

CCR
3
Meet.
372

1 UNITED STATES
2 COMMISSION ON CIVIL RIGHTS
3 INDIANA ADVISORY COMMITTEE
4
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6 FACTFINDING MEETING OF THE
7 INDIANA ADVISORY COMMITTEE ON
8 THE ENFORCEMENT OF AFFIRMATIVE
9 ACTION COMPLIANCE IN INDIANA
10 UNDER EXECUTIVE ORDER 11246

11 _____/

12 REPORT OF PROCEEDINGS, taken in the
13 above-entitled cause, taken before MR. PAUL CHASE,
14 Chairman of the Indiana Advisory Committee to the
15 U.S. Commission on Civil Rights, taken on the 20th
16 day of April, A.D., 1995 at the Indiana Convention
17 Center, 100 South Capitol Avenue, Room 212,
18 Indianapolis, Indiana at the hour of 9:00 o'clock
19 a.m..
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Meet.
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1 APPEARANCES:

2 INDIANA ADVISORY COMMITTEE

3 CHAIRMAN: PAUL CHASE

4 COMMITTEE MEMBERS: JAMES MC ADAMS

5 KATHLEEN BRITA

6 MICHAEL GRADISON

7 DORTHEA GREEN

8 JUDITH HAWLEY-CONLEY

9 SHEILA KENNEDY

10 SONDRA MATTHEWS

11 JOHN NORMAN

12 SIDNEY TAYLOR

13 STAFF: PETER MINARIK

14 CAROLYN WHITFIELD

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PUBLIC SESSION

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<i>DWALA TOOMBS</i> <i>State of Indiana</i>	

1 *(The meeting was convened at 9:00 o'clock a.m..)*

2 *CHAIRMAN CHASE: Good morning. This*
3 *meeting of the Indiana Advisory Committee to the*
4 *United States Commission on Civil Rights shall*
5 *come to order.*

6 *For the benefit of those in our*
7 *audience, I shall introduce myself and my fellow*
8 *committee members. My name is Paul Chase and I am*
9 *the Chairperson of the Indiana Advisory Committee.*
10 *My immediate predecessor is Hollis Hughes of South*
11 *Bend who continues to serve on this committee, but*
12 *could not be here today. The other committee*
13 *members are Dorthea Green, John Norman, Judy*
14 *Hawley-Conley. I know Judy is here, but I don't*
15 *see her. Sheila Kennedy is also here. Sondra*
16 *Mathews of Evansville, Michael E. Gradison of*
17 *Indianapolis, Sidney Taylor of Evansville, Dr.*
18 *James McAdams, South Bend and Kathleen Brita of*
19 *Fort Wayne.*

20 *We are here today to conduct a*
21 *factfinding meeting for the purpose of learning*
22 *about the enforcement of affirmative action*
23 *compliance under Executive Order 11246 which was*

1 signed into law 30 years ago.

2 The Indiana Advisory Committee is
3 established to advise the Commission on matters
4 pertaining to the discrimination or denial of
5 equal protection of the law because of race,
6 color, religion, sex, sexual orientation, national
7 origin, age, disability or in the administration
8 of justice, and to aid the Commission in its
9 statutory obligation to serve as a national
10 clearinghouse for information on those subjects.

11 The proceedings of this meeting are
12 public and are being recorded by a court
13 stenographer. A report of these proceedings will
14 be sent to the Commission for its advice and
15 consideration.

16 At the outset I want to remind
17 everyone present of the ground rules. This is a
18 public meeting, open to the media and general
19 public. We have a very full schedule of people
20 who will be making presentations within the
21 limited time we have available. The time allotted
22 for each panel will be strictly adhered to. This
23 will include a presentation by each panel

1 participant, followed by questions from committee
2 members. Presenters may enter information into
3 the record as exhibits.

4 To accommodate persons who have not
5 been invited but wish to make statements, we have
6 scheduled an open session today at 5:30 p.m.. In
7 addition, written statements on this topic may be
8 submitted to committee members or by mail to the
9 Midwestern Regional Office and that is to the U.S.
10 Commission on Civil Rights, 55 West Monroe Street,
11 Suite 410, Chicago, Illinois, 60603. The record
12 of this meeting will close on May 20th, 1995.

13 In order to ensure that all aspects
14 of the issues are represented, knowledgeable
15 persons with a wide variety of expertise and
16 viewpoints have been invited to make
17 presentations; including the United States
18 Department of labor, law firms, employers,
19 community agencies and selected individuals. Some
20 of the statements made today may be controversial.
21 To ensure that persons and organizations are not
22 defamed by testimony received here today, any
23 person or organization that feels defamed or

1 *degraded by statements made in these proceedings*
2 *should contact our staff during the meeting so*
3 *that we can provide an opportunity for public*
4 *response. Alternately, such persons or*
5 *organizations can file written statements for*
6 *inclusion in the record. I urge all persons*
7 *making presentations to be judicious in their*
8 *remarks.*

9 *The Advisory Committee appreciates*
10 *the willingness of all participants to share their*
11 *views and expertise with the committee.*

12 *Our first presenter this morning is*
13 *Martin J. Klaper who is an attorney with Ice,*
14 *Miller, Donadio and Ryan. Mr. Klaper, you have*
15 *approximately fifteen minutes or so for your*
16 *presentation.*

17 MARTIN J. KLAPER

18 *Good morning. I'm pleased to have*
19 *been asked to be present this morning to speak*
20 *with you. As Paul indicated, my name is Marty*
21 *Klaper. I'm an attorney and partner with Ice,*
22 *Miller, Donadio and Ryan. I've been practicing*
23 *law in Indianapolis for approximately 25 years. I*

1 *represent management exclusively. My practice is*
2 *limited to labor and employment matters, and*
3 *within labor and employment I have had a focus on*
4 *the area of civil rights, including equal*
5 *employment opportunities and affirmative action.*
6 *I doubt very seriously if there's another lawyer*
7 *in this state who has dealt with the Indianapolis*
8 *Office of the OFCCP more frequently or over a*
9 *longer period of time than have I.*

10 *If the purpose of today's meeting is*
11 *to find out how the Indianapolis Office of the*
12 *OFCCP is doing, I would suggest to you that its*
13 *doing quite well. The performance of this office*
14 *has improved greatly over the last ten years.*
15 *Moreover, and positively continues to improve with*
16 *the rate of improvement also increasing. The*
17 *local office today is staffed by individuals who*
18 *are generally formally educated and who have been*
19 *trained to do the work that they're employed to*
20 *do. What I would describe as the "I got you"*
21 *approach that used to typify audits that were*
22 *conducted by this office years ago has very much*
23 *disappeared. The local office today is much more*

1 user friendly. Its interested in providing
2 technical assistance and this interest exceeds
3 finding violations of Executive Orders. The EOS
4 or Equal Opportunity Specialist who a decade ago
5 saw his or her role primarily as one of a
6 prosecutor or persecutor, that person's gone.
17 7 They've been pretty much replaced by EOSs who have
8 been much better trained to investigate and audit.
9 These persons are not predisposed to thinking that
10 every contractor is a violator of the law and
11 usually arrive at the audit with no preconceived
12 notions as to what they are going to find.

13 While there are, to my way of seeing
14 it, there's no question but that things are better
15 at the local level, I did not agree to be present
16 today simply to talk about that issue. Rather, I
17 think that I have some suggestions I would like to
18 offer that I think would make the OFCCP more
19 effective and that was the stimulus behind my
20 agreement to be present here today.

21 Let me begin by noting to you that I
22 understand that some of the recommendations that
23 I'm going to be proposing would require a change

1 in operating procedures which would probably have
2 to be approved by the national headquarters before
3 a district or regional office could implement
4 them. Regardless of that, to the extent that any
5 office of the OFCCP has any discretion as to which
6 contractors within its jurisdiction its going to
7 audit, I offer for the local office the following:
8 I think we all recognize that the resources of
9 OFCCP are greatly limited in relationship to the
10 number of contractors within its jurisdiction.
11 There is simply too many government contracts and
12 too many government contractors to allow each to
13 be audited yearly. Accordingly, I think its
14 imperative that the agency be very selective about
15 who it will audit. Where I think the agency in
16 general and that includes; therefore, the local
17 office, has not performed well is identifying who
18 it will audit and where it will expend its
19 resources. I do think that the \$50,000 contract
20 value and 50 employee threshold for maintenance
21 of affirmative action programs are both too low.
22 However, I would not suggest changing either
23 number since what really needs to be changed is

1 the criteria that is used by the agency to select
2 which covered contractors will be audited. If I
3 were a district director of the OFCCP, and if I
4 had the authority to operate that office the way I
5 thought it would be best to operate, here's how
6 I'd go about selecting a contractor for audit.
7 First, once a year I would send every contractor
8 within my district a letter requesting that the
9 contractor provide a list of every individual who
10 has been hired or promoted in the preceding 12
11 month period, and for each person identify their
12 name, sex and race. I would also ask the
13 contractor to identify whether any of the persons
14 hired or promoted were hired or promoted into a
15 job title within a job group wherein the
16 contractor recognized in it's affirmative action
17 program that it was under utilized. Secondly, I
18 would request each contractor to rank, by pay from
19 highest to lowest, all persons in each EEO job
20 category as those categories appear on the EOS
21 form the contractor's required to maintain.
22 Following receipt of the hire, promotion, and pay
23 information by EEO category, I would prioritize

1 *full fledged audits of contractors. I would first*
2 *visit those contractors who have had the most*
3 *employment activity. I'm talking about hires and*
4 *promotions. It makes no sense to waste*
5 *enforcement dollars auditing contractors who have*
6 *had little, if any, employment activity and who;*
7 *therefore, had few, if any, opportunities to*
8 *correct prior deficiencies or to engage in good*
9 *faith affirmative action activities. I would next*
10 *schedule for audit those contractors whose EEO job*
11 *category by salary data reflected a concentration*
12 *of protected persons in the lower pay levels of a*
13 *particular EEOS category.*

14 *My focus here reflects my view that*
15 *while protected class persons have increased their*
16 *respective representation rate in the work force,*
17 *they have not faired near as well as regards pay*
18 *equity issues which are different than, but*
19 *closely related to glass ceilings.*

20 *The other point I think is important*
21 *to make is that pre-award reviews or audits should*
22 *be mandatory for contracts involving significant*
23 *sums of money and I speak the number of a quarter*

1 of a million dollars or more. My experience with
2 contractors is that they are much more aggressive
3 about the affirmative action that they are willing
4 to take in an effort to get a contract than they
5 are when it comes to taking actions to retain or
6 maintain a contract. Likewise, I think that
7 government contracts for significant sums should
8 not be let to organizations whose employment
9 profiles reflect no recent effort to address
10 historical under representation or under
11 utilization of protected class persons. A
12 criteria that should be used by the government in
13 awarding contracts is whether or not the
14 employer's work force represents the diversity of
15 the community in which the employer does business.
16 I think that employers who have had an opportunity
17 to change the fabric of their work force through
18 hiring and promotion and have taken advantage of
19 that opportunity deserve credit for having changed
20 the complexion of their work force.

21 Finally, I have a procedural or
22 technical suggestion which relates to the conduct
23 of the glass ceiling CMR or corporate management

1 *reviews that are currently being conducted by the*
2 *OFCCP. Simply stated, I think that all corporate*
3 *management reviews ought to be preceded by normal*
4 *onsite reviews. The onsite review should not be*
5 *conducted concurrently with the corporate*
6 *management review. By conducting the regular*
7 *onsite review first, the EOS from the district*
8 *office can compile all the relevant data necessary*
9 *for the persons who will be conducting the*
10 *corporate management review to better understand*
11 *where people in a contractor's organization come*
12 *from and how they got there.*

13 *Areas of concern that are uncovered*
14 *during the normal audit proceeding, the corporate*
15 *management review, should be identified to the*
16 *contractor and the contractor provided an*
17 *opportunity to address perceived problems prior to*
18 *the commencement of the corporate management*
19 *review. Proceeding in this fashion will allow*
20 *those persons who are responsible for conducting*
21 *the corporate management review to proceed more*
22 *quickly and more correctly to determine if a glass*
23 *ceiling problem is present. Moreover, I think*

1 *having the regularly scheduled audit completed*
2 *allows for a focus during the corporate review on*
3 *business practices which is an interchange of how*
4 *you can do things differently and better to be*
5 *more effective in terms of making affirmative*
6 *action a reality for your organization.*

7 *Let me end my prepared comments by*
8 *simply summarizing for you my views. First, I*
9 *think that the local office of the OFCCP is*
10 *operating in a positive way and is as effective as*
11 *I have ever known it to be. Secondly, my*
12 *frustrations with the local office stem from the*
13 *type of audits that they are required to do rather*
14 *than how they do them. I think that time and*
15 *money is spent and wasted in conducting reviews of*
16 *contractors who have had so little movement in*
17 *their work force that advancement in the*
18 *utilization of protected class persons was not*
19 *possible. Auditing those people, using that kind*
20 *of time and effort to me makes no sense. The*
21 *limited resources to the local office should be*
22 *spent on doing a cursory review of all contractors*
23 *to identify those with high employment activity*

1 levels and/or pay distribution problems. I think
2 in getting the focus on high activity levels and
3 on pay distribution problems you're going to get
4 much more value for your dollar spent on
5 enforcement activities, and I think that one other
6 thing I would again emphasize is the awarding
7 contracts phase. I do believe that focusing on
8 people's performance, a contractor's performance
9 in terms of affirmative action and equal
10 employment opportunity is an appropriate thing for
11 the government to be looking at when they're
12 deciding whether or not a contractor is a
13 qualified bidder. If you have a contractor who
14 has -- who employs hundreds of people and has
15 hiring activities in the last five or ten years
16 and the work force does not reflect the community,
17 I think that is a negative and I think it's
18 something that has to be taken into consideration
19 in making those determinations.

20 I think that pretty well summarizes
21 the points that I thought valuable to share with
22 you and I'd be happy to entertain any questions or
23 comments you might have.

1 CHAIRMAN CHASE: *Thank you, Mr. Klaper.*
2 *We have about fifteen minutes, ten, fifteen*
3 *minutes or so if anybody has questions for Mr.*
4 *Klaper? Michael?*

5 MR. GRADISON: *Marty, you discussed this*
6 *with some of your colleagues in the same practice,*
7 *the same management these issues, do you think*
8 *your remarks characterize the feeling of*
9 *management's side, attorneys such as yourself who*
10 *deal with these OFCCP affirmative action*
11 *questions. In other words, did you form a poll of*
12 *some kind?*

13 MR. KLAPER: *I would say this, I think*
14 *that the colleagues with whom I practice law would*
15 *support my views and comments. I cannot speak*
16 *with any kind of authority to folks from other*
17 *organizations, but I think that the personality of*
18 *firms take mold and they approach these problems*
19 *from different angles. I think that historically*
20 *some management lawyers have approached this in*
21 *terms of a very defensive focus and I think those*
22 *people would think that I had lost my grip, but I*
23 *disagree with them. I have always strongly felt*

1 that a diversified work force within a
2 contractor's organization is a positive and have
3 always sort of focused on helping people get that
4 done. But within my organization of which there
5 are about 18 of us who practice management law, I
6 think the support for this would be strong.

7 MS. MATHEWS: On the issue of not
8 auditing those contractors that have limited or
9 flat levels of activity, in time did you also say
10 that we had a remedy for those that had large
11 contracts but still had kind of like a flat hiring
12 as far as diversity? And then the organization --
13 the other thing I want to know is what do you
14 suggest in terms of credit for those, in your
15 opinion, to form?

16 MR. KLAPER: In terms -- let me take the
17 last part first. In terms of credit, I recognize
18 the different agencies make determinations of
19 qualifications using different criteria. Some
20 point bidders. They have a variety of different
21 ways of deciding who is qualified. I do believe
22 that the issue of diversity and correction of
23 historical under utilization is an important

1 *criteria and I believe that that can be measured*
2 *in part by whether or not the contractor has*
3 *increased their representation within the recent*
4 *time. It's unfair for a contractor who is in a*
5 *rust belt industry, he used to have thousands of*
6 *people, who now has hundreds, who has no*
7 *opportunity to make it better to be punished or*
8 *penalized for that lack of opportunity. But if*
9 *I'm looking at the contractor, and let me say*
10 *that, let's pick a time period, the last two*
11 *years, they have hired 50 people in a variety of*
12 *different areas and those 50 people are not, the*
13 *make up of that group does not reflect female,*
14 *minority representation, then I've got a serious*
15 *question that I will be asking as to where they*
16 *are on that issue. And I think my initial*
17 *determination of their qualifications would be*
18 *based on what documentation they can provide me as*
19 *to their good faith efforts to have made headway*
20 *in that last 50 hirings. But I do think you have*
21 *to focus very much on what's happened most*
22 *recently because historically some organizations*
23 *are likely not have to have an opportunity to*

1 correct historical hiring patterns because they're
2 going in the downward slope in terms of employment
3 levels. In terms of the pre-award process,
4 usually when you're talking about a large
5 government contract there is some anticipation
6 that the contractor will be adding personnel in
7 some fashion or another to meet the contract or
8 just as importantly will be engaging in
9 subcontracts to meet the contract. And it seems
10 to me that if a person has a plan and program in
11 place to outreach and to invite people into the
12 process who haven't been there before and they
13 present that as part of their proposal, I think
14 that's a positive. To give you an example, I had
15 the opportunity to do some work with one of the
16 riverboat license competitors and one of the
17 things we did in terms of our presentation as to
18 why we thought we should be a successful bidder is
19 we went out and designed and developed an
20 affirmative action program and basically
21 voluntarily implemented that program indicating
22 job groups and indicating availability of
23 minorities and women. Indicating plans that we

1 would use to focus on hiring to make sure that if
2 the contract was let that our work force reflects
3 the community in which it was going to be located.
4 And I think that's -- I believe it was very much a
5 positive when the state looked at the bids as to
6 who was the best bidder, so to speak, and we were
7 successful. And I think in part it was
8 attributable to the fact that we recognized that
9 we had to do something affirmative if women and
10 people of color were going to be represented in
11 this organization if it got the license and
12 started work. So I think a lot of creative things
13 are possible.

14 MS. MATTHEWS: I guess I missed your
15 point. What you said was the credit. What, in
16 your opinion, would be the credit?

17 MR. KLAPER: The credit would not be a
18 credit in the sense of the dollar credit, but it
19 would be the credit in the sense of a positive.
20 You might -- let's say you had a form, you were
21 checking off items. I think one of the items that
22 I would have on the form would be the concept of
23 Equal Employment Affirmative Action. And you

1 *could use a grading scale, I suppose, you could*
2 *use effort, no effort, good effort. There's a*
3 *variety of ways you would design it, depending I*
4 *think on the type of contract you were letting.*
5 *But that the credit would be you judge certain*
6 *things; the person's ability to fulfill a contract*
7 *and that would just be one of the things that I*
8 *would judge. And I would render somewhat a*
9 *positive evaluation if they had a plan in place as*
10 *to how they were going to improve their profile or*
11 *within the last five years they had dramatically*
12 *improved their profile.*

13 *MS. MATTHEWS: I want to go to the*
14 *aspect, one point you talked about how some*
15 *contractors on the front end when they're putting*
16 *their plans together when they're bidding, it*
17 *seems to be very positive and meaningful, and then*
18 *later on into it they get the contract, there*
19 *seems to be nothing happening, they don't seem to*
20 *be as active in their hiring and their promotions.*
21 *Yet when you talk about not spending any time*
22 *auditing those, that very flat activity in hiring*
23 *or promotion, how do you reconcile what we should*

1 do about those, who would get a contract, had all
2 the affirmative action plans? It's not unusual
3 for people to have a good affirmative action plan,
4 a good faith effort clause in that plan, and then
5 a year later there's flat activity. If that were
6 true then we wouldn't audit them, if I follow what
7 you were recommending.

8 MR. KLAPER: Well, what I was saying to
9 you, I would prioritize my efforts. I'm not saying
10 I wouldn't audit them. I just would not audit a
11 person like that when I had a contractor sitting
12 next to me that had recently hired two hundred
13 people and showed a disparity in their hiring
14 patterns. I think the local office just has
15 limited resources and they have to decided out of
16 a thousand how many I'm going to look at and I'm
17 saying I would prioritize it on that basis. That
18 doesn't mean that those that have no activity
19 level would never be audited, but they certainly
20 would fall lower on the list than the people who
21 have had a lot of activity. And even on people,
22 when you're assessing a contractor's efforts, you
23 could have no activity within your organization at

1 all and you could still have undertaken a lot of
2 activities internally that are going to improve
3 life; diversity programs, support of historically
4 black colleges and universities, involvement in
5 community activities such as the Urban League.
6 There are a lot of things a corporation can do to
7 put a footprint in that community that says we
8 will support diversity, we support utilization of
9 people without regard to race or sex and I think
10 that's an important committment that any
11 organization has to the community in which they do
12 business.

13 MS. MATTHEWS: Thank you.

14 CHAIRMAN CHASE: Mr. Klaper, I have a
15 follow up question. You talked about visiting
16 contractors with the most hires or promotions.
17 What about contractors that are receiving lower
18 awards and therefore may just not have the volume
19 of hires and promotions? How would we address
20 that through your recommendations?

21 MR. KLAPER: Well, my recommendation
22 again was just one of prioritizing. I don't think
23 you exclude those people. It may very well be

1 *that in your efforts you would have let's say 20*
2 *percent or 25 percent of your activity will be*
3 *focused on people who don't fall in those other*
4 *parameters. But if you're interested in*
5 *increasing the utilization of women and people of*
6 *color and of making sure that women and people of*
7 *color not only get in the door, but get into the*
8 *room, you have to focus on people who have*
9 *opportunities to make improvement. Good faith*
10 *efforts are measured against what you try to do.*
11 *You may not be successful, but good faith efforts*
12 *require some energy and activity. And I do, I*
13 *have a host of clients who are as committed I*
14 *think to civil rights and decent treatment for all*
15 *people and who have had no opportunities to add*
16 *new bodies because their work forces have gone*
17 *from a thousand to a hundred and they may be*
18 *encumbered by union contracts that require a last*
19 *in first out kind of seniority system. So what*
20 *you have is you go back 20 years, 25 years of*
21 *seniority and if you look at most work forces who*
22 *have 20 or 25 years seniority, you're going to see*
23 *a lot of white people, white men people. SO*

1 *accordingly, it's real difficult to make inroads*
2 *unless you have activity.*

3 *MR. TAYLOR: Have you ran into any of*
4 *your clients who have doctored records to get a*
5 *contract?*

6 *MR. KLAPER: No, I never have. I will*
7 *tell you this, the thing that is most disturbing*
8 *to me, I have never accepted any employment in*
9 *this regard, but I have people seek to employ me*
10 *who wanted to get qualified as MBE or DBE,*
11 *disadvantaged business enterprise or female*
12 *enterprise or minority enterprise because of some*
13 *of the set aside programs and the first thing I*
14 *always do is I personally engage in an audit to*
15 *see whether or not this is a hoax. And I would*
16 *state to you that the hoaxes, in my experience,*
17 *have been more prevalent than the honest to God*
18 *legitimate minorities or disadvantaged business*
19 *enterprises. It's pretty easy to get your mother*
20 *to sign up as a president of a company and to seek*
21 *a hundred percent of the stock in her name and*
22 *have her go out as WBE and a lot of that goes on*
23 *and that's something that really needs to be*

1 audited much, much more carefully than it has
2 been.

3 And the other thing that has to be
4 carefully audited is the minority side of it.
5 There are a lot of very aggressive, clever white
6 businessmen who can find a black friend who can go
7 into business with them and you can give them a
2 8 hundred percent of the non voting stock. You can
9 do a lot of things to qualify him under the
10 guidelines of the MBE and you end up with not
11 really having accomplished what you sought out to
12 accomplish, and that is -- and that would be a
13 subject of a hearing in and of itself. But it's
14 an area of the law, before I accept an employment,
15 I meticulously do the search myself because I know
16 what to look for and I care not to be put into the
17 same basket with people who would do what I've
18 just described to you.

19 MR. GRADISON: Does that suggest that
20 some of your colleagues on the bar are not as
21 scrupulous as yourself?

22 MR. KLAPER: No, I think that you have
23 to have a level of experience in this area to

1 *understand what the problem is and where to look*
2 *for it. I think that most of the people I know,*
3 *colleagues or competitors alike they had the*
4 *opportunity to do as much of this work as I did*
5 *and knew what the games were, they'd be looking*
6 *for them too because I don't think anyone wants*
7 *that kind of business.*

8 *CHAIRMAN CHASE: Any more questions?*

9 *MS. MATTHEWS: Mr. Klaper, the good news*
10 *that you brought to us today is that the Office of*
11 *Contract Compliance is doing very well and, in*
12 *your words, I guess you said better than ever.*
13 *What organizations or agencies do you think might*
14 *differ with you on that?*

15 *MR. KLAPER: I'm sure there's a lot of*
16 *contractors out there who have been found in*
17 *violations who would differ.*

18 *MS. MATTHEWS: Not necessarily*
19 *contractors, but maybe non profit groups, maybe*
20 *people with oversight, people who monitor groups*
21 *like that. I mean --*

22 *MR. KLAPER: I don't know of any that*
23 *would because I can tell you I don't want to say*

1 *day and night that's pretty dramatic, but if you*
2 *look at what it was to do business with this*
3 *office 15 years ago and what it is to do business*
4 *with this office today, it's day and night and*
5 *there may be still people who are dissatisfied,*
6 *but if they are dissatisfied now, they should have*
7 *been around 15 years ago because they would have*
8 *been really dissatisfied.*

9 *MS. MATTHEWS: Okay.*

10 *MR. KLAPER: Clearly I've had the*
11 *opportunity to work with OFCCP district offices*
12 *and regional offices in probably eight other*
13 *states, maybe nine, and I can tell you that that*
14 *was also factored into my evaluation that this*
15 *local office is on what I would describe a*
16 *continuing upward trend of improvement and it has*
17 *to do with the training and the quality of people*
18 *who do those audits. They represent the*
19 *government when they show up and they introduce*
20 *themselves to that contractor. The contractor's*
21 *response to that government audit is in large part*
22 *controlled by the behavior of that EOS. They may*
23 *not be the highest paid people in the office, but*

1 they really do represent the office out in the
2 street and if they come in with an attitude that
3 says hey, I got you, you've got problems. That
4 attitude, which was very prevalent 15 years ago,
5 it's not something you find very often at all any
6 more.

7 CHAIRMAN CHASE: One more question.

8 MS. KENNEDY: Just very quickly. I was
9 wondering if you had clients in your firm who
10 state that they don't want to do business with
11 government because of the additional requirements
12 that they submit to audit and other of -- and
13 other reporting requirements also can.

14 MR. KLAPPER: Yes, I have over these 25
15 year period I probably had over a half a dozen who
16 came in and understand if they needed to do -- if
17 they received the contract at this dollar level,
18 said it's just not worth it. And the reason it's
19 not worth it is because they have 50 people but 49
20 of them are out there working and you've got the
21 president who runs the office. He doesn't have a
22 personnel function, he has no willingness to
23 maintain the kind of recordkeeping you need to do

1 and they just make a business judgment to say I
2 have to hire somebody for \$30,000 to keep myself
3 in compliance. I'm not going to say I'll do
4 something I won't do and I don't want to spend
5 \$30,000 to make \$10,000. So they'll bypass it.
6 But it's not on a philosophical level or a racial
7 or sexual hatred level, it's on a business level
8 that says gee, balancing what I seek to make here
9 against what I have to cost myself to stay in
10 compliance, it just doesn't make sense for me to
11 do it.

12 CHAIRMAN CHASE: Kathleen? A quick
13 question.

14 MS. BRITA: Mines runs along the same
15 line. In the Americans with Disabilities Act it
16 talks about the hiring of people with disabilities
17 and reasonable accommodations without undue
18 hardship. How is this dealt with, dovetail with
19 affirmative action as far as the expense the
20 employer would have to go to hire someone who may
21 need extensive accommodation?

22 MR. KLAPER: The disability-related
23 audit functions of the OFCCP have been there

1 really for some time because as long as they've
2 been enforcing the Veteran's Act and the Handicap
3 Act, both of those have had a real strong parallel
4 to what is now the ADA. In fact, the ADA models
5 it very, very closely along the guidelines that
6 the government's been using for years in these
7 other areas. And one of the things this agency I
8 think does which is a positive is they do an audit
9 of the employer's outreach efforts for disabled
10 Americans and in that audit it pretty much brings
11 to life a lot of the ADA provisions which
12 otherwise are only going to come to life if
13 someone files a complaint. So I think that to the
14 extent I can tell you this, the ADA was no burden
15 at all for my government contractors because they
16 already were up and running. They understood what
17 it was, they understood what a handicapped
18 individual was or disabled person was. They
19 understood what accommodations were. They
20 understood what outreach was, and for them ADA
21 compliance has really been sort of a no brainer.
22 It's been real easy for them. For folks who
23 weren't in that program before, it's just a --

1 *it's a more basic rules. It's very difficult for*
2 *them to focus.*

3 *CHAIRMAN CHASE: Mr. Klaper, we'd like to*
4 *thank you for your testimony this morning.*

5 *Next we're going to hear from a*
6 *panel of representatives from the Office of*
7 *Federal Contracts Compliance Programs and we've*
8 *asked Mr. Halcolm Holliman to present to us. He's*
9 *the Regional Director for the U.S. Department of*
10 *Labor and also Mr. Phil Stepteau who is the*
11 *Indianapolis District Director, U.S. Department of*
12 *Labor.*

13 *Good morning. We have some time*
14 *right now.*

15 *HALCOLM HOLLIMAN*

16 *Office of Federal Contract Compliance Programs*

17 *I got worried when you said we have*
18 *to squeeze this in maybe ten to twelve minutes or*
19 *whatever. I'm Halcolm Holliman, H-a-l-c-o-l-m*
20 *Holliman, H-o-l-l-i-m-a-n, Regional Director for*
21 *the Midwest Region and also the Regional Director*
22 *for the former Region 7 and we'll talk awhile*
23 *about the merger activities going on between our*

1 *region downsizing and restructuring activity a*
2 *little later. I'm Phil Stepteau, I'm the District*
3 *Director for the Indianapolis Office of OFCCP.*

4 *MR. HOLLIMAN: What I'd like to do is,*
5 *because of all the debate that's going on these*
6 *days about certainly the OFCCP and more*
7 *specifically affirmative action et cetera, I'd*
8 *like to just provide a little bit of background*
9 *and perspective on things. I think it's good to*
10 *sometimes go back and revisit the genesis for a*
11 *lot of what we're doing. So I have a little bit*
12 *of a statement. I hope I can get through that and*
13 *then we can talk about some of the more recent*
14 *activities of the OFCCP. So this is sort of*
15 *memory joggers. We can sort of get through that*
16 *very quickly.*

17 *The Department of Labor's Office of*
18 *Federal Contractor Compliance Program enforces*
19 *Executive Order 11246, Section 502 of the*
4 20 *Rehabilitation Act, and the Viet Nam era Veteran's*
21 *Readjustment Assistance Act. Those are our basic*
22 *authority. Taken together, these laws ban*
23 *discrimination and require federal contractors and*

1 *sub contractors as a general condition of their*
2 *government contracts to take affirmative action to*
3 *ensure minorities and women, individuals with*
4 *disabilities, and veterans have an equal*
5 *opportunity to compete for employment with these*
6 *contractors and subcontractors. More than 25*
7 *percent of the labor force that's two million*
8 *workers in America, work for federal contractors*
9 *and subcontractors subject to the laws enforced*
10 *and administered by the OFCCP.*

11 *In terms of background, the*
12 *requirement that government contractors refrain*
13 *from discriminating in employment has been an*
14 *established part of the Federal contracting policy*
15 *since 1941 when President Roosevelt signed*
16 *Executive Order 8802. The underlying principle of*
17 *this and subsequent executive orders on the*
18 *subject; that is, that federal tax dollars may not*
19 *be used to perpetuate discrimination in the work*
20 *place. The importance of the concept of*
21 *"affirmative action" was first recognized in 1960*
22 *by the then Vice President, Richard M. Nixon who*
23 *recommended that something more than passive non*

1 discrimination be required of federal contractors.
2 If real progress was to be made in achieving equal
3 employment opportunity, President John F. Kennedy
4 embraced the requirement with Executive Order
5 10925. This commitment to affirmative action was
6 reaffirmed by President Johnson with the issuance
7 of Executive Order 11246 in 1960. Every President
8 since President Kennedy has supported affirmative
9 action; the affirmative action program. A
10 distinguishing feature of the affirmative action
11 program under laws administered by the OFCCP is
12 that the contractor is obligated to analyze its
13 work force, evaluate the total scope of its
14 personnel practices and identify areas to equal
15 employment opportunity. Where such barriers are
16 disclosed, the contractor is obligated as a part
17 of its contractual obligation to take affirmative
18 action, including where appropriate, establishing
19 goals to address the under utilization of women
20 and minorities. Affirmative action does not
21 mandate preferential treatment. It does not
22 mandate hiring unqualified workers or using
23 quotas. Moreover, moreover, any form of

1 *preferential treatment in the selection process,*
2 *including the use of quotas is unlawful under*
3 *OFCCP guidelines. I'll quote from our*
4 *regulations. "Goals may not be rigid and*
5 *inflexible quotas which must be met, but must be*
6 *targets reasonably attainable by means of applying*
7 *every good faith effort to make all aspects of the*
8 *entire affirmative action program work." The OFCCP*
9 *regulations provides federal contractors, those*
10 *with 50 employees and at least a \$50,000 contract*
11 *with a blueprint by which to develop a written*
12 *affirmative action plan. If a contractor fails to*
13 *comply with it's contractual obligations, OFCCP*
14 *laws authorize the secretary to cancel, terminate,*
15 *or debar a federal contractor from receiving*
16 *future contracts with the government. However, a*
17 *contractor cannot be debarred without having an*
18 *opportunity for a full evidentiary hearing before*
19 *an administrative law judge. OFCCP nationally*
20 *investigates -- OFCCP investigators conduct more*
21 *than 4100 compliance reviews and investigates more*
22 *than 800 complaints each year. OFCCP also issues*
23 *policy guidance to companies and develops*

1 innovative ways to gain compliance with the law,
2 including regional initiatives, linkage agreements
3 and partnerships with other federal agencies,
5 4 contractors and constituency groups.

5 I'll talk a bit about OFCCP's
6 effectiveness. During the past fiscal year,
7 fiscal year '94 more than 15,000 minorities,
8 women, persons with disabilities and veterans
9 benefitted from OFCCP's enforcement and compliance
10 efforts. Nearly \$40 million in total financial
11 settlements was recovered for victims of
12 discrimination and I might interject at this point
13 that \$17.5 million of that was recovered here in
14 my ten midwestern states. Five contractors were
15 also debarred for failure to meet the obligations,
16 a record number of debarements for OFCCP.
17 However, much of the often unseen progress occurs
18 as a result of the requirement that contractors
19 conduct a self assessment. For many years OFCCP
20 has been working in close cooperation in a
21 constructive partnership with businesses to
22 encourage compliance and self-regulation. For
23 example, each September the OFCCP presents the

1 *Secretary's Opportunity to Thousand award and the*
2 *Exemplary Voluntary Effort Award or EVE Award to*
3 *federal contractors who have made extraordinary*
4 *achievements in affirmative action and equal*
5 *employment opportunity programs.*

6 *The OFCCP also recognizes non profit*
7 *organizations who assist in the training and the*
8 *placement of minorities and women with exemplary*
9 *public interest contribution, we call that the*
10 *EPIC award. Among the results of OFCCP*
11 *enforcement of equal opportunity and affirmative*
12 *action laws are the selection of the first African*
13 *American Vice President of McGraw Hill Company,*
14 *for example, and I'm reminded in stating that that*
15 *I'm also reminded that I held a management meeting*
16 *in Chicago for my midwest managers a couple of*
17 *months ago and met with the general manager of a*
18 *major hotel in Chicago who confided in me that*
19 *without the OFCCP he would not be general manager*
20 *of a major chain in Chicago. Further, employment*
21 *of native Americans on federally assisted highway*
22 *projects has been one of our achievements. The*
23 *regulation of a 20 year old discrimination*

1 *complaint was settled with Honeywell Corporation.*
2 *Some of you may have read about that. That*
3 *benefitted a potential class of 6,000 women and*
4 *also the provision of remedies by Holly Farms in*
5 *which 82 disabled individuals were denied*
6 *employment. We settled that case.*

7 *Very quickly, let me try to give you*
8 *a little background in terms of our overall*
9 *staffing and human resources and what the agency*
10 *has been able to achieve. From 1991 this agency*
11 *had 918 total staffing nationwide. That figure in*
12 *1994 is down to 829. We operate on a budget of*
13 *approximately \$60 million a year. Even though*
14 *we've declined, our financial settlements has gone*
15 *up from \$30 million in 1991. That figure is now*
16 *is up to approximately \$40 million. So apparently*
17 *we're doing a much better job or more skilled job.*
18 *Those figures, by the way, include direct back pay*
19 *in 1991 of \$11.7 million up to \$14.4 million in*
20 *1994. And also in the way of background, in terms*
21 *of our enforcement activity, I mentioned that we*
22 *completed in 1994 about 4100 reviews. That*
23 *includes, that number includes over 3,000 of those*

1 *that were reviewed we found over 3,000 violations.*
2 *I mean 3,000 of those had violations.*
3 *Approximately 2,200 of those was closed with a*
4 *concilliation agreement which indicates more*
5 *serious violations as opposed to a letter of*
6 *committment which we closed with 784 of those. So*
7 *we're apparently finding more serious violations.*

8 *Let me go on then to talk about what*
9 *OFCCP is doing in terms of focusing it's authority*
10 *and better utilization of our resources. I*
11 *mentioned earlier that there has been a decline in*
12 *the OFCCP staff resources. So what does that mean*
13 *to us? That means that we have to do a better job*
14 *and be more focused in terms of how we utilize*
15 *those resources. So early last year before we*
16 *started, fiscal year '94 we came together and*
17 *decided, along with our national office*
18 *representatives Wilcher and Deputy Assistant*
19 *Secretary, I'm sorry, Assistant Secretary*
20 *Anderson, we took a look at how we could better*
21 *use those resources and how we could better focus.*
22 *We developed several initiatives. We developed*
23 *a -- which has really been ongoing a corporate*

1 management review. The, "glass ceiling"
2 initiative. We wanted to maintain that initiative
3 and we had 55 and last year we conducted over 44
4 corporate management reviews of Fortune 100
5 Corporation throughout the United States and we
6 continued our initiative of the construction mega
7 projects. There is a focus in which we decided we
8 could get a bigger bang for the buck if we could
9 concentrate on the larger projects of a hundred
10 million dollars or more on a project basis. We've
11 got 30 or 40 of those going nationally now. We
12 are continuing with our responsibilities under the
13 Bureau of Apprenticeship and Training Statute and
14 we have a shared responsibility there with the
15 Bureau of Apprenticeship and Training. We
16 conducted 141 of those reviews last year.

17 We'll talk about special
18 initiatives. We have a special initiative. We
19 recognized that we -- we can only do a small
20 percentage of our total universe of contractors.
21 We recognized that and have been for years been
22 able to only conduct review activities with a
23 small percentage of our total universe. However,

1 *therefore, we took a look and said how can we*
2 *better focus? We developed several special*
3 *initiatives for 1994-'95. We decided that we*
4 *could get the biggest bang for the buck by going*
5 *in and determining who the worse offending*
6 *contractors were and we are doing X number of*
7 *those we did for last year and we're certainly*
8 *fiscal year '95 will be continuing that activity.*

9 *We went in and we studied the*
10 *industry. We decided and determined through the*
11 *assistance of the Bureau of Labor Statistics and*
12 *other agencies where the growth industries were.*
13 *So we decided that we could increase our*
14 *effectiveness by focusing on those contractors who*
15 *were operating in the growth industries.*
16 *Therefore, we decided to focus our activities*
17 *there. We also decided rather than conduct*
18 *repeated reviews of those that we already looked*
19 *at, we wanted to better focus on what we call*
20 *initial reviews; those contractors that had never*
21 *been reviewed before and therefore, we have*
22 *decided to apply a number of our resources in that*
23 *area. We also did something a little different*

1 *this year. In '95 we decided that a good*
2 *percentage of employment curves were smaller*
3 *contractors. That this is an area where we really*
4 *hadn't focused very much before. Most of our*
5 *reviews had been with contractors with 50 and*
6 *above, the 50 and above. And very few at the 50*
7 *level. Most of them were very large. So we*
8 *decided this year we'd have a small contractor*
9 *initiative. Therefore, we're conducting X*
10 *percentage of our review activities in that area.*

7 11 *One of the other special initiatives*
12 *that the Deputy Assistant Secretary decided, in*
13 *conjunction with the Regional Director, each one*
14 *of us developed a regional initiative. Something*
15 *special and made our recommendations to the Deputy*
16 *Assistant Secretary and they vary all over the*
17 *place from region to region. And I'll just run*
18 *through those very quickly. Investigation is the*
19 *Boston area is focusing on corporations who are in*
20 *a downsizing mode. They wanted to determine how*
21 *women and minorities were faring in those*
22 *situations. We're also taking a look in Region 2*
23 *of the use of computers in terms of the corporate*

1 management review process. How can we -- we want
2 to develop an automated kind of system that would
3 allow us to move through and use, you know,
4 sooner, quicker, faster more accurately. So we
5 have a special initiative in that region using
6 computers. Region 3, the Philadelphia area. They
7 will be using testers similar to that that's been
8 used in the housing industry to go out and test
9 the market to see how women and minorities when
10 they apply for jobs how they're faring. Then as a
11 result of that, help guide the scheduling of the
12 review process. In this region our regions 5 and
13 7, I have to think of that as combined now, we are
14 conducting joint reviews in the higher education
15 area with the Department of Education's Office for
16 Civil Rights and that I must say is going very
17 well. In Region 8 which is out on the west coast,
18 California, they're focusing on the entertainment
19 industry and just to give you a few examples of
20 it, I mentioned already the corporate management
21 review or the glass ceiling reviews activities
22 which continues to be a very high priority
23 initiative for us. Some of you may be familiar

1 with the, have seen the recent reports related by
2 the glass ceiling commission oh maybe two or three
3 weeks ago. The OFCCP will be issuing its own
4 report we hope very soon. Our corporate
5 management or glass ceiling reviews activity. We
6 expect that to -- I don't want to pre-empt the
7 Washington office, but we hope that's out very
8 soon.

9 Let me just briefly say what are
10 some of the growth industries that we determined
11 in conjunction within the industry. Services is
12 one of those areas, business services, motor
13 freight and transportation services, air
14 transportation, computer manufacturing, and motor
15 vehicle manufacturing, believe it or it or not is
16 one of those that is seeing an increase of
17 activity. Certainly we chose and this region the
18 motor vehicle industry because we determined that
19 a bit of -- there's a bit of growth there that
20 they are seeking and adding to their work force in
21 terms of apprenticeship programs. So we decided
22 to give a little bit of a focus there.

23 I will stop there and ask Phil to

1 talk a little bit about the Indianapolis district
2 activities which I think is a primary focus of
3 this. But it's very difficult to talk about one
4 office in isolation because I have to look at
5 things from a more global perspective. But Phil
6 maybe can add some of the local scene.

7 PHIL STEPTEAU

8 Office of Federal Contract Compliance Programs

9 I think, as you can tell, we have a
10 full plate with the initiatives; particularly
11 given our staffing level of the Indianapolis
12 office currently has 15 employees, including
13 myself.

14 MR. GRADISON: What was the number
15 again?

16 MR. STEPTEAU: 15. 11 compliance
17 officers, two support staff, two managers. We are
18 charged with the responsibility of covering
19 Indiana from Valpraiso south, Illinois from
20 Springfield south, that is our area. There's
21 approximately 3,500 contractors in our
22 jurisdiction. In any given year we probably
23 conduct about 82 compliance reviews, about 40

1 construction contractors and the number of
2 complaints varies. In recent years we probably
3 have averaged maybe about 20 complaints a year.
8 4 They've seemed to have dropped with the ADA coming
5 into play. The reason being I think is that
6 although one when we get a complaint, which is an
7 503 handicap complaint, it's considered jointly as
8 ADA, American -- under the Americans with
9 Disabilities Act. One thing that is happening we
10 think is that because of the greater monetary
11 gains that may be attained through ADA, punitive
12 damages up to \$300,000, that many of them are not
13 filing with the OFCCP, but instead are filing with
14 the EEOC and the numbers that we've had, the few
15 that we've had we've had the complainants ask that
16 we issue a right to sue letter that allows them to
17 go into court and; therefore, you know
18 discontinue -- causes us to discontinue our
19 investigation. We conduct of course as I said,
20 the supply and service, Fortune 100 Fortune 500,
21 Fortune 1000 companies, construction, glass
22 ceiling reviews. We conduct glass ceiling
23 reviews. We're conducting currently our second

1 *glass ceiling review and it's still ongoing.*
2 *During those review processes, particularly with*
3 *the supply and service contractors, we also review*
4 *their handicap program, their veteran's program.*
5 *When we review a contractor, we are looking at*
6 *their good faith efforts, good faith efforts to*
7 *take affirmative action and eventually bring about*
8 *equal employment opportunity. As Hal had*
9 *mentioned, we do not require any contractors to*
10 *hire someone who is not qualified nor set numbers.*
11 *They are simply judged on their good faith efforts*
12 *to take affirmative action.*

13 *Given the size of the staff, we*
14 *attempt to maximize our efforts by again reviewing*
15 *contractors with the greatest number of*
16 *opportunities and in that way we can measure the*
17 *growth effort; if they don't have opportunities*
18 *and if they're not under utilized, we cannot deal*
19 *with good faith efforts. So in that case, we try*
20 *to make certain that we maximize our efforts.*
21 *Given the large area that we have to cover, that's*
22 *almost mandatory.*

23 *One of the things that we also do,*

1 one of the things that has been that we initiate
2 in the past year or so is we formed with private
3 industry a liaison group of I think currently
4 there's about close to 40 members representing
5 various industry in the Indianapolis and even in
6 Indiana itself. I think we have several
7 contractors from Fort Wayne that are members, some
8 from Muncie, maybe the vast majority around
9 Indianapolis, and what we do meet, hopefully
10 quarterly, to discuss issues. There's been times
11 when I remember two sessions, one is my staff and
12 myself attended the meeting. We have talked about
13 what the contractor, they looked at us and said
14 listen these are the problems or the issues that
15 we find during the reviews with your personnel.
16 The next meeting we had we talked about our
17 perceptions of the contractors. And I think that
18 makes everyone's job a little bit easier. If we
19 can look at each other in an environment where
20 we're not working across from each other, we're
21 not doing our jobs. We're looking at it more on a
22 social basis, I would think, and it tends to have
23 worked a little bit better. It eases when you go

1 into a company, it eases their apprehension as to
2 what to expect from us. That we're people just
3 like they are. We have problems with them as they
4 do with us. So it works pretty well, the liaison
5 group. We also have had town meetings with
6 community organizations that will serve as
7 recruitment sources, delivery agents to the
8 contractors, and those have all worked pretty well
9 and are growing. And we have more interest in
10 those. And basically I think that's about it.

9 11 MR. HOLLIMAN: Can I have just a couple
12 more seconds? Mr. Klaper I think must be a profit
13 because he, in some of what he desires to have
14 happen in the OFCCP program and it's future. I
15 think we're about to do that. Let me just mention
16 two or three things very quickly. In terms of
17 what are we doing to enhance OFCCP's effectiveness
18 in addition to the other things I've mentioned?
19 We have developed nationally a rather extensive
20 training program. We have several courses that
21 are being offered both to newer staff,
22 intermediate staff, and more senior staff. That
23 activity is ongoing as we speak. In addition, we

1 *have increased our effectiveness through use of*
2 *technology, computers, and we've got special*
3 *training in that activity as well. Very quickly,*
4 *we're taking a look at how we're structured in the*
5 *OFCCP. The region 5-7 merger will be the first of*
6 *a series of mergers that will take place across*
7 *the country. Meaning that the former region 7,*
8 *the Kansas City will be merged into the Chicago*
9 *Region 5. I will have ten states, 11 district*
10 *offices. But as we restructure, I think we*
11 *anticipate that we will reduce the number of*
12 *district offices down to about six to make it a*
13 *more manageable situation in having reduced the*
14 *number of middle managers or first front line or*
15 *first line managers to make it a more better*
16 *structured organization.*

17 *Getting back to Mr. Klaper, I think*
18 *he'll be pleased to know that the OFCCP is*
19 *beginning to focus and develop what we call an*
20 *annual report. This will be a situation in which*
21 *all federal contractors and subcontractors will*
22 *have to send back on an annual basis an*
23 *affirmative action report that summarizes all of*

1 *their activity for the past year. We will use*
2 *that as a tool -- you might think of this as the*
3 *IRS 1040 approach and you have to be careful when*
4 *we say that. In a sense you have to think of it*
5 *this way. That contractors will no longer be able*
6 *to wait until they get this scheduling letter from*
7 *OFCCP to decide to go out and rush and develop an*
8 *affirmative action program. They're going to have*
9 *to think about this all year long, conduct special*
10 *analysis and prepare that report to submit it. It*
11 *will also, we think, be automated for quicker and*
12 *help us better focus on where we should do our*
13 *activity. You know and I don't want to pre-empt*
14 *the Deputy Assistant Secretary, but we think the*
15 *tradeoff is of something like this will be maybe*
16 *reduce paperwork for federal contractors. In*
17 *other words, we do have something I have*
18 *something. So we may see a few changes coming*
19 *down the road.*

20 *The other important point to mention*
21 *here on the annual reports is that probably in*
22 *Chicago we will be consulting with both the*
23 *federal contractor community as well as the*

1 *constituancy of the community for input on the*
2 *structure of this report. This is the kind of*
3 *outreach that we're having in OFCCP. With that I*
4 *will stop and see if I can respond to questions.*
5 *Thank you.*

6 *CHAIRMAN CHASE: I want to thank you both*
7 *for your testimony and we do have some time right*
8 *now for questions and if there are questions from*
9 *members of the committee?*

10 *MR. GRADISON: I like a question, a*
11 *subset of the same issue in terms of attitude*
12 *probably on both your staffs; the attitude that*
13 *your staff is encountering with this incredible*
14 *hail of bullets coming from Congress and what have*
15 *you -- and looking at still significant problems*
16 *in the area of compliance with the staffing*
17 *continues to diminish. I guess a lot of it is by*
18 *attrition. I presume it is not refilling a lot of*
19 *these positions and covering a large area, as*
20 *large an area as you are, in particular. I'm just*
21 *curious to know how these assaults by all these*
22 *politicians on the character and integrity of*
23 *contract compliance means?*

1 MR. HOLLIMAN: Well, can I initially
2 respond?

3 MR. GRADISON: Go ahead.

4 MR. HOLLIMAN: I think what Phil may not
5 have mentioned is that, in fact, he is being
6 permitted for the first time in a few years to
7 back fill the vacancies that he's had. So that's
8 a plus. What we tell our people or certainly
9 region wide and nation wide I'm sure is that never
10 mind this debate, that nothing is changed for
11 them. The regulations are still in place. As
12 long as they are enforcing current and existing
13 policy, that they should not encounter any
14 problems. So -- and they're moving right along.

15 MR. GRADISON: Do you encounter more
16 dramatics because they're emboldened by what
17 happened in November? Is that --

18 MR. HOLLIMAN: Absolutely. I think
19 you're absolutely right.

20 MR. STEPTEAU: Yes.

21 MR. HOLLIMAN: That is they, some
22 attorneys, particularly when federal contractors
23 go to outside counsel, they're a bit of stall

1 *tactics here and there. So sure we encounter that*
2 *and you know if we reach a point of no return, we*
3 *simply have the enforcement recommendation package*
4 *prepared and we submit it for enforcement. But*
5 *you're absolutely right. There a bit of stall.*

6 *MR. GRADISON: But the committment to*
7 *vigorous, truly vigorous enforcement remains and*
8 *the comments of staff --*

9 *MR. HOLLIMAN: No one to my knowledge is*
10 *going to argue if we have a sound, solid developed*
11 *discrimination case, how is anybody going to argue*
12 *with that? So we try to make certain that our*
13 *findings are sound and that the remedies that we*
14 *seek are appropriate.*

15 *MR. TAYLOR: I just had a comment. I've*
16 *met with some of the state staff and when they*
17 *come to Evansville and in being the NAACP*
18 *President, I can always tell when they've been*
19 *there because companies that I've never heard from*
20 *usually leave a message on my answering machine or*
21 *they send certified letters requesting people for*
22 *employment. When I get a certified letter, I know*
23 *they've been in town.*

1 MS. HAWLEY-CONLEY: *Do you have community*
2 *representation on the liaison groups and are you*
3 *involved in any outreach activity to educate*
4 *prospective minority business entrepreneurs or*
5 *women or members of the disabled community that*
6 *would be interested in procuring contracts?*

7 MR. HOLLIMAN: *Well, that's an area that*
8 *we have no responsibility for. The MBE/WBE side,*
9 *those would rest with the SBA and with the*
10 *agencies, the funding agencies. Now in a related*
11 *kind of way we have file-linked, we have met*
12 *extensively with community constituency groups in*
13 *a town hall fashion to talk about our program*
14 *responsibilities. So that's an ongoing initiative*
15 *that we have to educate them about OFCCP and its*
16 *responsibilities.*

17 MS. HAWLEY-CONLEY: *Thank you.*

18 MR. NORMAN: *Do you have a requirement,*
19 *an initial requirement that contractors to provide*
20 *information up front by the make up of the work*
21 *force prior to bidding for the job?*

22 MR. HOLLIMAN: *Can you give me the first*
23 *part of that again?*

1 MR. NORMAN: Perhaps I could rephrase
2 this. When a contractor bids for a government
3 job, is there a requirement to show the make up of
4 that work force in the application of that bid?

5 MR. HOLLIMAN: Yes, I believe to some
6 extent there is. It's a part of the pre-bid,
7 pre-award process. That is still an ongoing
8 process. The federal contracting agencies, before
9 they award a contract, at least to the tune of \$5
10 million or more, have the obligation of coming to
11 OFCCP and request determination as to whether or
12 not that employer has the capability of complying
13 with the regulations. We then will get some
14 feedback to that contracting agency about that
15 contractor's posture. If we have anything in our
16 records on that. Then there are other procedures
17 that the agency, the contracting agencies will
18 have that I'm not totally conversant with, but
19 maybe Phil--

11 20 MR. STEPTEAU: That's about right, other
21 than the pre award process itself where we have a
22 direct request from a procuring agent, agency.
23 That would be about the only involvement that we

1 *would have to obtain information about a work*
2 *force prior to an award.*

3 *MR. HOLIMAN: One other point we should*
4 *make on that is that if it's an absolutely brand*
5 *new contractor, first time contractor or*
6 *subcontractor, the award can be made to them, but*
7 *they have, for example, up to 120 days to develop*
8 *and maintain a written affirmative action program*
9 *if they're a first time member. If they have*
10 *existing contracts, the expectation is that*
11 *they're already in.*

12 *MR. NORMAN: It's an assuming --*

13 *MR. HOLLIMAN: Well, it can be.*

14 *MR. NORMAN: That point you just made,*
15 *they have 90 days --*

16 *MR. HOLLIMAN: 120 days.*

17 *MR. NORMAN: What means is available*
18 *then to follow up on that? What I'm thinking that*
19 *you were talking about earlier, the application of*
20 *computers. Is there any kind of a database that*
21 *can -- that's established that can be accessed or*
22 *updated into monitor --*

23 *MR. HOLLIMAN: Yes. All of them have an*

1 obligation. Any federal contractor or
2 subcontractor has an obligation to submit
3 completed submit the EEOS report that provides
4 what their profile is broken down minority and
5 women in various job categories on an annual basis
6 and that is to be submitted to the joint reporting
7 committee of the EEOC and OFCCP. That information
8 goes into the EEOC and OFCCP database of which we
9 use to assist us in the scheduling activities.
10 Equal employment opportunity data system is where
11 those reports go into.

12 As I mentioned earlier, one of
13 things that we're planning on doing is getting a
14 much better handle on all of the activities
15 through the submission of this annual report that
16 we're working on. I think this will bring about
17 significant change.

18 MR. NORMAN: May I ask one more question
19 on that subject; a follow up question? In doing
20 so then we're talking, I think you're alluding to
21 more of an analysis on an annual basis perhaps?

22 MR. HOLLIMAN: Yes.

23 MR. NORMAN: So that you can make

1 *comparisons to the performance of a contractor*
2 *from one year to the next?*

3 *MR. HOLLIMAN: That's correct.*

4 *MR. NORMAN: And to know any kind of*
5 *change.*

6 *MR. HOLLIMAN: Yes.*

7 *MR. MC ADAMS: I have a couple of*
8 *questions and they're probably much more general*
9 *since this subject is new to me. But just to*
10 *satisfy my curiosity. Both of you spoke*
11 *frequently about good faith and I'm wondering how*
12 *your agency recognizes good faith or an absence of*
13 *good faith when it investigates somebody is in*
14 *good faith something substantive that you can*
15 *point to or it's like that, you can point to or*
16 *does it have something to do, as I think is also*
17 *the case with been proven over time that my second*
18 *and related question is if any given office has*
19 *several investigators, how do you guarantee that*
20 *the investigators that are going into a*
21 *corporation are all looking for the same thing,*
22 *given this nebulous concept?*

23 *MR. HOLLIMAN: Well, maybe the last one*

1 *first. We have, for example, a contract*
2 *compliance manual that sets out for the compliance*
3 *officers basic policies and procedures to be*
4 *followed and it's sort of non compliable. So they*
5 *should generally be following that for some*
6 *uniformity and consistency.*

7 *I mentioned earlier, too, that we're*
8 *providing significant training to our staff. It's*
9 *being offered essentially by the same people on a*
10 *national basis. So you're getting the same*
11 *message, the same approaches being explained to*
12 *them so that helps to provide some uniformity and*
13 *consistency to the review process.*

14 *Your second question was about good*
15 *faith and Phil, feel free to say what you need to.*
16 *The measure is on an individual contractor basis.*
17 *They make claims about, in other words, let's take*
12 18 *a simple example. We go in and we conduct a*
19 *review and we find that an employer, a federal*
20 *contractor, is under utilized in certain job*
21 *groups. Then they have an obligation under our*
22 *regulations to develop goals and timetables for*
23 *that job to overcome that under utilization. As a*

1 part of that process -- see it's not a violation
2 on the part of the employer for failure to meet
3 the goal. The real measure is good faith efforts,
4 the extent of their good faith activity. And we
5 look for, you know, we get a lot of lip service
6 sometimes. We look and examine in depth their
7 activities. Let's just say, for example, they're
8 going to do some hiring to overcome that under
9 utilization. They're sending out a general letter
10 to one of these recruitment forces. There's no
11 follow up activity and no serious -- in no serious
12 way. We would examine and evaluate the
13 seriousness of their efforts and fill in.

14 MR. STEPTEAU: We will also contact
15 those recruiting sources to see if, in fact, they
16 have the relationship with that particular
17 contractor. We would look at the timing of the
18 hire of the request the job or when did it go out?
19 Did it go out two weeks or three weeks before to
20 fill the job and not -- in all cases that cannot
21 be possible, but for the most part, have they
22 allotted those sources time to provide them with
23 qualified referrals or have they formed a rapport

1 with these agencies so that they feel good about
2 each other. Many cases we found that when we
3 talked with the referral agencies, certain
4 contractors who will send in job orders, they go
5 directly to the file because they know that the
6 contractor will not respond to them. So we look
7 at good faith efforts. Well the contractor has
8 documented their efforts, genuine efforts to
9 recruit and minorities and females, the veterans,
10 the handicapped, then that's good faith efforts.
11 It's a matter of documentation. Many cases there
12 is no documentation, no way to support those good
13 faith efforts. But when they do, we surely accept
14 that. For consistency or uniformity, one of the
15 things that we require is that before a compliance
16 officer goes into the field, they meet with the
17 supervisor and go over their findings during the
18 desk audit and to ensure that they've covered
19 everything and have eliminated those areas where
20 there are no problems and that their plan to
21 proceed on site is only directed at those areas
22 where they have indicators that have been
23 identified during the desk audit. That maximizes

1 *our efforts and minimizes our time on site.*

2 *MR. HOLLIMAN: Along that same line,*
3 *what we do is encourage those referral*
4 *organizations in the community that when they or*
5 *if they suspect or have direct knowledge that*
6 *they're qualified referrals, assuming they're*
7 *qualified, are not seriously being considered.*
8 *But these corporations they track that, keep*
9 *record of it, and if they suspect that the basis*
10 *of those rejections are the fact they weren't*
11 *getting hired is on any prohibitive basis, then*
12 *they have the the option of filing a complaint or*
13 *requesting or just providing general information*
14 *to us about that employer. So we track it in two*
15 *or three different ways.*

16 *Won other example on a little*
17 *different level. A lot of the employers will use*
18 *executive recruiting sources for some of their*
19 *executive positions. We examined, for example,*
20 *the instructions that are provided to those head*
21 *hunter organizations in terms of where they*
22 *recruit. We examined seven who are out there*
23 *utilizing minority recruitment forms where they're*

1 likely to get a better referral, better mix of
2 referrals for the applicant's pool and make some
3 judgements about that.

4 MR. STEPTEAU: A couple more examples,
5 maybe if we're looking at good faith. Say they're
6 under utilizing -- say the company is under
7 utilized females in factory areas or whatever, and
8 during the onsite we find that they tell us they
9 sent orders, job orders in to recruit more females
10 and we find they have no rest room facilities in
11 the factory for females. Then it's kind of tough
12 to talk about good faith efforts. Same way with
13 the disabled. If they're taking applications or
14 they have a means for taking applications or
15 interviewing, we find that the personnel office is
16 on the second floor and no access for the
17 disabled. Kind of tough to prove that you're
18 doing good faith efforts to recruit.

19 MR. MC ADAMS: Just one more question,
20 if I could. Just a follow up question. Did that
21 mean then that you could go to a corporation,
22 hypothetically, with a, before an audit and say if
23 you follow the following list of recommendations,

1 chances are you will not be audited? Keep your
2 documentation aggressively utilized, helping
3 companies create the right kind of facilities.
4 Could one come up with that sort of list
5 hypothetically beforehand or is it still so murky
6 that it's likely a lot for discussion?

7 MR. STEPTEAU: What the agency has had
8 for many years is technical assistance to provide.
9 What the agency has now done for years is provide
10 technical assistance and through the liaison group
11 we've gotten the word out and through contractors
12 that come in. A contractor who anticipates being
13 a bidder on government contracts or feels like
14 maybe they really don't have a handle on what the
15 regulations will require can simply call any of
16 the offices and request that technical assistance
17 be provided. And what we will do is meet, my
18 senior specialist in Indianapolis will set a time
19 and date for them to come in and we will go
20 through and explain the regs and the requirements
21 to them. It's simple. All they need do is call.

22 CHAIRMAN CHASE: Judy, I think you have a
23 question?

1 MS. HAWLEY-CONLEY: *What sanctions or*
2 *penalties do you impose against the federal*
3 *contractors that are debarred? Are they precluded*
4 *from any further certification or could they have*
5 *to repay Federal dollars or --*

6 MR. HOLLIMAN: *That's the ultimate*
7 *sanction is that two things, they can be debarred*
8 *from receiving future federal contracts and the*
9 *order can also include the termination of existing*
10 *contracts, depending on the ruling, and then they*
11 *have to apply and go through a rather tedious*
12 *process for gaining re-entry or status as a*
13 *federal contractor.*

14 CHAIRMAN CHASE: *Sondra Matthews?*

15 MS. MATTHEWS: *Mr. Chairman, Mr.*
16 *Holliman, Mr. Stepteau, thank you very much. I*
17 *was glad to hear that one of your future*
18 *initiatives was to look at the small contractors,*
19 *some of us that live in small towns need a little*
20 *bit of enforcement with the small contractors and*
21 *I guess just as the small businesses in the area*
22 *that hires the most people, we're told contractors*
23 *would fall in that same category.*

1 MR. HOLLIMAN: You're talking about your
2 growth industries. I didn't hear you talk about
3 if that I've been told are growth industries and
4 want to know what your role or responsibility is
5 for those and that is the growth of the prison
6 industry and the gambling, legalized gambling;
7 whether it be lottery or riverboat gambling. Do
8 you have any relationship at all to the commission
9 or in terms of contract compliance in those two
10 areas?

11 MR HOLLIMAN: Yes, yes, that's
12 interesting. There would have to be, for our
13 purposes, some nexus in terms of the contractual
14 relationship between the gaming industry. I can't
15 imagine this would happen, if they're building
16 their casino on federally leased land, for
17 example, that would be the tie in and I would have
18 to believe that would make them a federal
19 contract.

20 MS. MATTHEWS: I'm thinking about where
21 I come from, Evansville, that already has the
22 license, well permit. The Corp of Engineers is
23 involved and coast guards and everybody else is

1 involved, but they've already done a tremendous
2 amount of spending at this point and I'm not sure
3 if any contract compliance oversight is taking
4 place. And so that's what I'm going at.

5 MR. HOLLIMAN: Well I understand, you
6 know, clearly if we could establish that federal
7 monies, federal contract monies as opposed to
8 grant monies are going into development of that
9 casino activity, then that would give us certainly
10 jurisdiction to take a look at it. We would have
11 to establish that. So if you're aware of any
12 federal contract monies, either those leases or
13 Corp of Engineers or whatever linkage might be
14 there, then let us know about that.

15 MS. MATTHEWS: U.S. Park areas.

16 MR. HOLLIMAN: Yea. I'm saying federal
17 land, public land. If that is being leased from
18 the federal government, for example, a lease
19 constitutes a federal contract relationship as far
20 as I'm concerned.

21 MS. MATTHEWS: What I'm understanding is
22 about close to \$50 million has already been
23 obligated in getting this first riverboat going

1 *and I'm not aware of any contract compliance*
2 *oversight.*

3 *MR. HOLLIMAN: Well I'm saying there may*
4 *not be. We may not have jurisdiction to take a*
5 *look to provide any oversight. We would first*
6 *have to establish that we have jurisdiction.*

7 *MS. MATTHEWS: Okay.*

8 *MR. HOLLIMAN: So that's why I'm saying*
9 *if you have information about monies, the source*
10 *of the monies being used to develop the site, then*
11 *share that with us.*

12 *MR. GRADISON: Well, U.S. Coast Guards*
13 *has the direct responsibility of the Ohio river*
14 *for their riverboat. All these waterways have*
15 *substantial federal interests involved and I share*
16 *Sondra's curiosity about that because there*
17 *certainly is a nexus there in terms of -- the*
18 *federal nexus seems to be quite clear with this*
19 *evolution of these showboats on public waterways.*

20 *MR. HOLLIMAN: I'd sure like to know*
21 *about that. It would be something we've not*
22 *apparently gotten into at all.*

23 *MR. GRADISON: It's fairly new.*

1 *Illinois' in Phil's district.*

2 *MR. HOLLIMAN: It's something we will*
3 *check out.*

4 *MS. MATTHEWS: What about the prison*
5 *industry? Is that a growth industry? When you*
6 *say prison industry, do you mean the building of*
7 *prisons?*

8 *MR. HOLLIMAN: Yes, absolutely. Federal*
9 *prisons in particular, and we have two or three of*
10 *those going somewhere in the nation. I don't know*
11 *if -- yes, we have two or three in our region*
12 *here. I think in Ohio they're building a new*
13 *prison, Federal prison and it's definitely what we*
14 *call all direct Federal contracting arrangements*
15 *because the Bureau of Prisons is responsible for*
16 *that. Those are Federal contract dollars. We are*
17 *taking a look.*

18 *MS. MATTHEWS: So it would be under*
19 *your --*

20 *MR. HOLLIMAN: Oh, yes. Well I don't*
21 *know if it's growth, but it's something we take a*
22 *look at. We are conducting reviews. As a matter*
23 *of fact, we view those projects which are really*

1 *sizeable, a hundred million dollars or more as*
2 *under our mega project initiative. We have that*
3 *special project focus.*

4 *CHAIRMAN CHASE: I wanted to follow up*
5 *on I think something that you talked about before,*
6 *Mr. Stepteau, with industrial liaison groups and*
7 *working with the community. Certainly there's a*
8 *relationship that has to be fostered with a lot of*
9 *different organizations and groups and I was*
10 *wondering if you could talk a little bit. I know*
11 *you have a Home Town Plan here in Indianapolis*
12 *talk about your office's relationship with the*
13 *people in the Home Town Plan and also your*
14 *assessment of the relationship with the industrial*
15 *liaison group. And also as a follow up, I know*
16 *that there's a memorandum of understanding that*
17 *your agency has entered into with, for example,*
18 *the Equal Employment Opportunity Commission.*
19 *That's the Bureau of Apprenticeship and Training*
20 *and also the Veteran's Employment Training*
21 *Service. And maybe if you could speak a little*
22 *bit about those relationships as well?*

23 *MR. STEPTEAU: Yes, the liaison group I*

1 think we have an excellent relationship from the
2 beginning and it seems to grow. More and more
3 contractors are aware of our agency, our posture,
4 that we're not in a get you mode, and more
15 5 contractors are contacting the co-chairman and are
6 asking to join. So I think that that's a
7 relationship that will continue. They can -- I
8 think more and more contractors feel freer to
9 contact the office and inquire as to some of their
10 concerns and which hadn't happened in the past.
11 So I think that that's on the move. The EEOC,
12 probably now the investigators are in my office
13 reviewing some records of an investigation that
14 we're doing that they too are reviewing similar
15 issues and under that Memorandum of Understanding
16 we share information. So that goes without
17 saying. The Home Town Plans we have, I think we
18 have a good relationship; however we must audit
19 the Home Town Plan and those signatories to the
20 Plan. I think that given that relationship, it
21 works quite well.

22 CHAIRMAN CHASE: I'm not sure if all of
23 the members of the committee are familiar with the

1 Home Town Plan. Could you maybe describe what
2 that is because I know it's so unique I think to
3 the country. We have the only one maybe.

4 MR. STEPTEAU: I suspect that this may
5 be the only active -- maybe there's one in Ohio,
6 Cincinnati. I think Cincinnati is active and
7 Cleveland. So there's a few that's still active.
8 If my recollection serves me right, I think that
9 Home Town Plans came into existence sometime in
10 1972, and some of them have -- well, the majority
11 of them have kind of faded away for one reason or
12 another. This one seems to be very effective in
13 what they do. Sometimes there's --

14 MR. GRADISON: What they do, which is
15 what?

16 MR. STEPTEAU: I don't know. They just
17 do -- they seem to do the job that they're
18 required to do.

19 MS. KENNEDY: What is that?

20 MR. STEPTEAU: They recruit, train and
21 place, trainees or pre apprentices okay, to
22 contractors that are signatories to the Plan. Not
23 all of the contractors are government contractors

1 that would fall under our jurisdiction, but quite
2 a few do and such when we review these
3 contractors. The Home Town Plan representatives
4 sometime participate as observers and not to
5 interfere in the review process. They work with
6 the contractors. So, although I think our
7 objectives are the same, sometimes the way each
8 agency goes about it may differ. The contractors,
9 nonetheless, are required to adhere to the
10 regulations if they have a federal contract. But
11 all in all, I think that given that backdrop, it's
12 a good relationship. I have a great deal of
13 respect for what they do and although we still
14 have to enforce our regulations --

15 MR. HOLLIMAN: One other point on the
16 relationship with the EEOC. The basic agreement
17 includes provisions for referral of complaints of
18 an individual nature that are filed with OFCCP
19 under executive order to the EEOC for
20 investigation. And that's sort of their mission.
21 We will retain generally class complaints for
22 investigation of OFCCP.

23 MS. BRITA: You spoke earlier more in

1 *generalities about the number of complaints*
2 *received and resolved in the last year. So can*
3 *you elaborate on what types of complaints they*
4 *were; race, gender, disability?*

5 *MR. HOLLIMAN: The bulk of our*
6 *complaints that we're getting is filed under the*
7 *Section 504 of the Rehabilitation Act, the ADA*
8 *now, and has been for the past several years. We*
9 *don't know what brings that about. Complaints*
10 *under executive order and basic race, et cetera,*
11 *are declining for some reason. So we're not*
12 *certain. We do get --*

13 *MR. GRADISON: Is that a national*
14 *phenomenon?*

15 *MR. HOLLIMAN: Yes, and for some*
16 *strange reason more complaints are filed in the*
17 *southeast quadrant in the Atlanta area than most*
18 *of the other states, other regions. We don't know*
19 *why that is, but that's the bulk of our activity.*

20 *MS. BRITA: Do you think that some of*
21 *the -- that has to do, again I asked Mr. Klapner*
22 *about this, too, that they have to be reasonable*
23 *accommodations for these people that it's more of*

1 an expense to perhaps hire disabled because of the
2 accommodations that have to be made to the place
3 of business?

4 MR. HOLLIMAN: I think it's been our
5 experience that the majority of the accommodations
6 really aren't that expensive. We're not asking
7 them to remodel entire buildings. I think they
8 have to meet certain local codes and all but.

9 MS. BRITA: But they can be to a small
10 business.

11 MR. HOLLIMAN: Well but you have to
12 examine those very closely when you find that a
13 lot of instances that minor adjustments really
14 take care of most of that. And I think they
15 probably get more concerned about it than we do
16 and we try to work with them in terms of
17 accommodations, at least OFCCP. We don't find
18 that an employer has to go through a great deal of
19 major expense for accommodations.

20 MR. GRADISON: It seems to me, being a
21 disabled person and serving on several committees
22 including Mark Temple, for instance, who had a
23 huge addition, several million dollars, Mark

1 Temple and we have a committee of members of the
2 congregation who are disabled. They are pretty
3 significant expenses that are to be incurred and
4 no matter how large or how small the physical
5 plant may be, seems to me, in my experience being
6 a disabled person, it does involve some pretty
7 extraordinary procedures. The rest room
8 facilities, ramps, elevators. I don't want to
9 diminish the significance of the expenditure
10 because it can be really quite substantial for a
11 small or a large operation of any kind. I think
12 it's--

13 MR. HOLLIMAN: Well, let me -- I
14 certainly agree with you. I didn't mean to
15 diminish that, but what I was saying, those are a
16 part I think of the basic requirements that
17 they've got to meet certain laws on a state, I
18 mean local basis now and if their buildings are
19 not accessible, and certainly any new building
20 that is constructed must meet those requirements.
21 So if they're going to retrofit a building to
22 accommodate the physical space and so forth, quite
23 naturally those are very, very expensive things

1 we're talking about. But I'm saying that most of
2 the situations, and we see those all the time and
3 we see those very large expenditures for the
4 physical space accommodations, kinds of general
5 stuff. But I'm talking about the stuff that we
6 see on the complaint situation that in, generally
7 in order to accommodate this person's access to
8 the employment office, I mean a ramp, a small ramp
9 is sometimes adequate or once a person is
10 employed, they can't roll the chair, for example,
11 up to the desk, just raise it a few inches and you
12 got it. Those are the kinds of things we're
13 talking about. And we see most of that.

14 MR. GRADISON: Mark Temple is 30 years
15 old and there's a lot of things to do.

16 MS. KENNEDY: I think a couple of these
17 questions really get to the question that I have,
18 maybe even more general than some of the others,
19 but there is so much misunderstanding about some
20 of the requirements you have spoken, for example,
21 the jurisdictional issue. People seem to think
22 frequently that, you know, if there's any kind of
23 federal dollars involved then you're involved and

1 clearly that's not the case because you're
2 contract complaine. Similarly, having worked a
3 little with the ADA and being married to the
4 architect, the requirements, for example, for
5 reconstruction are far different than the
6 employment requirements which you deal which are
7 much less honerous. There are ways that you can
8 make reasonable accommodation under your section
9 where people can, yea, they could lift somebody if
10 it's a question of a simple barrier and the
11 employer makes, has an obligation to do that.
12 Then he can have somebody lift somebody over
13 something. It can be something literally that
14 simple. All of these things I mean it's fine for
15 us to sit around and talk about that and clarify
16 that in the context of this hearing, but is there
17 some effort and maybe that is, to clarify in the
18 general public some of these issues. So that I
19 guess my concern is far less with reality than
20 some of the perceptions that we're dealing with
21 all the time. You know, the guy who comes in and
22 says I don't want to do business with the
23 government because you're just too much trouble.

1 Or I don't want to have to comply with the ADA
2 because it's going to cost me a fortune, or
3 whatever other misunderstanding. I think it gets
4 to your point earlier, if there were policy that
5 says if there was some simple kind of mechanism to
6 explain to the public these issues in ways that
7 would quiet some of the fears and perhaps put to
8 rest some of the misunderstanding, is there
9 anything from your office happening to do that?

10 MR. HOLLIMAN: Sure. We mentioned
11 already several things that we're doing. We've
12 had an ongoing relationship with the federal
13 contract, federal contracting community itself for
14 many years now and we have; for example, 145 or
15 150 industry liaison groups. That includes
16 certainly every major employer and their various
17 divisions throughout the nation. We met with them
18 routinely to discuss all sorts of matters outside
19 the compliance review process, but related to our
20 requirements and that is an ongoing kind of thing.
21 And the further extension of that, there is a
22 national industry liaison group that's convention
23 every year for a national convention. We've been

1 holding town hall meetings with community
2 constituency groups. Those who employment
3 referrals and organizations and others routinely
4 to explain who were what we, do what the
5 requirements are. So this is --

6 MS. KENNEDY: What you don't do?

7 MR. HOLLIMAN: Absolutely, and it's
8 amazing how much misinformation. There's a lot of
9 confusion between OFCCP and EEOC. I mean they
10 think we're EEOC and we say, no we're a sister
11 agency or whatever and here's what we do. That is
12 distinctly different from what the EEOC does. So
13 that's an ongoing effort and we will offer, in
14 addition to that, upfront technical assistance to
15 any employer of any size. And what the problem we
16 encounter is that there's still a fear, it's like
17 going into the IRS that you're going to discover
18 in April, schedule me for a review. Well we've
19 got enough to do. If we can get to five percent
20 of our universe, we're doing great. So in all
21 likelihood we wouldn't get to them anyway for some
22 time unless if they had serious problems we'd
23 point that out. But it doesn't mean that they

1 *would be scheduled for an audit. So there's a*
2 *little bit of fire there.*

3 *MS. KENNEDY: And I don't want to*
4 *belabor this. What you're talking about,*
5 *relationship with groups, educational efforts with*
6 *groups with whom you've already had relationships.*
7 *I'm wondering if there's not a need for or perhaps*
8 *an initiative occurring to educate perhaps more of*
9 *the general public so that those groups with which*
10 *you have contact will increase. Because I think*
11 *there's a great deal of self censorship. Oh I*
12 *wouldn't even walk in your office. I don't want*
13 *to do business because it's going to be the IRS*
14 *thing. Don't use that.*

15 *MR. HOLLIMAN: Yes. It's something,*
16 *what you're talking about is something I've been*
17 *concerned about for a good time. I think we can*
18 *do a better job with the public service*
19 *announcements about who we are, what we do and*
20 *invite them in, you know. So, sure, that's*
21 *something that we need to think about it.*

22 *MR. GRADISON: Or these kinds of*
23 *presentations are valuable and we're sympathetic,*

1 *you know.*

2 *MR. HOLLIMAN: We want to do more of*
3 *this kind of thing.*

4 *CHAIRMAN CHASE: We have one last*
5 *question. John?*

6 *MR. NORMAN: With the responsibilities*
7 *that you have and declining work force, although*
8 *you suggest that it might be reversing itself, how*
9 *many reviews have been conducted in the last three*
10 *or four years?*

11 *MR. HOLLIMAN: It's been declining in*
12 *terms of the number of reviews. For example, last*
13 *year we had approximately a little over 4,000*
14 *nationally. That's probably down from say five or*
15 *six years ago we might have done maybe 6,000. Now*
16 *what the difference being is that we think that*
17 *those reviews, those 4,100 reviews are more better*
18 *quality reviews. And if you equate that then to*
19 *reduction in staff resources and say the financial*
20 *settlements of four or five years ago is at \$30*
21 *million, that figure is increasing, meaning that*
22 *we're finding more discrimination with fewer*
23 *resources. And you know what's the answer for*

1 that, we think we're better trained, better
2 equipped, even though we have fewer resources and
3 declining technology and other things that allow
4 us to do a better job.

5 CHAIRMAN CHASE: I'd like to thank you,
6 Mr. Holliman, Mr. Stepteau, for coming and
7 speaking with us this morning. I have a list of
8 some other things that I wanted to go through and
9 I know we didn't have time mainly for the purposes
10 of generating our reports, we're going to be
11 releasing, hopefully this fall, we may need data
12 and I'm just wondering if we will be able to
13 contact your respective offices for data and going
14 through some of the things we're looking for just
15 in order to make sure that we have a really good
16 report about things such as the support positions
17 in each of your offices for the years say '91
18 through '94. Your staffing, both professional and
19 support. The number of reviews for each of those
20 years, and the types of reviews which I know we
21 have talked about a little bit. The number of
22 audits that you may have conducted during those
23 same time periods. Number of Indiana complaints

1 that were filed and resolved within those time
2 periods. The type of complaints. Travel budget.
3 Travel budget, for example, for the district
4 office within the last few years because I know
5 that has a lot of impact on how effective you can
6 be and also I know we talked about training and
7 there is and there's an initiative now on the
8 federal level for increased training. So if you
9 have any data that reflects the training for staff
10 members over the past few years, how that may have
11 increased, that would be helpful. And there may
12 be some other things that I'm omitting and we're
13 happy, actually very glad to have the support of
14 our regional office up there in Chicago. That's
15 been very helpful for us and hopefully they can
16 also follow up with some of these requests.

17 MS. CONLEY: Well, I was thinking maybe
18 they would be able to have some of that
19 information to go to South Bend next week because
20 that's kind of nearer their regional office.

21 CHAIRMAN CHASE: Some of it may be easily
22 accessible. Maybe you have some of these
23 compiled.

1 MR. HOLLIMAN: Yes. We can certainly
2 provide most of that. I think we've already
3 furnished Peter some data of information about our
4 activities. I don't see a problem.

5 MR. GRADISON: Is it in response to
6 this? Peter, have they sent this?

7 MR. MINARIK: Yes.

8 MR. HOLLIMAN: So you can expect us to
9 be cooperative. Peter and I communicate -- Peter,
10 his boss and I communicate regularly. We're part
11 of a civil rights conference group. So we
12 exchange information regularly.

13 CHAIRMAN CHASE: I want to thank you both
14 for being here. We will take a 15 minute
15 break and we will reconvene.

16 (A brief recess was taken.)

17 CHAIRMAN CHASE: We're now back in
18 session. And our next group of panelists
19 represent the Industrial Liaison Group, and with
20 us today we have Paul Bayless who is the Assistant
21 Affirmative Action Officer, Indiana
22 University-Purdue University of Indianapolis. We
23 have Brenda Pitts who is sitting in today for

1 *Joseph C. High with Cummins Engine Company, and we*
2 *also have Dan Russell who is the Director of Human*
3 *Resources and Equal Employment Opportunity for*
4 *Magnavox Electronic systems Company. And before*
5 *we start, I just want to tell you, if you could*
6 *limit your opening statements to maybe about five*
7 *minutes each and we'll have time for questions.*
8 *And I also want to say to committee members that*
9 *please after lunch if you could be back here about*
10 *five minutes to 1:00 because we're going to be on*
11 *a tight schedule so we would like to begin*
12 *promptly at 1:00 o'clock. So why don't we start*
13 *with Mr. Bayless.*

14 *PAUL BAYLESS*

15 *Indiana University-Purdue University*

16 *Thank you, Mr. Chase. I have a*
17 *prepared statement which may run a little bit*
18 *longer than five minutes, but I'm hoping you'll*
19 *bear with me.*

20 *My name is Paul Bayless and I would*
21 *like to thank the committee for this opportunity*
22 *to share my views on OFCCP's enforcement of the*
23 *Executive Order 11246.*

1 I come to this hearing with more
2 than 17 years experience in affirmative action,
3 and having had numerous interactions with OFCCP at
4 the local and national and regional levels. I'm
5 currently Assistant Affirmative Action Officer at
6 IUPUI here in Indianapolis. And prior to taking
7 this position in August of 1993, I directed the
8 Affirmative Action program at Purdue University in
9 West Lafayette for 15 years.

10 In addition to this tour of duty, I
11 have, for the past ten years been a member of the
12 Board of Directors of the American Association for
13 Affirmative Action or what we call Quad A, a
14 national organization of EEO affirmative action
15 professionals and was privileged to have been that
16 body's president from 1988 to 1990.

17 I was also one of the founding
18 members of the Indiana Association of Affirmative
19 Action or INAAA. I have been a member and past
20 chair of the Committee on Institutional Cooperation
21 or CIC Panel on Affirmative Action. Most of you
22 may not know CIC, but it's a consortium of large
23 midwestern universities, perhaps better known as

1 *the Big Ten conference. I've also been an active*
2 *participant in the regional and state industry*
3 *liaison groups.*

4 *Others at this hearing will testify*
5 *from the public and private sector perspectives.*
6 *I shall focus my remarks on OFCCP and higher*
7 *education. I've divided my remarks into three*
8 *areas; first, my personal experience with OFCCP,*
9 *second, the experiences reported to me by other*
10 *higher education institutions in Indiana, and*
11 *third, a brief general comment on OFCCP based on*
12 *my interaction with colleagues in Quad A and in*
13 *INAAA. So let me begin with my personal*
14 *experience.*

15 *As I previously noted, I began my*
16 *career in affirmative action at Purdue University.*
17 *That opportunity came in 1978 as a consequence of*
18 *a compliance review by the Office of Civil Rights*
19 *which you may recall was under the old Department*
20 *of Health, Education and Welfare. After that*
21 *review, I was transferred by the Purdue*
22 *administration or asked to transfer from another*
23 *position and was given the task of organizing the*

1 *first full time affirmative action office on that*
2 *campus. Here, let me make point number one. One*
3 *major OFCCP's impact measure is the positive*
4 *change brought by its activity. Prior to that*
5 *1977 review, Purdue's affirmative action program*
6 *was a makeshift, hip-pocket affair delegated as a*
7 *part-time function to an executive assistant. I*
8 *doubt that it would have soon changed had there*
9 *not been considerable pressure arising from that*
10 *complaine review.*

11 *Now during my stint in Purdue's*
12 *affirmative action office I underwent or should I*
13 *say survived five OFCCP compliance reviews on the*
14 *West Lafayette Campus and one at our Calumet*
15 *campus. Which is an unusually high level of*
16 *activity. This circumstance was a result of the*
17 *WEAL or Woman's Equity Action League consent*
18 *degree, Federal Court Order, 1977 Federal Court*
19 *Order mandating that OFCCP conduct pre-award*
20 *compliance review whenever a university received a*
21 *federal contract of over \$1 million. All the big*
22 *universities across the country; M.I.T, the*
23 *Georgia Techs, Ohio State, University of*

1 *California and others came under heightened*
2 *scrutiny because of their big research contracts.*

3 *Here is point number two. Because*
4 *of WEAL's hammer, nearly all the large*
5 *universities put together very comprehensive and*
6 *sophisticated affirmative action plans. Even*
7 *though OFCCP was forced into a very tight 30-day*
8 *window in which to conduct pre-awards, I'm*
9 *convinced that just like Purdue, few would have*
10 *moved as far and as fast without that prod. I*
11 *conclude that OFCCP has had a major positive*
12 *influence on the degree to which higher education*
13 *has practiced affirmative action.*

14 *Which leads me to point Number 3;*
15 *that is that the ivory tower of academe has been*
16 *an especially tough nut to crack for OFCCP. The*
17 *agency has always struggled with understanding the*
18 *nature and complexity of universities, especially*
19 *faculty hiring, tenure and promotion. Few other*
20 *enterprises so jealously guard that prerogative to*
21 *make arcane decisions in the name of "academic*
22 *freedom" and because of these idiosyncracies,*
23 *OFCCP has had difficulty applying it's routine*

1 *analyses. So, even though faculty are at the core*
2 *of university life and governance, OFCCP has*
3 *turned the focus on the non-faculty side of the*
4 *house. This deference means that the pace of*
5 *change in the numbers of minorities and female*
6 *faculty has lagged that pace in other industries.*
7 *For example, from 1983 to 1993 the percentage of*
8 *female tenure-track faculty at those CIC*
9 *institutions rose from 17.7 percent to slightly*
10 *over 20 percent. During that same period the*
11 *percentage of Hispanic faculty increased from 0.9*
12 *percent to 1.6 percent. And black faculty changed*
13 *from 1.9 percent to 2.6 percent. Clearly, OFCCP*
14 *cannot take all the credit nor all the blame for*
15 *these rather disappointing figures. But I believe*
16 *that without their involvement, even less change*
17 *would have occurred.*

18 *The pipeline for professionals and*
19 *managers starts in the educational system and the*
20 *well head is the university. So these*
21 *institutions need to be held accountable for that*
22 *critical role.*

23 *Point Number 4. I found these six*

1 compliance reviews in 15 years to have been very
2 useful because they invariably uncovered some area
3 which we had missed in our internal analysis;
4 whether it's suspicious pay discrepancy, a hiring
5 decision that went awry or termination, our
6 adverse impact analysis failed to uncover. We
7 tightened up a number of procedures as a direct
8 consequence of the agency visits and I believe
9 Purdue's personnel system is far better for that.

10 Point Number 5. One criticism often
11 heard is that some OFCCP staff had been
12 overbearing and heavy-handed. And while there
13 certainly were instances where I disagreed over
14 just what were reasonable demands for data or
15 material, on balance I have enjoyed an excellent
16 working relationship with OFCCP staff in
17 Indianapolis. I have the highest regard for
18 current and former professionals like Jim
19 Franklin, Bill Smitherman Ann Byfield and many
20 others. Likewise I've had the good fortune to
21 have been personally acquainted with each of the
22 OFCCP regional directors as well as the national
23 agency head as far back as 1980. To me they have

1 all exemplified the highest standard of
2 professionalism and dedication to public service.

3 Point Number 6. A decade ago I like
4 Jim Klaper would have levied the criticism that
5 OFCCP sometimes paid more attention to form than
6 to substance. I recall in 1979 review when one of
7 the EOS insisted that we type in zeros in all the
8 unused cells of our 8-factor availability analysis
9 even though the worksheets explicitly stated
10 that these particular factors were clearly not
11 relevant and thus given zero weight. But based on
12 my recent experience this kind of nonsense is all
13 but disappeared, and especially since the agency
14 has undertaken a vigorous nationwide training
15 program for all its staff members.

16 Now let me turn to comments from a
17 few other universities across Indiana. I spoke to
18 colleagues at five of the largest schools:
19 Indiana University, Ball State, Indiana State,
20 Notre Dame and Vincennes. Interestingly, I found
21 that Purdue had had as many compliance reviews as
22 the others combined. Indiana University at
23 Bloomington underwent its last review in 1984.

1 *Ball State University in Muncie was reviewed in*
2 *1983 and Indiana State in Terra Haute has never*
3 *been visited. Notre Dame falls under the*
4 *jurisdiction of the Chicago Office and the*
5 *committee, I believe, will hear their experiences*
6 *at the hearing scheduled in South Bend.*

7 *As the Assistant Director recalled*
8 *Indiana University's 1984 compliance review, she*
9 *noted that it had focused almost exclusively in*
10 *the skilled trades area and dealt very little with*
11 *faculty or the academic departments. The results*
12 *of that included strengthening the affirmative*
13 *action office and there were substantial changes*
14 *in personnel practices. She felt the reviewers*
15 *were hampered by a lack of understanding of higher*
16 *education. While the Director at Ball State*
17 *chuckled that "OFCCP doesn't seem to exist for*
18 *me". She expressed no regrets at that lack of*
19 *attention noting that her hands were full*
20 *responding to investigations by the Indiana Civil*
21 *Rights Commission by the Office for Civil Rights*
22 *and EEOC. The Director at Indiana State said*
23 *emphatically, "Even though we've never had an*

1 *OFCCP review, I would welcome one. It would give*
2 *me a great lever to get more cooperation from*
3 *deans and department heads".*

4 *Vincennes has had the most recent*
5 *contact having just completed a review that*
6 *started in November, 1994. Ms. Gazella Summitt,*
7 *the affirmative action officer at Vincennes*
8 *described her reaction in much the same terms that*
9 *I have used: Positive. "They didn't come in*
10 *swinging an ax. The focus was on complying with*
11 *the law and making progress towards real work*
12 *force equality. It was important because the*
13 *review covered the keys of good personnel policy,*
14 *including applicant screening, hiring and*
15 *promotion."*

16 *CHAIRMAN CHASE: Mr. Bayless, I don't*
17 *mean to interrupt. Like I said -- how much time*
18 *will you need?*

19 *MR. BAYLESS: I have about four minutes.*

20 *CHAIRMAN CHASE: Is it possible to maybe*
21 *summarize so we can hear testimony from the other*
22 *panelists? We'll have more time maybe to flush*
23 *some of these things out.*

1 MR. BAYLESS: *Let me make my one other*
2 *point. The comments of my colleagues confirm my*
3 *view that the greatest impact from OFCCP is*
4 *indirect. While OFCCP's presence has not*
5 *necessarily led to dramatic increases in faculty*
6 *hiring, nearly all say that the leverage that the*
7 *affirmative action office obtains from the threat*
8 *of an OFCCP review allows us to obtain data to*
9 *institute procedures and to change policies that*
10 *would not happen without that leverage.*

11 *I have prepared remarks so you can read,*
12 *too.*

13 CHAIRMAN CHASE: *Sure, and we'll accept*
14 *that into our testimony as well. We'll also hear*
15 *now from Brenda Pitts and from Dan Russell and*
16 *then there will be some time for questions.*

17 BRENDA PITTS

18 *Cumms Engine Company*

19 *I'm Brenda Pitts. I'm the Vice President of*
20 *Human Resources for Cummins Engine Company. Like*
21 *Paul I want to thank you very much for the*
22 *opportunity to appear today before you to talk*
23 *about a topic that we feel is extremely important.*

1 Cummins Engine Company shares many
2 of the views that Paul has expressed about the
3 effectiveness of OFCCP to the effectiveness of
4 affirmative action today in Indiana. What I'd
5 like to do is just basically complement his
6 comments as opposed to repeating what he's already
7 covered.

8 First of all, I don't know how many
9 of you are familiar with Cummins Engine Company.
10 We're located in Columbus, Indiana which is about
11 40 mile south of Indianapolis. We are a \$5
12 billion corporation. We've just celebrated our
13 75th Anniversary last year and we're located -- we
14 have 26,000 employees across the world. What
15 makes us a little different than many of the
16 companies that you may talk with today is that we
17 have long embraced EEO and affirmative action for
18 three reasons, and we view the efforts of the
19 OFCCP as complementary to what we're already
20 doing. We do it first because we believe it's
21 good business; particularly for companies who are
22 engaged in a global marketplace. You have to be
23 able to hire the best talent in the world to be

1 *able to be competitive for the long term.*
2 *Applying good human resource practices that*
3 *eliminates barriers and proving us day by day are*
4 *what makes you competitive over the long term.*

5 *Second, would be that we think it's*
6 *right. As most of you who are familiar with Mr.*
7 *Herman Miller, now is that we believe as a*
8 *corporation that the success of any business is*
9 *related to how well we address the interest of the*
10 *stakeholders and we defend those stakeholders as*
11 *the community, employees, shareholders, even our*
12 *suppliers as well as most importantly our*
13 *customers. So we work very hard to do that. In*
14 *fact, as part of what we deem our customer high*
15 *quality program, we have five major business*
16 *objectives, two of those objectives are directly*
17 *related to how we deal with people and my*
18 *organization support. One would be*
19 *responsibility, citizenship. So we do a lot of*
20 *work in communities around the world to improve*
21 *that. The second would be outstanding people. So*
22 *we take this very, very seriously. We were also*
23 *the first company in Indiana to undergo a glass*

1 ceiling audit last year. And we found it
2 extremely helpful because as we worked with the
3 OFCCP on this audit, it was a learning experience
4 for both of us. But the collaboration and
5 experience and learning for both of us was very,
6 very high. And we have been able to use what we
7 learned from this audit to accelerate our progress
8 and moving protected class people up through our
9 organization. So, as we looked at it, I would
10 also say that I've had experience in the 15 years
11 that I've been involved in affirmative action,
12 with working directly with EEO and with
13 affirmative action in OFCCP as an EEO manager 15
14 years ago, now as a senior executive and the
15 improvement is vast. It has moved from an
16 organization that was primarily focused on the
17 numbers to an organization that's really focused
18 on how you make continuous improvement. Given
19 that most companies today who are successful are
20 used to this quality process of being audited, we
21 find and welcome audits as a way of learning.
22 When I think specifically about why our experience
23 has been positive, maybe as opposed to some other

1 *folks, there's several clear things I would point*
2 *out. One would be that the approach has been as a*
3 *partnership with us. We have the same purpose*
4 *which is the advancement of and utilization of all*
5 *different types of protected class people. So we*
6 *in OFCCP share that; therefore, we have focused*
7 *our efforts on what do we do specifically to*
8 *improve.*

9 *The other major effort has been*
10 *sharing of business practices. Given that they*
11 *work with a number of different firms and*
12 *corporations and groups, they are able to give us*
13 *some good thoughts and suggestions about what we*
14 *could do to improve and that's been very, very*
15 *helpful. The other thing is that the competency*
16 *of the group has vastly increased over the past*
17 *few years. That has helped us as we've talked and*
18 *focused on building off of what we do well as well*
19 *as identifying the areas where we need to improve.*

20 *In terms of areas of improvement,*
21 *it's been talked about already, the major thing*
22 *would be to continue the focus on reaching out to*
23 *the community and helping all of the groups;*

1 particularly those who may not have the resources
2 that others have. Secondly, to do in a data-based
3 way to help in this debate over affirmative
4 action, by using data as a way of helping us
5 understand what the true impact of affirmative
6 action has been and how we can improve the effort.
7 We should not throw the baby out with the bath
8 water. Affirmative action is a good thing and
9 we've made tremendous progress. There's always
10 room for improvement and I believe that this is a
11 group that can offer that leadership to many of
12 the groups today. In terms of other
13 opportunities, it would be continuing to help us
14 and other groups, particularly small companies
15 with the application of technology. Sometimes we
16 spend too much time and effort just on analyzing
17 data and collecting data that there's not as much
18 time to spend on actually implementing affirmative
19 action plans. For small companies this would be
20 more of an issues than it would be for us. So
21 that could be a major opportunity as well as
22 reducing the cycle time that would be involved
23 from the time that an audit begins and the time

1 that it ends.

2 So again, more of a person's time is
3 spent on actually implementation and making things
4 happen and less time spent on the data piece of
5 it. But our experience has been very positive
6 with this effort and we hope to be able to help
7 this group and we look forward to your report.

8 CHAIRMAN CHASE: Thank you, Ms. Pitts.
9 Mr. Russell?

10 DAN RUSSELL

11 Magnavox Electronic Systems, Co.

12 Thank you. Again, like the rest of
13 the panel, I'd like to give you my thanks and
14 appreciation for inviting me here today for
15 participating in this hearing. Due to the time
16 frame, I won't try -- I will try and keep my
17 comments brief. But I've been in OFCCP in terms
18 of an AAP Plan since 1974 up to March of '95. And
19 just to clear the record, at that point in time I
20 went into business for myself. Prior to that,
21 just to let you know that I've been responsible
22 for affirmative action with major organizations;
23 that being with East Systems, Scary Corporation,

1 *Nan Technology, Magnavox. Primarily most of those*
2 *operations have been in manufacturing. As we all*
3 *well know today that they have been impacted*
4 *greatly with the reduction in the manpower and*
5 *resources. To that end, what I bring to the part*
6 *today is the relationship that I've had with OFCCP*
7 *in the liaison group with regard to the supporting*
8 *that that reduction in force, an example that the*
9 *Magnavox Corporation in 1986 were at 7,200.*
10 *Presently we're right under 2,500 right now.*
11 *Prior to that we were primarily a target company,*
12 *if you will, because we were one of the largest*
13 *electronic military tactical equipment companies*
14 *in Indiana. Up to probably the last three or four*
15 *years we were audited almost every year. So with*
16 *that I can hopefully provide you some*
17 *relationships that I've had with OFCCP and the*
18 *liaison group. I'll be happy to answer any*
19 *questions you may have before the panel. Thank*
20 *you.*

21 *CHAIRMAN CHASE: We have time for*
22 *questions right now. I'd actually like to ask the*
23 *first one. Mr. Bayless, you were here earlier,*

1 you heard Mr. Holliman speak about some of the
2 newer regional initiatives and I think he
3 mentioned that for regions 5 or 7 they're going to
4 be doing joint reviews on higher education working
5 with the Department of Education. Is that in any
6 way going to address some of the concerns you
7 brought about regarding focusing on faculty in
8 particular?

4
9 MR. BAYLESS: It's unclear. I would
10 hope that it would. Well I've not seen any
11 guidelines or outlines of exactly how those
12 reviews would be conducted. As it stands there is
13 a different emphasis on OFCCP's approach. There's
14 different emphasis on the approach a work force
15 evaluation or a compliance review than we
16 typically see from OCR, Office for Civil Rights.
17 And of course there are different jurisdictions
18 under current law. So, until we're sorted out to
19 see exactly how that would be conducted jointly,
20 it's really hard to say. However, I do think that
21 it has the potential for addressing much more
22 directly concerns in adequate coverage of the
23 academics sides of universities.

1 CHAIRMAN CHASE: And is that something,
2 if we could make recommendations, I would imagine
3 that's something you would agree with from this
4 group and maybe there are other recommendations in
5 a final report that might address some of the
6 concerns you have?

7 MR. BAYLESS: Yes, I think that would be
8 an appropriate part of a recommendation. One of
9 the things which I as a, sort of a not a pet
10 complaint, but an issue that I would hold as a
11 challenge was applied by part of my remarks there
12 that higher education and the educational system
13 in general is the pipeline for providing
14 professionals for faculty, for managers in all
15 sectors and because of OFCCP's jurisdiction in
16 employment, they really don't have anything to do
17 with the student programs. They don't look at
18 admissions, they don't look at other aspects of
19 that. Now admissions, the offset of
20 discrimination issues in admissions of course is
21 handled through the U.S. Department of Education,
22 but it would be nice, in my view, if when OFCCP
23 does a compliance review, they might be able to

1 *say part of your good faith efforts are what you*
2 *do in your admissions in your student programs in*
3 *being sure that there's access and equity there.*
4 *Whether that can ever take place, I don't know,*
5 *but I'd like to see it considered.*

6 *MS. KENNEDY: Follow up on that because*
7 *as I'm listening to this, how much of the*
8 *effectiveness of these agencies is hampered by the*
9 *fact that there's so many of them? In other*
10 *words, are there things falling between the cracks*
11 *is what I think I'm hearing you say because it's*
12 *sort of back in the good old days I remember*
13 *before we had union government in Indianapolis,*
14 *there was part of 46th Street that nobody paved*
15 *because the city said it was the state and the*
16 *state said it was the city. Is that part*
17 *occurring?*

18 *MR. BAYLESS: I don't think it's*
19 *widespread. I wouldn't say it's a major defect.*
20 *But I think yea, there are some things, as I say,*
21 *one of them would be that, that because of the*
22 *unique character of the universities, your product*
23 *is not cars, it's students, it's people with*

1 *degrees and with training and with skills. And to*
2 *have a linkage and a recognition of that as a*
3 *major part of the good faith efforts of a*
4 *university would, in my opinion, help.*

5 *MR. GRADISON: Brenda, being well aware*
6 *of Garwell Miller and Cummins Engine Foundation*
7 *and the entire Columbus experience down there, to*
8 *my perspective it's been a wonderful, wonderful*
9 *record in all areas of human affairs. I would*
10 *presume companies like you -- I wouldn't be*
11 *concerned about a company like yours that, if*
12 *should affirmative action be zeroed out by the*
13 *federal government, God forbid, but should that*
14 *happen, I'm sure that your position and the*
15 *members of your organization would remain*
16 *absolutely the same. How do you deal,*
17 *specifically is kind of a subjective -- how do you*
18 *deal specifically, and the kind of committments*
19 *and follow up investigations conducted by your*
20 *office with your subs and suppliers that come in*
21 *to see you?*

22 *MS. PITTS: In terms of the suppliers,*
23 *we do have in our purchasing a group that sets*

1 *certain standards that we audit our suppliers*
2 *against. We include this as a part of that. We*
3 *also, in terms of our suppliers, have a program*
4 *that we encourage the outreach to other -- to all*
5 *groups and represented groups. As part of that,*
6 *and it's been helpful to other parts of the*
7 *business, would be that we have in place*
8 *standards. For example, we -- certainly one of*
9 *the key things our employees in southern Indiana*
10 *wanted was an employee discount program. Ford*
11 *Motor Company owns ten percent of our stock and*
12 *employees were wanting employee discounts. We've*
13 *tried for a number of different ways of making*
14 *that happen. What we came up with was getting*
15 *into a relationship with a Ford dealer. As we set*
16 *up a process, which our purchasing group did, they*
17 *opened it up to Ford dealers all over the United*
18 *States. As it so happens, the dealer that was*
19 *selected is located in Chicago and won it hands*
20 *down and is an African American. So he ended up*
21 *getting business that represents not only all of*
22 *our employees, but our employee's families which*
23 *is their extended families, all of our*

1 distributorships and other associated groups. And
2 it's been a win-win for everyone concerned. So
3 it's demonstrated that affirmative action doesn't
4 mean lowering your standards. It can actually
5 increase quality for everyone concerned.

6 MR. GRADISON: Again, the bottom line is
7 it works and it makes you a better company.

8 MS. PITTS: It really does.

9 MR. GRADISON: So obviously if it's
10 zeroed out, you're still committed to it?

11 MS. PITTS: We're so committed that as I
12 referenced we have five objectives, 11 initiatives
13 that we write down to all employee work plants,
14 all 26,000. Of that diversity is one of those 11
15 initiatives and we include affirmative action in
16 our diversity efforts and we do it because, as I
17 said earlier, we believe its a critical part of
18 our success.

19 MR. MC ADAMS: I have a question for all
20 of the members of the panel who would like to
21 respond to it, but in particular I'm responding to
22 something that Ms. Pitts said. You have mentioned
23 that you welcome audits, which I think is

1 something that really shows why the comparisons
2 with the IRS are no good, but I really, I almost
3 laughed when I heard that because that seems quite
4 courageous and commendable in particular because
5 of the cost of audits which, of course, I would
6 presume are going to be greater the smaller the
7 company. Perhaps your company can afford such
8 generosity. But I wonder in particular to what
9 extent you have seen progress in these audits over
10 time? Are there ways in which the agency has
11 conducted audits that have been less expensive or
12 ways in which you've been able to or any of you
13 have been able to work with the agency to make the
14 audits more pointed so that they don't become
15 tremendously burdensome in terms of the hours
16 spent and other expenditures?

17 MS. PITTS: Well, I'll go first. As
18 part of our major business effort, we are involved
19 in a number of quality programs and auditing is a
20 way of life. I go out and audit the quality
21 efforts of some of my organizations and we believe
22 that's critical to our improvement efforts. So
23 it's the same way audits of our affirmative action

1 *plans. The change I've seen in the last 17 years*
2 *has been one where when I was preparing the*
3 *affirmative action plan it was simply bring me*
4 *your truckload of data and we'll look at it and*
5 *that is we would ask questions. It ended up well,*
6 *what do the regulations say? And as long as you*
7 *verbally had everything correct, everything was*
8 *okay. It didn't really speak to how you were*
9 *going about that and sharing information on how*
10 *you could prove it. It also tended to be more*
11 *adversarial, and quite honestly as I looked at*
12 *some of the people who staffed offices and this is*
13 *again 17 years ago, they were not people who had a*
14 *lot of understanding of business, or of the whole*
15 *area of affirmative action and EEO. What I see*
16 *now is that I'm able to sit down and discuss about*
17 *these issues and as a business to business person*
18 *and share technical competency. So we're able to*
19 *focus our efforts on specifically what we can do*
20 *to improve and how as opposed to just you missed*
21 *this word or you left that word out. The*
22 *streamlining of the data requirements have helped*
23 *us and freed us up to spend more of our time on*

1 implementation and programming and so that has
2 been the vast change would be sharing with us,
3 working as a partner like we worked with our
4 partners as well as our customers on how we can
5 make this, the results better and being data-based
6 in doing that.

7 MR. RUSSELL: There's a couple of other
8 things I think that has transpired in the business
9 world. I think a lot of businesses have become
10 more aware of OFCCP's, particularly in the last
11 year, assertiveness with respect to their new
12 appointments. But given all that, I think over
13 the period of time what has transpired is I think
14 that most EEO officers welcome OFCCP in their
15 organization for the following reasons. One is
16 that many times what happens is the EEO Officer,
17 whoever he or she may be, is not able to
18 facilitate those issues of concern at the level
19 that they need to be addressed without the
20 presence of OFCCP. Sometimes I think that gets
21 diluted and placed on the end of the priority
22 list. But the presence of OFCCP itself maintains
23 some visibility. Within Magnavox we initiated

1 *several years ago is I put a quarterly review*
2 *together just on affirmative action to our CEO and*
3 *his executive staff. There's no other*
4 *discussions. Unfortunately, what has transpired*
5 *in many other industries, what I have dealt with*
6 *OFCCP, EEOC only maybe got five minutes of*
7 *presentation. Well now there's a whole different*
8 *visibility. I think it's because of our business*
9 *trends, our diversification. We're looking at the*
10 *year 2000 and I think there's a new awareness at*
11 *this point in time and I think without the*
12 *presence of OFCCP, it's my feeling that I don't*
13 *think we will be as, what's the word I want to*
14 *find, I don't think we'll be successful in our*
15 *endeavors for EEO or OFCCP's challenge and goals,*
16 *without their presence I think it precludes a lot*
17 *of growth in business and industry without that.*

18 *MR. BAYLESS: I would only ditto that*
19 *and that was part of my earlier remarks.*

20 *MR. GRADISON: In terms of Magnavox and*
21 *what you just said Dan and I asked Ms. Pitts, she,*
22 *you know, that the committment is probably already*
23 *in place before we came along because of the*

1 *unique personality of this their founder. So*
2 *you're more concerned about what would happen if*
3 *OFCCP is deleted or de-funded or zeroed out or*
4 *whatever, is that there may be some retrenchment,*
5 *there would be recidivism by Magnavox in terms of*
6 *it's committment, in terms of a diversified work*
7 *force?*

8 *MR. RUSSELL: I don't know if I want to*
9 *say Magnavox specifically, but I think a lot of*
10 *business in general.*

11 *MR. GRADISON: I thought you were*
12 *talking about your own company.*

13 *MR. RUSSELL: No, it's not a problem. I*
14 *think particularly with the economics, individuals*
15 *are more concerned about how to make a profit, P*
16 *and L statement. And with regard to hiring and*
17 *firing, you know, and maybe it's inappropriate to*
18 *say, but I'll say it anyway, those individuals*
19 *look for those individuals that they're*
20 *knowledgeable of that can get the job done. If*
21 *you do not have a diverse work force, how do you*
22 *achieve that objective?*

23 *CHAIRMAN CHASE: I think Sondra had a*

1 question.

2 MS. MATTHEWS: Mr. Bayless, I was struck
3 by your windchill kind of survey. Of course down
4 in Evansville, Indiana we're always sensitive to
5 other people in the state probably wishing we were
6 in Kentucky, that you went as far as Vincennes
7 University and not down to southern Indiana in
8 your survey and I was wondering if you could just
9 kind of work out for me, if you do not have a
10 relationship with everybody on the campus, and
11 work out for me that are you finding that the
12 human resource is personnel is replacing the EEO
13 officer or the affirmative action officer on some
14 campuses?

15 MR. BAYLESS: I think you asked two
16 questions there. One of them is because of the
17 time factor I simply deliberately limited the
18 number of calls that I made in the particular
19 thing, but--

20 MS. MATTHEWS: I want to know do you
21 have a relationship with anybody on that campus?

22 MR. BAYLESS: Yes, we do at USI and most
23 of the other campuses around the state I know

1 personally probably the bulk of the -- I wouldn't
2 say the bulk, at least half of the affirmative
3 action. But more to your second point. There is
4 a trend which we see. In fact, our CIC group had
5 a meeting just a couple of months ago talking
6 specifically about the trends in which we see
7 affirmative action offices being reorganized and
8 replaced with several other titles. They may be
9 lowered in the hierarchy so that they don't -- they
10 no longer report to the top executive or at least
11 at that top level. They may be reorganized so
12 that they fall under a human resource function
13 which our organization and our professionals
14 believe is wrong because of the requirement for
15 the auditing function. And an affirmative action
16 officer is like the internal auditor and I don't
17 think that you say the internal auditor reports to
18 the treasurer of the company. It's got to report
19 to the CEO or the Board. And because that
20 auditing function we think is inappropriate, but
21 that's happening. We see affirmative action in
22 some place being "replaced by diversity" and I
23 agree a hundred percent that diversity is

1 *important. But I really don't have diversity if I*
2 *don't have an affirmative action plan. And if I*
3 *only have diversity without the requirements for*
4 *systematic review and analysis, I'm really much*
5 *less likely to have progress so. So, yes, indeed*
6 *there are many cases -- I don't know specifically*
7 *of the USI problems, but there are many cases*
8 *where the affirmative action office is being*
9 *degraded.*

10 *MS. MATTHEWS: I'm not worried -- I'm*
11 *not aware. I think we have one and that's why I*
12 *raised the question.*

13 *MR. BAYLESS: I won't answer that. I*
14 *won't respond to that. I'm not sure of today's*
15 *facts.*

16 *MS. MATTHEWS: Thank you.*

17 *MS. BRITA: Mr. Bayless, from one*
18 *segment of the population do you have the greatest*
19 *amount of concern on campuses?*

20 *MR. BAYLESS: I don't know any way to*
21 *prioritize that because there are different kinds*
22 *of concerns. Clearly the groups which fall under*
23 *our purview, particularly are, of course, women,*

1 *all minorities and ethnic groups, people with*
2 *disabilities. We're supposed to be responsible*
3 *for veterans programs, although I admit that's*
4 *probably a very low key and low priority effort.*
5 *I think you have to look at the particulars of a*
6 *unique campus situation. There are some campuses*
7 *where there have been very aggressive minority*
8 *recruitment programs, both for faculty and*
9 *students and staff and that may not be the current*
10 *problem at Wright State, not in our area, but at*
11 *Wright State they've long had a very aggressive*
12 *program for dealing with disabled. They've got a*
13 *marvelous campus. They've got a marvelous program*
14 *there and I suspect they're problems within*
15 *another segment. So I don't want to not answer*
16 *the question, but I think you really have to look*
17 *at the particulars of the campus and it's*
18 *environment and what it's done in the past.*

19 MR. TAYLOR: *Mr. Bayless, what kind of*
20 *recruitment program does IUP-UI have?*

21 MR. BAYLESS: *In terms of faculty or in*
22 *terms of students?*

23 MR. TAYLOR: *Faculty and students?*

1 MR. BAYLESS: For faculty most of the
2 recruitment is not most for faculty, the
3 recruitment is done by the individual schools and
4 departments and we oversee that process in terms
5 of getting the initial announcement. The
6 Department and the search committee report to us
7 what they're doing, what they're advertising, how
8 they go about the recruitment process. We get --
9 about who is in the applicant pool what the
10 selection is, sign off on the interviews. We sign
11 off on the final hire. So we're monitoring that
12 at all stages of the process. However, as I kind
13 of indicated, it's really very difficult on an
14 individual case unless you know someone, have some
15 other external intelligence from an external
16 source or know something about what's really going
17 on inside the process because I'm not sitting with
18 every search committee. I don't know all the
19 bases for their decisions. We look at the
20 patterns that fall out of the search processes and
21 some we're able to monitor what goes on on that
22 point. We're not always in a position to have a
23 direct influence on each and every decision. In

1 terms of most recent efforts, we've had a minority
2 faculty initiative that's been undertaken by
3 several of the schools that's nearly moderate
4 success in student recruitment. That's also done
5 by the admission office by each of the various
6 schools. I don't know some of the details of that
7 program, but I do know they have several
8 visitation efforts that are made in various places
9 around the state. Of course, and particularly
10 around the IU-PUI is more locally focused in terms
11 of their recruitment than would be Purdue or
12 Indiana or some of the other larger universities.

13 CHAIRMAN CHASE: We're close on time
14 now. I wanted to ask though one other question.
15 All of you are members of the Industrial Liaison
16 Group. From what we understand, there's about 40
17 or so members of that group.

18 MR. BAYLESS: Give or take.

19 CHAIRMAN CHASE: Do you all seem to be
20 very supportive of the OFCCP? It's very evident
21 by your testimony. Would that be the flavor of
22 most of the people on that group, would you say or
23 are there a lot of difference of opinion?

1 MR. BAYLESS: *It definitely would be the*
2 *flavor, but, of course, that liaison group is a*
3 *select group. You relied -- the liaison is one*
4 *concept, is one of voluntary participation on the*
5 *OFCCP, but clearly those of the employers. So*
6 *what we have is a group which is self-selected.*
7 *We're the people who are going to be supportive;*
8 *companies and employers are going to be supportive*
9 *are the people who sit around that time are ones,*
10 *while they've had their individual problems and*
11 *difficulties from time to time, are going to be*
12 *supportive.*

13 MR. RUSSELL: *I'd like to elaborate on*
14 *that with regard to the liaison group. Speaking*
15 *on behalf of Magnavox probably for about the last*
16 *year, year and a half, we've had a vice president*
17 *attend each one of those meetings because of the*
18 *topic areas that are discussed and he or she can*
19 *bring back. Through that effort they have*
20 *recommended other individuals within the*
21 *organization to support and attend the liaison*
22 *group. So I think with that I think that*
23 *represents the committment and the feeling of at*

1 least Magnavox personnel how important that
2 organization is to the company. So I think it's
3 well-deserved. I think it has a good reputation
4 and one of the things that I know that most of the
5 vice presidents share with me is that the form is
6 such where before OFCCP comes in you have an
7 opportunity to bring up questions, issues,
8 whatever the case may be and that allows them to
9 share some of the concerns that may clear up some
10 of the myths that were talked about earlier, some
11 of the frustrations. We can present that and Phil
12 has done an excellent job in addressing those
13 issues with follow up. So I would say from an
14 overall, I would support Paul's comment. I think
15 it's very favorable.

9
16 CHAIRMAN CHASE: One final follow up.

17 MS. KENNEDY: I'm not quite sure how to
18 ask this and I really respected your point that
19 the existence of this program as well as
20 organizations provides those of you who are
21 already committed to diversifying the work force
22 with a very needed tool. I guess my question is,
23 given the self-selected nature of your group, is

1 *it your perception that the groups that are being,*
2 *for which affirmative action in your particular*
3 *firms is working is limited to those that are*
4 *protected clases under the law or do you go -- let*
5 *me ask specifically for example, do your groups*
6 *have affirmative action which is obviously not*
7 *legally mandated, but voluntary for gay men and*
8 *lesbians? In other words, how much is the*
9 *committment of a given company a product of the*
10 *legal requirement and how much of it is perhaps*
11 *these other, these market forces, goodness*
12 *features that have been alluded to as well?*

13 *MR. RUSSELL: From my perspective, I*
14 *guess a lot of the individuals, and I think many*
15 *of us in the field we deal with affirmative*
16 *action, EEO and all the areas that surround that*
17 *activity. I've advocated the liaison group not*
18 *only just to the select group because it's not*
19 *like, you know, here's a list or a roster and*
20 *you're the only ones that are able to attend,*
21 *okay. We have been selected; however, the group*
22 *itself is always had that invitation open to the*
23 *public. I've solicited other individuals to*

1 *participate. In fact, what I've done is*
2 *distribute areas that I thought would be of*
3 *interest on certain topic area. Particularly like*
4 *when Hal came in and made some presentation, Marty*
5 *Martin from the Chicago office. I can go on with*
6 *that. I think they would gain some valuable*
7 *insight. So it's not a close knit group, if you*
8 *will, but it's a select group from the standpoint*
9 *we selected, but we've continued to open and*
10 *increase that participation.*

11 *MS. KENNEDY: But out of that group are*
12 *those or anybody -- is the affirmative action that*
13 *you all are undertaking limited to those groups*
14 *that have been identified under the law or does it*
15 *slope off, I guess?*

16 *MR. RUSSELL: Its open.*

17 *MR. BAYLESS: It's clearly open. My*
18 *response to that aspect of your question would be*
19 *that probably the greater art, in fact, the much*
20 *greater part of our effort and our activity*
21 *focused on the legal requirement and part of the*
22 *reason is the legal requirement is so broad, if*
23 *you read the regulations from OFCCP or by the way*

1 *we should also recommend there are other mandated*
2 *affirmative action on the state level and some*
3 *communities and other jurisdictions, but if you*
4 *read the legal requirements, it's very broad and I*
5 *could spend 150 percent of my time just meeting*
6 *the letter of those requirements in the law. So*
7 *the bulk of that is driven by the legal mandate.*
8 *The other aspect of advocacy for other groups not*
9 *legally protected I think is much more a matter of*
10 *individual and personal perspective. If I have an*
11 *affirmative action office, if I have someone who's*
12 *interested in other causes, they're going to make*
13 *that a part of their program or at least if not*
14 *part of the written program, it's going to be part*
15 *of what they've talked about and what they*
16 *emphasize in their community.*

17 *MS. PITTS: And I would just add that*
18 *from a business perspective that's why I believe*
19 *the diversity effort has helped to broaden that.*
20 *I mean 40 percent of our business currently is*
21 *outside of the United States and we expect that to*
22 *increase. That enables you to look at this issue*
23 *from a very broad range and we believe every*

1 individual has to be engaged. So we want to make
2 sure that's happening. And when you look at it
3 from that perspective, you look at what are all of
4 the barriers that get in the way and it's more
5 than just a legal approach.

6 CHAIRMAN CHASE: Well, Mr. Bayless, Mrs.
7 Pitts, Mr. Russell, I want to thank you all for
8 coming here and speaking with us today.

9 We are now going to adjourn for
10 lunch and I would ask the committee members to
11 please be back here by five minutes to 1:00.

12 (A luncheon recess was held.)

13 (The meeting was called to order at 1:30 p.m.)

14 CHAIRMAN CHASE: The meeting will come to
15 order. Good afternoon everybody. Before we begin
16 with testimony from our guests here at the table,
17 we had expected to have Kathy McKimmie here to
18 start the afternoon session to talk about her
19 perspective from the Indiana Chamber of Commerce.
20 She's unable to be here this afternoon. I imagine
21 the General Assembly is taking up a large amount
22 of her time, but she has given us some written
23 testimony and now I'm going to just read that into

1 the record.

2 Also, as part of the record she has
3 provided us with an affirmative action survey
4 which you all should have and I'm going to direct
5 your attention to pages 3, 4 and 5 of the survey
6 because of some of the remarks that seem to differ
7 somewhat from the remarks we heard this morning
8 about the OFCCP. And so after I read this into
9 testimony, we'll also take a moment or so so that
10 committee members have a chance just to review
11 that so you have the flavor of what the survey
12 results are.

13 KATHY MC KIMMIE

14 Indiana Chamber of Commerce

15 This is Kathy McKimmie's statement:

16 "Good afternoon, my name is Kathy McKimmie, Vice
17 President of Human Resources of the Indiana
18 Chamber of Commerce. The Indiana Chamber of
19 Commerce is the state's oldest and largest
20 broad-based business advocacy association with a
21 membership base of more than 5,000 businesses.

22 I want to thank the U.S. Commission
23 on Civil Rights and in particular Peter Minarik

1 *for contacting the Indiana Chamber of Commerce and*
2 *asking us for our comments on affirmative action*
3 *program and the requirements of the Office of*
4 *federal Contract Compliance.*

5 *At the Chamber we play many roles on*
6 *behalf of our business members. Proably the most*
7 *important are: 1. Lobbying to limit regulatory*
8 *burdens on business. 2, Education and training of*
9 *employers about their many regulatory obligations*
10 *and requirements. And 3, As a liaison with state*
11 *and federal agencies.*

12 *I will comment on the last two roles*
13 *and share some information about a limited survey*
14 *we conducted in preparation for today's meeting.*
15 *Education and training. For many years the*
16 *Indiana Chamber of Commerce has sponsored a*
17 *seminar on writing and updating Affirmative Action*
18 *Plans. Mr. Marty Klaper, attorney with Ice,*
19 *Miller Donadio & Ryan, and Evelyn Freeman, a*
20 *consultant from Wisconsin, have conducted the*
21 *seminar for the Chamber. You heard from Marty*
22 *this morning. He is very well-known as an expert*
23 *in the area. Evelyn consults nationally in*

1 *Affirmative Action and Equal Opportunity areas.*

2 *We couldn't have two more qualified people to*
3 *conduct our program. Yet, despite the caliber of*
4 *the program, the requirements of the Affirmative*
5 *Action Plan are so complex and time consuming,*
6 *that many seminar attendees leave without the*
7 *confidence they need to adequately fulfill the*
8 *requirements.*

9 *Our program used to be one day in*
10 *length. We expanded to two days and our speakers*
11 *made themselves available in the evening. Still*
12 *it is difficult for attendees to grasp all that is*
13 *necessary in the number-crunching requirements*
14 *many companies don't even try to do the plans*
15 *themselves. They use consultants to develop the*
16 *plan from the start. Others, even those who*
17 *attend seminars, use consultants to assist. On*
18 *the matter of agency liaison. Since the coverage*
19 *of Affirmative Action requirements is less*
20 *expensive than other areas of employment law, such*
21 *as programs under the U.S. Department of labor and*
22 *Wage and Hour and EEOC, we have had less contact*
23 *with the OFCCP. In my limited contacts, however,*

1 the OFCCP has tended to be more reluctant to share
2 general information with us. I was told that one
3 reason for their reluctance was the fact we
4 conduct seminars for which we charged a fee.
5 There seems to be an opinion within OFCCP that
6 technical assistance cannot be provided to
7 individuals or organizations who then sell their
8 services. I would not consider the Chamber, a
9 business advocacy organization in that category.
10 No other agency with which we have dealt has this
11 policy.

12 Many businesses are very reluctant
13 to contact state and federal regulatory agencies
14 directly because they fear that the contact will
15 trigger an inspection or audit. They rely on the
16 Chamber as an information conduit. A good example
17 of the fear of government regulation and
18 retaliation is the fact that several of the
19 replies to our Affirmative Action survey were
20 returned in plain unmarked envelopes. This is
21 despite the fact that I indicated no company names
22 would be divulged. It is important that groups
23 representing employers have open access to

1 regulations and necessary information in order to
2 assist businesses in their compliance
3 responsibilities.

4 *On the subject of Survey Results.*

5 *This attached survey was sent to participants at*
6 *our last three Affirmative Action seminars and to*
7 *our Human Resources Committee at the Chamber.*
8 *Most of the responses are from seminar attendees*
9 *since our committee members are not all federal*
10 *contractors.*

11 *We had hoped to be able to send the*
12 *survey to a larger sample of business. We were*
13 *unable, however, to obtain a list of federal*
14 *contractors in Indiana. Surely this list must*
15 *exist, if not in one document, from the largest*
16 *awarding agencies.*

17 *Although the survey includes only a*
18 *limited number of responses, we hope it will be of*
19 *some use to you." That's the end of her*
20 *statement. And if you want to take another*
21 *minute or so just to take a look at this survey*
22 *and particularly pages 3, 4 and 5.*

23 *Are there any questions about the*

1 survey or shall we continue?

2 Hearing none, we're going to move on
3 and our first group of panelists this afternoon
4 are Father Boniface Hardin who is President of
5 Martin University from Indianapolis, Indiana, and
6 also Theodore R. Hood who is District Director of
7 OFCCP, Indianapolis Office. And we would ask both
8 of the gentlemen if you would maybe make about
9 five minute statements and then we will have
10 sometime for questions and answers and we'll start
11 with Father Hardin.

12 FATHER BONIFACE HARDIN

13 Martin University

14 That you, Mr. Chairman and panelists
15 to the Advisory Committee to the Commission. I
16 appreciate being invited, being provided an
17 opportunity to testify before you today. I don't
18 do this -- most people don't want to hear
19 everything that I have to say, so I will not try
20 to say everything this afternoon. But I am very
21 honored to be invited and I will address the issue
22 of institutional racism and the need for the
23 enforcement of Affirmative Action.

1 *The last 30 years have watched over*
2 *me as I have served as a social reformer,*
3 *consultant to major corporations in affirmative*
4 *action across the land, theologian and as founding*
5 *president of a university with the mission to*
6 *serve low income minorities and adult-aged*
7 *persons.*

8 *For the sake of brevity and clarity,*
9 *I will address the issues of racism and*
10 *affirmative action from a historical perspective*
11 *and educational experience.*

12 *Historical perspective. It is my*
13 *strongest conviction that America is the best land*
14 *in the world. But it's people do not wish to*
15 *observe the Constitution, it's laws or statute.*
16 *There is an obsession in our land to make a law to*
17 *implement an existing law or statute. One could*
18 *make a case that the framers had tongue in cheek*
19 *when they said it is evident that all men are*
20 *created equal; meaning, of course, and in fact*
21 *that all free white men who owned property are*
22 *equal. It should be noted that there were many*
23 *white men who were indentured servants who shared*

1 the lot of Negroes and Indians. This principle of
2 color and property continued on in the
3 establishment of the Northwest Territory and the
4 Indiana Territory. The ambivalence of saying that
5 slavery should be dismissed while taxing its
6 citizens like cattle has set in motion a mindset
7 that exists today in Indiana. Thus the State of
8 Indiana fought on the side of the Union while
9 legislating the black codes long before many of
10 our southern states. We are called up north or up
11 south, depending on the perspective.

12 Indiana boasts of its abolition
13 society while permitting meeting that ferment
14 oppression and hate. The Civil War has not ended
15 in Indiana. But yet this is Indiana. It is our
16 way. It's not uncommon that persons who will
17 accept the excellence of an athlete on a
18 basketball floor, but will challenge a person of
19 my background to prove myself. Yet this same
20 person will work hand in hand with me on a
21 community service.

22 Educational experience. It is my
23 experience as part of the main stream higher

1 education system and the work society that unless
2 a person is educated, jobs in the future for the
3 poor, blacks, women, and persons on fixed income
4 will not be a part of the job force or the payees
5 into the Social Security System at the majority
6 minority. It is very clear that being optioned in
7 and optioned out of the work force will be an
8 issue that must be faced. As far as affirmative
9 action being enforced, we will have to continue to
10 work on the project, but we may have to change the
11 vocabulary. Affirmative action is a red flag.
12 Quotas is a red flag and we've never had it in the
13 laws or the statutes. So that those who are
14 opposed to the existence of being human beings
15 will change their attitude. We have to change the
16 vocabulary.

17 Finally, just let me say in my brief
18 remarks that as a citizen, that Indiana people are
19 good, but we are slow learners. Sometimes we're
20 quite brusque but we are worth all the struggle. We
21 do not need any more laws, in fact, some may need
22 to be taken off. But we need a chance for the
23 existing laws to create the good will between

1 *people in those institutions that exemplified in*
2 *those institutions that have been faithful to the*
3 *Constitution and the laws of Indiana.*

4 *I want to say in a sub conclusion*
5 *about Indiana and education. Mr. Clyde Engle who*
6 *has just recently resigned from Higher Education*
7 *Commission indicated to the Presidents of Public*
8 *and Private Institution that if Indiana needs,*
9 *would like to be a part of the national median of*
10 *education, it would take us until 2020, but we*
11 *would have to have 250,000 people with Bachelor's*
12 *degrees to reach the national average. He says*
13 *that we are 49th or other. We used to be below*
14 *Mississippi in its educational program, but*
15 *Indiana now is challenging Mississippi to be the*
16 *last. Those are my preliminary remarks. Thank*
17 *you very much.*

18 *CHAIRMAN CHASE: Thank you, Father*
19 *Hardin. Now we'd like to hear from Mr. Hood.*

20 *THEODORE R. HOOD*

21 *OFCCP (1976-1988)*

22 *My remarks are going to be very*
23 *brief here initially and then, of course, I will*

1 try to answer any questions that you might have.

2 First of all, I was born in
3 Indianapolis. I was raised here. I have seen a
4 considerable amount of change with respect to
5 employment. I would say that the OFCCP has been
6 instrumental in many of the changes. In some of
7 the major companies in Indiana you would be
8 surprised at the progress that has been made. For
9 example, women in some of the major companies in
10 Indiana, we had less than three or four women in
11 facilities that had eight and nine thousand
12 people. While we haven't progressed as far as I
13 think we should have, there has been some
14 tremendous progress.

13 15 One of things that might surprise
16 you is a major company, there used to be a time
17 when OFCCP could require contractors to give time
18 tables for meeting their utilization goals and
19 what we mean by that is that when they would
20 expect to have as many minorities in all job
21 categories as could reasonably be expected by
22 their audit. And some of these job groups the
23 company showed us 15 years, some they would say 25

1 *years. And as we went on into their analysis of*
2 *their work force and how long it would take*
3 *minorities and women to penetrate, I saw some 99*
4 *years. I said 99 years? Yes. We went a little*
5 *further and the AAP had some asteriks and the*
6 *question was what does the asterik mean? That*
7 *means more than 99 years. The company had*
8 *developed a model, a statistical model and they*
9 *had projected this is how long it would take women*
10 *and minorities to actually infiltrate the work*
11 *force. I thought that was ridiculous, and of*
12 *course we negotiated some of those things*
13 *substantially lower.*

14 *But as I sit here 20 years from when*
15 *I did that, I have to say that that contractor is*
16 *absolutely right. It will be a hundred years, and*
17 *with that I'll let you ask any questions that*
18 *you'd like.*

19 *CHAIRMAN CHASE: Thank you both. We do*
20 *have sometime for some questions from Committee*
21 *members. Sondra Matthews.*

22 *MS. MATTHEWS: Thank you both for being*
23 *here. Father Hardin, you've testified many times*

1 *for panels and groups, commissions and you always*
2 *apologize first about nobody wanting to hear about*
3 *what you have to say. I don't know if that's to*
4 *disarm us or what, but do you find the task,*
5 *carrying the task on affirmative action to be*
6 *counterproductive or sometimes you hear people say*
7 *these are exactly what we need to wake up people*
8 *as to what is really happening?*

9 *FATHER HARDIN: Well, I'm really*
10 *embarrassed by a lot of our Congress people and*
11 *some of our officials that don't understand what*
12 *affirmative action is about and I find that they*
13 *speak out of ignorance. But because some of them*
14 *are -- because some of our black representatives,*
15 *those that are taking "conservative points of*
16 *view" and I think that sometimes I believe that I*
17 *think they really mean it. I think they really*
18 *mean to dismember the corrective action that*
19 *affirmative action has brought to many of us.*
20 *It's done many things, maybe not everything. But*
21 *without affirmative action we wouldn't even be*
22 *sitting here today, nor would we have the contrast*
23 *that we have. But at the same time, it has lots*

1 of weaknesses, but I want to say in response to
2 the seriousness of your question, is I believe
3 sometimes they provoke. That there are some
4 people are trying to provoke us. But I think most
5 of them, they really mean to eliminate affirmative
6 action and they don't understand there is a
7 corrective action. That we haven't done it yet.
8 You know, take Indianapolis for instance and you
9 know I know this gentleman here has given his life
10 just like the rest of us have. But we don't have
11 any power in this community the as black people.
12 Maybe women do, maybe white women do. But you
13 name me a black man that has power and I'll tell
14 you he's bringing \$50 million in. That's about
15 the only power we have. But all our elected
16 officials the chosen because of affirmative
17 action. There's still so much to be done and so I
18 say that the people on the national level, when
19 they say we are going to eliminate affirmative
20 action they mean it, they mean it. Because I'm
21 experiencing exactly what they're doing in higher
22 education. They're mean, they're mean. They walk
23 in on you, don't give their credentials and they

1 don't really care. They don't really care. So
2 I'm taking them seriously and I think we should be
14 3 aroused. I think this kind of a session is good
4 and I'm hopeful, but I think the ultimate change
5 comes within us, convincing not by laws,
6 convincing to have people of good will who believe
7 that justice and equality is good. I think that's
8 where the change is going to take place.

9 I think the laws are there for those
10 who don't want to do what's right, but for those
11 who want to do what's right. I don't think we
12 need any laws.

13 MS. MATTHEWS: Mr. Hood, thank you. Mr.
14 Hood, the whole basis for many of the complaints,
15 some of which is in the document we just read by
16 the Chamber of Commerce is that to comply costs so
17 much money in terms of times and paperwork and in
18 adding staff or contracting with consultants that
19 this could be money saved, would therefore,
20 enhance coffers, profits, that more black people
21 could get hired on jobs if the government would
22 not force businesses to spend so much money on the
23 compliance. How do you respond to that comment?

1 MR. HOOD: *That's totally false, that*
2 *kind of thinking is totally false. First of all,*
3 *you and I listened to the things from the Chamber*
4 *and as I said before, I used to be the Director of*
5 *of OFCCP here in Indiana. We had good interface*
6 *with the Chamber. We met with them. We went to*
7 *their seminars. They used to have us on their*
8 *seminars. So, of course, I can't answer for what*
9 *happened the last six years, but I'm talking about*
10 *previous. In addition to that, I know that there*
11 *was this statement in there that OFCCP didn't*
12 *provide them with a list of federal contractors.*
13 *Surely a list exists and the OFCCP must have it.*
14 *But there is no such list. You would think there*
15 *was one, but the federal government no where has a*
16 *repository of every federal contract. That's one*
17 *of the things we were concerned. Because if*
18 *you're a federal contractor then you're under our*
19 *jurisdiction. We never knew what that complete*
20 *universe was.*

21 *As far as costing money, most of the*
22 *major corporations that I have dealt with, and I*
23 *guess one of the things that I'm more proud of*

1 *than anything else that I did was, some*
2 *contractors after interfacing with us went back*
3 *and developed human resources systems which*
4 *improved their corporation and their management of*
5 *human resources ten fold. Because we required*
6 *them to identify qualified minorities and females*
7 *throughout their organization for all jobs levels.*
8 *Most companies had no such thing. What they would*
9 *do it was a mentor kind of thing. I like this*
10 *guy, I'll bring him along. We required them to go*
11 *back and identify, and with the identification of*
12 *every minority and woman that they had who was*
13 *promotable to, and I'm talking now major kinds of*
14 *jobs. They not only did the system for*
15 *minorities, they did it for whites as well, and*
16 *everybody in those companies agreed that this*
17 *improved their overall operation of human*
18 *resources.*

19 *When you talked about money, when*
20 *you talked about minorities and women, look at the*
21 *resources that -- you may not know, but*
22 *affirmative action has brought that resource into*
23 *our overall work force. You see this whole thing*

1 *started because we needed manpower and resources.*
2 *That's why Roosevelt, the first one who issued an*
3 *executive order did it in the war because we*
4 *didn't have resources. All the people, most of*
5 *the men were away at war. And any company that's*
6 *got a good personnel system has got a good*
7 *affirmative action system.*

8 *MS. MATTHEWS: Thank you.*

9 *MR. HOOD: I don't know if I answered*
10 *your question, but I'd like to make --*

11 *MR. MATTHEWS: You answered my question.*
12 *It makes sense. It wasn't true.*

13 *MR. HOOD: I'd like to make another*
14 *comment. You asked him about affirmative action*
15 *and the dialogue that's going on now. First of*
16 *all, most people don't even know what affirmative*
17 *action is and every time I turn on the radio and I*
18 *hear about all these unqualified men and women who*
19 *are getting these jobs. Ridiculous. There's no*
20 *such thing. There's no such thing that OFCCP is*
21 *requiring contractors to hire unqualified people.*
22 *All of these people are qualified, every one of*
23 *them. Now I'm not trying to tell you that there*

1 *hasn't been some reverse discrimination. Any law*
2 *that's out there, there's going to be something*
3 *that happens that the law isn't applied correctly.*
4 *But to hear all these stories you here, they're*
5 *blown up, the media is blowing them up. And it's*
6 *unfortunate that the people who run our programs*
7 *in Washington is so silent. I think I saw where*
8 *one study was done that showed that affirmative*
9 *action was really had done some good in this*
10 *country. But you hear very little of that.*

11 *MR. TAYLOR: Dr. Hardin, if affirmative*
12 *action is abolished, what do you think society is*
13 *going to be like in the year 2020?*

14 *FATHER HARDIN: We'd better learn how to*
15 *sing Dixie and sing it well because I think we're*
16 *right there and right in this state. Our*
17 *legislature has been singing Dixie for a long time*
18 *and they know it and that's why the educational*
19 *system is failing. I know affirmative action is a*
20 *corrective thing and people need to be corrected*
21 *in their behavior. Those that did it, my*
22 *experience on the national and local level, they*
23 *found out that this is a better thing. More*

1 culture, beautiful people, more talent and
2 everything, but some of us are going to disappear.
3 Some of us are going to disappear. I have a
4 predominantly black institution. I have to be
5 sensitive to whites. For a long time I used to
6 worry. I don't worry about it any more because we
7 have an environment, a climate that anybody that
8 comes in can become a part. They don't have to be
9 whipped into line. That's what some of this thing
10 is all about and they know they're wrong and they
11 try go to cover up this sin. But there going to
12 be found out. Those institutions that I worked
13 for and one of them was the Bell System with the
14 Consent Decree for 8 years I traveled between
15 here, New Jersey, Denver, Atlanta and I would
16 present myself to them, good morning. I had to
17 prove that the day was a good morning. I'm glad
18 to be here, we're not. These were people that put
19 the beams up on the moon. My partner in
20 affirmative action was Arnold Pensias (phonetic)
21 who got a Nobel Prize for the big bank theory,
22 understood how important it was. Smart, people
23 don't push this thing out, people who don't

1 *understand and that's why I say we've got to*
2 *change our vocabulary, we've got to bring them*
3 *along, we've got to show them because I think that*
4 *the people that are in Washington mean what they*
5 *say and what they say is mean about people and*
6 *we'd better listen to them because they do know*
7 *what they're talking about and they've already*
8 *started. Now, I don't mean to say that the Ten*
9 *Commandments, I ain't dealing with that. I'm*
10 *talking about the impact, the disparate impact on*
11 *us. I don't care how intelligent or what degree*
12 *you have or where you are, you're going to end up*
13 *on the low end of the totem pole again and we'll*
14 *never get back. We'll never get back to where we*
15 *were. All of these 20 years and my 30 years or*
16 *his hundred years or however long he was there, he*
17 *was there a long time and we're going to lose it*
18 *all. So I'm saying it's not just about black*
19 *people or white, it's about all of us. It's about*
20 *the American family and I think America will step*
21 *back before the Civil War if we're not careful.*
22 *And that may be a little hard for some of us, but*
23 *that's where I am. And I would feel very*

1 *saddened. But it doesn't mean that those of us*
2 *that understand affirmative action have to stop.*
3 *With or without the laws we must go on. We must*
4 *fight for all of us, all of us, all of us.*

5 *MR. HOOD: Let me say something to Mr.*
6 *Taylor just a moment. You know there was a time*
7 *when we didn't have affirmative action. We had*
8 *just non discrimination. That was Roosevelt's*
9 *initial thing, 10925, basically non*
10 *discrimination. We tried non discrimination for*
11 *many, many years and non discrimination produced*
12 *no results. In Indiana a black person couldn't*
13 *drive a trolley. There was only one fire station*
14 *with three or four black firemen. There were two*
15 *black policemen. This was when they had non*
16 *discrimination. Certainly if affirmative action*
17 *were abolished, and I worked at OFCCP when it*
18 *wasn't OFCCP, but it was it's predecessor, when*
19 *there was no requirement for goals and there was*
20 *just what you say, basically programs that dealt*
21 *with non discrimination. There was no, almost no*
22 *penetration at all in the work force as far as*
23 *blacks and women. They had almost no jobs, and if*

1 we revert back to that, the same thing is going to
2 happen again. And one of the reasons, obviously
3 is that they're only so many pieces of the pie.
4 What this is all about, the way I see it is
5 economic discrimination is the worse kind. Once
6 you deal with that, you can deal with the other
7 problems in the other areas. But if a person
8 doesn't have a decent job and can't feed his or
9 her family, then they aren't going to be able to
10 do anything with any of the other areas of
11 discrimination. And as I said, there's a smaller
12 and smaller piece of the pie and that is creating
13 many of the problems that we see today. There
14 aren't jobs like there used to be. Most of the
15 major manufacturers are cutting back. They're
16 cutting back. There's less and less and less of
17 an opportunity for decent jobs and that really is
18 when you get this crunch.

19 CHAIRMAN CHASE: I know we may have
20 another question or two, but we do have to move on
21 and I want to thank you on behalf of the
22 Committee, both of you, Father Hardin, Mr. Hood
23 for coming before us today and making your

1 presentation. Thank you.

2 Now we have present Mr. David Swider.

3 He's an attorney with Bose, McKinney & Evans. I

4 just wanted to say that if you could maybe have

5 about fifteen minutes or so for testimony and then

6 maybe we can have some time for questions.

7 DAVID SWIDER

8 Bose, McKinney & Evans

9 All right. I think these questions are

10 going to be difficult. I wish I had prepared more

11 text. I will have plenty of time. There were

12 just a few points I wanted to make.

13 Thank you very much for inviting me

14 here today. To give you a little bit about my

15 background, I am a management labor employment law

16 attorney and I have represented companies since I

17 began practice in 1978 in such matters. I have a

18 thorough familiarity with affirmative action, at

19 least as we're looking at it I think today under

20 Executive Order 11246. Experience going back to

21 1979. Lots of experience since then representing

22 scores and scores of companies in compliance

23 reviews, in putting together affirmative action

1 *programs, addressing employer groups such as*
2 *Indiana Manufacturer's Association, Indiana*
3 *Banker's Association, numerous other employer*
4 *groups in helping them in affirmative action*
5 *compliance. Everything from extra preparation of*
6 *plans, to representing many companies in*
7 *enforcement proceedings when things haven't worked*
8 *out between the OFCCP and the contractor.*
9 *Obviously I can't speak for my clients and don't*
10 *purport to do that. But I think generally my view*
11 *is consistent with many people in management, and*
12 *that is affirmative action under the Executive*
13 *Order as it is designed shouldn't create the kind*
14 *of problems that have brought us together today.*
15 *If you look at it from a business perspective, the*
16 *objective is simply this: If you're a business*
17 *and you're not utilizing all available resources*
18 *in the market, you're doing yourself an injustice.*
19 *That is to say if you're only recruiting from one*
20 *source and that source doesn't have females and*
21 *minorities, then there are some very qualified*
22 *people who you are overlooking and therefore, what*
23 *you need to do and what I think what true*

1 *affirmative action is, affirmative action that is*
2 *to create, to further equal employment*
3 *opportunity, you need to spread your net wider.*
4 *The theory being that if you do that, if you go to*
5 *non traditional sources, if you go to minority*
6 *institutions, if you advertise in minority and*
7 *female publications, then you're going to increase*
8 *the candidates, the number of candidates who come*
9 *in who have qualifications and you don't, as Mr.*
10 *Hood said, you're not required to hire anybody who*
11 *is unqualified or anybody who is less qualified*
12 *than somebody else, if you set your credentials in*
13 *a non discriminatory fashion. But you should be*
14 *able to get better people that way. As that*
15 *objective goes, I don't think a lot of employers*
16 *necessarily disagree with me.*

17 *In terms of problems that I think*
18 *have arisen because of the way the Executive Order*
19 *is enforced, I would say there probably are two*
20 *major problems as I view it. One is that there's*
21 *a little bit of form over substance. The other is*
22 *and you've probably heard, you know, enough about*
23 *that, but the other is that I think you've got the*

1 *umpire swing the bat and that creates problems in*
2 *trying to meet the objective. And the first issue*
3 *I'm talking about the recordkeeping. If you're*
4 *looking to further opportunities for minorities*
5 *and females, the regulations themselves create a*
6 *regulatory spider web of problems sometimes for*
7 *employers first in trying to understand them and*
8 *then putting together numbers. Availability is a*
9 *good example. You don't need eight factors.*
10 *You've got a different eight factors and one of*
11 *them is different for females than it is for*
12 *minorities and they really don't tell you for the*
13 *most part what's really available of qualified*
14 *females and minorities in your recruitment area or*
15 *in your organization. But there, you're sitting*
16 *there computing what is the unemployment rate of*
17 *unqualified people in this labor market.*

18 *There were proposed regulations*
19 *going back to 1980 in the Carter Administration*
20 *that sought to streamline the approach and I think*
21 *that's a good idea. What you need to look at is*
22 *what is externally available if you're recruiting*
23 *from the outside and where those recruitment*

1 sources are of qualified people and what's
2 internally available and that get you down to two
3 factors, not eight. Your work force analysis can
4 be simplified. I spent a lot of time saying you
5 didn't rank them from lowest paid to highest paid
6 and each time I don't like your departments, if
7 the OFCCP comes and says that, then you're
8 hassling with issues that really don't to go the
9 core issue and that is what affirmative action
10 efforts are undertaken. That isn't to say you
11 throw the baby out with the bath water. I think
12 generally it's a reasonable approach to what is
13 trying to be accomplished through the numbers, but
14 it take a lot of time for employers. It does cost
15 money. I don't think costing money is the
16 problem, but wasting money or unnecessary costs
17 because of that part of the regulations is
18 probably not the best way to go. And I think that
19 can be fixed.

20 The second issue relates more to
21 substance I think here today and that is I'm not
22 sure that it really makes sense to have the same
23 agency which is out there trying to further this

1 affirmative action goal as we talked about it,
2 also carrying a discrimination stick. You've got
3 another agency for that. You've got the Equal
4 Employment Opportunity Commission and you've got a
5 whole host of state and local organizations doing
6 the same thing. But it creates a real different
7 problem for employers when the OFCCP comes in and
8 is looking for discrimination at the same time
9 it's trying to further this affirmative action
10 objectives.

11 Let me give you an example. If I'm
12 an employer and I don't have any minorities in my
13 applicant flow. In other words, I'm recruiting
14 traditional resources and I don't have any
15 applicants applying for the job who are
16 minorities. I haven't committed discrimination,
17 but I haven't done all I can for affirmative
18 action purposes, but when you run the statistics
19 and you see that I've got zero minority applicants
20 and zero minority hires, I don't have a problem
21 from a discrimination standard. OFCCP comes in
22 and says let's widen that net, let's get you out
23 to institutions which will bring a flow of

1 minorities and females into the work force. Then
2 the next time the OFCCP visits and you've
3 accomplished that, you're looking at statistical
4 analyses which now are focusing not so much on
5 affirmative action, but potentially on
6 discrimination because all I'm going to do if I'm
7 the OFCCP is look at how many minorities are in
8 your applicant pool, how many have you hired using
9 the 80 percent rule or a hundred percent thing and
10 now I'm not coming in saying what a great job you
11 did in getting people into the applicant flow or
12 I'm not saying you've hired him, but why aren't
13 you moving him up in the organization faster? I'm
14 saying the statistics suggest you have a problem
15 and now we're going to come down on you. And
16 that's where you slide from goals which are just
17 to exercise good faith efforts to reach the quotas
18 because you now see that this game has to be
19 played by the numbers. And I have a basic premise
20 that you may disagree with and that is whether
21 it's because of educational problems in society or
22 whether it's because of experienced programs,
23 whether it's because of training problems, whether

1 *it's because of attitude, we've created the*
2 *statistics that aren't going to match up with the*
3 *hiring, even if all we're looking at are*
4 *legitimate qualifications, and I'm hiring the best*
5 *people.*

6 *I think whenever you look at the*
7 *statistics, particularly in a large group, you're*
8 *going to find problems and what happens then is*
9 *the employer gets punished and instead of saying*
10 *what great efforts you've made to really make this*
11 *thing work. I'm going to take you to enforcement*
12 *proceedings and say that you've discriminated.*
13 *Now that isn't to say that when the OFCCP is doing*
14 *an investigation, there shouldn't be aware of that*
15 *issue, and maybe the way Mr. Hood used to do it,*
16 *bring it to the employer's attention, say, well*
17 *look I don't know whether this is a fair -- you're*
18 *to take affirmative action on potentially*
19 *discrimination issues, let's promote this woman.*
20 *Let's work out something that puts this person in*
21 *the job and let's not fight over it where we've*
22 *got a winner or loser. Let's not call it*
23 *discrimination, let's just call it failure to take*

1 *appropriate affirmative action measure and move*
2 *the person up. That accomplished so much more*
3 *that we are going to enforcement procedures. We*
4 *believe you've discriminated against these people.*
5 *Rather I would suggest that this agency either*
6 *shouldn't have that authority or that*
7 *responsibility. They should, when they encounter*
8 *that problem, refer it to the Equal Employment*
9 *Opportunity Commission. Obviously not just turn*
10 *their heads to it or secondly the reliance undue*
11 *and over reliance on statistics needs to stop.*
12 *And those are my views.*

13 *CHAIRMAN CHASE: Thank you. We have time*
14 *for some questions. Mr. Gradison?*

15 *MR. GRADISON: I'm not sure if I'm*
16 *impressed with the specificity and regulations.*
17 *I'm hearing this from all kinds of sources, too*
18 *much regulatory burden. It's keeping Dan Quayle*
19 *employed and just the whole issue. So in terms*
20 *you have your clients, you don't have to reveal*
21 *who they are, of course, but can you give me some*
22 *more specifics about the kinds of problems they're*
23 *encountering on an ongoing basis with enforcement*

1 regulations with numbers? Can you give any more
2 concrete examples or just a general problem with
3 burdensome regulations?

4 MR. SWIDER: All right. Let me go
5 further with available analysis. What that is
6 intended to do is simply look at dividing your
7 work force into nine categories from office
8 managers down to service workers because obviously
9 you want to stratify it that way so you can see
10 how you're doing at each of these levels in terms
11 of what's available. You have a very complicated
12 formulation for trying to determine what
13 availability is. You're looking at 8 factors and
14 you're trying to come up with an ultimate number.
15 I have 20 percent minorities available for my
16 executive level jobs in this market from which I
17 recruit or hire.

18 It's not disputed, I don't think,
19 that the present regulations are too cumbersome in
20 that respect. You're doing a lot of number
21 crunching which doesn't matter at all. One of the
22 factors is, for instance, what is the unemployment
23 rate in the labor market? Well, I'm filling a job

1 *and I don't care who is out there who is*
2 *unqualified and is just unemployed. There's*
3 *another factor in the eight which says the*
4 *percentage of qualified females and minorities in*
5 *the labor group from which you're recruiting,*
6 *that's the one that makes sense. That's the one*
7 *you give weight to. And a lot of the other*
8 *calculations you've done are meaningless. The*
9 *same is true in terms of defining your work force*
10 *analysis. You're supposed to take your*
11 *organization, divide it into departments or*
12 *similar sub units and then rank from lowest paid*
13 *to highest paid the jobs and the number of people*
14 *in each of the categories by race and sex. It's*
15 *simple on it's face, but as applied, what's a*
16 *department? What's a similar sub unit? And*
17 *sometimes we waste a lot of time on issues that*
18 *once the OFCCP is there and that's a computer run*
19 *off of your work force, they're better able to see*
20 *where people fit and who they should compare with*
21 *than the regulations themselves would suggest.*
22 *And when I say it's pretty well-known, there were*
23 *proposed regulations in the Carter era that*

1 *simplified the whole process and made sense and I*
2 *think they're floating around again. And I would*
3 *simply suggest that that kind of approach where*
4 *much fewer factors, for instance for available*
5 *only the ones that really count make sense. I'm*
6 *not saying that it's the end of the world, we've*
7 *lived with it and I can show employers how to get*
8 *through it, but it's more complicated than it*
9 *needs to be.*

10 *MS. KENNEDY: Mr. Swider, I was*
11 *listening. I assume you were, too, to Father*
12 *Hardin when he talked about the need to change the*
13 *vocabulary and I'm struck with some of your*
14 *statements as well. If you were asked the*
15 *question, given your clients and your job and you*
16 *were given the task of selling people on*
17 *accomplishing the goals that all of us agree need*
18 *to be accomplished how would you change the*
19 *vocabulary, not just the statistical analysis, but*
20 *the vocabulary to make your clients happier to*
21 *engage in this sort of activity that we are now*
22 *calling affirmative action, but we could call soup*
23 *if that got us there?*

20

1 MR. SWIDER: Right, right. That's a
2 good question, I really haven't given it thought.
3 There was so much baggage tied to the term
4 affirmative action that you need another term. I
5 haven't thought of what that term would be, but
6 you're really talking about affirmative equal
7 employment. Affirmative good business practices
8 in certain respects. But, again, the down side of
9 that is when you're successful, what you've just
10 done is opened yourself up to another problem.
11 But just in terms of the underlying objectives,
12 I'm just not sure that that argument is
13 necessarily winable by employers. How can you
14 argue with the idea? Maybe I did need to spread
15 out my recruitment a little bit. Maybe I have
16 overlooked some good sources of people, and while
17 it may be a little bit more expensive, generally
18 it's not. In Indianapolis it's as simply as not
19 just advertising a job in the Indianapolis Star
20 News. Let's spend whatever it costs to put an ad
21 in the Recorder.

22 But you're right, I think you have
23 to -- the vernacular will have to change before

1 *there would be a greater acceptance.*

2 *MS. KENNEDY: But what I'm hearing you*
3 *say I think, and please correct me if I'm wrong,*
4 *is that you believe that given perhaps avoidance*
5 *of terms that have become politically charged, we*
6 *can still sell what we here in this room are*
7 *calling affirmative action. I think that's*
8 *exactly right.*

9 *The other part of it, however, is I*
10 *still -- they're disconnecting it from*
11 *discrimination. They're really two different*
12 *things. One is I'm talking affirmative steps*
13 *towards ensuring equal opportunity, not equal*
14 *results, equal opportunity. And the other is*
15 *you've discriminated and therefore we want back*
16 *pay. We want you to pay all this money and what*
17 *was a good intended thing for employers can*
18 *backfire in that regard. And I think that's not*
19 *the agency's fault. I think it's just the way the*
20 *whole system is set out. But I think the agency's*
21 *mindset, if that emphasis were changed as well,*
22 *the results would be even better. Now the*
23 *affirmative action idea I had, I don't know. I*

1 think there are pluses and minuses on both sides
2 of the coin or the issue. When you go further
3 into it, the quotas are definitely wrong and I'm
4 not sure anybody here would necessarily support
5 that view because it's probably -- it's
6 discrimination. It's the same time and I'm jaded
7 believe me because I represent employers not only
8 in affirmative action matters, but day after day
9 after day after day in alleged discrimination
10 matters. And I think that we as a society, the
11 more we talk about race, the more we give an
12 indication that that is a problem or determinative
13 factor that's necessarily being used by businesses
14 all the time. And I'm not sure across the board
15 that's true because it doesn't make good business
16 sense. Businesses want to make money. They want
17 the best people in jobs, whether they're red,
18 green, brown or purple. But if you give the
19 individual the sense that he or she is being
20 denied the job or promotions or some other
21 opportunity and the first place they look is to
22 their race, sex or disability, I think that's a
23 problem. Because I think all of us first need to

1 look at well maybe I didn't have the right
2 education, maybe I didn't have the right
3 experience, maybe I should have shown up to work
4 three days in a row. Look first at our own
5 problems and create a sense of responsibility in
6 ourselves and then when you are going through
7 those factors and you see that none of them fit,
8 let's then talk about these protected statuses.
9 But I think we've got a lot of people today
10 because of this atmosphere that we've created
11 who immediately turn to that issue and say well if
12 something bad happens to me by golly it has to be
13 because of my protected status.

14 MR. GRADISON: Mr. Swider, if you're
15 saying a lot of people, is this prevalent? Is
16 this everybody experiences this that its unfair to
17 the employers because of all these unnecessary
18 complaints the way the system seems to encourage
19 or invite complaints and so issues being violated
20 against these employers. Is it that widespread?
21 Is it working at all? I'm not seeming to get from
22 you being very positive about the program.

23 MR. SWIDER: I think it has done a lot,

1 *there's no question about that. It has sensitized*
2 *people, but so have vigorous enforcements of*
3 *existing non discrimination laws.*

4 *I talked with Mr. Hatfield who is*
5 *the Director of the EEOC here locally and well*
6 *I've worked in these arenas, I know all of the*
7 *agency people and there's always an emphasis on*
8 *what can we do to educate the employer community*
9 *so that there won't be these ramifications and Mr.*
10 *Hatfield will say, look at the sheer number of*
11 *charges that are filed constantly and they are I*
12 *mean they're overwhelmed at the agency because of*
13 *the charges that are filed. But I'm on the side of*
14 *defending them and I try to be fair-minded. Maybe*
15 *I'm not totally objective because I'm representing*
16 *a client, but we're constantly -- we employ hours*
17 *working with management. We're constantly giving*
18 *seminars and employers are there and what we're*
19 *saying to them, we're not saying I'll give you*
20 *ways to lie, discriminate. I'm not saying here's*
21 *how you get away with it. We're saying here's*
22 *what you need to do, and they want to know. They*
23 *don't want to discriminate. They don't want to*

1 get a charge filed against them because it doesn't
2 cost somebody a dime to go through it. And it
3 costs the employer money to defend it. If it
4 seems -- if I feel something bad has happened to
5 me, all I have to do is go down and file a charge.
6 And I say Mr. Hatfield and others were doing a
7 good job generally. I mean there's discrimination
8 out there. I'm not going to deny that it doesn't
9 exist and I think particularly when you begin
10 talking about glass ceiling problems. I see it
11 sometimes even a little more clearly in terms of
12 good old boy networks and I want my friend to move
13 up. But in terms of educating employer groups, I
14 think they know the problems and they're doing
15 what they can in a lot of respects. We also need
16 to educate the applicants, the employees, others,
17 to know the first time something happens to them
18 to think what I want to do is go file a charge
19 because it really just sort of perpetuates the
20 problem and the debate. So I guess it's more two
21 sided than we sometimes tend to paint it and I'm
22 not going to say I don't know our numbers. I
23 think everybody is going to disagree on how many

1 of those charges that are filed really had merit.
2 But in terms of the numbers that I see, not a
3 great percentage, I'm sorry.

4 CHAIRMAN CHASE: Mr. Swider, you talked,
5 I think you kind of described it as a carrot stick
6 as far as the current responsibilities of the
7 OFCCP to go out there and to try and assist in
8 promoting affirmative action and then coming back
9 and possibly then – and you've also mentioned
10 that there are other enforcement agencies like the
11 EEOC, I know with the ADA now and there's been an
12 onslaught of filing with the EEOC. I don't know
13 that their budget really increased at all. I know
14 there's talk of a lot more complaints and they're
15 basically overworked and understaffed and so there
16 may be a long time period, waiting period for
17 people to enforce their rights and they may feel
18 like it's not even worth going through that kind
19 of a process. And so it does seem to be some
20 justification at least for the maybe having the
21 OFCCP looking at these things in order to possibly
22 bring something to a head quicker. And I wonder
23 if you could comment on that from your point of

1 view?

2 MR. SWIDER: I guess we have created a
3 framework that there are other options. With the
4 Civil Rights Act of 1991 we're seeing much more
5 litigation than we ever had in the past because
6 now the agency in mind respects the EEOC,
7 otherwise has become an unnecessary step in the
8 process other than that's on my walk to the
9 courthouse I've got to file a charge with the
10 EEOC, but I can just ask for a right to sue and go
11 to federal court and now I've got more punitive
12 damages and that's trickle down and there's a jury
13 trial and the like. The sheer numbers, again, are
14 really the problems that are weighing down the
15 system and I think we need again to do an
16 education process. Maybe its when people file the
17 charge to really do a quick review. Let's look at
18 the facts. Let's look at what you're saying here
19 and whether it has merit so that you can sort out
20 the potential merit cases from the other because
21 they have to be investigated and that takes a lot
22 of resources. To tell employers as the OFCCP we
23 coming in and doing review. Look, I think you've

1 got a problem here and you could practically get a
2 list of Plaintiff civil rights lawyers who would
3 say come to me, and the OFCCP could have it and
4 they could say any compliance review, look, while
5 this isn't really our focus at this point, I think
6 you may have a problem here. And before I talk to
7 these people and refer them onto somebody else,
8 maybe you want to address it. And we can address
9 it in the name of affirmative action and make it
10 more palatable. So what you do is encumber that
11 agency with limited resources just the same and it
12 makes it more difficult to I think accomplish the
13 legitimate objectives that we've talked about.
14 You're right, it's a problem and I don't know how
15 to work it. It's a system that is innundated
16 with --

17 MS. KENNEDY: I hope this is not afield,
18 but how do you as an employment lawyer respond to
19 a theory that I know has been out there for a long
20 time, a great deal of what is perceived to be over
21 filing of complaint based on discrimination are
22 really a result of Employment Rule Doctrine, and
23 the fact that there is no remedy for people who've

1 *been fired unfairly and therefore, they look for*
2 *someone to vindicate them. And so what we're*
3 *doing is clogging the system and making it harder*
4 *for those who really have been discriminated*
5 *against to get their remedy and then would your*
6 *clients support a change for that?*

7 *MR. SWIDER: I think if anything that*
8 *this Civil Rights Act of 1991 has done, it has*
9 *probably made employers much more receptive to the*
10 *idea that for some other mechanism that should*
11 *exist for handling -- you're right. I mean what*
12 *happens is people feel they're treated unfairly,*
13 *even if they're not treated unlawfully, look for a*
14 *means of addressing the problem and because it's*
15 *an employment at will state, the only real means*
16 *of doing it is saying, oh, wait a minute, I know*
17 *I'm in a protected class so I'm going to go file a*
18 *charge.*

19 *MS. KENNEDY: I'm a victim of reverse*
20 *discrimination.*

21 *MR. SWIDER: That's another. I think*
22 *that area is going to be a lot more fear until --*
23 *because what's happening again because of the*

1 Civil Rights Act of 1991, agencies were never very
2 receptive or response to reverse discrimination
3 claims and I think it gave some well-meaning
4 employers a sense of security to go out and say
5 something like this. All right, I'm at our board
6 meeting and I'll tell you what, oh I'm the
7 president of this company. My next sales manager
8 is going to be a minority because I think that's
9 good and that's what affirmative action is all
10 about. Well, I'm the non minority sales manager
11 candidate who didn't get hired and that's the
12 evidence I've got. That wouldn't have gone very
13 far with the agency, but now I don't need the
14 agency, I've filed my charge and I go to federal
15 court, you know, I can get punitive compensatory
16 damages and I've got a jury and there may well be
17 jury memebers that are saying, yea, I'm tired of
18 this, too. There's a little bit of a backlash
19 there and I think you're going to see more of
20 that. And to answer your question, yes, I think
21 they're going to be much more responsive to
22 arbitration or other kinds of mechanisms for
23 resolving what people think are inequities. And

1 my experience, because I also handle labor law, is
2 that when there's a union, and please I'd never
3 support union, believe me, but when they're there,
4 I think there are fewer charges filed because
5 there's a mechanism for challenging even what I
6 think is a discriminatory action. And people I
7 don't think are so understanding of the nuances of
8 a jury versus a judge versus an arbitrator. By
9 golly I think I've been wronged and I want
10 somebody to hear it. And I think you're right,
11 Ms. Kennedy, that having those kinds of
12 alternative dispute mechanisms are very important
13 and it would sure simplify and streamline the
14 whole process if we looked in that direction.

15 MS. KENNEDY: Maybe take some of the
16 poison out.

17 MS. MATTHEWS: One quick question, one
18 quick response. I think one thing is that a lot
19 of people have forgotten how this got started and
20 I would like to ask Mr. Swider what would you
21 advise your clients if say, for example, the black
22 community would decide to boycott your client's
23 products and no longer buy those products because

1 *your clients had decided to go back to the non*
2 *discriminatory regulation as opposed to*
3 *affirmative action, would you counsel your*
4 *clients?*

5 *MR. SWIDER: Well, it would probably be*
6 *increasingly important, affirmative action laws or*
7 *not, to look to again to spread the net to make*
8 *sure you're not giving the appearance -- running*
9 *the thin line on the one hand to serve that*
10 *business objective. You don't want to engage in*
11 *reverse discrimination, on the other hand. So you*
12 *need the best qualified candidates and if you're*
13 *not getting them from the minorities and female*
14 *community, you need to spread the net and in that*
15 *case I would advise if you're recruiting now on a*
16 *local level, maybe you need to recruit on a*
17 *regional level or a national level and kind of*
18 *step up the pace. And in that regard, affirmative*
19 *action as intended by those regulations may not be*
20 *such a bad thing.*

21 *CHAIRMAN CHASE: Thank you very much, Mr.*
22 *Swider for presenting before us today. We now*
23 *will take a 14 minute 25 second break.*

1 *(A brief recess was taken.)*

2 **CHAIRMAN CHASE:** *We're back in session*
3 *and we are next going to hear from another panel.*
4 *Both are representatives from Indianapolis Plan*
5 *Construction Training Program and we have with us*
6 *today, Michael T. Elder who is the Executive*
7 *Director of the program, and also the Deputy*
8 *Director, Herman W. Oliver.*

9 *So if you would both like to make*
10 *statements?*

11 **MICHAEL T. ELDER**

12 *Indianapolis Plan Construction Training Program*
13 *The Indianapolis Plan is 20 years*
14 *old. It's a local approach to recruit minorities*
15 *and females to the union building construction*
16 *trades industry through our apprenticeship*
17 *programs. We use an outreach concept. We edify*
18 *the candidate and do a pre training, approximately*
19 *300 hours of classroom training shoring up any*
20 *deficiencies the client might have towards the*
21 *apprenticeship examination. Upon the conclusion*
22 *of that classroom training, we offer employment*
23 *with one of our 180 signatory contractors.*

1 *The Home Town Plans acts as a*
2 *triangular structure; organized labor, contractor*
3 *members, and the community. The program is*
4 *certified with the United States Department of*
5 *Labor, Bureau of Apprenticeship and Training which*
6 *allows us to work these folks as a pre apprentice*
7 *on federal and state jobs. In the Federal*
8 *Register it talks about signatory contractors must*
4 9 *have a collective bargaining agreement with one of*
10 *the signatory contractors assigned the original*
11 *Memorandum of Understanding. So we're pretty much*
12 *locked into an apprenticeship concept sponsored by*
13 *joint committee; labor and management committees.*
14 *That's our structure.*

15 *CHAIRMAN CHASE: You want to add, Mr.*
16 *Oliver?*

17 *HERMAN W. OLIVER*
18 *Indianapolis Plan Construction Training Program*
19 *I might also add here the*
20 *Indianapolis Plan, we kind of started off as we*
21 *call parallel training in the early 70s where we*
22 *tried to duplicate the apprenticeship concept and*
23 *the Indianapolis Plan ran their own program and we*

1 *did that for about five to six years. I think*
2 *from like 1970 to 1976. And the program is set up*
3 *basically to remedy the numbers of minorities at*
4 *that time entered into the apprenticeship*
5 *programs.*

6 *We found that as we worked towards*
7 *those goals that we were making results, but not*
8 *the way we wanted to. So we reorganized in 1980.*
9 *Mike and I went to Gary and they had a concept*
10 *there called Outreach, and as we looked at the*
11 *concept of Outreach where you go in and you*
12 *basically you prepare individuals to meet the*
13 *goals of the industry, to go into those types of*
14 *programs, we found that that has been a lot more*
15 *successful for us.*

16 *So, as a result we've been working*
17 *under Outreach for the last 10 to 15 years.*

18 *MR. ELDER: Currently the State of*
19 *Indiana there are 3,884 registered apprentices in*
20 *the construction industry in joint corporation*
21 *training components; electricians, carpenters,*
22 *sheet metal, plumbers, painters, so forth.*
23 *Department of Labor defines Indiana in four*

1 regions; South Bend, Gary, Fort Wayne, Evansville,
2 Indianapolis, pardon me, five. In the Gary area,
3 6.7 percent of the registered apprentices are
4 minorities, yet we have a population there of
5 about 26 percent. South Bend, 7 and a half
6 percent. Forth Wayne, 7 percent. Evansville, 5
7 and a half percent. Indianapolis 13 and a half
8 percent. Since these statistics became available
9 to the state building trades in a meeting last
10 October looking at the numbers, we now have
11 changed our course to the Indiana Plan and have
12 opened regional offices to incorporate these other
13 cities and these other areas and the success has
14 been the ability to recruit minorities and females
15 on an outreach concept. Once we get them to the
16 door of apprenticeship, the fall out rate is
17 nothing less than what anybody else would expect.

18 So, the key is to do something up
19 front and get them in the door. So we now are a
20 state wide program endorsed by the Bureau of
21 Construction Trades. And we also found out that
22 in what we were doing it's important that you're
23 able to educate the participants as to what the

1 *programs are, where the programs are, where you go*
2 *to apply, who you reply with. Like Mike was*
3 *saying, doing something in terms of preparing them*
4 *for aptitude testing. Preparing them for -- I'm*
5 *not going to call it sensitivity training, but*
6 *preparing them for when you go out on the job*
7 *site. What do you expect in terms of putting*
8 *someone that's never been exposed to a new*
9 *environment out on their own. They haven't been*
10 *more or less say well this is construction, this*
11 *is how -- this is what you can expect, this is*
12 *what you should not. You need tools. You*
13 *shouldn't go out without tools. You're going to*
14 *be required to work within a 50 mile radius of*
15 *your home because those are areas that your local*
16 *union cover. So, these are things that we find,*
17 *if a person is educated, what they're getting into*
18 *and understanding that your success rate will*
19 *follow.*

20 *MR. ELDER: Traditionally if you were to*
21 *stereotype the building trades, it's a father and*
22 *son operation. It has been for 50, 60 years. I'm*
23 *4th generation in my family. I had a father that*

1 told me to take algebra, geometry, trigonometry if
2 I'm going to be an electrician. Those are the
3 problems we encounter. So the real mix of our
4 success is the month of April electricians are
5 accepting applications here in Indianapolis.
6 They've advertised in 20 or 30 journals that
7 they're taking applications and they've met the
8 law, but you can come and apply in May, they'll
9 tell you to come back next year. That's a shut
10 off and a turn off to a lot of people. They won't
11 do that. The biggest plus we have is that when
12 you come in our office and you identify yourself
13 as a potential candidate, we put you in the pre
14 training. We put you to work. Now you're on the
15 career path. You stay employed in that industry
16 until that door opens again if you came in behind
17 it. So there's a continuity of employment in that
18 industry and you're gaining all the time.

19 We find it extremely popular that
20 our -- that it's mostly our candidates get a
21 monthly work evaluation so at the end of nine
22 months they open the door again, we've got a track
23 record there.

1 *Betty doesn't miss days of work,*
2 *even though she's a single parent. We take that*
3 *evaluation. That tells a real story about her*
4 *last nine months and she's normally selected*
5 *before someone from off the street corner that*
6 *just happened to be there to apply. The other*
7 *positive thing we feel very strong about and*
8 *Indiana State Work Force Development sponsored us*
9 *in the statewide movement, is our ability to*
10 *create job opportunities for our welfare*
11 *participants. And we deal with about 67 percent*
12 *of our clients are welfare mothers. We offer a*
13 *liveable wage and we offer a spring benefit*
14 *package to take these people off of the welfare*
15 *system. We offer health insurance, her and her*
16 *family. Health care, health care on top of a*
17 *wage.*

18 *I brought some statistics to share*
19 *with you, but last year on our females we had*
20 *average entry level wage of \$8.27 an hour plus the*
21 *benefit package. You can do things, you can move*
22 *people off of welfare and into the work rolls with*
23 *those kind of wages. 358 jobs in central Indiana*

1 *produced by the Home Town Plan. We are the only*
2 *left Home Town Plan in existence. There is a*
3 *remnant of something that started out in*
4 *Cincinnati, but it no longer operates. Home Town*
5 *Plans were created in the construction industry*
6 *exclusively. In Cincinnati they still do some*
7 *things with the construction industry, but they're*
8 *into General Motors and training of other sorts.*
9 *Most plans go by the way side from 1980 to 1984.*
10 *Most of the majority of them lose their funding.*
11 *We stayed intact simply because Bill Hutton, Mayor*
12 *Hutton liked the Home Town Plan, saw its merit and*
13 *funded us through A three to five year period when*
14 *there just were no dollars. And that's the reason*
15 *we survived.*

16 *CHAIRMAN CHASE: What do you see as the*
17 *Home Town Plan specifically? Do you feel that*
18 *there are any efforts or attempts by OFCCP to*
19 *decertified the plan? What is the long term --*

20 *MR. ELDER: I think in the past there*
21 *has been. Simply because I think we were the only*
22 *surviving creature out there. We were a nuisance.*
23 *I don't think they feel that way today. I hope*

1 *they don't. With them or without them, we're*
2 *going to stay in business. We're expanding and*
3 *growing very, very fast. There's a total*
4 *commitment by the building trades, state wide*
5 *organizations, and their employers to keep this*
6 *thing alive. We're doing what's right and we took*
7 *a look at ourselves, we don't look like America*
8 *and we're going to, you know, creating a solution*
9 *to the problem in some other cities that we see*
10 *with these numbers and we're going to represent*
11 *America. We're building America, we're going to*
12 *represent America. So our future looks very, very*
13 *good and with or without OFCCP's blessing.*

14 *We do currently have the blessings*
15 *of the Bureau of Apprenticeship Training and*
16 *that's what we're all about. We offer technical*
17 *assistance to our employer members about Federal*
18 *regulations and the OFCCP and we do attend audits.*
19 *Today we attend them without a lot of controversy.*
20 *There was a point in time when we were barred from*
21 *them, yet they were our signatory contractors that*
22 *we were representing. The OFCCP does annually*
23 *audit us every four or five years.*

1 CHAIRMAN CHASE: As I understand it, the
2 Home Town Plans concept is also there for
3 companies, construction firms to sign on
4 signatories. Is that supposed to in some respect
5 show that they are making good faith efforts to
6 comply?

7 MR. ELDER: In the original documents,
8 Memorandum of Understanding in the Federal
9 Register it talks about umbrella protection. You
10 were to be given a compliance status as long as
11 the craft was in compliance. Somewhere that's
12 been lost and OFCCP doesn't -- they don't separate
13 signatory plan contractors from a non signatory
14 plan contractor. The regulation says that if
15 you're a signatory plan contractor, you will live
16 up to 11246 and the rules of the Home Town Plan.
17 It's very clear. It's very easy to read and
18 understand. Contractors who are not signatory to
19 an affirmative action plan are under 11246 and
20 604.5 which says you must also show that you have
21 complied with the 16 affirmative action steps.
22 That's been my biggest problem with OFCCP is they
23 want to impose the 16 affirmative action steps on

1 the signatory plan contractors, irregardless of
2 their good faith efforts or not. We can go to an
3 audit and an examiner is doing you, it's his
4 opinion if you're in compliance versus the next
5 time you go to an audit and its examiner B, it's
6 his opinion. And I don't see a lot of leeway
7 given to good faith effort. A contractor, a
8 construction contractors for no fault of his own,
9 may be in compliance today and he's employing 17
10 second and third year apprentices. Because of the
11 nature of our business and the continuity of
12 employment and training, we annually rotate
13 apprentices. So if you're serving with a very
14 large employer, learning industrial commercial
15 work. Where at the end of your rotation you
16 transfer to a smaller contractor. So you know the
17 entire industry. He may unfortunately rotate out
18 five minorities and the females, through no fault
19 of his own, it just happened. Now he's in non
20 compliance individually, but as an industry he's
21 in compliance. We've met the 13 in Indianapolis.
22 Our federal goal is 12.5 percent minority
23 employment. We're at 13,3. If yet we're still

1 getting individual employers cited for non
2 compliance.

3 MR. GRADISON: Only for those reason not
4 recognized in the rotations?

5 MR. ELDER: There are non signatory
6 contractors that certainly need to be cited.
7 Don't get me wrong, they don't seem to be
8 scrutinized as we are as a larger identifiable
9 contractor. We have some contractors who are
10 audited four and five times in a seven year
11 period. We have other contractors that have never
12 been audited in a 20 year period. I don't know
13 how they pick and choose who to audit. I just
14 question a lot of the good faith effort that's
15 written in the regulations.

16 MR. GRADISON: You've discussed this,
17 this quandry with the OFCCP people and the way the
18 system works, they recognize--

19 MR. ELDER: Locally and in Chicago.

20 MR. GRADISON: This year might be a
21 little bit out, next year we'll be way off in term
22 of meeting our committment and fulfilling our
23 compliance?

1 MR. ELDER: Yes, locally and in Chicago?
2 I'm still waiting for my 1991 audit results of my
3 program.

4 MS. MATTHEWS: I'm hoping that the
5 factfinding that we read about indicates some
7 6 information about this good faith that you talk
7 about. But what I continue to hear is that good
8 faith efforts is the -- I might be generalizing,
9 you can correct me, but the good faith effort
10 ought to be the only thing on whether or not a
11 contractor is in compliance. Can you speak, for
12 example, that if the State of Indiana's goal is to
13 have say 15 percent, whatever it is, 15 percent
14 affirmative action employment as a goal and one
15 company that has been doing a lot of activity in
16 hiring has not hired anybody of the classes that
17 we look at, but overall in the industry have
18 probably gone beyond meeting the goal that was
19 set? If that were to continue, if we were to go
20 back to where you say just leave those guys alone.
21 That this time they didn't make it because the
22 overall industry is doing well, do you think that
23 that would set a question where other companies

1 would begin to wait on somebody else to be the
2 guide or somebody else to do the work and at some
3 point in time nothing would be done.

4 MS. MATTHEWS: Not only you, but we've
5 had other witnesses earlier that they just want to
6 go to the good faith efforts and then don't come
7 back again to see what we've done.

8 MR. ELDER: Maybe you've misunderstood
9 me.

10 MS. MATTHEWS: Okay, that's why I'm
11 asking. The other thing I want to ask you, while
12 I have the floor, how deep does the Home Town Plan
13 go? Does it kick in anywhere at the high school
14 level like 9th grade or 10th grade in order to get
15 people in the pipeline so that when you really
16 want to get to your classroom, you have a bigger
17 pool and therefore the numbers are not way down
18 low like you've talked about Gary having a 26 but
19 only apprenticeship is so low. Does it kick in
20 anywhere down there; two questions.

21 MR. ELDER: To answer your first
22 question first. Contractors that bid and receive
23 federal projects must comply with the law and

1 *report a monthly 257 manpower utilization report.*
2 *Signatory contractors to the Home Town Plan must*
3 *give me that report every month whether they're on*
4 *covered work or not. It's very clear in the*
5 *regulation that I'm supposed to be at OFCCP to the*
6 *signatory contractors. We have a Board of*
7 *Directors and we refer this to, so if what you*
8 *said happened, a contractor just kind of sitting*
9 *back and not doing his fair share, I'm going to*
10 *catch him the first month, the second month, the*
11 *third month. I watch out. If his employment goes*
12 *up. I watch how it goes down. You can also be in*
13 *violation for discriminatory layoff. He's a 12*
14 *percent minority but he laid off 13 people and 18*
15 *percent of that was minorities. That's not right*
16 *either.*

17 *So I'm going to be the first to know*
18 *it because I get a monthly 257 manpower*
19 *utilization report every month, whether it's*
20 *covered work or not.*

21 *It's our philosophy that you should*
22 *be in compliance all the time, not just when*
23 *you're on federal work, and there's a provision*

1 that I will put them out of compliance with Home
2 Town Plan and then notify OFCCP that's the way it
3 should work.

4 Your second question. I also feel
5 the contractor should be rewarded for good faith
6 efforts.

7 MS. MATTHEWS: We heard that earlier,
8 but you're saying that's not how it works?

9 MR. ELDER: It doesn't seem to matter,
10 they're going to audit who they're going audit,
11 whether they're signatory or in compliance with
12 our standards or not, they're just going to get an
13 audit. In July during the peak of construction
14 season is pretty devastating to a contractor when
15 he has to stop, open his payroll records for a
16 year, and it takes at least a week. And it again
17 doesn't seem to be a lot of who gets the audits
18 and who doesn't get the audit.

19 The second part of your question,
20 would you state that once again?

21 MS. MATTHEWS: Does your Home Town Plan
22 kick in at the 9th grade, 10th grade, 9th grade
23 level so that there would be students in the pool

1 *when you all want to really do some serious work*
2 *for the joint apprenticeship program?*

8

3 *MR. ELDER: We've attended high school*
4 *career days, middle school career days. Quite*
5 *honestly, pretty unsuccessful here in*
6 *Indianapolis. We've also had, for the last four*
7 *years, an apprenticeship fair in which we invite*
8 *all the high schools and middle schools to and*
9 *actually watch our apprentice work. It's not got*
10 *that much done. Two years ago by legislation we*
11 *were able to get an advisory committee to*
12 *vocational education established by legislation.*
13 *We're now in the process of piloting through the*
14 *vocational educational department a true work to*
15 *apprenticeship high school linkage. The Bureau of*
16 *Professional Training has been very instrumental*
17 *in that along with the State Building Trades*
18 *director, Bill Ramsey. We're actually going to*
19 *get to design a curriculum when a young man or*
20 *woman starts in high school and says I want to be*
21 *a plumber, well if you take this course study.*
22 *It's not going to be pre college or free, it's*
23 *going to be this course study. We're going to*

1 work you in the summertime, even though you're not
2 18 by waiver. Every year your progress -- we're
3 going to work you in the summertime and you're
4 guaranteed entry into that apprenticeship of your
5 choice when you graduate from high school there.
6 We'll make a difference.

7 MS. MATTHEWS: And you say this just
8 started?

9 MR. ELDER: We are starting in
10 Indianapolis, Terra Haute, South Bend, and
11 Evansville for this next year and it has the
12 Governor's total support.

13 MR. TAYLOR: I know as African Americans
14 we don't have very many funds and it says it costs
15 \$2,490 join the program and are there any kind of
16 grants?

17 MR. ELDER: It's 99 percent grants.

18 MR. TAYLOER: That good. Okay, I didn't
19 see it in there.

20 MR. ELDER: That was done so that we
21 found ourselves competing with Ivy Tech for funds.
22 If you publish a brochure and you're open to the
23 public, then you get more access to funds. If you

1 *don't, you don't. To date we've collected one*
2 *tuition. The rest has been through grants.*

3 *MR. TAYLOR: Okay. I didn't see it in*
4 *here, so.*

5 *MR. ELDER: If you're not open to the*
6 *public, I guess you're discriminated against, I*
7 *don't know. We've collected one tuition.*

8 *MR. OLIVER: We, since 1982 worked with*
9 *JTPA. Before that we worked with CEDA. Before*
10 *that I think we were with Manpower. So most of it*
11 *basically come through DOL funds through either*
12 *CDPL, other sources like that. I think we're*
13 *working on a lot of state welfare because that*
14 *seems to be where the training dollars are. And*
15 *as Mike was saying, if we went to this new*
16 *concept, a lot of the FTAs would service deserving*
17 *areas. JTPA are going to voucher system so it's*
18 *easier for them to make the payments. In other*
19 *words, if you use a published brochure and use --*
20 *they're starting to voucher everyone out and*
21 *that's more or less what Ivy Tech do.*

22 *MR. ELDER: The other interesting thing*
23 *you might find very positive, four years ago when*

1 we really got on this corporate expansion, there's
2 so much construction, a couple of our contractors
3 invited us to a meeting corporate Lily, not the
4 endowments, you know, what can we do to help you?
5 We're interested in minorities working on our
6 construction projects. Under the current JTPA
7 laws we have Title 2 economically disadvantaged
8 Title 3 if you're a dislocated worker. Title 4 is
9 veterans and 5 I and J are impact, food stamp, and
10 welfare. What about the minority that doesn't
11 qualify? He came from a two parent home. His mom
12 worked at Allison's and his dad has a pretty good
13 job and he just doesn't meet any of these
14 pitfalls. So Lily, for the last four years, has
15 given us a \$30,000 grant to pay the tuition on 15
16 minority males that would maybe slip through the
17 cog. These kids -- we get to pick and choose them
18 to make sure they graduated from high school, had
19 a good math background, had a good science
20 background. These make a real difference. For
21 the first time in the selection procedure, and
22 I've been doing this for 30 years, we have seven
23 minority males. And one class of electricians,

1 *it's unheard of, we had 14 kids accepted in one*
2 *class. So it's making a difference.*

3 *MS. BRITA: Your program seems to be so*
4 *successful. What has been -- what has caused the*
5 *demise of other Home Town Plans?*

6 *MR. ELDER: Funding. It's simply a lack*
7 *of funding. I'm not waving the flag. I'm the*
8 *union member through and through. So politically*
9 *you probably know where I stand there, too. Bill*
10 *Hutton has saved this thing. He loved this Home*
11 *Town Plan. He was pretty dynamic as a building*
12 *type of mayor. We in the building trades enjoy a*
13 *dialogue with him as a mayor's labor advisory*
14 *council. This stuff went on and on and on and he*
15 *saw the good jobs the folks in the neighborhood*
16 *had.*

17 *MR. GRADISON: That's because he was a*
18 *closet democrat.*

19 *MR. ELDER: You said it, I didn't. It*
20 *was good for us and I think it was good for the*
21 *community.*

22 *MR. OLIVER: And prior to 1977 when CEDA*
23 *took over all Home Town Plans that were in*

1 *existence received direct DOL funding. So you*
2 *didn't have to go through city government to get*
3 *funding. But as it went to CEDA then with the*
4 *revenue sharing then you had to negotiate with the*
5 *local entities to get funding.*

6 *MS. MATTHEWS: And DOL went to A. Philip*
7 *Randolph.*

8 *MR. ELDER: Right. And we've had some*
9 *very shaky years, '80, '83, '84 when the funding*
10 *changed to JTPA and we were kind of like the new*
11 *kids on the block, convincing this Jobs*
12 *Partnership Training Act that we were worth*
13 *funding. Our funding was cut in half. Again,*
14 *Hutton surfaced and got us to match some money.*
15 *But it's taken us approximately ten years to*
16 *prove. If you look at INET, I don't know if*
17 *you're familiar with the term INET, without a*
18 *doubt we're the number one performing program year*
19 *after year after year with INET. We have an*
20 *accomplishment rate of 95 percent of the students*
21 *we touch complete our 300 hour course. 92 percent*
22 *of them get a job and 88 percent of them have a*
23 *job 26 weeks later.*

1 MS. BRITA: What percentage of your
2 people that you help are disabled?

3 MR. ELDER: That's been the hardest
4 things for us to really deal with because we're in
5 the construction industry. You have to define
6 disabled. We don't do -- there's virtually
7 nothing we do for a person in a wheelchair.

8 MS. BRITA: Well there are other
9 disabilities. That's a mobility thing, but
10 hearing impaired, visual.

11 MR. ELDER: Impaired hand, impaired
12 hearing. We can certainly work with that, but
13 it's really hard. It's really hard if you're
14 totally deaf it's very hard for us because of the
15 nature of our business and the machinery and loads
16 moving across the building site. It's very, very
17 hard for us.

18 MS. BRITA: Have you had applicants
19 you've had to turn away because of that?

20 MR. ELDER: A few, but they were very,
21 very impaired. We just didn't really hardly know
22 what to do at that point in time. We refer them
23 to Bidwell, INET for other type services.

1 MR. GRADISON: About that one
2 consistency you referred to of the minority,
3 protected minorities apprentice who had two
4 parents, great jobs, probably college degrees. Is
5 that constituency have a problem finding a job;
6 kids who come from that kind of a solid family,
7 good education?

8 MR. ELDER: They've never been
9 indoctrinated to building trades and by that
10 nature it's foreign, it's closed. If you saw what
11 we see, we deal with on the other end of the
12 spectrum. We deal with clients that have never
13 been more than ten blocks from where they were
14 born in Indianapolis, Indiana and with the end of
15 the time should be an exciting time, you're going
16 to go to work today. And we tell them your first
17 job assignment is with Urco Electric, Greenwood
18 Shopping Center Sears renovation. They don't want
19 to go, they're scared to death to go down there
20 and it's real, it's not imagined.

10 21 MR. GRADISON: So am I.

22 MR. ELDER: So it's a new world for
23 them. So many things we do that we think is by

1 *the nature is non discriminatory seems to be*
2 *discriminatory in their eyes. Why will they only*
3 *take applications five days out of one year? Why*
4 *can't I hand deliver my high school transcript?*
5 *Why can't, you know.*

6 *MR. OLIVER: And if you get someone that*
7 *probably applied this year and there's a lot of*
8 *coaching, too. If you get someone applied this*
9 *year and say for some reason you interviewed a*
10 *hundred people and you score a 42 or 45 and you*
11 *only take 30, normally that person will not go*
12 *back and reapply the next year without some type*
13 *of additional coaching. And that's what we tend*
14 *to do. We will take a position, say someone has a*
15 *good work report and worked for us for an extended*
16 *period of time, they apply to apprenticeship. We*
17 *tell them as that committee, what can I do to make*
18 *myself a better candidate next year if the*
19 *committee says take a math course, take a*
20 *blueprint reading class. It will almost say I*
21 *wouldn't say guarantee, it will increase their*
22 *chances substantially if they did something and*
23 *then went back to that same industry and say well*

1 I took blueprint reading and got an A in it and I
2 still continued to work in the industry and these
3 are my work reports. And we find those kinds of
4 successes. And we're also looking at in this year
5 that we've been doing this, I think when I've been
6 working with the Plan off and on since 1974, when
7 I first started working with the plan we weren't
8 taking in applicants if you were considered to be
9 over the age limit for construction for
10 apprenticeship programs. Well now we're finding
11 that our 18, 19, 20 year olds are not quite ready
12 to make that committment. So you really need to
13 do a lot more coaching up front to get them to a
14 point to take apprenticeship seriously because
15 you're talking about committing yourself to five
16 year training programs, 144 classroom hours each
17 year and going to school some evenings in between
18 there. So you really have to be committed if
19 you're going to get in this type of training
20 situation. So a lot of coaching is necessary.

21 MR. ELDER: So many instances we're
22 playing the parent role. Where if you didn't make
23 it and you're the white male, your dad is a

1 plumber, he encouraged you to reapply. It's not
2 uncommon in our industry to take three and four
3 applications to get in, that's three and four
4 years and we're finding successes still with some
5 of our clients the 4th time they made it.

6 MS. GREEN: I wanted to ask, awhile ago
7 you said something about having successes with
8 mothers, single mothers and welfare programs and
9 I'm very interested in how that \$2,490 is paid for
10 them?

11 MR. ELDER: under the Jobs Partnership
12 Training Act, under Impact. The welfare allows
13 training dollars.

14 MS. GREEN: Do they put all that
15 together and help a mother do that because then
16 what happens with the children? I have to come in
17 on the other end where I have to help the mothers
18 get through this or that or the other, so I'm
19 concerned about how they're getting this training
20 program because there are some that I would like
21 to say, you know, there is this training program
22 that we can --

23 MR. ELDER: Any female that is receiving

1 AFDC or food stamps qualifies for this program.
2 That tuition will be paid for her.

3 MR. OLIVER: And they also have
4 provisions that they will set up whereby child
5 care for the length of our training program, plus
6 the length -- it's a period of time once they go
7 to work where they kind of wean them off. They
8 provide child care, they'll provide up to \$500 to
9 repair a car. They'll provide up to I think it's
10 \$200 for tools and clothing. They'll provide, you
11 know, it's a lot of things they provide for that
12 person that they're trying to -- the state welfare
13 department, they're trying to get off of
14 assistance. So we find that client is a lot more
15 well taken care of than our other clients because
16 while they're attending our classes, our classes
17 are not -- there's no compensation for coming to
18 them, they're more prepared for our classes than
19 just the average person that has to go out and
20 find themselves some type of survival job in order
21 to complete the five weeks of training.

22 MS. GREEN: And how long is that
23 program, for instance?

1 MR. OLIVER: Our training is six to
2 eight weeks. What we're required to do is through
3 our contract with INET is provide 300 classroom
4 hours. So that takes about eight weeks. But we
5 can, if someone is a little bit more advanced in
6 what we're trying to do, like once we get a
7 person, if we've done our assessment, we prepared
8 them for the apprenticeship at the time, we've
9 counseled them about safety and some of the other
10 things that affects construction. If we find that
11 this person is ready to go to work a little
12 earlier than somebody else, then we have the
13 ability to put them out after say about 175 hours.
14 Now we have got some people that we think might
15 need four or five hundred hours, but you know--

16 MR. ELDER: When the client walks in our
17 office, is administered a test of adult basic
18 education. That rates that person's math skills,
19 reading skills and high school grade equivalency,
20 10.2, 20th year, second month. We then start the
21 syllabus. We're tutoring in preparation for
22 examination, plain and simple. We're making sure
23 that you can do fractions, decimals, how you

1 *figure how many cubic yards of concrete it takes*
2 *to build a sidewalk. Mechanical reasoning,*
3 *spacial relations is one of our biggest problems.*
4 *The test that has a field of view of an object in*
5 *three dimension and if it exploded and lay out.*
6 *If you have to pick the one if it was folded up,*
7 *mechanic dexterity, paperwork. If you've never*
8 *touched it and you go down to take the test and*
9 *you don't get enough, that's it for the year.*
10 *Where if we tutor for six or eight weeks, you can*
11 *speed through those things. So tutoring the exam*
12 *is part of the program, then going to work and*
13 *gaining good work reports; pretty much removing*
14 *obstacles.*

15 *Since April 1st, 1994 through April*
16 *1st, 1995 we have employed 74 black females, 60*
17 *white females for 134 females. The jobs ranged*
18 *from \$8.10 to \$17. All have health insurance, all*
19 *have full benefit packages.*

20 *MR. GRADISON: Child care?*

21 *MR. ELDER: No child care. I haven't*
22 *figured out how to do that in the construction*
23 *environment. But look around Indianapolis on the*

1 mall, you see a lot of our participants working on
2 that mall. That mall is a union only project
3 because of affirmative action and the committment
4 to minorities and females that country central
5 building trades made to the City of Indianapolis.
6 We pledged a 20 percent minority female goal on
7 that job and that's the way it is.

8 MS. GREEN: You may get a lot more
9 clients now.

10 CHAIRMAN CHASE: This gets back to issue
11 the of funding and this sounds like a wonderful
12 program and in some ways it ties back into what
13 Kathleen was saying. People with disabilities,
14 your funding seems to be limited. Hutton is not
15 the mayor anymore. What are the long term -- how
16 much support is there by Goldsmith or from other
17 sources? And then when you talk about the
18 construction industry, I mean they also have to
19 comply with the Americans with Disabilities Act.
20 What kind -- and it seems to me with limited
21 funding, how do you recruit so that you're not
22 discriminating against persons with disabilities
23 even though you may know that it maybe very hard

1 to place them in training programs. How do you
2 justify all that?

3 MR. ELDER: Three years ago we started
4 Project Independence. Now I was hard as anybody
5 for relying on that dollar out there. I had to
6 bid against is Congress going to repeal CEDA?
7 Yes, they did. And we went through now what about
8 JTPA? The current governor is wonderful, but what
9 happens when he's gone? So we put a membership
10 fee on our contractors, \$250 and \$500, depending
11 on the size of the employer. And this generate us
12 another \$100,000 that we didn't have three years
13 ago. So our financial base is getting broader and
14 broader and broader and less dependent on one
15 source.

16 Last October we made the decision
17 with the state to go statewide. We found other
18 sources of dollars. Dollars aren't our problem
19 right now. This is the first time I can say that
20 in years, dollars aren't our problem. When I
21 charge a contractor \$500 and say I'm an
22 affirmative action program, I will help you set up
23 your regulations and show you how to stay in

1 compliance and wham, he's on it and wham he's
2 audited, wham, he's audited. He says I'm not
3 going to pay you \$500 any more because I can get
4 audited by myself.

5 CHAIRMAN CHASE: So the problem is OFCCCP?

6 MR. ELDER: Enforcing the regulations as
7 they are written today is what I would love.

8 CHAIRMAN CHASE: And what about the other
9 part of that question? With who you can train for
10 your program and is there any kind of selection
11 criteria? Obviously you can't discriminate on
12 race, sex--

13 MR. ELDER: We certainly do have some
14 white males in the program that fit the economic
15 barriers and barriers to employment as the
16 Department of Labor defines barriers to
17 employment. From start to finish we are primarily
18 a minority and since 1980, a female training
19 program. That's what the building trades find
20 hard to recruit. We don't have any problem
21 recruiting white males, that's just not a problem.
22 We've got enough. So we are still a minority and
23 female recruiting program.

1 *CHAIRMAN CHASE: I guess the point I was*
2 *trying to make though is hopefully from the OFFCPs*
3 *perspective, when looking at employing people with*
4 *disabilities or are they?*

5 *MR. ELDER: I don't think they are. You*
6 *know under the Act when if I have a person with a*
7 *disability, he comes to my program and he goes to*
8 *F.A. Wilhelm Construction and Whilhelm knows the*
9 *law, which here again and he says do you have any*
10 *disabilities you'd like to declare and the guy*
11 *says no. That's his choice to say that he does*
12 *not have to disclose he has a disability.*

13 *CHAIRMAN CHASE: Actually under the law*
14 *the employer is not able to ask him that legally.*

15 *MR. ELDER: I think they are under the*
16 *Disability Act. If he declares he has a*
17 *disability, you'd better not terminate him for*
18 *that disabled. He's allowed to declare he has a*
19 *disability.*

20 *MR. OLIVER: We're allowed to ask that*
21 *under JTPA.*

22 *MR. ELDER: Under the new law he's*
23 *allowed to declare he has a disability and you*

1 *have to ask if he wants to.*

2 *CHAIRMAN CHASE: Well under the laws as I*
3 *understand it, those kinds of questions are*
4 *prohibited by employers. They can only ask*
5 *questions that are related to their ability to*
6 *perform specific aspects of the job. So it sounds*
7 *alike, though, that there is quite*
8 *misunderstanding and maybe, especially in the*
9 *construction industry, although I don't know that*
10 *it is.*

11 *MR. ELDER: I think OFCCP is auditing*
12 *our contractors. Did you offer -- I can't think*
13 *of the name of that form -- did you disclose,*
14 *have the right to disclose whether you've got a*
15 *disability or not?*

16 *MR. OLIVER: I think OFCCP, they do have*
17 *reliance on whether or not there is accessibility*
18 *to the water fountains, the buildings themselves,*
19 *the use, basically the site and there's a lot of*
20 *emphasis on that we see when they do do audits.*
21 *But as far as whether or not you would audit a*
22 *disability, I don't know.*

23 *MR. ELDER: I guess to end the thing*

13

1 *about OFCCP when we conduct an audit and the*
2 *contractor is found to be not in compliance, they*
3 *make recommendations and one of the*
4 *recommendations is they will give them eight*
5 *sources to recruit from. I'm treated as one of*
6 *the eight. We've been doing this so long, the*
7 *other seven will get the letter from that employer*
8 *and say did you know that? Can I send you, Urban*
9 *League sends us a lot of our candidates because we*
10 *have an avenue to put them into the industry. The*
11 *Urban League does not have an avenue to put them*
12 *into the industry. You can't seem to convince*
13 *them that the program is more than one of the*
14 *agencies. It's the program that opens the door.*
15 *We're just listed as one of the eight to call.*

16 *CHAIRMAN CHASE: So even if there's some*
17 *problems, maybe with OFCCP coming in and still*
18 *trying to do audits still seems like there's an*
19 *insensitivity for contractors because its a*
20 *wonderful pool of ready applicants.*

21 *MR. ELDER: Sure and I'd love to see if*
22 *they're in compliance with the plans. That's*
23 *wonderful and certainly we will tell OFCCP and*

1 *they're fair game. When a contractor is making*
2 *fair game at times, he can't be in compliance;*
3 *five jobs. He has 15 people. How can he have 12*
4 *percent of anything? What if it's a two man crews*
5 *that goes to work? You ought to be judged that*
6 *you hire a minority when you had an opportunity to*
7 *hire them, not this number. Did you hire them.*

8 *MS. KENNEDY: We're not really talking*
9 *though about somebody who is out of compliance.*
10 *You're just suggesting that the particularity of a*
11 *given industry, the pool should be evaluated in a*
12 *different way if you're talking about a job site,*
13 *those are to be considered as --*

14 *MR. ELDER: The trades should be*
15 *evaluated.*

16 *MS. KENNEDY: But to the extent they are*
17 *signatories to the Plan and subject to ongoing*
18 *evaluation by United States and that sort of*
19 *things. In other words, you're not suggesting*
20 *that they really aren't in compliance, but that*
21 *the way of measuring compliance, given a*
22 *particular idiosyncracies of your situation ought*
23 *to be adjusted?*

1 **MR. ELDER:** *Leave them alone until*
2 *they're blatant and we will be glad to tell you*
3 *they won't hire and we'll tell them and you do*
4 *whatever you want to do, disbar them.*

5 **MS. MATHEW:** *Mr. Elder, I was struck by*
6 *the difference we heard earlier this morning from*
7 *Ms. Brenda Pitts and one of the statements all of*
8 *us heard her say was that her company was glad to*
9 *be audited because when you get an audit they*
10 *learn and they grow and they get better from the*
11 *audit. And then, of course, we hear that some*
12 *companies hate the audits and they see the audits*
13 *as something punitive as opposed to the tool to*
14 *help them to grow and to get better at what it is*
15 *they do in terms of resources for their labor. Do*
16 *you have any feel for how you get people to the*
17 *point where the audit is not looked at as a*
18 *punitive piece, but as a piece to increase their*
19 *knowledge and growth in their own company,*
20 *industry?*

21 **MR. ELDER:** *Two weeks from now, if the*
22 *IRS calls you and says they're going to audit you*
23 *on your taxes, will you be glad to get that*

1 letter? That's the only way I know to tell you
2 unless we do an extremity. The image that's
3 portrayed by the OFCCP field examiner when he
4 comes on site, they don't come on with I'm here to
5 help.

6 MS. MATTHEWS: Let me ask you a
7 question, though. I think you take that different
8 perspectives. If I'm running a company, I don't
9 do everything in my company. I have other people
10 work for me; personnel director, all these kinds
11 of people. The IRS says we're going to go to do
12 an audit. Now I can take a different attitude on
13 that. One attitude I can take, I'm glad for this
14 audit. It sets me down, gives me a chance to look
15 at what my people have been doing versus what
16 they've been telling me they've been doing. And
17 it helps me to see where I might fill in some
18 holes, do some different kinds of plans. It
19 doesn't always have to be a bad thing. I don't
20 think paying taxes is a bad thing. A lot of
21 people do, getting ready to think about throwing
22 them away because I think there's a lot of people
23 that need help from the taxes and I think my part

1 *is to pay taxes. So I wouldn't take the attitude,*
2 *I think, if I knew I was doing something wrong*
3 *that I'd been trying to cheat, I'd been trying to*
4 *get by those kinds of things where my attitude is*
5 *I just don't want to be bothered. I think, yea, I*
6 *would not like to be audited. It would bother me.*
7 *It would be inconvenient. I don't want to be*
8 *bothered, that kind of thing. But on the other*
9 *hand, if my company is growing, I can't watch*
10 *everything. I can't see everything. It may not*
11 *be a bad thing.*

12 *MR. OLIVER: Well, what we have found*
13 *happens in some cases is say you're a contractor*
14 *and you work on a lot of federal jobs, we might*
15 *find one contractor that might get audited every*
16 *18 months because while his name pops up and he's*
17 *okay and where one of the other people in his*
18 *association running the same number of people*
19 *which has never had an audit, and you're sitting*
20 *around at your little association meetings and the*
21 *first thing he says, I've been audited two or*
22 *three times in the last four years and you have*
23 *other contractors here that's never been audited.*

1 *And I think what that is, what we hear sometimes*
2 *when contractors really get upset that they've*
3 *been audited over and over and over again and*
4 *there's others that have never been audited. And*
5 *there's really only -- I won't say there's a fast*
6 *and hard rule for who gets audited other than*
7 *federal job. We've even heard things like if*
8 *you're an open shop you don't, they don't audit an*
9 *open shop contractors. And so I think what we*
10 *find is some contractors just get tired of*
11 *continuously being singled out.*

12 *MS. MATTHEWS: As leaders.*

13 *MR. ELDER: Or easily identified. They*
14 *know where they live.*

15 *MS. MATTHEWS: I understand what you're*
16 *saying and I understand the gripe to some extent.*
17 *If the attitude is not a positive one, in other*
18 *words, when you talk about some of the ones that*
19 *couldn't hire you, but then some of the other*
20 *people are hired. So the overall industry picture*
21 *looks good. That means it's got to be some*
22 *leaders, it's got to be some followers and that*
23 *kind of thing. The person who happens to be*

1 *getting all the attention must be a big time*
2 *leader. Somebody that's visible and present and*
3 *that's just the cost of doing business and that's*
4 *the cost of the position that you're in.*

5 *MR. ELDER: I wish it was that simple.*
6 *It's not the big one always gets audited, the*
7 *small ones don't. There's no rhyme or reason, but*
8 *under the rules and regulations, it says good*
9 *faith efforts. You don't have to be in*
10 *compliance, you have to demonstrate good faith*
11 *effort. Then it comes down to the point of how*
12 *did you recruit? Well, I sent 17 letters out.*
13 *What were your responses? Well, I got four*
14 *responses. Did that give you enough people? Not*
15 *quite. Then you should have sent 19 letters out.*
16 *The next auditor says well I think it should have*
17 *been 22.*

18 *MS. MATTHEWS: So you're saying it's*
19 *arbitrary?*

20 *MR. ELDER: Yes, it's totally arbitrary.*
21 *There's nothing in their manual that says what is*
22 *good faith effort. It's up to the individual*
23 *auditor. It's totally subjective and no two*

1 *operate the same. I'll almost guarantee you we*
2 *can pick any contract we want to pick, don't tell*
3 *OFCCP and send three auditors and you get three*
4 *different results. I know you will. They won't*
5 *find them guilty of the same violation.*

6 *CHAIRMAN CHASE: Probably the same thing*
7 *with the IRS and tax accountants.*

8 *MS. MATTHEWS: Because it's subjective.*
9 *But are you saying that I'm still struggling with*
10 *this, just the good faith effort and no*
11 *compliance. How do we get to compliance? Where*
12 *does the measurement come in? The good faith*
13 *effort to me is subjective. I don't care who does*
14 *it, it's going to be subjective. But then at some*
15 *point in time we've got to get to some imperical*
16 *information and I don't think you can get to that*
17 *and that helps both sides because somebody's going*
18 *to argue you don't need these statistics, you*
19 *don't need these filling out forms. But we've got*
20 *to have something that's black and white. Got to*
21 *have some standards.*

22 *MR. ELDER: Let me try another way.*
23 *Although this is 1995 and you would think people*

1 *should know what's going on.*

2 MR. MATTHEWS: *They do.*

3 MR. ELDER: *Well some don't go to a*
4 *contractor who is fairly sizable and you're OFCCP*
5 *auditor and you walk in and you say I'd like to*
6 *see your affirmative action officer and they say*
7 *who? That should tell you this contractor has got*
8 *problems. Step number 1, who is your affirmative*
9 *action officer, and I don't have one. You've*
10 *never read the first regulation. You didn't even*
11 *reads the contract you signed to do this job.*
12 *That still happens all the time. But you go to*
13 *another contractor, you meet his affirmative*
14 *action officer. He he has his affirmative action*
15 *file and he's been putting stuff in. He's got*
16 *eight and a half percent minority and six percent*
17 *female out of a 75 person work force. He can*
18 *answer you intelligently about step 15 or step 13,*
19 *step 12. He's still found in violation because he*
20 *didn't demonstrate enough good faith effort in*
21 *somebody's mind because he didn't have the numbers*
22 *to be in compliance.*

23 MS. MATTHEWS: *And the reason why I'm*

1 *belaboring this because from the very first person*
2 *that testified, Mr. Klaper, through you this has*
3 *been to me the prominent issue, the part about*
4 *good faith. What I'm saying is does it have to be*
5 *an either or? Why can't we operate both? Work on*
6 *the guy that doesn't know anything about nothing*
7 *and also work on the guy who knows everything*
8 *about it and is kind of like maybe got lax? Why*
9 *do we have to give up the guy who is making the*
10 *industry look good because he knows everything,*
11 *but he's getting a little lax in favor of moving*
12 *all your resources to the guy that you got to*
13 *start all the way from zero, ground zero to bring*
14 *him up. And in the meantime, the picture of the*
15 *industry is looking really, really bad. You're*
16 *not going to meet the goal because you have to*
17 *bring somebody up to snuff. And what I'm saying*
18 *is that it seems to be the same coin, the good*
19 *faith on one side, and the compliance, statistical*
20 *data on the other side is what I'm trying to say.*

21 *MR. ELDER: I didn't write the*
22 *regulations. I know what you're saying, but all*
23 *I'm trying to tell you is the guy that's doing*

1 *nothing is treated the same as the guy that's*
2 *trying to do a lot. They're both guilty unless*
3 *you have the magical number, and that's not what*
4 *the legislature was intending to do. It was to*
5 *regocnize those employers who tried to do right.*

6 *CHAIRMAN CHASE: It almost sound like a*
7 *triage approach you're talking about where we need*
8 *to focus on the most outrageous discriminators or*
9 *people that aren't complying with affirmative*
10 *action and those that are making some attempts and*
11 *it does sound like those are some limited*
12 *resources. But I want to thank you both for being*
13 *here today and presenting for us, both Mr. Elder*
14 *and Mr. Oliver.*

15 *How about a two minute stretch?*

16 *(A brief recess was taken.)*

17 *CHAIRMAN CHASE: We're now back in order*
18 *and our next two presenters this afternoon are Mr.*
19 *John Delgado who is the Indiana State Director for*
20 *the U.S. Department of Labor, Bureau of*
21 *Apprenticeship and Training and also Mr. George*
22 *Patrick who is Assistant State Director for the*
23 *U.S. Department of Labor Veterans Employment and*

1 *Training Services and we thank you both for*
2 *coming. And we have a little bit of time here,*
3 *maybe ten minutes or so for statements, if you*
4 *have statements you want to submit, and then we*
5 *have time for questions as well. We will start*
6 *with Mr. Patrick.*

7 **GEORGE PATRICK**

8 *U.S. Department of Labor*

9 *I guess in the way of opening*
10 *statement I would state thank you for the*
11 *invitation to come. Prior to going to work for*
12 *the Department of Labor I was affirmative action*
13 *coordinator for the Bureau of Employment and*
14 *Training Service for five years. So I've had some*
15 *exposure to civil rights and I'm happy to be here.*
16 *That's it.*

17 **CHAIRMAN CHASE:** *Okay.*

18 **JOHN M. DELGADO**

19 *U.S. Department of Labor*

20 *Well, I'm going into a little*
21 *overview of the apprenticeship in Indiana and*
22 *excuse me I've a cold and I thought it would be*
23 *important to get here today. So let me give you*

16

1 *an overview of what we do with the apprenticeship*
2 *in Indiana and then I'll get into affirmative*
3 *action, how we deal with civil rights issues.*

4 *First of all, overview*

5 *apprenticeship in Indiana. The Indiana Bureau of*
6 *Apprenticeship Training, United States Department*
7 *of Labor is the registration agency for federally*
8 *funded apprenticeship programs in the State of*
9 *Indiana. This agency is responsible for promotion*
10 *and development of apprenticeships, for monitoring*
11 *training and for providing technical assistance to*
12 *the program's sponsors. Community-based*
13 *organizations, vocational, technical, education*
14 *system and employment and training entities to the*
15 *State of Indiana. The BAT definition of a*
16 *federally approved register apprenticeship program*
17 *is the structured supervised on the job training*
18 *program of a specific length combined with related*
19 *technical classroom instructions. The requirement*
20 *for the approved program briefly are the final*
21 *length of training is usually three to five years*
22 *progressive increase schedule of wages, planning,*
23 *on-the-job training, planned classroom instruction*