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TRANSCRIPT OF PROCEEDINGS

ARKANSAS ADVISORY COMMITTEE

TO THE

U. S. COMMISSION ON CIVIL RIGHTS

LITTLE ROCK CONVENTION CENTER
MILLER ROOM
LITTLE ROCK, ARKANSAS

SEPTEMBER 24, 1998
9:00 A.M.

VOLUME II

EXECUTIVE REPORTING, INC.
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U.S. COMMISSION ON CIVIL RIGHTS

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APPEARANCES:

2 Civil Rights Commission Members:

3 Dr. Katherine P. Mitchell, Chairperson

4 Marge Lu Baker

5 Doris M. Both

6 Elijan Coleman

7 Nate Coulter

8 Father R. Scott Friend

9 Rabbie Eugene H. Levy

10 Jerome E. Ngundue

11 Danielle D. Strickman

12 Also Present:

13 Melvin Jenkins, District Director

14 Farella Robinson

15 Jo Ann Daniels

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1 DR. MITCHELL: Good morning. We're so pleased to
2 see you here, the participants for this morning's meeting.
3 This is a fact finding meeting. We had a very
4 resourceful, informative day on yesterday from 9:00 to
5 9:00. The committee gathered a lot of information that
6 will be very useful to us.

7 I want to remind you that we do have people that are
8 scheduled to speak to the committee; however, we do have
9 opportunities for other people to speak who are not on the
10 scheduled, at the end around 11:00 or so we will have an
11 open session. If you wish to address the committee, would
12 you please first of all see Ms. Robinson. Would you raise
13 your hand, Ms. Robinson? So that she can first ascertain
14 your concerns and you will be allowed -- thereafter you
15 will be allowed to speak.

16 Our first presenter this morning is District
17 Director of EEOC, Kate Klugh, and we're glad to have you
18 with us today. We have two set-ups here. You can stand
19 only if your voice projects enough that all of us can hear
20 you --

21 MS. KLUGH: I'm a former trainer.

22 DR. MITCHELL: Very good.

23 MS. KLUGH: Good morning. I'm Kate Klugh, and I
24 thank you for the promotion. Actually I'm the Area Director of
25 the Equal Employment Opportunity Commission in Little Rock.

1 I've presented some material for you here. I'm
2 going to be reading from that, and then there's some charts of
3 information in the back. I was asked to bring information
4 regarding the EEOC activities in Little Rock, something about
5 how we process our charges, and some of our priority
6 considerations.

7 The Equal Employment Opportunity Commission is an
8 independent executive branch agency, which enforces four laws.
9 One of these is Title VII of the Civil Rights Act of 1964,
10 which prohibits employment discrimination against any
11 individual because of the person's race, color, religion, sex
12 or national origin.

13 The Age Discrimination and Employment Act makes it
14 unlawful to discriminate against an employee or applicant of
15 employment because of his or her age, which is 40 or over.

16 The Americans With Disabilities Act makes it
17 unlawful to discriminate in employment on the basis or
18 perception of disability, or refuse to make reasonable
19 accommodation for an applicant's or employee's disabilities.

20 The Equal Pay Act makes it unlawful for an employer
21 to pay different wages to men and women for work of equal
22 skill, effort and responsibility, unless the payment is made
23 pursuant to a seniority system, a merit system, a system which
24 measures earnings by quantity and quality of production, or a
25 differential based on any other factor other than sex.

1 All of the statutes enforced by the EEOC make it
2 unlawful for an employer to discriminate against the person
3 because he or she has opposed any practice made unlawful by the
4 statutes, because he or she has made a charge and testified,
5 assisted or participated in an investigation, or hearing under
6 the statutes.

7 The Little Rock area office of the Equal Employment
8 Opportunity Commission is responsible for all charges filed
9 within the State of Arkansas, and is a part of the Memphis
10 District Office, which has jurisdiction over the States of
11 Arkansas and Tennessee.

12 The Little Rock office is staffed with an area
13 director, one supervisory investigator, one charge receipt
14 supervisor, one alternative dispute resolution coordinator, ten
15 investigators, one investigative support assistant, and a
16 support staff of three.

17 Administrative duties associated with the office are
18 performed by staff in the Memphis District Office. So in order
19 to more effectively implement the agency's mission of
20 revocating employment discrimination, and to address the
21 growing backlog of cases, on December 1, 1994, former chairman
22 of the Equal Employment Opportunity Commission, Gilbert
23 Casellas, authorized a task force chaired by vice chairman
24 Paula Igasaki to conduct a clean slate review of the
25 Commission's charge processing procedures.

1 On April 19th, 1995, the Commission adopted a series
2 of motions incorporating key recommendations of the task force.
3 In addition, the former chairman announced a number of action
4 items implementing the new procedures.

5 The new procedures were based upon the development
6 of a national enforcement plan, which provides a coordinating
7 approach to achieving the agency's mission through
8 investigation, conciliation, and litigation, in addition to
9 technical assistance and public education.

10 Central to the new approach is a charge
11 prioritization system, which provides for the classification of
12 charges into three categories. Category A charges are charges
13 that fall within the national and local enforcement plans, as
14 well as other charges in which it also appears more likely than
15 not that discrimination has occurred.

16 Category B charges are charges where further
17 evidence is required to determine whether it is more likely
18 than not that a violation has occurred, and Category C charges
19 are charges that are subject to immediate dismissal.

20 Category A charges will receive priority treatment.
21 Category B charges will be investigated as resources permit,
22 and Category C charges will be dismissed.

23 These standards give field personnel flexible
24 procedures for processing charges, including discretion to
25 decide the appropriate level of resources to be utilized for

1 each charge, and permitting settlement in appropriate cases.
2 They place substantial decision-making authority in field
3 offices and with front line investigators and attorneys. These
4 priority charge handling procedures apply in both incoming and
5 pending charge inventory.

6 I've given you further examples and clarification of
7 these. I am going to skip over them at this time for the sake
8 of the time we have here today.

9 The procedures developed for use by the Little Rock
10 area office initially involved categorizing all pending cases
11 as defined by the priority charge handling procedures. The
12 cases placed in Category C were immediately dismissed in
13 compliance with established procedures.

14 All cases placed in Category A were immediately
15 assigned for investigation and our remaining cases were either
16 assigned or placed on hold to be investigated as resources
17 allowed.

18 All charging parties whose charges were placed in
19 Category B were informed in writing, advised of their rights
20 under the law, and advised to provide any additional
21 information to be considered in recategorizing their charges.

22 All new charges entering the office are similarly
23 categorized. Charge receipt is a critical point, since initial
24 assessment of a charge's priority status will be made at this
25 stage of the investigation. The charge receipt process,

1 whether conducted in person, by phone or by mail, includes a
2 charging party interview conducted by experienced personnel who
3 will counsel the charging party and recommend an assessment or
4 disposition of the charge.

5 This interview will be lengthy in certain
6 circumstances. For example, where the case appears to involve
7 systemic discrimination. In other situations a shorter
8 interview will be appropriate. For example, where the
9 individual alleges age discrimination but is 38 years old, and
10 therefore not within the age group protected by Age
11 Discrimination and Employment Act, and there are not
12 allegations that would suggest a broader pattern or practice of
13 discrimination.

14 In the Little Rock area office two meetings are held
15 weekly for discussion of new charges. This allows the
16 investigator to have input from his peers and supervisors in
17 determining the priority the entering charge will receive.

18 Charges that are Category C charges are dismissed
19 within ten days of their receipt. Category A charges are
20 immediately assigned for investigation, and charges which are
21 Category B charges are maintained in a centralized location.

22 Once the employer's position statement and any
23 information which was requested of the employer is obtained,
24 the management staff of the office reviews the file for
25 recategorization. These meetings are held weekly to allow for

1 quick movement of cases.

2 The investigation to be made in each case is
3 appropriate to the particular charge, taking into account the
4 EEOC's resources and general and appropriate investigation is
5 one where the field office determines that a statute has been
6 violated or that there is sufficient information to conclude
7 that further investigation is not likely to result in a finding
8 and there is reasonable cause to believe that the statute has
9 been violated.

10 As earlier stated, the Commission has developed a
11 national enforcement plan, which provides a coordinated
12 approach to achieving the agency's mission, through
13 investigation, conciliation and litigation, in addition to
14 technical assistance and public education.

15 The Commission is committed to an enforcement plan
16 that encompasses a three-pronged approach to eliminate
17 discrimination in the workplace. The first is prevention
18 through education and outreach. The second is a voluntary
19 resolution of disputes, and the third, where voluntary
20 resolution fails, strong and fair enforcement.

21 The Commission identified three major categories or
22 priorities, which include a series of sub-categories that will
23 provided the foundation of the national employment plan, and
24 the three major categories are cases involving violations of
25 established anti-discrimination principles, whether on an

1 individual or systemic basis, including commissioner charge
2 cases, raising issues under the national enforcement plan,
3 which by their nature could have a potential significant impact
4 beyond the parties to the particular dispute.

5 The second broad category are cases having the
6 potential of promoting a development of law, supporting the
7 anti-discrimination purposes of the statutes enforced by the
8 Commission, and the third broad category involved cases
9 involving the integrity or effectiveness of the Commission's
10 enforcement process, particularly in investigation and
11 conciliation of charges.

12 The local enforcement plan then is what the district
13 works under, and is based upon this national enforcement plan.
14 So the local enforcement plan adopted by the Memphis District
15 Office comports with and incorporates guidelines established by
16 the national enforcement plan.

17 The initial local enforcement plan was accepted by
18 the Commission in mid-1996. Our revised plan is currently
19 being reviewed by the Commission.

20 The local enforcement plan presents an overview of
21 the district regarding population trends. Labor force data
22 which was updated by Arkansas Employment Security Department in
23 1996, indicates that the labor force of Polaski County, which
24 includes Little Rock, is 22.4 percent black.

25 The labor force for the State of Arkansas is

1 composed of 14.3 percent minorities. These statistics indicate
2 a growing number of hispanic, Native American, and Asian
3 Pacific Islanders in the state. In the Polaski County area
4 alone there was an 83 percent increase in the hispanic labor
5 force from 1990 until 1996.

6 Similarly, there was 168 percent increase in the
7 Native American labor force. According to the Arkansas State
8 Data Center with the University of Arkansas, Little Rock, the
9 population of minority groups will increase considerably
10 throughout the 90's. A recent article in the local newspaper
11 indicated that the Northwestern area of Arkansas is
12 experiencing a grown in the number of Asian Americans or Asian
13 immigrants. Another article stated that Arkansas had the
14 largest growth in hispanic population in the country.

15 The local enforcement plan also addresses serving
16 the underserved areas of the district, an analysis of charged
17 filings in Arkansas indicates that approximately 38 percent of
18 all charges filed are filed in one county, which is Polaski,
19 which includes Little Rock.

20 Polaski County contains 15.8 percent of the total
21 labor force for the State of Arkansas. This suggests that all
22 other areas of the state are to be considered as underserved.
23 The local enforcement plan provides for outreach activities and
24 expanded presence in all of these areas over the next three
25 years.

1 An analysis of charges filed with the Little Rock
2 area office over fiscal years '96, which would be starting
3 October 1, 1996, through June of 1998 indicates that 4,220
4 charges were filed, with approximately 44 percent filed on the
5 basis of race.

6 Another 25.8 percent were filed on the basis of sex.
7 21.3 percent were filed under the ADA, and 16.6 percent
8 contained retaliation allegations.

9 An analysis of cause findings issues over the same
10 time period shows that approximately 47 percent of our cause
11 determinations were issued on Americans With Disability Act
12 charges. Approximately 35 percent of the cause determinations
13 were issued on charges alleging sex as a basis, with 27 percent
14 being on sexual harassment cases. 12 percent of the cause
15 findings were in race cases.

16 Analysis of the workload and cause findings suggests
17 that the priorities for the district remain to include the
18 hiring and advancement of African Americans and women,
19 downsizing, which impacts minorities, women and older workers,
20 sexual harassment, ADA issues of reasonable accommodation and
21 discrimination against individuals with terminal illnesses and
22 retaliation.

23 The local enforcement plan also addresses how the
24 district will achieve its objectives. In the Little Rock
25 office this involves working with a staff of ten investigators

1 to provide quality service to the public served. The staff
2 currently consists of eight investigators, who are assigned to
3 investigate priority charges. The remaining two investigators
4 attempt settlement of charges and process cases identified by
5 management as cases which don't appear to have any merit.

6 All investigators serve an intake of charges, with
7 each investigator serving one day per week in that function.

8 The office also currently has one alternative
9 dispute resolution coordinator. The invitation to participate
10 in ADR is given to approximately 50 percent of the Category B
11 cases. This is a relatively new program in the office and is
12 still being developed.

13 Statistics regarding the numbers and types of
14 charges received and processed during the past two years are
15 attached. Also attached is a listing of some of the cases
16 investigated by the Little Rock office, which are currently in
17 litigation.

18 On Page 12 of this handout are just some basic
19 office statistics. As of June 1st, 1995, the office had a
20 pending inventory of 1899 charges. As of 9-21-98 we had 1,069
21 charges. That's a 43.7 decrease since the -- we started using
22 the new charge processing procedures.

23 We have 160 cases pending, which we have already
24 decided don't appear to have any merit, and we have 568
25 unassigned cases, and that includes the 160 we've identified as

1 having no potential merit.

2 Page 12 is just a listing of some of the cases that
3 we are aware of that are currently in litigation, and these are
4 cases investigated by the Little Rock area office.

5 Page 13 shows charge receipts for fiscal year '97.
6 We took in 1662 charges in that year. Page 14 shows the number
7 of charges we've received so far this year with our fiscal year
8 ending on the 30th. So far we've taken 1480 charges.

9 Page 15 will show the charges we had pending on June
10 1, 1995, and it gives a breakdown of their age and how they
11 were categorized at that time. It also gives you a breakdown
12 of the statutes they were filed under.

13 Page 16 is the same thing for fiscal year '98. And
14 Page 17 is an analysis of our pending inventory. We currently
15 have 1,069 charges in our inventory.

16 Pages 18 and 19 are charts which may be a little bit
17 confusing, but these charts will give you a breakdown of the
18 charges we took for fiscal year '97 on Page 18, by the issue
19 they were taken under and the date -- the statute they were
20 taken under.

21 And Page 19 will give you that same information for
22 the current year.

23 And if you look at the upper right-hand corner of
24 this last page, it also shows you how the cases in our office
25 are currently categorized, with 26 percent of our charges at

1 this point being considered for priority consideration, 72
2 percent in the on hold category. So that's where we are at
3 this point.

4 DR. MITCHELL: Thank you very much. The committee
5 may have some questions.

6 MS. KLUGH: Okay. Does anyone have a question?

7 MS. STRICKMAN: I do. First of all thank you for
8 this really comprehensive report. I think most of us who
9 are involved in some of these issues have been not had
10 access to this kind of information in the past. So I
11 appreciate that. It's a lot to take in at once, so there
12 may be some questions that we might have later.

13 One of the issues that we have concerns with, and I
14 in particular am concerned with, is what happens to a
15 complainant, what happens in the process when a
16 complainant files a charge and what kind of communication
17 there is with that individual in terms of the area of your
18 work that you refer to as public education and awareness,
19 which I think is very important for the whole community,
20 but particularly for the person who feels they have a
21 complaint.

22 We know of a number of circumstances where people
23 have filed and they have over a period of time received
24 some correspondence or telephone contact, but one of the
25 things that concerns me the most is that after -- if it

1 was a Category A or B, and after your inquiry to the
2 employer, I have not heard of an opportunity for the
3 complainant then to respond again, to know what the
4 employer has said, and to conciliation through that
5 process or even just understand what's happening, and it
6 really is -- appears to be a very demoralizing experience
7 and something that the individual doesn't know what to do
8 next.

9 MS. KLUGH: Let me go into a little bit more detail
10 then on how we process cases. A person comes into the
11 office to be counseled or calls or writes a letter,
12 somebody is going to speak with him initially.

13 They will be given, first off, a fact sheet that
14 explains what the process is. The person also will
15 explain to them what is going to happen. If the
16 investigator at the initial stage of the investigation can
17 determine that there's nothing we can do for this person,
18 we try to tell them immediately, and those are the cases
19 we will dismiss within ten days.

20 And each of these persons is still given their right
21 to sue should they choose to do that. All of the other
22 cases, the cases where we think that discrimination has
23 occurred, these cases will be immediately assigned for
24 investigation. That does not mean that they will get
25 immediate investigation, because we have ten people.

1 Okay. Right now we have nine. So we have nine
2 people to serve as the entire State of Arkansas. That
3 includes taking that charge when it comes in the door, so
4 that really leaves about three days a week for the
5 investigator or investigate charges, okay.

6 Then Category A charges are fairly quickly
7 investigated. Oftentimes in these cases where we think
8 the statutes have been violated, we don't even ask for
9 information from the employer. We will immediately
10 schedule an on-site or we will ask that the employer give
11 us the information within a very short time period, so
12 that we can try to resolve the situation as quickly as
13 possible.

14 In those cases where we just don't know whether or
15 not discrimination has occurred, we ask the employer to
16 respond within 30 days. Oftentimes they do, oftentimes
17 they don't, and that causes another problem. However,
18 once that response comes into the office currently, me and
19 my two supervisors and the ADR coordinator will review
20 that information. We review that case file again, and we
21 re-prioritize at that point.

22 At that point there are very few of our charges that
23 will remain in the holding tank. If the charge is to
24 remain in the holding tank, we do send the individual a
25 letter telling them that. We also tell them in that

1 letter that they can provide any other information they
2 may have that will help us to recategorize that charge.

3 Okay. Only the charges that are going to be
4 remaining in that holding tank should be in a situation
5 where the charging party won't know what's happening,
6 other than it's being on hold.

7 In the other situations where the charge is being
8 actively investigated or being dismissed, that person is
9 going to be contacted immediately, either by phone or by
10 letter. I know that our district prefers that we contact
11 people by phone. I prefer sending out that information in
12 writing, so there's no misunderstanding of what our
13 evidence shows.

14 That person is at that point given time to recontact
15 the investigator or provide any additional information
16 that will change our decision, and that happens in every
17 case. We don't dismiss a case without that person being
18 told either initially when he comes in or through written
19 correspondence or telephone contact before the charge goes
20 out. And it may involve a period of time simply because
21 of the number of charges we're getting and the size of the
22 staff we have.

23 MR. COLEMAN: I think that -- and I appreciate that
24 you have a very challenging job. I don't for a minute
25 underestimate how challenging it is, but it's not so much

1 the time that I'm concerned with as the substance of the
2 information. When you give information on the telephone
3 to someone who has had a very difficult experience
4 themselves and to file even was a very difficult
5 experience, giving information on the telephone I agree
6 with you is not the best way to give it, because then
7 immediately that information, you know, plays havoc in the
8 mind and does not necessarily get processed well.

9 But I haven't heard of information regarding the
10 employer's response, if it was a Category B case, so that
11 they have no understanding of what convinced you all that
12 it was not necessarily a viable case.

13 MS. KLUGH: That's what's presented to them in the
14 letter we give them.

15 MR. COLEMAN: The actual employer's --

16 MS. KLUGH: It's called a pre-determination letter,
17 and we in that letter we give the information we rely upon
18 to reach our decision.

19 MR. COLEMAN: And if you telephone then, you also
20 send them a letter?

21 MS. KLUGH: No, not generally, it's one or the
22 other. I think most of the people in our office send out
23 the letters. But that's what the purpose of the letter is
24 to advise the person as to why we are making the decision
25 we're making, and to invite them to provide any other

1 information they may have, or information which in fact
2 the letter says information which contradicts what we
3 have.

4 MS. STRICKMAN: I have one question on a slightly
5 different track. You indicated that you have one
6 alternative dispute resolution coordinator and it's a new
7 process for the EEOC and new development of that program.
8 Can you tell us in any more detail what you think is the
9 direction it's going and --

10 MS. KLUGH: We've had an alternative dispute
11 resolution program in the Memphis District for about two
12 years now. It wasn't started up in Arkansas until January
13 of this past year. What's happening now in the State of
14 Arkansas is that we are not getting a very good response
15 from employers and that they're not willing to participate
16 in the program. We're having a very low response rate, so
17 the person in our office is spending a lot of time calling
18 individual employers to invite them again to participate
19 and really to try to find out why they're not willing to
20 participate in the program.

21 As far as -- in fact, I just came back yesterday
22 from our management planning session in Memphis, and as
23 far as this current year goes, it appears that the program
24 will stay as it is now, where we are really attempting to
25 get employers interested in it.

1 DR. MITCHELL: Anyone else?

2 MS. BAKER: What are they saying or what are their
3 objections to participating in that program? What kind of
4 information are you getting out there?

5 MS. KLUGH: I can really only guess at that because
6 the person who does the program in our office is
7 supervised by someone from Memphis, so I'm not getting a
8 lot of the direct feedback. All I know is that there is a
9 tremendous reluctance.

10 I do know that some employers in the state have
11 their own ADR program and if it didn't work the first
12 time, they're not willing to go and try it again. A lot
13 of the employers believe that what they've done is totally
14 nondiscriminatory so they're not willing to try to go
15 through an ADR program to work out the problem. Some of
16 the others have told us that that's just a way for us to
17 make them pay out money.

18 There's just a variety of different reasons as to
19 why they haven't been willing. We are trying to publicize
20 the program more. That's part of our plan for the next
21 three years.

22 I mentioned briefly the plan we have for the next
23 three years involving expanded presence and just technical
24 assistance, and what that means is that someone -- we do
25 have a person from the Memphis District Office who goes

1 out routinely and works with different groups of
2 individuals, and part of that plan is that we target
3 certain parts of the state each quarter for the next --
4 well, for next year and then move into a different part of
5 the state for the next two years after that, to make our
6 presence more known, since it is I think a little bit
7 surprising to me that so many of our charges come from
8 just the area surrounding Little Rock.

9 SO we are trying to go out into the state more and
10 this ADR coordinator will be one of the people who goes
11 out, simply because of staffing and because of the need to
12 publicize that program more.

13 MS. BOTH: I have a question.

14 DR. MITCHELL: Okay.

15 MS. BOTH: You say the Little Rock office -- the
16 Memphis District -- you miss a claim, do you -- the whole
17 case have a connection, go to the Memphis -- I mean, the --
18 - you just do it locally --

19 MS. KLUGH: We do all of the investigations for the
20 State of Arkansas in Little Rock. Our legal staff is in
21 Memphis. If we have -- if an investigator has a charge
22 entering the system, where he believes, you know, when the
23 person is in the office, that discrimination has occurred,
24 he contacts the legal department in Memphis and they talk
25 about what course of action they want to take in this

1 charge, and some of these situations result in immediate
2 investigation, and the attorney will go out with the
3 investigator.

4 If we then investigate a charge to completion, where
5 we think that discrimination has occurred, in most
6 situations those cases are then reviewed by the legal
7 department in Memphis. Now, right now in all situations
8 they don't have to be reviewed by the legal department.

9 MS. BOTH: Does the people know where to go and how
10 to contact with you? I mean, have your office and the
11 phone number listed in --

12 MS. KLUGH: Yes. Yes. We get thousands of calls.
13 I had a number and right off my head I can't remember it,
14 but like in the month of June of this year we had two to
15 three thousand calls in one month.

16 DR. MITCHELL: Another question?

17 MS. BOTH: I don't see very well and I don't see
18 your full address and your phone number in this
19 information.

20 MS. KLUGH: It isn't. I typed this up myself so I
21 did all this myself. The --

22 MS. BOTH: It's very inclusive but I didn't see any
23 way to contact you.

24 MS. KLUGH: The phone number for the office is
25 (501) 324-5060. And we're at 425 West Capital.

1 MS. ROBINSON: Do you have an 800 number?

2 MS. KLUGH: We do have an 800 number but right off
3 the top of my head I don't remember it.

4 MS. ROBINSON: Is it 72225

5 MS. KLUGH: 72201 -- we're on the sixth floor.

6 FATHER FRIEND: I've got a question about given the
7 statistics have increased in the Spanish population, Asian
8 population in Arkansas. And also work with a lot of
9 hispanic immigrants here in Arkansas. What are you all
10 doing or planning to do to get to that population and help
11 them understand, you know, what discrimination is or even
12 if they're being discriminated against? I mean -- and I
13 would say there's probably a serious lack of education
14 about that amongst those people, and are you all planning
15 to do anything to address that or to deal with the new
16 immigrant populations coming into Arkansas?

17 MS. KLUGH: We do have a person in Memphis who is
18 responsible for all of our outreach activities, and the
19 areas we targeted for this year do include an area of the
20 state with the largest hispanic population. She tries to
21 make contact with different groups representing our
22 advocacy groups, and she does try to provide information
23 to them.

24 Also in our office we respond to any request we get
25 for information from EEOC. I do most of that. If someone

1 calls the office and asks us for training or to provide
2 information, I will go out to their location, their site
3 and do that.

4 DR. MITCHELL: Are your materials in Spanish?

5 MS. KLUGH: We do have material in Spanish. We also
6 are getting an employee on next Monday who is fluent in
7 Spanish.

8 RABBIE LEVY: One of our goals is to talk about the
9 need for an enforcement authority for civil rights. Is
10 that -- do you see that as in any way helping you, in
11 conflict with you, needed, unneeded, what is your
12 assessment of what we're all about?

13 MS. KLUGH: Well, I'm a field person. And I really
14 can't speak to what the Commission thinks about that. I
15 can say that any assistance we have would be of great
16 value. I mean, we have an absolutely monumental task
17 right now.

18 RABBIE LEVY: Would we be doing things different
19 than you are? Would you be funneling things to us? How
20 could you see us working together if in fact there was an
21 enforcement authority for the Arkansas civil rights law?

22 MS. KLUGH: I have worked in offices where there are
23 fair employment acts, and where the offices do work
24 together. I've worked in the Washington Field Office and
25 most oftentimes there is a coordination between the two

1 offices where certain charges are taken by one arm versus
2 the other. And I know that generally a person is staffed
3 in an EEOC office, who serves as that coordinator and who
4 reviews the findings. But as far as speaking to exactly
5 how it works, I can't do that. I've never worked in that
6 position.

7 DR. MITCHELL: We went for a period of about ten
8 years with a lot of deep emphasizing of enforcing civil
9 rights laws. How does that impact your office?

10 MS. KLUGH: I've been in Arkansas for nine years,
11 okay. I came from Washington, D.C. and before that I
12 worked in Equal Employment Opportunity offices in
13 Birmingham and I also worked in Mississippi. Okay. So
14 I've been in all different size offices and of course I've
15 seen the changes over the years.

16 All I can say is that right now the kind of
17 procedures we're working under I think have had a very
18 positive impact. We, because of what we are doing now, we
19 actually have time to work on the charges that need the
20 attention most.

21 For this past year in conjunction with these
22 activities, we've probably -- in fact, I know we've had to
23 three times as many cause findings as we have in the past.
24 So I mean, it's difficult for us working with the staff we
25 have, but using the procedures we are now implementing, it

1 has certainly helped us.

2 DR. MITCHELL: What is the average time it takes to
3 resolve a case?

4 MS. KLUGH: That's hard to say, strictly because the
5 cases where we find merit often go much faster. In fact,
6 they go very fast as opposed to the ones who are sitting
7 in that drawer waiting for someone to be able to look at
8 them.

9 In the information I gave you, I think there is an
10 average processing time, like Page 15. On Page 15 over on
11 the left-hand side, this at that time was the average age
12 of the case. And you can see that the average charge age
13 in the office was 224 days.

14 DR. MITCHELL: These are days, okay.

15 MS. KLUGH: In the next one on Page 16 you see that
16 it increased, and this increased because this is the time
17 when we were starting to implement the new procedures. We
18 got everything out of the office that we knew that we
19 could work that had merit or didn't have merit, and these
20 were the things pending. And then as of the 21st, which
21 is on Page 17, you see they started to decrease again,
22 because we're actually now in the process of making these
23 procedures really work for us.

24 But we typically -- every quarter when we do our
25 statistics, we had been asked by the Commission to list

1 cases that were quickly done by these new procedures, and
2 a lot of our cause cases were coming out within less than
3 six months of their being filed. A lot of these others
4 that still need some extensive investigation are getting
5 old, very old.

6 MS. ROBINSON: Two brief questions. If a
7 complainant feels that their complaint is not being
8 processed fairly by your agency, are there any procedures
9 in place where they can address that? Under what kind of
10 circumstances can one have those issues resolved if they
11 feel like the complaint is not being investigated
12 properly?

13 MS. KLUGH: After we've issued a determination, we
14 do have -- it isn't something that's required by law. We
15 do have a reconsideration process, and the person will
16 either write me a letter or he writes the district
17 director a letter and says whatever, and then that charge
18 goes over to the district director, who assigns it to an
19 attorney to be reviewed.

20 MS. ROBINSON: Okay. And my other question is this.
21 One of the major concerns that's been raised during the
22 course of this fact-finding meeting is the fact that there
23 is a lack of legal or availability of attorneys to accept
24 or attorneys that practice civil rights law in Arkansas.
25 Do you provide a listing of attorneys for complainants?

1 MS. KLUGH: Yes. From our legal office in Memphis
2 there is a listing of attorneys. Anyone can contact our
3 office or contact that office and they are given three
4 names, and then they can choose -- we don't recommend
5 anyone but we do provide them with the names.

6 MS. ROBINSON: Could you provide us with that list?

7 MS. KLUGH: I can get the list, yes, ma'am.

8 DR. MITCHELL: Any other questions? Thank you very
9 much.

10 MS. KLUGH: Thank you.

11 DR. MITCHELL: We have a slight revision of our
12 agenda, and we're going to have Verma Simmons, Assistant
13 Director for Employee Relations from the Arkansas
14 Department of Human Services, and following her will be
15 Senator Lewellen and then the Honorable Wendell Griffen.
16 Then Dale Charles with the State NAACP.

17 MS. SIMMONS: Good morning. Thank you for inviting
18 me, and I must apologize, because you don't have your handout
19 from me, but I will send it to Farella Robinson. We're in the
20 process of moving, so everything is packed up, so I'll have to
21 send you our entire process, our forms and our policy, and
22 that's what the packet will include.

23 I was asked to talk about the kinds of complaints
24 that our office has, what our office responsibilities are, and
25 just the overall process that we use in our office.

1 As you all know, Department of Human Services is a
2 state agency. Within our office we have two grievance
3 officers. We have one civil rights coordinator. We have one
4 civil rights reviewer. We have two individuals who have just
5 completed ADR training, as we are about to get involved in ADR
6 and these two individuals also do investigations.

7 Our office has responsibility for the grievances, as
8 I've stated. We do all of the work force analysis for
9 Department of Human Services. We are doing a pilot with the
10 ADR process and that pilot is with -- it's two other agencies
11 involved, Department of Health and the Department of Finance
12 and Administration.

13 We have all had our training together and the way
14 the process will work during this pilot period, we have
15 approximately 30 individuals who have been trained in the three
16 agencies.

17 The DHS mediators will mediate for DF&A and for
18 Department of Health. They will not mediate for Human
19 Services, as we enter the pilot process, and those -- the
20 mediators from the other two departments will mediate for us.

21 Our process will be -- the way our process will work
22 during this pilot project, if a person wants to mediate or if
23 they come into our office to file a grievance, the first point
24 of contact for those individuals will be with the grievance
25 officers. The grievance officer will then advise them of the

1 ADR mediation process and the grievance process, the individual
2 will be the person who will make the choice, the person who
3 comes in making the complaint.

4 If they don't want ADR, then they want to go on with
5 grievances, then we will continue to handle the grievances as
6 we always have. We have now incorporated the ADR process into
7 our grievance policy, so it's all one in the same, so when I
8 send you that policy, you will have the ADR piece as well.

9 Our office also has responsibility for Title VI and
10 Title VII, compliance. Title VI is service delivery, and we
11 talk about in the service delivery any form of discrimination
12 with providers or even the provider's experience in some form
13 of discrimination from us, or clients going into the provider's
14 office and they feel that the providers have discriminated.

15 And at that point we will do an investigation and
16 look into that kind of situation.

17 As far as our Title VI, we have assigned and
18 approved methods of administration on file. That's a document
19 with the Department of Health and Human Services, and in that
20 we must explain to them how we will conduct our civil rights
21 investigations as it relates to service delivery. And I
22 suppose that the biggest funds that we get in DHS comes from
23 the Department of Health and Human Services, the agency handles
24 all of the funds for protective services. They handle our
25 funds for the agent program. They handle a lot of the funds --

1 all of the Medicaid dollars, so the majority of our funds come
2 from that agency.

3 MS. STRICKMAN: The majority -- I didn't hear your
4 statement.

5 MS. SIMMONS: The majority of our funds within DHS
6 comes from the Department of Health and Human Services. We
7 also have a plan with USDA and that we investigate all
8 discrimination as it relates to any of the USDA programs, such
9 as food stamps or special nutrition or any of those.

10 Our reviewer has the responsibility of doing --
11 conducting our civil rights reviews in all of our 75 counties.
12 They must go into our county offices and conduct reviews. They
13 interview clients. They see clients there or can talk to
14 clients. They also interview individuals who are identified as
15 grassroots individuals, within those counties there, and that
16 is in conjunction with our USDA plan.

17 We have a policy within the department and if the
18 policy is the equal opportunity/affirmative action policy.
19 That policy is written in our office. And it goes through the
20 APA process and it is available to anybody who wants to see it.
21 Along with our policy we have brochures. We have posters that
22 are in all of the county offices, and we also have a form that
23 is used if an individual wants to come in our office and
24 complain of discrimination.

25 If they want to file a complaint of discrimination

1 we do ask them if they will try to identify what or how they
2 believe they've been discriminated against, and identify the
3 individual. If it's a complaint within the department, before
4 we begin our investigation, there is an interview with the
5 person at the time they complete the form, especially if they
6 come to the office.

7 The complaint is then assigned to someone to conduct
8 an interview with that person, if they sent it in the mail or
9 wrote us a letter or that sort of thing.

10 Once we get it, we assign it a case number, and then
11 we notify the complainant in writing whether or not their case
12 can be investigated, if it falls within discrimination.

13 If we started on an investigation, we notify the
14 appropriate division director. I suppose that most of you are
15 aware that DHS is a huge agency. We have 12 divisions within
16 the department. So we notify the appropriate division director
17 that a complaint has been filed, that we will be doing an
18 investigation, and we do ask that division director to ensure
19 that management does not interfere with the investigation by
20 questioning the witnesses that we plan to interview, not asking
21 them to say certain things, nor asking them after they've given
22 testimony to us, what they said.

23 So we try to do that. If we find that managers do
24 that after we notify the division director, then we in turn go
25 back to the director, and if need be, we will go back to the

1 director of the department.

2 Once we have completed our investigation, we then do
3 a report. The division director will get a copy of our
4 findings, and the department director will also get a copy of
5 our findings, and my boss as well gets a copy of those
6 findings.

7 We allow the divisions to do a corrective action
8 plan if we have a finding, and then we try to monitor that plan
9 after it's done. At this point we have investigations -- I
10 listened to I believe it was Ms. Anthony yesterday, thought
11 about eight weeks was a long time to get something resolved in
12 city government.

13 I can't speak for city government, but I can say
14 within my office I have investigations that -- request for
15 investigations I've had for more than eight weeks, and I can't
16 get to them because of the volume of complaints that we have in
17 the office, and the number of staff persons that I have in the
18 office.

19 The two people who are going to be doing ADR and
20 will also assist with investigations, I just got that staff in
21 July. Prior to that I only had the ones that I called off
22 before. So for right now, you know, I just kind of feel we are
23 fortunate to have two additional people.

24 There are some investigations that I end up doing
25 myself, because I don't have the staff to do them, and because

1 of the time they have been within our office.

2 As far as our grievance process, the way grievances
3 are handled, they file with the grievance officer. We have
4 time frames. Thirty-five days that all grievances must be
5 finalized within the internal process. Many cannot be
6 processed within that 35 days, but it has nothing to do with
7 the office. Usually because the grievant has gotten an
8 attorney or a representative, and once they get an attorney
9 then the agency gets an attorney, and sometimes it's real hard
10 to work attorney calendars to get everything done and heard and
11 a report out by the 30th day.

12 There is an appeal process. If a grievant is not
13 satisfied with the internal process, they can appeal to what is
14 known as state, within DF&A. It is then heard outside of DHS,
15 and it's heard before a panel or a committee. So that's the
16 way basically our office operates and I will be sending all
17 this information to you. So do you have any questions?

18 DR. MITCHELL: Do you make recommendations to the
19 divisions, say for example if someone files a complaint in
20 youth services, after you have done your investigation and
21 you do find that it's valid?

22 MS. SIMMONS: Sometimes we do. One of the things
23 that I try to do a lot with investigations, and because we
24 work right there in the agency, I try a lot to leave out
25 the employee issues, try to deal with all other issues in

1 the complaint, and I usually handle employee issues as
2 separate.

3 For example, if we're doing an investigation and we
4 turn up that an employee or manager or somebody has done
5 something that they shouldn't have done, we immediately do
6 a memo to the appropriate division director. Usually meet
7 with them if they want to, and then the procedures are
8 followed. We have an administrative review process, and
9 within our administrative review process supervisors and
10 employees go into what is considered a fact-finding
11 conference, and at that point the employee has an
12 opportunity to present whatever his side of the story is.

13 My investigation may have determined that something
14 was done inappropriate by somebody. The supervisor should
15 look into that, and when they look into it, they should
16 look into it all the way and allow the employee to present
17 his side of the facts, and then we have conduct standards
18 and all the others that happen as a result. Any other
19 questions?

20 MS. STRICKMAN: I have one question. Because your
21 position title is employee relations director, I believe,
22 maybe we don't have -- is that your -- I guess I'm
23 interested in how the information, other than I realize
24 posters and signage and brochures in different offices,
25 what your office is doing to educate the public and

1 particularly the consumers using your services, about the
2 grievance process?

3 MS. SIMMONS: We also do training out of our office.
4 Anybody who wants training about anything that we deal
5 with, we train with the department. We have new division
6 directors even who don't really understand our process.

7 We are in the process of preparing a training right
8 now for all of the executive staff on the ADR piece, but
9 we are willing to do any form of training, especially with
10 the provider who don't understand the process, and we have
11 had occasion to do that. Some of my staff has gone out,
12 and especially in the civil rights area. I've not had
13 anybody outside of the department ask for training in the
14 grievances or anything like that.

15 I also have people from outside who may call us and
16 want to talk to us about certain policies with the
17 department. We have employees who call our office to
18 understand policy, as opposed to going to their immediate
19 supervisor or to go to our personnel. For some reason, I
20 don't know if they feel like there's a different answer
21 they get from us. I don't know. But sometimes I have to
22 go and ask the same person that they would ask, but they
23 would prefer to call our office, and I'm not quite sure
24 about that.

25 We handle and refer an awful lot of people to EEOC,

1 because if individuals contact our office to file any kind
2 of complaint in terms of employment with other agencies,
3 outside of DHS, we cannot handle it, so those are
4 forwarded directly to EEOC. We give them the phone number
5 and the exact location.

6 MS. STRICKMAN: I think what I'm trying to get at is
7 not only for employees, but area of responsibility you
8 have in providing opportunities for consumers, clients of
9 your services to their grievances.

10 MS. SIMMONS: Basically with the providers who
11 contract with our agency, they should have all of the same
12 information, the brochures, the pamphlets, all of that is
13 available out there with anybody who contracts with us.
14 Whether they are posted as they should be, I don't know,
15 because we have an awful lot of people all over the state
16 who contract with us, but it should be.

17 DR. MITCHELL: I don't mean to take over but I think
18 what Danielle is inquiring about is someone who comes over
19 there on Martin Luther King, Jr. to your office, someone
20 who is a recipient of the services, and that person feels
21 that he or she has been discriminated against, or
22 mistreated or whatever, what avenue does that person have?

23 MS. SIMMONS: It's on the brochure, and the county
24 office.

1 DR. MITCHELL: Okay.

2 MS. SIMMONS: We have the posters in all of the
3 county offices that tell them that they can contact our
4 office. And on all of our forms. If we are AFDC or food
5 stamp -- not AFDC -- client, you should get your forms and
6 all that. It has all of that information on there about
7 our office. That's why I say it's on all of our brochures
8 and forms, posted all over the state.

9 DR. MITCHELL: Thank you. Any other questions?
10 Thank you very much. Now we'll hear from Senator
11 Lewellen.

12 SENATOR LEWELLEN: Good morning. I apologize for
13 not being able to make it yesterday but I was in court.

14 I will speak to you I guess both basically as a
15 state senator who has been involved in the civil rights
16 legislation and also as an attorney representing a lot of
17 citizens in the Delta.

18 DR. MITCHELL: I know you probably talked a lot
19 yesterday in court, but we need you to project a little
20 bit.

21 SENATOR LEWELLEN: Let me mention just briefly to
22 you so that you will have some concept of what's going on with
23 the issues that I think you're trying to deal with. Some of
24 the historical factors about our civil rights litigation in
25 this state.

1 Early in 1991 is when I first began writing the
2 civil rights litigation or civil rights laws. And I began
3 writing those with the assistance of Mr. Jenkins and Ms.
4 Robinson, who forwarded me copies of proposed legislations.

5 The initial bill filed did in fact contain five
6 times as much enforcement and laws in regard -- it had housing,
7 it had sex discrimination, it had an enforcement agency,
8 involved the Commission, it had the budget bills to go along
9 with it.

10 That bill which fought and saw opposition that our
11 current Governor at the time -- came, the fact that I noticed
12 that one problem was in this state, half of us were -- half the
13 state was in a point of denial, the fact that we did not have
14 this discrimination in this state, and most of them felt that
15 it wasn't necessary to have a civil rights bill.

16 Within the process of doing this, it was recognized
17 that our state was one of the few states that did not have the
18 civil rights bill. Then that made this bill become a political
19 animal for reelection.

20 Our Governor came in and decided to take the bill
21 over so that it would make it appear as though he was the front
22 runner in civil rights. He'd get the bill passed and then he
23 would have something to reflect for reelection.

24 Because negotiations went for so long in trying to
25 get the bill, which we thought was a bill of substance, done,

1 we couldn't get an agreement.

2 The next session came up and the watered down source
3 of the bill, which was the first bill that I wrote, the
4 Governor convinced one of the other legislators to sign onto
5 the bill, he endorsed it, and basically they rammed down our
6 throats a civil rights bill that African Americans really
7 didn't want.

8 So we got civil rights that we felt were inadequate
9 in the beginning, and we wet down screaming that you have given
10 us something that's really not a basis or has any basis of
11 enforcement or meaning.

12 The overall intent was never to have a civil rights
13 bill that was going to be enforceable or usable in this state,
14 and I think as you can see from the result of it, and when you
15 hear people talk about how often they use the civil rights bill
16 in court, or how often it's brought up or what you see,
17 generally when you pass legislation that you hear Ms. Simmons
18 say when they do things, they've got brochures going out,
19 they've got pamphlets out, they've got things noticed in county
20 offices and what have you.

21 Many times we pass legislation that we're proud of
22 and we pass out brochures. We send things out. We do public
23 service announcements, et cetera, et cetera. No such
24 occurrences have occurred to notify the public that Arkansas
25 even has a civil rights bill.

1 So at this point probably 99 percent of the citizens
2 of this state are still not aware that the civil rights bill
3 was ever passed or what the laws are in regard to it.

4 In the last session I made another attempt, which
5 was somewhat successful in bringing in a housing portion of the
6 civil rights bill, which I drew up and sponsored, and demanded
7 the current bill to include housing.

8 In '95 I also sponsored and wrote legislation that
9 said if you are found to discriminate against an employee, it
10 was grounds for termination as part of our personnel policy.

11 That bill was passed and it went through, but I have
12 never known to this day one person who ever was caught
13 discriminating, they never got fired, reprimanded or even a
14 letter of caution went in their file because that law exists.

15 To this date I know very few legislations that were
16 passed or very few lawsuits that were brought in state court.
17 Now, why? Several reasons.

18 One, because of the limits that we have in the civil
19 rights bill, monetary factors and all this, it is still better
20 for any attorney if he is going to go and file a lawsuit to go
21 in federal court, because they have more rights and more
22 guarantees at federal court. So why would you waste your time
23 in the state court trying to enforce the civil rights bill that
24 is less effective and with fewer remedies than what you would
25 have in federal court?

1 So that in itself has basically made this bill
2 unusable in its effectiveness. We also have other factors in
3 the state that causes problems with attorneys in taking these
4 cases. In areas where I live, and if you're limited to
5 monetary amounts, if you're limited in back pays, it's
6 difficult for me as an attorney to take a lawsuit in the Delta
7 where I've got an employee, where we have very low wages, not
8 many industrial complexes, and I've got to take a lawsuit that
9 may take two years in court for an employee who makes 4.65 an
10 hour, and when I get through and when the remedies come down,
11 the total amount of remedies that I can get for my client won't
12 equal to half the attorney's fees I've got involved in the
13 case, because of the wage factors and because of that.

14 Now, the other question becomes that you're asking,
15 do we need an enforcement agency? Okay. Yes, we do and I can
16 tell you why from my perspective. The conciliation process in
17 this state is not going to work. One of the primary factors
18 I've noticed is that most of the discrimination now that's
19 occurring among African Americans and other minorities is from
20 state government and city governments, and local county
21 governments.

22 We have had over history of this country and in this
23 state many pieces of litigation involving private industries.
24 Attorneys have whipped up on private industry enough until
25 they've learned quite a bit over the years on what to do and

1 what not to do, and so not to say that they don't still
2 discriminate, but say they are a lot more cautious of what they
3 do and they take a little bit more concern about what they're
4 doing in the workplace.

5 State government, local government, city and
6 counties have not had that problem. Still again, most I find
7 that most discriminatory problems are coming right from my own
8 government. We are the ones who are probably the most vicious
9 and we produce the most victims.

10 Give you some examples. In this state we have a law
11 that's passed that says ten percent of our state business will
12 be done with minorities. I don't think we've ever met one-
13 tenth or three-tenths of one percent in the history of that
14 litigation.

15 Two, we have three or four state retirement systems
16 in this state. Teacher retirement, we have highway, state
17 employees, these systems carry billions of dollars in
18 resources. To this date there has never been an African
19 American or minority financial manager hired by any retirement
20 system to manage any funds, even though lots of these are funds
21 contributed by African Americans.

22 We've fought that issue -- we've brought in minority
23 money managers, and every time we bring one in, the standard
24 changes to fit that particular situation, to exclude that
25 particular manager.

1 The most recent situations that I'm aware of, and if
2 you followed the recent crisis that we have in human services
3 with youth services, we have had where the allegations of
4 violating the rights of youth was raised. Almost every -- I
5 think in every situation every employee who has been
6 reprimanded and fired were black, okay.

7 Now, the problem becomes in that I sat in on the
8 committee meetings and what we had was one or two white
9 employees who made allegations against a room full of blacks.
10 It was assumed that the white folks was telling the truth and
11 the black folks were lying, and based on those very statements
12 that those folks made, we saw rash of black firings being done,
13 people who had 20 and 15 years of service to this department,
14 lost their jobs solely because one person came up and said he
15 did something wrong, no defense, no procedure, no nothing was
16 given.

17 Now we've got all of these folks unemployed whose
18 records and history of employment have now been marred solely
19 because someone made an allegation and an article appeared in
20 the newspaper.

21 To me that's a violation of the civil rights. We
22 have other situations that are going on in the state that I
23 think in education, as you are aware, Representative Wilson and
24 myself, we've been involved in a ten-year class action lawsuit.
25 From that the state and the courts found that the State of

1 Arkansas totally discriminates against the small, predominantly
2 black school district in its funding.

3 What we have now in the state, we have school
4 districts that are located in wealthy areas who have radio
5 stations and TV stations. But we find in the Delta where we're
6 predominantly black, school districts, they cannot buy buses,
7 do not have microscopes, do not have buildings, we put buckets
8 under when it rains, and at the same time when the court found
9 that it was discriminatory, money was given in, and we then
10 recreated an equally discriminatory system again for school
11 funding.

12 Well, that to me is the most vicious discrimination
13 that we have to deal with here in the state, because it affects
14 us in overall basis.

15 Well, I'll carry it even further, after winning the
16 lawsuit, and this matter will be going to court sooner or
17 later, but after winning the courts found that even though we
18 brought in two, three hundred more million dollars to school
19 funding and you know, we had done a great job in high schools -
20 - so high schools after the lawyers, they wouldn't pay us a
21 legal fee, so -- and this is the only class action lawsuit held
22 in the history of this state where someone refused to be paid a
23 legal fee, only because the attorneys -- if we had been white
24 attorneys, the question would never have been raised.

25 Other issues, where we are dealing with, and I

1 cannot begin to tell you how many cities -- I have probably in
2 my Senate district 30, 40 cities. I can't tell you how
3 pervasive discrimination is in city employment, fire
4 departments, police departments, these type of things, because
5 government is the overall power and, therefore, there's really
6 no change.

7 Now, when we were able to add -- I saw yesterday
8 where Mr. Pless addressed you, who is head of the Arkansas Fair
9 Housing Council, of which I am one of the founding board
10 members, and I still serve on the board. When we brought in
11 the housing clause and I was able to amend the law, we brought
12 it in, that automatically qualified us for some other factors,
13 HUD grants.

14 Now, we were able to apply for and get a HUD
15 enforcement branch. That \$300,000 we got, they made this
16 agency viable. We have been filing lawsuits and bringing
17 actions all across this state to enforce housing
18 discrimination. And it's been effective. Why? Only because
19 we have a method of enforcement.

20 Okay. Now, with the enforcement agency to be
21 brought, we would see the same type of result if they are
22 funded and given the proper monies in order to go out and to
23 enforce these laws. We're not going to get it at this point
24 because the fact is the bill and civil rights factors were
25 never intended from the beginning to have any enforcement, any

1 teeth.

2 That's the need for it. Now, the other problem, and
3 I heard all of the statistics given by the EEOC and what
4 they're doing. I've been practicing law almost 20 years. I
5 have rarely seen EEOC have a finding of fact that there was
6 discrimination. In almost every case I've ever seen, they
7 always found that there was no basis, give you a right to sue
8 and you go hire a lawyer, and that's it.

9 There are a lot of charges that may come in but
10 there are very few findings of discrimination from that agency,
11 period. As a matter of fact, we could use part of their
12 budgets to have an agency -- enforcement commission, I think
13 we'd do better that way than we've done with them over the
14 past.

15 Now, there are other situations that I'm not at all
16 pleased with in this state, with state government. Good
17 examples. We had recently last year a big deal about fraud in
18 medicaid transportation, where we had a bunch of taxi drivers
19 who were convicted of defrauding state government and putting
20 in false information and getting medicaid payments.

21 Now, the taxi drivers went to jail. The company got
22 a fine. What's the difference? Okay. If it's fraud, it's
23 fraud.

24 Another situation. We had that situation there
25 created an uproar in the Department of Human Services, and all

1 of a sudden we've got to do something to cure fraud because
2 this one situation occurred and a couple hundred thousand
3 dollars got moved around.

4 We have 123 medicaid transportation providers
5 throughout this state, most of whom were black, who could use
6 their own private vehicles, who got insurance, taxi insurance,
7 qualified under the medicaid programs, and they would have two
8 and three cars or vans providing medicaid transportation. Most
9 of these drivers and those people are just plain citizens who
10 did not do anything wrong whatsoever.

11 Well, in order to cure the taxi situation, the
12 Department of Human Services decided we're going to go to a
13 five or six provider system of which now those major providers
14 or nonprofit agencies are white, and they eliminated the
15 licenses and all of these poor folks and went out and financed
16 vans at the First National Bank and financed two or three cars
17 over here, and had been doing enough to pay the notes on it,
18 and told them now we don't have a right to keep your business,
19 and most of those folks went out of business, still holding the
20 notes at the bank on the cars and the insurance, and the vans
21 that they had bought.

22 And now they're out of business and we've got major
23 agencies who's taken over, and those folks are left out in the
24 cold. I think that's a violation of their civil rights,
25 especially when you've encouraged and brought them on to do

1 that in the beginning, and that was a part of what your program
2 was. Then you turn around and leave them out there.

3 Again, that to me says that still most of our
4 problems are still in state government. Now, we are our own
5 worse enemy in a lot of situations, in our own agencies. And I
6 think that having the Civil Rights Commission that had some
7 enforcement power could correct a lot of the problems we are
8 dealing with.

9 It goes from that down to day care funding, grants,
10 those type of things are done on a discriminatory basis in this
11 state. You can look at the numbers and one of the difficulties
12 is and while we need an agency, is that a poor person who runs
13 a ten-kid day care center, and I know that I'm being
14 discriminated against because I'm applying for a grant to buy
15 equipment or to do this, but in order to do it and in order to
16 prove I'm discriminated against, I've got to have the ability
17 to show where you discriminated against me. I've got to be
18 able to show you budgets as to who got money and what their
19 kids are doing and what those reports are.

20 Poor people do not have the economic resources to do
21 what it takes to prove -- they just know they're discriminated
22 against. I know it because I'm looking, but I don't have the
23 ability to look at your records. I don't know how the FOI
24 information -- I don't know how to look at budgets and
25 determine the basis that numerically you've discriminated

1 against me.

2 And therefore, those folks who suffer the brunt of
3 that type of discrimination have no resources to prove what has
4 happened to them, and that's why an agency who has the
5 experience and people who have the qualifications to compute
6 this can readily prove when there's discrimination and when
7 there's problems created.

8 So that's why an agency is there. They need to be
9 there for the benefit of the poor, you know, the minorities who
10 cannot afford to enforce their rights. Yes, ma'am.

11 DR. MITCHELL: Any questions?

12 RABBIE LEVY: Why was it that you said
13 reconciliation would not work in Arkansas? Would you go
14 back over that just --

15 SENATOR LEWELLEN: Well, because reconciliation has
16 no enforcement in the beginning when the reconciliation is
17 a matter that we're going to go in. Secondly, if you're
18 going to do it, who is going to appoint those persons?
19 This -- an agency in order to be effective is going to
20 have to have some autonomy. Okay, because political
21 appointments are just that. They are appointments. And
22 we're going to appoint people who we think are going to be
23 more concerned about one side than the other. This agency
24 -- whatever you do, is going to have to have a complete
25 autonomy, where they have the right to make decisions

1 without fear of repercussions. I'm not going to be
2 reappointed or whatever.

3 Reconciliation I think has never worked, because
4 there's no fear of it, and the whole idea of it is this,
5 to reconcile. It is not to stop, and that is the problem.
6 We can always reconcile but we have to be able to stop the
7 problem. And only a Commission with some enforcement
8 powers can do that.

9 DR. MITCHELL: Thank you so much, Senator. Next on
10 our agenda to present to us is the Honorable Wendell
11 Griffen, who served on the Arkansas Court of Appeals.
12 Attorney Griffen, Judge, Honor, has been involved in a lot
13 of the civil rights and other kind of litigations, and he
14 will share his view on whether we really need this agency
15 and how he feels that it would operate. Thank you.

16 HONORABLE GRIFFEN: Good morning, Chairperson
17 Mitchell and members of the committee. As the Chair has
18 mentioned, my name is Wendell Griffen, and I am a Judge on the
19 Arkansas Court of Appeals, which means that I am a lawyer by
20 training and by experience.

21 I am also pastor of Immanuel Baptist Church, which
22 is a congregation composed primarily of African Americans who
23 worship at 3323 West 12th Street in Little Rock.

24 In both those callings I observe and interact with
25 situations and people involved in issues of justice. I am here

1 to share my perspective personally and professionally about the
2 state of civil rights enforcement in Arkansas.

3 My personal and my professional views on what the
4 current level of civil rights enforcement means to the life of
5 Arkansas, and to offer some ideas on how I think an Arkansas
6 civil rights agency might be helpful.

7 I speak because of my concern for the administration
8 of justice. My views are I should say my own. They should not
9 be considered as the views of my court or necessarily the view
10 of my congregation.

11 I first begin with what I consider a fundamental
12 premise. Arkansas needs a civil rights agency, a civil rights
13 enforcement agency. Despite the appearance of a number of
14 civil rights offices in a few state agencies, there is and has
15 never been in Arkansas a single state agency with state-wide
16 enforcement, investigatory or compliance responsibilities and
17 powers to handle allegations of discrimination in education,
18 employment, public accommodation, or commercial activity.

19 Although there are agencies to regulate a number of
20 things ranging from economic development, education, health,
21 cemeteries, water well construction and pollution. Arkansas
22 has never seen fit to create, fund, staff and concern itself
23 with any governmental entity that addresses and enforces the
24 age-old issue of inequality.

25 Intellectual honesty compels us to acknowledge that

1 reality, and to admit that it is at the very least remarkable.
2 It is no accident that Arkansas lacks a civil rights
3 enforcement agency. Like other jurisdictions, our state has
4 historically viewed justice from the perspective of persons who
5 are white and male.

6 Those are the very persons who are least likely to
7 complain about historical practices, traditions and mores that
8 are unjust, because they have been historically the
9 beneficiaries rather than the victims of discrimination.

10 We should not be surprised, therefore, that a state
11 that made it unlawful for teachers to hold membership in the
12 NAACP, a state that paid white teachers a different and higher
13 income from that paid African American teachers, and then that
14 used the Arkansas State Police to investigate the NAACP, and
15 persons suspected of involvement with it, has no state agency
16 to investigate civil rights complaints and reports of
17 discrimination.

18 During Bill Clinton's first term of Governor in 1979
19 and '80 he recommended that Arkansas create a civil rights
20 agency in state government. Legislation was passed to that
21 effect, and Vashti Varnado, a talented lawyer from Pine Bluff,
22 was named to head an office for that work.

23 Ms. Varnado's office received no funds to operate.
24 If I recall correctly, it was authorized to receive complaints
25 and reports, but it had no enforcement authority. An

1 appropriate bill was passed but it was appropriated at such a
2 low level that the money never was disbursed.

3 This is a poignant example of the way that we seem
4 to view civil rights in Arkansas. We prefer not to think about
5 civil rights at all, but if we must, we don't desire anything
6 that is effective.

7 Yet Arkansas is certainly in need of a civil rights
8 agency, after all federal lawsuits against the Arkansas State
9 Police, the Arkansas State Hospital, the Arkansas Department of
10 Corrections, and other state agencies have been won in federal
11 court in Arkansas by Arkansans, who were treated unfairly
12 because of their race, gender, age, disability, religion or
13 national origin.

14 Perhaps our state might have even been spared the
15 expenses and the embarrassment that came from the ill-fated
16 creation science bill, legislation, in the 1980's, had there
17 been some state agency that served as a clearinghouse for
18 information, about the potential civil rights effect of a law
19 that required the teaching of creation science in public
20 schools.

21 I suspect that Arkansas will continue to resist
22 creating a civil rights agency, will continue to resist funding
23 one, and will continue to resist staffing one. Of course,
24 there is the time-honored notion that we really don't need such
25 an agency, because we treat people fairly. If that notion were

1 true, the Arkansas State Hospital would not still be defending
2 a federal race discrimination lawsuit that was first filed two
3 decades ago.

4 There will always be those who insist that a civil
5 rights agency will simply encourage people to raise unwarranted
6 allegations of discrimination so that they can obtain leverage
7 that they don't deserve.

8 Then we can expect opposition from businesses and
9 business leaders who already consider the federal civil rights
10 agencies to be unnecessary and intrusive. And we must never
11 forget that there still in Arkansas and elsewhere a strain of
12 political leadership and a block of citizens who are opposed to
13 civil rights efforts because they reveal entrenched policies
14 and practices in our institutions that promote racism, sexism,
15 and other unjust treatment to people because of their age,
16 disability, religion or national origin.

17 Nevertheless, I continue to maintain that Arkansas
18 needs a civil rights enforcement agency. Just as our people
19 need local help in the areas of health, education, criminal
20 justice, pollution control, and economic development, we need
21 local help in the area of civil rights monitoring,
22 investigation, and enforcement. Just as the Arkansas
23 Department of Labor regulates labor practices, investigates
24 allegations of unsafe and unfair labor conditions, and enforces
25 labor standards, Arkansas needs an Office of Civil Rights that

1 can investigate allegations of discrimination, regulate
2 compliance with state and federal civil rights laws and
3 regulations, and enforce civil rights standards.

4 The issue and the question that I hope this body
5 will put to the political leadership of this state, as well as
6 the business leadership of this state, and the people of this
7 state, is whether we have the decency, the courage and the
8 political will to create, fund and staff an agency to do this
9 necessary work.

10 Thank you for permitting me to share these
11 observations with you. I will now try to answer your questions
12 on this subject, if I can.

13 DR. MITCHELL: Are there any questions from the
14 committee members?

15 MS. STRICKMAN: I'm always the one who has the
16 question. Thank you for being here and for your
17 presentation.

18 MS. BOTH: I have a question. We are in need of
19 legal guidance and our terminology and checking our
20 proposal, and I wondered if there would be any possibility
21 that you would have someone who could do that?

22 HONORABLE GRIFFEN: Well, I could not because of my
23 role as a judge.

24 MS. BOTH: Yeah, but you might know of someone who
25 could.

1 HONORABLE GRIFFEN: There are any number of
2 wonderful civil rights lawyers. You just heard from one,
3 Senator Lewellen. Of course, John Walker, Phillip Kaplan,
4 from whom you heard yesterday. There are any number of
5 civil rights lawyers who I would believe to be very, very
6 capable and reliable on this subject.

7 I would encourage the committee to refer to a civil
8 rights lawyer as opposed to a lawyer who generally
9 practices other areas of law, for a couple of reasons.
10 Number one, civil rights law and enforcement is not for
11 either the fate-hearted or the ignorant. And while a
12 lawyer may be very, very able and informed in the area of
13 municipal finance or tax. Civil rights litigation civil
14 rights enforcement is very much a specialty unto itself.

15 And secondly, you're going to have to have somebody
16 who if I can say it, who not only can talk the talk, but
17 who can walk the walk. Everybody who has a law degree
18 doesn't particularly believe in the notion of civil rights
19 enforcement, and you will have to have, if I may say so, a
20 believer.

21 MS. BAKER: I have a question, Judge. According to
22 Senator Lewellen say that Arkansas didn't have civil
23 rights law passed, but the past few days we've been
24 hearing of these different agencies, you know, and the
25 civil rights enforcement agency we're talking about, is

1 that above all of this agencies, to -- all this different
2 -- you know?

3 HONORABLE GRIFFEN: If I may, and those people who
4 know me know that I am one of two things. I am either
5 insane and/or I just simply don't know how to soft shoe.
6 I never have been able to dance well. Arkansas has never
7 had a civil rights bill at the state level, civil rights
8 law at the state level that had any teeth. The civil
9 rights law that was passed in 1993 and signed into law
10 practically is not used by any of the agencies that have
11 offices of civil rights in them, whether you call it the
12 Department of Human Services or the Department of
13 Corrections or any of the other state agencies.

14 Any civil rights compliance that they do is more
15 because of the federal mandate than the state, and if
16 there is to be a state-wide civil rights compliance
17 standard, I maintain that Arkansas needs to have a state-
18 wide civil rights law and a state-wide civil rights
19 office.

20 Otherwise, we will have one set of policies
21 practiced by the Department of Corrections, another set of
22 practices and standards practiced by the Department of
23 Health, and down the line. So if I think I understand
24 your question correctly, I certainly agree that there
25 needs to be a general office of civil rights enforcement

1 that will serve the whole state, and to which the various
2 state agency offices would be both accountable and
3 responsible.

4 MS. BAKER: What I don't understand is those state
5 agencies, are they established according to the federal
6 law -- is that what you mean?

7 HONORABLE GRIFFEN: Yes, ma'am. I would suggest to
8 you that those agencies that have offices of civil rights
9 do so because they receive substantial federal funds that
10 require them to have those offices, but for that
11 requirement, the level of money is the root of all kinds
12 of evil, but for that requirement I doubt that they would
13 have it. And, of course, the best kind of convert is a
14 hypocrite, and money can make hypocrites of everybody.
15 And so you know, it's not surprising that you would find
16 in Arkansas, a state that did not have a civil rights law
17 at all, and a state that does not have a civil rights
18 agency, and a state whose civil rights law basically is
19 toothless, and that's perhaps a charitable view, does not
20 have a state-wide civil rights agency because there is no
21 money in it. If we had a state-wide agency, we'd have to
22 pay for it ourselves, and we've already seen with the
23 Vashti Varnardo situation, that we are unwilling to pay
24 our own money to enforce civil rights for anyone.

25 I think this is very important, particularly because

1 we're getting at the end of this century and the beginning
2 of the next century, to have even more pressures in the
3 area of civil rights. You already know that the Asian and
4 hispanic communities are growing, the Asian and hispanic
5 populations in this state are growing.

6 We do not have a state-wide civil rights law that
7 obligates state agencies, let alone municipalities or
8 local businesses, to monitor how well we treat people for
9 whom English is not their first language.

10 Now, there is going to be a rather interesting kind
11 of situation, I would imagine, as we begin the 21st
12 century, and we have a number of people who are Arkansans
13 by choice and by birth, because many of these people will
14 have -- will come to Arkansas and then have children born
15 in Arkansas, and they will be born into families for whom
16 English may not be their governant language.

17 But the policy of the state will not think enough of
18 them or their dignity to ensure that they are treated
19 equally, merely because they do not speak English as the
20 first language.

21 Now, that's really a form of discrimination based on
22 national origin, which is against the federal law, but
23 because there is no state law against it, I suspect you'll
24 have a difficult time getting people to pay attention to
25 it, but that pressure is going to continue.

1 MS. STRICKMAN: I think the question I wanted to ask
2 you is if you could share either now or at another point
3 some of your ideas for what would be a credible and
4 effective state office of civil rights, so that we can
5 build that into what we do?

6 HONORABLE GRIFFEN: I'm so glad you asked, Ms.
7 Strickman. First of all, the office must have -- it must
8 have the power to investigate, to enforce, and to
9 negotiate resolution of civil rights complaints. Vashti
10 Varnado's office, to which I referred in my prepared
11 remarks, if I recall correctly, had the responsibility of
12 receiving complaints, but it had no power of enforcement.

13 I'm from the country, and if you'll allow me to use
14 a colloquialism from the country, that makes about as much
15 sense as putting a side saddle on a hog. Perhaps it looks
16 pretty, but you wouldn't want to ride it, and you couldn't
17 get very far if you did.

18 And please understand that this approach to civil
19 rights enforcement was viewed in 1979 as a great thing.
20 The civil rights bill that we have is viewed as a great
21 thing and it has no power.

22 The second element I think for the civil rights
23 enforcement agency must have -- it must have some ability
24 to initiate or bring lawsuits in the name of or for the
25 benefit of complaining parties.

1 Now, I may get in trouble with my friends in the
2 civil rights Bar, on this part, but it seems to me that if
3 we will pay state dollars to lawyers hired by the state to
4 defend the state and its municipalities against
5 allegations of discrimination, we should be able to pay
6 state lawyers to bring lawsuits, to rule out
7 discrimination.

8 What's sauce for the goose should be sauce for the
9 gander. Thirdly, this agency needs to be politically
10 independent. Let's be candid. Racism, sexism and other
11 forms of discrimination are good business. Otherwise, we
12 wouldn't keep doing it.

13 What usually is seen as good business works its way
14 into the political nerve structure, which is why there has
15 not been in my mind any more women elected to the state
16 judiciary at the appellate level than we've seen, even
17 though both political parties claim to like to have women
18 voting. Women lawyers are more numerous. It was not
19 until 1988 that a woman was elected to a judgeship at the
20 state level for the appellate court structure.

21 And so -- and I must remind us that although
22 Arkansas was and remains dominated by the Democratic
23 Party, neither political party really jumped to the
24 forefront of creating a civil rights enforcement agency,
25 and so we cannot expect this to be a political hot button

1 issue that either party raises.

2 If you look at the polling cards that you get in the
3 mail, civil rights is rarely listed as an issue any more
4 by the national parties, let along by the state. And so
5 the agency must be politically independent, and I think in
6 that regard that you will have to have some kind of long-
7 term office for the Commissioners, if you have
8 Commissioners. The executive director needs to have a
9 certain amount of autonomy, protected by certain civil
10 service protections, and there would need to be some
11 measure of accountability beyond the election cycle,
12 because we're talking about doing right, not about what's
13 doing popular.

14 Those are three thoughts.

15 MS. STRICKMAN: Thank you. I have one more request.
16 When the initial report from these hearings is published,
17 I would appreciate it if your scheduled amount of time, to
18 review it, because I think you'll find surprising
19 statements by some of our colleagues in the community who
20 are not thinking positively about this direction, and
21 perhaps you can give us some feedback at a later point.

22 HONORABLE GRIFFEN: Hopefully one of these days we
23 can find out what you mean by surprising. I just had my
24 46th birthday yesterday and very little about the issue of
25 civil rights surprises me any more. I'm rarely surprised

1 any more, even at the level of hypocrisy I see about the
2 issue. Rabbie.

3 RABBIE LEVY: This is such a wonderful report and
4 wonderful ideal. If whatever you said could, you know,
5 just plop down and happen right now -- we've still got a
6 state legislature to deal with, and you and I both know
7 and people here know who have sat in on other committee
8 meetings, to know that things much simpler than this don't
9 get through in the realm of civil rights, and the realm of
10 protection of little people. How in the world is
11 something like this going to go -- is going to all of a
12 sudden -- the legislature is going to say yeah, we really
13 do need something like this, let's do it. What do we need
14 to do -- I've asked that to a number of people yesterday.
15 What do we need to do to get this idea through to the
16 legislature?

17 HONORABLE GRIFFEN: Rabbie Levy, we have several
18 possible scenarios. I hope that we will in Arkansas not
19 create a civil rights agency based upon the factors that
20 it historically result in civil rights agencies. What has
21 historically been necessary in the nation and other
22 jurisdiction have been some great, horrible event. I
23 would remind you that the 1964 civil rights law came of
24 age because of the horrors of Jim Crowe segregation, that
25 Martin Luther King and the civil rights movement began to

1 put -- the federal housing bill in 1955 came of age
2 because of some of the horrors that we saw in housing.

3 The federal job discrimination law, Title VII in
4 1964, came about because of some of the horrors we found
5 out. I hope it will not be some horrible event, but I
6 must -- I am now a child, and so I cannot pretend to
7 ignore history. I must suggest to you that my concern is
8 it will take something about that bad or that
9 embarrassing.

10 I would remind you that we got our 1993 civil rights
11 law because, number one, Governor Clinton was getting
12 ready to run for President, and while I do not by any
13 means suggest that Governor Clinton at the time or
14 President Clinton now does not believe in the ideal of
15 civil rights, he realized that he was going to be running
16 from Arkansas, a southern state, in a national election,
17 and one of the issues that Arkansas would have to deal
18 with is the issue of civil rights, and so the civil rights
19 bill that we have passed such as it is.

20 It was signed into law and nobody used it, because
21 it's not worth nobody using it.

22 The second thing -- the way it come to be is because
23 enough good people, Martin Luther King said evil triumphs
24 because good people decide to do nothing. If enough good
25 people rise up and say it is wrong for us to spend

1 millions of dollars to defend discrimination, and not to
2 invest millions of dollars to root it out, if enough good
3 people say that, to enough people who want to be public
4 officials, then the people who would get elected to public
5 office may find it in their political interest to put
6 civil rights legislation in force that includes a civil
7 rights enforcement agency.

8 And lastly, I would hope that there will be enough
9 people who believe in the notion of civil rights
10 enforcement, as unpopular as it is, and who want to hold
11 public office, who will take it upon themselves to put
12 this issue before the public. You cannot get a public
13 candidate to talk about civil rights in this state. It is
14 our great, great embarrassment. It is like the child that
15 you don't like. You make sure that that child only comes
16 to the dinner table when no company comes.

17 And it's regrettable. It's truly regrettable. You
18 can run for everything from police chief or mayor to
19 legislator, and you can't talk about it. And I think this
20 is important because we're going to deal with some real
21 civil rights issues. When you talk about the way our
22 prison population is bulging, and you talk about how gets
23 arrested and who doesn't, and you talk about the way we
24 look the various ways we punish crime, you have a civil
25 rights question.

1 How long will it be before somebody who runs for
2 office says there's something terrible wrong about a
3 criminal code that allows you to finance a methamphetamine
4 or a crack cocaine operation? From a white collar
5 operation? And never get investigated? But allows people
6 who sell the stuff at the street and neighborhood level to
7 go to prison. I have never known anybody who made money
8 selling drugs to have enough money, to run their own
9 manufacture process, let alone their own distribution
10 system? That's a white collar operation.

11 And the refusal to investigate that is a civil
12 rights issue. And the failure to investigate it is wrong.
13 But there has to be some network of politicians or people
14 who want to be politicians who are willing to have the
15 moral will, the courage and the decency to speak up.

16 I probably told you more than you wanted and took
17 longer to say so.

18 RABBIE LEVY: Judge, thank you. Pardon my
19 informality when I addressed you.

20 HONORABLE GRIFFEN: You are my friend as well as my
21 rabbie.

22 DR. MITCHELL: Anything else? Thank you so much.

23 HONORABLE GRIFFEN: Thank you very much, and I wish
24 this committee and its work much success.

25 DR. MITCHELL: Thank you. We're going to take a

1 three and a half minute break. Appreciate it.

2 (Break.)

3 DR. MITCHELL: We are reconvening from our break.
4 And we are now privileged to have a presentation made by
5 Dale Charles, who is I want to say President, am I right?

6 MR. CHARLES: Yes.

7 DR. MITCHELL: President of the Arkansas NAACP.

8 MR. CHARLES: Good morning, Chair, Dr. Mitchell, the
9 Board, Ms. Robinson. My name is Dale Charles and first of all
10 I'm the local branch President of Branch of Little Rock, and
11 I'm the State President for the State of Arkansas NAACP.

12 I want to take this opportunity to thank Tracy
13 Steele from the Martin Luther King Commission for his
14 presentation, Cathy Collins from the Little Rock Racial and
15 Cultural Committee, Senator Lewellen, and most of all our
16 previous speaker, Court of Appeal Judge Wendell Griffen.

17 Many of the things that they have said that I
18 wholeheartedly endorse and agree with, but I'd like to point
19 out and then I'm going to go into some other things briefly.
20 I'd like to point out some things that I was kind of saddened
21 by what I heard here, and one was from Attorney Phillip Kaplan,
22 who many years ago practiced law with Attorney John Walker and
23 others, and at that point in time I feel like either one of two
24 things that he was concerned about civil rights, he was ready
25 to make some money.

1 Now that he made a lot of money, on yesterday his
2 views had changed on civil rights. And I'm very, very saddened
3 by the comments that Attorney Jim Moore made from the Friday
4 law firm, who tried to believe and I'm glad that Board Member
5 Nate Coulter brought it to task about three issues.

6 One, that the civil rights -- well, first of all he
7 said that we don't need any more laws, we got enough watch dogs
8 to take care of all these problems. Another one is the fact
9 that he tried to lead you all to believe that there are many
10 lawsuits filed on the state current civil rights law.

11 I have an opportunity -- first of all, I get a lot
12 of calls in Little Rock and across this state. I'm a state
13 employee, but I do volunteer work for the NAACP.

14 Many lawyers that I've talked to, none, none have
15 brought any lawsuit based on the civil rights law. It was so
16 great and handling the problems, why aren't lawyers bringing
17 cases based on the civil rights law? They bring them on the
18 federal law.

19 Two, he indicated to you all that EEOC filed a lot
20 of complaints on behalf of people, but you go back and check
21 EEOC records, when they bring a lawsuit on behalf of an
22 individual, just real egregious type situation, it's -- on the
23 norms, that they bring those types of lawsuits.

24 Another thing that he indicates that there's a lot
25 of civil rights lawyers that still practice civil rights. I

1 checked with a lot of them. Walker law firm don't have any any
2 more. Mays and Kertzer law firm to my knowledge have very few
3 or none. Attorney John Walker about the only one that I know
4 that's continuing to bring those cases, because -- for a number
5 of reasons. One, they're so expensive to bring now.

6 If you recall the United States Supreme Court turned
7 back a lot of cases in 1988, '89, I believe, that changed the
8 proof one must do in court in order to prove these cases. So
9 right now there are very few or any recourse for individuals
10 out here who has been discriminated against based on race, sex,
11 religion or national origin.

12 As the previous speaker has stated that blacks,
13 hispanics and other minority groups are facing a tremendous
14 amount of discrimination. Judge Wendell Griffen just related
15 to you about the language situation in schools, and I get these
16 kind of calls.

17 I would like to just mention a few of the cities
18 that have called our office, and we've taken a look at some
19 complaints that are very, very egregious. One comes to mind is
20 McGee, Arkansas, a lady called our office whose son had some
21 problem with the instructors where it was a fight between a
22 white youngster and a black youngster, and they instructed --
23 the black youngster broke his finger, was denied medical
24 attention, and she went to the school board and got no relief.

25 Newport, Arkansas, we have a terrible problem within

1 the system for police brutality, civil rights violations, just
2 momentous, and there's no recourse unless one can afford an
3 attorney to file a lawsuit.

4 Pine Bluff, Arkansas, Crosses, Studguard,
5 Blythsville, just over and over, cities and states or towns in
6 the State of Arkansas who have terrible problem, Hazel,
7 Arkansas. And many of these people do not have the money or
8 the resources to address their concern.

9 Again, Mr. Moore yesterday talked about the federal
10 civil rights law takes 15 and up and the state takes ten.
11 Well, what happened to all of those below nine, starts at nine
12 and below? Do they not have any civil rights? Do they not
13 have a job and being discriminated against? Are we supposed to
14 turn our backs on those needs?

15 Judge Wendell Griffin pointed out to you and I'm a
16 state employee for 28 years, been a state employee for 28
17 years. I'm aware of a lot of things that Ms. Simmons talked
18 about, a lot of things that Senator Lewellen talked about,
19 because I've been -- I am a state employee as of today. I took
20 leave time to come here on yesterday and today because I wanted
21 to have some input and hear what was going on, because I truly
22 have had an opportunity as a state employee and as an
23 individual working with the NAACP to see a great need for a
24 Civil Rights Commission to address the civil rights problem
25 that we have in the State of Arkansas.

1 And as Senator Lewellen stated, state government,
2 city government and local government is one of the most
3 egregious that go way out in the form of violating individual
4 rights because there is very little recourse from those issues.

5 You talk about police brutality, you talk about
6 blacks, hispanics and Asian being abused by police departments.
7 Who have no protection, who now in the State of Arkansas and in
8 this country, one of the biggest industries going in sports
9 arenas and prison systems.

10 You know, we have now in the State of Arkansas, we
11 couldn't afford enough prison systems, so we now have two
12 private contract prisons, running this state. We now have a
13 private industries investing in prisons. So it tells me that
14 if we don't have something in place to address this issue,
15 because in another ten or 15 years we're not going to be able
16 to pay enough taxes to incarcerate people because now -- the
17 latest figure that I've seen, it takes from twenty-five to
18 thirty thousand dollars a year to incarcerate one person.

19 If you think in terms of persons getting 40 years
20 for a crack cocaine, and you start to add up the numbers, you
21 can see that pretty soon we will not be able to continue to pay
22 -- all we would be doing is paying taxes to incarcerate people.

23 On the other hand, if we go back to what other
24 speaker said and put that money in education, in job training,
25 where they can be productive taxpayers for the next 30, 40, 50

1 years instead of us paying thirty, forty thousand dollars a
2 year to keep them locked up, then you understand that we have a
3 serious problem.

4 Senator Lewellen and I believe Judge Griffen talked
5 about the state agency. I understand the process in the state
6 agency, because I am a state employee. The mental health
7 system as he stated earlier has been in court for the past two
8 decades. Refusing to comply with the federal law that has been
9 mandated by the judge.

10 They just finished up last week, I believe it was,
11 several days in court again failing to do something that they
12 agreed to do. We get many calls on racial discrimination based
13 on marital status, where a white female you know, marrying a
14 black male, and have all kind of problems within the job, the
15 kids going to school, are tremendously affected, mistreated,
16 and there is no to my knowledge, no recourse out there or no
17 place that they can go to address these kind of issues.

18 And it is -- human rights, as Mr. Ed Coleman talked
19 about yesterday, it's a human right issue first of all. It's a
20 moral right issue and it's a civil rights violation, so I
21 whole-heartedly agree that we need a civil rights commission
22 that where one is -- rights are violated, they have an
23 opportunity to address those issues and that they will not be
24 strapped with should I make a complaint and lose my job, and
25 have no enforcement or any recourse for it? Thank you.

1 DR. MITCHELL: Thank you. Any questions? Thank you
2 very much.

3 MS. BOTH: I have one question. Have you found any
4 attorneys, and we keep asking this question of everybody -
5 - any attorneys who will take a case on a civil rights
6 basis?

7 MR. CHARLES: To my knowledge and my understanding,
8 and I pretty keep up with this an awful lot, but I stated
9 earlier, I remember a time that Wilson Walker law firm
10 held a lot of civil rights cases, and I talked to him. He
11 told me he do not handle them any more. He referred the
12 ones in his office to Attorney Richard Kreger, who used to
13 practice with Attorney John Walker. The Mays law firm to
14 my knowledge -- if they handle any now, it's very few.

15 Attorney Dale Brown, who used to handle a lot to my
16 knowledge handles very few or none, so the only law firm
17 that I know that consistently handles them is Attorney
18 John Walker. Most of them -- and attorney Jim Moore told
19 you all yesterday that he did a lot of them -- I want find
20 a list -- he talk about a lot of young lawyers -- I want
21 to find them as well. The fact of it is if a young lawyer
22 is handling them, first he has to be prepared to do so.
23 And that's just like me trying to play basketball with
24 Michael Jordan. I'm going to get slammed from the word
25 bounce. So it's the same thing.

1 And it goes back to what Judge Griffen talked about.
2 The sentiment of this state and the mentality of the civil
3 rights -- whether we will spend hundreds and thousands of
4 dollars mending wrong, and spend no money -- no
5 consideration in doing what's right.

6 But I really want to know those law firms that are
7 handling civil rights, because I can refer a lot to them,
8 if they're out there, but I don't know of any.

9 DR. MITCHELL: Thank you very much, Mr. Charles. I
10 don't see Eron Lanoue in the building. So now we'll hear
11 from Mr. Barry Vuletich. Good morning.

12 MR. VULETICH: Well, I guess always being last on
13 the agenda, you've probably heard everything so I thought I'd
14 probably just keep my remarks somewhat short and -- but before
15 I get to my prepared statement I just want to tell you, I'm
16 representing people with disabilities, and that's one thing
17 that does not discriminate against any age, any race, any sex.
18 Disability happens to anybody, so that, you know, kind of
19 covers all aspects of life.

20 But my name is Barry Vuletich and I'm employed with
21 the Arkansas Rehabilitation Services, as manager of Consumer
22 Affairs. My duties in this position include being the
23 executive director of the Governor's Commission on People With
24 Disabilities, also being the Section 504 and Americans With
25 Disabilities Act -- although being the executive director of

1 the Governor's Commission of People With Disabilities, my
2 comments do not necessarily reflect the opinions of the
3 Governor's Office.

4 By the nature of my position I receive numerous
5 inquiries about possible discrimination towards people with
6 disabilities. These include an array of various topics from
7 employment issues to housing, being denied access to county
8 operations, denied services from public accommodations, to
9 questions about service animals.

10 Although I do not maintain records of the actual
11 numbers, or the actual types of calls, it would be safe to say
12 that I probably receive about 200 calls a year related to some
13 form of possible discrimination.

14 Unfortunately for the most part all I can do is
15 provide them with information or perhaps provide some technical
16 assistance in filling out a complaint, and then referring them
17 to either an appropriate federal agency that has enforcement
18 jurisdiction, or suggest that they might want to obtain an
19 attorney to pursue it in court.

20 In some cases I will refer someone to our state
21 protection and advocacy system, the Disability Rights Center,
22 but then again they are also limited in the amount of cases
23 that they can handle, and I believe we heard from their
24 attorney yesterday, William Cain was on the agenda.

25 Although we have a Civil Rights Act in Arkansas and

1 just hearing this morning -- I didn't have the opportunity to
2 come yesterday, although I wanted to, I heard several times
3 that we -- people referred to the Civil Rights Act of Arkansas.
4 I'm not aware of any cases brought about by this legislation.

5 Maybe part of these are because of the way the law
6 is written, but moreover I believe that we don't have the same
7 mechanisms needed at the state level as we do at the federal
8 level. People get discouraged when they feel that their only
9 option is to deal with the federal government or don't have the
10 capability to hire an attorney.

11 I honestly believe that if we had an Office of Civil
12 Rights at the state level, this would provide an opportunity
13 for not only people with disabilities but for others to have a
14 needed voice and another resource to turn to.

15 With 70 percent of people with severe disabilities
16 unemployed or under employed, and when only 33 percent of
17 people with disabilities go to a restaurant at least once a
18 week, compared to 60 percent of nondisabled people, and when
19 only one of five adults, that's 20 percent, adults with
20 disabilities 18 and over, have not graduated from high school
21 compared with only one in ten of those with disabilities, this
22 indicates to me discrimination is going on, and these
23 statistics can go on and on.

24 There might be an argument from the legislators not
25 to create more government, however, the establishment of an

1 Office of Civil Rights could be good for everyone, not to
2 mention the availability to provide speedier remedy, putting
3 more people to work and off the welfare roll, that's more
4 revenue to the state and less benefits that it has to pay out.

5 Just a side note from my prepared thing, for every
6 one dollar we spend in rehabilitation, we get 11 to 13 dollars
7 back when those people are put to work in revenue.

8 People with disabilities are probably the only group
9 of people I know that really want to pay taxes who want to be
10 put to work. Of the 70 percent of the people who are out of
11 work, an additional 70 percent would much rather be working, so
12 I think we're probably the only ones that really want to pay
13 taxes and go to work.

14 I believe that the criteria of a civil rights office
15 or some form of an organization that would be -- that would
16 have investigative authority and enforcement powers, as one of
17 the previous speakers alluded to earlier, is a great need and
18 would definitely be beneficial.

19 The Governor's Commission on People With
20 Disabilities' main purpose is to advise the Governor's Office
21 on issues that affect people with disabilities and to be a
22 clearinghouse of information with other duties that we have.
23 Members of the Governor's Commission are appointed by the
24 Governor and these members come from different areas of the
25 state, all geographical locations. The membership is comprised

1 of 51 percent of people with disabilities, and perhaps -- I
2 mean, this is just a way to throw out there, but perhaps one
3 area to explore would be to expand responsibilities of the
4 Governor's Commission with the appropriate resources.

5 So in closing I just would like to support the
6 possible establishment of a more productive civil rights
7 protection system, and I'd make myself available for whatever
8 assistance I could provide making this a reality.

9 DR. MITCHELL: Thank you very much.

10 MR. VULETICH: Any questions?

11 RABBIE LEVY: One of our previous speakers this
12 morning mentioned -- I believe I've got it right, that he
13 thought that state agencies and government agencies, both
14 state and local, were among the biggest abusers of civil
15 rights. Did you find that -- I don't know if you're --
16 how free you are to say that, but in other words, you're
17 employed by the state. In your opinion is the state or
18 cities themselves abusers in people with disabilities?

19 MR. VULETICH: Well, I probably would -- I wouldn't
20 know for sure whether the state or local or city
21 governments are any more abusive to violating civil rights
22 as the other organizations or any other big employer. I
23 mean, you've got to realize the state employs 8,000 people
24 or something, so just by virtue of the amount of people
25 that the state employs, there is going to be I'm sure a

1 high rate of discrimination. But even if it's 8,000
2 employees or nine or eight employees, discrimination
3 occurs way too often, whether it's abused by the state,
4 abused by local mom and pop stores or anybody.
5 Discrimination is just overwhelming and too rampant,
6 period, so I wouldn't know whether they are any more
7 abusive than anybody else, but they I'm sure do a large
8 part of it.

9 DR. MITCHELL: Any other questions? Thank you.

10 MR. VULETICH: Thank you.

11 DR. MITCHELL: We have heard presentations from all
12 persons who are on the schedule to speak, and now we have
13 a person who wants to address us in our now open session.
14 Randy Zurcher. Thank you, come forward, please.

15 MR. ZURCHER: Thank you guys for being here and for
16 allowing me an opportunity to talk to you a little bit. My
17 name is Randy Zurcher. I'm a former alderman in the City of
18 Fayetteville, and a candidate for alderman in the City of
19 Fayetteville.

20 I also am the director of volunteer programs at the
21 Project for Victims of Family Violence, which is also in
22 Fayetteville, serve all of Washington County.

23 And I'm here today to -- sorry, I'm a little bit
24 nervous -- to talk to you. I completely agree with those who
25 have come before me to say yes, we need a state agency that can

1 address these concerns.

2 But another issue I want to bring up, and I know it
3 was talked about some yesterday, I definitely want to talk
4 about it today, is discrimination in the area of sexual
5 orientation, and hopefully including sexual orientation in the
6 other civil rights legislation that occurs on the state level,
7 and hopefully federal level eventually.

8 During my time on the council I introduced a measure
9 called the Human Dignity Resolution, which said we will not
10 discriminate as a city in our hiring against people for any of
11 these reasons, and they include all the ones that we talked
12 about today, and familiar status and sexual orientation.

13 And you know, a lot of people consider Fayetteville,
14 well, it's this great Athens of the Ozarks, great tolerant
15 place to live. We have a university here and I still think the
16 majority of us are that way, but it really brought out some
17 ugly attitudes and some ugly remarks, and just some things that
18 made me a little embarrassed to where I was, I guess.

19 It made me realize that it's more of a problem even
20 than I thought, so I would just encourage this Board and
21 whoever you report to that discrimination -- nobody has a
22 corner on the market of discrimination, as long as there are
23 humans there will be groups of humans that other humans want to
24 kick around.

25 And please, any future legislation, look at sexual

1 orientation to be included, because discrimination does exist.

2 DR. MITCHELL: Thank you. Any questions.

3 MS. STRICKMAN: I do. I think that Randy has a lot
4 to offer in coming before us. I realize that as Mr.
5 Jenkins said yesterday, as Director of the District Office
6 for the U.S. Commission on Civil Rights, that currently
7 the only jurisdiction that we can explore are things that
8 are -- having to do with sexual orientation would be when
9 sexual orientation is a factor in the administration of
10 justice, and I know that you have some knowledge and
11 experience of how that has perhaps been in terms of the
12 administration of justice at the police level or whether
13 the state police or the city police, but you might want to
14 add any comments to that as some of your knowledge?

15 MR. ZURCHER: When you say administration of
16 justice, is that what you mean as far as police?

17 MS. STRICKMAN: I assume, Farella, it also covers
18 the court system. It's not --

19 MS. ROBINSON: Yes, law enforcement and court
20 system.

21 MS. STRICKMAN: And you may not have something
22 specific to --

23 MR. ZURCHER: I'll tell you the area of sexual
24 orientation is very hard because you can't look at
25 somebody and know that person is gay, that person is not

1 gay. They don't have a certain type of skin or a certain
2 hat or anything. In the administration of justice it's
3 hard for me to say. What I do know is my own family and
4 you know, because you're not going to just tell anybody,
5 hey, I was discriminated against because I'm gay, because
6 they'll say oh, you're gay? You know, and you might get
7 fired or whatever.

8 But in my own family my mother-in-law is a lesbian,
9 and just in trying to refinance her land, was asked very
10 pointed questions, you know, what is your actual
11 relationship with this person? You know, it's a business
12 deal. Why is it anybody's business? So it's still
13 something that's very hidden and it's very subtle, and so
14 it's hard for me to say well, this happened and this
15 happened. So you know, several very close friends and
16 relatives who have shared this.

17 MS. STRICKMAN: I had another question, and you and
18 I have talked about this before, one of the things that
19 has been identified, at least not so much in yesterday and
20 today, but in some of the meetings that I sat in on with
21 Farella earlier in preparing for this, that some people
22 feel in the state that the population that is most
23 discriminated against are women, and the fact that you
24 work at the Project for Victims of Family Violence, you
25 might have something that just occurs to you you want to

1 share and be part of the record in terms of what women are
2 facing in accessing services or business transactions or -

3 MR. ZURCHER: I guess the main thing I see, you
4 know, I guess we have a law against this, but I still see
5 a lot of discrimination in employment. Just about any
6 woman you talk to is going to be making a lot less than
7 just about any man you see. Now, how to approach that, I
8 don't know. If it's the kinds of jobs that are available
9 or not -- I do know and this might be off the subject but
10 I consider it discrimination against women, I do know that
11 this state doesn't have any real domestic violence
12 legislation, something that would say if a person is
13 convicted of battery, this person needs to go to
14 batterer's counseling. It would be great, and we don't
15 have that, and so a person can go in for battering his
16 partner and be out in a day or two and that's very
17 dangerous for the women we serve. That persons get a lot
18 more violent when a woman actually leaves, so I consider
19 that discrimination against women and I don't know why,
20 you know, maybe it's because I'm emersed in the field and
21 I see it so much, but it puzzles me that there would be --
22 there would be political opposition to a law like that.
23 You know, do batterers have some kind of big lobbying -- I
24 don't understand it.

25 MS. STRICKMAN: I'm sorry to laugh --

1 MR. ZURCHER: No, domestic -- I think everybody
2 would -- that's what I would like to see.

3 DR. MITCHELL: Any other questions? Thank you very
4 much.

5 MS. STRICKMAN: Thank you for making this trip.

6 DR. MITCHELL: Well, we're at the point of
7 adjournment but we want to thank this opportunity to
8 express our appreciation to first of all the staff from
9 the regional office, the central regional office, Melvin
10 and Farella and Jo Ann, for all the work that they have
11 done to make this fact-finding meeting what we call
12 successful, because we have gotten a lot of information
13 that would guide us along the road that we're going to
14 have to try for the next several years in order to get
15 something done here to benefit the people in this state,
16 and I want to also express my appreciation to all the
17 people who came forth with presentations and people who
18 came far away from the far corners of the state to have
19 stayed with us through all of this. That shows a true
20 commitment and those are the kind of people we are going
21 to have to rely upon in order for us to be successful in
22 our attempts here, and then to the committee members who -
23 - this is a voluntary commitment. We are pleased to have
24 this opportunity I call it to share in something that we
25 feel will be a benefit to our state and to the citizens of

1 the state, so we thank all of you.

2 At this time I want to see if any committee members
3 wants to have any expressions or Farella want to say
4 anything?

5 MS. ROBINSON: We're supposed to meet on is it the
6 5th or the 6th -- meet with the Governor on October the
7 5th and I invite and encourage committee members to attend
8 that meeting. It will be in the Capitol Building. I will
9 be sending a notice out. 11:00 a.m.

10 DR. MITCHELL: Thank you very much. If there is
11 nothing else, then we will consider ourselves adjourned.

12 (Proceedings concluded at 11:30 a.m.)

C E R T I F I C A T E

STATE OF GEORGIA)

COUNTY OF CRAWFORD)

I hereby certify that the foregoing transcript is a true, correct, and complete record of the said proceedings; that I am not a relative, attorney, or counsel of any of the parties; am not a relative of attorney or counsel for any of the parties; nor am I financially interested in the action.

This, the 8th day of October, 1998.

Ralph L. Ledford