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UNITED STATES COMMISSION ON CIVIL RIGHTS
WISCONSIN ADVISORY COMMITTEE

CONSULTATION: FOCUS ON AFFIRMATIVE ACTION

REPORT OF PROCEEDINGS, taken in the
above-entitled cause, taken before MS. GERALDINE
MC FADDEN, Chairperson of the Wisconsin Advisory
Committee, taken at the Milwaukee Hilton, 509 West
Wisconsin Avenue, Milwaukee, Wisconsin on the 22nd
day of February, A.D., 1996 at the hour of 9:00
o'clock a.m..

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APPEARANCES:

CHAIRPERSON: GERALDINE MC FADDEN

COMMITTEE MEMBERS: EMRAIDA KIRAM
KIMBERLY SHANKMAN
JASJIT MINHAS
MARY PAT FARRELL
GEORGIA PRIDE-EULER

COMMISSION STAFF: PETER MINARIK
CAROLYN WHITFIELD

Also present: HALSELL & HALSELL REPORTERS
VERNITA HALSELL-POWELL, CSR

1 (The meeting was convened at 9:20 a.m.)

2 CHAIRPERSON MC FADDEN: Good morning
3 ladies and gentlemen, I'm Geraldine McFadden,
4 Chairperson of the Wisconsin Advisory Committee to
5 the United States Commission on Civil Rights.
6 With me are other members of the Advisory
7 Committee. Starting from my far left, will each
8 committee introduce themselves and tell where
9 they're from?

10 MS. PRIDE-EULER: My name is Gloria
11 Pride-Euler and I'm from Madison and I work for
12 the Department of Natural Resources.

13 MS. FARRELL: My name is Mary Pat
14 Farrell. I live in Seymore, Wisconsin. I work
15 for the Oneida Trib.

16 MR. MINHAS: My name is Jasjit Minhas,
17 I'm from Haywood, Wisconsin. I'm a president and
18 NCO Community Coalition.

19 MS. MC FADDEN: Again, my name is
20 Geraldine McFadden. I'm from McQuan, Wisconsin
21 and I work with New Concepts Self Development
22 Center.

23 MS. KIRAM: My name is Emraida Kiram. I

1 work with the University of Wisconsin, Milwaukee.

2 CHAIRPERSON MC FADDEN: Today the
3 committee is holding a consultation on affirmative
4 action. A topic that is receiving considerable
5 attention and scrutiny over its role in the public
6 policy. The papers received at this consultation
7 will be compiled and forwarded to the United
8 States Commission on Civil Rights for publication.

9 The Wisconsin Advisory Committee is
10 bipartisan and independent of any national, state
11 or local administration or policy group. Those
12 making presentations today were invited by the
13 committee membership.

14 This is a public meeting and open to
15 the public. We have a full agenda and will
16 strictly abide by the published agenda.
17 Participants will be allowed to make a five minute
18 opening statement. This will be followed by a
19 question and answer period from committee members.
20 The committee seeks to ensure that no invited
21 guests or public speaker defames or degrades any
22 person or organization. Any person or
23 organization that feels defamed or degraded by

1 statements made in these proceedings shall contact
2 our staff during the meeting so that we can
3 provide an opportunity for public response.

4 The Advisory Committee appreciates
5 the willingness of all participants to share their
6 expertise and time with the committee and the
7 United States Commission on Civil Rights.

8 So, we will begin with Ms. Barry and
9 Ms. Barry has two other representatives with her.
10 So, would you introduce yourself and tell what
11 organization that you're representing.

12 ANN BARRY

13 Human Resource Management Association

14 We would be happy to. Thank you for
15 inviting us to provide comments to you today. My
16 name is Ann Barry and I'm a member of the Human
17 Resource Management Association of Southeastern
18 Wisconsin. With me today on my right is William
19 Osterndorf of H.R. Analytical System and Todd
20 Scott, to my left of Medical Associates. Both of
21 these individuals have experience in complying
22 with affirmative action requirements as are
23 required by employers who receive federal

1 contracts.

2 Our paper and comments here today
3 will address affirmative action in employment.
4 Specifically, the requirements of contractors in
5 providing through the regulations -- provided by
6 the OFCCP, the Office of Federal Contract
7 Compliance Programs in establishing a written
8 affirmative action plan as you most likely are
9 familiar with the guidelines and the goals of such
10 a program as to enhance, advise and provide for
11 active recruitment of females and minorities. As
12 part of these programs, there are various
13 statistical analyses that are required of
14 employers and those statistical analyses become
15 part of an OFCCP audit that a federal contractor
16 may be subject to as part of their enforcement
17 responsibilities under the Executive Order 11246.

18 With respect to the requirements
19 under the OFCCP regulations, there are a number of
20 concerns and issues that are raised by employers
21 complying with such regulations. With respect to
22 our organization, which is composed of over 650
23 H.R. professionals, we have considerable

1 experience within our organization in dealing with
2 the OFCCP and also ensuring that our organizations
3 comply with the mandates of OFCCP, specifically,
4 development of affirmative action plans.

5 In that context, our paper addresses
6 issues and provides for suggestions for change
7 among the regulations and suggestions for
8 providing a meaningful audit for both the OFCCP
9 and employers. Among those suggestions for change
10 would be a shift in the burden of paperwork
11 requirements as well as providing for more
12 meaningful data that will serve to provide the
13 employer and contractor with the opportunity to
14 advance, recruit and provide for meaningful
15 employment of its minority employees as well as
16 recruiting applicants.

17 Having said all that, we would like
18 to address any concerns or issues that you may
19 have and specifically the members that are with me
20 today would be happy to talk about those specific
21 requirements. Our paper gets into detailed
22 requirements and we would be happy to discuss
23 those in a more detailed fashion if it's the

1 desire of the Committee.

2 CHAIRPERSON MC FADDEN: It's the desire
3 and any questions after that, then we'll address
4 it to you once you do your presentation.

5 WILLIAM A. OSTERNDORF

6 Perhaps it would be useful to do
7 this at this point, to talk about some specific
8 requirements that are in the federal regulations
9 and to look through what some of the statistical
10 reports are that employers are required to do and
11 also get into some of the narrative pieces that
12 may go into an affirmative action plan.

13 There are quite a number of
14 different statistical reports that every employer
15 that's doing affirmative action plan, whether
16 they're an employer of 100 or an employer of
17 50,000 are putting together in order to do some
18 viable reporting for the federal government.
19 Among these reports are the following: work force
20 analysis, a job group analysis, availability
21 analysis, a utilization analysis, a personal
22 activity table, a goals progress report and an
23 impact racial analysis table. And let me spend a

1 moment and go through all those different reports.

2 A work force analysis is an
3 examination of an employer's employees by job
4 title within the departments or work units to
5 which they belong. So, if as an employer I was to
6 do a work force analysis, I would have a breakdown
7 where I would have, for example, my assembly
8 department. I would list all the jobs in my
9 assembly department. Assembling we're on two,
10 three lead assembler, supervisor of assembly. I
11 would show in those job titles what those people
12 were paid, and how many women and minorities were
13 in each of those job titles. I would do that for
14 every department in my organization. I would
15 provide some summary information on those
16 departments and within that analysis I would give
17 some sense of where people are put in terms of job
18 groups.

19 The next statistic report which is
20 probably the primary statistic report that the
21 companies need to do is job group analysis and
22 that's an analysis in which the employer looks at
23 their work force by grouping jobs together

1 according to three factors; similar wages, similar
2 duties and similar opportunities for advancement.
3 In this case, rather than putting together all of
4 my assemblers and the assembly supervisor as I do
5 with the work force analysis, what I would do is I
6 would group like jobs so that I would group
7 together the supervisor of assembly with the
8 supervisor of fabrication and the supervisor of
9 inspection. I would group together the lead
10 assembler with the lead fabricator and other lead
11 positions in my company. And I would try to draw
12 those together so that jobs that are somewhat
13 alike in that sense are available that I can do
14 some analysis with. Again, I would look at each
15 of these job titles according to pay, and
16 according to the number of women and minorities
17 that are in each of these titles. I would do some
18 summary detailing of the number of people in each
19 of those job groups and then I would go on and do
20 further analyses. Among the other analyses that
21 are done after that point when I have a job group
22 analysis, I do an availability analysis in which I
23 look at each of my job groups in an attempt to

1 make a determination as to the people that may be
2 available for those jobs. I look at the
3 percentage of women and minorities who may be
4 available internally and externally to come into
5 positions in job groups. If, for example, I
6 decide that I have to fill my supervisor of
7 assembly job, I do an availability analysis to
8 look at who in the Milwaukee area may be available
9 to take that assembly supervisor job. I also look
10 internally to see whether somebody may be able to
11 promote up, move up internally to the supervisor
12 of assembly job. That kind of analysis has to be
13 done for every job group and there's a very
14 detailed and a very statistical mechanism that's
15 used to make some final determinations about
16 availability of people for each job group. Once
17 I've done an availability analysis and a job group
18 analysis. I then do a utilization analysis where
19 I compare the percentages of women and minorities
20 that I have in my job group against the
21 availability figures that I have just looked at
22 and try to determine where my current numbers
23 don't match up against the percentages that the

1 availability figures suggest that I should have.
2 When I'm underutilized, as the regulations
3 describe it, I then have to set some kind of goal.
4 The utilization analysis is a way to give a
5 company a sense of where they need to target their
6 affirmative action efforts. In the utilization
7 analysis I may find that my job group or my
8 supervisor, my supervisors contains a greater
9 number of minorities than the availability
10 statistics would suggest, but it may also show
11 that I don't have as many women in those jobs as
12 the availability numbers may suggest I should
13 have. And in that case, as a company, I want to
14 target some affirmative action efforts to reach
15 out and find women who may be able to move to
16 those positions. I need to do some things then in
17 order to track whether I'm having success in
18 meeting my goals and in moving forward towards
19 meeting the affirmative action objectives that my
20 company has.

21 In the other three reports I
22 mentioned, social activity table, goals to impact,
23 racial analysis charts are ways to do those

1 things. Those kind of charts look at who have I
2 hired, who have I promoted, who is leaving my
3 organization, what kind of applicants do I have
4 and give me a way to check on the progress I've
5 made towards effectuating my affirmative action
6 goals and making sure that my affirmative action
7 efforts are being successful. There are narrative
8 pieces that have to go in affirmative action plan
9 and surrounding statistical pieces. There are
10 narratives that would describe, for example, the
11 ways that I'm making my employees and my
12 applicants and the general public aware that I'm
13 an affirmative action employer. There are
14 narratives that describe who is in charge of doing
15 my affirmative action plan and what management's
16 role is in effectuating that plan. There are
17 narratives that look at the kind of problems that
18 I may be facing in my work force, some of the
19 things that are drawn out of the statistics.
20 Questions that I may find and problems that I may
21 need to deal with over the course of the year.
22 There are also narratives that deal with the plans
23 I intend to take during the coming year in order

1 to more effectively implement the affirmative
2 action plan and met my affirmative action
3 objectives. Once you get through with all these
4 statistical and narrative analyses, you generally
5 have a book that runs towards hundreds of pages.
6 The larger the employer, obviously the thicker it
7 gets, but even for small employers, the
8 affirmative action plan is easily going to run
9 into a hundred pages and more for the course of
10 putting together the statistical and narrative
11 reports.

12 You want to move on to some of the
13 other questions or does anyone have questions
14 about some of those sections of the plan?

15 CHAIRPERSON MC FADDEN: Any questions
16 from committee members?

17 MS. PRIDE-EULER: I think I have one
18 here. When you're talking about the availability
19 analysis and that you look at the jobs and you
20 look to see what employees are available
21 internally and externally, what have you done to
22 put something in place for those internal
23 employees? What type of programs do you have set

1 up to ensure that those employees internally would
2 be eligible for that vacancy or what you might
3 have?

4 MR. OSTERNDORF: In doing availability
5 analysis, the purpose of that is to get a sense of
6 who potentially can move into new positions.

7 MS. PRIDE-EULER: How would you know that
8 they were potentially eligible?

9 MR. OSTERNDORF: A lot of it is looking
10 at historical data. It may be -- let's go back to
11 examples again. It may be that historically what
12 we find is that our assemblers move up to
13 Assembler II. That they then move up to Assembler
14 III.

15 MS. PRIDE-EULER: So, it's a natural
16 progression?

17 MR. OSTERNDORF: There may be a natural
18 progression. There may also be historical
19 patterns that such that lead assemblers are going
20 to be the natural feel for supervisor of
21 assembler. There may also be historical data that
22 suggests that we always fill our supervisors from
23 the outside. That historically we have not been

1 able to find people internally that are able to
2 meet some of the requirements of those positions.

3 MS. PRIDE-EULER: I go back to my
4 question. What have you done to ensure that those
5 people internally would be eligible for those
6 supervisory positions instead of going outside
7 because we know that there are people who really
8 want to be supervisors who have the qualifications
9 or capabilities, but at some point or for some
10 reason, you know, were not selected. What type of
11 safeguards do you have in -- apparently you don't,
12 but what would you do to ensure -- I guess what
13 I'm trying to get at, I can't get at -- I can't
14 remember your name.

15 MR. OSTERNDORF: Bill Osterndorf.

16 MS. PRIDE-EULER: Do you have anything
17 that would be for training, upward mobility? What
18 would you do as far as upward mobility for those
19 employees?

20 MR. OSTERNDORF: On your question is very
21 well-taken and I'm going to shift to Scott to give
22 you a sense of things that they've done in their
23 organization. I should say that my role in this

1 process is in many ways is going to be sort of as
2 an outsider. My company happens to be a
3 consulting group that does work with lots of
4 different companies in their affirmative action
5 and effectuating affirmative action plans and so
6 at my company per se, we're not doing a lot
7 because I don't have the employee base that would
8 do those things. Mr. Scott I think could give you
9 some insight in the kind of programs that people
10 put together, individual companies.

11 MS. PRIDE-EULER: Todd, before you start,
12 I thought you three were together.

13 MS. BARRY: We are from the same
14 organization, the Human Resource Management
15 Association.

16 MS. PRIDE-EULER: Right.

17 MR. SCOTT: It's a non profit
18 professional society for human resource
19 professionals, pretty much in the Milwaukee Metro
20 area, southeastern Wisconsin. So, our membership
21 of a little better than 650 I believe comes from
22 320 some odd companies throughout the metro
23 Milwaukee area. So, we represent different

1 companies, however, we belong to the same
2 association of human resource professionals.

3 MS. PRIDE-EULER: I guess I don't know if
4 anybody else was, I was confused. I was under the
5 impression that Barry and Buchanan was a company
6 and that you were employed by, although you're
7 part of the HR.

8 MR. SCOTT: Right.

9 MS. BARRY: We're all members of the same
10 organization.

11 MR. SCOTT: But we're not co-workers,
12 different employers. But they're a professional
13 society where we come together to exchange
14 information, ideas and so on on the practices of
15 human resources. I don't know if I made that real
16 clear. Does that make sense?

17 MS. PRIDE-EULER: Yes. As far as
18 association, but-- and you have a company, you
19 have the company Buchanan & Barry and --

20 MS. BARRY: I'm a lawyer. THat's my law
21 firm, but I personally am a member of the human
22 resources management.

23 MS. PRIDE-EULER: Absolutely. You guys

1 are representing the human resources and not your
2 company.

3 MR. OSTERNDORF: I'm sorry about that. I
4 should have made that clear once I started talking
5 that each of us is part of a different
6 organization and that HERMA is an umbrella for
7 human resources professionals in town and so in
8 some ways when you see the comments and opinions
9 in the paper that we have this morning, the papers
10 meant to reflect some of the things that we know
11 from the HERMA membership from the professionals
12 that are part of these many different companies
13 across town.

14 MS. BARRY: So, we hae a wide variety of
15 experiences reflected in our paper.

16 MS. PRIDE-EULER: Okay.

17 MR. SCOTT: Could you restate your
18 question? I can probably address it.

19 MS. PRIDE-EULER: I guess Bill was
20 talking about the availability analysis that you
21 do. Is that -- I said what type of programs do
22 you have in place which would ensure that those
23 internal employees would have the opportunity to

1 advance, i.e. upward mobility? What do you do as
2 ar as upward mobility and what cross training --
3 are those people cross trained?

4 MR. SCOTT: That cross training is in
5 essence one of the things an employer will do. If
6 you notice that you have--I think one of the first
7 things employers want to do is look at are there
8 few groups internally. Are there groups of
9 employees that, based on their experiences, are
10 going to naturally have an opportunity to move
11 into that next level or that upper level position.
12 If they're not doing it already, what an employer
13 wants to do is look at cross training those people
14 to give them the type of experience that they
15 could move into those. Many employers,
16 particularly today and ours included, is looking
17 at tuition reimbursement. Providing that for
18 people that need to get education to move into
19 those roles that they have an opportunity to do
20 that. Setting up internal training programs for
21 people where they have an opportunity to learn the
22 skills they need to move into those next level
23 positions.

1 Another thing that employers do to
2 help move people through the system is to look at
3 establishing job postings. That's also something
4 that at least in my experience as part of doing
5 affirmative action plan is strongly encouraged
6 that you post job positions so your employee base
7 through the entry level can look at what
8 opportunities are out there and if I have an
9 interest or desire to move onto a different
10 position, be it a higher level position or at
11 least a different department, I'm aware that it
12 exists and I can post for that. If they are
13 looking in the required requirements of the
14 position and skills an employer can look at is it
15 possible, feasible to train that employee for that
16 or is it just a function they don't have the time
17 in yet. So, there are different things that
18 employers are doing and can be doing to move
19 people through. I think the biggest thing is the
20 cross training aspect. Most employers look at
21 that and develop career ladders in departments to
22 help people move up.

23 MS. FARRELL: I have several questions

1 and maybe I'll refer that to Bill regarding what
2 you were talking about. Number one, do you have
3 any vehicle of measuring the longevity that you
4 have of minority people within a corporation or
5 organization?

6 MR. OSTERNDORF: Different companies I
7 think use different mechanisms. Different
8 companies obviously have different levels of
9 computerization, different levels of recordkeeping
10 methodologies that they use, their historical
11 utilization of minorities and women. For some
12 companies it simply is easy, the gentlemen is
13 going to the computer, pushing a button and it
14 spits out reports that gives you five, ten,
15 whatever you want to use for historical analysis
16 of where they've been, where they're going. For a
17 company that's not as heavily computerized, it's a
18 matter of backtracking, digging through old
19 records, looking at personnel files, try to pull
20 together a paper to give themselves a sense.
21 Affirmative action plans are done on an annual
22 basis and thus when I go to do a new affirmative
23 action plan with a company I'm working at, we're

1 going to have a very, very good picture of what
2 was going on a year ago. The affirmative action
3 plan is not going to tell you a lot about what's
4 going on five years ago, but it will give you an
5 extremely clear picture of what was happening a
6 year ago this time. So, you get a sense in doing
7 the affirmative action plans in where you were and
8 where you are and most people then use that as a
9 way to get a sense of where they're going to.

10 MS. FARRELL: Is there a way of
11 measuring, for example, if you lost two minorities
12 in '95 and you replaced them in '96 with two more
13 minorities, is there a way to identify that you
14 lost two and you picked up two so it doesn't look
15 like you didn't lose?

16 MR. OSTERNDORF: Yes. Most affirmative
17 action plans will have pieces in place that will
18 give you a sense of what's happening in that
19 regard. Most people who are doing affirmative
20 action plans will have a report on all the people
21 that left their organization. So, they will know,
22 for example, that two of their minority employees
23 left the organization and usually they will know

1 why. Their report will tell you that one minority
2 employee left to take a new job with another
3 employer while the other minority employee, for
4 example, may have been terminated for attendance
5 problems. There's a chance then for the company
6 to do an analysis on that and make sure that that
7 was the real reasons behind those people leaving
8 and that they have legitimate documentation in the
9 files to support that. And I think that the
10 employers that I've worked with, worked very hard
11 to make sure that that documentation is available.
12 Employers are also required to track whose been
13 hired during the course of the year. So, once
14 again, you can go back to your records and you can
15 see that there were two minorities who came in to
16 the organization. They came into some certain
17 kind of position and you can see whether you're
18 adding minorities only at one level of the
19 organization or whether you're adding them all
20 over the big spread of the different jobs that you
21 may have. Those tracking mechanisms give you a
22 sense at some point of whether you're moving
23 forward and whether you're moving forward only in

1 one job group or whether you're staying stagnant.
2 So, those similar tracking mechanisms are in place
3 in the affirmative action plan.

4 MS. FARRELL: Thank you.

5 MS. KIRAM: I have a question. Do you
6 technically just do consulting work, is that my
7 understanding of the things that you do or is the
8 human resource management group just a networking
9 group of people in that field?

10 MS. BARRY: It's a networking group.

11 MS. KIRAM: So, if a company wants to
12 come to any of you, do you get paid for doing the
13 work with them?

14 MS. BARRY: No, it's a non profit
15 professional organization.

16 MS. KIRAM: So, you just advise. I know
17 that the guidelines are uniform for all, but is it
18 different for state employees and private
19 companies? I work for the state and I know that
20 for promotion purposes you either get a reclass or
21 you take a test. It's very hard for anybody to go
22 up progression to another position, even if he's
23 the most qualified, if he does not pass the test

1 or get a reclass, which is already hard to do at
2 this time. So, how do you work out or a
3 legitimate question is what do these companies do
4 to bypass the regulations to be able to fulfill it
5 in a way that that's not actually very regret
6 because I know -- because I know that there are --
7 I don't know this from the companies, but I know
8 this from other employees who will complain about
9 the opportunities that they did not have because
10 the state agency, for example, will advertise a
11 job. It's possible but they know they are going
12 to hire within. Things like that. So, what I'm
13 trying to find out is what do the other people do
14 to bypass the legitimate guidelines so that they
15 still fulfill the requirements without having to
16 do all the work that they're supposed to do?

17 MS. BARRY: I think that there's some
18 concern and we do address that in our paper. I
19 would not agree that there's employers seeking to
20 bypass requirements, however, I do think that the
21 point you're making is a very real one out there
22 and when I mentioned paperwork burdens, that has
23 become an almost a catch 22 from the standpoint

1 that we've heard and Ms. McFadden mentioned that
2 this has become a very critical issue. With
3 affirmative action, the whole idea is, is it
4 quotas? Is it really, truly a meaningful device
5 that is being utilized by companies and one
6 concern that we mentioned in our paper is some of
7 the paperwork burdens are simply that. That the
8 company needs documentation for the sake of having
9 documentation. And sometimes there's the concern
10 that as the example you raised, is there the
11 externally advertising for a position, but you may
12 know that that position may not be filled by those
13 external sources. However, the company is
14 fulfilling it's obligations on paper to advertise
15 in many different places which may not be
16 meaningful for that employer. And one of the
17 suggestions that we had for a change was to take a
18 look at those paperwork burdens. Are there
19 duplications of efforts and in those instances,
20 can we reduce that to provide the employer a
21 meaningful way in which to fulfill it's
22 obligations? And I think the question that was
23 raised by Ms. Pride-Euler was what are employers

1 doing for internal candidates? Not to recruit
2 applicants, but what is being done once these
3 people are brought into both female and minorities
4 that are brought into the work place and our
5 suggestion is we need to take a look at that
6 because getting somebody in a door and having the
7 bottom line numbers may not be what the purpose of
8 affirmative action plans are and I would argue
9 that's not the purpose. We incorporate some of
10 those ideas that, for example, a company's
11 resources may be better spent instead of
12 recruiting in different places where the
13 likelihood that a candidate will be drawn from
14 that is low. But, to maybe spend those resources
15 on a mentor program which would, as Todd
16 mentioned, we can set up internal and external
17 training, but a mentoring program may be better
18 suited to that employer's environment and to allow
19 employees to have that flexibility and to use
20 those resources instead of focusing it's efforts
21 strictly on the bottom line statistical analysis
22 and jumping through hoops of documentation. I'm a
23 lawyer and I like documentation, but sometimes it

1 doesn't suit it's purposes and I think that's
2 something that we need to look at.

3 MS. KIRAM: In this group that you have,
4 do you consider Asians a minority?

5 MS. BARRY: Yes.

6 MS. KIRAM: How come in the job
7 opportunities bulletins of the state and the city
8 and whatever else they will say, there's this
9 humiliation and they will say women and minorities
10 are encouraged to apply, but if they are
11 enumerating the African Americans and handicaps,
12 why are they not including Asians in that group?

13 MS. OSTERNDORF: In regard to all the
14 statistical reporting that's done under a
15 traditional affirmative action plan, for the
16 federal format, Asians are definitely included as
17 one of the classes of minorities. I have to admit
18 I don't know what exactly the state is doing
19 currently and I guess that's not something that we
20 can effectively address. I know a little about
21 the state processes from ten years ago from having
22 been a state employee at that time.

23 MS. PRIDE-EULER: Those things have

1 changed.

2 MR. OSTERNDORF: I do know I guess the
3 little input that I can give on something like
4 that is there's a very defined process for writing
5 an affirmative action plan to the federal
6 government and there was a very defined process of
7 writing an affirmative action document for the
8 state government and they are not the same. If I
9 was a state employee or the state is an employer,
10 I would be very frustrated because I'm suddenly
11 writing two affirmative action plans who have
12 different definitions and different goals and
13 different objectives and you know I have quite a
14 tremendous level of paperwork that I'm doing and
15 there's a real question about whether I'm
16 effectuating any of that. In the private sector,
17 most private sector employers are most concerned
18 about the requirements of the federal government
19 because in the long run it's the federal
20 government that may come in and observe their
21 affirmative action practices where the OFCCP, the
22 unit of the Department of Labor that looks at
23 affirmative action practices may come in and make

1 some requests about seeing the affirmative action
2 plan and documentation of the plan and ask for
3 some details about what employers are doing. So,
4 that's really why our paper is addressed to the
5 federal standard.

6 MS. KIRAM: I do realize that the
7 reporting mechanism includes the Asians, but the
8 reason I'm bringing it up is cultural to the
9 Asians. If there's an enumeration and they are
10 excluded, they tend to interpret that that they
11 are not included, that's why you have less Asians
12 applying for jobs. It's because when you
13 enumerate that and say open to Asians, we don't
14 apply but it's cultural to us. That's why I'm
15 addressing it because maybe your organization can
16 do something about it.

17 MR. OSTERNDORF: Those kind of things are
18 helpful for us to know. There are times as a
19 private sector employer you spend lots of your
20 time on the business running effectively. Where
21 do we need to go, making sure that the human
22 resources manager, making sure that there are
23 benefits for the employees, that people are being

1 paid, that there are the many questions in
2 employment that are being answered. With
3 recruitment and affirmative action being only one
4 part of that and therefore, it's helpful to know
5 things like that because most human resource
6 managers don't necessarily have time to research
7 those questions. Those are some of the kinds of
8 things that are being brought forward in places
9 like the industry liaison group that HERMA, our
10 organization, has developed. The industry liaison
11 group is an opportunity for federal contractors to
12 meet with representatives of the OFCCP and discuss
13 some of the concerns on both sides as to what's
14 happening in the affirmative action relm. It's
15 sort of an opportunity to meet on neutral groups
16 with both the regulators and the regulated
17 expressing their opinions and providing input to
18 each other and getting a chance to get issues on
19 the table that may not come out other places. And
20 that's where I know that for many of us a number
21 of valuable things have come up in that industry
22 liaison group and your point is one we can bring
23 back today.

1 MS. KIRAM: Thank you.

2 MS. PRIDE-EULER: I just have a couple of
3 suggestions. There are several national and local
4 organizations that would be helpful in that
5 respect. Like if you have an affirmative action
6 directory which would tell you who the resources
7 are like for the Asian groups, what you would do
8 would tailor, not tailor, but you will make sure
9 that your announcements were sent to those
10 organizations like the Asian associations, the
11 African American associations, and all of the
12 associations that have directories that have these
13 so that your organizations or your member
14 organizations should be cognizant of the fact that
15 there are people out there or organizations who do
16 nothing but that, but set up directions to make
17 sure that the information is gotten out there and
18 also word of mouth on campuses. There are a lot
19 of students graduating grad school. I work for
20 the Department of Natural Resources and I'm in'
21 human resources and part of my job is recruiting.
22 We also have an internship program available for
23 college students and we have agreements and have

1 contracts that we set up. So, you could be like a
2 partnership with a college or an organization
3 would be in partnership with another state agency,
4 local government or whatever. But, there are a
5 lot of things out there that these organizations
6 should be doing and so what is your compilation of
7 people of color in your organization or within the
8 human resources? Are there a lot of people of
9 color that belong to the association, your group?

10 MR. OSTERNDORF: No. I would have to say
11 that statistically we're at about I think about
12 six percent in our group is the last percentage.

13 MS. PRIDE-EULER: Six percent of 650?

14 MS. BARRY: So approximately --

15 MR. OSTERNDORF: No, it's not a great
16 number, but there's an initiative that's come out
17 of the Board of directions of HERMA, our
18 organization, that's looking to both tie to other
19 professional human resources organizations and to
20 try to draw more non white human resource
21 professionals into the organization. Those are
22 things that are part of our strategy initiative
23 for the next several years.

1 MS. PRIDE-EULER: As well as to serve in
2 leadership positions. So, you're going to be
3 recruiting?

4 MS. BARRY: We recruit all the time.

5 MS. PRIDE-EULER: I don't think I've ever
6 heard of your organization. I'm in Madison, I know
7 you're located here in Milwaukee, so do you have
8 any parts in Madison or would there be Sharp?

9 MS. BARRY: There's a Sharp chapter.

10 CHAIRPERSON MC FADDEN: Any other
11 questions from the committee? Would you like to
12 make a closing statement or something, Ms. Barry?

13 MS. BARRY: Just in conclusion, I guess
14 in terms of goals and areas where we have
15 suggestions for change and you will see them
16 outlined further in our paper, would be to develop
17 consistency, to reduce confusion out there among
18 employers and to at the same time allow
19 flexibility and allow employers to develop systems
20 best suited for their organization in terms of job
21 groups and recognizing some of the difficulties
22 given a particular employer and to try to develop
23 more consistency and a better relationship with

1 the OFCCP so that those affirmative action goals
2 can be accomplished within the workplace.

3 CHAIRPERSON MC FADDEN: Okay, Ms. Barry,
4 Mr. Scott, Mr. Osterndorf, thanks a lot for
5 sharing your expertise with the Committee.

6 MS. BARRY: Thank you for the
7 opportunity.

8 CHAIRPERSON MC FADDEN: We would like to
9 reconvene. Ms. Schopf and Ms. Williams, good
10 morning and welcome. Can you indicate where
11 you -- what agency you're representing?

12 MS. SCHOPF: I'm not representing an
13 agency at this time. I'm listed as being with the
14 Boys and Girls Club and but I'm no longer with
15 them. I've been downsized.

16 CHAIRPERSON MC FADDEN: Each of you would
17 have three minutes for your presentation and I'll
18 let you know when you only have one minute left
19 and after that we'll have questions and answers
20 from the Advisory Committee.

21 MS. WILLIAMS: I'm Phoebe Williams. I'm
22 Associate Professor of Law at Marquette University
23 Law School.

1 CHAIRPERSON MC FADDEN: So, Ms. Schopf,
2 if you would like to go.

3 JAN SCHOPF

4 Thank you. The paper that I just
5 finished writing focuses on two arenas that have
6 come together. One is the State of Wisconsin
7 minority population primarily in southeastern
8 Wisconsin and the needs among that population for
9 good paying jobs. I have statistics in my paper
10 showing how many of the certain populations are at
11 poverty level and how many are looking for jobs.
12 AT the same time, throughout my employment in the
13 last five years at the Boys and Girls Club and
14 prior to that, too, but that was my most recent
15 professional association. I came in contact with
16 the highway construction industry and they had a
17 great need for workers. So, it looked like there
18 would be a good match here or that it might be
19 something worth looking into. During my term with
20 the Clubs, we had a Board of directions member who
21 was the owner of a highway construction company.
22 He's not identified by name by choice in my paper.
23 He would rather remain anonymous and not have a

1 lot of fanfare. He came together in a personal
2 initiative with members of the Boys and Girls
3 Clubs primarily through our executive director and
4 one of our branch directions that they began
5 talking and devising a plan where they would look
6 at why hasn't something been happening? Why do we
7 have the parents of many of these children who
8 have been coming to the clubs and are very poor,
9 why aren't the parents getting jobs in places?
10 And this was the specific place dealt with the
11 highway construction industry. So, then one of
12 the first things that was identified and that I do
13 cover in the paper is that there's a recruiting
14 loop, a hiring loop where people who are in the
15 organization working refer their peers. The
16 people who have been traditionally in the
17 organizations working are white men. So they
18 would be referring friends, relatives. Their
19 perspective was to refer other white men. They
20 didn't even identify the women in their community
21 necessarily as construction workers. So, that
22 recruiting loop that kind of went around and
23 around and wasn't open to this point was open by

1 sort of a mini job fair that was held in the
2 central City of Milwaukee. And from there there
3 were some very successful employment relationships
4 developed.

5 What was critical, however, was that
6 once the loop was opened, another series of
7 obstacles came up and those were also dealt with.
8 Drivers licenses were a problem, transportation
9 was a problem, other kinds of family systems were
10 a problem. A couple of years after that, this
11 personal initiative on the part of just two
12 individuals, our government decided, President
13 Bush signed into law what we call ISTEA and it's a
14 law for funding of initiatives of this kind in
15 relationship to federal contracts and making jobs
16 available to all people.

17 A couple of years after that sort of
18 this personal initiative that I talked about,
19 first of all, and the funding from ISTEA were
20 combined into a program that just had completed
21 its first year that I was very active in called
22 TRANS, Transportation A Life for New Solutions.
23 Basically what it involved was people from all

1 disciplines, the highway construction company
2 owners, minority agency workers, workers in
3 agencies that serve minorities and women. The
4 union reps, trades. People from the Bureau of
5 Apprenticeship trades all came together and sat
6 down at tables and really talked about the issue,
7 talked about problem solving and I feel like we
8 really, all of us stayed in this and looked at all
9 the things that came up and we were able to
10 problem solve. It's been a very successful
11 program and primarily my paper is about how that
12 as a model for success. I don't know how much
13 time I used, but that's probably enough.

14 CHAIRPERSON MC FADDEN: Okay. Any
15 questions for Mrs. Schopf from committee members?
16 Okay, Ms. Williams.

17 PHOEBE WILLIAMS

18 Reflecting on the subject about
19 affirmative action, I thought that it might be
20 helpful to engage in a process what I call
21 disassembling some myths and reassembling some
22 concepts. And those were basically the two goals
23 that I had for my paper. I felt that there was a

1 lot of rhetoric that surrounded the discussion of
2 affirmative action. That the discussion had been
3 politicized greatly and I thought that by pointing
4 out and articulating some of the myths that
5 surround the discussion about affirmative action
6 then perhaps that would be helpful for future
7 evaluations of the movement that we're currently
8 now in.

9 What I did that is some of the myths
10 that I felt ought to be disassembled were myths
11 such as common assumptions that affirmative action
12 programs just simply fuel racial tensions and
13 retards progress towards color blind societies
14 where racial identities are irrelevant. Just
15 looking at the historical perspective and the
16 research that has occurred over the years, it
17 seems that racial is ever progressive move and
18 racial resentments can arise from a number of
19 different sources and certainly they're not
20 exclusive to affirmative action. And while I
21 don't necessarily mention this in my paper, some
22 other research that I've done as an academic
23 indicates that racial resentments can arise at

1 sporting events because alcohol is served or
2 because individuals are in a competitive nature or
3 because people are angry or because individuals
4 are in an open setting. So that the willingness
5 to make racial epithets, to express anger and to
6 engage in racially obnoxious behavior can occur
7 for a number of different reasons and I felt that
8 where there are tendencies to assume that
9 affirmative action is the reason why we have
10 escalation of racial resentments, that that
11 assumption ought to be re-examined.

12 Another myth that I thought I would
13 address is one that indicates that affirmative
14 action programs stigmatized their beneficiaries
15 and that they re-enforce their stereotypical
16 notions about racial inferiority. And it seems
17 that the argument of stigma can perceive from
18 several directions, one from concern about
19 potential beneficiaries, all being stigmatized and
20 all believing that as a result of affirmative
21 action somehow their accomplishments have been
22 diminished and I felt that many commentators have
23 answered these arguments and these concerns quite

1 well. They've answered them by indicating that
2 perhaps we ought to balance the stigmas.
3 Certainly they're more stigma to having minorities
4 excluded from certain agreements of competition
5 in our society than perhaps suffering some
6 diminution of how they got there. And it's
7 clearly more stigma in particular for African
8 Americans to have the larger numbers of
9 individuals who are unemployed, disproportionately
10 to white Americans and there are other instances
11 where one can disabuse with this idea of
12 stigmatization and in the paper I just mention one
13 of them so that at least this thought process of
14 stigma being a major concern can be re-examined.

15 Another myth that I found in research
16 that I've engaged in over the years that studies
17 discrimination in a number of different economic
18 transactions is the assumption that is generally
19 held that the existing anti discrimination law
20 basically protects most individuals from racial
21 discrimination in our society. When looking at a
22 number of transactions and research in this area
23 from car purchases to obtaining insurance to

1 obtaining professional medical services, certain
2 data suggests that racial discrimination does
3 disadvantage African Americans. So that again
4 when talking about the efficacy of affirmative
5 action programs and the willingness to do away
6 with them and replace them with simply anti
7 discrimination prohibitions, I thought that one
8 should be cognizant of the fact that the current
9 schemes do not cover effectively all markets in
10 which discrimination may occur.

11 A final myth that I felt was worth
12 noting was the concern that affirmative action
13 programs seem to divert energies from other
14 worthwhile pursuits such as developing human
15 capital and they merely act as a distraction. It
16 seems that when I've examined some of the
17 affirmative programs that certainly have entered
18 into my life as a law professor and are currently
19 in place. It seems that if anything they nurture
20 capital human capital development. They provide
21 ongoing structures which encourage the development
22 of skills, constructive work habits, passions for
23 learning and an entrepreneurialship.

1 Now, in reassembling affirmative
2 action concepts, I felt that it's useful to
3 realize that some business initiatives consider
4 affirmative action as a business with changes in
5 the demographics. It appears that business is
6 concerned that their work forces will be occupied
7 by persons who are from diverse cultural
8 backgrounds and affirmative action becomes for
9 them a business decision to undertake more so than
10 a moral one of providing opportunities. And
11 affirmative action is also involved as a strategy,
12 it seems for businesses to penetrate other diverse
13 markets. So that there's a profit motivation that
14 encourages the continuation of affirmative action
15 programs.

16 And finally, I wanted to clear up I
17 suppose the concept of affirmative action as to
18 what is it meant to address. Criticism often
19 lodged against affirmative action is that many
20 programs simply are for the elite and for the
21 privileged and for the middle class. It's my
22 opinion that affirmative action represents just
23 one of the many strategies that ought to be

1 considered when we determine what it takes for
2 individuals to achieve in our society and to
3 access the economic mainstream and that in
4 evaluating affirmative action programs we should
5 not evaluate those programs unfairly by expecting
6 them to solve the problems that they simply
7 weren't designed to address.

8 CHAIRPERSON MC FADDEN: Are there any
9 questions for the panelists? Mr. Minhas?

10 MR. MINHAS: Professor, I have one
11 suggestion. Recently we have been talking about
12 another factor which is a comfortable level of the
13 employees in any employment, whether it's private
14 or state or federal or whatever. And comfortable
15 level determine whether that employee will stay
16 there or not, will make a progress career or not,
17 or will be fired or not. All the company will
18 make profit out of that employee or not. If the
19 employee is not comfortable, not feeling
20 comfortable, not matter how much trained that
21 person is, how much intelligent that person is,
22 it's not putting himself or herself to the company
23 devoting himself or herself to the company and

1 company may not be making profit. And the
2 comfortable level is a treatment provided by the
3 company to the employee and it has more than just
4 training, more than just recruiting, more than
5 just providing equal opportunity even if
6 everything is there and the comfortable level is
7 not there. I give you one example. I sent one
8 minority employee for a job in a utility company
9 and gave the recommendation. The employee was
10 hired. The employee left the job after ten days.
11 It was a good job, they give him a favor because
12 he's a minority, they hired him and they were kind
13 of missing him. He was a good worker, he was a
14 minority, they didn't want him to go, but the
15 employee left. The employee left, not because
16 anyone treated him bad or his salary was less, but
17 because comfortable level was down there. When it
18 was lunchtime, everyone was eating lunch here, he
19 was over there and no one was talking to him. He
20 was kind of left by himself. I think something
21 needs to be researched and done to create that
22 comfortable level in the place of what the
23 minority workers. Besides all those mechanical

1 things we're talking about.

2 MS. WILLIAMS: I think that certainly
3 your observation is perhaps accurate in terms of
4 what it takes to have an effective work force and
5 for an individual to have an effective or fruitful
6 work experience. Although we do see that certain
7 studies that for example talk about emotional
8 intelligence, for example, indicate that some
9 people have the capacity I suppose to endure more
10 hostile environments, more isolation than others
11 and that for those individuals certainly to
12 prejudge what is their comfortable level is
13 troublesome because clearly we have seen that some
14 persons have been able to go in the most
15 uncomfortable situations for other people and
16 nevertheless manage to create a comfort level for
17 themselves and to penetrate I suppose those
18 environments of isolation.

19 So that I think it's certainly
20 worthwhile as you mention researching the comfort
21 level so that steps can be taken by employers to
22 make sure that within the workplace they can
23 provide that type of environment that will

1 integrate each worker so they can work to their
2 capacity. But, on the other hand, I would hate to
3 see that type of research results in assumptions
4 being made about groups of individuals as far as
5 what is their comfort level and how well they can
6 function in certain workplaces because I think
7 there will be individual differences.

8 CHAIRPERSON MC FADDEN: Ms. Schopf, would
9 you respond to that same question?

10 MS. SCHOPF: I think it's a very
11 interesting observation and probably one worth
12 looking into. What I was thinking about during
13 Ms. Williams' answer to that is that populations
14 that we have traditionally seen in the work force
15 have the option, if they are an individual who
16 prefers to be isolated, they can be isolated. If
17 they feel more valuable and at home or comfortable
18 being with a group, eating with a group, however
19 those different situations might look, they have
20 that option, too. I would venture to guess, an
21 educated guess that those options don't exist for
22 people of minority cultures and sometimes women in
23 workplaces. Perhaps even sometimes men in certain

1 workplaces. That they don't have the choice and I
2 think it would be nice and probably support
3 progress in terms of all people having equal
4 opportunity if those kind of choices exist so that
5 whatever your individual preference is you can
6 achieve that comfort level.

7 CHAIRPERSON MC FADDEN: Ms. Williams, you
8 spoke about the different myths around affirmative
9 action. Why do you feel these myths exists?

10 MS. WILLIAMS: Well for some reasons
11 because I suppose it's been popular to publicize
12 them and politicize discussion around affirmative
13 action. So that may be some of the reasons for
14 the myths and why they exist. Others may simply
15 cloak desires not to see certain racial progress
16 and that could be an explanation for the myths.
17 Others perhaps arise out of sincere and perhaps
18 paternalistic concerns about some of the problems
19 of affirmative action and that, too, could be a
20 bases for the myths. But, the reason why I
21 characterize them as myths is because the
22 assumptions are made that they are such general
23 application that we ought to accept them as truths

1 and I feel that we certainly ought to re-examine
2 some of these assumptions and allow for individual
3 reactions.

4 CHAIRPERSON MC FADDEN: Mrs. Schopf,
5 would you like to respond to why do you feel some
6 of the myths surrounding affirmative action
7 exists?

8 MS. SCHOPF: Well, I guess I feel that
9 oftentimes when things are different as a way to
10 protect ourselves, whoever is sort of running the
11 show or in power, makes the other way of
12 operating, the other way of being wrong and or
13 different and non functional and it's a way to
14 protect what I believe is right, what works for me
15 and then it gets passed on, it gets carried down
16 and its turned into something that people start to
17 believe as if it's truth or they just accept it
18 without analyzing it and challenging it. And so
19 sometimes we don't even know where it comes from.

20 CHAIRPERSON MC FADDEN: Any further
21 questions from committee members? Go ahead.

22 MS. PRIDE-EULER: Ms. Schopf, when you
23 were talking about your situation or paper, was

1 that concerning while you were working with the
2 Milwaukee Boys and Girls Club?

3 MS. SCHOPF: YES.

4 MS. PRIDE-EULER: You mentioned something
5 about the poverty level and that the parents are
6 looking for jobs, the parents of the students who
7 are there in the program looking for jobs, but
8 because of the poverty level or whatever, they
9 were not getting these jobs?

10 MS. SCHOPF: We don't know why they
11 weren't getting the job. We just knew we had this
12 organization in the central city where the
13 children came and the parents would come and drop
14 in, hey, if you hear about something, let me know.
15 Some would be much more insistent because it was
16 in this part of milwaukee that had very high
17 poverty, very high minority population.

18 MS. PRIDE-EULER: Okay. But, you're
19 saying that the jobs you were knowledgeable of
20 their was a recruiting route internal, a recruiting
21 loop so that only white males knew about the jobs?

22 MS. SCHOPF: Primarily that loop seemed
23 to keep that going.

1 MS. PRIDE-EULER: What type of
2 organizations were these? What type
3 manufacturers?

4 MS. SCHOPF: Highway construction.

5 MS. PRIDE-EULER: You were just in the
6 highway construction?

7 MS. SCHOPF: Right. Excuse me. That
8 does happen in other work areas, but the highway
9 construction is the field that I've had the most
10 personal involvement within terms of that being
11 the norm and finding a way to break out of that.
12 So that's what my paper addresses, specifically
13 that model.

14 CHAIRPERSON MC FADDEN: Mrs. Williams and
15 Mrs. Schopf, thank you for presenting.

16 (A brief recess was taken.)

17 CHAIRPERSON MC FADDEN: Why don't we
18 resume. Our next presenter is Sebastian
19 Ssempijja. Why don't you tell us a little bit
20 about yourself and the program that you're
21 operating.

22 SEBASTIAN SSEMPIJJA

23 Thank you. It's a good privilege

1 for me to be here and take a few moments to share
2 my views. Those of personal views indeed on the
3 relevance of affirmative action for a recent
4 immigrant among the minority population. If you
5 will allow me, I'll take a quick minute to
6 introduce myself. I speak with an accent.
7 Definitely this is not a Milwaukee accent. It's
8 an accent by birth from the Uganda in East Africa.
9 I have had the opportunity to live in this country
10 since 1978. I pursued my college and graduate
11 education at Marquette University here in
12 Milwaukee. I finished with A Ph.D. in Educational
13 Psychology in 1990. I have had the privilege of
14 being part of and an active participant in the
15 community here in Milwaukee. My involvement is
16 that of a primarily as a psychologist working with
17 children and families. Children that have severe
18 emotional and behavioral problems. Permit me to
19 talk a little bit about my program. I work with
20 the program called Matrix. It's part of a larger
21 agency, St. Aemilian Lakeside, Inc. which is a
22 social service agency working again with families
23 and children in diverse population of children

1 having severe emotional behavior problems. That
2 experience, which has now spanned ten years for me
3 both as a full front line counselor and as a
4 psychologist since '90 has helped me to appreciate
5 the meaning of having equal rights and equal
6 protections for the people that are disadvantaged;
7 economically, socially and marginalized, but also
8 the emotionally, physically and mentally disabled.
9 That has further sensitized me to the further need
10 for the government as a body to provide equal
11 protections for its citizens.

12 I have been very much amazed and
13 academically challenged to understand the aims of
14 the constitution and the efforts made by the
15 government in establishing the various civil
16 rights. Especially those of 1964 and subsequent
17 civil rights that have so much extended the
18 principles, the percept of equal protection to all
19 the various peoples. The relevance of such strong
20 move to provide equal protection to me as a recent
21 immigrant is a very personal experience. I come
22 from a country where ethnic strife and conflict
23 are very intense. Where tribalism is as high as

1 racism. In fact, I have learned to equate ethnic
2 conflicts or tribalism with racism. So, it has
3 been a personal growth for me to understand what
4 it means to live with regard people not -- to
5 regard people not by their color, but by the
6 content of their character as the venerable Dr.
7 Martin Luther King has told us. It has been a
8 very learning experience that I have appreciated
9 and have therefore struggled to share with my
10 fellow Africans that are here. We find that being
11 given equal protections as Africans as part of a
12 larger sub group of foreigners coming here makes
13 us appreciate not only in terms of living here and
14 being active in this -- at a disadvantage in this
15 community. But, also in terms we're able to equal
16 people back home on what it means not to hate.
17 What it means to not be tribalistic. What it
18 means to not be parochial and rather look at
19 people as who they are. It's been not only a
20 moral crusade, but it's a challenge for me and
21 many of my colleagues here, but not only here in
22 Milwaukee, but across the nation. But it has also
23 been a parental challenge. I am happy and a proud

1 husband and father raising children that are I
2 know are going to grow up here. They are U.S.
3 citizens and I know they are going to have to
4 function in this nation. So, the relevance of
5 affirmative action to my company is so very
6 crucial. I'm worried about the politics that is
7 going on currently. It's only nine months from
8 now until the elections and the rhetoric is on.

9 This morning I was hearing on the
10 news about the move by Governor Pink of the
11 challenge to provide with the so-called civil
12 initiative. That's meant repeal of affirmative
13 action. That's the next stream that can be not
14 allowed to stay. I urge the committee to pursue
15 to the U.S. Civil Rights Commission in terms of
16 your report to not have the government retreat.
17 There has to be a committment by the government to
18 be fair to all people.

19 Let me briefly also talk about a
20 small incident that took place this morning in a
21 small conservative town in south Africa. This
22 morning was the first day where a ten black
23 african children dared to begin school in an all

1 white school. As you know, this is very
2 reminiscent of what happened over 30 years ago in
3 this nation. I mention that because of what I'm
4 pointing out in my paper. That the moral high
5 ground that a government takes does not only
6 benefit this nation, it also sets a principle, a
7 lesson for other countries. South Africa did not
8 become what it is now. Those kids did not get
9 there just because of the human nature, the
10 kindness and gentleness of the people residing in
11 that community. They have only been able to get
12 there because of the law. The law is a strong
13 instrument that can promote the equal protection
14 of the law and the principles of justice, liberty
15 and happiness. What is going on in the Balcons
16 right now is another example of how much hatred
17 can do. The serpent has many venomous fangs that
18 can take place if there's no control on the
19 prejudice and racism. Let the lessons of Proverb
20 who is at one time the radical South African, let
21 us know that what the U.S. has done in setting the
22 ground to promote equal protections also provides
23 the lesson for the entire world. Thank you very

1 much.

2 CHAIRPERSON MC FADDEN: Questions from
3 committee members? Mr. Minhas?

4 MR. MINHAS: My question is you said the
5 prejudice, the equal protection bylaws is okay,
6 but the prejudice and the feelings, don't you
7 think that's the purpose of education training,
8 morality, church, rather than bylaws. If you
9 force people to do something they might resent it.
10 Equal protection is right, but the prejudices,
11 yes, I believe it will disappear over the long
12 practice, but by people interacting with each
13 other much closer other than separate
14 compartments.

15 Yes, this is the argument of many.
16 When I think the government has to legislate, you
17 do it, you're therefore forcing people to do what
18 is very much contrary to their feeling, their
19 inclinations. Yes, I appreciate and I think that
20 this is a follow up to the comments that the
21 various panelists were discussing about the whole
22 issue of being comfortable. I think this was in
23 response to your question. But, having said that,

1 the people when they went on a one to one level in
2 the very informal situations, the cafeteria, the
3 coffee table, the assembly line, school, church,
4 hospital, those are the day to day enactments over
5 what it means to live in a society that is color
6 blind and prejudice-less. But those things don't
7 just happen naturally. I think under the
8 circumstances the necessity of law sets the
9 grounds for those to be secondary benefits. I
10 have no doubt that there has been some progress in
11 housing, in jobs, in education. Yes, universities
12 do accept the students from all over the world,
13 but I also am very much aware of what it means if
14 a particular professor does not like a student
15 because of their own feeling, he has a very
16 measurable experience. I have gone through that,
17 many of my friends have gone through that. But, I
18 also know that if there had been no protection of
19 the law, the ugly head of prejudice that I'm
20 referring to in my paper as a venomous serpent
21 would reign. So, I think both have to be looked
22 at as an adjunct, yet allow people to know each
23 other at the very informal level and to increase

1 the comfort level, but at the same time legislate.

2 CHAIRPERSON MC FADDEN: Okay Sebastian,
3 thanks for presenting.

4 Committee members, we have a break
5 until about 11:15.

6 (A brief recess was taken.)

7 CHAIRPERSON MC FADDEN: We would like to
8 reconvene and I would like you to note a change in
9 our agenda. The change comes at 11:45, so the
10 agenda remains the same for 11:15. May I have the
11 presenter state their name and where they're from?

12 MS. MERSHART: Good morning, my name is
13 Eileen Mershart and I'm from Madison, Wisconsin
14 Women's Council.

15 MR. RUSHBROOK: Dereka Rushbrook from
16 Ripon College.

17 CHAIRPERSON MC FADDEN: Welcome. Each of
18 you will have five minutes and when you get close
19 to about four I'll let you know you have about one
20 minute left. And after both of you have
21 presented, the panelist will have some questions
22 for you.

23 EILEEN MERSHART

1 Thank you for this invitation to
2 participant in the consultant. I told Peter that
3 it was an honor and definitely an opportunity that
4 I'm very grateful for. The paper that I prepared
5 for you basically does three things; it talks
6 about numbers, it talks about definitions and it
7 talks about some recommendations. The numbers are
8 about where women are employed now and where they
9 were 30 years ago. You need to just as a very
10 quick aside, I've been spending a lot of my life
11 working on issues related to women for these last
12 several years. The definitions are about what
13 affirmative action is and what it's not and what
14 the glass ceiling is and what it's not. And
15 lastly, the paper, as I said, deals with
16 recommendations. Briefly, where are women today?
17 Well, in 1990 women make up, are 93 percent of
18 private household workers. They're 79 percent of
19 clerical workers. That's the largest group of
20 women represented who are employed. Six percent
21 of civil engineers are women. Six percent of
22 electrical and electronic engineers are women.
23 Eight percent of dentists are women. 23 percent

1 of vets are women. 70 percent of teachers are
2 women. 31 percent of judges are women and 88
3 percent of health care professionals are women.
4 If you looked at it as where we stood in 1965,
5 '75, the trends, the proportions are the same. As
6 Reginald White, senior scholar of the American
7 Council on Education wrote in Affirmative Action
8 Yesterday, Today and Beyond, it is one thing to
9 believe in American democracy, yet it is another
10 to believe it's here right now. And my analysis
11 tells me that it's not. 97 percent of senior
12 managers of Fortune 1000 industrial and Fortune
13 500 service companies are white. 95 to 97 percent
14 are men. In Fortune 2000 industrial and service
15 companies only five percent of senior managers are
16 women and of that five percent virtually all are
17 white.

18 The paper is also as I said about
19 what affirmative action is. Very briefly, it's a
20 tool. It's about casting a wider net. As Jude
21 Warer said to the Glass Ceiling Task Force here in
22 Milwaukee a few years ago, it's about looking
23 beyond the low hanging phenomenon and I go in to

1 some detail about that in my paper. It is the
2 deliberate undertaking to of how to discuss the
3 design and implement procedures to ensure the
4 employment system provides equal opportunity to
5 all. That all qualified individuals have equal
6 access and opportunity to compete on ability.

7 To put it simply, affirmative action
8 is not about quotas or hiring, promoting or
9 admitting unqualified employees or students, it is
10 about actively ensuring that everyone has equal
11 access to quality schools and viable employment
12 and the business opportunity and about taking
13 reasonable measures to address enduring histories
14 of discrimination. Concretely, affirmative action
15 is a set of policies, laws and executive orders as
16 well as voluntary and court ordered practices
17 designed to promote fairness and diversity.

18 And lastly as I mentioned, it deals
19 in some length with recommendations. I have noted
20 the recommendations that were made by the
21 President's group, Stefanopolis and Hadley, I put
22 me in here as well because they're very important
23 and I'm talking to some people who were here

1 earlier today, the issues of paperwork are real
2 and they should be dealt with and Stefanopolis and
3 Hadley talk about those as well.

4 I also turned to the recommendations
5 of the Glass Ceiling Commission, the Federal Glass
6 Ceiling Commission. Those are good
7 recommendations and one in particular links the
8 two issues absolutely together. They talk about
9 corporate America. That corporate America ought
10 to use affirmative action as a tool to ensure that
11 all qualified individuals have access and
12 opportunity to compete based on ability and merit.
13 My argument in the paper is that affirmative
14 action is the beginning. It ought to cast the
15 wider net. It's not the end. We need to be
16 totally and completely as a society both in
17 government and outside of government, committed I
18 think, to diversity and I hope that as you read
19 the paper that that comes through.

20 And finally, I made some
21 recommendations of my own. Namely, to do some
22 things that would strengthen the work place for
23 all people, not just for women and minorities.

1 Those are strengthening the Family Medical Leave
2 Act and providing child care that's affordable,
3 accessible and of high quality. The European
4 countries are way far ahead of us on these issues.
5 Universal child care is a given. I would
6 strengthen our sexual harassment laws as well as
7 their enforcement and I would also increase
8 funding and staffing of the EEOC and the OFCCP.
9 And I also would reaffirm our committment to the
10 Equal Pay Act. My paper does not at all deal with
11 part time contingent workers or pay or comparable
12 work, but those are big, big issues and ought not
13 to be ignored. Greater education and training
14 needs to be done for those doing hiring in
15 organizations. Specifically employers need to be
16 trained by how to develop a more diverse applicant
17 pool, how to evaluate education and qualifications
18 and what discrimination is and what it's effects
19 in the workplace are now.

20 CHAIRPERSON MC FADDEN: Thank you. Mrs.
21 Rushbrook?

22 DEREKA RUSHBROOK

23 As an economist I approach

1 affirmative action from a slightly different
2 angle. Historically in the U.S. there's been
3 tension between the question of freedom in equality
4 and now that's reflected in the debate between
5 individual versus social responsibility. The
6 analagous tension between conflicting, but also
7 cooperated goals in economics is the distinction
8 between efficiency and equity. And equity was the
9 initial justification for the inclusion of
10 affirmative action programs under the Civil Rights
11 Act, but efficiency has been one of the criteria
12 that was first raised in oppostion to affirmative
13 action.

14 Today both opponents and proponents
15 of affirmative action use the arguments of equity
16 and efficiency. One of the problems in looking at
17 the actual infusion of affirmative action programs
18 is that they can be grouped into three general
19 types and each has different outcomes and both of
20 these areas. The most common affirmative action
21 programs in place in corporations tend to be those
22 which promote the hiring of equally qualified
23 minorities or women when they're equally qualified

1 applicants. That's the most common.

2 Secondly, you might promote a
3 qualified applicant who is less qualified than
4 another but is qualified for the position; and the
5 third, and this is the most common perception of
6 affirmative action is the use of actual quota
7 systems which may end up with different efficiency
8 results. One of the goals of affirmative action
9 might be to reduce the discrimination on the part
10 of employers by allowing me to become familiar
11 with the work done by minorities and women workers
12 and; therefore, relieve many concerns about
13 differences in skills and productivity. The
14 efficiency argument against the actual use of
15 quotas is that you can have a disincentive in that
16 if less qualified workers are hired and the skills
17 are perceived to not be necessary, you can
18 actually have underinvestment in human capital.
19 Whereas now you have underinvestment in human
20 capital due to discrimination and you know even if
21 you have the skills you won't be hired. So, human
22 capital investment, human capital with education
23 and training will vary with affirmative action

1 versus discrimination. Firms today are finding
2 themselves increasingly adopting affirmative
3 action in some instances beyond goals that the
4 government has set for me and they're doing this
5 because there's a changing economy. By the year
6 2020 only ten percent of the new entrants into the
7 work force will be white males. Companies are
8 going to have to deal with diverse work forces and
9 they're going to be able -- they're going to need
10 to foster environments which allow each worker to
11 be as productive as possible. And that means
12 going beyond what we perceive as affirmative
13 action today in merely hiring and promotion, but
14 providing sensitivity training, informational work
15 shops for workers who themselves may not have
16 operated in diverse environments before. Scatchet
17 (phonetic) Valley Community College in Washington
18 State did a survey of regional employers and found
19 that the most common reason for termination of
20 employee was inability to interact and cooperate
21 with others of different backgrounds. There's a
22 high cost to employers of training workers. They
23 want to maintain their workers and fostering the

1 productive workplace is part of doing that. A T &
2 T started running work shops on homophobia.
3 Corning located in Upstate New York has started
4 bringing in minority firms, minority entertainment
5 in order to make the town itself more hospitable
6 as they found that the corporation wasn't the
7 problem, but the region itself was.

8 Firms are also finding that they're
9 dealing with more diverse customer bases and that
10 diverse work force may enable me to target their
11 products more appropriately. Reebok took
12 advantage of women employees to dominate the
13 aerobic shoe market early on which they may not
14 have been able to do without that input. And
15 increasingly global markets are being dominated by
16 firms with heterogeneous work forces themselves.
17 They're perceived as more able, more global access
18 and far more effective on a national basis.

19 Firms have are also found profit
20 motives and share prices are moved with public
21 announcements on affirmative action. When the
22 labor department awards affirmative action stars
23 in a sense to firms, their share price almost

1 always rises. Firrms which receive negative
2 publicity almost always see, after discrimination
3 cases, fall in the price of their stock.

4 In terms of other questions of
5 efficiency, studies have been done either way
6 which show that affirmative action can either
7 increase efficiency output in the nation's economy
8 by reducing the costs of discrimination. In 1991
9 it was estimated that economic output would have
10 been \$251 billion greater if discrimination which
11 prevented the efficient allocation of resources.
12 Workers would have been more productive in using
13 their skills if it hadn't existed. Other studies
14 have purported to show that up to 4 percent of GDP
15 goes towards administrative costs and loss
16 productivity due to affirmative action programs.
17 Those studies have generally found little
18 acceptance in the community because they have
19 tended to clump together all sorts of anti
20 discrimination laws. They look at more than
21 affirmative action concerning all the costs
22 involved and overestimating some of the
23 administrative costs on that.

1 In terms of equity, today's economy
2 is clearly still one which favors the white male.
3 Although white women have made some advances in
4 terms of unemployment rates approaching those of
5 white men, the unemployment rate for black males
6 remains double that of white males. During the
7 last recession African Americans were the only
8 group to see an actual fall in net jobs. All
9 other groups saw the total jobs increase during
10 that period. Wage and equality increasing in this
11 country and that's affecting minorities to a
12 greater extent than it is whites. During the
13 1980s the gap between increases in real wages
14 between whites and African Americans increased.
15 And that's a trend that is likely to continue
16 unless some concerted effort is made to avoid it.
17 In terms of affirmative action programs, I would
18 favor programs targeted as closely as possible to
19 those who most need me. You have a more efficient
20 allocation of resources. You're more likely to
21 achieve your direct goals. That might include
22 using not only race and gender as criteria, but
23 also using high school graduation rates,

1 percentages of students from the high school who
2 go on to college and family income as additional
3 variables.

4 CHAIRPERSON MC FADDEN: Okay. Thank you.
5 Committee members, do we have questions for our
6 panel members? Kim, do you have any questions?

7 MS. SHANKMAN: I'm interested, Ms.
8 Mershart, in your figures about the percentages of
9 women in various occupations as being fairly
10 consistent over the past 30 years which would
11 indicate relatively little impact of affirmative
12 action in terms of shifting women from one kind of
13 category to another. And I'm just wondering if
14 there are any areas in which there has been a
15 significant change in the proportion of women?

16 MS. MERSHART: There has, law and
17 medicine are two big ones. The patterns though
18 are hard to break, they're insidious. And as I
19 was driving over here this morning, I was
20 processing that from Madison somewhere around Lake
21 Mills I said well what does that mean that the
22 patterns are still here? That women are still so
23 overwhelmingly in the clerical administrative

1 arena and what it tells me is that affirmative
2 action isn't a failure at all. We've seen some
3 movement. We've seen as I said law and medicine
4 improved. But, what it says to me is that it's a
5 very, very huge problem and 30 years is simply not
6 enough. We're asking to undo a whole cultural
7 socialization process and that's going to take
8 some time. We all I think want to see quick
9 fixes. We all want to see something change
10 overnight and when back in '65 and '67 when Lyndon
11 Johnson started this, I don't know what he thought
12 or what other people thought about how long this
13 was going to take or how deeply embedded in our
14 society words that we don't really like to hear
15 racism and sexism are really embedded. And it's
16 going to take effort, it's going to take time and
17 it's going I think meaning for us to stay the
18 course and not to abandon it.

19 MS. SHANKMAN: Did you have any figures
20 on race based occupations, segregation? Is that a
21 similar pattern?

22 MS. MERSHART: I don't -- we can get me.
23 What I'm going to give you are two things that the

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1 Women's Council wrote, one is a profile of the

2 conscious woman and the other is the report of the
3 governor's task force on the glass ceiling
4 initiative. I give this to you. I have a lot of
5 these. The task force I can only give you one, I
6 only brought one, but if you want more, I can give
7 me to you. We are out of print on the profile,
8 but it's in here that we have the chart on women's
9 employment patterns. That's these. For race, I
10 don't have me, they're not in here. We did look
11 to the extent that we could for the glass ceiling
12 study on where race and position within
13 organizations interplay there.

14 CHAIRPERSON MC FADDEN: Mrs. Mershart,
15 you mentioned in your recommendations increasing
16 the sexual harassment law. What would you add to
17 that law?

18 MS. MERSHART: I'd say strengthening me.
19 I'd say -- in Wisconsin I can get you copies of
20 the bills that did not go anywhere a couple of
21 years ago. One or two did go. They would in some
22 instances do things to the timelines involved in
23 processing sexual harassment laws. Requiring that

1 education within organizations. People get very
2 nervous about that. The reality is that it costs
3 more I think to ignore issues of sexual harassment
4 than it does to deal with me up front. But, we
5 had a three or four bills that we were looking at
6 a couple of years that as I said did not go
7 anywhere and I'd be more than happy to share me
8 with you.

9 CHAIRPERSON MC FADDEN: Okay, thank you.
10 Ms. Kiram?

11 MS. KIRAM: I know that in the last few
12 years that I've been in this country there's been
13 a lot of emphasis on education and I work in a
14 university system where I see a lot of students
15 and I see a lot of minority students I guess
16 because I'm one and they think that because I'm
17 there I can tell me where to go next so that they
18 can get the jobs that they are looking for because
19 now they have the education they were told to get.
20 In the university we always hear people saying
21 about the old boys network, meaning somebody's
22 mentoring, whether it's formally or informally. I
23 want to be a bank president in 15 years, what do I

1 do now? In education you do this, you do that.
2 Is there anything like that that exists for women
3 because I think they're just as competent, as
4 intelligent, as ambitious, but somebody has to
5 tell us. I want to be a registrar in ten years,
6 I'm new in this country, I have a law degree, what
7 do I do? I'm sure that if we had something like
8 this or do you know if there's something that I
9 can share or we can share because I think that
10 this is why many of the minorities-- what many of
11 the minorities and women are looking for.

12 MS. MERSHART: Let me start by giving you
13 a whole bunch of these reports. We listed in here
14 and I think the recommendations of the Federal
15 Glass Ceiling Commission are extremely viable
16 recommendations on the issue of mentoring.
17 Formalizing mentoring I think is extremely
18 valuable to do. Being clear about what the rules
19 are within an organization, about advancement
20 within that organization are absolutely essential
21 and not deviating from me. The unwritten informal
22 network that applied to the golf course or in the
23 hunting lodge needs to be abandoned in our

1 environment today.

2 I got a call yesterday from a
3 woman -- if you could walk in my shoes for a few
4 days, I think you too would see what I see. I got
5 a call yesterday from an accountant in the Fox
6 River Valley area. Her accountant's firm has no
7 women shareholders in it and it's been around for
8 now 25 plus years. Some men are hired and within
9 a year and a half she said became shareholders and
10 she and some of the other women -- it's not like
11 there aren't women in the firm, there are quite a
12 number, 24 I think, but not one single
13 shareholder. And we talked about this very
14 question and we talked about ways of doing it
15 together. One thing I would recommend is for the
16 student to get together as a group to support each
17 other and to bring people into -- bring speakers
18 in very informal luncheons. The new CEO here in
19 Milwaukee, Kathleen Brady I believe, she came from
20 Kodak, she said one of the things that -- Kathleen
21 Hudson -- one of the things that she did at Kodak
22 where she came from to Milwaukee is institute
23 informal lunches where all the women got together.

1 That in and of itself sent the entire upper
2 management of Kodak into a tizzy because women
3 were sitting down and talking to each other and
4 they weren't planning anything, they were just
5 talking to each other. There are a number of
6 recommendations in the Glass Ceiling Task Force
7 that I would say you should look at and use the
8 networks that you've got. Get some mentoring
9 going, bring people in to talk about what the
10 qualifications are and what paths other people
11 have taken and to try to break down these
12 informal, unwritten, ever-changing rules within
13 organizations on what it takes to move up.

14 MS. SHANKMAN: I have one more question.
15 Professor Rushbrook, I was just wondering since as
16 you say affirmative action programs which
17 essentially promote equally qualified candidates
18 are the most common programs, but the almost
19 unbreakable perception is that with the effect of
20 affirmative action is to promote unqualified
21 minority candidates over better qualified white
22 candidates and I know we just did a study on the
23 Milwaukee Police Department and we were provided

1 with all sorts of data to show that the
2 affirmative action program in Milwaukee Police
3 Department involved no lowering of standards for
4 hiring or promotion, but no one would believe it.
5 At the various stages in which the report was
6 reviewed, they kept sending it back saying this
7 can't be true and we had to keep sending all our
8 data to show that it was true. And, I'm just
9 wondering if you have any ideas why that
10 perception is so strong in people's mind that
11 that's what affirmative action means?

12 MS. RUSHBROOK: Well, one of the reasons
13 is this is an example from academia. If you have
14 200 people applying for a job and one person gets
15 it, if that person happens to be a minority or a
16 woman, it's much easier to sell to 90 white people
17 who applied, well, we had to hire this person and
18 all 90 of me can blame it on minority hiring or
19 women hiring, ignoring the fact that 89 of me
20 wouldn't have gotten the job anyway and that tale
21 gets told again and again and again. It's
22 academia, it's a particular problem because
23 there's so many people who are more than qualified

1 for the posts they're applying for and that's just
2 the change in the market.

3 I think what corporations can do to
4 change the perception within and some of them have
5 done this effectively although it's a minority
6 firm is to use mentoring. Corning has established
7 a mentoring program to require diversity and
8 sensitivity training for all managers and to show
9 committment from the top down and to give even low
10 level employees, employees at all levels of the
11 corporation during paid work days have seminars on
12 issues of diversity in the workplace, not trying
13 to change anything. The ones that have been the
14 most effective haven't tried to change anybody's
15 personal values, but have tried to show me how
16 those people might be less productive and how
17 discrimination and prejudice affects their
18 performance and me as a person as well. Their own
19 productivity in the workplace and those programs
20 have been more effective.

21 CHAIRPERSON MC FADDEN: Ms. Rushbrook,
22 does the economic progress support affirmative
23 action?

1 MS. RUSHBROOK: Some economist do, some
2 economist don't. The first model of
3 discrimination in the labor market -- the typical
4 neoclassical economics which is taught in most
5 graduate programs is going to be against
6 affirmative action because theoretical models show
7 that if you discriminate, you hurt only
8 yourselves. You're going to pay higher wages
9 because you're competing for a smaller number of
10 workers and you won't necessarily hire the best
11 worker. You'll have higher costs. You will be
12 under priced, undersold by firms that are hiring
13 the best workers and hiring at lower wages
14 because they're taking advantage of all the
15 workers available to me. Therefore, with
16 competition, discrimination should disappear over
17 time and we, although that doesn't happen and the
18 Wall Street Journal last year sent out equally
19 qualified hispanic, black and white candidates
20 with identical resumes, interviewing skills,
21 trained and found that whites were consistently
22 hired over hispanic and black candidates. So,
23 most economists who are willing to leave the

1 chalkboard and look at what's happening in the
2 real world would support affirmative action. They
3 would support it not in the form of a quota
4 system, the same thing with international trade
5 and stopping imports from coming in. If you're
6 going to do it, don't do it using quotas, do it
7 using care, raise taxes. Affirmative action goals
8 would be best met through subsidies. The
9 Secretary of Labor for instance is talking about
10 giving a lower tax rate to corporations who behave
11 in a socially responsible manner and diversity in
12 hiring, affirmative action could be one such
13 criteria used in setting differential tax rates.
14 Economists would support that.

15 There are clear economic gains to be
16 had by eliminating discrimination and using
17 affirmative action to do so is one of the clear
18 ways to achieve those gains because it's not just
19 the individual that benefits, but it's the next
20 generation, it's the rest of society overall and
21 those individual benefits won't -- those group
22 benefits won't be taken into account by
23 individuals. But, economists would not support

1 quotas, firm quotas in order to do that because
2 they're more efficient ways to achieve the same
3 goal at a lower cost and better target.

4 CHAIRPERSON MC FADDEN: Gloria?

5 MS. PRIDE-EULER: Ms. Mershart, you
6 talked about the wire net, is that in relation to
7 the glass ceiling? You said there was a wire net?

8 MS. KIRAM: Wide-

9 MS. PRIDE-EULER: And low hanging.

10 MS. MERSHART: Low hanging fruit
11 phenomenon. Casting a wider net. I don't see
12 affirmative action as quotas and I don't think
13 they're not. It isn't, it simply is not, and --

14 MS. RUSHBROOK: Most programs aren't.

15 MS. PRIDE-EULER: I think you made the
16 comment equal opportunity for all and access to is
17 what affirmative action is all about. If everybody
18 had equal access, then would we not have a need
19 for affirmative action.

20 MS. RUSHBROOK: Eutopia, yea, but I saw
21 the same article that you did at the Wall Street
22 Journal ran about their sending people out. Equal
23 access isn't there, that's right, but that's our

1 goal. I think that's what we're asking and it's a
2 tool to get there, yes.

3 MS. PRIDE-EULER: That if we do ensure
4 equal access that --

5 MS. MERSHART: Until we get there. Until
6 we get to a society and I say this in the paper,
7 that's free of bias, racism and sexism. I think I
8 reaffirm in this paper my committment to
9 affirmative action. And one of the reasons I
10 think that perception that you asked about is
11 there is because this may not be real popular to
12 say, but people pander to fears and we've seen it,
13 we've heard it, we saw it a couple of years ago in
14 ST. Louis and we're going to see it some more and
15 I think those kind of ads and that kind of speech
16 creates the misperceptions and misunderstandings
17 and it's an easy excuse and it's a hard job you've
18 got because I hope that reason prevails and that
19 we can grow into some listening on this issues and
20 get over that rhetoric.

21 MS. PRIDE-EULER: I just have more
22 comment and that is when we talk about equal
23 employment, but equal employment opportunity is

1 the law and so that means people are breaking the
2 law if they're not. So, if we're not trying to
3 make sure that the laws are enforced, it seems to
4 me that enforcement of these equal opportunity or
5 equal employment opportunity laws is what we need
6 and they're not being enforced.

7 MS. MERSHART: Well, they aren't because,
8 first of all, if you've -- I meant to know this
9 yet and look at reductions in the EEOC over the
10 last ten, fifteen years. Their staff has been
11 eviscerated.

12 MS. PRIDE-EULER: So, it's not being
13 monitored?

14 MS. MERSHART: No, their budget has not
15 eviscerated. The OFCCP has been eviscerated.

16 CHAIRPERSON MC FADDEN: We have time for
17 about one more question. Ms. Farrell?

18 MS. FARRELL: I have a question about the
19 disparity that's occurring with black males versus
20 white males and that it seems to be getting larger
21 and larger. What recommendation -- do you have
22 any recommendations that you might begin to change
23 that? How could we begin to look at ways to

1 change that?

2 MS. RUSHBROOK: Part of the problem with
3 that is stemming from the general trends in the
4 U.S. over the last fifteen years. When the car
5 industry, black made up 35 to 37 percent of
6 Chrysler's work force and they were also
7 represented in GM and Ford. So, in the automobile
8 industry contracted blacks were disproportionately
9 hit. The same may happen with the civil service
10 if the government keeps cutting back. Clinton
11 claims to have only eliminated 200,000 jobs,
12 minorities were over represented in terms of their
13 share of the population in civil service. It's a
14 long term problem that society overall is going to
15 have to face. It can't -- I don't know.
16 Everybody, and this is what the presidential
17 debate is about this year, what are we going to do
18 to stop increasing income inequality. Why is it
19 that people in the poorest 40 percent of the
20 population had fallen real income that only people
21 that had rising real income are those, even a
22 couple of years of college, have witnessed falling
23 real incomes? so, ensuring access to education

1 would probably be the first step. Access to
2 education and training is the first step, but it's
3 going to affect the U.S..

4 MS. FARRELL: Certainly the horizon
5 doesn't look very bright for a young minority
6 person looking to where he might be and maybe may
7 not even be thinking in terms of going on for
8 education because where is it going to get me?
9 It's unfortunate.

10 MS. RUSHBROOK: But, if high school
11 graduates 16 percent drop in real wages in the
12 last decade, it's a big fall.

13 CHAIRPERSON MC FADDEN: Okay. to our
14 panelists, thanks for your expertise and we'll get
15 ready for our next guests.

16 MS. RUSHBROOK: Thank you.

17 CHAIRPERSON MC FADDEN: good morning to
18 our panelist. Each of you would have about a five
19 minute presentation and the committee will ask you
20 questions after that.

21 Can you state your name and where
22 you're from?

23 MICHELE WITTLER

1 Good morning. You can hear me
2 without the microphone. I'm Michele Wittler. I'm
3 the registrar and affirmative action officer and
4 assistant professor of Computer Science and
5 Mathematics at Ripon College in Ripon, Wisconsin.
6 I'm here to talk about affirmative action at a
7 small private liberal arts college.

8 I can speak limited about it. I'm
9 the affirmative action officer. I have been for
10 about a year and a half. My point of view is that
11 of someone "in the trenches". Someone who is
12 responsible for administering an affirmative
13 action plan.

14 Ripon College established its first
15 affirmative action plan in 1973 in response to the
16 Executive Order 11246 as amended and near as I can
17 tell, I wasn't around back then, the notion of
18 affirmative action was embraced by the college not
19 feared by the college. The reason for that is
20 because the college views affirmative action as
21 entirely consistent with it's educational mission.
22 That's for it's very reason for existing. In
23 reviewing the earlier affirmative action plans, I

1 see that the plans are full of, not full of their
2 equity quotas and numerical analysis of the make
3 up of the pool of people available for
4 employment. More recently the plans do not have
5 any kind of numeric quotas in me, but rather
6 called for an increase in cultural diversity of
7 college community and an increase in the number of
8 women and persons from designated minority groups
9 and persons with disabilities in various roles on
10 campus.

11 Each plan, the plan currently
12 consists of forward policy statement, objectives,
13 goals, implementation and evaluation. If I can
14 quickly read the specific policy, I think that
15 would be helpful. It's the policy of Ripon
16 College to provide equal employment and enrollment
17 opportunity on the basis of merit and without
18 discrimination for reasons of age, color, gender,
19 national or ethnic origin, race relation, sexual
20 orientation or disability. All applicants for
21 employment, enrollment will receive fair
22 consideration. Qualified women, people from
23 minority groups and individuals with disabilities

1 will be sought out and encouraged to apply. The
2 president of the college is responsible for
3 receiving affirmative action programs. All
4 members of the college community are expected to
5 comply with the intent and application of the
6 Ripon College policy as delineated in the
7 affirmative action plan. How it actually works is
8 the president appoints an affirmative action
9 officer. This person is a regular full time
10 employee of the institution. Care is taken that
11 the person appointed is sensitive to issues that
12 swirl around affirmative action and has sufficient
13 status within the organization to be effective in
14 his or her role. Coincidentally, all the four
15 officers since 1973 have been women. It probably
16 isn't a coincidence, it probably is design. The
17 affirmative action officer reports directly to the
18 president. Functionally the affirmative action
19 officer reports to the dean of the faculty as
20 that's the person who is there on a day to day
21 basis. The responsibility of the affirmative
22 action officer includes exhibiting and updating
23 the program every three years and then presenting

1 that plan to the Board of Trustees for approval.
2 So the plan is actually approved by the Board of
3 Trustees, disseminating a plan to the campus
4 community, serving as a resource person to the
5 administration of others involved in hiring and
6 anyone having questions about the policy,
7 overseeing the collection and analysis of
8 employment data and enrollment data. Preparing
9 the annual report on affirmative action and
10 presenting it to the Board of Trustees and high
11 levels of administration and serving as an
12 affirmative action grievance moderator, conducting
13 exit interviews and reporting any apparent
14 violations to the president. I go into some
15 specifics of the specific responsibility.

16 I think I'll jump to what I view
17 what the challenges of affirmative action are for
18 our particular community because we view
19 affirmative action as falling directly from the
20 mission to the institution. It's not hard for us
21 to mesh it into everyday life and into all aspects
22 of the community. That is, the faculty is
23 regularly concerned about the curriculum and if

1 it's about the cannon and what the academic
2 climate should be. The student services people
3 are forever concerned about the campus climate and
4 do not need an affirmative action officer to point
5 this out to me. The particular challenges took
6 place like Ripon is that we're isolated and
7 whereas it's a rural place and some distance from
8 a major metropolitan area, some of our prospective
9 students that employees view this as a plus. Many
10 times they do not want to be that away. We resist
11 the temptation to use that as an excuse and rather
12 try to make the campus as welcoming and as fair a
13 place for everybody as possible. I view that
14 there are many benefits of institutions served by
15 having affirmative action plans. One of those is
16 the mere collection and analyzing of the data and
17 the formal report of that information that calls
18 attention to the situation at the very highest
19 level. Second is and I think this is the most
20 important actually is this conversation that
21 ensures because many people on campus talk about
22 affirmative action, never a week goes by when
23 somebody doesn't ask me an affirmative action

1 question. And through those conversations I think
2 real education occurs and the campus experiences
3 some success as a result of having the plan.

4 CHAIRPERSON MC FADDEN: Thank you, Ms.
5 Wittler.

6 Father Wantland?

7 FATHER WANTLAND: How are you?

8 CHAIRPERSON MC FADDEN: It's nice to see
9 an old familiar face.

10 FATHER WILLIAM WANTLAND

11 When I was approached to write a
12 paper for this project to appear, I took a look at
13 the project proposal and noted that there were
14 three areas that were identified. The first thing
15 in the area of employment, the second, minority
16 and female participation in contracting and
17 government assisted programs; and the third,
18 voluntary institutional initiatives. And so I
19 want to address that third one because the church
20 is in American society a voluntary institution.
21 It has an advantage and that is that the First
22 Amendment limitations apply to government, not to
23 religion and that means that religious

1 institutions are able to function in this area of
2 affirmative action regardless of what happens at
3 the government level. I say that because I think
4 all of us are aware of what's going on in the
5 world today and the tremendous pressure to wipe
6 out affirmative action programs.

7 On the way down here from Eau Claire
8 I was listening to the public radio and noticed
9 that over a million signatures were obtained in
10 California which means that within a month they'll
11 be certified to have a referendum to repeal
12 affirmative action, which is a chilling thought.
13 For religious institutions, however, a commitment
14 to affirmative action is based not on the statute
15 that may or may not be enacted by Congress or
16 state legislatures, but have an underlying
17 foundation on theological principles, the
18 principles of equality, principles of justice,
19 principles of human dignity. And if a religious
20 institution is motivated by those principles, then
21 we should expect to find within that institution
22 the existence of affirmative action to provide a
23 means for redress of past inequalities and

1 injustices. Within the religious institution and
2 I'm taking the Episcopal church because that's the
3 church of which I am a part of and I'm sure this
4 would apply across the board to other religious
5 institutions, but talking about that which I know
6 about. In the Episcopal church that approach to
7 affirmative action falls into three area. The
8 first is within the structure of the church
9 itself. Plans for affirmative action for
10 placement in employment within the church
11 structure. And that applies to far more than
12 simply placing clergy in congregations because it
13 means all levels of employment in the church.

14 The second has to do with the
15 decision-making bodies within the church which, by
16 and large in a voluntary institution are non
17 salaried positions, but if affirmative action is
18 to be effective, if all peoples are to have a
19 voice in the process, it means that the
20 decision-making bodies must be open to all people.
21 So, all committees and commissions and agencies of
22 the church must likewise reach out in specific
23 ways of finding means of incorporating people of

1 all races, all nationalities, women and other
2 discriminated minorities.

3 The third area is where the
4 institution can cooperate with outside agencies to
5 have an impact on the broader society. So that as
6 we look at religious organizations, religious
7 institutions, we see that those religious
8 institutions must be involved internally, but must
9 also be involved in the broader community and
10 working with interfaith and other agencies that
11 will promote justice, dignity and equality.

12 I just wanted to share a couple of
13 quotations from the paper that I prepared which is
14 a review of the history of this within the
15 Episcopal church beginning with legislation in
16 1973 and legislation by various church agencies
17 continuing right up to the last general convention
18 in 1994 and that that action is seen both at the
19 national level and then below the national level
20 at the provincial diocese and local parish level.
21 I have to be honest and say that on paper it's all
22 in place, but there's unfortunately a lag between
23 what we say and what we do and one of the big

1 problems has been in the area of monitoring and we
2 still find that while the spirit is willing, the
3 flesh is weak and that monitoring doesn't always
4 get done as it should be done. But let me quote
5 from the standing commission on church in
6 metropolitan areas in a report to the 1988 general
7 convention that sort of summarizes the theological
8 bases for our position.- "Our religion tradition
9 teaches us that all people are created in the
10 image of God and possess an inherent dignity and
11 worth regardless of race or class. Despite this
12 tradition, racism is still deeply ingrained
13 throughout all the institutions of our society,
14 including the church. Its manifestations are
15 often subtle and devastating. Historically
16 affirmative action has been seen as one effective
17 remedy to offset past racial injustices. This
18 view has been under hostile attack over the past
19 decade and it needs to be reaffirmed at that stage
20 of our history." And tht was said eight years
21 ago, but it could be said doubly so today. In
22 1991 the Executive Council Commission on Racism
23 made a report to the Episcopal Church outlining

1 several areas in which affirmative action might be
2 strengthened and I just want to review several of
3 those. Among the goals and objectives for the
4 triannum 1992 to 1995 were sent to equip church
5 members to understand institutional racism and
6 develop plans and programs to combat racism using
7 data resulting from the institutional racism
8 audit. 2, influence and monitoring the racial and
9 ethnic composition of interim bodies, commission
10 committees and networks of Episcopal church. 3,
11 provide anti racism training for the executive
12 council. 4, monitor implementation of affirmative
13 action programs, equal employment policy and
14 purchasing practices at the Episcopal church
15 center which must be a model for the whole church.
16 5, follow up on recommendations from meetings with
17 Episcopal church center units and divisions. 6,
18 continue the development of networks of trainers
19 in provinces. 7, work with a minimum of 911
20 diocese in developing programs to combat racism.
21 8. request a pastoral letter on this senate of
22 racism from the house of best options. This is
23 basically where we were up until last year. A lot

1 of that has been accomplished. Certainly the
2 effort at opening employment opportunities to all
3 people goes on throughout the church and we are
4 making strides in all areas in the diocese of Eau
5 Claire which is the 26 Northwestern counties of
6 Wisconsin. The demographics of the population are
7 not really a reflection of the nation as a whole.
8 About 80 percent of the population is Scandinavian
9 which gives it a very skewed effect, which means
10 that racial minorities make up far less than ten
11 percent of the population about seven or eight
12 percent of the population in that area. Within
13 the Episcopal church in the placement of clergy by
14 about ten percent of clergy are minority and of
15 those intraining for priesthood right now, 20
16 percent are in the minority racial groupings and
17 so that in a way we're ahead of the population
18 curve. But, there's still a long way to go and it
19 means the understanding that a person would be
20 accepted in the congregation regardless of the
21 racial identity of congregation and of the members
22 of the clergy.

23 CHAIRPERSON MC FADDEN: Father, we really

1 need to stop now and open up for questions from
2 our committee members. Any questions from
3 committee members?

4 MS. SHANKMAN: Ms. Wittler, I have a
5 question for you. In looking back over the change
6 in the affirmative action plans at Ripon College
7 from numerical goals and quotas to one which
8 dropped those out, can you identify was there a
9 campus wide discussion? Was there some sense that
10 numeric goals were always seen before us and were
11 never going to be achieved or was it simply more
12 of a decision, you know, among the affirmative
13 action administrators that this was a more
14 appropriate approach? Do you have any idea about
15 that?

16 MS. WITTLER: I don't actually know. My
17 guess is as I look at the language of the very
18 first place are things that all of us would be
19 worried about. The way the language that's used
20 and the mere fact that the projection that we're
21 going to have four faculty positions the next five
22 years and a call to fill those positions with
23 women or other members of other designated groups.

1 I don't think an institution would guess as to how
2 many positions are going to be available and go
3 into all of that. I think that the insitutions
4 learn that that's kind of a foolish way to
5 approach it because there's so much unknown about
6 it. Rather, the goals are stated to have to
7 increase the numbers without stating a particular
8 number and looking more at the campus climate
9 trying to make sure that it's the kind of place
10 where all people will -- it is conducive to good
11 work by all people, whether they're students or
12 faculty.

13 MS. SHANKMAN: And my follow up question
14 would be actually an unrelated question would be
15 in your judgment was the affirmative action plan
16 successful in the sense that both the faculty, the
17 staff and the student body are more diverse than
18 they would have been in the absence of an
19 affirmative action plan or do you use the --

20 MS. WITTLER: I think the community is
21 better educated than it would have been in the
22 absence of the plan because having the plan causes
23 a formal discussion on a regular basis and that

1 kind of formal attention on an issue gives it
2 status. Frankly, gives it importance and so at
3 that level. In addition, it calls for the
4 administrator of the plan to be involved in areas
5 where he or she might not be involved and to bring
6 the perspective of persons that has that agenda to
7 the conversations. A department head will be
8 involved in hearing and finding or promoting and
9 won't be thinking about issues of affirmative
10 action unless I or one of my predecessors is
11 called in to remind persons of this commitment
12 and look at subtle ways where we might be
13 violating our own policy.

14 MS. SHANKMAN: I would just want to
15 follow up I think that its possibly the faculty
16 level to a better faculty in the sense that I know
17 my predecessor was hurt because when there was a
18 vacancy, the Chair called up somebody and said,
19 you have a good student and you probably don't get
20 to select the most qualified applicant pool.

21 MR. WITTLER: Certainly the emphasis is
22 on how to get the broad pool and the affirmative
23 action plan does not have to say you have to hire

1 anybody. I probably answered that question very
2 regularly. Do I have to hire anybody of any
3 certain characteristic, no. You're supposed to be
4 hiring the person that's most qualified, but the
5 practice better be that all people are invited to
6 participate and be considered.

7 MS. KIRAM: Ms. Wittler, what's your
8 population?

9 MS. WITTLER: Student is about -- I'm the
10 registrar, but I lost that every now and then.
11 I'd say we have about 750 students.

12 MS. KIRAM: I know you have more control
13 over hiring for affirmative action purposes of
14 faculty. Do you go out of your way trying to get
15 a diverse cultural mix among your students?

16 MS. WITTLER: Oh, absolutely. It has
17 been a longstanding goal to increase the cultural
18 diversity of the student population. The
19 admissions office has tried to do all sorts of
20 things to hire a diverse staff and to develop
21 students on campus. Help me -- well, develop me,
22 employ me in the admissions office. We have
23 student organizations, multicultural clubs. We

1 have funding that's designated for increasing
2 diversity on campus. That's bringing in speakers,
3 acknowledging women's history. Bringing in
4 performers. So, there's a lot of emphasis on
5 trying to attract a student body that's culturally
6 diverse.

7 MS. KIRAM: Is it difficult for a
8 minority person to live in the town?

9 MS WITTLER: One of the questions that I
10 ask. I do an exit interview with everybody who
11 leaves the employment of the college and I do
12 believe -- some persons do report that it can be
13 difficult to live in the town. However, more
14 recently several persons I interviewed very
15 recently who were members of minority groups loved
16 it and were very -- had never had negative
17 experience. Maybe we're kind of at first put off
18 when they'd be in the grocery store and maybe it
19 was the first time that somebody from rural Ripon
20 had seen a person of a different skin color and
21 you know were put off by that initial reaction,
22 but then sees the opportunity to be part of
23 learning and so I've got, relative to 20 years ago

1 I know that there were significant racial
2 incidents within the town and I've not heard of
3 significant ones most recently from students.
4 That doesn't mean to say that there aren't. I
5 don't know everything.

6 CHAIRPERSON MC FADDEN: gloria?

7 MS. PRIDE-EULER: For Wittler I had a
8 question about you. You're a math professor, but
9 you were appointed as a percentage of your job is
10 as the affirmative action officer?

11 MS. WITTLER: The affirmative action
12 officer is a non paid position. Each of my
13 predecessors were not paid either. The position,
14 affirmative action officer was the Director of
15 Libraries. So, only a small percentage of your
16 responsibilities deal with AA and -- first of all,
17 you're appointed by--

18 MS. WITTLER: The president.

19 MS. PRIDE-EULER: And you report to the
20 president, but then what was that about, the dean
21 or something?

22 MS. WITTLER: I'd say functionally my
23 conversations are more often with the dean than

1 with the president because the dean is the highest
2 ranking official on campus on a regular basis and
3 so he's going to be more involved in any questions
4 that are going on.

5 MS. PRIDE-EULER: You said if there were
6 violators, you would report it to --

7 MS. WITTLER: The duties require me to
8 report it directly to the president if there seems
9 to be an apparent violation of the policy.

10 MS. PRIDE-EULER: Okay. Then what
11 happens, what are the consequences if someone are
12 in violation?

13 MS. WITTLER: The most recent situation
14 that I'm aware of is when affirmative action
15 officer has not been consulted in advance. This
16 is an example. I give the example in the paper.
17 It's usually for candidates to come to campus and
18 tthey're not about at least one woman in that
19 pool. If that occurs, if it appears that the
20 candidate pool is not well represented, usually
21 the department head will call me and say look,
22 this is the candidate pool. Can you give me
23 advice? What should I be doing. And sometimes

1 the advice is we need to extend the search. We
2 review where we advertised. We look at all of
3 those kinds of things and we decide we're going to
4 open the search up again. We decide maybe to
5 interview more candidates than we might otherwise.
6 Recently the violations -- that might be a strong
7 word -- is occurred when somebody did not consult
8 the affirmative action officer and then the
9 outcome was not desirable and that this was not me
10 and who is, in that person's point of view and she
11 wrote letters of reprimand to the persons' file
12 and called it to the attention of the Board of
13 Trustees which is a pretty big group to call that
14 to the attention of.

15 In reality, was there any downside
16 to that person, I can't say that there was except
17 for this acknowledgement that in her judgment you
18 didn't carry out the plan. I cannot tell you that
19 anybody's ever been fired because they didn't.

20 MS. PRIDE-EULER: So nothing really
21 happened other than the letter of reprimand in
22 your file which is purged over so many years no
23 doubt.

1 MS. WITTLER: I don't know that our
2 personnel records are purged. Letters of
3 reprimand can keep there from being increases in
4 salary.

5 MS. PRIDE-EULER: So, okay, there's a --

6 MS. WITTLER: There could be. I don't
7 know if in these cases with what about there could
8 be.

9 MS. PRIDE-EULER: What about the person
10 who does something outstanding to recruit? Is
11 there some incentive for someone to do something
12 extra or go that extra mile to make sure that
13 applicant pool or is that your responsibility or
14 personnel? Now, we haven't mentioned the
15 personnel at all. You're an AA but what is your
16 personnel officer doing in order to ensure there
17 is a diverse applicant pool or a balanced
18 applicant pool?

19 MS. WITTLER: with me the personnel
20 officer and we're a very small place, so we don't
21 have the director of personnel. The vice
22 president of finance serves that function and he
23 has written as has the dean, written guidelines

1 for advertising and so forth. So, we have
2 policies that guide all department heads to direct
3 me how to advertise for various positions and
4 those violations have not occurred recently. I
5 think that that line has been towed very well.

6 MS. PRIDE-EULER: I'd just like to make a
7 comment that we as people of color are concerned
8 that when you have an affirmative action program,
9 whoever the people are in charge of that program
10 are detached from that program and unless you get
11 support from the top like from the dean or the
12 president of the company, of the organization, to
13 enforce and make sure that things are in place and
14 so you're busy doing your teaching and then
15 something comes up, something's going to fall
16 along the wayside. And one of the things that we
17 were concerned about is that you do not hire or
18 organizations are not hiring one particular person
19 that that's that person's job to do affirmative
20 action or to make sure that the programs are in
21 place. They only work on that affirmative action
22 plan. They work with the staff. They work with
23 the other people in the organization to make sure

1 that what goes into that plan is going to be
2 enforced and that person makes sure that that plan
3 is enforced and they monitor the plan and they
4 evaluate the plan. so, if none of these is being
5 done on the site at your job or anybody's job is
6 doing that, how much can get done?

7 MS. WITTNER: I would say that it might
8 appear that more gets done than what I have
9 presented to you.

10 MS. PRIDE-EULER: I don't mean just you.

11 MS. WITTNER: It's impressed by
12 community, that's right, much as my colleague
13 said. It's fundamental to the church's
14 philosophy, it's fundamental to the college's
15 philosophy. We are in the business of providing a
16 liberal education for students. And so it falls
17 from that. Therefore, it's the responsibility of
18 all people on campus to follow the affirmative
19 action plan. I'm responsible for calling it to
20 their attention on a regular basis and keeping it
21 in the conversation, keeping it on the forefront
22 and evaluating how well we have done and
23 presenting that to the Board of Trustees and so

1 forth. But, it's not viewed as I'm the only one
2 who is concerned about these issues.

3 MS. PRIDE-EULER: I said your job, your
4 job.

5 MS. WITTLER: Yes, I have quite a few
6 jobs as do a lot of people in smaller
7 organizations.

8 MS. PRIDE-EULER: And that's what my
9 concern is. You're stretched here, you're
10 stretched there.

11 MS. WITTLER: You asked what gives. What
12 gives is the personal life because I still have to
13 teach. I still do the teaching. I still have my
14 other responsibilities.

15 CHAIRPERSON MC FADDEN: We need to move on
16 committee members.

17 Father Wantland, do you feel that
18 other religious congregations support affirmative
19 action plans?

20 FATHER WANTLAND: I would say certainly a
21 majority of religious groups in this country do.
22 I can't give you precise specifics on that. In
23 Wisconsin and beyond and the group that really the

1 Episcopal Church began way back in 1973 is project
2 equality. That's an interfaith group which is
3 very effective and it certainly as supported
4 Wisconsin on a number of religious groups as well
5 as businesses.

6 CHAIRPERSON MC FADDEN: Okay. We have
7 time for about one more question from panel
8 members, from the committee.

9 MS. KIRAM: Father, there's always a lot
10 of talk about the difficulty of getting students
11 into the religious life. Is that a problem that
12 you've got?

13 FATHER WANTLAND: It's becoming more of a
14 problem for Episcopal Churches in the last five
15 years. The number of people graduating from
16 seminary has been running about 20 to 25 percent
17 below the number of people dying or retiring. so,
18 there's a problem.

19 MS. KIRAM: So, are you also having a
20 problem getting minorities into the clergy?

21 FATHER WANTLAND: Yes and part of the
22 reason for that probably is that whereas the
23 church was seen as a place in the minority

1 - community, especially in the American Indian
2 community where people would go and this was the
3 door opening for having an impact on the society.
4 Those people are now going into other area of
5 vocation.

6 MS. KIRAM: Am I correct in assuming that
7 if you do not do anything towards affirmative
8 action, which I know you're doing even if you were
9 not supposed to or nobody will touch you, right?

10 FATHER WANTLAND: God would.

11 MS. KIRAM: That's going to be a long
12 time. People live a longer time now.

13 CHAIRPERSON MC FADDEN: We need to break
14 for lunch. I have one more presenter, Ms. Bravo
15 from 9 to 5 would be the last one. Thank you, you
16 two presenters.

17 Can you state your name and
18 organization you're representing?

19 ELLEN BRAVO

20 Thank you for changing the schedule.
21 I have to be on the airplane at the time I'm
22 scheduled. I'm Ellen Bravo, I'm the Executive
23 Director of 9 to 5 National Association of Working

1 Women. I have the pleasure to speak before you
2 today and I appreciate you all coming to Milwaukee
3 for this purpose.

4 9 to 5 is a national membership
5 organization that was founded in 1973 and is
6 dedicated to empowering women to improve their
7 status and condition on the job. Most of our
8 members are non management in traditionally female
9 jobs. Especially office work. We also have an
10 800 hotline number so we hear a lot from people in
11 every kind of job and what we hear over and over
12 are stories of discrimination and injustice. Some
13 of these are very blatant. The women who brought
14 it is against Dell Labs. You may have read about
15 this. Originally this came to us, in fact they
16 came to us after they had gone to lots of other
17 people. And their experience, of course, was you
18 know, everything from vulgar, sexual comments to
19 indecent exposure and unfortunately sexual
20 assault. Or the woman whose boss told her that
21 her maternity leave was not in the business plan.
22 We hear those kinds of stories. Every time you
23 think you've heard the worse, you hear more. And

1 a lot of the stories we heard are much more
2 subtle. Many people who call us have not just
3 experience -- are women who are experienced, not
4 just gender discrimination, but discrimination
5 also on the basis of race and also age and sexual
6 orientation, abilities, et cetera.

7 I was talking to a member and
8 telling her I was going to testify here and she
9 said this is great. I'm so excited. There's
10 going to be a hearing on discrimination and I said
11 actually it's a hearing on affirmative action. And
12 she said how did that happen? How does it happen
13 that women are still on the bottom and somehow we
14 have to defend that we are not getting an unfair
15 advantage? How did that happen? Well, I want to
16 echo her frustration. I applaud you for holding
17 this hearing, but we really have to ask ourselves,
18 given the situation and we all know the numbers,
19 why aren't we holding a hearing into why things
20 are so bad for women and people of color.

21 I'm not going to go through the
22 numbers about women and people of color,
23 percentage and senior management or wages. You

1 know these, I have them in my report. The fact is
2 more women in the families live in poverty. The
3 income gaps between whites and blacks has grown
4 and yet one of the few programs that was designed
5 to undo past discrimination is under attack. I
6 want to say that my friends questions, they are
7 not rhetorical. Equality, injustice in this
8 country are under siege. I think we have to use a
9 word like that and that the attack on affirmative
10 action is just one example of it. So, I want to
11 add the voice of 9 to 5 to people who are speaking
12 here today and many others across the country in
13 an effort to set the record straight. Language
14 has been used to obscure these issues. It's very
15 interesting that Orwell many years later Double
16 Speak is becoming such a reality for us. An
17 opponent with quotas and preference, they can take
18 and hire anyone who happens to be a certain gender
19 or a certain race. In fact, affirmative action
20 simply means the opposite of negative action.
21 It's about expanding the opportunity that has been
22 restricted. Affirmative action means going out of
23 your way to find qualified individuals who

1 previously have been excluded or discouraged or
2 overlooked. I've always liked the explanation
3 that Mary Francis Berry from the U.S. Commission
4 gave. Something to the effect -- I remember it
5 well, but I may be not quoting it exactly. She I
6 think was the first black woman Chancellor of I
7 believe the University of Colorado. Affirmative
8 action didn't make me qualified to be chancellor.
9 Affirmative action meant that the university was
10 able to recognize my qualifications. Opponents
11 use the language of restoring fairness. This was
12 the language from the bill in California.
13 Restoring equal treatment. This hides the reality
14 of our country's history. The truth is that for
15 centuries we've had a form of affirmative action
16 for many white men. People in charge hired people
17 who looked and talked like them. That were
18 related, people that were familiar and there's lot
19 of examples of how this still affects us today.
20 If you look at studies that have been done and I
21 have examples of these and I know you're familiar
22 with me of firefighters or police. How many are
23 related? And I know you also know this that more

1 students are admitted to college because they're
2 the children of wealthy alums than are students of
3 color admitted because of any affirmative action
4 program. Some people who like us to believe that
5 who gets the jobs are those who are most qualified
6 to get the job. To paraphrase Eleanor Holmes
7 Norton. The idea that so many people of the same
8 race and gender happen to be clustered in the
9 lowest paying jobs because of coincidence or
10 because of a lack of merit or talent or
11 qualifications is outrageous and it's wrong. Has
12 anyone unqualified ever been hired in the name of
13 affirmative action? Of course they have, but
14 that's tokenism, it's not affirmative action. If
15 you're going to talk about people who are
16 unqualified in many jobs, we have to start with a
17 very long list of politicians, executives and a
18 lot of the other folks, most of whom let's be
19 honest, are white men. So, yet I believe, I
20 believe in people being qualified for the job, but
21 let's not kid ourselves about where that isn't
22 happening. The attack on affirmative action also
23 hides the reality of the present day

1 discrimination which is widespread. It is always
2 harmful. It's sometimes lethal. Studies have
3 shown that most employers wouldn't have reached
4 out to women and people of color if affirmative
5 action hadn't required me to do so and I
6 personally know story after story and I'm sure you
7 have lived me of how this is true. We have to
8 expect that the destruction of affirmative action
9 would take a terrible toll.

10 Finally, the language of the
11 opponent of affirmative action diverts attention
12 away from the real problem of white men. Most of
13 us know white men who lost a job or had a hard
14 time finding another one at the same pay and it's
15 true that there are ten million white men today,
16 who are poor. There's been an 83 percent increase
17 in the number of white men who are on poverty
18 wages. That's a fact. That's a problem. Who took
19 those jobs? It certainly wasn't women and it
20 wasn't people of color. They've also been
21 battered by downsizing by corporate flight to the
22 cheapest place possible and you know, if we're
23 going to talk about living in poverty, I hate to

1 say this, but there is one area where women have
2 the edge and always have and have also increased
3 the percentage and of course if you add race as we
4 always must, it's black women and latinias who are
5 predominantly the ones who earn the poverty wages.
6 The jobs that you have disappeared. Where did
7 they go? We have to trace me directly to
8 corporate greed. To a structure that rewards
9 layoffs with a boost in stock price when it's very
10 decision makers who are often some of the biggest
11 holders of the stock. When the chair of A T & T
12 said hey, I didn't do anything wrong? That's the
13 way it works. He's right, that's the way it
14 works. There's something wrong with that. We
15 have to look at trade and tax policies that lower
16 living standards here rather than raising me
17 around the world. Inciting anger over affirmative
18 action is a smoke screen and it's deliberate and
19 it's designed to divert attention away from the
20 people who are really responsible for this
21 problem. Because maybe if we all figured it out,
22 we'd work together to do something about it.
23 Affirmative action, of course, is only one tool in

1 an arsenal of trying to deal with problems of
2 unfairness. That's what I wish we were holding
3 hearings into in what would help women achieve not
4 just equality. If equality means equality of
5 misery, that's not what we want. What we want is
6 a fair living standard for everybody and that me
7 and we have to look at a broad range of things.
8 We have to look at things like the minimum wage
9 which is becoming a meaningless term. We have to
10 look at things like people. The fact that you can
11 work for the same company doing the same job and
12 getting a lower wage by law and no benefits by law
13 just because you work fewer hours or because
14 you're a temporary worker and not a permanent
15 worker. We have to look at the issue of family
16 friendly policy. We have to look at how business
17 does business and rewards success and we have to
18 talk about enforcement of anti discrimination.
19 It's a mockery and an insult to tell us that
20 Congress cares about discrimination when they cut
21 the budget of the OFCCP and the EEOC and the other
22 alphabet agencies which were designed to make
23 these laws meaningful.

1 CHAIRPERSON MC FADDEN: Ms. Bravo, your
2 time--

3 MS. BRAVO: I've one more sentence. so I
4 just want to say I'm here to speak strongly and
5 equivocably in favor of the affirmative action,
6 but also to call on the Commission to hold
7 hearings into the real problems of the
8 discrimination and exploitation.

9 CHAIRPERSON MC FADDEN: Thank you.
10 Questions from committee members.

11 MS. PRIDE-EULER: Thank you. Ellen, as
12 always you're very outspoken and get us thinking.
13 It's good to see you again and you know your
14 question was, what was your question?

15 MS. BRAVO: How did it happen that we're
16 talking about affirmative action rather than
17 talking about discrimination? Who sets the terms?
18 I don't mean of this meeting, but of debates in
19 the country. I realize that you are, the
20 Commission is responding to a very real debate
21 that's going on, but it's sort of like why are we
22 talking about getting rid of the welfare instead
23 of getting rid of poverty. Who decided this was

1 the framework for us?

2 CHAIRPERSON MC FADDEN: Any other
3 questions from other committee members while
4 Gloria searches for hers?

5 MR. MINHAS: I have one question and you
6 said that the last 30 years or so with the
7 affirmative action there's no change. That things
8 are the same.

9 MS. BRAVO: No, I didn't say there's no
10 change. There certainly has been change and a lot
11 of people and particularly white women have
12 benefitted from affirmative action. It's a very
13 important program. People whose brief questions
14 were excluded or discriminated against or
15 overlooked, I mean I think I know people have
16 testified that about the -- I call it the GOBLIN,
17 good old boy's largely invisible network and the
18 way the GOBLIN works is it's so hard to get a
19 handle on it because it's not like some one saying
20 oh, don't hire women, although they, believe me
21 they do say that or don't hire people who are
22 black, But of course they do say that. But more
23 what they do is, hey, I have a great person. We

1 should really pay attention to him. He's a hot
2 prospect. How did he get to be a hot prospect?
3 How did he get there in the first place? You
4 know, if you ever do an exercise, we do this
5 exercise in 9 to 5 called the level playing field
6 and people start out in a line from one end of the
7 room to the other and the you just ask certain
8 questions. How had parents who graduated from
9 college and et cetera, et cetera and suddenly
10 there's some people who are way up in the front
11 and some people who are way in the back and then
12 the facilitator says everybody as fast as you can
13 everybody get to the front of the room. Well,
14 guess what? Some people are already there, some
15 people are way in the back. And then they say we
16 all had an equal chance. Of course we didn't.
17 So, you know, if your daddy plays golf with the
18 CEO or manager or you're in a fraternity or
19 whatever, you're going to know people and they're
20 going to pay attention to you in a way that
21 somebody else who has no connections. She doesn't
22 exist for me. She's invisible. Not that they're
23 going to say keep her out. They don't know where

1 to find her and they don't know how to look and
2 they didn't look hard enough.

3 Affirmative action makes me start
4 looking and if they do it right, chances are there
5 are lots of talented people that they find and
6 they encourage and develop and so on. But, if
7 those patterns don't happen so as it made a
8 difference, it has. Has it been enough, God no.
9 I mean, why would we have five percent of senior
10 executives women, three percent people of color,
11 one percent women of color if it were enough. Of
12 course it isn't. You can't undo discrimination
13 that simply, but has it mattered? Of course it
14 does. And will it hurt to take it away, you bet.

15 CHAIRPERSON MC FADDEN: Okay, Gloria, you
16 can ask you question and then we need to break for
17 lunch.

18 MS. PRIDE-EULER: I found -- why are
19 things so bad for women and minorities? I guess
20 you said we're talking about affirmative action,
21 but thje real issues are other issues are out
22 there which is another topic. We're always
23 looking for things to, you know, discuss and I

1 think at this point in time why we decided to do
2 affirmative action as opposed to other things is
3 that we thought it was important to do it right
4 now. To get people thinking about other reasons
5 why we need affirmative action and the attack on
6 affirmative action. Why we wanted to bring it up
7 to the forefront, is that not correct, Gerry?

8 CHAIRPERSON MC FADDEN: That's correct.

9 MS. BRAVO: I appreciate you doing it
10 because I think it's very important that we all
11 get mobilized and say to the folks that are trying
12 to lead these attacks, not in our name, you're not
13 speaking -- in the paper this morning someone said
14 those who demonize white men, it's their husbands
15 that they're demonizing, it's not our husbands who
16 take away these jobs and it's not our husbands who
17 oppose affirmative action because they understand.
18 I didn't tell you how many times I've met a couple
19 and the guy had come up to me and said, you know,
20 my wife works in a clerical job, her little income
21 was helping us pay the car payment, and I lost my
22 job and all of a sudden her little income was all
23 we had and I thought why on earth does she make so

1 little money? Never thought about it before. It
2 hurts us. I want her to get paid fairly. It's
3 not in his interest to keep her down or to keep
4 her from advancing.

5 CHAIRPERSON MC FADDEN: Okay. Ms. Bravo,
6 thank you for your presentation. We will break
7 for lunch and be back shortly at 1:30.

8 (A luncheon recess was taken.)

9 CHAIRPERSON MC FADDEN: Our afternoon
10 session is about to be convened. Mr. Munson, Mr.
11 Gabor, each of you have five minutes to summarize
12 your paper and after that the panel of committee
13 members will ask you questions. Mr. Munson you
14 may begin. Can you introduce yourself and tell
15 where you're from?

16 KENNETH MUNSON

17 My name is Kenneth Munson and I'm
18 Executive Director of the Milwaukee Fire and
19 Police Commission.

20 The Milwaukee Fire and Police
21 Commission is the city agency which is responsible
22 for the recruitment, for the hiring, for the
23 testing for all individuals for the police and

1 fire department. You were given I believe a one
2 page paper which is a table that shows police
3 hiring from 1975 through 1995. That document is
4 the last page of our paper that was presented
5 today. The Fire and Police Commission is
6 committed to hiring a diverse and highly qualified
7 work force to serve the citizen of this city. And
8 we are committed to that for a variety of reasons.
9 I guess first off obviously if we don't utilize
10 the talents of all the segments of this community,
11 we're doing ourselves a disservice and not getting
12 the best people we can. And a related reason for
13 our committment I believe is that we invest a
14 great deal of authority, great deal of power in
15 our police officials, our police officer.
16 Obviously they have the power to arrest, the power
17 to use deadly force in protection of life. When
18 you give that kind of authority to an institution,
19 to an individual, it's very important that that
20 institution and those individuals be seen as
21 legitimate in the exercising of that authority and
22 this is one way in helping to make this a more
23 legitimate institution; that is, to make it as

1 reflective as possible of the community that it
2 serves. So, given that, I can tell you that's our
3 committment today to a diverse and highly
4 qualified police work force.

5 Now, I think it's important and
6 helpful to look to the past. As you see in the
7 paper in front of you, in the early 1970s there
8 were fewer than 60 minorities in sworn in
9 positions on the Milwaukee Police Department and
10 sworn is a term of art. It means people who have
11 arrest powers, that were not civilians. That was,
12 then was 3 percent of the police Department at
13 that time. At that time there were also fewer
14 than 25 females in the department. They were
15 aboard as police matron or police women****. AT
16 that time the positions were patrolman, police
17 women and police matron. The police matron
18 essentially had jail duties, jailer duties and the
19 police woman dealt with mainly victims of crime
20 and with juveniles. They did not have the full
21 range of responsibility as patrol men. Now,
22 because of those numbers and because of just that
23 rigid sort of legal separation, there was some

1 dissatisfaction with the institution at that time.
2 The Fire and Police Commission began special
3 recruitments at that point for minorities and
4 female candidates and recruiting staff and a
5 community relations staff and changed that rule to
6 allow women also to apply and take the test for
7 what was then the patrolman position. Now, in
8 1974 then a woman named Christine Ward, an African
9 American woman took the examination for patrolman
10 and the exam she took, she and all the other
11 females failed that examination, the physical
12 examination. Because of that, she then sued the
13 City of Milwaukee for gender discrimination and
14 later that year the U.S. Department of Justice
15 also sued the City for race and gender
16 discrimination. When that sort of set the stage
17 for the beginning of some of these changes in how
18 people were selected for those positions. The
19 position patrol woman and police matron and patrol
20 man, those were changed so that anyone could apply
21 and take what now because the police officer
22 position. After that was done, about 1975 or so,
23 a woman named Hattie Nichols who is currently on

1 the police department today, she was the first
2 female hired as a patrolman at that time.
3 Second -- actually I gave you some wrong
4 information. There were two people, a woman named
5 Ada Wright was hired as the first patrolman in
6 1975 and she's on the Department today as a police
7 alarm officer. In that same group another woman
8 named Hattie Wright, she was hired, also African
9 American, was still in the department today in the
10 promoted position as detective. As a matter of
11 fact, her son is also in the department today.

12 In anticipation of the resolution of
13 these lawsuits, the Commission committed to hiring
14 two minorities for every three majority at that
15 time in 1975. In '75 and '76 the lawsuits were
16 resolved and they led to a series of federal court
17 orders which required the Commission to hire two
18 designated minorities. In that time it was
19 African American, Hispanic and Native Americans,
20 for every three majority and one female for every
21 four males. Those orders really set the stage,
22 really framed the next 20 years of hiring in the
23 police department.

1 And given that past history, if I
2 can just briefly tell you where we are today.
3 Compared to 1976, as I said, with fewer than 60
4 minority officers, today there are 560, more than
5 560. I believe about nine times as many as in
6 1975 or so. There were about 25 females in the
7 police woman and police matron officer There are
8 about 305 female police officers today. Now what
9 has happened? I believe we have begun reaching
10 for of a critical mass in those positions where in
11 the past minority and female officers were few,
12 now they are certainly substantial in the
13 department and that has an effect not just in
14 entry level where we have about 30 percent of the
15 patrol force is minority now, but also in the
16 promotional positions. So, we're seeing that
17 change begin to move up further into the
18 department. I do have further information on the
19 percentages, the changes on the promoted
20 positions. Given the amount of time, I don't want
21 to go over what's in the paper. I'd be happy to
22 answer any questions you have about that, but I
23 want to just summarize by saying I trthink over the

1 past 20 years the change has been substantial and
2 it's sort of naive to think it would have
3 happened if not for those court orders. But, it's
4 also naive to think that it happened solely
5 because of those court orders. I think it took
6 also a change in focus and a commitment to doing
7 the things that should have been done to make those
8 changes occur. The court order was an important
9 tool, but the dedication to that task was equally
10 important. And, I think some examples. There was
11 a survey in 1981 of the African American police
12 officers in the police department and more than 90
13 percent at that time said they never been
14 contacted by the Commission or the city in helping
15 in recruitment. That's a routine occurrence
16 today. As a matter of fact, a few months ago I
17 sent a letter to all minority officers asking for
18 help in identifying and recruiting new candidates.
19 The Commission now works with the League of
20 Martin, a group of African American officers in
21 providing test taking practice sessions for
22 officers. There have been a sort of routine and
23 regular changes in the practices that have changed

1 what we do and I think finally city
2 administration, the Mayor and common counsel have
3 supported and shown their committment to this
4 process by first budgeting, but I can tell you
5 from my own experience when I was hired for this
6 position nearly four years ago, when I met the
7 Mayor he charged me with doing two things, making
8 sure we have highly qualified individuals in the
9 police department and also ensuring that we have a
10 diverse police department that is as
11 representative of the city as it can be. And
12 given that, I can answer any questions you may
13 have.

14 CHAIRPERSON MC FADDEN: Okay. Why don't
15 we hear from our next presenter and questions will
16 be asked after that.

17 DENNIS GABOR

18 My name is Dennis Gabor. I'm
19 training and development manager of the Martin
20 Center for Independent Rehabilitation, an agency
21 located downtown. We work with individuals that
22 have disabilities ranging from developmental
23 disabilities, through mental health issues,

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1 through learning disabilities, cognitive delay and

2 it's a wide range basis of disabilities that we
3 serve.

4 The agency has been around since
5 1983 and we have a rich and diverse background
6 with individuals, minorities, women, the ones that
7 are in the underrepresented groups here in the
8 City of Milwaukee.

9 Our position towards affirmative
10 action, what should it be? Well, we feel that it
11 should be a legislative program that ensures
12 individuals who are member sof an under
13 represented group that they will recevie the
14 training and development that they will need as
15 they go out and try to find jobs in today's work
16 force. Even in an initiative like George
17 Thompson's work with TWO, they're looking at job
18 training as an essential component to welfare
19 reform. Why is this important? Well, to be
20 honest, from our perspective, we see an ever
21 widdening gap between the abilities and skills of
22 individuals coming in and the abilities and skills
23 needed to do the jobs of today. The need to fill

1 vacancies in businesses today is a very difficult
2 endeavor and the situation will only deteriorate
3 further as the level of technology advances. How
4 should we achieve a point of opportunity for
5 individuals who need it? We believe that resource
6 allocation by itself will not be totally
7 effective. On the other hand, recusing or
8 eliminating resource allocation will only make the
9 gap wider. What is needed is a strategic plan
10 that will invest in the appropriate development of
11 these individuals. The process of proactive
12 affirmative action should include; number one, a
13 systematic assessment of an individual's
14 capabilities and interest. This should occur in
15 the secondary education level. That's junior or
16 senior high school. Number 2, proper allocation
17 of resources from individual training which is
18 consistent with an individual's capability and
19 interests. Number 3, reasonable effort needs to
20 be made that the training programs fulfill current
21 and future employment needs. Number 4, once
22 employment is obtained, is that advantageous to
23 the employer and employee that opportunities be

1 extended for the continuation of education and
2 training. And Number 5, in the case of an
3 individual with special needs, provisions need to
4 be made between the employer and the supportive
5 employment agency to make sure that there's
6 adequate follow up that's job related. Our
7 rehabilitation has implemented a proactive and
8 reactive approach which includes the active
9 recruitment of individuals with disabilities and
10 other special needs. In other words, we go to
11 other community agencies and schools to help
12 recruit individuals that fill our clientel. We
13 provide realistic training for competitive job
14 market. Key aspects of this activity is the
15 development of a solid work ethic, a sense of
16 personal responsibility and the pride of living a
17 more independent lifestyle. At this point
18 individuals are ready to enter either the
19 competitive employment training sectional
20 employment or supported employment. Competitive
21 employment requires little if any services.
22 Basically going out and getting an entry level
23 job. Transitional employment can go in two

13

1 directions. The first one is an affirmative
2 industry where they are nothing more than an
3 industry set up that provides a stepping stone for
4 individuals with special needs to go out and get a
5 job later on in the competitive world.

6 The second direction can go in is
7 through temporary employment programs. Martin
8 Center for Independent Living currently has an
9 initiative going called Match It, our temporary
10 employment program. And what this does is it
11 places individuals in temporary jobs in a
12 competitive market. This allows individuals and
13 employers to overcome their personal barriers to
14 the employment experience.

15 And lastly, the supported employmen
16 tis for lower level individuals who are not
17 capable of entering the competitive job market
18 probably now or in the future.

19 In conclusion, it's invaluable to
20 establish multi productive relationship between
21 employersr and community based agencies that work
22 with people with special needs. Very important to
23 this goal is the education of employers to dispell

1 common myths, conceptions about this population.
2 Therefore, agencies like the Office of Federal
3 Contract Complaine are vital to this endeavor.
4 Thank you very much. ---

5 CHAIRPERSON MC FADDEN: Thank you.
6 Committee members, are there any questions for our
7 panelists? Ms. Kiram?

8 MS. KIRAM: A question for Mr. Munson.
9 How near are you towards the ideal match of
10 percentage of hiring of minorities or are you
11 already there?

12 MR. MUNSON: Well, I guess the first part
13 I'd say is I don't really know there's an ideal.
14 When I say that might be as representative as
15 possible. I usually even try to avoid saying
16 we're looking for an exact match of X percent of
17 the population, X percent of the department. One
18 main reason is as things change, let's say the
19 population becomes smaller, do we want to reduce
20 that number? I don't really think so. But, in
21 terms of closeness to the inner -- here in the
22 city righ tnow, the city right now at least the
23 numbers we have is about 36, 37, 38 percent

1 minority. The department is at this point about,
2 in the police officer's position, 30, 31 percent
3 minority, about 28.2 percent minority in the all
4 sworn position.

5 MS. KIRAM: In cities comparable to
6 Milwaukee, how are we faring?

7 MR. MUNSON: I guess you could say almost
8 across the board that there's some cities with
9 larger minority populations that have about the
10 same minority population in their departments and
11 some that have greater, some that have smaller.
12 There's a whole range and mainly -- I can say I
13 believe that mainly what is happened across the
14 country, cities that have had these kinds of
15 orders the past 20 years, those are things you see
16 the greatest increases. So, these kind of
17 affirmative action court orders that were issued
18 in the '70s are very helpful and to those who got
19 them, I think it's made those proportions of
20 minorities in those departments much higher than
21 those who did not get them.

22 MR. MINHAS: Mr. Munson, you mentioned
23 earlier that in the police force you maintain

1 equality because equality is very important. With
2 the increasing of the minorities in the force, do
3 you have any reason to believe that equality is
4 sacrificed?

5 MR. MUNSON: No, none whatsoever. In
6 fact, our first thought is always that the person
7 who -- the person who is hired is going to have
8 authority to carry a weapon and arrest people.
9 So, that can't be sacrificed.

10 MR. MINHAS: At one time you indicated
11 two women tried to go through the test, physical
12 test and both of them flunked that test.

13 MR. MUNSON: Actually it was more, it was
14 about 36 women and all failed that test.

15 MR. MINHAS: Are they going through the
16 same test now or is the test more difficult?

17 MR. MUNSON: The test has been modified,
18 but not made easier. One of the things in testing
19 is that a test should always be related to the
20 job. In terms past, let's say for example, you
21 have a test that says you must lift a hundred
22 pounds. If that's not required for the job,
23 there's no reason to have that requirement.

1 MR. MINHAS: But those tests probably
2 were biased in the first place towards men and
3 against women.

4 MR. MUNSON: I think that's why they were
5 modified, yes.

6 MR. MINHAS: Okay, thank you.

7 CHAIRPERSON MC FADDEN: Mr. Gabor, does
8 your organization have a relationship with the
9 OFCCP?

10 MR. GABOR: Yes, it does, through me.
11 I'm the community liaison group with the Office of
12 Federal Contract Compliance interacting with the
13 industry liaison.

14 CHAIRPERSON MC FADDEN: How many
15 employees does your organization have?

16 MR. GABOR: Direct employees of our
17 organization?

18 CHAIRPERSON MC FADDEN: Right.

19 MR. GABOR: There's approximately 225
20 staff members in our organization interacting with
21 around a thousand clients.

22 CHAIRPERSON MC FADDEN: I think also in
23 your presentation you mentioned starting

1 assessment of an individual interest and skills
2 level in the secondary high school. When you
3 start testing people, doesn't that have a tendency
4 to discriminate against that person? Test scores
5 follow the person for the rest of their lives?

6 MR. GABOR: The intent is not to be
7 discriminatory in the testing. The testing should
8 be ultimately there to identify what the person's
9 capabilities are and compare them to the person's
10 interested so that a match can be made between
11 their interests and their capabilities so that
12 they can eventually become employable.

13 CHAIRPERSON MC FADDEN: Who would go
14 about developing such a test and sometimes bias is
15 built in at the development stage of testing.

16 MR. GABOR: Very good point. It would
17 have to be -- I don't have an easy answer to that.
18 It would have to be a diverse group of individuals
19 that would sit down, who understands what the
20 disabilities do to an individual, how it manifests
21 itself and how it would bring out what the
22 person's capabilities would be so that we can sit
23 down and say this person needs particular

1 training, for instance, in a service related
2 field, then they can then start putting or
3 investing into that person the necessary training
4 that they would need to be able to eventually get
5 a job in that area.

6 CHAIRPERSON MC FADDEN: Okay. Mr.
7 Munson, are you working under an affirmative
8 action program?

9 MR. MUNSON: Yes, we are working under I
10 guess I'd say two things. There's an affirmative
11 action program that's filed with the federal
12 government, but also federal court orders that are
13 continuing.

14 CHAIRPERSON MC FADDEN: Who continues to
15 monitor that affirmative action program within
16 your organization?

17 MR. MUNSON: Within my organization?

18 CHAIRPERSON MC FADDEN: Yes.

19 MR. MUNSON: Many people do. I do for
20 one. There are people separately within the
21 Police Department who monitor as well. That's
22 sort of a separate issue.

23 CHAIRPERSON MC FADDEN: Do you bring in

1 outsiders to audit your affirmative action
2 program?

3 MR. MUNSON: We're audited by the federal
4 government, by the Justice Department every year.

5 CHAIRPERSON MC FADDEN: And the results
6 of those auditors, is that shared with the public?

7 MR. MUNSON: I can't actually say that
8 there's a report that comes to us. We report to
9 the Justice Department what we're doing every year
10 and then we are essentially told that it's okay.
11 We're doing what we should be doing.

12 CHAIRPERSON MC FADDEN: If you're out of
13 compliance, what would happen?

14 MR. MUNSON: We've not been. I can't say
15 what would happen. I assume what would happen,
16 first off, we would be in violation of a court
17 order is presumably there can be some action taken
18 at the federal government level through the court
19 system.

20 CHAIRPERSON MC FADDEN: Are you saying
21 that it hasn't been any action since you started
22 the job there?

23 MR. MUNSON: And I don't believe there's

1 been any action since the '70s. There have been a
2 few situations, I believe, in the past. Maybe one
3 where the Commission could not meet it's goals and
4 had to go to the federal_government and ask for
5 the exemption for this one class. So, the
6 monitoring is a regular routine monitor.

7 MS. FARRELL: Mr. Munson, you were
8 talking about minority officers or would be
9 officers go to the League of Martin to get
10 assistance for studying for the test. What's the
11 difficulty between majority people and minority
12 people? Why are they not passing the test? Have
13 you looked at where the weakness lies with the
14 individual or have you looked at the testing tool
15 itself?

16 MR. MUNSON: I guess, let me first say
17 that the League of Martin practice session is for
18 anybody who wants to take it. The League of
19 Martin is an organization of African American
20 officers, but they do a lot of marketing, but it's
21 open to anyone who wants to take it. The second
22 issue is that members of all of the minority
23 groups both genders are passing the test. I don't

1 think there's a problem with the failure rate on
2 the test right now. We have had candidates and we
3 are having candidates. We in the past few years
4 as I think the paper shows, have filled record
5 numbers of vacancies and have filled them with
6 people who have passed the test, majority and
7 minority. There's not been a problem getting
8 minority candidates.

9 CHAIRPERSON MC FADDEN: Are there any
10 other questions for our panelists?

11 Thank you very much.

12 Would you introduce yourself and
13 tell us where you're from and each of you will
14 probably have about six minutes because we have
15 some time to play with.

16 MS. MEYER: Okay, so you'd like to start
17 with me?

18 KAREN MEYER

19 Good morning, my name is Karen
20 Meyer. I'm the construction director of Esperanza
21 Unida, but I'm not here as an organizational
22 representative, I'm here as an individual. This
23 research paper is not really just a research

1 paper, it is based on my experiences in the
2 construction industry.

3 I titled it Strong Affirmative Action
4 Monitoring Guarantees Impartial Employment
5 Opportunities for Women and Minorities Currently
6 Not Welcome in Wisconsin's Construction Industry.
7 Now, affirmative action policies are strictly
8 enforced on federal construction projects in the
9 State of Wisconsin, but minority workers on
10 private projects, state and municipal projects
11 still face tremendous obstacles from hiring
12 discrimination and hostile work environments.
13 Women and minorities still find it very hard to
14 initially break into construction jobs and skill
15 trade apprenticeships. The people that do succeed
16 in acquiring these jobs often leave these careers
17 they fought so hard to obtain because they have
18 continual unemployment problems and they work in
19 hostile work conditions. It affects their health
20 and their family lives. In my eight years working
21 as an operating engineer, I continually
22 experienced hiring discrimination by contractors.
23 On the job I was called vulgar names, grabbed,

1 sexually harassed, threatened, had my car and
2 crane sabotaged, was kept in menial jobs, denied
3 training and eventually blacklisted on my career.
4 I'm sorry, it's hard to discuss this. Other
5 trades women have told me they experienced similar
6 problems, including sexual assault, touching, men
7 exposing themselves, work sabotage and pranks.
8 Now, I never experienced discrimination before
9 this. Women are the biggest minority in the
10 construction industry, representing less than two
11 percent of the entire work force. Working as a
12 token is really hard. It was really hard for me.
13 You're watched, you're scrutinized, you're noticed
14 by everybody. Everything you do is the hot topic
15 of gossip. There's constant pressure to perform.
16 Mistakes are blown out of proportion and they're
17 used against you as proof of lack of your skill.
18 I always felt isolated and alone. I went for a
19 year without working with another woman and most
20 male minority tradesmen said they had the same
21 problems, but they didn't have the gender and
22 sexual emphasis. An African American told me I
23 would rather be any color man than be a woman in

1 this industry. Complaining about the problem
2 usually just made it worse. Your complaint is
3 usually just shrugged off. If you do complain to
4 the government, you lose your job and you fight
5 court cases for years that don't amount to usually
6 anything. You never ever recover those losses.
7 And working in a hostile environment it takes a
8 toll on your nerves, your family, your health and
9 economically it's hard because you lose a high
10 paying job and you usually end up getting a much
11 lower paying job, if you can find one at all.
12 Even some labor unions who should be protecting
13 the rest of their dues paying members often just
14 turn a deaf ear on these discrimination
15 complaints. Some labor unions are themselves the
16 discrimination problem.

17 Early in my career I found it hard
18 to believe that all this happened, that these laws
19 could be intentionally violated and people got
20 away with it. Why was it happening? What good
21 were any of these laws if nobody was there to
22 monitor and enforce me? Traditionally the
23 industry is white male dominated. Even in the

1 1990s when affirmative action policies are
2 protecting and integrating other occupations in
3 other occupations, Wisconsin's construction
4 industry is still in the dark ages on issues of
5 civil rights. The only glimpse of work force
6 equality that I have seen in my eight years is on
7 a federally funded job where construction
8 companies were closely monitored by the Department
9 of Labor offices, federal contract compliance.
10 Women and minorities are a threat to the white
11 male construction workers. They fear they're
12 going to lose their jobs. They fear their trades
13 are going to be devaluated from the influx of
14 workers. Many of these white male construction
15 workers believe very strongly in stereotypes.
16 Women are meant to stay home and raise children.
17 Women are too stupid and weak to handle a man's
18 job. Blacks, hispanics and indians are dishonest,
19 lazy, high on drugs and alcohol all the time and
20 cannot keep a job. Then if nobody stops them,
21 these beliefs are put into action.

22 So, how do you break down these
23 racial and gender barriers in this archaic

1 construction industry? Well, this is my opinion,
2 but I feel affirmative action policies combined
3 with strong monitoring and enforcement is the only
4 way to assure impartial employment opportunities.
5 Who ever is controlling the money for a
6 construction project defines the rules of the
7 construction project. When federal money is
8 involved, the job is closely monitored and
9 affirmative action policies are enforced, but on
10 private contracts and even some state municipal
11 work these policies, they may give the appearance
12 of a good faith effort to employ minorities, but
13 the projects are not monitored. Construction
14 companies can simply go through the motions that
15 they are going through hiring of minorities, but
16 sometimes if they even do hire the minorities,
17 they keep me on the job short term to make it
18 really good on paper. Policies can be distorted
19 to accommodate the employer's white male work
20 force and without monitoring enforcement of
21 affirmative action in this industry has been a
22 toothless dog. People with a role in the industry
23 have to agree about what is wrong and the extent

1 of the problem that's going on. Discrimination
2 for women and minority in the trades is the rule
3 not the exception. Once we have agreed there's a
4 problem, all those who have a major role in the
5 industry must commit to positive change.
6 Federally funded projects have strong affirmative
7 action policies. We need these same policies
8 applied to state and local projects who
9 traditionally have weaker policies if any at all.
10 The private sector should also create employment
11 standards that reflect fairness in job hiring.
12 Strong affirmative action criteria must be
13 implemented on all construction projects. If
14 these criteria becomes a part of the bid
15 specifications of the project, the owner of the
16 project, whether it be federal, state, county or
17 private, can guarantee fair employment. The only
18 measure of the success is in increase in the
19 construction work force representation and so far
20 this has not happened.

21 CHAIRMAN MC FADDEN: Thank you. Mr.
22 Carleton.

23 DR. FRANCIS CARLETON

1 I'm an Assistant Professor at the
2 University of Wisconsin at Green Bay and I teach
3 in the Department of Social Change and
4 Development, Political Science and Women Studies
5 and my primary area of interest in both the
6 classroom and in my spot where we work is fallen
7 society, the role of law and social change. And
8 what I've done in my paper is I've analyzed three
9 Supreme Court cases dealing with affirmative
10 action in the workplace based on both gender and
11 race. I looked at cases between 1987 and 1995 and
12 I think by just taking that time frame I sort of
13 capture a definite trend not surprisingly by the
14 Supreme Court to become increasingly hostile to
15 affirmative action, especially race based
16 affirmative action. And so what I do then is I
17 use an ethic of care to analyze critically these
18 cases. I think an ethic of care which I'll talk
19 about momentarily provides critical purchase on
20 these cases. It provides a way to critique the
21 court to see where the court comes up short from
22 that perspective and I think the ethic of care can
23 also suggest an alternative juris prudence, a

1 juris prudence that takes affirmative action more
2 seriously and treats it with more respect. And
3 then I also use ethic of care to suggest how we
4 might think about affirmative action in general in
5 the future.

6 The first case I looked at was
7 Johnson versus Transportation Agency, 1987. Now,
8 this was a case in which the Supreme Court upheld
9 an affirmative action program that was based in
10 part on gender. Wait, forget that. I'll get to
11 that. I need to talk about the ethic of care. I
12 use the ethic of care in at least three
13 dimensions. I think the ethic of care first of
14 all needs to be thought of in relationship to an
15 ethic of right. Ethic of care is the notion that
16 people and institutions have a deep responsibility
17 to extend carrying and compassion to those on the
18 margins of society, those who have experienced
19 unfair discrimination. I think that's at the
20 heart of an ethic of care, especially those in
21 power have this responsibility to reach out
22 affirmatively. At the same time, the Court also
23 and other institutions have to also pay attention

1 to the legitimate rights of all employees of all
2 citizens and so oftentimes I think the Court and
3 institutions need to balance an ethic of care with
4 an ethic of right. They need to come up with the
5 right mixture. I think to often though the Court
6 has endorsed rights, oftentimes the rights of
7 those are more powerful at the expense of those on
8 the margins and this is where you and lose the
9 ethic of care. So that's one dimension that I'll
10 be using to look at these three cases.

11 The second dimension to an ethic of
12 care is the concept of empathy. I think that from
13 the Court is going to implement specific ethic of
14 care, they need to be willing and able to really
15 listen to those on the margins of society. They
16 need to be able to consider seriously the
17 perspective of those who faced, for example,
18 unfair discrimination, people who are often on the
19 bottom of society's hierarchy. They need to be
20 able to empathize. If they only listen to the
21 powerful voices, if they only listen to the voices
22 from those above, they'll tend to denigrate an
23 ethic of care. So, that's a necessary compound of

1 an ethic of care.

2 And the third dimension of an ethic
3 of care is the notion of context. That the Court
4 needs to place what they are doing within some
5 sort of context. If the Court can't think of
6 itself as simply a solver of an intellectual
7 puzzles. They need to consider the human
8 implications of cases that are decided. They need
9 to place the issues within their proper social,
10 historical and economic context or else they're
11 not doing their job properly and you can see I
12 think that a contextual juris prudence is
13 necessary for the Court to extend an ethic of
14 care. They need to be able to see what's going on
15 in society and respond to that in some affirmative
16 fashion. So, those are I think the three
17 dimensions that I will apply briefly to these
18 three cases, okay?

19 The first case then is Johnson, 1987
20 in which the Court upheld an affirmative action
21 program based in part on gender. This was an
22 affirmative action program that was challenged by
23 a male employee based upon Title 7 of the Civil

1 Rights Act of 1964. This put the primary burden
2 of proof upon the challenging employer, employee.
3 The employer needs to rebut the claim of
4 discrimination. And the court found that the
5 employer successfully rebutted the claim of
6 discrimination, unfair discrimination by the male
7 employee. And I argue that that represents
8 reasonable empathy with an employer who is trying
9 to do the right thing. It represents a reasonable
10 burden of proof on the employer, an employer in
11 this case who is reaching out trying to diversify
12 their work force and extend an ethic of care to
13 those who face unfair discrimination. I think the
14 Court also held in that case that an employer who
15 wishes to implement affirmative action need not
16 show that they themselves have been guilty of
17 discrimination in their workplace, rather
18 employers can legitimately use affirmative action
19 if there are gender or racial imbalances in the
20 work force that may be the result of deeper social
21 discrimination like the notion of proper gender
22 roles. So that employers then I think appliedly
23 the Court argues that employers can in fact

1 impelement affirmative action to render the deep
2 social discrimination. It doesn't have to be just
3 directed at specific identifiable discrimination
4 within that particular workplace and I argue that
5 represents a vigorous ethic of care. It
6 represents the court endorsing the notion that
7 employers have a deep responsibility to reach out
8 to society and not just within their own
9 particular workplace. So in that case then I find
10 that the Court is relatively empathetic. The
11 Court is aggressively caring too. And they also
12 discuss the notion that this affirmative action
13 program was flexible. It was not rigid. It paid
14 reasonable attention to the legitimate rights of
15 male employees as well as female employees. So, I
16 think the Court did a good job of balancing care
17 and rights and then I probably ran over here.

18 CHAIRPERSON MC FADDEN: We have time.

19 DR. CARLETON: So that I can represent
20 sort of high watermark of how the Court treats
21 affirmative action and from there it's all
22 downhill so to speak.

23 Richmond in 1989. Richmond versus

1 Crosson. In this case for the first time the
2 Court held that state-based affirmative action
3 programs based on race are subjected to strict
4 judicial scrutiny. This is a landmark case. This
5 means that hence forth any state government agency
6 that employs race-based affirmative action
7 programs, if that program is challegned, they must
8 demonstrate a compelling government interest and
9 that the program must be narrowly tailored to
10 serve that compelling government interest. The
11 problem with strict scrutiny is as Thurgood
12 Marshall mentioned once in Fullilove v Cutsnik,
13 strict scrutiny is often strict in theory, but
14 fatal in practice. Particularly the Court struck
15 down almost any policy that's subjected to strict
16 scrutiny. So this I think is seriously disturbing
17 in that sense because I think the Court is doing
18 at least three things here. They are denigrating
19 the prospective of employers who seek to reach out
20 and do the right thing and diversify the work
21 force based upon race because strict scrutiny
22 essentially negates the employer's perspective.
23 The employer's perspective almost always fails to

1 meet this burden of proof. So, I found it
2 powerful, not empathic relative to employers who
3 are using affirmative action.

4 A second I argue that in this case
5 the Court held that employers could not use
6 affirmative action based on race unless they could
7 show that they themselves had been guilty of
8 specific discrimination in their workplace. That
9 employers cannot reach out and say that since
10 there are serious social problems, we're going to
11 do the right thing in our workplace, whether we've
12 been guilty of discrimination or not. We're going
13 to aggressively reach out. The court said no, you
14 can't do that. If you're going to do affirmative
15 action at all based on right, you've got to show
16 that you yourself have been guilty of serious
17 discrimination. Okay, so that's a rather pinched
18 notion of an ethic of care, a rather limited
19 conception of ethic of care. And then finally
20 what the court ruled in Richmond was that
21 affirmative action programs could not be
22 distinguished from, for example, Jim Crow laws of
23 the south prior to 1964. That there was no

1 distinction that the court could make between
2 remedial benign discrimination and pernicious
3 discrimination that the Court pandered. They must
4 subject both Jim Crow type laws as well as
5 affirmative action programs to the same level of
6 judicial scrutiny and I agree that's a contextual,
7 it rips the issue out of context. It doesn't take
8 seriously the social, historical and economic
9 context within which we all exist in all day. It
10 treats different things as if they are the same.
11 That formal abstraction and the dissent argues in
12 Richmond that in fact that's the case, there's a
13 real difference that the Court can recognize
14 between Jim Crow and affirmative action. So, and
15 I think I'll stop there since I know now I'm
16 definitely running over and with that, later on in
17 1995 it gets a bit worse, but that's the general
18 trend. And so I agree that using an ethic of care
19 to critique the Court and we can think about how
20 the Court might take more seriously an ethic of
21 care to being contextual, structural,
22 empathetic and care oriented and the same thing
23 for affirmative action in general. It needs to be

1 based upon this notion of care if at all possible
2 and it must be contextual. It must be empathetic
3 and I think we should use affirmative action based
4 upon a range of criteria such as race of the
5 necessity gender and even class statute. I think
6 certainly being poor in America is a bar to fair
7 opportunity in the workplace, just as race and
8 gender are and, of course, those all cross cut and
9 overlap. But I think all those criteria can be
10 wholly appropriate for a contemporary affirmative
11 action program and maybe that's where we need to
12 heed in the future.

13 CHAIRPERSON MC FADDEN: Thank you.
14 Committee, questions?

15 MS. SHANKMAN: Ms. Meyer, I was just
16 interested. You said that the federal projects
17 are more closely monitored and is the monitoring
18 at the federal level also able to deal with this
19 horrible problem of the hostile work environment
20 that you described or is it just monitoring in
21 terms of just hired and who is hiring?

22 MS. MEYER: Well, since I don't really
23 work in their office and know their procedures as

1 well, but I began my career on a federally funded
2 project which was the deep tunnel project here in
3 Milwaukee. I really did not notice many of these
4 problems and for my first three years in my
5 career, if there were problems, they were taken
6 care of. There was a place to go. People had
7 seemed to be more -- it didn't happen that much
8 because they knew they would get in trouble.

9 MS. SHANKMAN: So you had somewhere to
10 go?

11 MS. MEYER: I wasn't aware that there
12 were a lot of these problems until after I was
13 under the umbrella -- out from under the umbrella
14 of protection and I must add I forgot to put in
15 the emotional damage. I've never really had to
16 talk about this before. And then once you're out
17 of the umbrella and on the private jobs and when I
18 start applying for jobs on my own when the project
19 was over and there wasn't any more federal work in
20 Wisconsin, I applied for jobs on my own. It was
21 extremely hard and even my experience working on
22 federal and state projects like the DOT project or
23 private projects. It was so hard to get the job.

1 I was lucky if I could get four months worth of
2 employment a year as far as that's how much work I
3 could get. And then even once I was there, there
4 was really nobody to go to with these problems.
5 And I'm not saying that all construction companies
6 are like this because I work for a couple of good
7 ones, but a couple is really sad. This is the
8 norm. This is not like an unusual thing. I've
9 talked to other trades women. I've talked to
10 minority males to see if this was just a female
11 issue. If this was a gender issue and it seems
12 like this industry was just -- is left in the
13 1800s while the rest of the country has gone into
14 modern times and has followed this policy. This
15 industry somehow has gotten ignored.

16 CHAIRPERSON MC FADDEN: Ms. Meyers, during
17 your time of employment, were there any type of
18 sensitivity training for the majority which were
19 men to prepare me for female and minorities being
20 a part of that work force?

21 MS. MEYER: As an employee, no, I have
22 never. There were never any sensitivity or
23 diversity training programs. They did have safety

1 programs, but no. The male work force seemed
2 extremely uncomfortable with just having me
3 around. Sometimes I thought maybe I'd just
4 better -- I adjusted better than they did, even
5 though they were in the majority.

6 MS. FARRELL: What would you recommend
7 to young minority and young women that are looking
8 towards that sort of field?

9 MS. MEYER: Well, it's funny you should
10 bring that up because right now I train them. I
11 hire and I recruit and I train minorities
12 interested in getting into construction skill
13 trades and regular construction jobs. And what I
14 do with them, even though my career started eight
15 years ago so maybe there have been some
16 improvements, I've been out of the industry for a
17 year and a half as a worker. I worked my way up
18 to journeyman status as a heavy equipment operator
19 which is an operating engineer and now what I try
20 to tell the student is what I didn't have anyone
21 to tell me about this, I wasn't warned. I tried to
22 let me know that this is preparing yourself for
23 this and they have me to come to to talk about it

1 to and I had no one. So, I do -- I don't paint a
2 rosy picture for me. I tell me these are the
3 positives, these are the negatives. Don't be
4 surprised if this happened to you. I tell them
5 about my expereinces. I tell them about the
6 stories and I even do a lot of role playing. I
7 put them in situations where I try to train them
8 to defend themselves. This is what got me. I
9 wasn't prepared for this. It took me a while to
10 implement defense mechanisms to defend myself and
11 once I did, it got a lot easier. But, I was never
12 expecting anything like this. So, I try to
13 prepare the student because it's -- they are very
14 good paying jobs, skilled trade people making over
15 \$20 an hour. But, they have full pensions. They
16 have medical insurance. I mean they're very good
17 jobs and if you're a single woman or you're a
18 woman supporting a family or even with the male
19 workers, this can support a family. This is not
20 minimum wage stuff. So, the reason I stuck it out
21 is I needed to make a living. I needed to
22 survive. So I tried to make an adequate
23 representation for the students that I train going

1 into the industry and I feel that it will improve
2 the numbers because on the federally funded job it
3 wasn't bad, but there were women, there were other
4 minorities and with the numbers it got easier. It
5 was when I was the only one which lasted for a
6 year, that's when it got tough. Then I started to
7 think where's the boarder here and then I thought
8 it finally dawned on me I was on a federal job
9 before and after that was over, I was only on one
10 other federal job in my whole career and once I
11 got away from that, well bye-bye, nobody was there
12 to protect me. They knew they could get away with
13 murder. They did everything they could. I've
14 heard the same thing. I went though I've heard
15 from other women over and over and over and it's
16 sad, it's really sad and most people are just not
17 even aware that this situation is going on.

18 CHAIRPERSON MC FADDEN: Any other
19 questions?

20 MR. MINHAS: I have one. In consolation
21 on that one. I deal with student who are in
22 training in the construction trade and we are
23 having the same problem, even at the training

1 level when the female students come in for
2 construction training. The other students go
3 straight to me and I wanted to tell you one
4 particular case happened in my school and that the
5 traders in the construction trade, they were
6 carpenters and framing and one was electrician and
7 each girl in each of those girls they also teased
8 me, you're supposed to make cakes, clean houses.
9 And there was so much type of listening to this
10 that they complained to the teacher and the
11 teacher gave me lectures and everything and
12 nothing happened. And he talked to me one day and
13 says this is what's happening and I said, well,
14 you're the teacher, can you control the situation?
15 Should I have to go in there and do something and
16 he said do I have the authority to control the
17 situation? I said, yes, go and do it. And after
18 about ten days he came and he says the problem is
19 solved and no one is teasing any girl now. So,
20 what happened? What did you do? He said I told
21 those girls to make the cakes for the boys, but
22 do only one thing, put a little Ex-Lax in there
23 and they did that. And for the next two days all

1 boys were absent and girls were in the class.
2 They never asked them for cakes. Well, that's a
3 little happy incident. The problem was solved for
4 that particular class. We are trying to get
5 apprenticeship program for Columbus and we have I
6 guess the union and unions have much against
7 female people and plumbing trades. So, they did
8 the plumbing program because we have a number of
9 females in the program and it's still going on.
10 It's more than two years now to get anything done.
11 It's not done and the plumbers union is not
12 willing to accede to. They are not going to
13 accept that ladies can be plumbers, too, and
14 there's nothing in plumbing which any lady cannot
15 do. It's just a kind of biased trade kind of bias
16 and it's important and building trades kind of
17 locations for whatever reason is coming in and
18 it's not going away yet. It's not going away yet.
19 But, on the other hand, what you brought to the
20 notice of this team today and getting into
21 publications I think there should be something to
22 resolve all of these problems. This will go a
23 long way -- I don't say to solve the problem, but

1 getting this problem solved.

2 MS. MEYER: Thank you. I think awareness
3 is very important to it.

4 CHAIRPERSON MC FADDEN: Mr. Carleton, has
5 the supreme court effectively rescinded
6 affirmative action and if not, will it soon?

7 DR. CARLETON: No, they haven't and in
8 some ways my presentation was quite bleak, but I
9 don't want to overplay the bleakness, but in some
10 ways it's not entirely catastrophic. It's just
11 not real good. For example, in Richmond Justice
12 Sandra Day O'Connor had held, "that only those
13 programs that employ a rigid rule that erects race
14 as the sole criterion would be subjected to strict
15 scrutiny. So, in essence, in Richmond, the Court
16 indicates a willingness to issue a fairly narrow
17 ruling that only targets a small subsection of
18 affirmative action. So, I'm thinking, okay, well,
19 there's a little bit of wiggle room there to make
20 it a more narrow ruling, but then in 1995 in
21 Adarand the Court gave a much broader definition of
22 what they would subject to strict scrutiny. She
23 cited in Adarand, which also applied strict

1 scrutiny to federal government as well as state
2 and local government programs on affirmative
3 action, she says that the government must justify
4 any racial classification subjecting that person
5 to unequal treatment under the strict test of
6 judicial scrutiny. And she doesn't explain why
7 there's a shift from Adarand from Richmond. It's
8 fairly narrow holding. It seems almost
9 encouraging in it's limited nature to the much
10 broader attack on affirmative action based on race
11 in Adarand. There's no explanation given. It's
12 just happened apparently. It's magical, I don't
13 know. So, the Court is somewhat hostile towards
14 race-based affirmative action. The irony here is
15 that the Court subject general based affirmative
16 action presentably to something called,
17 intermediate scrutiny, which means the government
18 or use such program merely as to show that there's
19 important government interest. It's an easier
20 burden to save that the compelling government
21 interest. Of course this worked against women
22 when the Court was looking at pernicious
23 discrimination back in the '60s. Then that worked

1 to the disadvantage of women that the Court was
2 more likely to let stand the sex discrimination by
3 the government, but less likely to let race-based
4 discrimination stand. But, given the nature of
5 affirmative action, that flips that on it's head
6 and now gender based affirmative action programs
7 come under less judicial scrutiny, race come up
8 more. And also it strikes me as a bit of a divide
9 and concur strategy, dividing women and racial
10 minorities in a way that I think is particularly
11 unfortunate and is oftentimes exploited by
12 contemporary politicians. The Court seems to be
13 playing into that. So these holdings have have
14 some limitations. In some ways they seem to be
15 getting broader, but it doesn't mean that all
16 programs must fall. The government shouldn't get
17 too panicky about this and a I think oftentimes
18 affirmative action programs based on race can be
19 justified by compelling governments. I think
20 there is a compelling government interest in
21 race-based affirmative action programs. I think
22 the case can be made that the government has to
23 want to make that case and be committed to it.

1 Sometimes the Clinton Administration seems to mean
2 it. It's hard to know sometimes. That's a long
3 answer to your good question.

4 MS. PRIDE-EULER: Professor Carleton, you
5 mentioned unfair discrimination. Can you define
6 that for me?

7 DR. CARLETON: In the context of?

8 MS. PRIDE-EULER: I was trying to figure
9 out too I think you mentioned it a couple of
10 times.

11 DR. CARLETON: Right. That's the idea
12 like in the Johnson case where the Court held that
13 the plaintiff in that case was Paul Johnson, a
14 male plaintiff who had been he felt unfairly
15 denied a job that was given to a woman and the
16 court said well, okay, you know certainly we don't
17 want to entirely deny the opportunity for
18 advancement to Paul Johnson that wouldn't be fair.
19 That would be unfair discrimination as well as the
20 opposite slip side. But the courts held with
21 affirmative action programs, typically gender,
22 race or whatever is only one factor among many and
23 as long as it's only one factor among many and as

1 long as the affirmative action program is
2 reasonably flexible, that represents a good
3 balance between an ethic of care and a concern for
4 the legitimate rights of all employees. So, maybe
5 an affirmative action program that only considered
6 race or only considered gender and had no
7 flexibility whatsoever and I don't know if any of
8 those even exist. That would represent perhaps
9 unfair reverse discrimination.

10 MS. PRIDE-EULER: You use -- there's
11 research in there.

12 DR. CARLETON: Right because that's what
13 I was kind of arguing reverse discrimination can
14 happen. I think it's oftentimes a red herring.
15 It rarely actually happens, although I think
16 there's the methodology that it's common. I think
17 it's extremely uncommon. It can happen. There's
18 that possibility. I would state that unfair
19 discrimination, but I don't see that as a primary
20 problem in society today. I see it as highly
21 marginal, but it's been placed center stage by a
22 lot of politicians. It can happen. I don't deny
23 that it never happens, but I think it's extremely

1 rare. Its an exception to the broad rule of
2 affirmative action programs. That balanced care
3 with rights. Does that make any sense?

4 MS. PRIDE-EULER: You mentioned something
5 about the Supreme Court is very hostile towards
6 race cases, discrimination cases.

7 DR. CARLETON: Right. Affirmative action
8 programs based on race. They are very hostile in
9 the sense that they subject such programs to
10 strict judicial scrutiny which is extremely hard
11 to satisfy. And that was good of course when the
12 Court was looking at Jim Crow type laws, then
13 strict scrutiny was appropriate because of context
14 and I argue and the dissent argues in both
15 Richmond and Adaron the concept is different. Jim
16 Crow laws are generally different than affirmative
17 action programs and that's why there should be
18 only intermediate scrutiny for race-based
19 affirmative action programs because you can
20 distinguish between those two categories of
21 policy.

22 CHAIRPERSON MC FADDEN: Ms. Meyer, Mr.
23 Carleton, thanks for your presentation. We will

1 take now a break and resume at about 2:30.

2 (A brief recess was taken.)

3 CHAIRPERSON MC FADDEN: Mr. Jones, you're
4 first on our agenda, so can you state your name
5 for our recorder and where you're from?

6 GREGORY JONES

7 My name is Gregory Jones and I'm
8 with the Wisconsin Division of Affirmative Action.

9 CHAIRPERSON MC FADDEN: You would have
10 about six to seven minutes and after both of you
11 have presented, then the committee will ask you
12 questions.

13 MR. JONES: Am I to present first?

14 CHAIRPERSON MC FADDEN: Yes, you are.

15 MR. JONES: In your instructions or
16 direction to me you asked for a summary of the
17 position paper that I have developed and passed on
18 to the staff person. To summarize the paper, I
19 just want to highlight what it attempts to do and
20 what's included in it.

21 First of all, it discusses the role
22 and responsibilities of the division of
23 affirmative action in the area of equal

1 opportunity and affirmative action programs. It
2 speaks to the major goals of the division and then
3 it outlines and descibed the various programs and
4 reports that the division is responsible for.
5 That's the formal information. The paper attempts
6 to make a case that targetted recruitment develops
7 and sustains equal opportunity activity throughout
8 state government.

9 I'm going to have to rely on some of
10 the bases for what we do and if I get a little bit
11 repetitive with some of the terminology that you
12 may have heard today, forgive me, but bear with
13 me. But, essentially for positions that are under
14 utilized, the court component of our affirmative
15 action program is what we call expended
16 certification.

17 In the civil service system there
18 are various steps in the selection process. The
19 certification is a list of individuals who have
20 competed, successfully passed the exam. This
21 particular program expands that list which is
22 legally identified as five, it expands it for
23 minorities and women and under utilized positions.

1 It's at that point where the affirmative action
2 program develops those opportunities. What we've
3 noticed over the years is that it does open doors
4 for the interview for minorities and women. They
5 get to the interviews, they take it, they compete
6 on even grounds with any other candidate and are
7 expected to be evaluated as such. Essentially the
8 mainstay of the affirmative action program and
9 hopefully what comes through in this paper is that
10 any opportunity to address the formal civil
11 service practices for equal opportunity purposes
12 is fundamentally sound and appropriate to do. So,
13 we think that the expanded program brings those
14 individuals in to a point in the process where
15 they have an opportunity to get the job.

16 Now, I want to speak to a chart, a
17 couple of charts that are included in the packet.
18 You may not have them in front of you, but I think
19 I can make these points. They should be attached
20 to the very back. One is labeled Civil Service
21 Work Force is Becoming More Diverse. Racial ethnic
22 minorities and one for women. I just want to cite
23 just two comments relative to women, not that I am

1 or I'm slighting them, but I do want to state that
2 over the time period 1989 through 1993 we've seen
3 the proportional representation of women remain
4 somewhat steady in our work force and or by 50
5 percent over the years.

6 Relative to minorities, I'd like to
7 call the Chair's attention if you have a chart to
8 the year 1992. If you look at '92, it has a
9 number 2,299 and if you look at 1995 it has a
10 number of 2,571. The significance in that time
11 period was an aggressive effort as I mentioned to
12 focus on target recruitment and getting
13 individuals in the applicant process, minorities
14 particularly, and seeing the results carried
15 through to the end of the year. You may have
16 heard me kind of talk about getting them into the
17 process as applicants. Getting them to the
18 certification list and then jumping to hires.
19 This particular sheet shows actually net numbers
20 of individual minorities who are in the work
21 force. But the critical point that I want to make
22 about '92 is that there were several fundamental
23 changes made in terms of practices and policies

1 related to personnel actions in Wisconsin state
2 government.

3 Let me just highlight two of me
4 briefly and I'll end my comments. Fundamentally
5 in 1992 we learned that the recruitment efforts
6 for just about any position was not as integrated
7 and not as thorough as it could be. In '92 we
8 implemented what we-call-the recruitment activity
9 plan that requires the state agencies to do is
10 develop extensive recruitment plans addressing
11 under utilized positions and non under utilized
12 positions. And what we found was an increased
13 representation on employment registers which is
14 the precursor to our certification list I
15 mentioned earlier. And what we've noticed since
16 1992 regarding minorities is that there's been a
17 constant although slight upward trend in their
18 representation. The second point I want to
19 mention about '92 which fundamentally changes and
20 show from '92 onward significant or positive
21 increases for the representation among minorities
22 is we had an individual who was primarily
23 responsible for target outreach purposes and not

1 only traditional recruitment, we believe that non
2 traditional recruitment is what's needed to reach
3 people who may be culturally different than people
4 who are in decision making positions in the
5 agencies of state government. This individual did
6 outreach, extensive outreach to Native Americans,
7 minority community, Native American community,
8 Asian community and Hispanic Community. We've
9 learned and we believe that hopefully the paper
10 may not explicitly say this that recruitment for
11 minority individual cannot be done in the
12 traditional means. We're required -- it will
13 require extensive effort and resources and
14 individual who are able to relate to those
15 communities have the best chance of reaching them
16 and offer more opportunities. So, we think that
17 recruitment sets the stage. The policies and
18 programs we have in place follow that stage and
19 thirdly, we think that the evaluations that we do
20 and you will read is what gives us the information
21 we need to recommend procedural changes in the way
22 we do business in terms of recruitment and
23 employment in the state government. That's a

1 summary overall general, but as you go through the
2 paper, hopefully you will see some of the programs
3 we have in place. I don't want to understate the
4 significance of programs that make affirmative
5 action what it is. As you read about the internal
6 programs, the cooperative education programs we
7 have that are targetted for women and minorities
8 and persons with disabilities, the hope is that
9 they get exposure and experience and subsequently
10 become state employees. I will end my summary.

11 CHAIRPERSON MC FADDEN: Thank you. Ms.
12 Hoffman.

13 NANCY HOFFMAN

14 I'm Nancy Hoffman. I'm director of
15 non traditional employment training programs for
16 YWCA of Greater Milwaukee and I'm also a master
17 plumber. I served an apprenticeship as a plumbing
18 apprentice in construction. I'm also a union
19 plumber, so we can talk later.

20 My paper addresses Executive Order
21 11246 and Titles 29CFR 30 which is the Equal
22 Opportunity in Apprenticeship and Training. These
23 regulations articulate the goals for women in the

1 construction work force as skilled workers and
2 also as apprenticeships. The work force goals for
3 women under these regulations are 6.9 percent for
4 women in the skilled trades in the construction
5 work force over all and 20 percent for
6 apprenticeship. What these regulations do more
7 importantly is they detail actions that
8 contractors and sponsors who are the employers of
9 apprentices can take to obtain representation by
10 women in construction. The sixteen steps include
11 a lot of the same things that we advocate for a
12 trades woman and as trainers of people who are
13 hoping to enter the construction trade. Some of
14 those steps for instance are ensure and maintain
15 an environment that is free of harassment and
16 intimidation, developed on-the-job training
17 opportunities, disseminate the EEO policy and to
18 also ensure non segregated facilities except to
19 assure privacy to the sexes. As well they call
20 for training supervisory personnel and informing
21 them about the issues that women may have on the
22 job so that they can be alert to those kind of
23 things happening. These regulations were enacted

1 18, 17 years ago and in the State of Wisconsin
2 there were less than one percent of women in
3 apprenticeship in the work force overall in the
4 construction trades. That would have been 1978
5 and 1979. The increase in these past 18 years has
6 only been about two percentage points. So,
7 meeting the goal of 6.9 percent and 20 percent has
8 been falling far short.

9 When I was researching for this
10 paper, what I found were some surprising results.
11 You had a tendency having been in that industry,
12 to I think it was unwillingness on the part of
13 contractors overall that led to these goals not
14 being met. But, what I found was some surprising
15 things. One is what I think may be part of the
16 reason for the perception of goals is quotas.
17 When a contractor has a federal contract or is
18 made aware to whatever degree that they are of the
19 apprenticeship requirements for participation by
20 women and minorities, they often are only given
21 simply just the very introductory section of the
22 regulations which is where the goals are
23 contained. That's what's required by law. So, a

1 contractor may see that they need 6.9 percent
2 participation by women. They're not necessarily
3 made aware of 16 points in the case of
4 apprenticeship, the 10 points that lead to not
5 only recruiting a work force that's female, but
6 also retaining them on the job and making the
7 worksite women friendly. The broad unfamiliarity
8 with these actions, steps is really what I think
9 inhibits the drawing of women into the skilled
10 construction trade. And in my paper what I
11 attempted to do is look at what I found as some of
12 logistical issues that fail the OFCCP and/or
13 governmental agencies in trying to make things
14 happen for women in this work force.

15 I'm hoping that these
16 recommendations will explain what I found to some
17 degree. Require result-oriented affirmative
18 action programs and maintain the goals that give
19 the measures. So, that we can see if contractors
20 are indeed making good faith efforts. What seemed
21 to be lacking overall was communication between
22 all the government agencies that may be involved
23 in the process of contracting from the federal

1 government and through the state to the county, to
2 the city and so forth and it seems to be needed
3 for a formal system of communication between those
4 agencies that one agency or another would take
5 leadership and pull folks to be within those
6 agencies so that they can communicate clearly,
7 concisely and completely to the contractor is what
8 the expectations are. With that I believe there's
9 also a real need for community agencies. The
10 industry, which includes the unions, includes the
11 trades associations and contractors and joint
12 apprenticeship committees to sit at the table with
13 government agencies and really undertake a
14 dialogue where that will support everyone being
15 educated by the requirements, the methods, the
16 strategies that have been proven to work so far
17 and to move forward with really undertaking those
18 actions steps.

19 In Wisconsin there's been a few
20 initiatives that have done that on an informal
21 basis, but have really attained some incredible
22 results. The best instance would be the Wisconsin
23 Department of Transportation pulled all of those

1 key leaders and key players together to develop a
2 training program to help minorities and women
3 enter the road construction industry, one of the
4 toughest industries to enter and stay in. It took
5 about two years of time and there was a lot of
6 discussion, pleasant, unpleasant, but what it was
7 was an education process and it really built the
8 capacity of everyone to understand what the issues
9 were and what needed to be done. The program now
10 is in its second year and there last year I
11 believe the figure is 38 minority men and women
12 who entered the highway construction industry and
13 they will be returning for the most part this
14 season to continue that career. So, the
15 public-private community partnerships I think are
16 key, although I think there needs to be leadership
17 by government in making that happen. I think
18 another opportunity is to involve employment and
19 training systems throughout the state. Its an
20 immense system, but they do have resources in
21 terms of opportunity for contractors as well as
22 the agencies to help prepare and train people.
23 And I also think we yet need to hold the

1 contractors and the sponsors accountable for their
2 goals and if we stay on track with the results
3 oriented programs and if they have their trade
4 associations give them the assistance they need by
5 way of results oriented programs, I think that all
6 the stakeholders will be satisfied on this. I
7 think that's it. Thank you.

8 CHAIRPERSON MC FADDEN: Committee, do you
9 have any questions for Mrs. Hoffman and Mr. Jones?

10 MS. KIRAM: Mr. Jones, I have a question
11 from your statistics in that you said that within
12 the period 1993 to 1995 the push to hire
13 minorities was a lot more aggressive. Actually
14 the statistics for 89-90 are the highest and it's
15 higher in total than all the other years combined
16 up to now. I don't know if there's a different
17 way to look at it is that the state really hasn't
18 made a lot of push -- I'm sorry to say this, but
19 I'm also a state employee -- in hiring minorities
20 and women? Will you attempt to improve? I mean
21 some of the people that were hired, for example,
22 there are more people in my department than the
23 number of total hires for the state. If these,

1 the statistics, if they're only civil service. I
2 was hoping that there would be more.

3 MR. JONES: First of all, these are not
4 new hires. These numbers represent work force
5 composition or work force representation each
6 year. If I were to give you the new hire numbers,
7 are we looking at the racial ethnic minority in
8 the classic work force, 89-95?

9 MS. KIRAM: Right.

10 MR. JONES: The new hires number would be
11 totally different. I can cite for you some of
12 those new hire numbers since 1992 when I came on
13 board. For racial ethnic minorities, the new
14 hires percent has been about ten percent each
15 year. In '95, July 1 it was 11 percent. Now,
16 that's based on our fiscal year from July 1 to
17 June 30th of the following year. So, the new hire
18 numbers would be exactly that. For the work force
19 numbers, this should represent the work force and
20 if you were taking, you know, just doing the
21 subtraction between 89 and 90, you probably would
22 get a number that would be higher than some of the
23 other years. The point that I'm showing here with

1 this is that there's been a continuing trend
2 upward, but more importantly, you don't have this,
3 the total comparison ~~between~~ work force numbers,
4 the total work force numbers. These are minority
5 work force numbers versus the total. So, you make
6 a good point. As far as race ethnic minority
7 overall, I do know that we have been pushing to
8 attract individuals and we see that in terms of
9 the new hire numbers. So, I can't speak
10 thoroughly to or completely to your comment. I
11 can say that we use recruitment not only to
12 attract people into the work force, but also to
13 learn about some of the barriers that they are
14 having. So, without giving a whole lot of detail,
15 the person who is out recruiting keeps me informed
16 as to some specific barriers that he's finding
17 that various ethnic groups might be experiencing
18 so we can attempt to deal with some of those.

19 MS. KIRAM: How can I get the terms Asian
20 American into the job opportunity bulletins that
21 come from the state?

22 MR. JONES: Into the job opportunity
23 bulletin?

1 MS. KIRAM: Right. When these bulletins
2 come around trying to entice minorities into the
3 work force, there's an enumeration of what the
4 minorities are composed of in the state and it
5 does not include Asian and I made this comment
6 earlier in the morning session in that it's not
7 the fault of the state, but it's cultural to the
8 Asians not to apply if we are excluded where
9 there's an enumeration and I'm trying to find out
10 maybe are you the big honcho that can put one word
11 in and make us feel we're welcome? Because one
12 reason I get some bulletins for minority hiring
13 and everytime I pass it on to an Asian group, they
14 all say I'm not there, I'm not going to apply,
15 they don't need me. I'm not welcome. And like I
16 said, it's not your fault, but it's cultural to us
17 that when there's an enumeration and we're not
18 included, we know we're excluded.

19 MR. JONES: Let me ask you though that
20 enumeration that you spoke of, first of all, on
21 the state application it will have what we call a
22 racial ethnic code and ask the people to identify
23 whether they are of African descent, African

1 American, African hispanic descent, spanish
2 descent so to speak as well as pacific islander
3 and under the designation for pacific islander
4 Asians are specified in the current opportunities
5 bulletin. I'm trying to reflect now where that
6 may not designate any -- I can double check. It
7 may not designate any ethnic designations, but in
8 terms of the state application, I think that can
9 certainly be looked at.

10 MR. KIRAM: What happens is I can't get
11 to the state application if I'll not apply because
12 in the beginning I already feel I'm not qualified.

13 MR. JONES: So, good point.

14 MS. KIRAM: The next step for me too is
15 to apply and find out I'm included. So when I
16 originally look at the application, I'm excluded
17 so I don't get to the next step.

18 MR. JONES: Okay. That's probably due to
19 the broad equal opportunity policy which basically
20 says we don't discriminate. But it doesn't
21 specify.

22 MS. KIRAM: And it specifies you know
23 what I'm saying.

1 MR. JONES: It specifies exclusively or
2 inclusively. I hear what you're saying.

3 MR. MINHAS: Another point when it's not
4 included in the bulletin that these minorities are
5 included for employment opportunities and you send
6 the form. The common concept on the form is that
7 you want them to identify not to discriminate that
8 you give preference.

9 MR. JONES: Right.

10 MR. MINHAS: So even those people who
11 decided to apply will not apply looking at those.
12 Well, not being there, they're going to look at
13 this one. If I'm of this kind of the thing over
14 here, they're going to throw it out.

15 MR. JONES: Interesting.

16 MR. MINHAS: Ms. Meyer I have another
17 question. You said it's a very complex procedure
18 to hire the minorities into the state system.
19 Since the morning we have been discussing the
20 process which are going on and more or less and
21 it's that club I refer my friends and my friends
22 refer their friends and so the majority community
23 is there and minorities are not included or

1 excluded. Now, what is your agency doing to get
2 minorities informed that these jobs are available
3 because in my office or institution we never got
4 that from the state?

5 MR. JONES: Notices?

6 MR. MINHAS: Notice that these jobs are
7 open and it's a minority institution. So, if we
8 are not getting even the notice, probably what our
9 conclusion is we are deliberately excluded, not to
10 hiring into the state system. So, what are you
11 doing to eliminate those kind of things?

12 MR. JONES: We're doing five things. One
13 I mentioned, the targetted recruitment has three
14 components, one is that we work closely with the
15 Milwaukee Urban League and also there's the local
16 access television company where we've done several
17 local community television shows announcing jobs
18 and even using people from the various agencies,
19 industry, labor, human relations or whether it's
20 revenue and have those individuals talk about jobs
21 on the television. Two years ago before the radio
22 station I believe it was with an OV. I may have
23 that wrong on their public service announcements.

1 They would announce each Monday all of the job
2 vacancies we had throughout the community. So,
3 those are two of the parts of that target
4 recruitment for the third part has to do with the
5 actual face to face visits with probably about 17
6 to 20 community based agencies in Milwaukee.
7 We've had those with the Sanish Center, with the
8 Urban League, NAACPs all over the place as well as
9 the Native American community outside of Milwaukee
10 and throughout the state. So that makes up what I
11 meant by that target recruitment. The other thing
12 that we're doing to get at the old boys network is
13 kind of rooted in the equal opportunity
14 affirmative action conformance standards. If the
15 position is under utilized and we get minorities
16 interviewing for them or women and they're not
17 hired, that agency has to give us a written
18 justification for non selection. That's probably
19 our most strongest affirmative action EEO standard
20 that not only is it second guessing the agencies,
21 it basically gives them the opportunity to take a
22 look at the hiring decision, make sure it's being
23 based on principles of permit qualification and

1 the whole work and I can tell you from having sat
2 on both sides where I had to talk with supervisors
3 to justify hires, it may take some education
4 sometimes to tell them that the basis of the
5 reason they're giving don't add up in my head so I
6 can't go along. At the same time you're being
7 fair to the hiring decision if they give you a
8 justification that is reasonable, it's the
9 responsibility of that AA officer to say that's
10 justifiable. But, it's also that responsibility
11 to say if things are not kosher and don't add up
12 not reasonable, it has to be questioned,
13 challenged and checked. Now and getting back to
14 your question on recruitment, that's part of it.
15 That happens with the target recruitment for the
16 outside of the walls of our office. Inside of the
17 walls I mentioned the agencies have to do a
18 recruitment planning and those forms that they use
19 to identify who they're going to contact, what are
20 they going to do when they contact me? They're
21 called the recruitment activity plan and we
22 monitor those. When they do those plans and they
23 come to us and we see that they're not going to

1 agencies where we think people locate, visit or
2 gather, we include that as an activity in their
3 recruitment program and they have to do it.

4 Lastly, we have what we call an
5 affirmative action directory and this came to mind
6 immediately as you mentioned your organization.
7 It's a list of over 400 organizations in Wisconsin
8 and it's broken into four regions, northern,
9 southern, eastern and western and all of the
10 organizations, community based organizations
11 including the technical schools and the four year
12 schools in that region are part of that directory.
13 So, when an agency has a vacancy in region 1, in
14 region 5, we can give me the names of those
15 organizations and they can contact us. So, if you
16 were to give me your name, the name of your
17 organization, I can include it in that resource
18 directory which we've made available to all of the
19 agencies. So we think that we're getting it out.
20 What I think is the limitation in terms of
21 notification is are these numbers. Now, let me be
22 clear what I mean because you hit the nail on the
23 head before. We began in '92 really beefing up

1 the targetted face to face effort. We knew from
2 the data we collected off the state application
3 that most people learn about state jobs from their
4 friends and our work force is 5 percent white
5 Americans. It's been that way. So, the orders
6 are that white candidates are going to learn about
7 jobs from their personal uncles, aunts and so on.
8 So, in 1995 and this is a total number of racial
9 ethnic minorities, only \$2,500 in hand the work
10 force is 41. That is that tells us that you have
11 45 percent. The circle that they would have to
12 use the layers of circle to get the word out is
13 much more. And the other thing I have to have,
14 being a recruiter and this is my personal rule of
15 thumb, while it may take one or two contacts with
16 a -- and I'm just going to say white Americans
17 because I need to make this example. It may take
18 one or two contacts with a white American to
19 apply. It may take seven or eight for a minority.
20 So, the rule of thumb for me is seven to one
21 ratio. We have to contact that minority involved
22 maybe seven times to get me to apply. They may
23 have to hear it, one may be muddy and visual, one

1 man visual. The other may be oral. We have to do
2 that. We attempt to bring some cultural dynamics
3 into recruitment games which I think has been
4 missing from the traditional recruitment efforts.

5 MR. MINHAS: The reason it takes one or
6 two attempts for minority people to get to apply
7 and or to minority persons if I believe I'm
8 implying, I have 50 percent of a chance of getting
9 hired, I wouldn't want for the second person to
10 tell me, I'll go out and do it. And if I believe
11 this person is telling me I'm not going to get in
12 any way, so I will not believe it until eight
13 people come and tell me do it this time. It's
14 your turn. Then probably I'll go and do it. So,
15 it's to prove that way to the minority that yes,
16 we are serious. We really need you. If you're
17 qualified, if you're equal, you will get it. We
18 have to do that. And in order to do that, we have
19 to reach me right away. We've got to tell me
20 these are the job openings. These are the
21 qualifications that are required. We are
22 considering -- you give all the names of the
23 minorities listed. These people are considered as

1 priorities. They will get the job just like she
2 said, the name of Asians is not there and I saw
3 the difference on the forms. It's good to
4 eliminate it and to some extent that's true. They
5 just read that and though it's on their side and
6 you've got it, it's got to say in the job opening
7 itself. They are the minorities. They will be
8 given some sort of preference if they meet other
9 requirements. Probably people will get more and
10 they will not need the eight contacts to apply.

11 CHAIRPERSON MC FADDEN: I also think when
12 you're dealing with minorities, minorities do
13 things because of their relationship with you.
14 Relationship is important and being a state
15 employee, you're part of an institution. So,
16 state agencies need to use community based
17 agencies who have relationships with the
18 population that you're trying to reach.

19 MR. MINHAS: For some reason Nancy
20 Hoffman's agency have my address and we are in
21 that organization doing things and yours is not.
22 But, I'll give you my --

23 MR. JONES: Sure.

1 MS. KIRAM: In the state level, are you
2 authorized to specify that you want to specify
3 that. You want to hire a certain group of
4 minorities if its under utilized?

5 MR. JONES: No.

6 MS. KIRAM: It has to be a general --

7 MR. JONES: Right. We follow the general
8 planning methodology which compares minorities,
9 all minorities. So, we don't break down black
10 versus hispanic. For example, that expanded
11 certification program I mentioned the way that
12 would work is the highest scoring minorities who
13 would be added to the list would be minorities,
14 they can be black, Hispanic, American indian,
15 Asian or whatever. So, it doesn't specify.

16 MS. KIRAM: It doesn't specify?

17 MR. JONES: The same thing with women.

18 MS. KIRAM: Suppose you met an Asian in
19 an agency that's large and there's -- and you
20 can't --

21 MR. JONES: No because the model we use
22 is not developed on specific racial --

23 MS. KIRAM: Just minorities in general.

1 MR. JONES: Right.

2 MS. KIRAM: But, if you have an agency
3 that's all white and you want a minority, you can
4 specify?

5 MR. JONES: In the analysis it will show
6 that that agency is under utilized for minorities
7 in the job group of program planning analyst
8 professional or something like that. So, it would
9 be targeted and identified in the analysis and
10 then when they do their plan, they have to show
11 some steps that address that under utilization and
12 they are minorities for that particular job and
13 that's what we evaluate them on.

14 MS. KIRAM: In the state level, other
15 than taking the test or being -- is there any
16 other way for upward mobility?

17 MR. JONES: Good point. We have an equal
18 opportunity standard on upward mobility in our
19 guidelines to the agencies and we ask me to
20 identify ways to achieve upward mobility for women
21 and minorities in the work force. Many of those
22 agencies have put in place what they call bridge
23 or training programs or interim programs and those

1 programs logically link positions that vary their
2 into higher level ones. For example, if you look
3 at the way the system, the classification system
4 is laid out, you can look at something like in the
5 Department of Revenue maybe and let's say a
6 revenue agent and you could look at boxes as to
7 where that revenue agent could go based on the
8 skills he or she has already developed and it's
9 that kind of learning and planning that they do
10 for individuals. So, there are some interim
11 programs, some bridge programs that agencies are
12 doing. I personally think that what has to
13 happen, there must be more interim within those
14 agencies. There needs to be more cross training
15 within the agencies and between the agencies
16 because that in my opinion a person performing
17 physical services operations in the Department of
18 Administration could benefit from doing that same
19 thing in the Department of Transportation or there
20 may be more opportunity to apply that skill in an
21 upward mobility route. So, to think this state is
22 going to have to look much broader at its overall
23 planning for upward mobility and that can happen.

1 MS. KIRAM: Without the tests?

2 MR. JONES: Sure, sure, it could.

3 CHAIRPERSON MC FADDEN: We have time for
4 one more question.

5 MS. PRIDE-EULER: A clarification for
6 those that are not in state government that my
7 counterparts here is up in Hayward at a community
8 college and so he's saying that they're not
9 getting the current opportunity bulletins, but I'd
10 like for you to mention too it's now on the
11 internet so that everybody has access to it who
12 has the internet or access to a computer and I
13 think that was one of the innovative ideas that
14 came up with in the last couple of years and the
15 internship programs are on the internet. The
16 state has an internship program which is called
17 SAAIP for junior, seniors and graduate students in
18 college. What's happening though and Greg I want
19 you to know this, a lot of the students are not
20 aware of that program, so --

21 MR. JONES: Here's where I think you all
22 can help.

23 MS. PRIDE-EULER: Go ahead.

1 MR. JONES: No, I'm sorry.

2 MS. PRIDE-EULER: And for the Department
3 of Natural Resources, I have taken it upon myself
4 to inform people of all of these things that are
5 going on. But I'm getting calls everyday from
6 students that are graduating from college, seniors
7 wanting to know do you have an entire -- do you
8 have a job? Well, did you know about the SAAIP?
9 No, never heard of it and it's not that people are
10 not doing it, but somehow or another the colleges
11 are not trickling this information on down to the
12 students that are busy trying to; number one, get
13 the A or B in that class. So they're not going to
14 the little career fairs where other people would
15 go. And I'd also like to point out in the process
16 of doing all of my career fairs and job fairs that
17 I go to there are very few people of color and so
18 I wondered why aren't you dressed? Why don't you
19 have your resume with you? Oh, I didn't know
20 about this. So, there's a breakdown somewhere
21 and I think it's incumbent upon me to make sure I
22 get the information out there as a recruiter.

23 CHAIRPERSON MC FADDEN: Mr. Jones, you

1 have a minute to respond and we need to move on.

2 MR. JONES: Just briefly then I think all
3 that you've said is true and I think the other
4 significant element in this notification or
5 announcement with that program has a lot to do
6 with who is in state government. The people in
7 state government know about it. They have a
8 tendency to let their daughters and sons and
9 everybody else know and again we're talking about
10 five percent versus five percent and I agree with
11 you that somehow that information is not getting
12 down from advisors, college level to the students.
13 That's something that I personally taken upon
14 myself to go out and do regrouping.

15 CHAIRPERSON MC FADDEN: Ms. Hoffman, Mr.
16 Jones, thanks for your presentation.

17 CHARMAINE CLOWNEY

18 I'm Charmaine Clowney, Assistant
19 Chancellor of Diversity Compliance for the
20 University of Wisconsin, Milwaukee. I'm in charge
21 of implementing I call it now Diversity Programs.
22 I changed the title of my job because I think it's
23 in keeping with the times. I monitor affirmative

1 action diversity programs for faculty and academic
2 staff. The crux of the paper that I've submitted
3 to you today basically deals with whether the
4 Executive Order 11246 under which we operate as a
5 college affirmative action program should be
6 continued, modified or just completely done away
7 with. And to make your job a little simpler
8 today, what I'm going to do is throw out some
9 myths that we've all heard about affirmative
10 action and some realities and also summarize in
11 terms of the position I think that we should
12 follow.

13 Myth, minorities and women receive
14 preferences. Affirmative action does not require
15 preferences, nor do women and minorities assume
16 that they will be given preferences because of
17 race, gender and national origin. These are
18 merely factors to be considered when hiring or
19 accepting qualified applicants. Hiring qualified
20 women and minorities is not dissimilar to the
21 preferences that are given to veterans in hiring
22 and children of alumni in college admissions
23 programs.

1 Myth, affirmative action really
2 means quotas. We've heard that affirmative action
3 has never been about quotas, quotas are illegal.
4 The U.S. Supreme Court has been clear about the
5 misuses of affirmative action and, of course,
6 certainly there are some unfair employment
7 practices that go on that we can't monitor, but
8 basically it doesn't mean quotas.

9 Affirmative action leads to reverse
10 discrimination. That's a myth as Dr. Bentanza
11 says in many of his discussions, he's a well-known
12 diversity consultant. I haven't seen forward
13 discrimination, so where's the reverse? The
14 evidence demonstrates reverse discrimination is
15 rare. For example of 91,000 employment
16 discrimination cases before the EEOC that's last
17 year, less than two percent were reverse
18 discrimination cases. And also there's a study on
19 this very issue that Rutgers University just
20 sponsored. I think it interesting that one of the
21 four African Americans named this year to top
22 posts at major companies explicitly noted the
23 role of affirmative action and that it played in

1 their careers. They were Kenneth Senault, Vice
2 Chairman at American Express; Richard Parson,
3 President of Time Warner; Warren E. Shaw, Chief
4 Executive Officer at Capital Management, a \$28
5 billion New York Money Management firm; and Robert
6 Hollinger, President and Chief Executive Officer
7 at Ben and Jerry's. Shaw said earlier this year
8 that he and the others named to the top post all
9 had been in our business for twenty years. He
10 credited the great society programs of the '60s
11 and affirmative action for opening doors
12 and giving talented managers a chance.

13 Title 7. Myth, Title 7 alone and
14 I've heard this in numerous conferences, alone
15 you don't need affirmative action. You've got
16 Title 7 where people can file lawsuits. The
17 reality of this is that affirmative action means
18 taking positive, proactive and pre-emptive steps
19 to root out discrimination rather than waiting for
20 the after-the-fact litigation. Title 7 simply is
21 not enough -- it may be enough to address
22 discrimination, but it will do so only after an
23 instance of discrimination has been claimed.

1 Affirmative action policies are a means to end
2 discrimination and far less costly and I think if
3 we did away with the Executive Order 11246
4 program, we would see just a proliferation of
5 Title actions, Title 7 actions.

6 Myth, the federal government should
7 not promote affirmative action through government
8 contracts. I'm here to state that if it had not
9 been for Robert Potter who is sitting there and
10 the Executive Order 11246 Office of OFCCP, my
11 university would not have taken the positive
12 proactive steps. My very job title, I have been
13 put in this position. Of course I'm qualified,
14 but things did not change until OFCCP stepped in
15 and said okay, let's change. There's another
16 myth, pay differences between women and men are
17 not due to discrimination. The 1989 report by the
18 National Research Council of the National Academy
19 of Science confirmed earlier research by the
20 National Academy found that one half of the one
21 fourth of the earning differential between men and
22 women could not be explained by legitimate
23 differences in education, training, experiences

1 and characteristics of jobs.

2 Myth, women benefit more than
3 African Americans from affirmative action. I
4 think that statistics have shown that to be true,
5 however, both women and minorities have benefitted
6 from access to full education and workplace
7 opportunities to address past discrimination and
8 to pit these groups against each other is simply
9 wrong. Affirmative action programs are good for
10 both women and minorities and we should not be
11 caught up in the rhetoric of pitting groups
12 against each other.

13 Myth, women seem to be doing well in
14 education and in the work force; therefore,
15 affirmative action for women should not be
16 continued, even the so-called earnings gap between
17 men and women has closed significantly in recent
18 years. The reality is that in 1993 the total
19 amount of wages women lost due to pay inequity was
20 nearly \$100 million. The average women loses
21 approximately \$420,000 over a lifetime due to
22 unequal pay practices and I could go on and on and
23 read statistic after statistic. But when we talk

1 about changing affirmative action the way I see
2 it, I think that as one manager told me once, yes,
3 OFCCP has been here. Now we can put the plan on
4 the shelf. That is completely -- I don't know how
5 we get at that other than number one, streamlining
6 perhaps the eight factors analysis and beefing up
7 the good faith efforts. What have you done? Have
8 you been out in the community? Are you working
9 with community based organizations? We need to
10 become creative and that's what I've tried to do
11 at UWM to make our plan a living, breathing plan
12 rather than let's wait for the OFCCP which is akin
13 to the IRS to come in. We also need to internally
14 not rely on the OFCCP to come in and make us do
15 the right thing, but we also need to be again
16 creative. We at UWM, the performance evaluations
17 of all of our deans are hinging on how well they
18 have promoted diversity within the organization.
19 We are now embarking for the first time on a
20 recruitment resource manual. I believe that you
21 got to do -- it's so much many times in terms of
22 implementing these programs depend on that person
23 and that person simply can't be a bureaucratic.

1 That person has to be a passionate advocate. So
2 again yet affirmative action should remain in
3 particular because I've got a lot of statistics
4 that say that we need it and we can't and
5 affirmative action programs. However, I think we
6 need to look at some creative solutions meaning
7 briefing up the good faith efforts portion of the
8 executive order when the investigators come in and
9 not nearly crossing the ts and whatever, just
10 being a micromanaging our plan, but to really to
11 assist us with making these plans living and
12 breathing plans. Thank you very much. Any
13 questions?

14 CHAIRPERSON MC FADDEN: Any questions?

15 MS. PRIDE-EULER: You just said that the
16 staff or the faculty's performance evaluation is
17 it staff?

18 MS. CLOWNEY: These are deans at my
19 school. Deans who have hiring problems. I get to
20 play with their salaries.

21 MS. PRIDE-EULER: So, what incentive do
22 they have you know if it says if their performance
23 evaluation says that they have to do something

1 affirmative and they don't do it? They get an
2 incentive to do it and if they don't, what
3 happens?

4 MS. CLOWNEY: The incentive to do it,
5 unfortunately, is the bottom line, money. It
6 should be because it's the right thing to do and
7 they have to in terms submit me all of them
8 internal affirmative action plans and this is
9 under my direction. This is the first time every
10 they've submitted comprehensive plans with good
11 faith efforts and I'm working with me. They're
12 not just left out there alone, but you really do
13 have to work with them. We now are discovering
14 they don't know where to recruit and how to
15 recruit. So what we're doing for the first time
16 is develop on the internet recruitment resources
17 list and we have to show me the light. They don't
18 necessarily see the light without you showing me
19 the light. However, those that miss
20 opportunities, then they have to report to me. I
21 also am signing off that all the recruitments have
22 to come through me. Now that's something that
23 OFCCP mandated and that's something that is being

1 implemented, especially in my group with me at the
2 helm. So, again, so much of accomplishing things
3 under affirmative action depends on that person
4 and if you don't have the right person in there,
5 you do need a OFCCP to come in there and
6 unfortunately make people do the right thing. So,
7 I really see a dismantling of OFCCP or similar
8 agencies that's going to be setting us back so
9 much because so many people don't have my passion
10 or the passion of Greg Jones or others.

11 MS. FARRELL: Of the UW system, schools
12 compare to your school in terms of affirmative
13 action?

14 MS. CLOWNEY: I'm brand new, but I think
15 because we were audited, I'll answer it this way.
16 We were audited in 1992 and because we were
17 audited, we are at the helm. We are now in terms
18 of recruitment and promotion -- I don't monitor
19 student retention, that's student affairs, but
20 we've got national average of ten year minority
21 faculty is 12.6 percent, we are at 14. And so
22 much of that was done because of the audit that
23 was conducted and Bob I see you sitting back

1 there, that doesn't mean that you have to come in
2 and beat us up again but we are now at the helm
3 and others are calling me. In fact, I'm giving
4 diversity and training workshop seminars
5 systemwide now and so I think Madison is next of
6 course because there's a relationship between -- I
7 just believe that if you're getting federal money
8 and all these billions of dollars, then your
9 faculty and your staff and your student body
10 should reflect America.

11 MS. PRIDE-EULER: Just a point of
12 clarification. You were talking about the
13 university has missed opportunities. Not only has
14 the university lost out on those, but so has the
15 applicant if they're not hiring us for those jobs.
16 So there's two double jeopardies here. There are
17 missed opportunities and lost opportunities for
18 the candidate. So, how do you --

19 MS. CLOWNEY: With the classified system
20 we have to rely on very general. For unclassified
21 staff and faculty, yes, I can make a difference
22 and we can make a difference. But we have to go
23 to the state to blame applicant flow problems and

1 so forth and I think that the state can be doing,
2 now that I'm involved in this more, a heck of a
3 lot more to promote diversity and I think we
4 should use that term. I like that term diversity,
5 because it really reflects what we're all about.

6 MS. PRIDE-EULER: I work for the state
7 and so I know what we're doing and I know what we
8 say and I know what management says. But, when it
9 trickles down to that first line supervisor who
10 has hiring authority, who can pick that candidate
11 and that's when we come up with this lost
12 opportunity. So, if there's a candidate here and
13 a candidate there and I'm one of them and they
14 like that person better for whatever reason, it
15 has nothing to do with qualification, I think
16 that's been said so many times today. It has
17 nothing to do with the best qualified or the most
18 qualified.

19 MS. CLOWNEY: It doesn't and I think it's
20 up to and I'm not pushing lawsuits here, I happen
21 to be a lawyer, that's why we do have the EEOC and
22 if we flood the court with EEO litigation, maybe
23 we'll beef up the affirmative action part and

1 maybe that's what it's going to take. But, the
2 state system is very rigid I found. I've only
3 been there since August, but I have been very
4 frustrated and again some creative incentives like
5 we do in unclassified staff with faculty, you
6 know. They may need a little help there in terms
7 of evaluations and so forth; performance
8 evaluations. But they've got to walk the walk,
9 not just talk the talk. And you don't really see
10 it reflected in the numbers. That's something
11 that I don't know if I can change but, I certainly
12 am going to make an effort toward change.

13 MS. PRIDE-EULER: But they are walking
14 the walk, but still when you say we've hired X
15 number of minorities or people of color and you
16 walk around a building and you don't see me, so
17 you say show me. That type of thing, and on paper
18 it might say I was hired, but if people don't see
19 me there. Like I do recruiting for our department
20 and when I go to these fairs as I said, I don't
21 see people, the students out here, I come to UWM
22 and there are more here at UWM. I've been to
23 Madison in engineering and the other departments

1 and they're not there. I didn't know anything,
2 but it. I just found out about it and I start
3 fussing, you know, as a mother I start fussing.
4 You know, it's your responsibility to know what's
5 going on at this college and I know they're trying
6 to get their grade. One of the things is if you
7 don't get that A or B or C you're out.

8 MS. CLOWNEY: I know at UWM have all the
9 mechanisms in place. We've got outreach. We got
10 34 percent of our student body, although I don't
11 handle that end, happens to be minorities. We have
12 urban initiatives. If anybody should, we should,
13 so I appreciate your comments.

14 CHAIRPERSON MC FADDEN: Thank you very
15 much.

16 Our next speaker is not here, so
17 we'll take a break until 4:00 o'clock until he
18 gets here.

19 (A recess was taken.)

20 CHAIRPERSON MC FADDEN: Welcome Attorney
21 Costello and Attorney Ranus. We're going to allow
22 you to have about eight to nine minutes each
23 because we have some time left over and at the end

1 of your presentation, the committee will ask you
2 some questions. Okay, can you state your name
3 again, for the recorder and where you're from?

4 MR. COSTELLO: My name is Timothy G.
5 Costello with the law firm of Kruskowski &
6 Costello, S.C..

7 MS. RANUS: My name is Shelly A. Ranus
8 and I'm also an attorney with Kruskowski &
9 Costello.

10 TIMOTHY COSTELLO, ESQ.

11 Let me start off with I guess a
12 couple of observations and perspectives. When we
13 were approached to submit our view of affirmative
14 action, we were given a very broad definition or
15 no definition probably in terms of what we
16 perceived affirmative action to be in our
17 practice. Our practice is representing employers
18 or management or companies in a whole host of
19 employment and labor law issues. So, that's why we
20 were very open on the title of our paper that it's
21 from an employer's perspective and we tried to
22 focus -- there's a lot of social, psychological,
23 economic demands in this whole topic that go way

1 beyond an employer's resources, an employer's --
2 the employer most likely then cause these things
3 to happen in terms of educational defenses,
4 cultural deficiencies that society has tried to
5 address by a variety of laws. So, our perspective
6 was really purely tried to focus in on the
7 employer's perspective in what the legal system
8 has done to the employer with regard to the
9 affirmative action process or the concept of
10 affirmative action. And we tried to be, I'm sure
11 you've been inundated with papers and writings. I
12 don't know, I'm sure they vary in length. We
13 tried to be very concise and stay within our focus
14 of our paper. What I want to do is just hit some
15 central themes of that paper and with that
16 integrate some concepts that we experience on a
17 day to day basis representing companies.

18 My first observation is there's very
19 few clients I've ever represented that I even had
20 an instinct that they purposely discriminated. I
21 think when you look at affirmative action, it's
22 really probably how hard you want to try. That
23 was the original I think purpose of it back in the

1 early '60s and with our review and research and
2 reading, it appears the original purpose was to
3 make the employer or compel the employer
4 especially if they want to do business with the
5 government, the United States government to go out
6 and actively recruit candidates and hopefully
7 qualified candidates. But to get this, what I
8 call the applicant flow going, because you can't
9 really have a diverse work force if you don't make
10 any effort to get qualified applicants from the
11 broad labor market whether it's hispanic, woman,
12 Afro American. If you're only getting applicants
13 from word of mouth hiring of your all white work
14 force, you're not going to have a diverse work
15 force because your applicant flow just isn't
16 there. And employers did that for all practical
17 purposes and its worked well. If you look at most
18 affirmative action plans and their results, very
19 few times is the deficiency cited that you haven't
20 tried. Whether it yields a result where you
21 actually get the applicant flow in that's a
22 product of the labor market you're in really. But
23 most times when I've gone through an OFCCP audit,

1 there's been good applicant flow, good
2 advertising, good exposure on the job. So, the
3 paper hits on this theme that affirmative action
4 should be a recruiting tool. That was the
5 original focus of that because you can't make an
6 equal opportunity decision unless you have a
7 diverse applicant pool to draw from. And we go
8 through the historic development in some of the
9 Supreme Court cases all the way up to 1995. I
10 hope I don't do injustice to this plaintiff's
11 name, but I think it's called Adaran Contractors
12 versus Pena. That's cited on the first page of
13 the paper. And there the Supreme Court again
14 takes another hard look at what are we going to do
15 about affirmative action and if you read footnote
16 11 on page 3 there's a telling quote from Justice
17 Scalia that the Constitution does not create a
18 debtor/creditor relationship based on race or
19 based on sex or based on any other protected
20 category and this case is to me is very
21 predictible of what the Supreme Court will do for
22 the near future when they scrutinize affirmative
23 action from being a recruiting tool to a hiring

1 requirement. And what the Supreme Court has said,
2 especially in this case is that you'd better have
3 some very specific finding of discrimination for a
4 specific individual before we will allow you to
5 use affirmative action as a hiring requirement
6 versus a recruiting tool. So, in the near future
7 as long as the Supreme Court stays basically in
8 the configuration that it is, that will be the
9 attitude and I think that will be the result. The
10 fundamental problem we have had with clients that
11 again I start with the general premise that no
12 client purposely discriminates against a minority
13 group in terms of hiring and will stay with that
14 for now. We have a client that was in an
15 industry, is in an industry that has historically
16 been male dominated. This client has never been
17 sued for this, but they are aggressively seeking
18 to diversify their work force through the forms of
19 applicant flow, advertising, doing everything you
20 can. We are now in a lawsuit because we hired a
21 female over a male, but we always end up -- we're
22 always going to take the most qualified. We'll
23 have the diverse applicant pool. And the first

1 thing a lawyer now asks for in these cases is give
2 me every piece of paper you've ever done on
3 diversity, training in the company. What's your
4 company's mission with regard to it? These are
5 all good laudible company goals to try to
6 diversify their work force. You know what's going
7 to happen, that's going to be used against us in
8 this case saying see, the white male didn't have a
9 chance to get this job. It wasn't really a
10 recruiting tool of company A, B and C, it really
11 was a hiring requirement of A, B and C. So, the
12 paper ends with the conclusion or in this sense is
13 I really need to have these executive orders and
14 the paperwork function that's required if
15 affirmative action was truly intended to be a
16 recruiting tool. Why do we say that? Well, we
17 have a variety of different ways to communicate;
18 job openings these days. We have a whole
19 different approach, different labor market,
20 especially here in Wisconsin, that creates such a
21 shortage of workers that do we really need to have
22 a government requirements that says you must go
23 out and recruit and advertise in the minority

1 communities because you do business with us? If
2 that's the only intent -- that was the original
3 intent of affirmative action in our reading of the
4 legislative history.

5 We conclude with, we don't really
6 think it's necessary because of the labor market,
7 the way the media has developed, the way the
8 internet is out there. If you're sensitive to
9 Milwaukee county campaigns, one of the issues was
10 County Supervisor Nemeth was bragging, I think
11 rightfully so about his job banks. I think he's
12 got two of them set up in Milwaukee County and I
13 think he's going to have a couple of more where
14 there's a tremendous database for jobs available
15 beyond what job service does. So, if you concede
16 my point that it's a recruiting tool not a hiring
17 requirement, then do we really need it as a
18 recruiting tool given the fact that we're
19 recruiting in whole different ways?

20 With me is Shelly Ranus. Shelly was
21 with our firm through law school, went up to
22 Pittsburg and realized the mistake of going up to
23 Pittsburg and came back to Wisconsin and I'm also

1 happy to say Shelly will be a shareholder come the
2 first of March with our law firm. Shelly has done
3 a lot of work in this area, both in the public and
4 private sector and I don't know if she has
5 anything to add.

6 CHAIRPERSON MC FADDEN: Please do.

7 SHELLY RANUS

8 I think Tim's addressed most of the
9 key points in the paper. I think the only thing
10 that I would add is that I've been working with a
11 lot of clients who have had to go through the
12 process of either developing or revising on a
13 yearly basis written affirmative action plans. I
14 think from an employer's perspective that is
15 perhaps the most onerous aspect of, for example,
16 Executive Order 11246. That you have to conduct
17 all of these statistical analyses and prepare all
18 the statistical analyses which doesn't always
19 capture in most of our client's mind the essence
20 of what they're trying to do and what they do do
21 in their work force. There may be situations
22 where they may be under utilized, that under
23 utilization may be the result of a very limited

1 labor market in their area. It may have nothing
2 to do with any bad acts or any bad intent on the
3 part of the employer. If you've ever seen these
4 affirmative action programs and how much
5 statistical analysis goes into them, I think a lot
6 of employers question the value of that
7 information and whether that truly shows an intent
8 to discriminate. I think that as Tim has said,
9 you know, it's been our experience that most
10 employers don't go into a situation with the
11 intent of discriminating. We like to think it's
12 because all of our clients take the higher road
13 whether morally or ethically. But, if not, they
14 certainly like to take the higher road when it
15 comes to thinking about the impact of intentional
16 discrimination on their pocketbook. I think that
17 we have seen the benefits of Title 7 as well as
18 the recently enacted Civil Rights Act of 1991, all
19 of which have been whether you want to call it a
20 carrot or a stick have had the effect of
21 encouraging employers to engage in non
22 discriminatory practices. To seek to employ, as
23 Tim was indicating, the most qualified applicant

1 regardless of race or gender. And I think that
2 those laws have proven over the past 30 years that
3 they've been in place, they proved to be very
4 effective and we don't know that by continuing
5 with these onerous requirements for drafting all of
6 these affirmative action plans if it's really
7 accomplishing anything. If we haven't indeed
8 accomplished and achieved those same types of
9 diversity goals through the implementation of
10 Title 7 and the Civil Rights Act of 1991 and I
11 think we have and I think most employers feel that
12 way. So, the bottom line, they feel that putting
13 these plans together is a lot of time that doesn't
14 result in any benefit. I guess with that I know
15 that you indicated you might have some questions,
16 we'll go ahead and throw it back to you guys.

17 CHAIRPERSON MC FADDEN: My question can
18 be for either one of you. Does a fear of
19 discrimination lawsuits make some employers
20 hesitant to actively recruit minorities and get
21 them into the applicant pool?

22 MR. COSTELLO: No. I don't think a fear
23 of minority lawsuits does that. I think it's more

1 on the other end, the termination end. That
2 there's a lot of posturing because employees -- I
3 think we have a very informed work force these
4 days as to what people's rights are. If you go
5 into a workplace, there's probably 14 posters now
6 you have to have posted between the federal and
7 the state laws. It's a highly regulated
8 relationship as opposed to 30 years ago, very
9 regulated and for all practical purposes, we don't
10 have just cause in Wisconsin, but when you look at
11 all these laws you'd better still have a good
12 reason and if you can't articulate a good reason
13 for not hiring or firing then a court or a jury
14 will look and say it must have been because the
15 person's sex, race, creed, color, religion, et
16 cetera because you don't really have a good
17 reason. You can't articulate or what you tell me
18 isn't true. So, no, I don't think that that's the
19 reason why. I forget the name of the case, but
20 maybe Shelly can help me, but I would encourage
21 the panel members to read it. Judge Posner out of
22 the 7th Circuit wrote a case involving word of
23 mouth hiring by a Korean company where they were

1 hiring -- it was a janitorial firm in Chicago and
2 this person was a first generation Korean that
3 came over to our country, established a business,
4 got some decent contracts with some big office
5 buildings in Chicago and the EEOC came in and said
6 wait a minute, you got all Koreans working for you
7 and that's discrimination and Judge Posner -- and
8 the government sued this gentleman and I'm sure he
9 paid a lot of money, Chicago lawyers are more
10 expensive than Milwaukee lawyers, right Peter.
11 But the court goes off on a nice discussion about
12 well what would you expect? His hiring criteria
13 really was people that came to this country that
14 needed an opportunity just like he did. That's
15 his hiring criteria. Naturally it's going to be
16 mostly Korean because that's the people he knows.
17 That's the neighborhood he lives in. What's wrong
18 with helping people that come over to the country
19 that don't have any money. And so on hiring, I've
20 never sensed employer's fear the application. I
21 think they fear more on the termination end
22 because the employee said something. I know you
23 can't do this. I've got a hundred thousand from my

1 last employer that tried to do this. Employers
2 get really up tight about that says gee, I don't
3 have that. I can't afford a hundred thousand
4 dollars to defend myself. Another interesting
5 phenomenon is this whole area is insurance
6 companies are selling employment practices
7 insurance where you can go out and by insurance
8 for discrimination claims. They believe there's a
9 market out there. What does that tell us? Does
10 that tell us there are a lot of employers
11 discriminating or there's a lot of employees and
12 I'm sorry to say a lot of lawyers who think that
13 these are like personal injury cases. I don't
14 know, that's for a whole different day. But, I
15 don't sense that. Shelly, do you sense that the
16 fears of a discrimination lawsuit -- No. I think
17 in this labor market, they want applicants. They
18 don't care.

19 MS. RANUS: And I know that you know with
20 the, particularly now with the lower rate of
21 unemployment I think employers are looking around
22 saying, hey, we'll take people, we don't care, you
23 know, if they are white or black or red or green

1 or purple, whatever color they are, whatever
2 gender they are, if they can do a good job for us
3 because we have such a difficult time finding
4 applicants who can do the job.

5 MR. COSTELLO: And it's more of an issue,
6 I'll train them too, I'll give them a skill. So I
7 mean you may say well that's a short term
8 phenomenon. I don't think it is. I think we're
9 going to be with it for the next three years,
10 three to five years.

11 MS. PRIDE-EULER: I think one of the
12 things that bothers me and other people of color
13 is that we couldn't find the qualified applicant
14 to do the job and so I think we were talking this
15 morning about the people who are poverty level,
16 could not find jobs. That does not mean that they
17 couldn't do the job, but for some reason they
18 couldn't get the job. But people fix things
19 around their houses all the time. You know,
20 something breaks down, you fix it. That means
21 you're qualified to fix it at home, why can't you
22 fix it out in the workplace?

23 One of the things I think Shelly you

1 said is that the employers do not intend to
2 discriminate, but it's my understanding that
3 discrimination does not have to be intentional for
4 you to do it. Is that not still correct?

5 MS. RANUS: There are forms of
6 discrimination that can occur indeed without
7 specific intent to discriminate, yes, that's true.
8 Those don't happen on an individual basis, they
9 happen more frequently on a class wide basis,
10 what's called a disparate impact which is one of
11 the cases we cited in our paper, the Griggs case.

12 MR. COSTELLO: We have an employment
13 practice that is spacially neutral, but it has a
14 disparate impact on a particular minority group.
15 It could be an application process. It could be a
16 promotion process.

17 MS. RANUS: I believe Griggs was an
18 educational requirement.

19 MS. PRIDE-EULER: Now when we throw words
20 around like disparate impact, that has to do with
21 validation of exams in state government. That's
22 what we do for disparate impact.

23 MR. COSTELLO: Generally. If you're

1 administering an exam. It may not be an exam that
2 has the disparate impact, it may be a requirement
3 that you have your own car and you could argue
4 that that has a disparate impact on low income
5 people who happen to be more of a minority group.

6 MS. PRIDE-EULER: But that is
7 discrimination if you require like in state
8 government, you cannot require a person to have a
9 car. You can require that they have a valid
10 license, but not a car.

11 MR. COSTELLO: Or transportation.

12 MS. PRIDE-EULER: That's what you say you
13 just have to say transportation, but you cannot
14 require that they have a car.

15 MR. COSTELLO: Right. In the law now the
16 law changed in 1991 a little bit with this, but
17 the basic precepts are the same. If you have a
18 requirement such as the let's just use, for
19 example, the ability to add. That has to be
20 job-related based on business necessity. You can't
21 have requirements that have nothing to do with the
22 job and you can rebut the disparate impact by
23 showing that either the requirement that has a

1 disparate impact on minorities is legitimate. I
2 need to have it because of the business necessity.
3 Those are very expensive cases to litigate. As
4 Shelly said, they're generally class action cases
5 and a lot of them rise on hiring. You have a tool
6 that has a disparate impact on.

7 MS. PRIDE-EULER: Any group of people?

8 MR. COSTELLO: Any group of people.
9 Here's the phenomena that we are faced with. If I
10 do a self audit and determine that, I can
11 certainly stop the practice, okay. But I can't go
12 out there and say you know what, I'm going to go
13 out and not only recruit minorities, but I'm going
14 to hire minorities over majority because there's
15 been no specific finding of discrimination. And
16 as soon as you make an extra effort beyond just
17 recruiting people, then the court will say reverse
18 discrimination. So I mean those are unintentional
19 acts that have happened over years and years and
20 years. Seniority systems are another one. But
21 the court still says to an employer I'm not going
22 to make you remedy those by a hiring requirement
23 unless you find a specific finding of

1 discrimination.

2 MS. KIRAM: You mentioned that most of
3 the employers were not afraid of the recruiting,
4 they were more afraid of the firing. Is it
5 because it's winnable if they go to court?

6 MR. COSTELLO: They don't win anything in
7 court. I'm convinced of that. It's like being
8 acquitted of a crime, you really feel you've won
9 something. No, I've got a big lawyer's bill here.
10 My name was smeared all over the place. They
11 don't feel good and I, believe me, I've sent some
12 significant bills to employers and we've won cases
13 and other than maybe getting your bill paid a
14 little bit faster, it's not a vindication because
15 they go into it and say I made the right decision.
16 I didn't do it because of race, creed, color,
17 religion. The person wasn't performing and it
18 cost me a lot of money to prove my innocence. So,
19 that's the distasteful part of the process that
20 employers have. On the hiring end, again, the
21 distasteful part of the process is the
22 recordkeeping and the stringent monitoring if
23 you're a government contractor. That stuff is

1 done anyways. If you advertise the job vacancies
2 on the internet or this Milwaukee County, things
3 of those sort, those outreach programs, isn't that
4 enough? Because if you come in, if you come in
5 and say that the only way I hire people is through
6 word of mouth and I have an all white work force,
7 does that hiring or recruiting process have a
8 disparate impact? Yes, it does. Okay, then you
9 need a business justification for it and guess
10 what, the Korean gentleman had a business
11 justification for it which the Court approved. So,
12 I mean disparate impact cases in my mind are going
13 to be like the Supreme Court's doing on the hiring
14 requirements. They're going to scrutinize them
15 very closely because it's not an intentional act,
16 it's an act that maybe shouldn't have happened,
17 but nobody sat there and plotted in their office.
18 Let's put this in there, this will screen out a
19 bunch of the people we don't want. Nobody
20 intentionally to do that. You see, it's now with
21 the Americans With Disabilities Act. I mean, if
22 you want to look at a model where they really
23 honed in as to why are you really asking these

1 questions? Does it really have some relevance to
2 the job? Does it -- that's the Americans With
3 Disabilities Act. They've really gotten finetuned.
4 If you go, if there's particular questions, it'd
5 better be related to the job. If there could be a
6 model, I think that's a good model. I don't know
7 if I fully agree with it, but it's not a bad
8 model.

9 MS. KIRAM: The Department of Labor
10 influences a lot of enforcement of affirmative
11 action. In your opinion, are they just too
12 strict.

13 MR. COSTELLO: They have an ability or
14 perception that if the percentages don't match to
15 the labor market, it's because you're
16 discriminating. You're not hiring the qualified
17 people. It must be something rotten in Denmark
18 here. Versus if you apply the original recruiting
19 intent, the analysis shouldn't end with, let me
20 see, your applicant. First of all let me see
21 what attempts you made to get applicants. Okay,
22 they're all there. Let me see the applicants. All
23 right, they're there, all right. Now after that

1 if somebody didn't get hired who was more
2 qualified than the white male that got hired, then
3 it really becomes a specific issue of
4 discrimination. It's not that I should have eight
5 percent in this category, I only have two percent.
6 There are companies like that. Engineering is a
7 classic example. If you're a manufacturer and you
8 do work for the government, nine times out of ten
9 you will have two fewer women in engineering. You
10 know why? Go look at college enrollment at
11 Marquette? They don't want you. I didn't want
12 to go into engineering. It just isn't there.
13 They're not coming up through the system. So
14 remember, I said the original comment I made was a
15 lot of the stuff is beyond our control. Society
16 isn't producing these people in all shapes,
17 colors, creed. By society I mean the educational
18 system, and whatever social structures that
19 support that educational system. So, if they're
20 not producing the candidates, how can we even get
21 them in the flow of things? I think engineering
22 is a classic example. We always run into that.
23 There's companies want to have an applicant pool

1 of female eningeers. There just isn't any. They
2 don't like that discipline. I hope I didn't
3 offend anybody.

4 MS. PRIDE-EULER: I do recruiting for the
5 DNR where we actively look for female engineers,
6 civil and chemical engineers and we get them
7 through the Society of Women Engineers. You go to
8 the schools where they have a lot of women, so
9 there are a lot of female engineers out there.
10 They might not be what we're looking for, but what
11 other people are looking for.

12 MR. COSTELLO: This company is a food
13 company that is a heavy equipment manufacturing
14 operation. So, that's their focus. But, what was
15 it, five, ten years ago? I went to college at
16 Marquette in '77 and I remember there were I think
17 there were two women in the engineering class. I
18 went to law school in '77 to '80 for about a third
19 of my class were women. You know, if you look at
20 it, I can criticize law firms, I'll start at home.
21 Wait a minute, how many female partners are in law
22 firms? Well, I think that was an invalid
23 criticism ten years ago because there wasn't a lot

1 of women coming through law school. What was your
2 class?

3 MS. RANUS: I would say 50 percent.

4 MR. COSTELLO: Now, when those people --
5 Shelly is out five years. Now the next five years
6 I think everybody's going to watch a lot of law
7 firms and accounting firms and say wait a minute,
8 the pool you drew from was 50 percent female, so
9 shouldn't proportionally it go up within reason?
10 It all comes down to the most qualified and things
11 like that and personal choices, but you've got to
12 start with the pool and obviously the higher
13 skilled position, the more likely you're going to
14 have this problem. The lower skilled position,
15 then if you're talking high school education type
16 positions, then it's not a big issue. There
17 should be good applicant flow. There should be a
18 lot of applicants.

19 I even had a client ask me I really
20 want to hire a minority because I know the
21 government is going to come in and yell at me
22 about this. If they're equal can I hire the
23 minority or the majority? I said the law doesn't

1 permit you to do that. He said, what do I do? I
2 says, well, flip a coin as long as you've got
3 somebody witnessing you, that you flipped the
4 coin, that's how you picked it, it's neutral
5 based, okay. And I hate -- I don't mean to
6 suggest that as an example of how we've gotten
7 into the minutia of this, most employers aren't
8 like that. There's almost a clear winner, clear
9 loser in terms of the application process, but
10 most qualified. And then if there isn't a
11 qualified. I think that's one of your questions.
12 Suppose there isn't a qualified? You fix things
13 at home, yea, you've never worked in a plant, but
14 you're all relatively equal in the pool. Nobody
15 has any real good experience. Then again based on
16 objective criteria, what is it? Well, you
17 performed well in the interview, I feel
18 comfortable with you. You've got a good reference.
19 Those are the typical things that we all use. We
20 use it at our firm in terms of screening
21 applicants. So--

22 MS. PRIDE-EULER: You know, that might be
23 true, too, but a lot of us who are on the other

1 end trying to get that job and we've got that
2 college degree, we've got all of the
3 qualifications and when we're told we hired the
4 most qualified, to us that's subjective. And so
5 we don't know what went on behind the scene, but
6 we know we're just as qualified as Joe Blow
7 sitting down there. We both graduated from
8 college or good universities, Big Ten you know and
9 then we're told we had to hire -- we hired the
10 most qualified. To me that doesn't mean anything.
11 There might have been more qualified, but not most
12 qualified. I guess it's a matter of adjectives
13 there or whatever you want to call it, but we get
14 that all the time, talking about we hired the most
15 qualified. That person gets on the job and they
16 sit there and say duh huh. So we wonder what
17 happened to that other one who was not as
18 qualified, who probably could have done that job
19 just as well, fit in just as well, but we took
20 this person over that person because we felt they
21 were more qualified.

22 So, it's who's doing the
23 interviewing, who they have on the interview panel

1 and sometimes we have -- I'm in human resources so
2 we had people on the panels with no idea what
3 they're doing. They're told what to do, what to
4 look for. We want this person, so you want this
5 person to come out on the top person getting the
6 jobs, next thing you know they're gone because
7 they couldn't do the job once they were hired.
8 But they came over well in the interview. They
9 test well. You know, for civil service you have
10 to take a test. You can come out in the top five
11 by being just a good test taker. You get that
12 person on the job.

13 MS. COSTELLO: You know I say if we could
14 perfect the interview process and hiring process,
15 we don't have to worry about terminations. Nobody
16 would get fired. If you want to eliminate waste
17 in your system spend a lot of time on the
18 interview process and hiring process. Now I can't
19 sit there and say I've got the solution to making
20 the hiring process totally objective. I've seen
21 all sorts. I've defended all sorts of systems and
22 invariably some subjective element comes in and
23 more likely when you get in front of a jury, the

1 jury is going to have to believe you that this is
2 the way you did it and the way you did it wasn't
3 based on people's age, sex, race, creed, et
4 cetera. So the fact that this is, and Shelly and
5 I are we don't like the enhanced damages in the
6 Title 7 cases, the three hundred thousand in
7 compensatory and punitive damages, but that's our
8 bias and I'll admit that. But the good thing it
9 does is it really makes employers be careful on
10 how they're doing it and why they're doing it and
11 they'd better be able to defend their position.
12 And I said you know I can give you all these nice
13 burden of proofs and the pretext and rebutting the
14 pretext, but you're sitting on a jury, how would
15 you react to this, how this person's being treated
16 right now? And if you wouldn't want to be treated
17 like that, don't treat them like that because when
18 a jury looks at these cases, they say there's more
19 employees on juries than employers and they say
20 way I treated fairly? It's plain and simple. The
21 judge will read instructions, but for the
22 protected classes in employment decisions and when
23 they come back down were they treated fairly and

1 if it's most of these cases are performance issues
2 and the hiring case. These are clear line of
3 demarkation that made this person different from
4 this person in terms of past performance with
5 references.

6 In terms of the test score they did,
7 in terms of how they performed, that's why a lot
8 of employers are going to team hiring. They want
9 the person in there saying you're going to be
10 working with this person, give me your input. And
11 the more diverse groups you get in the sense of
12 subordinate co workers, maybe people from other
13 departments, the less I think the more likely you
14 will get an objective result, albeit based on
15 subjective perceptions, if there's such a thing.
16 Because you have multiple people in the process,
17 it isn't just the one person any more making these
18 decisions. You know why? Because you make a
19 mistake, I've always said these are \$500,000
20 mistakes if you get sued. I've seen the largest
21 jury verdict in a Title 7 case in Milwaukee was
22 \$500,000. That was in the paper for sexual
23 harassment because that may be reduced because of

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250

1 caps, but it's a new phenomena when I mentioned

2 the insurance. One of the things the insurance
3 company does is they come in and audit you before
4 they underwrite your policy. Just like when you
5 want to get worker's comp insurance, they go out
6 and make sure my plant is safe, make sure you've
7 got fire extinguishers. These companies will come
8 in, show me your handbook, your policies, your
9 affirmative action. Show me this, your hiring
10 process, how are you doing this? Do you have
11 questions on your application that you shouldn't
12 be asking? That's pretty basic stuff. They start
13 seeing those things, they assess a risk to it,
14 saying you don't have good systems in place.
15 So, I mean it's there, but I don't think you can
16 eliminate it. Somebody says I've got the most
17 objective means is throw the names in the hat,
18 pick one out and say you've got the job? It
19 doesn't get you the most qualified or perhaps a
20 qualified person.

21 CHAIRPERSON MC FADDEN: Okay. This is
22 our last question. Ms. Kiram?

23 MS. KIRAM: You represent that you

1 represent a lot of management portion of
2 affirmative action issues. If you have a
3 percentage of your winning arguments, what would
4 it be? How do you win your cases against an
5 employee when management is already top heavy and
6 they have the corporate lawyers behind them and
7 all the advice that they can get from consultants?

8 MR. COSTELLO: If I was representing
9 employees?

10 MS. KIRAM: Or would you lose most of
11 your cases instead?

12 MR. COSTELLO: I've never lost a case.

13 MS. KIRAM: I want to know how are you
14 winning?

15 MR. COSTELLO: Well, I'll give it from
16 the employer's perspective. First you win cases by
17 doing it right before the person runs in the
18 courthouse. You're not going to win generally, as
19 I said, you can hire a lot of lawyers and pay a
20 lot of money and they come up with technicalities
21 and loop holes or they just pound them in the
22 ground and you have that right now with this
23 litigation over the guy from Brownwell Abramson.

1 Those lawyers are just going to try to pound that
2 gentleman to the ground and until he cries uncle
3 and that's generally that doesn't work especially
4 the better the case for the employee. That does
5 not work. That's not a tactic I endorse. I think
6 that's a public's perception of a lawyer's job
7 that's archaic, you know, to especially like on
8 sexual harassment cases to sit here and belittle a
9 woman who is her perception is she was harassed,
10 right or wrong, that's her perception. And
11 whether it's legal, sexual harassment, that's a
12 lawyer's job, but don't do it that way. We
13 generally do it by getting in early and making
14 sure that they follow the law.

15 There are occasion where we get
16 lawsuits that we had no involvement in, it
17 happened and, you know if I always say if it's a
18 dog, I'll tell you it's a dog right away and I'll
19 not let you spend a lot of money on it and tell me
20 it's a scrimpy case. In the problem you have on
21 the plaintiff's side, I think is this is a very
22 long, intensive area and there's only two or three
23 good plaintiff lawyers. You've always said they

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1 are the people I would hire if I fired myself and

2 they're very good lawyers. They've done a very
3 good job. There's one in Madison that has made a
4 good living off of suing the state, Mike Fox, Walt
5 Kelly here, very good lawyers. I respect them and
6 I like having cases against them because you
7 really litigate the issues that you should
8 litigate, no games played. And I think the
9 Plaintiffs as far as coming around that they're
10 learning the law. For awhile we got a lot of
11 people that did personal injury work and they
12 thought just get me in front of a jury, I'll argue
13 the facts. You may not get in front of the jury if
14 you don't understand the law, burden and prima
15 facie arguments and all that jargon we live by
16 here. So, but if I had a plaintiff's case, I
17 would go hard on the disparate treatment issue in
18 terms of, you know, was this person treated the
19 same way? If it's a hiring question, why did you?
20 That's a subjective question. Generally hiring,
21 if it's a subjective call, you'll get in front of
22 a jury and you know, those are the hardest, I
23 would say those are the hardest cases to win for

1 employers. Termination cases are probably easier
2 cases to defend for employers because there's some
3 act there that we can link it up to. I don't
4 think the employee's lawyers do enough of
5 attacking the decision maker in a professional
6 way. I don't mean in an underhanded way, but
7 really going after the decision maker and make
8 them justify their position. If I were them, I
9 would -- if a CEO signs the policy on equal
10 opportunity employment, I would spend a lot of
11 time, what do you mean by that? Define your
12 terms? Do you really understand what you're
13 doing? What is the -- or the person in human
14 resources. And I think that should be done more
15 if there's enough there. You know, there are
16 lawyers that make a very good living on these
17 cases because they get good cases and they either
18 make a good living by settlement or by going to
19 judgment on it. The frustration we are
20 experiencing now is, and I've seen it boomerang I
21 guess and I've seen employers that will get rid of
22 cases for five or ten thousand dollars because
23 it's a cost benefit analysis. Now, it's once they

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1 do it once or twice then they get the third one,
2 I'm not paying a cent and I say you sure, this is
3 a cost benefit analysis. No, I'm not paying a
4 cent. Now we're out there and we're off on a
5 mission and hopefully it's the right case to
6 litigate. You always want to try to pick your
7 cases. It makes it look good.

8 MS. PRIDE-EULER: I remember what I
9 wanted. Do we have time? Mr. Costello, I think
10 what we've heard all day is people complaining
11 about all of the paperwork they have to do that AA
12 plan and everything to justify this and justify
13 that. I think you've just answered that question
14 right now. If you were going in there and the
15 employer is in trouble and before you took the
16 case, you want to know are your papers in order?
17 And in order to have those papers in order they've
18 got to get the paperwork done and they have to
19 justify what they're doing. So, --

20 MR. COSTELLO: I'm really talking about
21 the hiring criteria, you know, why did you rank
22 this person higher?

23 MS. PRIDE-EULER: Well, I guess you

1 mentioned something else, too. I think people
2 were complaining that about they felt the
3 paperwork they have to do for the contract
4 compliance office and also for the affirmative
5 action plan becomes too burdensome and it's
6 cumbersome and it's too much work. However, if
7 you had your plan the way you should and put all
8 those things in there and you monitor that program
9 at the end when you're audited, you're going to
10 have everything in place to begin with and that's
11 what a lot of people don't seem to understand or
12 they're not doing. So then it becomes so bogged
13 down. Is that what everybody got this morning?
14 People were complaining about the amount, being
15 bogged down in the paperwork.

16 MR. COSTELLO: Right now I'm trying
17 to exclude from in front of the jury the OFCC plan
18 because the white male is claiming that that's
19 evidence that we put minorities ahead of him.

20 MS. PRIDE-EULER: Is that what you're
21 calling the hiring requirement versus the
22 recruiting tool?

23 MR. COSTELLO: Hey, I'm saying it's just

1 a recruiting tool. We're just going out in trying
2 to get that applicant pool filled up with
3 minorities, then we go to -- I hate to use the
4 word you don't necessarily like, but most
5 qualified. And he's saying no, no, no, you go out
6 there and get all those applicants because that's
7 the applicant pool and not anybody else and you
8 wouldn't promote the white male. And again, if
9 you accept the precept it's just a recruiting
10 tool, all the affirmative action requirements, why
11 can't we just say to the OFCCP when they come in,
12 give them a list of all the places we recruit from
13 and that's all that's all we need? I mean, we
14 don't have to compare statistics because the
15 statistics will never match. They will never match
16 because you're always end up it's not a hiring
17 requirement, it's a recruiting tool. So, just
18 focus in on have you made the recruiting effort,
19 not the hiring effort, it's the recruiting effort.

20 MS. PRIDE-EULER: It's not enough that's
21 what we're talking about. It's not enough to say
22 hey, put it in the Wisconsin State Journal and if
23 people don't read that Sunday paper, they miss out

1 on it. So, you've got to go beyond that. You've
2 got to do more than just --

3 MR. COSTELLO: In terms of advertising?

4 MS. PRIDE-EULER: Recruiting tools
5 themselves.

6 MR. COSTELLO: That I'm not as I am
7 malleable on that in the sense that I understand
8 that and things change, people listen to different
9 radio stations, the music changes so they shift
10 from this to that.

11 MS. PRIDE-EULER: That's just a minor
12 part of recruiting.

13 MR. COSTELLO: Right. It changes with
14 technology. It changes with shifts in labor
15 market. It changes with the ages of the labor
16 market and things like that, but really isn't that
17 where it ends? I advertise, if people don't want
18 to come in and apply? Because if you translate
19 that effort into wait a minute, how come you don't
20 have eight percent in this category? And I come
21 back and say well, here's a whole pile of
22 applicants that I got. Saying well I tell you
23 what, you must have discriminated against because

1 if you have that big pile of applicants and you
2 only have six percent, there must be something
3 wrong here. That's the way it works and if now
4 we've gone from recruiting tool to hiring
5 requirement and that's what employers object to.
6 They don't like the reporting, they don't like
7 tracking the percentages, but if we're not going
8 to track percentages and just say show me the
9 effort that you made to get applicant through.
10 And I'll tell you, if you want to give me the ten
11 best sources today -- are you in Madison? The ten
12 business sources in Madison, if I want to get Afro
13 American, Hispanic workers, the employer says
14 fine, I'll contact those agencies, but that's
15 where my obligation ends. If that doesn't
16 generate applicants and granted I'm not putting
17 any -- it's the same applicant process that I have
18 for anybody else. I'm not going to make a special
19 applicant process, make it easier or harder. It's
20 the same one. We have openings, come on down to
21 the corporate office from the hours of 8:00 to
22 9:00 or 8:00 to 5:00 and fill out an application.

23 If it's a recruiting tool, isn't

1 that enough? You pick them, you hire.

2 MS. PRIDE-EULER: You weren't here
3 earlier when we were talking about that. No, it's
4 not enough.

5 MR. COSTELLO: Because people don't get
6 hired.

7 MS. PRIDE-EULER: No, no, about the
8 recruiting, getting information out to the public
9 as a whole. You just don't do it at one place.

10 MR. COSTELLO: Okay.

11 CHAIRPERSON MC FADDEN: We need to
12 conclude our discussion. Thanks to both our
13 panelist for presenting and this concludes this
14 part of our discussion and our public session will
15 resume at 5:00 p.m. Thank you.

16 (The meeting was adjourned.)

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C E R T I F I C A T I O N

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I, VERNITA HALSELL-POWELL, a
Certified Shorthand Reporter and Notary Public
within and for the County of Cook, State of
Illinois, hereby certify that I reported in
shorthand the testimony given at the
above-entitled cause, and state that this is a
true and accurate transcription of my shorthand
notes so taken as aforesaid.

17 VERNITA HALSELL-POWELL, CSR No. 084-001831
18 Notary Public, Cook County, Illinois
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