I was to  
25 help a minority area of the city, and then they say -- they

1 questioned everything. Everything I did. My phone calls  
2 were monitored.

3           What happened is I went through a personal crisis,  
4 and all of a sudden I became victimized. My employer asked  
5 everyone to watch me. Yes. Yes. He asked everyone to watch  
6 me. It put me in a very vulnerable position.

7           I was sexually harassed. I was -- I was generally  
8 harassed, and here I am making excuses for these people and  
9 their behaviors, and they made none for mine. Made none.  
10 But I didn't lose courage. I continued to do my work, and I  
11 tried my best to ignore them and continue to try to speak to  
12 them in respectful and genuinely caring tones. But this goes  
13 on every day.

14           I saw myself being set up before my very eyes. I  
15 mean, I saw the replacement for myself. They were training  
16 him right in front of me, and meanwhile my phone calls were  
17 being monitored and they were looking for an excuse to get  
18 rid of me. Do you know what the reason was? I was causing a  
19 morale problem.

20           I says, "Excuse me, but who do I look like? Did I  
21 look like God? I'm the cause of their morale? Who's going  
22 to provide me with my morale boosting?" I provided it for  
23 myself, that's what I did. By doing my work, by keeping my  
24 nose to the grindstone, and by continuing to try and make my  
25 supervisor aware of all of my doings. We had weekly

1 meetings, and on top of that, additional conferences with my  
2 employer to advise him of what I was doing and my  
3 accomplishments, which he was fully aware of. Fully aware  
4 of.

5           But that's what happens when you have an  
6 incompetent administrating supervisor that doesn't know how  
7 to deal with the situation, but it works against you.

8           And then when you're put in this traumatizing  
9 circumstance, I found you lose your memory, you lose the  
10 ability to function. I've suffered deep emotional problems  
11 as a result of this abuse. I have had to take therapy.

12           This happened to me in April of '92, and I'm still  
13 getting through the trauma of it all. It reduced me to  
14 homelessness, and I've been working for the federal  
15 government for years. And that's what it did to me. It has  
16 reduced me to a position where I have to rely on family and  
17 friends for my existence. And then we're put in a position  
18 where we have to wait until it goes through all these steps  
19 and procedures. I went through them all. I went through  
20 hearing processes. You know, I went to unemployment. I  
21 applied for unemployment, and I was denied benefits. I had  
22 gone to legal aid, and you know what? Moments before the  
23 hearing process began she said, "I'm sorry, but I can't  
24 represent you because my employer said I might lose and it  
25 would reflect badly on me." Yeah.

1           So you know, that's what we're up against, and it's  
2 not just minorities, it's not just those that are not  
3 non-LDS, but it's women too. It's just compounded when  
4 you're a minority, when you're female, when you're non-LDS.  
5 And you know, the innuendoes he made? "You are stealing  
6 government time." Well, let me tell you, I've given more  
7 than he could ever accuse me of taking.

8           And I finally -- I have finally gotten it together,  
9 and it's taken me all of this time, and maybe some of that  
10 time has been good because it's taken me this much time to be  
11 able to come up with all of the things that happened in my  
12 work place. All of the things that were going on. I went to  
13 the mayor and I advised him of what was going on, and they  
14 told me, "One of you will be let go."

15           Oh, it was me, and it was in violation not only to  
16 personnel policies, I mean, it was a wrongful termination, as  
17 well as discrimination. I knew that. They knew that. They  
18 didn't care. They didn't care how damaging or destroying  
19 they were to a human being. And that's all I've got to say  
20 is that something needs to be done. Something needs to be  
21 done to make these processes go through quicker and to  
22 understand that the person that's going through it is in a  
23 traumatized situation where they do lose their memory and  
24 they're unable to come up with answers like that, and it  
25 might make them look very -- in a bad position, because it's



1 hard. It's really difficult when you're fighting for your  
2 total existence. Your -- you have to support a family. You  
3 want to keep your job, like I said.

4 I've seen it happen many a time. I was working in  
5 the housing situation where my employer moved on. A new  
6 executive director took over. That was on -- like on May 1.  
7 May 5th I was fired, and I say, "What do you think? I'm  
8 working because I love to? I'm here working because I have  
9 to support myself. I have children," you know.

10 MR. MULDROW: I don't want to cut you off, but we  
11 have got to be going on with our proceedings here. I would  
12 like to say that we would like to remain in touch with you  
13 and get more details on your situation.

14 MS. VALDEZ: Well, it's in the hands of the EEO  
15 right now, and I do have a case number, and I requested --  
16 because I understood that in order for me to proceed with  
17 this -- I was told by an attorney that in order for it to  
18 be -- a federal suit to be filed, it had to be answered  
19 before -- prior to December 15th of this year.

20 I contacted them and they said, "No, because you're  
21 filing on the basis of discrimination, we still have time,"  
22 so therefore they're taking it into the next quarter.

23 MS. RICHARDS: Thank you.

24 MS. VALDEZ: That gave them more time.

25 MS. RICHARDS: Thank you for sharing your story

1 with us. We appreciate that.

2 Our next presenter is Robert Wilde.

3 Mr. Wilde.

4 MR. WILDE: Good afternoon. My name is Robert  
5 Wilde. I'm the president of the Utah Employment Lawyers  
6 Association. I've come to speak with you today to address  
7 some issues that have been addressed to me on the telephone  
8 in the last couple of days since you've been here, and that  
9 is primarily the availability of counsel to represent  
10 individuals who have discrimination claims.

11 Utah Employment Lawyers Association is a fairly new  
12 organization. In order to qualify as a member, you have to  
13 represent employees, the majority of the time in employment.

14 It seems to me that in selecting an attorney there  
15 are several issues. One is identifying whether or not  
16 there's a claim; two is dealing with large claims; and  
17 finally -- which I think is probably more important to the  
18 issues you're addressing here today -- is dealing with the  
19 smaller claims.

20 Recent advancements or changes in employment law in  
21 Utah, including the number of Supreme Court decisions, have  
22 sensitized the public to the fact that there are in fact  
23 legal remedies for employment-type claims. Accordingly,  
24 those of us who practice in this area get a lot of telephone  
25 contacts, we are referred to a lot of people. It's not

1 uncommon to have someone call and say, "I spoke with  
2 so-and-so who's also an attorney. He's an estate planner;  
3 however, he assures me that I have an excellent employment  
4 claim, discrimination, and I'd like to have you take and deal  
5 with it, because I know it's going to be a fine claim."

6           And as you go through the facts a little bit more,  
7 then you discover in fact there is no such claim. And this  
8 person has merely referred the potential client on to you in  
9 order to get him out of your hair.

10           Unfortunately, the practice historically in the  
11 field was -- someone calls and they don't have a claim,  
12 rather than subject yourself to liability for telling them  
13 that they don't have a claim, in the event that there is some  
14 remote possibility out there, attorneys will often say,  
15 "Well, you may well have a claim, but I don't have time to  
16 handle it right now," which the person who is not attuned to  
17 the code words that are being spoken there interprets, "Well,  
18 I probably have a claim. So I'll go back to the phone book  
19 and call the next 15 lawyers," who are going to tell this  
20 person the same thing.

21           Utah Employment Lawyers Association has taken the  
22 position that that's not an appropriate demeanor for dealing  
23 with people who have claims, and some of us have in fact  
24 drafted our own brochures that describe the status of Utah  
25 Employment Law. And when people call and we determine they

1 don't have a case, then we'll send such a document on to them  
2 so they can review what the case is in Utah and see if their  
3 case fits into the parameters for truly having a case.

4           There is some problems with that because that may  
5 have a tendency to subject those of us who practice in that  
6 way to some liability in the event that this person does have  
7 a case they're not able to identify that.

8           It would seem to us that it would be very handy if  
9 UADD -- or some other governmental agency -- had such a  
10 document, a brochure that we could hand out, send to  
11 potential clients, so they could examine their own case.  
12 When I say "examine their own case," that does not mean that  
13 we would not examine it, but when we don't believe that they  
14 necessarily have a claim, give them the opportunity to  
15 confirm in their own mind that that's the case.

16           It seems to me that identification of these sorts  
17 of claims is one of the principle burdens on UADD, because  
18 the people that don't call us probably call UADD, and they  
19 then spend a fair amount of time screening out the people who  
20 were terminated because the employer's going out of business  
21 or -- unfortunately it's not uncommon for people to call and  
22 say "I know I was discriminated against because I'm over 40,  
23 I'm the protected class, and money was missing from the  
24 office, and so several of us were fired," and they have a  
25 difficult time understanding that merely being in the

1 protected category does not mean they necessarily have a  
2 claim. So it would appear to me that that's where the  
3 investigators at UADD spend a large amount of their time.

4           Again, I would think that some sort of official  
5 brochure, publication, to assist people in getting an  
6 understanding their rights would be very helpful.

7           I anticipate that being inundated with people  
8 who -- and screening claims -- will probably be improbable  
9 for UADD and those of us in private practice, but I don't see  
10 that as a negative. I think that's their responsibility, and  
11 I think that those of us who have taken the oath that we're  
12 required to at the time we're admitted to the bar also have  
13 an obligation to assist people and understand what their  
14 rights are.

15           Among the claims that come into our offices, the  
16 ones we always like to see, naturally, are the large claims.  
17 People who have a lot of damages and they have good  
18 liability, and the employers, as soon as you call them, are  
19 willing to write a check. I heard of someone that had that  
20 happen several years ago, but I've never seen one. The  
21 larger claims, people I don't think have a problem getting  
22 counsel, and they are referred to attorneys who practice in  
23 the area, and they can identify one of those claims  
24 immediately. It's taken.

25           One of the problems that I'm certainly familiar

1 with from the testimony that I've heard during the past two  
2 days is the fact that these particular claims are not handled  
3 by UADD. And when I say that, I say that advisably. They  
4 are taken to UADD. The claim is filed, and the initial  
5 investigation is done, the conciliation conference is held,  
6 and then those of who us who practice in this area  
7 immediately ask for a right-to-sue letter and take them to  
8 Federal Court.

9           And the reason we don't leave them with UADD is for  
10 exactly the sorts of issues that are being heard here, which  
11 is they have no enforcement authority, and if they had  
12 enforcement authority, they'd be enforcing the statutes which  
13 does not defeat them.

14           When you have the ability to go to Federal Court,  
15 they ask for punitive damages, compensatory damages, then  
16 what attorney in his right mind is going to leave a case like  
17 that in the State system? And I don't know of anyone who  
18 leaves a case of significance there. The cases that are left  
19 in UADD are the cases where we believe there's probably not  
20 significant chance of recovery, so UADD is left to handle the  
21 case and to deal with it.

22           It seems to me that the category of claims is most  
23 problematic both for UADD and for those of us who practice in  
24 this area are the small claims. The small claims being those  
25 with smaller damages, generally arising because the

1 individual has lower wages. They're on the bottom end of the  
2 economic spectrum. These cases, I think, are problematic for  
3 us. They're problematic for UADD, and they're problematic  
4 for society in general. And the reason for that is because  
5 we cannot economically handle such claims.

6           You can see a claim come in where there is clear  
7 liability. It's very obvious that this person has been  
8 harassed or discriminated against, but they were making  
9 minimum wage and they've gone back to another minimum wage  
10 job. And so their damages are diminuous (sic). We can take  
11 the case and work in anticipation of obtaining some  
12 attorney's fees. However, judges historically do not award  
13 the full amount of attorney's fees for the time that you  
14 invested in the case, and there's always a possibility you're  
15 going to lose that case. So those particular varieties of  
16 cases get left at UADD.

17           It seems to me that that's where UADD comes --  
18 that's where they can be most effective, having the  
19 investigators deal with that, but that works only if we have  
20 a system that has to take them, that allows orders to be  
21 enforced, requires orders to be enforced, if you will, and it  
22 puts the employer at some risk.

23           An experienced employer who harasses or who  
24 discriminates will know that there is really no threat of  
25 having an action taken to UADD because at worst he's going to

1 get an order that requires the employee to be put back to  
2 work and have some remedial action taken. If he has a case  
3 that is a larger variety case and ends up in Federal Court,  
4 that's a different situation, but these smaller cases,  
5 they're problematic.

6 In short, let me suggest that the answers here I  
7 think are two. One is that the statute needs to be amended.  
8 The statute needs to have some teeth. The remedies that are  
9 contained in the statute need to be comparable to those that  
10 are available in the federal sector. There needs to be an  
11 availability for punitive damages, there needs to be an  
12 availability for compensatory damages, and once that happens,  
13 then people who are harassing, people who are discriminating,  
14 are going to have some reason to be concerned about actions  
15 being filed with UADD.

16 Secondly, I believe that there needs to be more  
17 investigators available to the UADD, that the individuals who  
18 are there can adequately handle those cases, can follow  
19 through the system, and if the employers are not willing to  
20 deal with the orders once they're issued, then the Attorney  
21 General's office can put on -- I would think -- relatively  
22 few more attorneys, and enforce those orders.

23 Those of us who practice in the area, if the  
24 statute was changed, would be much more willing to leave  
25 cases in State court and proceed there. Thank you.



1 MS. RICHARDS: Thank you very much.

2 MR. MARTINEZ: That attorney that you heard about,  
3 was Bruce Cohne. Made a million bucks on a letter.

4 MR. WILDE: That was the name.

5 MS. RICHARDS: Our next presenter is William  
6 Gonzalez.

7 MR. GONZALEZ: My name is William Gonzalez, and I'm  
8 associate professor in the Department of Languages at the  
9 University of Utah. I've been working there, this is my 25th  
10 year, and after I received tenure in 1978, I began noticing  
11 that my salary did not increase at all, and finally in 1985 I  
12 began to complain about a very low salary.

13 I went to the chairperson. I went to the office of  
14 the Equal Opportunity on campus, and nothing came about. I  
15 went to the chairperson, and the chairperson said "When you  
16 are promoted to associate professor, you will receive an  
17 equitable raise in your salary."

18 I have always been a very outspoken advocate of  
19 minority rights upon campus, and I think that I have been  
20 pretty well labeled as that.

21 Anyway, I was promoted to associate professor in  
22 1987. It was almost unanimous all the way through, with the  
23 exception of a letter from the dean.

24 The raise that I was supposed to receive -- the  
25 equitable raise -- you have to understand that the University

1 has a policy where the salaries of professors who are paid by  
2 the taxpayers, the salaries are confidential. No one knows  
3 what the other person gets.

4           Every state employee's salary is published, but not  
5 the University's, not the professors. It's a privileged  
6 class. Anyway, I asked for the equitable raise that they  
7 were supposed to give me. They gave me somewhat of a raise.  
8 So I complained to the chairperson. I complained to the  
9 dean. The dean refused to listen. I complained to the OEO  
10 (sic) and the OEO on campus is an exercise of futility. Then  
11 I finally -- when I saw that there was nothing forthcoming, I  
12 went to the AUDD (sic), and I filed my case there.

13           And I was called in by the academic vice president  
14 to withdraw my suit, and I said no, because the remedy was  
15 humiliating.

16           So I had discussed my case with Mr. Lopez from AUDD  
17 (sic), and he advised me to take it out of Utah and take it  
18 to EEOC in Arizona.

19           This was in -- we decided that in 1987. The winter  
20 of 1988, first of the year, I transferred my case down to  
21 EEOC, and I developed a very close contact with a Mr. Frank  
22 ~~Recca~~ <sup>\*Lopez</sup> (phonetic) down there. And finally in 1993, last  
23 spring, I received a letter from the director, Mr. Burnstein  
24 (phonetic) that they determined in my favor, that they had  
25 tried to negotiate with the University of Utah, and that the

\* Check  
spelling  
(Lopez)

1 University of Utah had apparently not been very cooperative.

2 So therefore the letter had ~~be~~<sup>been</sup> sent to the  
 3 Department -- Federal Department of Justice. And in July of  
 4 1993, this year, I received a letter <sup>for right to sue</sup> from the Department of  
 5 Justice ~~telling~~<sup>advising</sup> me that they had determined in my favor, and  
 6 to get myself ~~a lawyer~~<sup>an attorney</sup>.

7 So ~~that's~~<sup>it's</sup> seven years now ~~going on to seven~~<sup>Complaint</sup>  
 8 ~~years~~ that this has been going on. And I did get a lawyer  
 9 and it was difficult. Like the lady said last night, it's  
 10 very difficult, but I did get a lawyer ~~to go~~<sup>to represent me.</sup> on contingency  
 11 ~~in my lawsuit.~~

12 Now, as you can see, this is very frustrating, year  
 13 after year after year. The salaries have increased. They  
 14 have been, you know, they're very, very, very small  
 15 salaries. <sup>my salary is</sup> ~~it's~~ probably the lowest salary in the rank of the  
 16 associate professors in our department.

17 This -- I don't think that I'm the only one, and  
 18 I'm not a spokesperson for those professors up there, but  
 19 there are a lot of them that are hurting. A lot of them are  
 20 asking "How is your lawsuit coming?" I says, "Along." And  
 21 they have said they complained, they've explained the  
 22 situation to me. I've said, "Why don't you file with EEOC?"  
 23 they said, "Because we're not as young as you are and we're  
 24 not going to live that long." Or "Why don't you get yourself  
 25 a lawyer?" "Well, I don't have thousands of dollars to be

1 able to afford a lawyer." And so they basically sit back.  
2 They just resign themselves to the humiliations.

3           Among these -- among this nondisclosure of  
4 salaries, I know that the University receives millions and  
5 millions of dollars in federal funds, and it's a State  
6 university, and yet there are countless women up there,  
7 minorities, nondesirables, who are subject -- the objects of  
8 this type of salary discrimination. They're out there. Like  
9 I say, I'm not their advocate, but I am using myself as an  
10 example for what's going on, or what's been going on up there  
11 regarding this state law of creating a privileged class among  
12 the professors. So I thought I would kind of summarize your  
13 two days here with this.

14           Do you have any questions?

15           MS. RICHARDS: Thank you. I think we would all  
16 like some of that documentation for the record as well, if  
17 you could.

18           MR. GONZALEZ: I don't have any documentation. All  
19 of my documentation is with the <sup>attorney</sup> ~~lawyer~~. Every bit of it.

20           MS. HUTCHISON: Let me ask just one question. I'm  
21 a little familiar with the State scales and the publications  
22 of their salaries. Why is it that the professors -- have  
23 they chosen to or is it an administrative decision?

24           MR. GONZALEZ: It's an administrative decision  
25 because -- well, there's a very good article in -- not an

1 article but an editorial in the Salt Lake -- in the Deseret  
2 News from a few years back where we tried to go up and have  
3 the salaries disclosed, and the University has the Board of  
4 Regents that lobby, and the administrators up there, you  
5 know, they can pretty well handle the university the way they  
6 want to because they have absolute control on the salaries.  
7 So it's the administrators that -- there are a lot of  
8 professors -- many organizations want salaries disclosed, but  
9 they haven't been successful any time, the Board of Regents  
10 lobby is very strong.

11 MS. RICHARDS: Thank you very much, Mr. Gonzalez.  
12 Our last presenter is Mr. Nathaniel Johnson.

13 MR. JOHNSON: Well, I'm going to make mine pretty  
14 brief. When I got this letter, I took it to the Pioneer  
15 Investment Club where I'm the president, and so we discussed  
16 this and will give a letter to the chairman here, after our  
17 meeting on the 16th.

18 Let's go to the mechanics of what discrimination  
19 is, as we see it, so that we won't be here a long time, and  
20 I've got another meeting too. The first one has been with us  
21 a long time, is nepotism. We've got two cases going on here  
22 now, including one with the Department of Corrections.  
23 Another one is the selection process, whereby you either  
24 implement a test or you implement a program that comes out to  
25 an individual, he forms an application, and then goes back,

1 and then the job has been hired, and then you check around  
2 again and nobody's been hired.

3           So the selection process is a roundabout process in  
4 the state of Utah whereby honesty in the selection of the job  
5 process is not there.

6           The third item I think is the Affirmative Action  
7 Programs. In many places here in the state of Utah that  
8 don't have Affirmative Action Programs, so they don't have  
9 nothing to do about it. A good example of one is UTA. They  
10 didn't have one for a couple years. So we don't know whether  
11 they've got an internal program, but yet they're still 37  
12 percent monies -- they're getting money -- they're allocated  
13 the money for the light rail system, which may or may not  
14 come through.

15           The other one is illegal use of the Job Service.  
16 Now, you take some big industries, they'll have a job up and  
17 then what they'll do is they say we'll hire through Job  
18 Service, so they get enough minorities to come down to apply  
19 for the job to meet a quota of what then can turn into the  
20 federal government, then still, you may be the best  
21 qualified. A good example is we had a young lady that had  
22 come in from South Carolina. She had ODS. She had four  
23 tran, she had all of the languages of the computer to include  
24 WordPerfect, yet still she wasn't hired. And what they done,  
25 they said they hired a professor from the University of Utah

1 for a time, but he didn't show. So we don't know about that.

2

3 I think the most important one that we will get to  
4 is discrimination of black males right here in the state of  
5 Utah. And there's not a single black male who is a principal  
6 in this state. We have four women, and none, no black  
7 males. None whatsoever.

8 The closest we come would be Ike Spencer, who is  
9 the assistant principal at Fremont Elementary School. In  
10 fact, I don't see any black males up there, where we are now,  
11 right here.

12 I think the last one -- this young lady had done  
13 the best job, and then we can get out of here -- and I can  
14 just read a little bit about what we have here, but the  
15 letter will be composed by all six of us. I think the one  
16 that you have to look at now is probably harassment and  
17 whistle-blowing, which are going to be the two things that  
18 you may not have heard some about, or you may have. And I  
19 tried to tell the chairman from Denver that. Whistle-blowing  
20 ends up in you losing the job, no promotion, and some of the  
21 people in our organization work for the federal government  
22 where whistle-blowing has become a common element. And so  
23 those would be the six ones that we would be writing a letter  
24 on.

25 Now, in terms of correcting one of these is I think

1 that in the EEO there should be some way that you might check  
2 the use of the Job Service when -- you can always tell by Job  
3 Service how many people are available in particular jobs. If  
4 they don't know basics in the computer, he wouldn't know what  
5 an OS or a CD or COR is, so you could check that -- and if  
6 there's only one or two in the area, and they put the job out  
7 for that, unless they get somebody from outside, and the  
8 minority qualifies, I think that there's some instruments  
9 that you can put in to stop that. I think there's some  
10 instrument -- because the Job Service do not have the best  
11 qualified skills in every instance. So that would be one  
12 that I think that a correction could be made right away.

13 I think you're way overdue in nepotism. I mean,  
14 you know you get an intimate report. There should be an  
15 application of whether the person has a relative there or his  
16 relative is in a position where he can influence the hiring  
17 process.

18 Not like the selection with the President. He  
19 doesn't go through that. He has a right to select. But I  
20 think nepotism is well overdue. There's no question about  
21 it.

22 And the third one I think you ought -- anywhere  
23 there's money, there's federal money, there ought to be filed  
24 with this commission an Affirmative Action Program. There's  
25 no sense in having an individual or any company, contractor



1 whatever he is, that does not have an Affirmative Action  
2 Program.

3           Now, let me just read here: "The organizations  
4 originally receiving federal funds should comply with the  
5 laws that have been passed and mandated that you have a  
6 federal Affirmative Action Program available to the public  
7 and visible with the Equal Opportunity Act and Fair Labor  
8 Standard Act." They should be exposed, and there's no reason  
9 why somebody on this can't get those done. The cases of  
10 employment are very selectively isolated to select  
11 individuals they want, not necessarily the one that's the  
12 most competent. The use of the Job Service has existed for  
13 many years. In fact, the LDS Mormon religion has an  
14 employment office of its own.

15           And I think, Bill, this is a proper place to end,  
16 unless you've got some questions. And if you want, I can  
17 give you specifics, if you want.

18           MS. HUTCHISON: May I ask one. A word of  
19 clarification, the LDS employment does help all -- it does go  
20 across all boards, but that wasn't the question. The  
21 question I have is: Do you know specifically some black  
22 males who have their educational administration  
23 certification?

24           MR. JOHNSON: Well, yeah, I know of two. Ike  
25 Spencer is one in Fairmont (sic) and another one that's been

1 up too is --

2 MS. HUTCHISON: One is a vice-principal.

3 MR. JOHNSON: Yeah. And then there's one in Ogden.

4 MS. HUTCHISON: Okay. But I do know that  
5 educationally they have been trying to look at some, so that  
6 might have come in the ranks --

7 MR. JOHNSON: Yeah, well, we've been pressing it.  
8 We've been pressing it. I think it's something that needs to  
9 be looked at, you know. Isolation is not a good thing, and I  
10 think diversity in as they used in the university, is  
11 irreversible and should not be used. It's just not there.

12 MS. HUTCHISON: You're right. We need to do that.

13 MS. RICHARDS: Thank you very much, Mr. Johnson,  
14 and we look forward to receiving your letter.

15 MR. JOHNSON: Yes, and we will have a letter to  
16 you.

17 MS. RICHARDS: This concludes our meeting today.  
18 This is the conclusion of the Utah Advisory Committee to the  
19 U.S. Commission on Civil Rights, our factfinding meeting on  
20 discrimination in Utah, and we'll give Bill Muldrow about a  
21 minute to tell us what will happen after this, what should we  
22 expect in terms of a time table.

23 MR. MULDROW: A time table is difficult. We will  
24 follow up information received at this factfinding meeting,  
25 questions that have been raised, and we will have more

1 information, and we will organize and draft a report which  
2 will be finalized by the committee here. Following this,  
3 immediately following this factfinding meeting, all of the  
4 participants will receive a copy of their presentations for  
5 verification and any corrections that might be necessary.

6           And then they will also -- if they are mentioned --  
7 anyone who is mentioned in a significant manner or whose  
8 information we use in the report will receive a portion of  
9 the draft report that mentions their information of  
10 themselves. So they can either respond or verify the  
11 accuracy of the information that we're using.

12           Then the report will, upon finalization, final  
13 editing, on legal review, will go to our commissioners in  
14 Washington, be accepted by them. It will be then published  
15 with the recommendations formulated by the committee, and  
16 distributed free of charge to the public and to all of the  
17 people we have on the mailing list as a result of our  
18 research and as a result of this meeting here in these two  
19 days.

20           MS. RICHARDS: Thank you. And we now stand  
21 adjourned. We thank you all for your attendance and your  
22 input.

23           MR. MARTINEZ: Madam Chair, before we adjourn, can  
24 we put on the record that Commissioners Carlson and Hadley  
25 and Anna Jensen have been here both days with us, showing

1 their interest. Thank you.

2 (Whereupon the meeting was adjourned at 4:20 p.m.)

3 \* \* \*

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF UTAH )  
:  
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the foregoing transcript of proceedings was taken before me on December 10, 1993, at the time and place therein set forth before me, DONI L. SCHAEFER, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, residing at Salt Lake City, Utah.

That the testimony 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 testimony was so taken and transcribed.

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 13th day of January, 1994.

*Doni Lyn Schaefer*  
\_\_\_\_\_  
DONI L. SCHAEFER, C.S.R.  
Utah License No. 26889

