THE 1997 CIVIL RIGHTS LEADERSHIP CONFERENCE

The Connecticut Advisor Committee
to
the U.S. Commission on Civil Rights

Held before:

Dr. Neil Macy, Chairperson

Ms. Maritza Tiru

Ms. Phyllis D. Zlotnick

Mr. Michael P. Kaelin

Ms. Margery L. Gross

Dr. Ivor J. Echols

Dr. L.B. McKenzie-Wharton

Mr. Patrick Johnson, Jr.

Ki-Taek Chun, Director, Eastern Regional Office

George C. Springer, Jr., Executive Secretary

Taken before Kelly A. Hickson, a Notary Public/Stenographer in and for the State of Connecticut, at the Naugatuck Valley Community-Technical College, 750 Chase Parkway, Waterbury, Connecticut, on November 12, 1997, commencing at 9:08 a.m.

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ORIGINAL

(The conference was commenced at approximately 9:08 a.m.)

THE CHAIRPERSON: I'd like to welcome the group to the 1997 Civil Rights Leadership Conference being held at the Naugatuck Community College. My name is Neil Macy. I'm the Chairperson of the Connecticut Advisory Committee, and before we begin, I'd like to take the opportunity to introduce the members of the committee from the state of Connecticut that are here.

First of all, the vice chairperson of the committee is Dr. Lou Bertha McKenzie-Wharton, to my right. Next to her is Michael Kaelin, who is an attorney and who is also on the committee. Next to him is Dr. Ivor Echols; next to Ivor is Margery Gross, and at the end of the table is Phyllis Zlotnick. Next to Phyllis, on the right -- I'll hold off introducing him in a minute. On my left is Attorney George Springer, Jr.

Also, Maritza Tiru, who is sitting in the middle of the room, and it's under her help, with the help of the Naugatuck Community College, that we're able to be here today. She's done a wonderful job of assisting us, in fact, putting up signs until almost 11:00 last night so some of us wouldn't get lost when we came here. Of course, I should give her husband in absentia credit too because he was out there with her last night.

I didn't introduce yet our regional director, who has his office in Washington, D.C., Dr. Ki-Taek Chun; and before I introduce the local people, Dr. Ki-Taek, would you just want to say a few words of welcome from the National Civil Rights Committee?

DR. CHUN: I wasn't prepared for that.

THE CHAIRPERSON: Washington people speak at the drop of a hat.

DR. CHUN: On behalf of the U.S. Commission on Civil Rights, I'd like to welcome all off you to this very important event, the 1997 Civil Rights Leadership Conference. We believe this is an important event, and the Commission hopes that this will serve as an occasion to bring civil rights communities together and strengthen the communities in the state of Connecticut, so that we, as a group, may become more effective in strengthening the protection of civil rights of all citizens.

I realize that all the members of the committee have spent many, many hours preparing for this, and I would like you to know that the committee members all serve without compensation. When I realize what sacrifice that is for all of them who are professionals, it means a great deal of sacrifice, and that realization really gives me a renewed sense of appreciation for their commitment for the cause of civil rights. So I'd like to welcome you.

THE CHAIRPERSON: Thank you, Ki-Taek.

We're honored to have with us today -- oh, before I even introduce the mayor, there's a few things I want to bring to your attention: Number one, there's an error in the program. If you look at the program for today, it says that panel one will go on from 9:25 to 1:25, but if you look further down, it says lunch is from 12:25 to 1:25. We're not eating lunch during the panel hearing. That, obviously, should have been 12:25, so that's when the first panel group will end.

Second, if there has been anybody in here who has not signed up yet -- except the members of the committee -- there is a registration table outside.

And number three, if there's anyone here, including members of the panel, who wish to hand in written statements subsequent to the hearing today or tomorrow, they're obviously welcome to do it. They can do it by providing me or their moderator with a copy of the statement.

I'd like to now introduce the mayor of the city of Waterbury. I had some trepidation because the time we planned to have the mayor here was before the election. I kept wondering who I was going to be introducing, but I'm pleased to introduce the mayor of the city, Mayor Giordano.

Do you want to say hello and extend greetings?

MAYOR GIORDANO: Good morning, everyone. When I was talking to the gentleman earlier, he said he saw my face in the news too often the last couple of weeks. He's absolutely right. As a matter of fact, I refuse to watch the news any longer.

I'd like to welcome everyone to the city of Waterbury. As you all know, the governor calls our great city the center of the universe, and we're very proud of that title.

Here at the Naugatuck Valley Community-Technical College -- which we at the City of Waterbury have an incredible relationship with -- it's a wonderful college, and I hope you enjoy your next two days here. As mayor of the fourth largest city of Connecticut and as an attorney by training, I know the significance of the issues that will be addressed here over the next few days cannot be overstated.

Their importance is overarching because they ultimately go to the core of what America is all about: The concept so brilliantly described by Thomas Jefferson in the Declaration of Independence, that everyone has a right to life, liberty, and the pursuit of happiness.

The four topics of the 1997 Civil Rights Leadership Conference may not have been selected with the Declaration of Independence in mind, but they cannot have been better chosen by Jefferson and the people who helped him draft what is undoubtedly the most influential statement in history pertaining to freedom and self-fulfillment.

The four issues that you will be discussing the next two days have to do with educational opportunities, employment, safeguards against police misconduct, and hate crimes. In other words, they are about the essential ingredients of the pursuit of happiness.

Realizing that goal, of course, entails good schooling, a good job, fair treatment from police and fellow citizens. Take away one of those rights, and the intent of the Declaration of Independence is subverted.

The aim of this conference is to make sure that our civil rights are not trampled on by anybody. Toward that end, you have my undying support. Thank you very much for inviting me this morning. It certainly is a pleasure and a great opportunity, and I hope you enjoy the next two days in Waterbury.

THE CHAIRPERSON: Thank you. As I mentioned before, we're here today through the cooperation and courtesy of the Naugatuck Valley Community-Technical College. Unfortunately, the president is unable to be with us.

To bring greetings from the university is Dr. Joseph Cistulli, who is dean of the college.

DR. CISTULLI: I just want to welcome you to the college. I know that civil rights is something that -- one of the civil rights is that you don't like to be used, but we want you to use us.

We want you to use us as a center for all kinds of activities in your daily lives, and we really appreciate your using the institution as much as possible. Please come by again. If there are any other conferences, any other kinds of activities that require you to need a facility, we're totally wired. We have 800 computers on campus. If you need any kind of electronic conferencing or anything like that, we're ready for you around the Internet. Use us. Thank you for coming to us today.

THE CHAIRPERSON: Thank you, Dr. Cistulli, and thank you for welcoming us.

The first panel that is scheduled to take place is chaired by Attorney George Springer, who has been very active in the area of civil rights, and he will chair the panel on the effects of fair housing on school segregation. He will introduce the members of the panel.

I should mention one other thing: For those of you who want copies of the report that's issued, in your program, there is a half sheet of paper that says that if you wish a copy of the report, please fill it out and leave it at the registration desk. Please don't forget to do this if you wish the report. Thank you.

MR. SPRINGER: Good morning, ladies and gentlemen.

I am going to be moderating the panel this morning that deals primarily with the issue of fair housing. I want to clarify that. The topic matter says: "The effects of fair housing on school segregation."

We will talk about that, certainly, as a subject matter; but the principal point that I hope is conveyed to you this afternoon is that in Connecticut, one of the major civil rights issues that has been identified to this body has been a concern about increasing difficulties in the exercise of fair-housing choices for many of Connecticut residents. The committee felt that it was very important that we focus, at least for today in any event, on those issues.

With us this morning, we have four individuals, two of which are currently here, and I hope the others will arrive shortly.

The two that are not present, I'll introduce them first: Roger Vann, who is the president of the New Haven NAACP, and Denise Viera, who is the director of the Connecticut Fair Housing Center.

And now to those who are with us: We have Althea Seaborn from the United States Attorneys' Office, and we have Miguel Matos, who is the vice president of the Bank of Boston in Hartford, Connecticut.

What I would like to do is to have each of the panelists perhaps provide us with a very brief opening statement, giving your fields of expertise and experience in this matter; and then we'll proceed with moderated questioning and, hopefully, some give and take on the panel. Subsequent to that, we'll open it up to public discussion.

MS. SEABORN: I'm an assistant U.S. Attorney here in the District of Connecticut, which I have held that position for seven years in the capacity -- I handle, among many other cases, housing cases, and I do that as an arm of the Department of Justice.

MR. SPRINGER: Can everybody hear her?

MS. SEABORN: As I was saying, I've been an assistant U.S. Attorney in the District of Connecticut for seven years. The U.S. Attorneys' office is essentially a part of the Department of Justice. I have handled many cases dealing with civil rights issues in the U.S. Attorneys' office, among them housing cases.

The authority for investigation and enforcement of the Fair Housing Act is handled by the Department of Justice along with the Department of Housing and Urban Development. The authority for litigating fair housing cases is handled by the Department of Justice.

Because of the proliferation, for lack of a better word, of discrimination cases in the area of housing over the past several years, the Department of Justice has asked the various U.S. attorneys offices throughout the country to assist with the litigation of those types of cases.

Just to give you an idea of the cases that come into the office and that sometimes are handled, there are cases that we refer to as "election cases." Those are cases that individuals bring to the Department of Housing and Urban Development, and after they go through administrative proceeding, one of the parties can elect to go into federal court and sue. The U.S. Attorneys' offices primarily handle those cases.

There are also cases brought which involve an investigation initiated by the Department of Justice. Those cases are primarily handled by the Department of Justice, with the assistance of the U.S. Attorneys' office.

The United States has implemented a fairly proactive enforcement program, and primarily, the lawsuits have involved the pattern of practice of unlawful discrimination or the denial of rights to groups protected by the Fair Housing Act.

Our office has been involved in cases in Connecticut. I pretty much have a national perspective on the fair housing issue, so I'll try to keep bringing it back to Connecticut because while we do handle cases in Connecticut, like I say, most of our cases are the election cases that deal with individual denial -- of the denial of rights to individuals; but we have also been involved in cases trying to enforce the Fair Housing Act in particular communities where the communities have refused to implement affordable housing programs in a nondiscriminatory manner. We have been involved in cases in which the communities have attempted to thwart affordable housing goals by zoning problems. So there are a number of ways that we've gotten involved.

HUD has pretty much required communities to conduct analyses of different impediments to fair housing, and if those communities do not undertake that effort, as HUD regulations determine, then oftentimes, HUD will contact the Department of Justice in order to enforce the laws and in order to bring about some type of result for favorable fair housing.

One of the areas that the Department of Justice has become extremely interested in in the '90s has been lending discrimination by financial institutions. Several years ago, the banking industry and the federal government recognized that there were definite patterns of racial disparity in mortgage lending.

Despite the fact that it's been almost 30 years since the Fair Housing Act has been passed and the commitment was made to ensure that no one was denied housing because of race, color, or national origin, black and Hispanic individuals are still discriminated against in obtaining housing and mortgage loans.

Just by way of background, in 1991, a HUD study estimated that 59 percent of black and 56 percent of Hispanic home buyers experienced some form of discrimination with realtors. That discrimination would take the form of providing assistance and information on the loan application process. In 1995, the Department of Justice statistics indicated that blacks were denied mortgage loans twice as often as whites.

It is without question that in order for individuals to reach their full potential and provide a better life for their children, they need decent, safe, affordable housing, and it must be made accessible to them.

One need only examine the impact of a case that came out of Chicago, actually, Gautreaux versus Chicago Housing Authority, in which a lawsuit was brought and the Department of Justice was involved. Ultimately, the Court ordered a housing program that resulted in the move of public-housing residents into the suburban community occupied by primarily white residents.

What that case has shown is that the children who were moved from the public housing project and who went into the suburban schools, the studies have shown that those children have, basically, prospered in the academic environment that was provided to them, once they moved out of the inner-city public housing projects and got into a suburban community.

As a result, in the early '90s, the Department of Justice intensified its efforts to root out lending bias. The focus was not to challenge the standards by which the industry judged and approved loans, but to make sure that the industry applied an even hand when it did evaluate applications for all individuals.

As an example of how the Department of Justice has involved itself in lending bias cases, earlier this year, it determined that -- actually, it got a complaint from the office of Thrift Savings and determined that Albank Mortgage Company had been, essentially, red lining.

Albank is actually a New York institution; however, it has made different lending decisions that affect Connecticut. What Albank did was it determined and actually issued written directions to its various offices not to issue loans, to not accept applications from individuals who reside in certain communities, and those communities were predominantly black and Hispanic.

The Department of Justice instituted an investigation and concluded that there was a pattern of practice of discrimination and did not ultimately file the lawsuit, but resolved the case by form of a consent decree. That occurred just a couple of months ago, and what they were successful in doing was obtaining, for individuals in these affected areas, a $55 million loan package, in a sense, which would enable individuals who had been previously precluded from applying for mortgage loans, they are now able to apply.

The Albank organization had agreed to go into the communities and reach out to them, change their advertising; and all of this resulted because the Department of Justice went in and started evaluating what the mortgage company had been doing.

That particular case involved the communities of Norwalk, Stamford, New Haven, Waterbury, and New Britain. The policy of Albank was not to lend to those areas because Albank had determined that they were predominantly -- or had a large minority population, and they did not have an interest in providing loans to those particular communities.

The Department of Justice lawsuits generally result in remedies that provide compensatory damages to individuals. It can also result in punitive damages for individuals if an evil motive is established or there was a reckless indifference to the type of harm that was being caused.

In the pattern of practice cases, they can also obtain civil penalties of up to $55,000 per defendant for the first violation of the Fair Housing Act.

The Department of Justice has had a lot of recent success with lending-type cases, and I think that part of the reason is because the department is taking a more proactive approach. They are going into banks and examining data. They are not waiting for complaints to be brought because, typically, the way that the department became aware of what was going on was by waiting for individuals to complain and then seeing that there were a number of complaints about an institution.

They are now actually going in and reviewing the Home Mortgage Disclosure Act data that banks are required to maintain, and in the process, if they see some type of pattern, they look a little further, and if need be, they initiate an investigation.

So typically, the problem that historically there had been in terms of finding out about cases in order to bring them, that has kind of been dealt with a lot in the department by their proactive approach. I think that over the past few years, although there's a lot of work to be done, the department has been successful in at least getting the word out that lending bias will not be tolerated, that they will continue to pursue it. By bringing the U.S. Attorneys' offices into the process and bringing more resources, I think that they will be more successful.

MR. SPRINGER: Thank you, Althea.

Sort of a natural segue into Miguel.

MR. MATOS: Good morning. I got beat up already, so I don't know what to say.

I work for Bank of Boston First Community Bank. We are headquartered in Hartford, Connecticut. First Community Bank is a division of Bank of Boston, and our specialty and mission is to work in inner-city communities in New England.

What we do -- and we pride ourselves in doing -- is working in communities that have high concentrations of what we call low- and moderate-income individuals, that represent the full spectrum of the minorities that reside in our cities.

In terms of giving you a general overview of what banks are doing to prevent that Althea comes and knocks on our door is, basically, putting together more liberal guidelines to be able to extend, in the case of residential mortgages, those guidelines and underwriting criteria to individuals who, before, were not able to qualify for mortgages.

The second thing that banks are doing is that they are complying with the New Community Reinvestment Act. If you recall in the early '70s, the federal government passed the Community Reinvestment Act, and that placed some pretty clear parameters on what banks had to do to reinvest and to make sure that the dollars they were taking away from a community, they were putting back into it.

About a year or so ago, Congress amended the Community Reinvestment Act, and it has some sharper teeth, as we say, in that law that forces banks to, basically, lend money in communities where, before, for whatever reasons, banks were hesitant to lend, or the population in those communities did not meet the lending criteria that the banks were looking for.

Red lining in terms of my company is a word that we never believed in. Bank of Boston has, for the past number of years, received an outstanding rating from the federal regulators as it relates to community reinvestment and mortgage lending in New England: Rhode Island, Massachusetts and Connecticut. So we pride ourselves in doing our best and really trying to make those dollars available to those communities.

I will leave it at that, and then, as we go, we can get a little more into it; but that's basically what I'm going to try to cover today.

MR. SPRINGER: Thank you, Miguel. Since you finished last, I'm going to start with you first. There are basically two questions I'd like you to respond to for the benefit for the audience, and Althea, I'd like to get your comments as well: When someone is seeking a residential mortgage, they walk into a bank and have to fill out a loan application. There is a underwriting process that is typically applied in those situations to determine whether or not somebody is eligible for a loan approval.

In addition to that, banks, as I understand you -- and you correct me; you're the expert -- choose to lend in certain areas. Bank of Boston may locate in Connecticut, or they can locate in Arkansas; and even in Connecticut, they can have an office in Hartford or Granby. There's a variety of locations and geographic areas where a bank may be willing to commit its lending resources to.

The potential for discrimination, as Althea outlined with reference to the Albank situation, certainly exists in terms of geographic location. The potential for discrimination exists in terms of the actual underwriting process.

Having said all that by way of background, my question to you, Miguel, is: What is it that your bank has done and what is it that the financial institutions, in general, have done to ensure that underwriting criteria are fairly applied to people seeking residential mortgages?

MR. MATOS: The first thing we've done, which I think is pretty critical, is open branches where they no longer existed. I'll give you one example: In West Roxbury in Boston, there had not been a branch for the last 40 years. First Community Bank went into Roxbury and opened a branch.

Sixty percent of the staff of that branch in West Roxbury is multilingual. About 65 percent of our staff in First Community Bank represents one minority group or another, and we pride ourselves in speaking about 16 different languages. That's the first thing that the banks have done.

We cannot choose where we lend. We cannot specifically do one geographic location or another; however, what the banks have done is they've liberalized the underwriting criteria for residential mortgages. For example, we have a partnership with a local nonprofit in Hartford by the name of HART, and we pledge to that nonprofit, annually, $5 million.

Every dollar is lent to use them as our outreach arm into the community, through local schools and other organizations, to make mortgage lending available to people. The way that works is that higher ratios are established to allow between the income and the amount of debt that individuals can have.

Doing residential lending is very difficult. I'm not placing blame on one party or another, but I'll give you one example. If I would go into Waterbury right now into one of our low/moderate income neighborhoods -- and this is a national trend -- and I would go and take 100 loan mortgage applications, I would be lucky -- sad, but lucky -- if ten people, even with the liberal underwriting criteria, would qualify.

The reason for that, from my perspective -- and I'm talking a little bit personally here also -- is that society has placed certain pressures on people to keep certain standards of living that, unfortunately, put them in debt.

The so-and-so finance companies out there, the so-and-so mortgage broker companies out there, the so-and-so -- this is a name of a company I can't say -- rent-a-something company really end up punishing our population because when you pull their credit report, they end up having extremely high levels of consumer debt.

Not housing debt, because most of them are tenants; but when you look at the percentage of what they spend of their take-home pay on those types of items -- which, a lot of them are wants and not needs -- puts them in a position where they aren't, unfortunately, eligible for a mortgage.

So what do we do, then? Now I have ten people out of a hundred who potentially qualify, but I have 90 people that have not. What we have done, through partnerships with local organizations, is establish a credit-counseling process where we bring people in and we kind of put the carrot at the end of the stick and say, you know, There are ways that you may be able to qualify for this mortgage, but we have to work with each one of those creditors who is giving credit to you, to find ways to either pay off that credit or renegotiate that credit so that from the point of view of the number of dollars you take home, you will be able to qualify for a mortgage.

That's basically what residential lenders are doing is, number one, increasing the number of people who are multilingual, who represent all different minorities;

establishing partnerships with local organizations who can help with outreach; and establishing educational programs.

For example, in Hartford, the program that we have with HART, to help people get out from that consumer-debt issue, is 18 months' long. Some people can go through it a little quicker than others, because not everyone's consumer-debt issue is the same.

It's not a matter of working with those ten people who qualified and forgetting about the other 90, but having some ethical and moral responsibility on continuing to work with that other group that was not able to qualify.

MR. SPRINGER: Althea, I'd like you to respond, and when you do, one issue that I would like you to address is that the bank has a set of criteria that it utilizes in the underwriting process. There is a conventional criteria, and then you utilize a more liberal underwriting criteria in those areas where you've identified the community needs that.

My question, I guess, to Althea -- and what I'd like you to address in response to Miguel's comments -- is: Is that discrimination, where criteria, which is neutral on its face, is applied, but yet it has a disparate effect?

MS. SEABORN: First, if I may, I'd like to initially respond to what Miguel said, because what he pretty much discussed deals with marginal applicants; and you have to keep in mind that the cases that the department has seen are marginal applicants as well as very well-qualified applicants.

With regard to the marginal applicants, the remedies that Miguel talked about are oftentimes the ones that are included in consent decrees that the department enters into. What we tend to look for or to demand to resolve cases is that the bank do a little more in that community that had been excluded, or for those groups who had been denied access to credit in the past.

We also look for educational programs and advertising programs that are targeted for those minority groups or excluded areas. We also look for the loan officers to educate the public; the community that may not have the information that others have about how to clean up their credit reports.

We also look for the banks to also change their own hiring practices, because for the other group of individuals who aren't marginal, we believe that the hiring practices of the financial institution sometimes influences the decisions that are being made and the actions that are taken on the part of the financial officer involved in a particular case, whether or not that financial officer will suggest to an applicant what he needs to do to make his application acceptable, because they sometimes do that for other individuals.

I guess that brings me to the question that was actually put to me, and that is: Is it discriminatory to then turn around and liberalize the lending criteria? In a consent decree, I would say not, because you're rectifying something that has already occurred.

If it's in general, I think the department's position would be it could be discriminatory because what we're doing is not trying to, as I said, not trying to dictate to the financial institutions what standards they should be using. We're just saying whatever standard you use, use them across the board. Go into disadvantaged communities and offer standards that are less stringent than you would in the white community. I think the department would have a problem with that and would have to intervene in that situation as well.

MR. SPRINGER: The other part of that question, Althea, was to the extent to which underwriting criteria are utilized at all, which they are, obviously, to the extent to which the number of people who are applying for residential mortgages; my question was really more directed to the impact that that has on people who are seeking the mortgages themselves.

In your experience, have there been instances where you've seen a larger degree of people denied mortgages because they didn't meet the underlying criteria that was employed by the underwriter and it disproportionately affected people in the minority population? If that is the case, is that actionable?

MS. SEABORN: I guess I should point out you have the intentional discrimination, you have the disparate impact, and you have the disparate treatment. Initially, I was talking about the disparate treatment.

With regard to the underwriting criteria that has the disparate impact on a certain group, that definitely happens. We see that all the time, and it definitely has impacted the black and Hispanic community in terms of obtaining loans. That is actionable, and the department has been involved in cases like that.

What we tend to do in those cases is try to -- I mean, first, let me back up. What we've identified as the problem with the institution in those situations, where the underwriting standards have a disproportionate impact, is to have them do proactive things that they tend to do with the other nonminority applicants, such as telling the individuals how to clean up their credit, or other documentation that they might need to make a marginal application acceptable, helping them to seek out cosigners.

In those situations, we try to get the banks or the financial institutions to take more steps. The department will file suit in the disparate impact cases, and has. They're a little more difficult because you rely very heavily on statistics, and sometimes, if you don't have individuals who are complaining and you're relying just on documentation, you don't know the extent to which individuals who don't meet the criteria were told that verbally, and paperwork was not -- there's no paper trail.

Laws that are in effect now kind of help that process. The regulations that were implemented help to create a paper trail so that we can gather information. In disparate impact cases, you rely very heavily on statistics. Sometimes statistics are your only avenue for resolving. I don't know if I answered it.

MR. SPRINGER: Yes, you did. Thank you, Althea.

We have been joined by Denise Viera, who is the director of the Fair Housing Center. As I often do in these situations, I'm going to put Denise on the spot. We had asked the panelists to give, basically, a brief introduction about themselves and about their respective organizations and what they do and, basically, to comment briefly on the subject matters that we'll be discussing today.

At the conclusion of your presentation, what I'd like you to do, consistent with what I've asked Althea and Miguel to do, is respond to this: Just what I've heard this morning, there seems to be a tension between the desire of the financial institution to make loans, where it's not going to suffer undue losses, and at the same time, to provide loans on a nondiscriminatory fashion. There may be somewhat of a collision, particularly in cases where there is disparate impact. If you could address that.

MS. VIERA: Well, that will be easy.

MR. SPRINGER: In ten seconds or less.

MS. VIERA: Even easier; no problem.

Hi. If you don't mind, I'm going to stand up because I find that when I speak, I sometimes put myself to sleep. This way, at least one person in the room will be awake or, at least, if I fall asleep, I'll hit my head on the mike.

Good morning. I really apologize for being late this morning. I had one of those really severe crises that can only be caused by preadolescent angst. My son was having a little difficulty that really needed to be dealt with, so I'm really very sorry that I was late and I'm very happy to join you.

As George mentioned, my name is Denise Viera, and I am the director of the Connecticut Fair Housing Center, which is a statewide organization which assists people who feel that they have been victims of housing discrimination.

We have offices -- our main office is in Hartford, and we also have a satellite office in New Haven, although we work all over the state.

Our primary focus, as I said, was assisting individuals who feel that somehow or another, they have questions, concerns about fair housing. In the past year, we've received calls from over 200 people who -- a few were a little confused and thought that fair housing meant that when somebody was mean to them and wasn't fair, that they should call us and we should be able to help them; but the vast majority of which really were, what we in this room would all recognize as fair housing complaints.

We also provide training and assistance to organizations, landlord groups. We do trainings for real estate agents whom, we know, in the state, real estate agents are required to take, as part of their regular licensing, at least three hours in fair housing training; and that's something we provide with a few different real estate boards.

We work with all kinds of organizations that are concerned about fair housing issues. We've helped do affirmative marketing plans for development organizations. We are also right now working with the State of Connecticut on preparing its analysis of impediments for fair housing throughout the state.

We really do look at fair housing issues from a lot of different angles, both assisting individuals, but also from a programmatic and policy kind of level as well. Some of the questions that are before us today are obviously very relevant to the kind of work that we spend all day doing.

It is very frustrating, the number of individuals who do call us about fair housing issues. Right now, the number one type of complaint that we get -- because in addition to dealing with federally protected classifications, we also deal with all the state classifications -- has to do with people's source of income, which is protected in the state of Connecticut. Though, frankly, most of those stories end up playing out to be a proxy for some kind of racial or ethnic discrimination.

That's not to say that we never have any white individuals who will call us and say, This place has a blanket policy, for example, of not accepting Section 8. Very often we find that that is really the new code in this state for the way of making sure that people don't have access to moving outside of cities.

With many of the changes in federal governmental policy -- we all know about the Hope VI programs that have recently been funded in Stamford, things that are happening in Hartford and Charter Oak Terrace and Stowe Village, things that are also happening in New Haven and Waterbury; similar kinds of programs that many people are -- families are being moved from project-based public housing assistance to resident-based public housing assistance and things like the Section 8 program.

And yet, when our former president Richard Nixon, in his administration said the Section 8 program is going to be this wonderful thing that is going to allow people real choices, and they're going to be able to take this subsidy and move where they want to move, that just hasn't happened.

Even in a state like Connecticut -- which is an oddity in this country, where that assistance is protected as a classification, when you can say, The fact that I receive Section 8 is not a reason that you can reject me, that is still the major complaint that we are receiving in our office.

If you talk about some of the other issues that are around the table, things like where this bumps up against school desegregation issues. For example, if you don't have access to move, even when you have money, then we're really not going to be able to address that problem. That's potentially a program that allows people real choice, being able to move into the communities that they want, although there are a whole set of other little issues with the program I could talk about. Even as it stands, that's become a very serious problem.

Another -- almost tied -- the next two areas where we receive the majority of complaints are racial discrimination, which we, frankly, in this state, it's sort of race/ethnicity because it's often -- it's racial discrimination. We also hear a lot of complaints from

Hispanics where it's unclear whether it may be their color or their ethnicity that's at play, or both. In our office, although, if it's very clear, you know, we track that, it actually ends up for us, almost being an identical category of: "Well, we don't want blacks; we don't want Puerto Ricans." It's just sort of a phrase that flows out. It's the same thing, race and ethnicity.

The other one that's about on the same level as that is discrimination against families with children. Not surprisingly, the typical person who calls us falls into all of those categories, and also women, but that tends to not be the basis of the discrimination.

The typical person who is calling us is a single parent, a woman with children, African-American or Latina, often with a subsidy source. It's quite a challenge to figure out what exactly is going on here. What's the basis of this discrimination?

Our office also does testing, in trying to hold one of those variables constant and figure out what exactly was going on here. It can be a bit of a challenge, but that is -- that's the typical profile, but it's not the only one. Part of why I know that all of these different types of discrimination go on is that there are enough instances where it is just one of these factors, but it is compounded.

I think we need to be really clear to say, Here is a place that, for example, may accept Section 8, may not accept Section 8 from someone who is black or Hispanic; that this is a place where we allow children, may not allow children if the parent happens to be on subsidy; that this is a place where we have plenty of blacks and Hispanics, we just don't have any who have kids.

Those things really do crosscut, and it makes it very difficult to talk about what may be going on because when you look at the list of who lives in a particular community or in a particular development, when you hold each one of those classifications constant, it looks like there's no problem. It's just when you have multiple characteristics that it is a very serious problem and people really are locked out of the market.

Much of the discrimination -- you know, in this room, I think our tendency would be to say discrimination has gotten really subtle. We know, on a certain level, that that's true. We also need to not delude ourselves into believing that that is always true. Much discrimination is still very blatant.

We receive many complaints in our office, where someone says, You know, I called on the phone and everything was fine; then I went to apply for the apartment and suddenly it was unavailable, cousins moving in next week. Oh, one woman who called a few weeks ago, which is interesting:

Everything is fine; she goes in to see the apartment. I'm real excited about this, I'm on my best behavior, best clothes. She's an African-American.

There's a group of white individuals sitting on the porch. She had an appointment. She walks up: "Hi, I'm here to see Mr. Y. I'm here to see the apartment." All these people sitting on the porch looked around and were, like, "Just a moment."

They go inside. There's a little -- goes on for a minute. One person comes back out and says, He's not here; I don't know why you're here. "Oh, but I had an appointment with him; maybe he's running late. I'll just wait a minute."

"No, no, he won't be back."

Then we send testers out. The apartment is available, made an appointment, no problem, shows up for the apartment; black tester goes out, the same kind of thing goes on: "Oh, I'm sorry, it's just not available to you."

It's the same kind of stuff that we have been seeing for years: We still see advertisements in papers that say "no kids," "no Section 8," very blatant. I mean, it just doesn't get more blatant than that.

We've brought some of these cases before, and I've had both the landlord and the newspapers say to me, "Oh, but they had good reasons." We don't buy that when somebody goes to rob a liquor store: "Oh, but he had good reason for robbing the liquor store; he was really thirsty. You don't understand, this was a good reason."

But for some reason, when we're dealing with discrimination, there seem to be good reasons for discriminating people, particularly kids. Well, if there was a really good reason, it would be covered by one of the exemptions. If you're not covered by one of the exemptions, let me suggest to you it's not a good reason; and if you are covered by one of the exemptions, I might argue that that might not be a good reason, but it's an acceptable reason. These are places that are covered.

So it does still go on somewhat blatantly. Yes, there's no question that there are new and more subtle ways of discriminating as well, and we run into those.

Because I know we want to get into some discussion, I'm going to use that as sort of a segue into saying, Hi, Miguel, how are you? Let's talk about banking for a second, and neutral criteria.

Whether you're driving in here on 84 and you're looking at some of the billboards that some of the banks have up, or you're getting things in the mail, or you're just sitting down to dinner and that phone rings: Hi, my name is somebody you don't know, and I'm here to interrupt your dinner to see if you want to buy a new product, whether that's phone service or financial service.

Banks are being more aggressive than they have been about marketing. It's very competitive, and the banks are really trying to push a lot of different kinds of financial services which, frankly, a few years ago they couldn't sell -- which is part of why they weren't pushing them, because it wasn't allowed -- now they are.

There are a lot of other kinds of firms that are kind of hot on their heels, whether those are insurance companies or mortgage companies, that they don't own. There's a whole host of other types of institutions that can sell financial services that previously couldn't. So they're being very aggressive.

That has meant in areas like consumer credit, that you can be approved or not approved for credit pretty quickly. Now, we can do this over the phone in a matter of minutes. You're walking through the mall, and they're just handing you credit cards. They send them to you in the mail. "Just sign here, and you've got credit."

Mortgaging is one of the few places where it still seems to be -- other than, I would argue, small business lending, where it seems to be very laborious, lots of paperwork, lots of meetings still, ministeps -- the banks will argue, and I think somewhat rightly, that this has very little to do with them and a whole lot to do with the secondary market.

We have to be able to make sure this is a conforming loan. If it doesn't conform, then we're not going to be able to sell it. You know we only want to hold this loan for about five minutes, if that much. If we could hold it for 30 seconds, so much the better because we got our servicing fee off this thing. Let Fannie Mae deal with it. That's okay; that's how Fannie Mae gets to be the largest financial institution in the country, and so they're happy too. We all get mortgages, and so we're all happy. That's the system and isn't that wonderful, but it takes a little longer.

So one of the major moves in the mortgage markets these days is to say, What we should be doing is credit scoring. We use this in other arenas. By credit scoring, that means that we're going to have this list that we're going to be able to tick off much more quickly, and we won't have to worry about these discrimination issues because it will all be very objective.

We'll give you this number of points if you pay in this kind of time frame, and if you don't pay, you get this number of points or you lose this number of points. If you'd had credit for this long -- it's just a whole scoring system. There's a line at which you get this number of points, you get in; and if you don't have that number of points, you get out.

That's all really fair, right? That's what we want. We want this color-blind, completely blind kind of system that's completely objective. But that then really gets to what George's question was: Is that discriminatory?

Is it discriminatory to look at what kind of credit history do you even have when there are many people who are in this country whose backgrounds and cultures are such that, "We don't want to deal with credit at all, even though it's being pushed on us very much by our rent people"? Yes, it's being pushed on you. "We just always pay cash because that's the way it's supposed to be done. We don't trust banking systems, so we pay in cash." All these people who don't have a credit history, the credit-scoring system is going to really hurt them.

Then you have people who have been, whether it's enticed or really forced by circumstance into the only way that I can get things, that -- you know, whether you say they're necessities or luxuries; in some cases, they clearly are luxuries; in some cases, it may look a little more like a necessity.

In this country, you can always sort of argue that. Well, did you have to have a bed? Did you have to have this bed? There are a number of things that we might put in the home and say, How do you really function in this world, in this society, for example, without a telephone? It's very difficult, and there are people who do it and have to do it, but it's very difficult.

So now we'll talk about people who have been enticed by that. They've been enticed by the utility companies to have heat. They can't afford it. And we can argue, was it a necessity or not? Did you really have to have a telephone? Did you have to have electricity? Did you have to have heat?

But you couldn't pay for it for a whole host of reasons, not the least of which is a lot of the programs that are supposed to assist people and make sure that they can at least have some subsistence level of living, there isn't enough money to do that. God forbid it's month 22, and you're 21 months of assistance in this state have run out.

Now you have serious credit problems, some of which may come from places that actually report, some of which may be with nontraditional places. But as we go to these kinds of credit scoring, if your credit problem was with the phone company or the gas company, nothing may have been reported, good or bad, because they don't traditionally go to the -- the old TRW, when TRW decided that they were going to do that thing that they don't allow anybody else to do, which is change your name and not be followed.

So they changed their name, and they're now somebody else. It's true, right? They check out every last alias you ever had. I just thought it was very funny they were changing their name. Maybe they don't want their credit history to follow them.

Anyway, a lot of places don't report to the credit bureaus; places like the phone company typically wouldn't do that. So it wouldn't even show up on a credit record. If you have good credit because you've always paid things like that on time, you have no credit.

If you can convince the bank to look at things that are nontraditional, that's wonderful, except if you go to credit scoring, because that doesn't show up in most of those credit-scoring systems.

Now you've got to decide, are we going to have a credit system that's supposedly objective, but by its definition, is going to end up cutting out the kinds of credit that underserved populations tend to have, if they have good credit?

They tend to not overextend themselves on things that are going to show up on a credit report; and they've got a great history of paying their phone bills, paying their landlord, paying their utility bills. That doesn't show up, so they've got no credit. So the credit-scoring system hurts them, and they end up not being able to get that mortgage. So it is discriminatory? I said, No problem. Yeah, absolutely, it's discriminatory.

If you want to get to your disparate impact, that's who is going to be impacted by that. So there's been a whole move of the same type, who would argue we need to not have all this subjectivity in mortgage lending. Me, wearing that hat, I say you shouldn't be so subjective. You really have to be color-blind about the way you look at this thing.

I say, Okay, credit scoring, you can't do credit scoring. If you do that, you're not going to be looking at all these things. You need to take the whole person into account. So the bank says, I can't believe this. What do these people want from me?

We want you to apply the kind of criteria that you've always applied in other situations, which, yes, it does take a little bit longer, but you have always sat down with people and said to them, This is the kind of letter that I need that's going to explain away why you got behind with this bill, or what's changed in your circumstances, or why, if you were working multiple positions, we can assume that these are going to continue, and other kinds of -- or, Don't apply now; wait a couple months until your car loan is paid off or almost paid off and it becomes short-term debt because short-term debt is looked at differently than long-term debt.

How many lending officers tell you that? That's exactly the way you can look at a bill now, that you may not have later. Why don't we apply at just this moment, when your picture is going to be the best it could be, as opposed to six months earlier or later? That additional income isn't always a good thing particularly if we're trying to get you into particular programs. We don't want you to show higher income. We want you to be in just this window, where your ratios are just what we need them to be.

Don't go out and get that other job, because now you're no longer eligible for this program and the underwriting criteria is going to be more difficult. Those are conversations that a good banking officer is having with customers, as anyone who is trying the sell any product is having with someone. You are trying to find the right product for that person.

I think as long as you are telling everybody who comes in, This is the array of services and programs we have, that's fine. In private banking, that's always been done. You never go into your private banker and say, What's the standard? You say, How many different standards are there and what's the best standard for me?

Fannie Mae definitely drives the mortgage market. Freddie Mac definitely drives the mortgage. The secondary market is the way everything is done. Nobody wants to hold stuff in their pocket; they want to sell it. But Fannie Mae doesn't have just one product either. All the banks know that.

Miguel, I'm really not picking on you. So that's --

MR. SPRINGER: Pardon me.

MS. VIERA: I'm being cut off?

MR. SPRINGER: Yes. And the reason is what I want you to do is answer this question a little bit more directly. I'm going to try to put you on the hot spot as much as I can. You had mentioned earlier on the one hand, the bank is criticized for utilizing traditional criteria which may involve a certain element of subjectivity in the underwriting process; on the other hand, they say, Okay, we'll remove that and we'll go to a more objective format, using questions that can be checked off, that can have, potentially, a disparate impact.

What do you suggest as a mechanism for resolving that kind of inherent tension, which I suspect is going to exist? Miguel had mentioned that, for example, at his bank, they hire -- or, at least, attempt to try to recruit -- more people of color in a way to sensitize, I assume, those who are directly involved in mortgage-lending practices.

What would you suggest as a way to remedy the situation, where banks are not being put into this sort of Hobson's choice, at the same time that we are ensuring, through civil rights enforcement, that everyone has an equal opportunity to secure a residential mortgage loan?

MS. VIERA: I think there's four things that you do: First of all, I think when you -- well, there's four specific things that you do, in this context. I think you start out being very objective. You have criteria, and you consistently apply those criteria, so you may have something like a credit-scoring system. You plug everybody in that system and see what happens, so that you have some sense of where you are. That's important, and it gives you some baseline from which you're working. So first of all, you're objective.

Then what I think you do is you take that objectivity and you figure out what is going on with this individual. You say, Well, if no credit comes up, we need to say, Do you have some other things that you could show me? and you give the option of providing some nontraditional augmentation to that file. You do that for everyone, not just because you live in a particular neighborhood, your skin is a certain color, you have a certain number of children.

You say, Here is what came up, and before we reject you, give us some information. Then the person may still end up being rejected. I know a lot of banks are moving to this: They have second-look committees, and that allows you to not just have that one individual who looks at it and says, I don't like it because even your nontraditional information just offends me, which happens.

It's not what I'm familiar with, so the fact that you're in some collective that -- and they're called different things -- you're in some kind of collective, where you put money into this thing and when you need money, it sort of rotates around and you get the money now. We're going to help so and so put some money into a business, but we're all going to continue to pay; and a couple years later, somebody else is getting a car, somebody else is getting down-payment assistance for a house.

This is what we do. Our family shares money this way, our community shares money this way; but as a loan officer, as an underwriter, that's weird to me, so I can't count that.

Well, second-look committees allow a different set of folks with a different set of individual values to look at that and say, How consistently has this person done that and is this something that we can collectively look at? Second-look committees are really important.

Hiring is incredibly important. If you don't have people in the bank who bring these different experiences to the table, you're going to have a second- look committee with the same folks going again, I still feel uncomfortable with this. If you don't genuflect the way that I do, then you don't get to get the loan. Hiring is very, very important.

And then I don't think hiring is just enough, because we all know that you can look at a lot of different ways and you can come from a whole lot of different places, and you can end up in the same place. So assuming because I have people with this last name or that former address or this skin color is going to fix it, doesn't necessarily fix it.

This may not be 100 percent true. You go to Harvard and get your MBA, and you went to Harvard and got your MBA. You're bringing that to the table. It's not to say you have no different experience, but you're bringing that to the table.

So I think you need to look at, in addition to just hiring, you need to look at training. Part of that training needs to be -- as important as the objective stuff is the subjective stuff.

The fourth thing is that from the top floors of the bank, it needs to be made clear that people's heads aren't going to roll because they do this. I don't think that's always clear. I think it's clear on certain days, it's clear on certain forms, it's clear with certain programs. So you get these nontraditional criteria that are just as rigid as the traditional criteria, and you're still trying to jam people in the box.

You have to have some kind of criteria, but it needs to be clear what the flexibility is and what it isn't. What are my parameters, whether I'm the loan officer or an underwriter, what is the arena in which I can do things and I can't do things? If you have second-look committees, providing some of that flexibility is okay; but that second-look committee has to be in place, where you can really say, We've made exceptions that, at least, feel real similar to this, so we can do this again.

And you've got the fact that because it's a committee, not just one person, you've got a collective that's saying, We really think this would be an okay change from our standard criteria, and some documentation of that, and not one person who feels like they're kind of hanging out there.

From talking to loan officers and underwriters about this stuff, that's, I think, their big stickler. They say, I might have been willing to do this; I really like this person. I did home visits with them. I felt like they were really committed to this. If there was one bill they were going to pay, this is it.

Frankly, with lower-income people, that tends to be the case. If there's one thing that they are paying, it's their mortgage. Everything else, creditors are -- but their mortgage, they are paying, much more so than higher income people, who tend to sort of move the money and play with it more. All kinds of statistics will bear that out, so that's the hook.

MR. SPRINGER: Thank you. I want to give you a chance, Althea, to respond to that, but I have a couple of other things that I did want to touch upon before we go to our public session and, perhaps, maybe in response to these questions, you might be able to respond to some of the things that Denise has just said.

It's amazing how a lot of these issues seem to relate to one another. One of the trends that we have been witnessing in Connecticut is what they refer to as the downsizing of our urban centers, and one of the things that has been increasing -- in fact, it's not just in Connecticut, but from what I'm reading, it's happening across the country -- you're seeing the collapsing, for example, of public housing. You're seeing, under the theory that we're reducing blight, a lot of demolition of buildings in low- to moderate-income areas.

How does that -- and I'll direct this question to you, Althea -- are you seeing, in terms of the issue of access to low -- I shouldn't say low -- but decent, safe, affordable housing, is that something a trend that you are seeing, and if so, how is that manifesting itself in your office?

MS. SEABORN: I can speak generally about what we're observing in terms of the downsizing in the cities. I know, for example, in Stamford, they have begun demolition of high-rise buildings, a major public housing project; and in connection with that, a lot of the residents have been given Section 8 certificates that they cannot use.

The community is not receiving them because of the Section 8 certificates and because of the color of their skin. There's a tremendous impact on individuals seeking housing in Connecticut, with this downsizing, so to speak.

We are not really seeing the effect of that in our office. As I said, a lot of cases that the U.S. Attorneys' office handles are the cases that come through HUD, so the procedure with HUD tends to be kind of a lengthy one. If the complainant doesn't go to HUD, they will go to the Connecticut Commission on Human Rights and Opportunities, so it's either CHRO or HUD.

They may never get to the U.S. Attorneys' office or the Department of Justice. What HUD tends to do is resolve the cases on its own, but if there should be a suit, it would come through our office. At least recently, it has not.

MS. VIERA: Would what you dealt with be systemic as well as individual?

MS. SEABORN: Yes. Primarily, it is systemic. People come to us through the Civil Liberties Union, through other organizations or individuals who kind of run out of money or don't have the resources to take on the big cases where there are a large number of people who have been impacted or where there's a belief that there's a pattern of practice occurring.

The individual cases could get to us through HUD, if either of the parties elect to sue in federal court after going through the administrative process. They tend not to make it that far. I think for individuals, the obvious reason is they need to get the housing or they may be offered some small sum of money that's more than what they typically have.

And I forgot the second prong of your question.

MR. SPRINGER: No. You answered it. Thank you.

I guess the same question would be directed to you, Miguel, in the sense that, to the extent that you see this as a trend. I know you have an office located in Hartford where there has been some shake-up in public housing, and I understand certain people moved out on Section 8. I don't know to what extent this impact has had on your office.

If it has, would you please just describe it in terms of what's happening in terms of lending. Are people coming to you seeking loans to buy homes in the urban areas? What's happening in terms of the banking industry?

MR. MATOS: What's happening in the urban areas -- I can probably talk a little bit about Hartford and New Haven, and I'll start with Hartford. Everyone knows about the Charter Oak Terrace project in Hartford. Three hundred-something units in the old barn style of public housing have been demolished, and actually, I was there Monday with the executive director of the Housing Authority, touring a subdivision that is being built by the Housing Authority to accommodate some of those folks, as many as they can.

The urban planners at the city level call it reducing density. I tend to call it moving folks out somewhere else, but that's a whole other issue. Again, I'm injecting a little bit of my personal opinion in here.

Hope VI has been great in that it takes away a lot of old, dilapidated -- I mean, who wants to live in one of those places? However, the alternative to that, as Althea said, is putting people on carrier Section 8s, is a whole different issue.

We're trying to balance that in two ways, and I'll give you one example in Hartford and one example in New Haven. The research that we've done, since we primarily practice in inner cities, the case in Hartford has shown us that Hartford has a 23-percent homeownership rate. That means that everybody else is renting an apartment.

Then we found out that of that 67 percent, or whatever the number is, of folks that are tenants, 40 percent or higher of those property owners are not responsible property owners, and I'm being diplomatic. So, you know, we have that issue in Hartford.

Those nonresponsible property owners tend to foster a lot of crime issues in our neighborhoods, because they're not responsible about the folks that live in their properties.

What we're trying to do in Hartford, among other things, is to foster homeownership. We're in a partnership with Trinity College, Hartford Hospital Children's Hospital, The Institute for Living, through a nonprofit entity by the name of SINA. We are their primary lender.

Last year we did a little experiment to prove to the Fannie Maes of the world and a lot of other negative forces in Hartford that home ownership was alive and well and it was possible.

I'll tell you that story: With our help, we went out there to the neighborhood in Frog Hollow, and we bought ten homes. We say "we"; I work so closely with them, I feel we're one. We took those ten homes -- a lot of them two-family, some of them one-family -- and we rehabed them and brought them up to modern standards. We put them on the market.

Everybody was telling us, You're out your mind. You're never going to be able to sell those things. Nobody wants to buy in Hartford. $90,000 what? On and on and on.

A long story short: We were very happy that in a 12-month period, we sold all of the homes to Hartford residents, four of which were prior tenants of the Housing Authority, four of the ten; and the average selling price was close to $95,000, where people would have said that for Hartford, that's never going to happen. That's one example.

So now we're putting in a phase two, that over the next three years, we're going to do exactly the same procedure, but now with 150 properties, which translates to about 300 units of housing. The idea is to continue working with our mortgage company, working with the type of so-called liberal practices, to make homeownership a possibility.

I don't know about you, but if I own the property, I'm going to take care of it. I'm going to be concerned about what's going on in that neighborhood. The inner cities should really be able to start shifting away from the issues of blight.

In New Haven, what we're doing -- and we really encourage this for local municipalities and local nonprofit corporations -- is to look at the low-income-housing tax credit vehicle. Homeownership is great, but you have to stop to the point where you're then erasing multifamily rental stock. There's always going to be a need for both.

Through the low-income-housing tax credit structure, in New Haven, for example, we're taking 19 boarded-up and blown-away properties that will contain 65 apartment units and bringing those back on line. We are the primary lender, in that case, for the construction financing.

So one point that was very critical, and that I agree 100 percent, banks need to hire, and not only hire what your educational background is, but from where you come from. If for any reason, I was hired at the bank, not only that I have the correct stuff from degrees on paper, but I've been in the neighborhood.

I've been executive director of a nonprofit, I've worked for the Housing Department of a local government, I've been out there picketing. I bring a totally different perspective than what the typical Saab-driving loan officer from the suburbs --

MS. VIERA: What do you drive?

MR. MATOS: I drive a Jeep; I'll take anybody downstairs to see my 12-year-old Jeep.

So those are two quick examples of how the whole downsizing of the urban centers and what, in a limited fashion, a bank can do.

Going back to three other points that I found to be very critical is, yes, we do have second-look committees. Before that notice of rejection goes out, somebody will call me. I'll get a ton of faxes, or someone in my group will say -- this is all over small business residential lending -- take a second look at this credit and look at ways that we can leverage existing sources of dollars make this work.

We have great expertise in working with the Home Program, CDBG program, with the SBA, the Department of Economic Development of the state on finding ways that we can make deals work.

For example, if you apply for a $300,000 small business loan, you may not qualify for it. But if we can find the city or the state or someone to put in $150,000 of those dollars and we come in with the other half, we can make those deals happen. Again, it's the person in the position who is familiar and understands all of these nonbanking sources of dollars that could make things work.

I wanted to just give you a little story about Florida. I spent some time living in Florida. I really wanted to experience the South, and I'll leave it at that comment.

Working closely with the governor's office in Florida, we started a program in Tampa a long time ago. Now it's about 8 years old. What's really interesting about portfolio lending, which we do, we have a large portfolio which doesn't get sold into the secondary market. We keep it ourselves.

One interesting small fact about portfolio lending in the case of Florida, the default rate is lower than the national average of Fannie Mae or anybody else. It goes back to our folks. I know I pay my mortgage first thing. Yes, a quick, sort of, education to other banks that may be still going through a learning curve -- and we still have a lot to learn -- but that's a very interesting fact.

MR. SPRINGER: We have talked this morning about the impact of discriminatory housing, and, if you will, in some cases, lending practices on the minority population. We talked about blacks and Hispanics, primarily.

I want to focus attention a little bit on people with disabilities and ask you, Denise, what are the types of things that your office has experienced in terms of discrimination in housing against people with disabilities?

MS. VIERA: Mostly, it's absolute confusion. We do get a lot of calls -- I said there were three areas; the fourth one is definitely people with disabilities and confusion about reasonable accommodations versus modifications. What does this mean? When does it have to be done? Why do I have to do this? and a whole host of other things like that. Definitely, making accommodations and modifications, and a lot of confusion about what the difference is.

It is not something that we find has the same urban/suburban split that a lot of other discrimination has. In fact, in the cities, we tend to find that property owners are more -- they may be more willing to make a modification or to make an accommodation, but they don't understand the laws and they don't have money.

It all seems to come down to money. If you can find somebody to pay, I don't have as big of a problem with this, but I'm not paying. The tenants tend to be poorer. You just sort of reach these impasses where exactly who has to do what. You shouldn't have said this before, and now we've kind of got you. We spend a fair amount of time with that.

In suburban areas, that is less the problem; but there tends to be more, Well, you don't fit in. So you want this modification, and it won't look right. We get a lot of complaints from condominium associations about, Well, we have these uniform standards; we have to treat you the same as we treat everybody else. So putting this ramp in will mean that your doorway now looks different, and that's not okay. There's a lot of issues with neighbors around disability issues as well, mostly with that argument.

How it ends up playing out across the board, every discrimination case is different, but with disability issues, even more so. There's a tendency, I think, with disability issues for it to be -- the kind of people with disabilities are by definition "mobility impaired," which is just wrong.

There's sort of that sense. Well, I have a ramp, so now I have -- this unit is accessible to people with disabilities. Well, there's a whole host of different kind of disabilities that people have, and you can't just say you have a ramp and that's enough. You may be dealing with people who, in addition to physical disabilities, have mental disabilities. That needs to be accommodated, and it's just not there.

There's a lot of confusion about how previous drug histories and alcohol abuse, and also AIDS, play as disabilities, have been areas that we've had to intervene a fair amount. I don't know if that really answers it or not.

MR. SPRINGER: Yes.

Althea, what is the jurisdictional overlay, if any, with the enforcement of federal laws regarding the protection for people with disabilities against discrimination in your office? In other words, what are you doing about this thing that Denise just described?

MS. SEABORN: We're pretty much doing the same thing that we're doing about the race cases. The U.S. Attorneys' office handles a lot more of the discrimination cases because they tend to be the election cases, the cases that are individual and go through the HUD complaint process.

They run the gamut, as Denise said, a lot of mental impairment cases, a lot of issues about reasonable accommodation. The department was involved in one case -- and I thought I had brought -- I really hadn't prepared to talk about disability today, but there was a recent case that the department was involved in in which several members of an apartment complex -- and I believe it might have been in Florida -- wanted to install an elevator in an apartment building, and they were willing to pay for it themselves, which is unusual.

Usually, the money is the issue, or the owner doesn't want to do anything to change the structure of their building. These individuals lived on the second floor and above, and they wanted to put this in; and the apartment complex came up with a lot of different reasons why not. The United States intervened and ultimately was able to assist these people in getting the right to put this elevator in.

But it's those types of cases that the department has been involved in, and I can say that right now, the Attorney General is really focused on disability cases, not just with regard to housing, but also with regard to 911 initiatives, making sure that individuals with disability have full access to all the rights that everybody else enjoys.

MR. SPRINGER: Thank you. I'm going to ask all of you to address one final question. Before I do that, there are some other members of the panel who will have some questions for you.

THE CHAIRPERSON: None of you addressed this question. I'd like you to address it, because I think the problem may still exist. I live in Bloomfield, and I don't think we have the problem; but then again, I'm not in the business.

A book that influenced me very greatly when I was much younger was Gentlemen's Agreement. I had never heard about red lining until I read that book. What I wanted to try to find out is whether today, whether the realtors are red-lining people is something that's occurred. Denise and you folks may be able to speak of its effect, but has it disappeared or is it something that's less of a problem now than it was before?

MR. MATOS: I'm just going to make a personal comment on that, not speaking on behalf of the bank. I live in Hartford. I have a three-family, and I had a vacancy several months ago. It was interesting that two of the realtors that brought people made comments that, This is where this type of tenant belongs, if that answers your question.

At least, in my practical experience as a landlord -- I live in the building, but I rent some apartments -- it's alive and well. I don't use realtors anymore. That's it; I won't deal with that. So from the realtor's side of the picture, it appears to me that, at least in my personal experience, that's very, very much alive.

MS. SEABORN: Yes, I agree. Just on the cases that the Department of Justice has handled, steering by realtors is still prevalent. Red lining is exactly what the Albank case was about. The case wasn't brought in the District of Connecticut; it was actually brought out in the Northern District of New York.

That case did draw a line. It said anything below Interstate 287 in Westchester County was off limits, and that included communities in Westchester County that had 75 percent minority populations. It included communities in Connecticut; they were more specific with the Connecticut communities because they had to hop around places like Greenwich and Westport.

They identified communities in Connecticut that had significant minority populations, and they decided on paper, as well as verbally, they were not going to market to these areas; they were not going to issue loans. So it's alive and well, and it does still form the bulk of the department's work.

I believe that maybe in the late '80s, early '90s, the department recognized that it was still alive and well and actually stepped up its efforts to try to rule out that type of discrimination. I can say that the department has been involved in a lot of cases and there's no shortage of work.

THE CHAIRPERSON: It hasn't gotten much publicity, though. I haven't seen too much in the papers on it.

MS. SEABORN: I think in Connecticut, we haven't really had many cases on it; but that's not to say it doesn't exist. As I say, it's really hard to find out about it because a lot of times what happens, people go into banks and they may be marginal applicants, and they don't realize that there's a policy that just cuts them out, that they never had a shot at it anyway.

We tend not to hear about those types of individuals because they think it's because of themselves or something that they've done. We have heard from people, though -- and it included Connecticut -- Shawmut Bank was actually -- the Department of Justice entered into a consent decree with Shawmut Bank after it determined that Shawmut was specifically denying qualified minorities loans, mortgage loans. I'm not sure if they actually had delineated a specific area, but they definitely decided that they were not going to make loans to minorities.

So it's happening, and I think that as with Albank, it's happening in Connecticut. It overlaps, like the Shawmut case was really a Boston case, but it involved Connecticut as well because some of Shawmut's business is done here as well. We just have not really heard about the red lining.

It's funny, the cases in Connecticut, so far, have tended to be a lot of implementation of the public programs, the concentration of housing in certain communities, and not putting housing in other communities where minorities aren't concentrated.

Actually, if I can, I'd like to slip something in. When Miguel was talking about what his bank does in the inner city, the concern the department has, while we would like and we welcome the type of revitalization of the inner city that is taking place, we are also concerned when you continue to revitalize within that city that's been allowed to go down and not allowed to receive improvement loans or other types of financing to keep the community alive.

We're concerned that the housing is going to be concentrated in those areas, and minorities will be limited there, and individuals will be denied access to better homes, better schools, a better life. So while we commend the bank and the work that Miguel is doing, that also raises concern for us.

MR. SPRINGER: Any other members have questions?

MS. ZLOTNICK: I have sort of a comment. I don't talk too loudly, so let me know whether -- because I can't get to the microphone.

If I can just make a statement, then I have a question. It's interesting to me that you aren't prepared to talk about disability issues, because whenever any civil rights group gets together, disability is not an adjunct, it's part of it.

Also, people with disabilities are not kind of like faceless, nameless, sexless, raceless; they're all of us, which means that we've got black people with disabilities, Hispanics with disabilities, women with disabilities. We're all over; we're in every community. We're very often red-lined in our own way; we're red-lined into institutions.

Probably the biggest case of discrimination is a black Hispanic woman, with children, who is on a Section 8. So it's not a separate issue; it has to be addressed at all levels. The banks have to make sure that the people developing the properties are including access. It doesn't come under the Americans with Disability Act; it's part of the Fair Housing Act.

I guess if I accomplish nothing else, at some point, I want everybody to automatically think of disability the way they think of other issues that relate to it, because you can't separate it out.

MS. SEABORN: If I can just respond to that, because I think there's a misunderstanding. I actually waited until the last minute yesterday to call George to ask him, What should I talk about? I didn't hear from him. The only thing that was there was housing and school segregation, and so I apologize if it appears as though I don't have the -- I don't give it the attention, because actually, I have handled more discrimination cases based on disability than race or any other status.

As I said, the Attorney General has made that a focus. The reason why I carved it out of this discussion was because I they thought we were only focusing in on school segregation, and that tends to be the race elements.

I apologize, because I don't want anybody to go away thinking that I don't consider that -- and actually, because it is a part of the Fair Housing Act and the lending decisions that have been made, I had to remove it from my materials. It is definitely a part of my work, and I think, as you said, it really is very important.

MS. ZLOTNICK: I'm just saying any person. We just all need to stop compartmentalizing. It's very, very difficult for someone within their own race or ethnicity to be the only individual with a disability in that group, because they're not getting support from anybody or understanding necessarily.

And I didn't mean it that way. What I meant was that whenever I'm with any kind of a group, I like to point that out, that it's not a separate issue. So that was a good -- just a kickoff for me.

I guess I would like to know -- and we really haven't gotten into the school part -- but that also --

MR. SPRINGER: I'm trying to get there, Phyllis. Believe me, I'm trying to get there.

MS. ZLOTNICK: That is also an issue. But we do have a lot of parents with disabilities, and we have a lot of children who are disabled, whose parents are a minority. But what exactly, in two minutes, what is the bank's position, for instance, on ensuring compliance with all the laws in terms of when something is built or remodeled? What is the Department of Justice -- you know, what do they do?

And then, what can Fair Housing do to clarify for them that it's not an ADA issue? This is a civil rights issue.

MR. SPRINGER: Three questions: One, two, three.

MR. MATOS: What the banks are doing -- and this falls under the commercial real-estate category, as opposed to residential, because most of it applies to multifamily properties or apartments -- what we do is we have a catchall phrase in our commitment letter to any specific landlord who is rehabbing property that says that the plans, specifications, and the building itself must comply with any and all state, federal, city, and local laws. That's the way that we can catch them and demand that whatever percentage of units under the Act are treated for potential tenants with disabilities.

Another way to accomplish that is to, given in inner cities, it's somewhat harder to economically, feasibly rehab a property because of the values of the inner-city neighborhood. So we usually try to work with the existing landlords and work with either the State or the City to use federal funds, to come in with the bank funds, to rehab the specific properties.

Then we've really got them. When we can get them to use federal funds, then the extent to which they can't get away without having units available for disabled tenants is a lot harder.

The commercial real-estate piece, which is where this type of issue would fall under, allows for a very, very,

very careful -- we don't fly through these things. Commercial real estate goes a little slower.

MS. ZLOTNICK: Is there anyone within the bank, in terms of disability, that you can rely on to talk to when those types of issues come up?

MR. MATOS: No. Typically, we would hire an inspecting engineer for the specific project, and that inspecting engineer is very well versed on the specific architectural requirements that need to be built into a specific unit so it conforms with the law, as to that. But I personally don't have anyone that I can consult with.

MS. ZLOTNICK: Not from a technical point of view, but the same way you would bring in where you come from, race, ethnicity, how is the bank with hiring?

MR. MATOS: I'm not in the Human Resources area, so you've got me there. Oh, boy, I don't know. I wish I did.

MS. ZLOTNICK: Just a thought.

MR. MATOS: I know that our bank is, not only on the training side, but on the hiring side, all kinds of people, not to put anybody in a box. We're probably one of the few in the peer group, as they call it; of the 25 largest banks in the country, we tend to be out in front. Hopefully, Denise can vouch on that one.

MS. SEABORN: With regard to the Department of Justice, the disability rights section of the civil rights division is very well organized and has a very extensive training program. It's all across the county; it meets with individuals, architects, banks.

Also, in terms of enforcing the law regarding the disabilities, the HMDA data, the Home Mortgage Disclosure Act data is examined routinely to look for patterns in the lending decisions of banks. Sometimes, just based on that data, the department would end up with an investigation. What we always try to do is resolve cases, short of filing a lawsuit, via consent decrees, and that typically happens.

As I said, in the past, we have tended to have more cases that were individually brought. All I can say is that we've been pretty successful in mediating and resolving those kinds of cases.

MS. VIERA: There doesn't seem to be, in terms of privately looking at enforcement issues, there hasn't been as much new construction going on in Connecticut in recent years. That's a trend that may be just starting to turn around, but we're looking at enforcement in existing buildings and in rehab, which, as Miguel mentioned, doesn't have the same triggers unless you can get some kind of 504 coverage because you've got federal money in a rehab project.

We haven't been spending as much time -- as I know is going on in other parts of the country -- of going out and test and see whether or not there actually has been compliance with 504, partly because there just hasn't been as much construction.

On the other hand, there are the accommodation and modification requirements, and we really find that most folks don't know about it. Yeah, I know there's a Fair Housing Act; I might know something about what some of the protected classifications are.

We just did a survey of housing providers -- mostly nonprofit, but not entirely nonprofit -- but people in the housing industry, who are focused on lower-income housing, at the Connecticut Housing Coalition conference last week, got a couple of hundred responses back to a survey that we circulated. I think I know which one was yours.

Actually, it was frightening how many groups that actually work in that arena didn't know what the protected classifications were, really just didn't know. Well, past criminal convictions, I don't know, so I'll say yes. Bad credit was checked as often as disability. I mean, just didn't even understand, baseline, what the protections were, and when you get into disability issues, it gets even more complicated about what can you ask and can't you ask. What do you need to know, what can't you find out, and who needs to make what accommodation and what modifications.

So I think some education in this area is very, very sorely needed as well as some money to assist with modifications that might not be required for an owner to pay for, or when an owner doesn't have the money and could argue that this is unreasonable because you're going to put me in bankruptcy if I'm required to do this. Those are two areas that we are really focused on right now in terms of trying to get the word out.

MS. ZLOTNICK: There is money. It's a matter of knowing where it is.

MS. VIERA: There's some, but it also tends to be small amounts.

MR. SPRINGER: I'm going to get to both of you.

Ki-Taek?

DR. CHUN: I have two questions: The first one, concerning your mortgage lending practices and what you call liberalized guidelines, I wasn't quite sure whether it was court ordered or voluntary on your part.

And related to that, if you were to apply the applicants to your liberalized loan programs, to them you apply, say, traditional standards. What percentage of the newly qualified applicants would be judged to be qualified in the old standards?

And then the third question is: You may not have a large enough data base, but what has been the foreclosure failure rate on those applicants who received loans under your liberalized guidelines?

MR. MATOS: I'll go backward, since I'll probably remember the last one first. On the foreclosure rate, the database is not very strong, but generally, it's found that what I've labeled liberalized underwriting criteria, today, the foreclosure rate is extremely low. That's what we have found. Foreclosure rate is probably not the right term.

The percentage of defaults that would occur under that portfolio as compared to the national trend -- which is usually established by Fannie Mae -- appears to be lower, which should, on a general basis, talking about all banks, give bankers some sense of comfort that these are not taboo loans to do.

The percentage of folks that do not meet the standard underwriting criteria, it's difficult to judge, because it all depends on where you are; but if you are to use the census track of low/moderate-income communities as a guide, you will find that the higher percentage of folks that are declined under the standard underwriting criteria fall into those communities. That's where the second look comes into place; that's where the liberalized criteria and being flexible is okay.

On a quick look, I know I can tell in ten minutes that this specific person ain't going to make it under the standard Fannie Mae secondary mortgage paper, which we do hold for about 30 seconds; however, I would have all these other options -- through different programs that are either bank initiated or initiated in partnership with local groups in the community -- that I know this person may fall into.

Or I may say, Let's wait a month until X happens or Y happens. So it's a matter of us providing -- us, the bankers, providing ourselves the training, the internal training to make these different tools available to them so we can adequately service that community.

And your first question, Ki-Taek?

DR. CHUN: Was it voluntary, or how did you end up doing it?

MR. MATOS: Ours is voluntary and has always been voluntary. I don't know yet of any -- of Althea coming in and telling me that you've got to do this, at least, in our bank, happening yet. And I think one of the backbones to that, which we're very proud of is, that I think three or four years in a row, we have received an outstanding Community Investment Act rating by the federal regulators, which is not easy to get.

One of the components of that outstanding rating is very good HMDA information that's been able to back it up. Ours has been voluntary all along.

DR. CHUN: Is it a state secret to tell us how many applicants you have made loans to, the scope of the program?

MR. MATOS: I don't know that, to tell you the truth. I don't have it in front of me. I don't remember. I would need to go to the Residential people to get that specific.

DR. CHUN: Hundreds, thousands, teens?

MR. MATOS: Millions.

DR. CHUN: Not dollars, cases.

MR. MATOS: I don't know. If you give me a call, I would be happy to get that information. We look at that monthly, and we track the goals versus the actual results on all categories of the bank, and one of them is residential. I'd be happy to share that with you.

DR. CHUN: Miss Seaborn, about the downsizing and demolition of public housing, I think what I heard is things of that nature are happening, the current tenants are receiving Section 8, the voucher certificates, yet the prospective landlords are not accepting it.

But I did not hear anything in terms of proactive intervention measures that the U.S. Attorneys' office or somebody else is taking, and why is that? I know you said earlier on that you tend to rely on cases referred by HUD. Are you prohibited from taking a proactive public stance that, if it ever comes to such and such, that will be your position, even going on that you could do some public affirmative sort of outreach to prevent that?

MS. SEABORN: Yes. Up to this point, we have not, and I can tell you that our office is, right now, in between U.S. Attorneys. The former U.S. Attorney, Christopher Droney, was in the process of setting up workshops, because we realized, through the Department of Justice as well as from the information we gathered here in Connecticut, that many individuals don't realize that the U.S. Attorneys' office and Department of Justice is available to enforce the fair housing laws.

We have not done anything active with the individuals there so far, other than to just advise on a one-on-one basis, the Housing Authority in Stamford, in particular, that they should refer these people to HUD. Because we don't get the case directly; the case has to come through HUD or through the Department of Justice.

The individuals can also file actions on their own, and they oftentimes do. They also go through the CHRO. I think since there are a lot more local entities that are providing information, that we tend not to hear complaints -- sometimes citizens do call directly to our office with complaints -- but we tend not to hear the complaints directly. They might end up going to Fair Housing officers within the particular city, if they do have a Fair Housing officer.

DR. CHUN: It strikes me how little the general public is underinformed about the rights they have in terms of housing. It strikes me that, really, it's almost necessary, if not imperative, that it would be highly useful if either HUD or DOJ jointly informed the tenants being kicked out, informed them of their rights, the recourses they have.

And also, the same time, from the perspective of the landlords, if and when you do such and such, this and that will happen. I think that may serve as a deterrent.

MS. SEABORN: I think that's a good suggestion. That probably will be done when the U.S. Attorneys' office gets involved in workshops. I think, at least, historically, everyone believed that Fair Housing officers within the cities were charged with that responsibility; however, there are a lot of cities in Connecticut that don't have Fair Housing officers. So the job is left undone and, unfortunately, the public is unaware; but we do anticipate having workshops.

Because of the size of the state and the size of our office, we anticipate doing, basically, one a month, and it would just be no more than two people, probably, roaming around the state, trying to get the word out.

MR. SPRINGER: I want you to respond to what Ki-Taek has just asked, and there's a few other follow-ups I think you can respond to on that central question. What I'd like to do, we're going to be going until approximately 12:35, and we've been going almost two hours now. I want to take a short five-minute break; then we'll come back. I'm going to start with Maritza. I know you had a question.

Denise, if you can, respond to Ki-Taek, and then we can proceed into the public participation section after that.

Five minutes.

(Off the record.)

MR. SPRINGER: Maritza, I understand you had a question. Go ahead.

MS. TIRU: I'm going to make a comment, and I want to address it to Althea. My comment is that it's very common, at least in the Waterbury area, for the banks to hold a nice reception to real estate companies. When we're talking about violations, the first person that wants to buy a house is a real estate agency.

Usually, because they have this agreement with the banks, if you're black or Hispanic, they take you exactly to where you could buy a house, because the bank will approve that because it's okay for to you live in the area where the majority of them are Hispanics or blacks.

What you mentioned before was violating people that qualify to apply to get mortgages and buy a house. How can I know that they will approve the loan or the mortgage loan for a Hispanic or a black person, and use that data to report that they have so many Hispanics and so many blacks that they approve mortgages, and they even have documentation to support the data? But then four or five months later, people get letters saying they sold your mortgage to some company in California or Tennessee.

So in reality, they're using that statistical data to prove that, yes, indeed, they're lending to Hispanics and blacks, but, you know, later the same year, you find out that someone else has got your mortgage, that you have to send the money to some other person who might tell you you've got to put more money into the escrow because we don't know the area. You got to get -- your mortgage payment will be more.

How do you keep track of that, when a bank is just forced to give that to the Hispanics, not because they willingly wanted to do it, and then later they just sell the mortgage to someone else, but are still using the data to report that they're lending to Hispanics and blacks?

MS. SEABORN: Well, I think that the way the department would look at it is that they are actually giving the loan. If they approve the loan, whether they sell it or not afterward, I don't think that the department would look at that as a problem, so to speak.

I'm not sure that I'm clear, either, on your question. Is your issue the fact that you're then shifted to another financial institution that is charging higher fees or discriminating in some other way, or is it just that the initial bank that you've applied with has given a loan but sold it, and then is using that data to show that they're complying with the Fair Housing Act?

MS. TIRU: The violation here is they still don't want us as customers, so they approve the loan. They're saying, This is fine. You know, they use the data to report, Yeah, we have 48 percent of the loans approved were for blacks and Hispanics. Yet, they're giving that loan to someone else out of the state, you know, to the West Coast, where people then get confused.

Sometimes, I know people that lost their house because they said they wasn't sure all the paperwork that they have to sign and send it back because Shawmut Bank sold their mortgage to someone in California.

MS. SEABORN: That presents a difficult issue because in terms of the role that the United States plays in these lending cases, that really wouldn't -- the department really, probably, wouldn't get involved because they're going to look at whether or not the bank applied its lending rules uniformly.

And when you applied for the loan, you were granted the loan, and they just happened to sell yours, and they sold other ones as well because that's for business reasons, I don't think that the department would get involved because it doesn't really present a violation of the Fair Housing Act or the ECOA.

I think that if you're saying that the bank is doing something different, selling loans from Hispanics but not selling loans from others for some particular reason, that may raise some type of issue. I'm not sure if it really is a Fair Housing issue; it might go more towards the Equal Credit Opportunity Act. I'm not really sure.

That's a new issue that I haven't dealt with in the past, so I don't know. Maybe Miguel might have experience in that and know about the sale of the loans, and if there are issues that he's aware of with discrimination in the sale.

MS. TIRU: I just wonder if there's any data or if you can track those banks that, indeed, are providing, you know, are giving loans, the mortgage loans; but then later, they say, We don't want them. Then they sell all Hispanics, all blacks, or both to someone else because that's not their preference of customer to deal with. I'm not sure.

MS. SEABORN: I'm sure that data is available, but I can't really speak to whether or not the department has actually tracked it. That is an interesting question that they might want to look at.

MS. VIERA: Almost all banks sell almost all loans. Portfolio lending is basically a thing of the past, except where they're talking about special programs that they can't sell. I think we'd probably find that there are more loans that are held in portfolio, that are actually in black or Hispanic communities, and where the person who has received the mortgages is black or Hispanic, because the tendency is to sell it immediately.

What they probably, in fact, have done is sold the loan within a matter of moments -- days would be long -- and have been continuing to service the loan. Then at some point, they sell the servicing to this bank in California, who now is where you're supposed to send your mortgage payment.

That new bank -- or it may not even be a bank; probably some other kind of financial institution -- is getting servicing fees for doing that. That is, frankly, seen as something that's a more efficient way for us to have mortgages.

It supposedly frees up that money for them to come back into that community and make more loans. So I think the ways to hold the toes of those banks to the fire, in the community is two things: One, from an education standpoint, that they should be making it clear to folks that we are -- not only can we sell your loan, which tends to be in the mortgage documents, we are likely to sell your loan.

It is very likely that at some point soon, you will get a letter that says you're supposed to send your payment to someone else; so when you get that, don't ignore it and act like, I'm not supposed to pay to them.

The other thing is to say to them, to the bank, Now that you've sold this loan, we're assuming that pool of money is now freed up again to make more loans back into our community. So the fact that you made ten loans this year into our neighborhood is nice, but if you sold those loans already, then you've gotten some money back from that sale and you should now have more money in that pool that you set aside, and we want you to start making more loans with that.

That is the reason for the secondary market, is to free up the money in the originating bank so they can make more loans and do that more efficiently in the community. So I think that's the way to deal with it, because just the sale of loans is so standard, and it's more out of odd if your loan hasn't been sold, than if it has, frankly.

MR. SPRINGER: Do you want to comment on that, Miguel?

MR. MATOS: I just wanted to support Denise's comment that from a purely technical point, once the loan is made, at least in our bank, we don't differentiate between that loan and another. Every night, pools are set up of a billion dollars in loans, and somebody buys them.

Once the mortgage thing is done, it becomes an asset; and very rarely is it looked at like, Okay, we have a billion dollars in loans and $50 million of that is Hispanics. It's gone. It just becomes a loan number at that point, and it goes through the treasury and people like your brother or your brother sell all that stuff, and we have no idea.

It may be an interesting angle for the regulators to look at, but I think it's going to be difficult to prove that it's a purposeful act by the bank not to service specific groups. It becomes more a function of a money market, and that's how the money markets work.

MR. SPRINGER: Denise, I did want you to take an opportunity to briefly respond to Ki-Taek's question, which addressed the issue which was raised earlier about the downsizing which is occurring in many of the urban communities. There is some discussion about Hartford and the Charter Oak revitalization process. If you could just respond to that briefly.

MS. VIERA: I was just going to follow up with what Althea said, noting that this is a really new arena for a couple of reasons: One, this has a lot of do with Hope VI and some other federal programs that are very new; and just in terms of implementation, we're talking about really just the last couple of years, at most, more like the past 18 months.

MR. SPRINGER: What is Hope VI?

MS. VIERA: Jeez, if I knew. Hope VI is a U.S. Department of Housing and Urban Development program that was developed when Jack Kemp was the secretary of HUD, under the

Bush administration. It was one of a series of different programs that were to change the way that public housing was delivered in this country.

There were other programs that dealt with the sale of public housing to residents, but Hope VI has been the one used to demolish old public housing buildings and provide assistance to residents to have other kinds of options, much of which is Section 8 subsidies, but some of which is the kind of development that Miguel was talking about before, of downsizing and developing public housing that looks very different than what we've traditionally known as public housing.

There's been a fair amount of Hope VI money that's actually come into this state and also, applications have been made under that program to change what public housing looks like. So because that's a fairly new program, in terms of that money actually hitting the ground, when Jack Kemp was secretary of HUD, most of what was happening was some demolition, but it's really a fairly new program.

The other thing is that it really tends to, from a fair housing perspective, tends to manifest itself in discrimination against people based on their source of income. As I said, when I first -- my initial comments, that that tends to be a proxy for something else. It's code. That's what's said.

So in terms of the best claims that people often had it's, I went and applied for housing and they told me they don't accept Section 8. Often, places have a blanket policy that they don't accept Section 8, so it's harder to make those race claims because they just don't take Section 8.

That means that getting to it Althea's desk, who, representing the U.S. Government, deals with federally protected classifications, we might be able to make some arguments about the disparate impact of women and minorities and families with children because of these policies; but the case law is between nonexistent and thin on that.

In Connecticut, we could make a very specific claim about this being discrimination based on source of income; and, frankly, those cases are just beginning to be decided. I think there are only two cases that are pending in superior court right now that will give us some case law very specifically that, yes, Section 8 is covered under source of income; no, it isn't. I think it's real hard to read Connecticut laws, where it says rental assistance is protected, and not get to that.

But these are the things that we have courts for, to make sure that even the most -- things that kindergarten children can read and say that's what it says, we hire judges to say, Yes, in fact, that's what that means. That's where that stands right now, and there are a few other cases finding their way.

I think at that point, maybe the idea of some of the systemic cases that would be more likely to see someone like Althea involved in, we will be seeing. It will be clearer what the case law is, and we can actually start talking about the racial end of it.

The last piece on that that I wanted to mention is that there are some programs that are out there to really help people moving because of Hope VI. There is specifically a program in the Hartford Housing Authority that was initially funded by the Hartford Foundation for Public Giving, and now is getting federal money under -- these acronyms -- ROC.

ROC stands for Resident Opportunity Counseling program, and that program provides assistance to individuals when they get that Section 8 certificate, to actually assist them with moving to nontraditional areas. There are counselors who will actually drive people around, help them, you know, get acclimated to a new community, really counsel them on what other options there may be.

There is a similar program in New Haven, which was funded through a consent decree and settlement of the Christian Community Action case. So people who are receiving Section 8 assistance, as part of that, are eligible, through Home Aid, down there; and I am hopeful that there will be some similar kinds of work going on in Stamford, now that Stamford has received a large chunk of new Hope VI money, because it's sorely needed there as well.

I think that's another way that you can come at this. Those of you who are familiar with the control model in Chicago, that's what these are modeled on.

MR. SPRINGER: I have one question, which is an open-ended question, and I'd like each of the panelists to respond to this before we move into the public session. The Supreme Court of Connecticut, several years ago, in Sheff versus O'Neil, found both as a matter of fact and as a matter of law, that in Hartford, there was a significant concentration of racial minorities that was identified to be unconstitutional insofar as it impacted on educational opportunity.

We've had a lot of discussion this morning about ongoing patterns of discrimination that are likely to be found in the area of Fair Housing. We talked briefly about lending practices. There was discussion about municipal housing and zoning policy. We've talked about some of the issues involved in the enforcement of Fair Housing laws.

The question is: To what extent are the fair housing issues, that have been talked about this morning and identified, been responsible for or contributed to or impacted on the isolation that the Supreme Court has concluded exists in the city of Hartford and other urban communities? And to the extent that that is the case, what is it that each of you recommend or propose as a solution for dealing with that problem?

MR. MATOS: That's exactly the topic that I wasn't prepared to talk about because I know nothing about that; I know a little bit about what I do. However, from a more general perspective and applying a little bit of common sense, in the case of Hartford, I think that one thing that may be a solution, at least, the way I look at it from a very community-based real estate perspective, is like I said earlier, to do our best to increase -- to continue to increase the home ownership patterns of the city.

The common sense out of that strategy tells me that that we're going to have folks that are going to pay much more attention to local schools, are going to get involved more in the local schools, and hopefully, the home ownership pattern is also going to, to a certain degree, bring in -- this is a nasty word -- bring in a certain amount of gentrification -- I see you raise your eyebrows -- which, from a simple yin/yang position, the Japanese keep everything in balance -- I mean, the city's way of balance on the other side.

You can get into all kinds of philosophical discussions of what happens to the folks and where they go. We can go on and on for hours, but my limited, ignorant experience says that I think homeownership of, at least, inner-city cores, which appear to have very low homeownership patterns, may be an answer in support, I hope, of better movements for schools. That's my guess.

MS. SEABORN: I would have to say that the court was correct that housing discrimination has led to an unconstitutional situation with regard to the educational system available to the inner city youth; and in terms of resolving it, the committee can't do it at present. It's a really tough, tough thing; but I think that with regard to what the Department of Justice has been doing, their effort to attack lending bias, builds on what Miguel said about homeownership.

If the department can continue to enforce the Fair Housing Act, the Equal Credit Opportunity Act, and open up housing opportunities throughout the city of Hartford and other suburban communities, then people will have choices about where to send their kids to school.

You have situations in some of the communities -- not all in Connecticut -- where you have neighborhood schools, and I think that when you have segregated housing patterns, you end up with the segregated school situations.

If you take, for example, a city like Norwalk, where they don't have neighborhood schools in the minority communities, and the neighborhood kids, the minority kids are bused into the other schools, you still have -- you have the segregated housing, you have schools that are dispersed in the more affluent areas, and you have kids going in, but what you tend to have is a bussing situation, where you bus the majority of kids who live in a certain community to certain schools. So I think that you're going to have to deal with the bussing issue.

Lending is one; bussing, you're going to have to deal with school construction. A lot of the communities are having overcrowding problems. I know the cities of Westport, Wilton and some of the communities in Fairfield County are actually building new schools. A lot of places aren't doing that right now.

Where you're building new schools, I believe what you need to do is build some schools in the inner city, build some schools in the more affluent areas, and cross-bus, if busses are going to be utilized. But it's a very difficult issue, and I think it's going to take many different approaches to try to resolve it.

I think that a lot more pressure is going to have to be brought upon the different communities to build affordable housing, to focus in on their zoning regulations, to make sure that they're not precluding or preventing developers from building low-cost housing within the communities; and that still is occurring a lot in Connecticut. So I think that it's going to take a broad effort in order to resolve the problem.

MS. VIERA: In 1988, the then State Department of Housing got the University of Connecticut Center for Social Inquiry to do a survey of perceptions about affordable housing in this state. One of the more interesting questions on that was not asking about yourself, but let's just talk about your town. Why do you think that affordable housing isn't being built in your town? One of the top responses was not wanting minorities living their community. So while, of course, I don't discriminate and I have none of these prejudices, I know everybody in my town does, but it wouldn't be me.

I think that when we talk about the school-desegregation stuff, we really need to remember that if on the one hand, that is going to be the response from the communities, and simultaneously, we're going to hear, We don't want bussing -- and I think we hear that from both suburban and urban parents; I don't want bussing either. I live in Hartford; I don't particularly want my child to be bussed -- but without that, where do you go?

You end up with neighborhood schools, which seems to be the cry that everybody is willing to say, I'll support that; I'd like for my child to not have to walk the five miles uphill in both directions in the snow that I did when I was a child. They should just be able to walk across the street, and the school is right there and it's a wonderful school. That's impossible to do that with our current housing patterns.

I come at this, because I tend to be antagonistic, as this is my one opportunity not to be antagonistic. You're right, I am against bussing. I am, therefore, for neighborhood schools, and I think we need to fundamentally change what our neighborhood schools look like so that we can have neighborhood schools.

This is a map of Connecticut, and I think from wherever you're sitting, you can still see what's most important about this map; that is, that most of it's white. There are a 169 towns in the state of Connecticut, and when you look at those towns -- and this is school districts and percentages of students of color. All of those towns that are colored white have less than 10 percent of their student populations, of any form of racial minority; and the ones that are in yellow are less than 25 percent.

You could begin to guess which -- the purple ones, of which there are only four, have over 75 percent -- that just happened to be where the chart broke down -- every single one of them is over 80 percent. The lowest one is about 83 percent minority. There are four towns that meet that criteria. Interestingly enough, one of them is Bloomfield, which is over 80 percent African-American in its school population.

So we have extremely segregated housing patterns which has translated into extremely segregated school patterns, and I think that to the extent that we want to address the school-segregation issue, we really need to address the housing-segregation issue. There are a number of different ways we could do that.

I could come up with a similar map for you that talks about multifamily zones, the cost of housing, that talks about some of the roadblocks that have been put up to building affordable housing; but I am also offended when people suggest that fair housing is, by definition -- as someone who's dealt with affordable housing issues for a dozen years, that's what I did; I worked on providing low-cost housing for people, and for just a few years, I've been working in fair housing -- I'm always offended when people think they're the same thing. They are not.

There are many minority families that can afford housing in areas that they have been steered away from, discouraged from purchasing, have been ineligible for programs merely because of the color of their skin or last name or religion; and we have a very long and deep history of that in that case. Until we address that, we will have extremely segregated housing patterns.

I think that people should have choices. I love the comment about gentrification. I support gentrification if we can also have -- I don't know -- "sans colourfication," something like that. If poor people can move out, have some wealthier people move in -- but it always tends to be this one-way street, and we've got to get beyond that. I think that's what will help fix the educational situation as well.

MR. MACY: By the way, if you would give us a copy of that map, we can incorporate it in our report.

MR. SPRINGER: Miguel, I'd like you to respond to one thing that you did say. There was some discussion earlier, and I'll touch upon it again, this concept of downsizing in many of the urban communities, and that's having the effect -- I think you were the one that actually identified it -- of driving people out.

Then you mentioned gentrification, which, I take it, is the inverse of bringing people in. To the extent to which the people that are being driven out look differently than the people who are coming in, what does that pose for you as a person in the community? I'm not just talking about your hat as a person from People's Bank, but how does that -- excuse me, Bank of Boston; I apologize -- how does that tension, if you will, how do you see that resolving itself?

MR. MATOS: I guess communication and people being able to get over this hurdle about what color you are and try to be friends with you or not. Where I live in Hartford, I'm really happy and very surprised at my experiences of mixed -- it's a little, little, little place; it's probably four or five blocks -- but it's very, very mixed, and people are not into what color you are to make a stereotype decision about whether you fit in.

I don't know how to respond to that. We have to communicate, and we have a moral and ethical responsibility, as people, to break that down into education and communication and starting with our schools as early as we can, to teach our children.

You know, a big issue with my wife and myself and our recent newborn was we wanted day care that's got a little bit of everything in it. I don't want to go to Super Stop & Shop and have my baby see an African-American and freak out. That really bothers me.

MR. SPRINGER: Let me come at it a different way: The Supreme Court identified a high level of racial concentration that exists in the city of Hartford, and that had been contributed to the segregation that existed in the public schools. I believe that Denise indicated that you have to break down the housing patterns in order to decrease the racial isolation that exists.

My question to you would be that on the one hand, you want to bring a different group of people in that currently live there, which does not automatically mean that you have to displace people and move them from the cities to someplace else, and if so, how is that going to be resolved?

In other words, you talked about underwriting criteria that has been applied for underwriting mortgage loans. If I now want to move from the city of Hartford to Wilton, what, if anything, is the bank going to do to help me get there by way of homeownership?

MR. MATOS: It doesn't matter because the underwriting criteria doesn't have anything to do with the geographic location. Probably, early on, when we were banging our heads against the wall trying to figure out how to do this, we would say, Well, we have this problem in Hartford so we'll do a civil program in Hartford.

I think that now that the number of years gone by, the residential mortgage lenders, the underwriters, et cetera, the product is generic across the board. So if you want to move to XYZ, we have the flexibility to still offer the product and not tie it to geographic location.

MR. SPRINGER: In your estimation, are the properties that would be available to purchase, for example, are they less expensive in Hartford versus the suburban communities?

MR. MATOS: The perception is that in the inner cities, the housing is less expensive. That's the market, generally. Some of it is perception, and some of it is real. It's a matter of lifestyles also.

MR. SPRINGER: So are the people who would be likely to apply for loans, who live in urban areas, are they going to be able to qualify, even under the liberal underwriting criteria, to purchase houses in the community where the real estate values are maybe substantially higher?

MR. MATOS: The pure market economic answer to that is no, they probably won't; and what will probably happen in the future is the pattern may repeat itself and you have, then, pockets forming within those communities that didn't have them before. The pattern duplicates itself that we're going to go through a cycle, and we're going to come back. I don't know whether my child will probably see that. From a pure economic outlook, the answer is that most probably, they will not be able to afford those.

MR. SPRINGER: That being the case, what do you see as a solution for that problem?

MR. MATOS: What I see as a solution to that problem, in my experience, is for most cities -- and this is more of a national perspective -- are entitlement cities, and those cities receive a certain number of dollars from the federal government.

A lot of it is geared toward housing, or at the local discretion of the city or town, it can be geared toward housing. One solution for that is for the banks to educate us and for us to educate those elected officials on how those dollars can help make those properties affordable, where, from a pure market-driven perspective, they were not. That's one way.

Now, you know, they don't have an exhaustible number of dollars, but that's one way to slowly begin to make those properties affordable and bring a certain balance in terms of racial composition of those neighborhoods. That's the best answer I can find for you. Or go to our congressmen and complain, and have them allocate more dollars specifically for that specific issue.

MR. SPRINGER: Denise, do you care to respond to that?

MS. VIERA: Working in Fair Housing, I often am -- it's often assumed that I am an integrationist, and I'm not. I like to make the distinction between integration and desegregation, because people need to have choices about where they live; and, particularly, when we talk about racial discrimination -- which, if we're having the education discussion now, I think is really at the crux of that -- it's not, I think, so much the problem that there have been ethnic enclaves in this country, and continue to be -- that is the greatest problem that we face in terms of fair housing issues now -- as it is the structural inability of people of color to have choice.

That may mean that there are communities that will be more Latino or less Latino, and I might choose to live in one of those communities or not. I might prefer to live in a community that has a few more African-Americans or a few less African-Americans or is racially mixed.

I also live in Hartford, and one of the reason I live in Hartford is because the area I live in is racially mixed, and that's what I prefer; but other people don't. There are going to be changes in patterns, and people will move out for a variety of individual reasons; but if I'm not harassing my neighbor because they moved in, and I don't like their color, but I decide to sell my house because I don't like their color, that's kind of an individualized decision, and if I move somewhere -- the problem I think we have in this country is that that's been made systemic. It's not just individual choices; it's cultural, societal, and governmental choices.

That's why the law needs to step in, not because people don't get along. We get as many calls in the office, you know, somebody says, I don't like my neighbor because I don't like my neighbor; and we have to kind of deal with -- those are the ones I told you, It's not fair. That's going to happen, and that's not just because of their race; but sometimes it is, and it's really, I think, about choices.

When you talk about moving from Hartford to Wilton, there are reasons beyond just economics as to why you may not be able to move, or even if they are economic, why those economics are those economics. That's what we need to address. We need to say that it's not okay for towns to say, We don't have a responsibility to have a variety of housing choices in our community, be that the city or the suburb.

It isn't housing choice in the cities either. If I want to live in a racially mixed community, I can say, Well, maybe that means I move to a Bloomfield or Hartford, but it means I'm giving up a set of whole other things, usually, and that means I don't really have a choice to live in a city. I also don't have a choice to live in a suburb; the door may be closed to me.

When we talk about fair housing, that's what we need to address, is that idea of desegregation and housing choice, more than the social engineering that seems to be typically involved in integration: Well, we have too many of this kind of people and not enough of that kind of people, and we aren't picking a baseball team here and worried that we've got too many pitchers. It's really about the choice.

That's why the gentrification stuff bothers me, and it doesn't bother me. I want to live in a community that's got doctors and lawyers; and I don't like doing yardwork, so it's real important to me that I live somewhere where somebody likes to do yardwork and I can pay them to do that because it's not something that I enjoy; there are other things that I do enjoy.

That's one thing I love about my neighborhood. We've got all kinds of people. There are people on the street who can fix things around the house and people who are doctors, people who are attorneys and people who are bankers. That's what I think a strong community is about; at least, that's my definition of what a strong community is about.

We have so many barriers that have been built up in this state that prevent that. Most of our communities are not that way. I don't know what you do in Wilton when it snows, because there's nobody there that thinks it's their job to shovel. "That's not what I do." That's a fundamental problem.

What happened if in your community, walls really were put up around it? What if those walls that you've been erecting keep people out, really kept them out and really kept you in? Do you have a strong and vital community in and of itself? Most of the communities in Connecticut are not that way. It's not a problem of Hartford and it's not a problem of New Haven; it's a statewide and, indeed, national problem that I think if we address it from that standpoint, we'd be better off. That's a question of will.

MR. SPRINGER: We're going to have some additional exchange on this, but before we do that, I'd like to call on -- is Tony Pepe here? No?

Mike?

MR. KAELIN: I just have a question for Denise: You identified several factors as contributing to the isolation between the suburbs and the urban communities; to what extent -- and I know this is hard to do; I'm just trying to get some sense of proportion -- to what extent would you attribute that isolation to the fair housing issues that we talked about this morning versus simply the affordability of the housing stock in the suburbs?

MS. VIERA: I don't know that those are -- well, when I make a distinction between affordable housing and fair housing, is that --

MR. KAELIN: Yes. Or can you?

MS. VIERA: Well, I think you can, to the extent that the way that cities grow up, in a city, it's going to be more dense than in a suburban or rural area. Your housing costs, you would expect, are going to be -- or that you'll be able to find housing that's lower cost just because of that density and economies of scale, certain services that are there. So this lifestyle is going to be different than in a suburban area.

I think that there clearly is a nexus between affordability and fair housing issues. The suburbs grew up because of governmental policies that allowed them to grow up. There wouldn't have been the roads that would have made it possible for people to live in a suburban community and still work in a city, if it weren't for federal transportation policy; and then, overlayed on that, other federal policies that said minorities can't move into these communities because their finances -- you weren't eligible.

There clearly is that nexus, but I also think that we need to not -- it's important that we not always say, All minorities, for example, are poor; that the reason that -- bringing in when we were talking about the disability issue -- they say, But they're not going to be able to afford it on their disability insurance.

You don't know what people's income is just because you look at them and say, Oh, you're an African-American, you're disabled; therefore, you have no money. But that tends to be what happens. They are not exactly the same thing. I think we need to be really careful about that, and be careful that to the extent that the roadblocks that have been put up for affordable housing, really don't come from any concern about affordability at all.

Most of those towns that I was pointing to have housing authorities; they have public housing in those communities. Most of it's elderly housing. There's nothing wrong with doing multifamily, low-cost housing as long as it's for the poor white people who already live in our community. If you can build lower-cost housing, then it can be available for people of all different kinds of shades and backgrounds, so it's not really an affordability issue.

There are ways of doing cluster housing. People talk about, We have wetlands problems, and we really can't. We have no buildable land, until some subdivision developer comes in and says, Here's how we're going to cluster this thing and it's going to look like this. They're going to sell just this much and bump up the market here. Then all of a sudden, there's land available.

That has tended to be the development pattern in Connecticut. There's not land available until the project is for the right people. When there's a perception that it's for the wrong people -- West Hartford is my favorite town to pick on. There's little developments all around West Hartford that there were major fights, up to the Supreme Court fights on, We will not allow these couple of little units.

Then when you ask the people where they are, they go, I don't know. When you tell them where they are, they go, That's it? That's the development that everyone was fighting about? They didn't even notice it. It was not a problem until, on paper, it looks like it's low-income housing. So yes, there is a relationship there.

Can I exactly divide out what's what? I mean, I sort of can't; but I think that we need to get away from just saying the reason there are no minorities in my town is because they can't afford it, because there's usually a whole set of other reasons as well, and that affordability was often -- or the unaffordability was created to specifically keep people out, not the other way around.

MR. SPRINGER: Althea, I wanted to direct a question to you that follows up on Mike's question: With respect to some of the suburban communities -- and Denise brought a map earlier, which I did hold up -- where there is a substantial -- or rather, insignificant minority population, how many cases have you dealt with in circumstances where someone has sought to either purchase a home and found that, for example, there was two-and-a-half-acre zoning, which drove up the cost of a lot, which drove up the cost of the size of the house that they could build on the lot and, therefore, prevented them, financially, from being able to afford that unit, are those situations that your office has ever dealt with? Are those some things that have occurred in your experience?

MS. SEABORN: Within the seven-year period since I've been in the U.S. Attorney's office, we have not had cases that have raised those issues. I'm not sure if they were brought in prior, but definitely in Fairfield County, that is a fact. There are communities there where there are zoning restrictions that -- Wilton, for example, has one-acre lots or above; but to my knowledge, my office has not dealt with it, at least in recent years. I think that --

MR. SPRINGER: I'm sorry to interrupt you, but you had mentioned before the concept of adverse impact as opposed to some intentional form of discrimination, and that was really where I was going with that question. I was wondering if a situation has arisen where you had a disproportionate number of people, who happened to be people of color, who could not buy in that particular area because of the zoning restrictions that drove up the cost of values so they couldn't afford them.

MS. SEABORN: The Department of Justice has been confronted with those types of issues, but I have not been involved in them and really have no specific instances to speak of. It's definitely the case, but I don't know. I don't know.

The disparate impact is obvious when you look at the different cities that surround a lot of the suburban towns, but unless the case is brought to the department, we won't get involved and we won't be able to address that. But there has been a disproportionate impact upon minorities, and I think it's obvious from the map that that is so; because in certain communities, the cost is so high that certain individuals are precluded from going in.

Even if, as Denise says, they have the income to afford whatever rental housing that may exist in some of those communities like Wilton, even though it has a one-acre zoning, does have some rental opportunities or condo units available.

That perception that has been created over the years because minorities have not been in these communities and minorities are concentrated in the other cities and in the inner city; these negative perceptions have created this situation where they don't have access. They're not able to even go in and secure the housing.

MR. SPRINGER: I think Miguel had touched on this and Denise had mentioned it, and I believe you did also, Althea, that one of the suggestions for dealing with that problem, if it's purely one of affordability, is to make access to affordable housing much larger.

In Connecticut, I'm aware that there's an affordable housing appeals statute, but I also am aware it has been subject to some controversy; and every two years, someone introduces a bill in an effort to scuttle it.

Denise, I just wanted to ask you to respond -- I know there's a couple of other members on the panel who have some questions -- to the notion of how do you expand affordable housing in Connecticut?

MS. VIERA: Okay. How do we expand affordable housing in Connecticut? There is this affordable housing appeals process, which basically just shifts the burden of proving that a local zoning statute is appropriate onto the town. If a developer is coming in and wants to develop affordable housing and it gets rejected, then the town needs to basically explain why they don't want this affordable housing in the community, which is helpful.

When it comes down to it, it hasn't really developed many units, other than the scare value of it has. Some of the things that Miguel talked about, of coupling public and private dollars, I think is extremely important. I think we generally need to remember that despite the fact that home rule is such a big deal, it's the zoning-enabling statute of the state that allows towns to even set up any kinds of zones at all; and that zoning-enabling statute requires that you provide housing opportunities for all people throughout the region, not just that individual town. So those kinds of things need to be used more.

I frankly think that, at least in recent history, Connecticut has had more programs for facilitating affordable housing than most other states in the country; at least, on paper they exist. I think there are some better relationships here with banks than in other parts of the country. It's a smaller state.

That definitely goes on to some extent, but I think it's just the old attitudes of, This is our community, and it's been this way and it's going to stay this way, and there's nothing you can do to make it change. That's the biggest problem.

Ten years ago, when Governor O'Neil declared 1987 to be the year of housing, it was because there were so many people who couldn't afford housing in the communities in which they already lived. That was the message that sort of rang real true for folks. It wasn't the idea that there were substantial numbers of minorities in the cities who couldn't move in. It was, My kids can't buy here. That's the problem. The fact that your kids can't buy here is of no interest to me whatsoever; it's the fact that my kids can't buy here. It's mostly an attitudinal issue.

I want to steal just a second to go back to Mike's question, because I knew there were some kinds of statistics that I think gets to some of what we were talking about, so indulge me while I read this to you: "In 1990, over 56 percent of all minorities in Connecticut resided in just five cities: Bridgeport, Hartford, New Haven, Stamford, and Waterbury.

"In three of those cities -- Hartford, New Haven, and Bridgeport -- minority populations constituted over half of each town's population. Also, about 60 percent of Connecticut's residents living below the poverty level resided in just ten communities. We have an extremely racially and economically segregated state.

"However, racial segregation is not merely the result of economic segregation. Poor whites are not nearly as segregated as poor minorities. In 1990, only 34 percent of poor whites in the New Haven metropolitan area resided in the city, this compared to 92 percent of poor African-Americans and 73 percent of poor Hispanics.

"In the Bridgeport areas poor whites were even more dispersed. Just 18 percent lived in the city, while poor minorities were just as concentrated: 55 percent of African-Americans and 76 percent of poor Hispanics lived in Bridgeport.

"Racial segregation was most pronounced in the Hartford metropolitan area. In 1990, a mere 12 percent of poor whites resided in the city, compared to 80 percent of poor African-Americans and 76 percent of poor Hispanics."

I think those statistics point out the fact that this is not just an issue of affordability. Poor whites are managing to find housing outside of our urban areas and yet poor blacks and Hispanics are not.

DR. CHUN: That raises the question of voluntariness. These patterns are alarming, but when we call that alarming, we are assuming that inability to move out. So do you assume, then? How can you?

MS. VIERA: One of the most clear ways that we can assume that is the fact that we continue to get a lot of complaints from people saying, I want to move out. I happened to bring this with me. I don't also have the statistics that the Citizen Research Education network put together when they surveyed Section 8 recipients, and the very high percentages of them -- this was in Hartford; the vast majority of which are African-Americans and Latinos -- who said that they would like to move out of the city of Hartford, but couldn't find housing.

The number of people who look for housing outside of the city are rejected and then end up moving into the city because they can't find housing anywhere else. In the past two weeks, I know that we've received three complaints from people from Milford who got Section 8 certificates from the Milford Housing Authority and could not find housing, went not only the period of time they had to use the certificate, but had two extensions and had been rejected in every single place that they had gone to to use those certificates. They were either discouraged, they felt, because of their ethnicity or because they were specifically told, We don't accept Section 8.

So I don't think it's merely choice. That may explain away some of it, but those numbers are so different that I think that we've got to say at least part of it has to do with discrimination.

THE CHAIRPERSON: There's one problem that was not addressed, and maybe in one minute, it can be answered: Nobody talked about the problem of lack of public transportation as a reason for lack of people being able to move. And if towns want to keep out people that are, quote, "undesirable" -- I know, by my first house, I had to take the public bus, but at least I could take a bus. In many of these places, there are no buses to take. Is there anything that can be done to force communities to put in more public transportation so that this problem will disappear?

MS. VIERA: We could ask the governor to not get rid of railways. I don't know what you do to force towns to -- I don't know enough about transportation policy to be able to say that. I do know that as part of the affordable housing appeals process, there was a survey of towns that asked whether this had been used in your community; in both northwestern and northeastern Connecticut, when the regional planning agencies were contacted, they said the number one barrier to access to housing in their areas was transportation.

Forget affordability; that wasn't it. It was transportation, and that needed to be dealt with. That was, therefore; their new housing policy, was transportation policy, and that's what they were focusing on. The survey I mentioned before, at the Connecticut Housing Coalition Conference -- that's an overcount of people who work in urban areas -- there were still a lot of concerns about transportation. I don't know if somebody else has an answer to it, but it clearly is a huge problem. I do know that some of the urban planners and regional planners have been noting it.

THE CHAIRPERSON: I want to thank George and the panel for the excellent job they have done. We do have a lunch break now. We will come back at 1:25, and Michael will be taking over the chair and running the next session. Again, thank you very much. It was truly informative.

(A luncheon recess was taken from approximately 12:25 p.m. until 1:25 p.m.)

THE CHAIRPERSON: Good afternoon. For those of you who may be new and were not at this morning's session, let me introduce the Advisory Committee of the United States Commission on Civil Rights. My name is Neil Macy, and I'm Chairman this year.

Beginning from my far right, we have Phyllis Zlotnick, Patrick Johnson; and representing our regional district from Washington, D.C., is Ki-Taek Chun; Margery Gross, Dr. Ivor Echols, Attorney George Springer, and Dr. Lou Bertha McKenzie-Wharton. On my left, Michael Kaelin.

Without taking any more time, because we actually -- you never know when you arrange it, how many questions -- we actually ran out of time today because people were still going hot and heavy.

Michael is going to be the moderator for this afternoon's session, so take over, Mike.

MR. KAELIN: Good afternoon. The first thing I'd like to do is introduce my panel this afternoon. The topic of discussion is civil rights enforcement in employment.

Sitting to my immediate left is Louis Martin. He is the executive director of the State Commission on Human Rights and Opportunities, which I will be referring to, probably frequently, as the "Crow." He was appointed in 1990 as the executive director. He is responsible for the enforcement of the state antidiscrimination laws here in Connecticut.

Before coming to Connecticut, he was the deputy director of the Maryland Commission on Human Relations; before that, he served with the Iowa Civil Rights Commission. He served as an administrative hearing officer, director of the compliance division, and as acting executive director.

He is a lawyer by training. He has the distinction of having been a partner in a Little Rock, Arkansas law firm -- not the Rose law firm.

MR. MARTIN: I tried, though.

MR. KAELIN: He is a member of the board of directors of the Greater Hartford Urban League, and is currently the president of the George W. Crawford Law Associates, which is a legal organization representing the interests of black lawyers here in Connecticut.

To his left is Ruth Pulda. Ruth is a practicing attorney. She is a partner in the law firm of Livingston, Adler, Pulda & Meiklejohn, which is based in Hartford. They represent unions and plaintiffs in labor- and employment-related matters. She's also counsel to the Connecticut Women's Education and Legal Fund. She serves as a commissioner on the Permanent Commission on the Status of Women.

She graduated as a Root-Tilden scholar from New York University and served as a law clerk to Leo J. Parskey, then an associate justice of the Connecticut Supreme Court. She's served on various legislative task forces, including the Law Revision Commission's Task Force on Revising the State Family & Medical Leave Act and the Law Revision Commission's Task Force on Legislative Changes to the Commission on Human Rights & Opportunities.

To her left is Betsy Gara. Betsy is associate counsel for the Connecticut Business & Industry Association. This is the state's largest business organization with over 10,000 member companies. She represents them on education, job training, insurance, employment discrimination, and corporate law issues before the state legislature.

She's also served on the CHRO Advisory Committee, which was created by the legislature in 1996 to improve CHRO's complaint processing system as well as the Law Revision

Commission's Advisory Committee on the Americans with Disabilities Act. She serves on the CBIA's Labor and Employment Council, which reviews and makes recommendations regarding the state's labor and employment laws and regulations.

Before joining the CBIA, Betsy held a variety of positions with the state Insurance Department, including senior insurance examiner. She is a member of the executive committees of the Connecticut Bar Association's Business Law section.

To Betsy's left is Robert Sanders. He is the area director of the Boston area office of the EEOC, which is the office of the EEOC responsible for this area; and to his immediate left is Anne Giantonio, who is the supervisor in that office.

Since the topic is civil rights enforcement in employment, the way I'd like to get started is by asking Mr. Martin to give everyone an overview of the enforcement procedures here in Connecticut.

MR. MARTIN: Thank you, Michael. Good afternoon. I hope you've had a good, stimulating morning, and it sounds like you did. I'm going to address employment discrimination from the perspective of a state administrative enforcement agency, the Commission on Human Rights & Opportunities. What I normally do is give you a history and overview of the agency, but I'm not going to do that. I'm just going to get right into the substantive part of employment discrimination and how CHRO enforces it and what are some of the parameters of the enforcement process in Connecticut, and what are some of the obstacles and what are some of the good things that I see as far as administrative enforcement from our agency's perspective.

I think the first thing we need to begin with is try to understand, in a philosophical sense, what employment discrimination is and the apparatus that has been created to redress these grievances or social evils as seen by legislative bodies over the past 50 years or so in the United States.

I think what you have to remember is that employment discrimination was seen as a social evil, and the remedy to deal with it was put into the legal context as the apparatus to eradicate our society of what we considered a social evil that was hindering many portions of our population from the full enjoyment of many of the benefits of being citizens.

This was very counter, the whole idea was counter to the concept that we as a people had this bundle of rights and we could do with our bundle of rights whatever we wanted to do, especially with the property that we own. We, as a society, are really into our own property rights.

We were willing to give up some of that when we started this dialogue about what should we do about employment discrimination and the impact it was having on the various segments of the community. We decided, as individuals, through the public policy dialogue and process that went forward, to give up a certain portion of that, but a very small portion.

What you have in place, and what you've had in place over the last 50 years or so is some very narrow exceptions to various elements of the property rights law in our country, that they carved out some exceptions that said, In most of the areas in your life, you are allowed to make free -- you have unfettered choice and discretion to make decisions about your employment environment which you own, which is your property rights.

The legislative body decided to carve out an exception in the area of employment, because it is so important to everybody's lives and for the social good, we're going to carve out some exceptions and we're going to take away from your individual discretion and rights to make decisions about things that you own. We're going to take away some of your rights.

So over time, and in 1943, Connecticut started that process -- and we go around telling people that we're the oldest effective civil rights administrative state agency in the country; 53 years old now -- so they started carving out exceptions. In the beginning, they made them do that.

Later on, in the '50s and '60s, they carved out some very strong exceptions to that. They said, In this very narrow area of employment, we are not going to allow you to base decisions upon certain things that we think are so important. So they started with race and religion and creed. Through the next 50 years, they've added about twelve or fifteen -- depending on how you want to count -- different bases of discrimination, which took away our individual rights to make decisions in the area of employment about these things. Now we have added sex, disability, physical and mental disability. We added sexual orientation and various things over time.

So now you have a set of laws in the state of Connecticut in the area of employment that prohibits certain types of conduct for certain types of people in certain types of circumstances. That doesn't mean all discrimination, even in employment, is illegal. It just means there's very narrow exceptions that they've outlawed in the statute which have now become illegal, embodied as prohibitions, like all other prohibitions, in our law.

So what we have in the state of Connecticut now is we have an administrative enforcement agency, the Commission on Human Rights & Opportunities, which enforces these prohibitions in the area of employment. At the Commission, in

1997, we received approximately 3,000, 2,800 complaints per year; and we've seen, over the last seven years, about a 91-percent increase.

We had traditionally received about 1,500 to 1,600 complaints per year. That has shot up; in 1990 to '92, we were up to about 2,400; in 1995, we went up to 3,000 complaints per year. We saw a direct correlation between how well the economy in this state was being managed and what the employment discrimination complaints looked like, the nature of the complaints, and the volume of the complaints.

When you had an economy like we had in the early '90s, we saw this tremendous growth in the number of complaints, like I said, from 1,500 to 3,000 complaints; we doubled our case inventory.

The nature of the complaints also changed during that time. What we saw when the economy was bad is that people did not file complaints; people did not file complaints where there was an intact employment relationship. That is, the nature of the complaints, people filed complaints based on termination and other types of employment decisions that were being made, where there was a separation of the employee from employment relationship, therefore, they felt more comfortable, we found very little, a small amount of complaints where there was an intact employment relationship, the employment relationship was ongoing in nature. That has now changed.

Now you see the nature of the complaints are now changing because the economy is doing better and people feel more comfortable complaining about things while they have a continuing employment relationship ongoing with their employer.

Let me just give you some summary-type statistics that are going through the complaint process itself: What you have now is 3,000 complaints per year; over the last four years, we closed about 3,400 complaints per year. About 35 percent of those cases are settlement cases; we collected about $5 million in benefits or cash dollars for people. That is a tremendous increase over what we've done over the last six years, when we usually averaged about a half million dollars; now we're up to $5 million.

Six years ago, seven years ago, we found only about one percent of our cases, where we actually did an investigation, did we find discrimination. We're now up to about 24 percent of a finding of reasonable cause to believe that discrimination has occurred. Mr. Brown may give you a little more on that.

We've made some tremendous progress in reducing our inventory. Four years ago, we had an inventory of 3,400 cases in the investigative stage; now we have 1,300 cases, which is less than six months of intake inventory that we currently have on file within our agency.

Let me begin now by giving you the process and some of the good things and bad things I've seen within our process and how it operates. As you know, people can file complaints with the Commission in the area of employment. The employer must have at least three employees; that is the threshold for filing complaints in our state.

We're relatively one of the few jurisdictions in the country that has a very low threshold for filing. The conditions precedent for filing a complaint -- this is sometimes what employers don't understand -- is merely a belief that you believe discrimination has taken place and you've been a victim. It's a very low threshold.

If someone files a complaint with our agency, I think sometimes employers believe that it is the Commission filing the complaint. It is an individual who files the complaint, and the Commission -- whether we believe them or not at the beginning of the process, and we are a neutral party at that stage -- merely takes the complaint in.

So when a complaint is filed, it is an individual who actually is making allegations and signing affidavits that they believe they have been a victim of discrimination. That complaint, of course, must be filed within 180 days. On that low threshold for filing, one of the real problems is whether or not that threshold should be raised; whether or not, before -- I think it costs an average employer to respond to a complaint, based on a feeling of discrimination, about $950 to $1,350, just to, bare bones, answer a complaint.

The question arises whether or not there should be a greater standard for filing a complaint, or is merely someone's belief that they've been a victim enough. Now some people argue that the nature of discrimination and the nature of victims of discrimination, that those people do not have access to the type of information that it would require if you put any higher standards to filing a complaint of discrimination.

On the other hand, respondents and other employers are being put through quite a financial expense, merely on a belief. Some people have suggested maybe a filing fee. What do you all think of that? A filing fee to thwart persons who don't have a legitimate basis to file complaints. That's the kind of issue that begins at that level, whether or not we have too low of a threshold of conditions preceding filing a complaint.

Once the complaint is filed, we review that complaint for merely jurisdictional matters. Is there enough employees, three or more? Is the complaint filed in a timely manner, within 180 days? Does the complainant state a cause of action? Is he or she alleging a harm that is covered by our particular law? so various jurisdictional elements.

We do not review the merits of what they're saying. They're saying, ABC fired me, and I think it's because of my sex. We do not make a value judgment on that at that stage because, again, we are a neutral party at that particular stage, when the case first comes in our door.

Once that is filed under our statute, again, we have to serve that complaint within ten days on the respondent, merely telling them this complaint has been filed, and under the statute, you have a 30-day time period in which to answer that particular complaint. It is a mandatory answer position; and not all agencies, federal or state, have a mandatory answer.

If a party fails to answer the complaint, we have the authority under our statute to default them. What that means is we merely find that they failed to answer and immediately order a hearing on damages. So it's like, You didn't answer; therefore, whatever the complainant said is true and, therefore, we're going to a hearing on damages before a hearing examiner in the agency.

Once we receive an answer from the respondent, then the statute and regulations require that the complainant be provided a copy by the respondent and that the complainant then has a 15-day time period in which to provide a rebuttal to that answer. That can either be orally or in writing, and we prefer it in writing.

Once that comes in, then the merit assessment process takes over. Two years ago, the state legislature gave the agency the authority to make an early determination on the merits of cases prior to a full-blown investigation. A few years ago, the Connecticut Supreme Court set out, in one of their cases, what was required to do an investigation. And we figured it was about 40 or so hours' worth of work to do a complete, prompt investigation, under the standard as interpreted by the Connecticut Supreme Court.

As our caseload rose and we realized that our staffing level was what it was, we either had to have double our staff, about two and a half more million dollars, or a process that would get us out from under the requirement of doing this 40-hour investigation on every case.

So we asked for the merit assessment process, and the merit assessment process said that within 90 days after a complaint is filed, the Commission will conduct an assessment of the complaint, of the answer, of the answer to any request for information, and the rebuttal, as supplied by the complainant.

We do an evaluation to say, Is there a possibility that if we did an investigation, would we find discrimination. That's the reasonable possibility standard as opposed to the reasonable cause standard, so it's a lesser standard. It's like looking at a half glass of water. If you say a reasonable cause is a half glass and a finding of discrimination is a full glass of water, the merit assessment determination is a quarter of a glass of water. That is the standard that we try to get to when making that determination.

Over the history of merit assessment, we have dismissed within the first 90 days about half of the cases under that statutory scheme; therefore, we get back down to about our 1,500 cases a year which we have to fully process under the court's interpretation. That's been a process that's worked fairly well. It assisted us in ferreting out those cases that, at the beginning stages, we're not able to make a meritorious determination; but we are able to make a determination after we have some information, and that is the complaint itself, that is the answer, and any answers to interrogatories or requests for information that we have. It's been a lifesaver as far as administratively balancing and managing the caseload within the agency.

Once we make that merit assessment determination, as I said, we dismiss about 50 percent of the cases at that point. We then are obligated to have a full type of case processing. Still, at that point, we have certain tools that we use to process the cases out. Not all cases go to a full-fledged determination on the merits of that particular point.

We have what is called the mandatory mediation process. We have authority to call the parties to a mediation session, which they must attend, and we try through various mediation schemes to attempt to work out a resolution of the dispute that's going on. We settle about 40 percent of the cases at that point, through that process; we have a satisfactory resolution. We commit it to writing, and it is an enforceable contract. We can go to the Supreme Court and enforce it, if any of the parties were to violate it.

Those cases that do not settle at that point are then subject, by and large, to a fact-finding process where we identify the relevant witnesses, the relevant records. We ask the parties to bring them in, and we go out and seek those independently, the ones that we believe are relevant and reliable and probative to the information that we need to resolve the material issues in dispute within the investigation that's going on.

So we have a lot of fact-finding conferences that go on. Hopefully, at the end of the fact-finding conference, the investigator then has sufficient information to render his or her determination on the merits of that particular complaint.

As I said earlier, at the end of that process, we usually find about 25, 24 percent findings of discrimination, and they kind of go across the board; there doesn't seem to be any juxtaposition. One of our fears always, anytime we have a discretionary decision-making process -- whether it be a jury system or anything else -- all kinds of factors seep into the decision-making processes. We try to filter those external discretionary factors out of the discrimination process.

One of the things that's unique about Connecticut is that our statutory scheme allows for and requires that the decision on reasonable cause and no reasonable cause is statutorily designated to be made by the investigating official who actually conducts the investigation, not the administrative agency. Whether we agree or disagree with a finding, we do not have the statutory authority to change it, and we often disagree.

So once we complete that fact-finding process, we mail a determination of reasonable cause or no reasonable cause; if it's no reasonable cause, we dismiss the complaint and the party who is aggrieved by that finding can appeal internally through the reconsideration process, which is an in-house process that we take it back through and allow the full Commission, the nine-member policy-making body of the Commission to make a determination.

If we find discrimination, then by statute, we're obligated to attempt a conciliation process for a 45-day period, and it can be extended to 60 days. You bring the parties back together, this time not from a neutral position but from a position that we have made a finding of reasonable cause and, therefore, we advocate for the elimination of discrimination during the conciliation process.

That brings us to what remedies are available under the various statutes that we enforce at the Commission on Human Rights & Opportunities. Several large cases happened last year, resulting in -- for the past twelve years, we've taken the position -- and the hearing officers have taken the position at the agency -- that the Commission has statutory authority to award compensatory damages when a finding of discrimination is made.

The Supreme Court disagreed and said because there are other available alternatives, that parties -- that is one reason they gave -- that the Commission did not have the authority to award compensatory damages. Damages in employment discrimination cases, that we rendered findings on, the remedies were limited to the normal things of equitable relief: back pay reinstatement, and things of that nature; but no compensatory damages for pain, suffering, and humiliation.

It always amazes me how in all the fender-benders that happen here and all these PI attorneys who go out and run those down on a daily basis, pain and humiliation is clearly a part of that; but the indignity that one suffers as a result of discrimination is not compensable in that way, according to what our Connecticut Supreme Court believes is their fair interpretation of our statute, which I vehemently disagree with, which I've said.

The question is: Should these injuries -- and they're really injuries -- should they be compensable for the pain and suffering suffered by individuals as a result, once a finding is made? We're not asking that these damages be passed out when there's no finding, only when there's a finding actually made. The hearing officer used to do that on a routine basis; therefore, we have a real problem that once we do find discrimination and conciliation fails, the next step of our process, of course, is the fact that these cases are then certified to the public hearing process.

Our hearing examiners are not employees of the Commission; they are private attorneys around the state of Connecticut. We are merely a party when we appear before them. You've always heard the administrative process is a very informal process; that's untrue at the Commission on Human Rights & Opportunities.

The statutes and the rules are for wanting due process. The State has turned that process into a full-blown trial, with all the rudiments that you have in the superior court. Hearing officers seem to have a less of a willingness to take control of the environment than some superior court judges do; but, certainly, that is a full-blown trial with witnesses and court reporters and 50-page briefs at the end, and it takes quite a long time.

Up until the finding of discrimination, our current average case process time at the agency, where, again, 50 percent of our cases are finished within 90 days -- but that's required by statute; at least, the determination must be made within the first 90 days.

On average, all cases are about 132 days; that includes the cases that are done real early and the ones that are done really late. Again, we have about 1,300 cases in the investigative stage, but we have 400 cases in the public hearing stage, where we've made a finding of discrimination. Now we're waiting for the hearing examiners to process those through; we have no control over that process, of course.

One of the things that we hear people talk about is backlog cases. There is no backlog of cases at the Commission on Human Rights & Opportunities; and a good word for those who say that is that it's untrue, and some people would even call that a lie. But certainly, there is a problem with the hearing process, and we've advocated for years that the state of Connecticut spend some money and hire full-time hearing officers. That's what you need.

Currently, our hearing officers are in private practice. Some will take cases when their private practice benefits. They only get paid $125 a day, by statute; that was only changed a few years ago, where it was $75 a day. It's really not a really good process. They hear cases when they can. They may hear two days in 1996, two days in 1997, and render the decision in 1998; even though, under the Connecticut Administrative Procedure Act, there is a provision that says they will render their decision within 90 days after the case closes.

Well, the statute doesn't say what happens if they don't do it. In Connecticut, there's a lot of statutes like that. You do something, but there's no penalty if you don't do it. I don't know why they waste their time up there passing statutes without any penalties, but so be it. You all elected them.

But that's the way the process goes. About 30 percent of our cases that we receive each year are sex based cases; about 26 percent are race-based cases. Some people have the perception that civil rights agencies like the Commission on Human Rights & Opportunities only serves racial minorities; but, in fact, there's more Caucasian people filing complaints than anybody of any racial group in this state. More than blacks, more than Hispanics, more than any other group you can name.

Eighteen percent of our cases are based on age. By and large, the large sums of settlement money that we get primarily adhere to the benefit of white males in our state, who were at high-level jobs, who filed discrimination complaints based on age, based on disability.

Seventeen percent of our cases are based on disability claims. By far, there's a greater learning curve in handling the disability claims than any other type of claim, because the analysis and the proof pattern that you need to investigate those claims are much more difficult.

I'm often saying we're always looking for social science advocacy-type people to do this work; what you really you need are people from the natural science perspective to do this kind of work. You need chemists, you need zoologists, people that have a very stringent perspective on outcomes; otherwise, cases take too long.

In social science, it takes forever to do things. We think there are exceptions beyond exceptions and extrapolation, and every fact situation is different. Well, that takes too long. Under the Connecticut scheme, there's a statutory time frame, so, as you know, the time frame is twelve months. It can be extended up to 18 months. So clearly, a new level of thinking needs to process these cases in a timely way, in a method where we can see some consistency and predictability of outcome; unfortunately, the social-scientist mentality -- not all social scientists -- do not have the perspective that outcome is ever supposed to be certain.

MR. KAELIN: Would you mind if I cut you off, so I can give you more of an opportunity to respond to what some of the other speakers are going to say?

MR. MARTIN: Let me just wrap up what I wanted to say. So I guess when you look at the whole process and look at where we are in 1997, I think we're in a pretty good stead; but I think one of the things that's clear is the merit system, the process was put in place primarily to help control inventory, because the legislature clearly made it a choice not to fund the agency at a level that was going to be appropriate to do the 3,000 new cases that were coming in the door. I think that that is a clear bastardization of the civil rights process that needs to be corrected and can only be corrected with funding.

MR. KAELIN: Thank you for the overview of the process.

Ruth, can you give us a plaintiff's perspective, going through the process?

MS. PULDA: I learn something new whenever I listen to you, Louis; so I've got a few more facts to sort of figure out what to do with in my next case.

I've been doing employment labor and employment from the plaintiff employee perspective for 13 years now, and I've been on, at least, I think maybe three task forces in an attempt to reform or put my two cents in about civil rights enforcement in Connecticut. I was just on one in which Jewel served and Betsy served this last year, in which the legislature refused to take any action on civil rights reform in Connecticut. So I feel like I have seen a lot of ins and outs of the enforcement of civil rights and the ebbs and flows; sometimes it's better and worse and better and worse, and I think that's just how it's going to be.

Things do get better and then things get worse. I think, nationally, since this is an advisory group to the U.S. Civil Rights Commission, I think one of the best reforms that I experienced was the Civil Rights Act of 1991, which leveled the playing field a little bit for complainants and plaintiffs in terms of remedies, providing all plaintiffs the damages for pain and suffering -- which Louis talked about which you can't get in Connecticut -- and recognizing just what Louis described, the injury that one experiences when one is proven to have been a victim of discrimination.

Also, the fact that now, in federal court, you can get a jury trial. Your claim of discrimination, just like your car accident, can be determined by a jury of your peers. I think that that had a profound impact on civil rights enforcement. I also think the expansion, including the Americans with Disabilities Act was a huge reform.

In the state, I think some of the best reforms have been our expansion of various causes of action. I think we should be proud of that. We protect various causes that very few states do, including the fact that you can't be discriminated against because of your marital status, including the fact that in Connecticut, you can't be discriminated against because you're a lesbian or a gay man. It's appalling that the Congress hasn't caught up with Connecticut, once again, in recognizing that just because you're gay, you shouldn't be fired. Connecticut has been a leader in that, and I think that that's a profound reform.

I also think that one of the best reforms is that the Commission on Human Rights in Connecticut functions better. At risk of being called a liar, because Louis -- I'm very scared about what I say -- we have had times where our biggest complaint has been that it has taken way too long to get anywhere with the Commission on Human Rights. My law firm had a case where a man couldn't get a hearing and his case was around for ten years.

That isn't the case anymore. You get much quicker and you get better investigations. I think we all agree that the staff is better trained, probably has more lawyers on staff, people who have really studied the civil rights laws; and it's a place, now, where people of high quality are attracted to work. I think that that is a huge reform.

But I'm a complainer, and I sort of want to echo one of the things that Louis said. I am not sitting here today and complaining that it takes too long to get your case through CHRO. The reason why I'm not complaining about that is because most people don't stay at CHRO anymore, and I'm going to talk about that a little bit more.

Just because, right now, the volume is up, but the time people stay at CHRO is not long, doesn't give the Connecticut legislature an excuse to not fully fund this organization, and it never does. We have gone to the legislature practically every year saying there aren't enough investigators, there aren't enough hearing officers, there's not enough money. Just because I'm not emphasizing that doesn't mean that that isn't a constant chronic problem, and I always feel like the legislature's commitment to the enforcement of civil rights is reflected in the fact that it never fully funds that agency.

I think today, as I'm here, what's burning today for me is that I think the worst problem for civil rights enforcement in Connecticut is that the administrative process doesn't really work because it doesn't provide effective relief at all.

I would say that about the state agency, because the Connecticut Supreme Court has stripped it of the authority to give real, real relief, which are damages, monetary damages and attorneys' fees; and I say that about the federal agency, the Equal Employment Opportunities Commission.

Something that Louis didn't explain is that there is an overlap of jurisdiction. We are all protected by both state laws prohibiting discrimination against us, and we're protected by federal laws. The federal laws kick in most often when the employer has 15 or more -- in some statutes, 20 or more -- employees, so at times, two agencies kick in.

Connecticut is, I think, a lucky state in that it has a work -- it's called a deferral state. It has a work-sharing arrangement with the federal government, the Equal Employment Opportunities Commission, which is the federal agency that administers the federal laws. Connecticut has an agreement with EEOC that it will do the work for the Equal Employment Opportunities Commission so that it doesn't -- so the two agencies aren't doing the same thing.

In my 13, almost 14 years of practice, I have barely had anything to do with the EEOC. Most of my claims are either at the CHRO or in federal court, and because of the work-sharing arrangement, with all due respect, the EEOC isn't a big part of my life. When it is, it has been merely for them to oversee the work that the Commission has done. I've never had them do an independent investigation. That's not necessarily a criticism.

Every so often, I forget to get a right-to-sue letter. I remember, Oh, I've got to ask the EEOC for a right-to-sue letter -- which is something I'll get back to -- and half the time or 98 percent of the time, that's all I have to do with the EEOC. I even file my papers with the state agency, and they file the papers with the federal agency for me.

I don't think that system works very well anymore. That's probably for a bigger discussion, but as an advisory council for the U.S. Civil Rights Commission, we've sort of piled thinking on top of thinking; and if we were to start all over again, I'm not so sure that that makes the best sense.

At any rate, the biggest focus I have today is to say that I think complainants in Connecticut do not get real relief. By the way, one thing I do want to say is it takes way too long to get a hearing in Connecticut. It can take you, I don't know, years to get assigned to a real hearing officer, who's a volunteer, who is going to hear your case. Then he could hear it the first Tuesday in February and then the third Thursday in October and, you know, the second Monday of the following February. That's truly how hearings can go.

We have proposed, and I think there's consensus on this, we propose that Connecticut needs administrative law judges, like most administrative agencies have; and if you have people whose job it is to do that, then maybe some day you'll get a hearing in Connecticut, if you still stay in the CHRO.

The CHRO is an important place for a lot of complainants. Most businesses in Connecticut -- I think you know the statistics better than I do -- a lot of them don't employ 15 employees, so that small businesses are an incredible source of business for the CHRO. To have an effective state commission is very important.

Also, there's some causes of action that aren't recognized as discriminatory under federal law, so for some people, the CHRO is the administrative mechanism for them. It's very important to have a fully funded and working one that provides effective remedies.

Louis referred to the cases. I think that, somehow, because of the lack of funding over various times and the decisions by the Connecticut Supreme Court -- which I think are completely, totally wrong -- they've sort of rendered the administrative process something of a relic.

In Connecticut, we went along thinking that you could have a hearing, and for many people, it's really the best place to be. You don't need a lawyer; that's crucial. That's part of the theory of civil rights enforcement. You shouldn't need a lawyer.

Well, if you file your complaint with the Commission on Human Rights & Opportunities, you're supposed to not need a lawyer. A lot of employees can't afford one. Sometimes, all that your damages are is pain and suffering.

The Connecticut Supreme Court said: In Connecticut, antidiscrimination statutes do not recognize damages for pain and suffering, which Louis referred to as compensatory and punitive damages; nor does it recognize the right for your Attorneys' fees to be paid if you've gone all the way through a hearing and have proven that your company has discriminated against you.

One of the main tenets of civil rights enforcement since 1964 is that when you hire an attorney to enforce your civil rights, you're acting as a private attorney general for all of us. That's how important Congress thought civil rights enforcement is. It's not like a typical case where you each pay as you go your lawyer.

Well, a lot of people are willing to take civil rights cases because if they prevail, the defendant will pay their attorney's fees. The Connecticut Supreme Court, in its lack of wisdom, has said our state law doesn't authorize that in an administrative process.

So now, not only can you most often not -- you can't get damages for pain and suffering at all, and most often, you can't get an attorney. Good luck working your way through the civil rights system, which I'll describe a little bit for you.

If you're someone who doesn't do this for a living, you can easily screw up; it's that simple. So a lot of people have chosen to try to get attorneys and can't. Now, if you are not covered by federal law or if you don't have a claim in which you can get an attorney to bring your case in federal court, you're really a stepchild of the civil rights system.

We have sought to overturn that. Betsy is going to talk to you about why it's not a good idea to overturn that. I think, basically, what those decisions have done is they have made civil rights enforcement, they've turned it on its head. These decisions, the sort of not taking the administrative process seriously, both on the federal and state level, made civil rights enforcement a matter of federal court litigation. It's not how it was supposed to be.

It was supposed to be that we had these administrative agencies that were charged with being the front-line enforcement of your civil rights. Now, frankly, people do whatever they can to bypass them, if they can get a lawyer, if they can pay one to get into state or federal court. I don't know how we got here in 30-some short years, but it's backwards. That's my biggest complaint, and the Connecticut courts are starting to recognize that.

I have a bunch of decisions here in which the Connecticut courts have started to say, You don't even have to file with the Connecticut Commission on Human Rights & Opportunities; come straight into state court if you want to bring your discrimination action.

There's a split now in the Connecticut court system about whether you even have to file your piece of paper, so they're essentially saying, because the remedies are not adequate in the administrative agency charged with enforcing antidiscrimination laws, forget them; come on here. We'll give you damages for pain and suffering and Attorneys' fees. By the way, you won't see a judge for five years or a jury, because Connecticut has probably one of the most backlogged state systems there is.

Federal court has always said, Once you file your administrative prerequisites, file your papers with the state and federal agencies; if you wait the period of time in which you have to wait, you can request a right-to-sue letter most often and come into federal court. If the process works perfectly, you file your complaint and in a little bit more than six months, you can be in federal court.

You're going to wait three to five years to get a trial in federal court, because more and more people are bypassing the administrative agencies. The complaints and the discrimination matters are up in federal court, and they are very fact- and labor-intensive cases. They take forever. So it's a system that's sort of collapsing on itself.

I'm not saying to start all over, but like I said, it's really bad when you even have superior court judges saying you can bypass these administrative agencies. So that is my biggest beef right now, is that the agencies aren't even allowed to function when they're asked to function.

Why is this such a big deal to want damages for pain and suffering? I think Louis said it best. If you fall down and you break your arm, we recognize pain and suffering. If you are a victim of sexual harassment or racial harassment or religious harassment, essentially, all, quote/unquote, that you experience is racial slurs, sexist slurs, religious slurs.

You haven't been fired, you haven't lost your job, but the daily grind of your life at work is a hostile environment. Your only damages are damages for pain and suffering. No one's home in Connecticut to award you those damages in CHRO. Are you going to get a lawyer and take your case to federal court to get them to stop calling you names, for the hope that some federal judge and jury will award you damages for pain and suffering and award you Attorneys' fees? It's very hard. It's my business; I know. I turn around a lot of those cases.

So I think it's ridiculous, and the people who oppose these damages force us to federal court and federalize these things that once were supposed to be an administrative matter. I can beat that to death; I won't.

I think we're still very worried about whenever the backlog kicks up at CHRO, because we have another horrible Connecticut Supreme Court decision hanging over our head, the Angelsea decision, in which the Connecticut Supreme Court said, If the agency cannot meet its statutory deadlines, you, as a complainant, who has sat there and waited for an investigator, you've done nothing except get your papers in on time; your case is going to be automatically dismissed. Good-bye; you're out. If CHRO can't meet the deadline, and in the past it's had trouble meeting the deadline, then you've lost jurisdiction.

So we've got some serious education of our state judiciary to do, but I think as a member of the Advisory Council to the U.S. Civil Rights Commission, I think it's important for you to know that our state statute is so out of step with even federal law, it's making the administrative process completely hollow.

I have another beef, if I could have a minute to keep complaining, again, because I get the chance to talk to the feds, or people talking to the feds. The statute of limitations for civil rights enforcement is a complete mess. This is why a lot of people feel like they have to have lawyers.

If you are going to file a complaint on, let's say, race or sex discrimination, you must file your complaint within 180 days of the discriminatory act. Make sure you know what that discriminatory act is, and make sure that you know or what you should know of that discriminatory act, and remember, 180 days is not six months.

How many causes of action, how many things do we value as a statutory right in which we say, Get going within six months or else you have a big chance of losing your right to vindicate your civil rights at all? Why do we have that 180-day period, which is not six months? Because with this overlap between state and federal law, you must file with the state agency within 180 days. A lot of people, particularly those who say, Why should I have a lawyer? I can't even get a lawyer, miss that deadline. A lot of people miss a three-year deadline; they're certainly going to miss a 180-day deadline.

Then there is a fallback that if you miss the 180-day deadline, you can file within 300 days; but it's really not 300 days because the United States Supreme Court, through another weird decision, chopped off 60 days and said, If you don't file with the EEOC within 240 days, you're going to lose -- there's going to be no jurisdiction.

Now, I described it like this, and I'm not going to explain it to you. Why? Because it's inexplicable, and my point is it's absolutely incomprehensible to a person who is not well versed in this. It's often incomprehensible to lawyers who do this. It's becoming like the tax code; if you don't zig when you're supposed to zag and meet these ridiculously short, convoluted, not uniform statutes of limitation every step of the way, you're going to lose the right to sue at all.

By the way, everything I just told you does not apply to age discrimination, and by the way, don't forget to get your right-to-sue letter from the EEOC; and if you don't get into federal court within 90 days, you're not going to be able to sue at all. It's a mess. Again, I am deliberately describing it to you as it is, not to explain it to you to, but to tell you that it's -- I call it a trap for the unwary, and most complainants get caught in it.

I think I've said everything for now.

MR. KAELIN: Let me ask Betsy to give the employer's perspective.

MS. GARA: I don't know if I'll have the epiphany that Ruth hopes for me, but I will share some of our views with you. Just for those of you who aren't familiar with the Connecticut Business & Industry Association, we're a trade association, as Michael had mentioned. We represent over 10,000 member companies across Connecticut, the vast majority of which are small employers.

Part of our mission is working to improve the state's business climate, to nurture the state's economy; and part of doing that involves making sure that the regulatory agencies in this state see businesses as really more of an asset than an adversary. We have been working with a number of agencies in that context. One of the agencies is the Commission on Human Rights & Opportunities.

We have been working, as Ruth had mentioned, on a number of task forces to improve the efficiency of the complaint-processing system at CHRO. It has been a very big problem, for both the complainants and the employers, when you're stuck in a system and you're spending money or wasting your time looking for a resolution to the problem, when it may take years and years.

As people had mentioned, there had been some changes in the CHRO as a result of the legislation passed in response to the Angelsea Productions case. There is now a cut-off time, so we do not have that backlog now; but I don't think a lot of the problems inherent with the statutory time frames themselves, with the complaint processing system itself, have really been resolved. So we may end up getting to a point where we do see that backlog that will result in people losing their right to a hearing on the merits of their case, regardless of any fault of their own.

I do want to say that we are very supportive of an informal administrative process that advances equal opportunities and encourages people to resolve things very quickly, very efficiently. We do feel that our Connecticut employers have a good track record of compliance with the state's discrimination laws, and we have concerns that particularly during recessionary times, the level of complaints does increase dramatically. I think that's because you do see a lot of disgruntled employees; they want to look for an opportunity to get back at the employer.

It has been mentioned there are a number of protected classes in Connecticut; pretty much, everybody falls within one protected class or another. It's very easy to file a complaint. All somebody has to do is write a letter alleging that they were discriminated against, and then the CHRO has to act on that particular letter.

Unfortunately, that letter can lock an employer into a process that was, until recently, a process that could take years and years to resolve. Obviously, for employers, when you have a situation that requires more time, more attorney's fees, that's going to result in more money. A lot of people say the employer can just hire an attorney, and it's going to cost them a few bucks; ultimately, most of the complaints are resolved anyway.

But it is a big problem. First of all, you have the cost involved in hiring an attorney. Just to get the answer filed to the complaint, to have those questions responded to generally costs anywhere between $700 and $2,500, depending on the attorney. Then there are little traps for the unwary, not only for the complainant, but also for the employer that is unrepresented in the process.

There's also the time involved. Even if you hire an attorney, for a small employer in particular, an employer may not have as sophisticated recordkeeping as some of the larger employers; it takes a lot of time and effort to answer those questions. You have these Schedule A questionnaires; they include hundreds and hundreds of questions, some of which bear no relationship to the actual complaint. That's a big problem.

I know small employers. They'll go down to their basement; they'll have their bookkeeper try to piece together the information. It's very difficult because, typically, the kinds of questions they ask are not the ways that employers would keep information for any other purposes. It doesn't make sense.

This is a big source of frustration for employers, when they feel that they're clearly innocent, that there's no wrongdoing whatsoever, that the complaint was frivolous, it was filed by a disgruntled employee. There is no way for that person to get out of that process any earlier than without responding to those Schedules A's.

Louis Martin and the Commission have made a lot of progress in terms of implementing the merit assessment review process, and I commend them for that. It is one way that an employer can see a meritless complaint dismissed early on in the process. They're still faced with a situation where they have to file those answers to the complaint, and that, again, is a big source of frustration for employers.

We do want to see a mechanism implemented where an employer would be able to file, like they can in court, a motion to dismiss based on the fact that the complaint either lacks jurisdiction or is meritless. Under the way that the statute is drafted right now, or in place right now, rather, the Commission only has ten days to take a complaint once it's filed with the Commission and serve that complaint on the employer. That does not give them a lot of time to tailor the questions specifically to the complaint, to really conduct the kind of jurisdictional review that maybe they need to do.

We do hope that they would end up moving more people to the front end of the process rather than having the clerical staff download questions; if it's a sex-based discrimination, take these Schedule A's. If it's age, take these; if it's race, take these. Or maybe it's a little of everything, so just lump them all in, and the employer finds this big packet of information on their doorstep. That is, again, a big problem.

I know we harp on these Schedule A's. A's I said, they have taken some steps. They have begun to train their investigators more. I think part of the problem is that these statutory time frames make no sense. One of the roles of the advisory committee was to look at these time frames; some of them just don't match up. Some of them don't give enough time in the front end of the process, and A's a result, everyone loses out, both complainants and employers.

You might think that we're always diametrically opposed to one another in terms of the public policy surrounding this area. There are a few, A's you heard, where we are opposed to public policy positions; but for the large part -- in the task force that looked at the Commission -- there was a lot of agreement in terms of ways that we could improve the system.

Some of those, A's I mentioned, were to improve the complaint intake process itself. Another area that we talked about was strengthening opportunities for neutral mediation. This is an area that employers raised very frequently, the fact that they feel that the Commission is biased against them. In part, I think it's because of what Louis mentioned, that the complaint is actually filed by the Commission, so they perceive the Commission coming and attacking them. I don't know that there's anything that we can do about that, other than for me to educate my members more about the role of the Commission in these complaints.

I think there are some things that can be done. For example, currently, in the mandatory mediation process -- unless this has changed since I last spoke to people about it -- they use the same fact finder A's the mediator. So the person that's actually been collecting all the facts throughout the investigatory process is also now the mediator. A lot of times an employer will walk in and the mediator will be sitting on one side with the complainant, and then the employer feels that they're sitting on the opposite side. Just physically, they feel there's a certain bias there.

And clearly, there is some gray area there. The Commission is supposed to be an advocate for victims of discrimination; however, we do want to make sure that those laws that they are required to enforce are enforced impartially.

So I do think that the staff really needs to understand the role of the Commission better. Certainly, we need to educate the business community A's to the role of the Commission and maybe make sure that we're in sync there.

We also need to simplify the process. The Schedule A's are just one area, but there's also a whole stack of forms, depending on the type of discrimination complaint or where you are in the process. I know that we've heard from investigators that these are very difficult to wade through, are never really sure which form is going to be attached to which aspect of the complaint.

We've also been talking about allowing people to opt out earlier in the process. People are going to court for a variety of reasons, largely because of the issue of the remedies. We're also seeing employers face multiple claims that may allege negligence A's well A's discrimination, so the employer is really defending against two areas of complaint. They're forced to defend in superior court and at CHRO.

Other times, they're then brought in -- the EEOC is brought in or federal court is brought in. When you talk about it being confusing for the complainant, it's also confusing for the employer. Some employers deal with this on a daily basis; other employers hire attorneys, and they may not be that familiar with the process.

This is always a new thing. You really never know what you're going to end up with in the process, whether you'll be chosen for mandatory mediation or a full investigation or dismissed in the merit assessment. It's never the same way twice because they have all these different ways that the investigation can go.

One of the things we've talked about is if an employer feels more comfortable in superior court because they have certain due process protections, they're just not going to be available at the administrative level, for example, their ability to depose witnesses, to subpoena certain documents, let them go to court.

By mutual consent, if the complainant is also, just A's CHRO, to gather A's much information A's they can from the Schedule A's, and then let them get into the court system. That would free up some of the Commission resources. They wouldn't be wasting their time investigating a complaint that is ultimately going to be decided in a court system.

The issue of the resources, we really haven't touched. We do feel that the issue of the hearing officers is a problem. The state Ethics Commission says if you have clients before the Commission, complainants or respondents, then you are not going to be available to serve A's a hearing officer. Well, that wiped out the entire list of hearing officers, just about.

We do support the proposal that Ruth had mentioned, to set up full-time administrative law judges, hearing officers, whatever you want to call them; but some body of full-time personnel that will develop some expertise in these areas and be able to make sure that the hearing process works more swiftly.

That is a big concern from the employer standpoint. The more time that goes on, the more money, but also, the more frustration. These employees really want to get back to work. They want to make sure these situations are not just out there. It's bad for morale and for the company. We do have that same goal of looking for an expedited resolution process.

With respect to issue of the damages, this is where I don't think I'll have an epiphany this year, but things are changing. The Supreme Court, in my opinion, didn't strip the CHRO of the authority to award compensatory damages. There really wasn't anything explicitly addressed in the law. The law didn't say yes, you can award compensatory damages. A's a result, some hearing officers did award damages; some didn't.

When they went before the legislature, there was some concern. First of all, we feel that it is an informal process; there are remedies available to complainants: back pay, reinstatement of their job, injunctive relief. That hostile environment would have to be eliminated in order to address that complaint. I don't think that these cases are without remedies.

Certainly, emotional distress is very sexy to the plaintiffs; it is a way of inflating the value of the claims. I also oppose emotional damages in personal injury cases. First of all, in any other kind of relief, if you were fired from a job and you were reinstated, it's very easy to determine what your back pay is or front pay would be; but in terms of emotional distress, there's no requirement that anyone introduce any evidence of psychological harm. It's all really on what someone thinks you can impress on the hearing officer to determine what you feel would be adequate distress damages. They're way out of proportion with the level of actual emotional distress that is suffered.

Victims of intentional discrimination are eligible to receive compensatory damages. In addition, they have a tier structure where small employers are not subjected to the same level of damages A's larger employers. Congress did that because they recognized that for small employers, compensatory damages can wipe you out totally. They're not making a lot.

We recently did a survey where we gauged Connecticut voters on what percentage they felt companies make in terms of profit, and the polling numbers show that most people feel that businesses make about 50 percent profit. That's just not true. It's about 4 percent in the good years, and in the recession, you had a lot of companies that were struggling to stay open. It's a real problem.

We have to see a balance here between the need to advance equal opportunity, to address those wrongdoings on the part of employers; but also, not to make every employer out there feel that they are a bad guy or bad woman, because that's just not correct. I think most of these people want to comply with the laws.

We don't need to raise the stakes in employment litigation by allowing distress damages and then having people feel that they're going to be held responsible for paying those damages; otherwise, the Commission is just going to take the complaint for years and years and years. That has been a big problem.

A's Ruth had mentioned, more and more times, people are filing in the superior court. A's that becomes more of a trend, we will look at that policy and see whether or not it is something that we need to address.

Also, if they fix the problems in the Commission in terms of what employers see A's an anti-employer bias, we would be much more amenable to looking at different remedies. I think I'm a reasonable person in that context, but we do want to see some of those issues addressed. That's really all I have to say at this point.

MR. KAELIN: Bob, I'd like to have you give us something of the federal perspective; but what strikes me from what's been said so far is there doesn't seem to be a big role for the EEOC in this process.

In the course of your remarks, I would like you to comment, if you can, on why the EEOC doesn't have a greater role in this process and whether it can or should.

MR. SANDERS: I'm so bruised and battered at the moment, I'm not sure I can stand. I'm not sure we don't have a role in this process and, in fact, the work-sharing agreement which was mentioned, there seems to be some feeling that because there's a work-sharing agreement, that individuals cannot file charges directly with the EEOC. If you've never had contact with us, except for asking for a notice for right to sue, it's not because the process prevents it, it's simply that you chose to go directly to the CHRO.

The work-sharing agreement is just that: It defines which cases the CCHRO will process and which ones the EEOC will process; however, there's also a component of it that's called dual filing, so someone who files with CCHRO, if that charges jurisdiction over EEOC, CCHRO will send a copy of that charge to EEOC to preserve that individual's federal rights.

If a Connecticut resident comes to EEOC directly, EEOC will process that charge, but we will also send a copy of that charge to CCHRO in order to preserve that individual's state rights.

You were everywhere, so I'm everywhere. There was a question about jurisdiction in terms of filing a charge with EEOC. If you are a citizen of Connecticut, you have 300 days to file with EEOC. Even though the state statute says you have 180 days, there was a decision in 1980 -- but nevertheless, the work-sharing agreement makes all that moot. You have 300 days from the date of the alleged violation to file charges with the EEOC, even if you have not filed a timely state charge with the state agency.

Another issue that was raised was the fact that CCHRO has a nine-month statute of limitations, and if you run up against that, the person will automatically lose their rights. If that happens, we pick the charges up and process them ourselves, so no one is actually going to lose the opportunity to be protected, federally, because CCHRO ran up against a statute.

A's I said, time to follow along. Under the Age

Act, it is true you do not need a notice of right to sue to file a charge in federal court under the age statute. The only requirement is that you wait 60 days from the date that you file the charge, which is to allow EEOC an opportunity to process.

On the 61st day, you can go directly into court; however, if you want to go into court on the Age Act prior to the expiration of the 60 days and I feel I am not going to complete my processing within 60 days, you simply ask me for a right to sue. You don't really need it in order to go, but it will allow me to resolve it on an administrative level, and you can file in federal court in less than 60 days.

The key thing, though, is that even though -- and most certainly, I don't want the 3,000 charges that Louis gets a year coming to me, because I only have eight investigators that cover the entire New England area. If a person feels they've been discriminated against on the basis of race, color, religion, national origin, sex, age or disability, and they live in Connecticut, they can come directly to EEOC and file a charge. They can also go to CHRO; remember that dual filing I talked about.

Did I cover all your points?

MS. PULDA: I'll make some more.

MR. SANDERS: They mentioned jurisdiction. With Title 7, ADA, the Americans with Disabilities Act, the employer must have 15 employees. The Age Act, the employer must have 20 employees. A's I said, 300 days to file with the EEOC, and you can do it directly.

I'll sit and listen to the rest of you.

MR. MARTIN: I have some questions for you.

MR. SANDERS: I'm sure you will.

MR. KAELIN: On that note, I did promise the panelists that I would afford them the opportunity to comment on what the other panelists said. Since we've started doing that, we might A's well follow through on it. I'll give you the opportunity now, if there are any volunteers that would like to comment on what someone else has said.

If you want to hold your questions, I have a few questions myself, actually. Starting with anyone in the panel: Why don't people use the EEOC anymore?

MR. MARTIN: They're not located in the state: accessibility.

MR. KAELIN: Did I understand what you were saying, Bob, correctly, that if the charge is filed first with the EEOC, then under the work-sharing agreement, the EEOC will investigate that first?

MR. SANDERS: Right.

MR. KAELIN: In terms of a practical matter, how often is that done in Connecticut?

MR. SANDERS: Not very many individuals come directly to EEOC. Most of our charges are deferred from CCHRO, so it doesn't happen very often. I'm saying they have the option, but it doesn't happen very often.

MR. KAELIN: How does the experience in Connecticut compare with the other states? Is New York within your region?

MR. SANDERS: All of New England: Massachusetts, Connecticut, Rhode Island.

MR. KAELIN: In general, how do we compare with Massachusetts?

MR. SANDERS: Massachusetts we get because, of course, we are right down the block from MCAD, Mass. Commission Against Discrimination. We do get them filing directly with us. In fact, 454 of them last year.

MR. KAELIN: In those cases, you do the investigation?

MR. SANDERS: We do the investigation.

MR. KAELIN: One of the other things that struck me about what the panelists are saying is there did seem to be consensus, though, about how convoluted the process was and how difficult it was to take advantage of the process, particularly someone who is not represented by an attorney.

What I'd like to do is ask each of the panelists now what suggestions they'd have to streamline the process, to make it more user friendly; but the condition I'm going to place on that is that it has to be a practical suggestion in the sense that, given your own perceptions of political realities, it has to be something that might actually come to fruition, pass muster at either federal or the state legislature. Do I have any volunteers on that?

MR. SANDERS: I think the system is, at the federal level, the EEOC, I think it is user friendly. You're not required to have, even need an attorney to engage the administrative process. You sit with an investigator who listens to your story. We take the charge; we conduct the investigation; we determine whether there's been a violation of the law. If we determine that the law has been violated, we then become your advocate in federal court.

MR. KAELIN: Do you have any information on what percentage of charges are filed with you, are actually processed through in that fashion?

MR. SANDERS: We now have -- Louis calls it one thing -- we call it "priority charge processing." We now, at intake, designate charges A's A, B, or C: A cases are the ones we're going to put our resources and energy into; B's are the ones we're not sure whether they are an A or a C; and C's are the ones that we know at intake that we can remove from the system altogether.

MR. KAELIN: The question is: What percentage of the charges that are filed with you are processed through and prosecuted or brought to conclusion in your agency?

MR. MARTIN: How many cases did EEOC file nationally last year?

MR. KAELIN: It doesn't necessarily mean litigated, if you can settle the cases. If the complainant walked in your door --

MR. SANDERS: The only cases that we don't make a decision on merit on are cases that we close administratively: lack of jurisdiction, untimely, not enough employees, et cetera. Every other case gets a decision on the merits. It may be simply that there's no reasonable cause, but nevertheless, a decision is made on the merits of all cases except those dismissed administratively.

MR. MARTIN: Let me ask you this, Bob, because we're kind of slow down here in Connecticut: How many cases last year did your Boston area office find reasonable, probable cause on?

MR. SANDERS: I think our probable cause rate is about 18, 19 percent.

MS. PULDA: I feel bad, because I feel like you think like I'm beating up on you, which I'm not. I think that probably one of the biggest answers to the question about EEOC is what you said, that you have eight investigators to cover six states; it can't be done.

MR. SANDERS: That's why we have the work-sharing agreement.

MS. PULDA: I don't know how many investigators you have, but at various times -- how many do you have?

MR. MARTIN: We have 35 to 40.

MS. PULDA: So 35 to 40 to cover 3,000 cases. The math means that you're not really equipped to investigate individual cases.

I think that one of the things that you do well and effectively -- and I'm not blaming you, I'm blaming Congress -- are class action and nationwide complaints. I think that the EEOC has been very effective and aggressive in that. Practically, that's not the bulk of cases; but I think that you just can't have eight investigators to deal with thousands and thousands and thousands of complaints, therefore, you have deferral agencies; therefore, most people rely on the deferral agencies.

Am I not accurately describing that?

MR. SANDERS: Well, the results are accurate, yes. That's why we have these referral agencies. Obviously, we cannot handle 3,000 cases in Connecticut, another 8,000 in Massachusetts, and so forth and so on, but that doesn't mean we can't investigate --

MR. MARTIN: I think the staffing, whether or not you can do whatever number of cases with so many people, is only important in the sense if -- like, in Connecticut, we're one of the few states -- maybe the only state that has a Supreme Court decision that tells you what you must do in defining the level of inquiry. If we didn't have that, I could do it with two people, if I had total discretion on what level of investigative inquiry was appropriate, under the statute.

They changed all that and gave us a level of inquiry that required this 40 hours' worth of work. Prior to that, it wasn't there. I could do two hours' worth of work.

The other piece that makes Connecticut so labor-intensive and staff-intensive is our cases are subject to judicial review, where at the EEOC level, their cases aren't subject to judicial review.

You don't like their decision, you still have the opportunity to go to court.

If you don't like our decision, you basically can't go to court. You have to file an administrative appeal and challenge the appropriateness of our decisions.

If you look around the country and you see -- if you see the states that have the shadow of an administrative appeal in back of their process, you see a more rigorous process up front that is required because of this shadow of administrative appeal over your head.

If we didn't have that administrative appeal over our head, that if other people, saying whether or not we were an arbitrary capricious standard, if you didn't have that, then staffing is not an issue.

MS. PULDA: But then enforcement is, because you don't have to do a good job.

MR. MARTIN: It's not a matter of a good job; it's qualitative defining what you have to do. The Supreme Court qualitatively defined what we have to do. Have you seen other Supreme Court cases that have defined that, have done that? No. They never said, in Title 7, where it talks about investigation -- in fact, in Title 7, it doesn't even say you've got to do an investigation, does it? Title 7 doesn't say that.

MR. SANDERS: EEOC does.

MR. MARTIN: But we have a Supreme Court case that says an investigation requires A, B, C, D, E, F, G, H, and I. I think that's one of the real -- that's the big issue here, and that's why it becomes more intensive and our investigative inquiry has to be a little bit different because of the shadow of administrative appeal and this Supreme Court decision.

One of the other issues about deferral and all that is that the EEOC has declared that we are a 706 agency. Since 1991, and because we now do not have compensatory damages, and the EEOC makes their determination across the country whether agencies are 706, are they ever going to look at the agency's remedies A's a way of determining whether or not a person --

because, basically, the theory is you're going to get the same thing at CHRO A's EEOC; therefore, we enter into this relationship with CHRO.

Now, the question is, because we don't have compensatory damages, do complainants have the ability to get the same things now, and would EEOC ever take that into consideration? I know that's a policy question, and EEOC never wants to talk about that, because even before 1991, there were a whole bunch of differences, substantive differences on what's available and what we can do in this state and not do and what EEOC provides.

EEOC has made a conscious decision not to look at those things in making a determination, because if they really looked, they would not designate some of these state agencies across the country A's 706, which means they would have a whole bunch of cases coming back and then Jessie Helms would say, No, I'm still not funding you.

MR. SANDERS: He's not funding us anyway.

MR. MARTIN: He's not funding you anyway. But certainly, right now, across the country, we do -- is it bifurcation of work load, 45/55? The EEOC does 55 of the work load, and the state and local agencies across the country do 45 percent of the work load. Is it 100,000 cases across the country, nationwide, each year? About 100,000 cases come into the federal agency and the local agencies, and EEOC processes

55 percent and the state agency 45 percent; and the question is: Are people getting the same thing they would get at the EEOC? because there's a lot of states that do not provide compensatory damages.

MR. KAELIN: I'm going to come back to the question about the constructive suggestions for streamlining the process, but I'll do that after a five-minute break. I think we could all use a break for about five minutes.

Why don't we resume at 3:00; I'll take up that question with each of you, and then I'll open it to questions from the other members of the committee.

(Off the record.)

MR. KAELIN: I'd like to go back to this question. You all are the experts in this field. I just dabble in this field. Being a trained lawyer, I've found Ruth's description of the process right on point, at least to a nonexpert; and the process does seem complicated, from a number of perspectives: One, I can never figure out what the deadline is for filing my complaint. I think the tax code is actually easier. There's no case law that helps you in interpreting all these regulations.

But I've also represented a number of employers, and I could also very much sympathize with what Betsy was saying about the Schedule A interrogatories. This word processor spits out questions that seem to have no relevance to the proceeding.

I will say, in fairness to the CHRO, that whenever I object on the grounds of relevance, I never get any resistance from the CHRO, so they've been very fair about that.

One of the things I'd like to take out of this conference is useful and practical suggestions on how we could make this process more user friendly for everybody. I'm going to compel you all to answer the question, and I'll start with Louis.

MR. MARTIN: One practical thing I think could be useful -- I haven't thought about it. I'll go generic first and then try to back-door into them. The process needs to become more -- needs to have less formality than it currently has, which means that in the administrative hearing process, I think some aspects of the hearing process ought to be out from under the Connecticut Administrative Procedures Act, which provides for various protections for people through that hearing process.

For an example, right now, our hearing officers do not believe they have the ability to rule on summary motions to dismiss cases. That's a serious problem, and maybe we should specify that they do actually have that authority. Our hearings currently must be transcribed; that's about $900 a day. That money could be used elsewhere in the administrative enforcement process. Some administrative hearings are done by tape recorder, and I don't know why these can't, except for many of the formalities that take place in our process.

On the other end, I think the Commission again needs to be given even more discretion to make meritorious determinations on less information, maybe without all the information they currently get under the Mar process, that is, without the answers to the Schedule A questions.

I think the Schedule A's, certainly, technically providing base information, is good from our perspective. Sometimes those questions aren't all relevant, but many of them are relevant and many of those questions are the questions that you have to get through discovery when you're fighting these cases in federal court.

I think when we decided to do it that way, we did it because the State of Connecticut didn't want to spend the $400,000 to pay the people to tailor those types of questions on an individual basis. That's why I don't think that's practical to get rid of it, unless we're going to get rid of the Schedule A's and do specifically tailored ones, unless you're going to decide we're going to spend the money.

If you're not, really, what you're doing is the state of Connecticut taxpayers are not spending it, but the employers are spending it, having to go through and answer it all. Somebody is going to pay. Who wants to pay it? Is it a societal expense or an individual expense for hiring such employees who file complaints in the first place? Employee selection is critical; you've got to make sure you hire the right kind of employees.

I think giving the agency more discretion to make earlier decisions on less information would free up the process; but again, that's taking away some of the due process rights and protections that currently are in the process.

I think raising the threshold for filing complaints is not a bad idea if you couple that with giving the Commission more discretion to make that determination. Probably 15 percent of our cases are clearly frivolous cases, although they are jurisdictional. The person did work for an employer who had three or more employees and it happened in the last 180 days; that's all they need.

The question is: Can we get rid of those earlier? Unless we give the Commission some discretion earlier, that's a nonappealable process so we won't have to defend it on the back end by giving them the right to sue when we make that determination -- and we've always advocated that -- by giving us earlier discretion, but giving the complainant the option out. A's Ruth said, that is going to take three to five years in the superior court and cost you a bunch of money, so that may not be a real practical alternative.

I think we have to look at all the areas in which we now extend due process which costs time and money and try to eliminate some of those. We A's a society have to be willing to live with that and give that back to the agency to make those kinds of determinations. It's got to be some trust built up, I guess.

MR. KAELIN: Let me ask you, Betsy, what do you think employers would think of eliminating -- streamlining the procedures and eliminating some of the, quote/unquote, "due process"?

MS. GARA: I think it would make a lot of sense because a lot of the due process goes only one way. A lot of due process goes toward the complainant, not toward the employers. Complainants can depose witnesses; employers can't. If you had an informal process, keep it informal from both viewpoints.

I also agree that you should give the Commission more discretion. A lot of people say, Well, she must be crazy to think that they should be able to dismiss complaints early on in the process; but when you look at the statistics, a lot of these complaints -- 15 percent -- are frivolous, and an even higher percentage end up being found meritless because they are just not going to have any reasonable possibility that they will find reasonable cause. I think those are areas that you can look at.

I also agree with Louis, you can clarify what hearing officers can rule on motions. That's been an issue where we just don't know which way it will go. Some hearing officers will rule on motions; some don't. Simple clarification there.

Again, I think you need to front-load the process so that you can conduct more of a jurisdictional review, and also more of the merit assessment review. Currently, to conduct a merit assessment review, they have a 90-day window. If it does not get conducted within that 90-day period, then it is retained for a full investigation. That's unfair. I think every employer should have the ability to have that complaint dismissed up front.

You may want to look at also creating a mechanism where an employer can file a motion to dismiss, similar to what they have in the superior court process, so that they can get those complaints out earlier.

We'd also be supportive of raising the threshold for filing the complaint. From what I understand -- correct me if I'm wrong, Louis -- it used to be that if you filed a complaint, you actually had to go in and sit down with an intake officer at the Commission at one of the regional offices.

Now, you simply have to file a letter. For just a stamp, it's very easy to file a letter and walk away from it and wait and see what happens; but if you physically have to go in someplace and sit down and talk to someone about your complaint, you tend to weed out more of the frivolous complaints, I would think. I don't know why that change was made. It does seem A's though the number of frivolous complaints has gone up. Either that, or more employers are calling me because they're frustrated from the process.

I think you can also look at doing something A's simple A's a how-to booklet. There are a lot of different ways the process goes. Some cases are chosen for mandatory mediation; some are retained for full investigation. It's very confusing for both employers and complainants to understand where they are in the process: Wait a minute, last time I had to do this; now this time they're saying I'm in a mediation. What's that all about? I'm really confused.

The Unemployment Compensation system has done an excellent job of doing a how-to booklet for complainants and employers in that system. They've also just done a video to explain to people what kinds of rights they have.

I also think that the Commission can explore opportunities for telephone adjudication. That's another area that the Unemployment Compensation system has looked at, because it's very difficult sometimes to have parties agree on when to schedule hearing conferences. The Commission even lacks space, sometimes, to hold these hearings, even though a lot of them are ultimately canceled. That's been another problem that has delayed the resolution of complaints.

Again, the Schedule A's, I think that you need to look at some other process. I think you can do that if you front-load the process. Again, you'll have the people looking at them being able to tailor the questions more specifically to the complaint so that you're not eliciting a lot of information that's just irrelevant, that any investigator has to wade through that information.

The lawyers that practice in this area, A's a major part of their practice, they don't even answer the questions. They file a position statement, and then they say, Refer to position statement on the Schedule A, so they know; but for the attorneys that don't practice a lot in this area or feel that they're going to be defaulted if they don't answer each and every question, there's some concern there.

The EEOC, from what I understand, has an interrogatory that only contains 25; and, in fact, they're required under the federal rules -- they're limited to 25 questions, including subquestions. I think you need to look at something like that. We've been talking about that for a while.

Also, have opportunities for mediation early on in the process. A lot of times we talk to employers and they've dug their heels in, once they filed the answer, that they're just not in the mood to the settle. I've already done this; what on earth can be worse than this? So they're not going to mediate. Why don't you have the mediation early on and allow the employer or complainant to elect mediation?

Right now, the Commission is the one that selects the case for mediation, and that doesn't make sense. If you have one party choosing mediation, you know that there's some area there that you can explore, an opportunity there to settle the case. If the Commission picks it, you're still going to have a complainant walking in, maybe adamant that they're not going to settle, and the employer adamant that they're not going to settle. So it doesn't make a lot of sense to me.

I guess that's about it, but simple things.

MR. KAELIN: Ruth, how about you?

MS. PULDA: Some of those, really, I don't think they're so simple; but some of the constructive suggestions: Well, one thing is last year, again, with this task force that the legislature convened, we did come up with some constructive suggestions that were hammered out A's a matter of, mostly, consensus.

There are some things in that, including expanding the time frames to allow the process to have a little bit more airing and give the investigators more time and the respondents more time. While I didn't agree with everything in that compromised bill, I think we all would have supported a more realistic investigation process.

I think -- and I'm sort of free-associating here -- but I think I completely agree with Louis, that it should be much more informal. I don't know if it means that you sort of -- that you're undermining due process. I think it's a different way of looking at due process. I would have no motion practice at all. Then you're in the procedure, and procedure ultimately becomes substance, and no one ever gets to a determination of whether there's discrimination.

I think -- again, I might change my mind -- but I would have a system resembling more like collective bargaining arbitration, in which -- and this requires longstanding relationships between the parties, however, and I do collective bargaining arbitration. It always amazing me that parties who have in some way an adversarial relationship never risk providing each other information.

There's often an information exchange. The union is doing an information request; it's a violation of the federal law if they don't provide the documents. So I think that you can get rid of a good chunk of the investigation if you're not begging, borrowing, stealing, and having Schedule A's that employers, on their word processor, say, Irrelevant; not going to answer. So one has to file a motion, and you go round and round.

I think that if we do much more like that, a required exchange of information in which there are penalties on both sides for failure to exchange, then you truncate the investigation, and then you can do arbitration, or something like arbitration. I'm not so sure I would have a full-blown due process hearing. I think that arbitration can suffice. You don't have to have the hundreds and hundreds of rules of evidence, and somehow it all comes out.

And not everybody needs lawyers in the process; most of the unions I work with, they have staff who does them. I'm moving toward much more a self-enforcing system with real penalties for failure to honestly abide by the system.

What do you think of that, Louis? Less work for lawyers.

MR. KAELIN: A populace viewpoint.

Bob, did you want to add anything, or do you prefer not to?

MR. SANDERS: CCHRO is an independent agency. It's entitled to develop its own procedures, processes, and I have no comment.

MR. KAELIN: I've got to get to my colleagues here.

THE CHAIRPERSON: I was very glad what you said in the end, Ruth. I do a lot of labor arbitration work, and it always seemed to me crazy that both the state and federal laws wouldn't allow what, under labor law, the trilogy said years ago: An arbitrator makes a decision, that's it; anybody who chooses to go this route, that's the way he goes. You're not paying a hearing officer $125 a day, but you don't need a transcription. It's an expedited process.

You can hear the thing, and once somebody says that the case should go to arbitration because there may be enough evidence to warrant the complaint, we do. That we should pass a law that gives the person the option of choosing arbitration and waiving his statutory rights to go to court, for example.

So that it would expedite the whole process and make it more meaningful. Even when I'm ruled against in arbitration, those arbitrators know a lot more than we give them credit for knowing sometimes. Very seldom does a decision get thrown out by a court in arbitration.

I would like your opinions A's to whether it would be wise to recommend to the legislature or congressional bodies that they amend the laws to allow for binding arbitration in lieu of the procedures that are presently in place.

MS. PULDA: I can speak vociferously on that. I 100 percent don't agree. The administrative process at CHRO should more resemble the informal process of arbitration, but it should not extinguish a federal right to go, if you don't stay in the administrative process, to go to court and have a jury and a judge determine your federal civil rights.

So I wouldn't support any legislation that says if you stay in the administrative agency and you get a process that is something like arbitration, then that's it, that's all you can do. What I was advocating is a process that is quicker and more informal in the administrative proceeding.

THE CHAIRPERSON: But we do it under the lemon law. If you feel you've been taken advantage by a stockbroker, you can go through this expedited process. Of course, it's not for the fair employment law-firm attorneys, but I think it would expedite the process.

MR. MARTIN: I guess it depends on how I understand it. If the arbitration process you're proposing is a substitute for the administrative hearing process -- and Ruth is saying she would want to see some of the structure of arbitration imposed on the investigative side of the process; is that what you're talking about?

MS. PULDA: I think that the investigative, ultimately, the hearing, to me, could resemble arbitration, where you don't have to have the full-blown rules of evidence and you don't have to have it transcribed.

MR. MARTIN: But not binding arbitration and not in lieu of going --

MS. PULDA: Not in lieu of extinguishing someone's federal rights.

MR. MARTIN: Go ahead, Jewel; you're the expert.

MR. BROWN: Respondents are not going to buy into that because it gives the complainant the opportunity to have someone adjudicate the merits of their case, and to go out and lay down the weakness of their case and the strong points of the respondent's case. In so many instances, those weaknesses or strong points are underlying the subsequent proceeding.

Also, right now, in the way arbitration is handled -- normally, a third party, someone pays for it, either the parties themselves or some third party. The problem that most state agencies have had in trying to do arbitration is there's no source for payment.

MS. PULDA: The ALJs could be the ones who are essentially --

MR. BROWN: If their process was structured toward that type of proceeding, the administrative process, then I think that, probably, in order to sell it to the companies, any subsequent proceeding would probably have to be on the record, and it would probably have to be in lieu of other processes.

I don't think that the average respondent would want to involve time, effort, and money in that process, knowing that the complainant has available to him or her numerous other processes to walk away from it.

THE CHAIRPERSON: That would end it, just like it does in binding arbitration, unless it was in conformity with the statutes that allow you to appeal in arbitration.

MR. MARTIN: He would make it the one and only process.

MR. BROWN: I have a problem with that, to a certain extent. In typical arbitration, especially labor law issues, you have the contract , and that contract contains all the rights and liabilities between the parties. If it's not within the contract, then the arbitrator doesn't address it.

Now, it's different when you move into the area of civil rights litigation, employment litigation. A lot of the obligations of the parties may come from prior court decisions; it may come from statutory interpretations; it may come from constitutional issues. What I'm saying is that -- now, I think probably an administrative law judge could do it because we say an administrative law judge can do it for purposes of administrative process; but I think that in order to make it binding, I think that the administrative law judge's decision would probably have to be subject to maybe some limited review on appeal. I don't know what that limited role would be, but I think you're going to have to make sure that you have the expertise at that process. Then you're still going to have to have some limited process for review.

THE CHAIRPERSON: Just like what the trilogy said in labor law, that there is a level, but it has to be -- the arbitrator, you choose him, and he is the expert. You just don't have to have an appeal unless there's some violation of a constitutional law.

MR. BROWN: Maybe if the parties were given an option to go this expeditious way; then, what they choose, using the administrative law judges to litigate it, that probably could be viable. I don't know. No one is forced into it. The person would have to see that it benefits their interest, and they have to believe that the person who is going to make the adjudication is independent of that governing process, and is going to realize that what he's giving up for the expedition is a great deal of his rights.

But I think, though, it's something that might -- it certainly couldn't hurt the process any to create that avenue; and it may be the thing that saves it. I don't know.

MR. KAELIN: Betsy, do you think that would be a problem?

MS. GARA: I don't think it would be a problem. I think, given the experiences that employers have had with the mandatory mediation process, where the decision is currently not binding and they feel that that's biased, they'd be very reluctant to enter into anything which is binding arbitration. It would depend totally on the neutrality of the arbitrator and whether they felt comfortable with the neutrality of that arbitrator.

I do like about it that there's an end point. One of the concerns that employers have is that there's virtually no end point in the process, prior to Angelsea, at least. The complaints could languish before the Commission for years, and if they're not before the Commission, then they're in court or federal court or EEOC.

It's confusing to an employer when they get one administrative dismissal and they find out, Oh, by the way, there's also something pending in court. For that purpose, I think maybe you do need to look at something like that. I think you do need to focus more on mediation and early opportunities for mediation. From what we've seen, employers do dig their heels in. They don't want to settle once they've been in the process too long. It would have to be early on.

MS. PULDA: Could I just respond to that a little bit? I probably need to make my proposal that -- I don't even know if it's my proposal -- my thinking is, because I certainly don't want you guys to leave here and say, Binding mandatory arbitration and, therefore, you can't go to federal or state court, or I think I would be, like, fired; because I don't believe in it, and that's not what I was suggesting.

What I was suggesting is a replacement, a process that replaces the current administrative process, so that this would be the administrative process, and it doesn't extinguish your federal rights, which, actually, is the situation now. You can go all the way to a hearing in CHRO and still go to federal court. I think you're crazy to do that, but I certainly -- that's the situation now.

About Betsy's suggestion that you mediate early. She may have gone around and around on this, and it sounds great, but it isn't, in my opinion, A's good A's it sounds. Louis will tell you that most respondents are represented by lawyers. Betsy has talked about some respondents who are not represented by lawyers; they're very, very, very few. Whether that's good or bad, it's a fact.

In contrast, the unrepresented people are complainants; and in early mediation -- I have seen this because people have come to me to try to undo this or have come to me for advice -- are unrepresented, and they have a settlement on the table that, We don't even want to do an investigation; give up your job, and we'll give you $10,000. They have no way of assessing, because they haven't gotten one whit of paper, whether that's fair to them or not.

So while facially, that sounds great, let's constantly throw these things out at the beginning. Remember that someone really wants to know or assess or have someone analyze whether they've been discriminated against. Without one piece of paper that gives them the opportunity to assess whether there's evidence supporting their claim, there might be -- there may be a smoking gun that the employer is trying to hide; that's why they'll throw $20,000 at you if you'll give up your job. That unrepresented person is unfairly taken advantage of in that system.

I've seen it, and I'm very wary of it. When we talked about this in the Law Revision Commission, I resisted a requirement of mandatory mediation up front. Often, the Commission will try to impress upon you that it's better that you settle early, with no one knowing any facts whatsoever. So I caution you about that, particularly, for the unrepresented person.

MR. MARTIN: I've been in the system where we've done mediation early, up front -- in one situation, prior to the complaint being filed and another case, prior to the answer being required -- what you really have is the use of government coercion on the settlement process. That process would yield a lot of settlements of cases, but you would have little effective civil rights enforcement A's a result.

The good cases will go away through that early payout at the mediation table; two, you would jeopardize the EEOC/CHRO relationship, especially if it was prior to even the filing of a charge. But certainly, the enforcement process needs to work. It doesn't seem that we should be using the power of the government prior to, at least, the agency making a facial determination, i.e., the merit assessment process, before we use the power of government to -- A's Betsy thinks or some of her clients think -- a biased agency using that power. I don't think you'd even want to sit down with an agency mediator prior to our making, at least, a facial determination that something may be wrong; then I think the coercive power of government at that point is reasonable. I think using it prior to that, bringing people to the mediation table, even though it isn't considered a coercive process, I think when government does it, it is a coercive process.

MS. GARA: Just to respond, by the way, you lost that one because it wasn't a bill. We did talk about the fact that first of all, the majority of cases are ultimately dismissed. What the employer is saying is a lot of times, the employer wants to sit down face to face with this person and find out what is the problem, because they didn't understand that there was any problem whatsoever.

Give them that opportunity before the Commission had to expend resources in determining whether or not it was a meritless complaint under the merit assessment review, and ultimately, dismiss.

If you look at the numbers of complaints that are dismissed, I think it would bear out the fact that you need to do more up front in order to get those complaints out of the process quickly. It doesn't make any sense to tie up the resources of the Commission and an employer. It doesn't do anything for anybody, really.

We had also talked about the fact that the unrepresented complainant really isn't unrepresented. The Commission, by law, represents the complainant in these proceedings. So they would be there to advise the complainant A's to whether or not what was on the table would sufficiently address their concerns that they raised or the complaint that they had raised. Again, I feel that we do need to look at that area. Whether or not we've worked out all the bugs, it does seem to be something we do need to look at.

Again, the actual agreement would not have been binding, but it would have been an opportunity -- the mandatory mediation itself would have been elected by either party. Either the complainant could have elected it or the employer, but the decision following the mediation was not binding.

MR. BROWN: These issues, for the most part, are not new, the task force coming in, and that has been discussed earlier.

I oppose the mandatory mediation-up-front process for a number of reasons: First of all, contrary to what Betsy and the CBIA thinks, CHRO does not represent the complainant, even at public hearings. We represent the State of Connecticut, and we represent the peace and dignity of the state of Connecticut. Just like the prosecuting attorney in a criminal case, we prosecute on behalf of someone violating the public policy of the State.

If the complainant benefits indirectly, fine; but we do, at the public hearing stage, we do advocate for eradication of the discrimination. In the investigative stage, we give respondents just A's much support A's we give a complainant, and we have a duty to do that. If anyone tells me, can convince me that we are taking sides during the investigation, then I will be very much concerned about that because statutorily, we cannot do that.

So if the complainant wants to settle for a banana, the CHRO employee is not going to say anything, even though he thinks it may be worth a million bucks. It's not our position to tell anybody about their rights because, number one, when you get into the area of advising persons, you should be licensed; and number two, you should have some type of attorney/client relationship, something that would protect you. Our statutory scheme would not, in my judgement -- a certain AG has told us it would not do that.

But the other reason I'm concerned about a mandatory mediation process is this: You're talking about 3,000 complaints, and you're talking about taking staff resources and making sure that each one of those complaints goes through some form of up-front effort to settle during the first 30 to 45 days. That effort to settle is going to entail 2 to 4, 6, 8 hours.

And our experience shows us that not enough cases are going to leave the process to justify taking each case times an additional 4 hours; you're talking about 10 to 12 staff persons per year, doing nothing but that in order to make sure that each one of those cases goes through mandatory mediation.

Now, our process already allows for the respondent to ask for a mandatory mediation up front, if he wants to. Our process tells the respondent, and tells the complainant too, that we have what we call a no-fault conciliation process. That process must be accessed within the first 45 days, and it must be complete prior to the answer due date.

But we do not initiate that process at the complainant's request. We only initiate it when the respondent requests us to, for two reasons: What we used to do, A's a matter of course in our cases, the respondent was contacting us, our legislators, the governor's office, everybody, talking about CHRO forcing them to pay out money when we hadn't done anything to determine the merits of the case.

So Mr. Mar, being guided by that process and thinking that that's a coercive process, changed the procedure around; and respondents know today that all they have to do is send a letter or telephone call to us and say, "I want to pursue early mediation." We'll set out and pursue it before the respondent has to file an answer. That happens in two, three cases a year.

Now, I mean if you're talking about taking a third of our staff -- the only thing the governor was doing over the past six months was taking it away -- but you're talking about taking ten persons, almost a third of our staff, to allocate to a process that's going to be completed in the first 30 to 45 days.

If it doesn't take any cases out, then you've still got the same work load, 20 percent, 30 percent less people to do it. I really do believe that a respondent wanted to do mandatory mediation up front, they would take advantage of the process we have. All they have to do is write that letter, and I guarantee you, we will meet with them and we will seek to mediate.

One other thing I did find in those cases, respondents oftentimes come in with the intent or purpose of changing the complainant's mind. Complainants come in and say, I want to buy this new home I saw in Avon; here's the bill. Respondents say, You made a mistake; we don't discriminate. We sat and talked about that. We don't know what the facts are. So I mean, it bores down -- we were settling a hundred cases a year through that process, and it just wasn't working.

Besides, the cases that would most likely settle during that 45 days would be cases that are going to be dismissed 45 days later; because in the 90 days, the way we have to process cases, we've got to get out about -- a large portion of our inventory has to go within the first 90 days. We have staff and resources to investigate about 1,500, give or take a couple hundred cases a year on the merits. Any other cases, people have got to go. That's just what the legislature said to do; that's what they said.

MR. KAELIN: To give people a sense of our timing, we're going to take statements from some of you all out there, representatives of the public and other agencies, at about 4:00. I want to give the rest of the members of the committee an opportunity to ask questions.

Did you want to add something?

MR. SANDERS: I just wanted to weigh in on this mediation issue. ADR or mediation is something that EEOC is really pushing this year. Our process, however, will be strictly voluntary; both parties have to agree to engage in litigation. The individual who will be conducting the mediation session will be an individual who will be impartial and not a part of the investigatory process.

If, in fact, mediation is unsuccessful, then the charge goes back into the normal pile of unassigned cases and nothing that took place in mediation will be a part of that file. That is something that we will be engaging in a lot in '98 and subsequent years.

DR. McKENZIE-WHARTON: I just wanted to pretend that I was John Q. Public and I had enough money to go to Boston. What advantages and disadvantages would I then have in selecting one office over the other in filing?

MR. SANDERS: People often ask that question. One is if you're coming from CHRO or coming from Connecticut, compensatory damages is one area that you can obtain by coming to the EEOC that you cannot get by filing with CHRO. But I don't tell people to come to Boston just for that reason.

By the way, you don't have to actually come to the office to file, physically, in person. You can do that -- we can take charges over the phone or by mail. We do try to make it A's easy a process A's possible.

DR. CHUN: But is that piece of information widely known to the public? Until this moment, everybody was left under the impression that somehow you have to come to Boston, and that's crucial. What do you think, does the public know about that?

MR. SANDERS: Connecticut is Louis's bailiwick. To the extent that I'm asked to come and speak to groups in Connecticut, I do so. When we're asked, we provide answers; but whether it's widely known or not, one of the things you've got to understand about EEOC, we operate under a strict privacy act. Nothing that comes before EEOC becomes public knowledge until we file litigation.

I can have the best case in the world, I can settle a case for the highest amount in Connecticut and you will never know about it, unless you represent the employer or you represent the charging party or you are the charging party. I cannot make public any of that information.

One of the reasons I think the agency latches onto high-profile cases is it wants to let the public know we exist. I get people calling me all the time saying, Do I have to go to MCAD before I come to you? And the question that she just asked, people just don't know. One of the reasons is a lot of the things we do, we can't publicize.

MR. MARTIN: One advantage coming to CHRO is if you look at the gross numbers, you probably had a greater chance to getting your case litigated if you came to CHRO. EEOC, I think they took 550 cases through litigation last year; so if you're looking for a determination on the merits, you're probably more likely to get it here.

You're less likely to get -- you won't get compensatory damages through our process; but the chances that you'll get compensatory damages here is lessened by the fact that -- does general counsel still make the decision on which cases get litigated?

MR. SANDERS: No, the regional attorney does.

MR. MARTIN: In our process, once you make reasonable cause, the statute says we must go to hearing.

There is no discretion in not going. Our Commission counsel, if there's not an error of law or fact, is going to go to hearing. Then the downside is you won't get compensatory damages.

I think another advantage from a respondent/complaint standpoint is -- it's not so much now with priority charge processing -- you're going to get a determination of what we think about your case in 90 days, whether we think it's a good case, in 90 days. Complainants and respondents will know that.

And we give you the reason why we think it is. If you don't like the decision at the administrative level here, you have the option of appealing our decision. In EEOC, you do not have that option; your option is to go to court.

MR. SANDERS: You have the option to ask for reconsideration, but it may not be granted.

MR. MARTIN: I was talking about appeal through the court system, which is more likely our case here. We're not allowed to act arbitrarily or capriciously and all that. I think those are the advantages and disadvantages. I think if you're really talking about the money, if that's your big issue, then you need to go to Boston and maybe you'll be one of those 550 cases.

DR. McKENZIE-WHARTON: What's the percentage of the 550 cases?

MR. MARTIN: Nationwide?

DR. McKENZIE-WHARTON: No. You say 550; from what pool, what number? What's the percentage?

MR. MARTIN: How many cases did EEOC -- I don't know that number. Do you know that number?

I just read it in the Labor Law Report. Last year, you litigated 550; the year before that, 663, and the year before that, 775, nationwide.

Those are not bad numbers; I'm not suggesting those are bad numbers, even though the people on the committee in Washington are criticized because the number's going down and they've been explaining how they get Mitzubishi and Hooters cases and all that kind of stuff. I don't know the number from which that pool was drawn, but it's thousands.

MR. BROWN: Roughly 60,000, I believe.

MS. PULDA: A's a matter of priority, I'm not so sure that the EEOC doesn't have -- I think it might have its priorities right. I think maybe it should be doing nationwide litigation. It is the federal agency with the federal perspective. It's certainly in need of investigators; even so, it certainly shouldn't necessarily be doing individual You-said-this-to-who cases A's a matter of national federal policy.

Putting those numbers in perspective, I think they're probably more class action, more broad-based cases in which you affect more people, or that the employer is more than one small employer. I don't criticize that.

MR. MARTIN: We do have a local enforcement plan in this district, which is more localized.

MR. SANDERS: Throughout the 1980s, early 1990s, every case on which we determined there had been a violation of the law had to go to Washington, and the Commissioners made a decision whether or not to litigate it. So our number of cases that were litigated during that period was very high.

In 1995, Commission Chairman Casayas (phonetic) and his commissioners came on board, they took a look at -- of course, we were getting criticized for only doing individual cases or not doing large impact cases. So the chairman came on, and now we changed direction. Now we're doing systemic cases, large impact cases; we're being criticized for not doing individual cases, so you can't win.

But the fact of the matter is there is a national enforcement plan which you might think of A's a menu that's set in stone. Every one of the districts in the country has this list of issues that the Commission has decided on, issues like egregious sexual harassment, multibased cases; those are all on the national enforcement plan and on the local enforcement plan.

These are the cases that we are looking to litigate. These are the issues that we designate A's A1 in our priority charge process and procedures.

MR. BROWN: Let me add this too: The EEOC, additionally, through the guidelines that they publish, and through the regulations and the cases that they litigate, but I mean, when the EEOC settled the case against -- or when the Texaco was published, you'd be surprised at the type of environment that those types of settlements and litigation create on the local level.

Respondents then see that the $30, $40 million settlements, or $200 million settlements really help cultivate enforcement for the local agency. The other day, we were just looking at our law in terms of mental disability, because we don't have the quality of experts that the EEOC does. I mean, there's no way, without their leadership and their publication, we could do anything approximating a competent job.

Just that type of indirect resources that they provide is instrumental on the local level. I'll be the first to agree that I think the EEOC should direct their resources to litigating the large cases, A's opposed to mom-and-pop individual ones.

MR. JOHNSON: This is to change the topic a little bit, I suppose, but I would ask each of the panelists to comment on the status of Affirmative Action in the state of Connecticut and what future directions you believe it ought to take.

MR. MARTIN: In the public sector or private sector?

MR. JOHNSON: Both.

MR. MARTIN: I think it's fairly healthy in the private sector in the state of the Connecticut. I see major Connecticut corporations doing outstanding jobs A's far A's diversifying their work force. I think they have now instituted diversity A's work/life issues, and they're approaching it from an operational point of view A's a business strategy.

If you look at the top ten major corporations in this state and you look at their strategic plans, and you see mentioned Affirmative Action A's business strategy, A's impacting them, especially those corporations who are doing business internationally, outside the United States, I think it's gone beyond the requirements of OSCCP.

Even our federal contracts in this state, who do international business, do see it A's a business strategy to understand that the markets that they want to penetrate require that in order for them to be successful, they have to not only give lip service, but operationally, do some good work there.

I think in the private sector, it's a different story. A's you know, we at CCHRO review Affirmative Action plans for state government. We just did a report, because the regulation for Affirmative Action had been in effect for 20 years now, ten years effectively. We've seen a doubling of racial minorities and the leveling out of women in the state government work force over that last ten-year period of time.

It's more than double for blacks, Hispanics and Asians. You see a grouping where those gains have been made at, in occupational categories of service maintenance, the lower job categories, the lower pay, the lower status, without a lot of decision making.

In the higher job classifications, officials, administrators and professionals, you see not much growth at all. So operationally, Affirmative Action, from an operational standpoint, has not been that effective at the state level, and we see that mirrored in the municipalities in Connecticut also.

What we anticipate coming to Connecticut, from our brethren in California, Texas, and places around the country, A's there are more constitutional challenges to the idea. Those who see Affirmative Action preferences, we have to start thinking about what is going to insulate our efforts to diversify the work force and the benefits that we get from that diversity, whether they be municipalities or the private sector, and I think there are many.

How can we couch that, insulated from attack from those who think Affirmative Action does mean legal preferences, preferences without a basis in history or fact; but, again, I think business is on the right track. They understand it's a business strategy, various business units of their corporations demand that it happen in order for them to get a market share; and they look at it just like that. Pick up any of the stockholders' reports now, that is a prominent issue. Some people like to think they should have got there based on morality, but I'm glad they got there.

MS. PULDA: I don't have the bird's-eye view that Louis has, so I'm glad to hear that. I do know that I continue to get reports from the Glass Ceiling Commission, which, again, remember, is a creation of the Bush administration. It's not one of these things that people like me developed. They continue to report that while there is more inroads, the phenomenon that I think you're describing, of the glass ceiling for women and people of color, and of sticky floor, which is also what you described, when you get in, you're getting in at the floor and not penetrating the higher level decision-making places is still a phenomenon.

That's reflected in pay, and in the legal profession, our own Connecticut Bar Association issued a report that women aren't making partners. They're on the slower track, that they're paid less, simply paid less for working more hours than their male counterparts.

Whatever you call it. If you call it Affirmative Action -- sometimes I think that people are brought in and then left there. So I consider the real work of Affirmative Action, of mentoring, of making people -- giving people, really, the opportunity to advance, is hardly done. It's not my reports; it's these federal reports that just come across my desk and institutions like the Connecticut Bar Association put out. They trouble me. I'm very interested to hear you say that.

MR. MARTIN: I just saw recently -- and have always known it -- A's far A's gender is concerned, you see a lot of females ride to the top in certain areas of corporate America; and those are what areas? You see them in law, Human Resources, other support functions within corporate America; but decision-making functions and finance, those kinds of areas, you hardly ever see females. Those numbers are skewing when you look at the private sector, but it's the support functions in corporate America, where it's kind of the kitchen of corporate America.

MS. GARA: Well, I was pleased to hear Louis's comments, and they match my perception of what is happening there. I think he's right, that diversity of staff and diversity awareness within companies is a strategic part of their overall business plan; it makes business sense.

But it also makes good sense. I think most of our employers are very good corporate citizens. On the other end of the spectrum, you do see more companies getting involved in mentoring projects in the urban communities with young minority students A's well A's other low-income students.

It's been very gratifying to see them try to break people into professions that maybe these kids weren't really exposed to, which a lot of the projects that CBIA and its members companies are involved with are really targeted to do. It's something we need to continue to work on.

It's going to be part of our overall effort to let our employers know that they should be doing diversity training within their organization and try to make that training available to them. I guess I think government should stay out of it. Usually, when they get involved in it, it makes it more contentious. It's just happening on its own, and I guess, leave well enough alone.

MR. SANDERS: No comment.

MR. KAELIN: It's 4:00, and I'm going to let you ask questions, but before I do that, just to get a sense of -- is Michelle Duprey here? Hector? Thomas Connors? Arthur Paine?

So Elam and Michelle, you would like to make statements, right?

MS. DUPREY: Yeah, I would.

MR. KAELIN: Since it's just the two of you -- is there anyone else that would like to make a statement? If it's just the two of you, I'll hold that off to the end, and finish the panel's questions.

MR. SPRINGER: There's one question that I would like the panel to respond to, and I realize this is somewhat open-ended, but I think it's critical for the purposes of this committee.

How would you respond -- and this is a question I will direct to, I guess, Elizabeth -- how would you respond to those who argue that given the practical realities of civil rights enforcement in Connecticut with CHRO A's well A's with the EEOC, for that matter, that it is rather inconsequential to abolish CHRO or to abolish EEOC than to allow people, instead, to have a direct action to go into the court to vindicate discrimination violations? How would you respond to that?

MS. GARA: I've never advocated abolishing CHRO or EEOC.

MR. SPRINGER: How would you respond to those who would advocate the abolition of CHRO or EEOC?

MS. GARA: There's a need for an informal administrative process designed, again, to advance equal opportunities while also encouraging the informal resolution of complaints. The very nature of discrimination complaints is one that is a very sensitive subject. It involves a lot of emotional baggage and feelings that come out.

Unfortunately, what you want to do -- the whole goal of civil rights enforcement is get people back to work quickly, to get people's complaints resolved quickly; you can't do that in court, particularly in Connecticut. You do need to have an efficient administrative process, and we're very fully supporting of that.

It's also important, from the employer's standpoint, because you don't need to tie up an employer with a complaint that can be sometimes very easily resolved. A lot of times, it is just misunderstanding. We are all becoming more aware of problems in the work place.

For example, with sexual harassment, the pendulum is really swinging, and we're hoping that we're seeing less and less of it. I know in my office, people are afraid to comment on anything, whether it's somebody's tie or jacket; we just don't talk. Again, I think we definitely need that informal process.

DR. CHUN: There's one question I'm dying to have Ruth elaborate on, but I do have a couple of quick informational questions, quickie ones: If I went to see or call your Boston office and say, I'm seriously thinking of filing a complaint; if I do, when would you be able to assign an investigator? Then I also ask, How soon would you be able to give me some sense of resolution, or better yet, resolution? What would the typical answer be, say, in November '97?

MR. SANDERS: My answer would be it would depend on the facts you provide me and how I assess your case and how I prioritize it. If I prioritize it A's a "C," I'll tell you before you leave the office that we aren't going to do anything with it; here's your notice of right to sue.

If you don't give me enough information about comparatives and other people that may have been affected, then I would say it's a "B" and we need to get more information.

DR. CHUN: The statutory time limitation, A's it is with the case of CHRO. And the other question is based on the experience, which I think is considerable: I think there is an optimal number of cases you can assign to an investigator, assuming that that person is working at a level of high efficiency, what would you say the number of cases per year would be for this employee?

MR. MARTIN: Are you asking how many an investigator can do in a year?

DR. CHUN: A hard-working investigator.

MR. MARTIN: A top investigator, last year, like the talented tenth, those investigators do 120.

DR. CHUN: Would you say the same?

MR. SANDERS: My top investigator last year did 269.

DR. CHUN: Are you happy with the quality of the product?

MR. SANDERS: Yes; otherwise, I wouldn't sign off on them.

DR. CHUN: One may sign off because of political procedures. I think I would like to see more in-depth investigations.

MR. SANDERS: The bottom-line standard that we currently use is more likely than not. Based on the information the charging party has provided, the information we've gotten from the employee, our analysis of that evidence, if we determine that further investigation is more likely than not going to lead to a finding of a violation, then I dismiss the case.

DR. CHUN: From those figures, extrapolation is saying that in both CHRO and the Boston office, your investigators are overloaded.

MR. SANDERS: If I assigned every case that I have in the office to an investigator, yes, it would be overloaded. At one time, the most an investigator probably has is 35 to 55 cases, and we're talking senior investigator. It also depends on the level of expertise of the investigator. If I have a trainee who is a GS-5, then I'm not going to give him or her 55 cases; but if I've got a GS-12 who has twelve or thirteen years of experience, then he or she is going to have 50 cases.

MR. MARTIN: All our cases must be assigned to an investigator after the merit assessment process, the ones that are left within 30 days after the end of that process. Currently, our investigators carry anywhere from 15 to 30 cases apiece; that's down from 60 or 70. But again, we only have 1,200 to 1,300 cases now, where we had 3,400; and we had the same exact number of people -- we have a little bit less now than we did when we had 3,400, and we've got 1,200. You can see that we're carrying much too much.

We think optimum, 30 cases -- an average investigator can juggle 30 cases of different complexity, some single-issue cases, some multiple-issue cases, and maybe one kind of systemic case, but that's about it. If you get above that, you're really -- we're able to assign every case by 30 days after the merit assessment.

DR. CHUN: The real question: I think earlier a couple of times, you said you and your colleagues have tried many, many times, and you've gone to state legislature and tried to argue your case, that some compensatory damages should be granted; and every time, you've failed.

If you can just share with us a little about, let's say, what happens? That is to say, the arguments against, maybe, and the composition of the sort of forces of different camps for and against? Can you tell us something about inside the deliberations of the state legislature on this issue?

MR. MARTIN: Yeah. You have some of the major actors here. Certainly, the advocacy community groups have been in favor of granting authority once -- it wasn't stripped. It was interpreted that we never had, we never had authority to grant those types of damages, even though our interpretation was that we did have.

CBIA has been opposed to, first, generally speaking, the institution of granting us authority to have the hearing officers grant compensatory damages. I think -- and Betsy can speak to her arguments of why they believe -- but over the last year, I think we've tried it twice now, two efforts, three efforts. But the case just came out two years ago, didn't it?

Because you don't have a jury trial -- isn't that one of the arguments? -- because there's not a jury trial, it shouldn't be awarded compensatory damages. And there isn't really an injury here, I've heard argument, a tangible injury that you can measure.

I think it was stated earlier that you can come into a hearing and just get these compensatory damages, and hearing officers pull them out of the sky; that's not true. You have to put on probative evidence to prove your injury. If you're saying you suffered some mental anguish A's a result of the discriminatory act, you have to put on the medical testimony just like in PI cases.

You send your person to a therapist for a couple of years. It's no different. Then that expert comes in and testifies A's to the damage that you suffered, and you bring your wife and kids in and all that kind of stuff to show that you've been damaged.

I think there's a real concern that because the damage suffered is intangible in nature and, therefore, is hard to get a hold of, I think that's a concern, that you have these hearing examiners -- who are also perceived A's impartial in some instances -- making that type of determination. In the past, when hearing officers thought they did have that issue, they only were awarding $5,000 or $10,000; they weren't awarding a lot of money. They didn't find a lot of damage.

MS. PULDA: The issue of compensatory damages is one that was troubling for us because we do support the idea that it should be an informal process. When you add compensatory damages in the mix, which could be anywhere from $10,000 -- I know in Massachusetts, a lot of times it's a $100,000 -- you end up raising the stakes in the litigation, and you end up making it more contentious.

One of the reasons that it has failed in the judiciary committee is I think people understood that there are very little due process protections in an administrative process, A's it should be. They don't have the right to depose witness. They don't have the right to subpoena documents. So there's very little that they're putting on in terms of a case. They just did not feel that it was fair in that venue to award compensatory damages.

In the past, we felt that hearing officers were awarding compensatory damage with very little evidentiary support. We did suggest to the committee that if they did authorize the Commission to award compensatory damages, that they require some kind of evidence of psychological harm to be adjudicated at the hearing process stage.

There were also concerns -- the proposal before the legislature authorized compensatory damages in all cases. The Civil Rights Act, from what I understand, only authorizes compensatory damages in cases of intentional discrimination. They also cap the amount of damages based on the size of the employer. Those things were something that the judiciary committee was unwilling to put in the bill, I think primarily because the trial lawyers have a problem anytime you talk about capping damages.

Also, the issue came out that what other state agency in Connecticut is authorized to award compensatory damages? I don't believe that the complainants could come up with any agency that does award compensatory damages. They look to the example of the Workers' Compensation situation, where if you want emotional distress damages, then you go to superior court; otherwise, you file within the Worker's Comp Commission.

DR. CHUN: How close were the votes?

MS. GARA: Very close. I earned my money on that day.

DR. ECHOLS: Can any of you see any directions in which the legislative process might go, particularly around the things that seem to hobble the intent of the laws that were passed to create an opportunity to serve more cases, but at the same time, to tax it to death with the amount of money that's required for the hearings and so on. I'm thinking in terms of our legislature, which generates so many laws that are imperfect, and the repair work that needs to go on on some of them just never seems to occur.

Is there any hope for that? Do you go back on a yearly basis to seek amendments or changes?

MR. MARTIN: Our legislative package was submitted on October 30 to the governor's office, and we have three bills in the package this year: One, we've submitted Senate Bill 414, which is a bill that encompasses several changes, but it primarily centers around full-time hearing officers and setting up that process. We have two other bills this year: One related to state contracting, and one related to police community relations.

The one employment discrimination is that procedural bill that deals with the hearing officer, which is our first priority this year.

MS. PULDA: If I can just say about the pain and suffering and other reform, how long did it take for the gay rights bill to pass? Ten, maybe even 20 years; so I think we can hang in there, and some of us intend to. I think eventually -- Connecticut didn't end when the gay rights bill was passed and business didn't fail when it was passed.

Same with the Family Medical Leave Act. Originally, we had the same arguments about the Family Medical Leave Act, that you keep layering requirements on business, and business will fail. I think, eventually, that shakes down and we realize that we have more in common in these battles than we don't. So I think that if we hang in there, eventually -- these don't get better solved by litigation, and that there ultimately will be some common ground. I really think that will happen.

MR. KAELIN: At this point, I would like to give the public the opportunity to make statements, and I'll start with you, Michelle, if that's okay.

MS. DUPREY: Good afternoon. My name is Michelle Duprey. I'm here wearing several hats. I'm a plaintiff attorney. I have been a defense attorney, I've been a complainant, and I'm the chairperson of the Connecticut

Women's Disability Network; so I'm here kind of trying to represent all those different interests.

I think that Connecticut has done quite a disservice to its citizens. I think the Commission on Human Rights is grossly underfunded, and I think by doing that, we've really compromised employers' positions along with individual employees.

I think that that's happened not only because of the process and the time frames and the requirements that have been set up to keep the case load manageable, but also the fact about emotional distress damages. I'm a firm believer that anybody that's been a victim of discrimination or sexual harassment inevitably has emotional distress damages.

By not giving individuals the opportunity at an administrative procedure to get compensated for that damage, you really put plaintiffs in the position where they -- absolutely, to get made whole again -- have to go into court.

When people come into my office, they say, We've got to spin our wheels seven months at the Commission on Human Rights, but then we can go to court, because most of their damages are compensatory damages.

I think that there's something that needs to be done, and I think that we should not let ourselves believe because the EEOC is here and the CHRO is here, that discrimination is getting eradicated in Connecticut, because I don't believe that's happening.

I just think it's very important for this group and a lot of the other Connecticut citizens to understand there's still a lot of work that needs to be done, and that work needs to begin at the Commission on Human Rights & Opportunities.

I think Ruth's position -- she said it much more eloquently than I could -- but I think an informal process would facilitate remedying some of the problems with discrimination and sexual harassment. I think that we should not let ourselves think that that's getting better with the system we have. I think that the system is causing A's much damage A's some of the employers, and I think that we ought to do something to stop that. That's it. Thank you.

MR. KAELIN: Elam Lantz is with the State Office of Protection and Advocacy for Persons with Disabilities.

MR. LANTZ: I'm a staff attorney with the State Office of Protection and Advocacy. I did type up a few things this morning; I got asked to pinch-hit this morning. Please excuse a few of the typos that I didn't pick up.

I guess the one practical suggestion, since I prepared the written things, is to just summarize for you that at the Office of Protection and Advocacy, we receive nearly 5,000 calls a year on a variety of disability issues. Over 10 percent of the calls we received in the last two fiscal years related to employment questions; many of those questions related to employment issues relating to people with disabilities.

We are constantly amazed at the lack of information, despite the passage of the bills, despite the fact that the Rehab Act of 1973 imposed many of the same requirements A's the ADA on various organizations and employers, that people still lack the basic knowledge that is needed.

A's we get into the nuances of many of the systems, we should not forget that there's still a lot of public education and technical assistance that needs to be done to inform employers of their requirements and inform individuals of their rights.

I've listed some of the examples that we get in our organization, just very basic questions, questions that are clearly, at times, addressed in the implementation of regulations of the different laws, which are practice that are continually engaged in.

Once again, we hear only the cases where something has gone awry, so I'm not saying that it's a pervasive practice. In fact, we still need to -- we would urge the Commission to continue public education, training technical assistance A's a continued piece.

I know I've been practicing in disability law for, I guess, close to 17 years now. I am still constantly amazed at the amount of training and information that we need to continue to disseminate, to teach individuals their rights, and to explain the requirements of the law. So that's the one piece that I would add to that. Thanks.

THE CHAIRPERSON: Mr. Lantz, is the real problem the one dealing with, quote, "inexpensive accommodations that can effectively assist a qualified person"? Is this where the real fight comes between the employer and the agency?

MR. LANTZ: We have found that many times, accommodations can, in fact, be accomplished that are inexpensive; but if you notice, I guess, the paragraph before that, I said that many times, reasonable accommodations are viewed with suspicion and people immediately think big bucks, A's opposed to seeing it A's an interactive process between the employer and the individual, to try to evolve some sort of working relationship where the individual can still contribute.

I mention the area of psychiatric disability, which has gotten a lot of press nationally lately; and many of the individuals who contact us are really calling about flexible working schedules, which are a very difficult issue to work out and one that just isn't often on the radar screen of many employers, despite the Family Medical Leave Act, which applies, and despite the ADA, which may require some accommodation. So these are the kinds of technical issues that we need to continue to address and expose people to.

Thank you.

MR. KAELIN: Well, then, in closing, I would like to, on behalf of the committee, thank each of the members of the panel for participating in the discussion today. I know you all have spent time preparing for this. You've given us your valuable time today, and we recognize that and appreciate that. We'll see if we can make some good use of it.

Neil, would I be upstaging you if adjourned us?

THE CHAIRMAN: I'd like to extend my appreciation too, and thank the panel for a really great job.

(The conference was adjourned at approximately 4:25 p.m.)

C E R T I F I C A T E

I, Kelly A. Hickson, Notary Public and Stenographer, do hereby certify that the foregoing testimony is a true and accurate transcription of my stenographic notes to the best of my knowledge and ability.

WITNESS MY HAND AND SEAL, this 23rd day of November, 1997.

Kelly A. Hickson

Kelly A. Hickson
Court Reporter