

**Hearing
Before the
United States
Commission on Civil Rights**

**AGE DISCRIMINATION IN
FEDERALLY-ASSISTED PROGRAMS**

**HEARING HELD IN
WASHINGTON, D.C.**

SEPTEMBER 26-28, 1977

VOLUME I: Testimony

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U: S. COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights is a temporary independent, bipartisan agency established by the Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

John A. Buggs, *Staff Director*

By the Older Americans Amendments of 1975, the U.S. Commission on Civil Rights was directed to: investigate unreasonable age discrimination in federally-assisted programs; report the findings of the investigation to Congress, the President, and affected Federal agencies; recommend statutory changes or administrative actions based on its findings; and draft general regulations for implementation of the Age Discrimination Act of 1975.

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Morning Session, September 26, 1977

The U.S. Commission on Civil Rights convened, pursuant to notice, at 8 a.m., at the Department of State, Washington, D.C., Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Stephen Horn, Vice Chairman; Frankie M. Freeman, Commissioner; Manuel Ruiz, Commissioner; Murray Saltzman, Commissioner; Louis Nunez, Acting Staff Director; Eileen Bradley, Director, Age Discrimination Study; Frederick Dorsey, Assistant General Counsel; and Gail Gerebenics, Staff Attorney.

PROCEEDINGS

CHAIRMAN FLEMMING. I'll ask the hearing to come to order. First of all, may I ask the clerk, interpreter, and reporter to stand and raise their right hand.

[The clerk, reporter, and interpreter were sworn.]

CHAIRMAN FLEMMING. The Age Discrimination Act of 1975 was enacted on November 28, 1975, as a part of the Older American Amendments of that year. The purpose of the act is to prohibit unreasonable discrimination on the basis of age in programs or activities receiving Federal funds. The act provides that "no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance including programs or activities receiving funds under the State and Local Fiscal Assistance Act."

The law specifies that this act shall become effective on January 1, 1979; during the interim the Congress has directed the Commission on Civil Rights to conduct a study of unreasonable discrimination in federally-funded programs. The age discrimination study is intended to uncover specific examples of instances where persons qualified in all

other respects are excluded from full participation in these programs. The Commission has been directed under the law to submit a report of its findings and recommendations for statutory and administrative changes and a set of general recommended regulations for consideration by the President, the Congress, and affected Federal departments and agencies.

The act directs the Commission in carrying out its study to hold public hearings and to seek the views of administrators, consumers, and other interested parties involved in the implementation of federally-funded programs. The Commission has held hearings in San Francisco, Denver, and Miami. This is our final public hearing; following this hearing we will develop a report which will include findings and recommendations and we will submit those findings and recommendations to the President and the Congress not later than the latter part of November.

At this time, I would like to recognize my colleague, Commissioner Freeman, for a statement relative to the rules governing this hearing.

COMMISSIONER FREEMAN. Thank you, Chairman Flemming.

At the outset I should emphasize that the observations I am about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which may arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any persons, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him or her before deciding to use such evidence or testimony.

When we use the term executive session we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present.

In providing for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them the opportunity to show why any testimony which might be defaming to them should not be presented in public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before

they were well publicized. Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event that we find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses even though those witnesses have been subpoenaed to testify in open session.

An executive session is the only portion of the hearing which is not open to the public. The hearing which begins now is open to all, and the public is invited and urged to attend all of the open sessions. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of cost. In addition, within 60 days after the close of the hearing, a person may ask to correct errors in the transcript of the hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she may make objections on the record and argue briefly the basis for such objections. Should any witness fail or refuse to follow any order made by the Chairman, his or her behavior will be considered disorderly and the matter will be referred to the U.S. Attorney for enforcement pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which in the discretion of the Commission may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf. All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpoenaed may be permitted in the discretion of the Commission to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this a very serious matter, and we

will do all in our power to protect witnesses who appear at the hearings.

Copies of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity.

This hearing will be in public session today and the next 2 days. All sessions will start at 8:30 A.M. Today, the hearing will adjourn at 6 P.M. We will have a break for lunch from 12:30 to 1:30.

CHAIRMAN FLEMMING. Thank you very much, Commissioner Freeman. Our first witness this morning will be the Honorable Joseph Califano, Secretary of Health, Education, and Welfare. The Commission is prepared to listen to his testimony as soon as he arrives.

Mr. Secretary, we appreciate very, very much your being with us this morning. You undoubtedly understand that under the rules of the testimony all testimony in public hearing is taken under oath, so if you will stand and raise your right hand.

[Mr. Joseph A. Califano, Jr., was sworn.]

**TESTIMONY OF JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH,
EDUCATION, AND WELFARE**

CHAIRMAN FLEMMING. We're very, very appreciative of the fact you found it possible to open what we think are going to be 3 days of very important hearings as far as this particular issue is concerned. We'll be very, very happy to have you proceed as you so desire.

MR. CALIFANO. Mr. Chairman, I would like to read an opening statement and then take questions.

CHAIRMAN FLEMMING. Fine.

MR. CALIFANO. I have with me on my immediate left, David Tatel, who is the Director of our Office for Civil Rights; on his left, Norman Chachkin, who is the director of policy in that office. They will be testifying during the day and later this afternoon.

Mr. Chairman, distinguished members of the Commission, I appreciate your invitation to share with you our thoughts on age discrimination and, in particular, the Age Discrimination Act of 1975. I would like to focus my remarks on some general concerns that must be addressed in the coming months. Other representatives of HEW [Department of Health, Education, and Welfare] will be here to answer your questions about specific HEW programs and to discuss the role of the Department in the implementation and enforcement of the act. Before I begin, I would also like to thank you, Mr. Chairman,

and the Commissioners for letting me come here early so that I could get to the Cabinet meeting today.

Before I talk about the Age Discrimination Act of 1975, I would like to say a few words about a related statute, the Age Discrimination in Employment Act. This administration is supporting in principle legislation which will amend that law by extending the upper limit of protection from age 65 to age 70. I think this is a move in the right direction. The President has recommended to the Senate Human Resources Committee that the effective date of that legislation be extended to January 1, 1979. This will permit employees and employers to plan for a smooth transition and will permit the Federal Government and other interested parties to evaluate the probable impact of the new law.

I want to emphasize that this amendment to the Age Discrimination in Employment Act will in no way affect the rights of workers to receive full social security retirement benefits at age 65, and reduced benefits, if they so desire, at age 62. This administration regards these eligibility ages as solemn commitments to those covered by the Social Security Act.

Distinctions based on age are woven into the fabric of American society. They appear everywhere—starting with the Constitution, which requires the President to be at least 35 years old, a Senator to be at least 30, and a House member to be at least 25. Age criteria have been established for driving a car, for drinking, entering certain professions, living in designated buildings, and for receiving various social services and benefits, such as social security. Some of these age-related requirements are based on sound judgment and experience; others are capricious and rest on stereotypes. In many cases, the Federal Government—primarily through financial assistance—sanctions these distinctions, either expressly or implicitly.

The Department of Health, Education, and Welfare will move ahead rapidly, with care and sensitivity, on the difficult task of distinguishing between those requirements based on age that are rational and defensible and those that are stereotypical and indefensible.

In 1975, the Congress enacted landmark legislation—the Age Discrimination Act—to require the Federal Government and those whom it assists to examine their programs and practices, to identify, and then abolish, those age or age-related distinctions that cannot be justified. The act provides major, interrelated roles for both the Commission on Civil Rights and the Department of Health, Education, and Welfare. The Commission is required to conduct a study of unreasonable age discrimination in programs and activities receiving Federal financial assistance, and to report its findings to the Congress and the President.

This Department is required to develop the general regulations to implement the act. As David Tatel, the Director of the Office for Civil Rights, will point out to you later, we believe that the statute should be clarified in several areas. It raises unanswered questions and speaks in broad, general terms, leaving room for varying (and sometimes con-

flicting) interpretations on such critical issues as statutory coverage, acceptable justifications for existing age distinctions, and interagency relationships.

We are confident that, under the leadership of its most able and distinguished Chairman, Arthur Flemming, the Commission will shed much light on the extent of age discrimination in Federal programs and will flush out those issues needing prompt resolution. We look to the Commission's report to guide us as our drafting moves forward and to make specific recommendations to the Congress for clarifying legislation.

We welcome the opportunity to draft the general regulations and to play a primary role in its enforcement. We recognize that the exclusion of individuals from productive opportunities on the basis of age is as destructive to the person and society as discrimination based on race, sex, and handicap. I take seriously the Department's commitment to meet fully its responsibilities under the laws banning age discrimination.

Drafting of the general regulations is already underway. We look forward to their publication hopefully well in advance of the statute's effective date to allow for as much public scrutiny and comment as possible. As we did with section 504 of the Rehabilitation Act of 1973, we intend to develop a regulation that provides clear guidance on their rights and obligations to recipients of Federal financial assistance, to program administrators, and to the American people, the regulation that the average citizen can read and understand.

The most critical issue before us—and one on which the statute offers little, if any guidance—is to determine which programs and practices containing age and age-related distinctions are to be permitted and which ones are not. I believe that we must carefully review all such distinctions to ensure that they are based upon reasonable factual circumstances, and that they further the general purposes of the programs in which they are employed.

Age and age-related considerations affecting the distribution of benefits and services are prevalent in HEW programs. They appear in such areas as Medicaid, vocational rehabilitation, community health and mental health centers, Title XX of the Social Security Act, post-secondary education programs (including some parts of the student loan program), and Title I of the Elementary and Secondary Education Act, to name a few.

We believe many of the age distinctions contained in these programs are justified. Many have been adopted as a result of extensive research or long experience and considered judgment by the Congress, State and local government officials, and program administrators. For example, there are certain diseases and illnesses, such as diseases of childhood and diseases of late adulthood, which strike almost solely individuals within these age categories. We believe preventive medicine programs aimed at checking the incidence of the diseases are

reasonably targeted toward segments of the population defined in age and age-related terms. On the other hand, there may be HEW programs where age distinctions should not be permitted. In making these judgments, we must be extremely careful not to raise expectations unduly, as difficult choices between competing, legitimate values will often be required. I am sure you will be exploring this matter in depth with my colleagues later today and tomorrow.

The Age Discrimination Act of 1975 is a landmark in civil rights legislation. I want the Department of Health, Education, and Welfare to be prepared to move forward to eliminate unlawful age discrimination when the act becomes effective on January 1, 1979. In order to achieve this goal, I am today directing agency heads within the Department to begin a review of all programs they administer in which age is a consideration. I am asking them to report back to me with their findings within 90 days. This department-wide review, coupled with the Commission's report, should provide a sound basis for the drafting of the implementing regulation.

In concluding, let me reiterate the intention of this administration to remove the obstacles preventing any American from living his or her life to the fullest of their talent and ability. Unlike other civil rights laws, the protected class under the Age Discrimination Act includes everyone. We are all, always, too old for some things and too young for others. We all have an interest in being sure that opportunities are available to the fullest extent, no matter what our ages. I look forward to continuing association with you, Commissioner Flemming, and with the members of the Commission, in our joint endeavor to make this a reality of American life.

Mr. Chairman, I would like to add one other comment which I think is particularly important that goes to your hearings. When the handicapped legislation was passed by the Congress, there were virtually no hearings. There was less than a half a page of debate on the floor of both Houses combined, and there was no guidance for the Department, no guidance for the Secretary. There are very few hearings in the Congress on this legislation. Virtually no debate on the floor—I think none at all on the floor of the House and very little in the Senate. I think that makes these hearings particularly important because my sense of what the Congress did was in effect set up a situation in which this Commission has the function of holding hearings not only on the problem of age discrimination, but hearings that related to the creation of both some legislative history with respect to that statute and clarification of its necessity in advance.

The kind of confusion and difficulty that plagued the Department for years, literally, with respect to the handicapped regulations, can be avoided here as a result of these hearings and of the work that you can do. I consider that terribly important to me in the context of getting guidance and terribly important to the millions of Americans that are going to rely and look to that statute and our Department to eliminate age discrimination and move on. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. We deeply appreciate your statement. It does provide a very fine frame of reference for the hearings that we will be conducting today, tomorrow, and Wednesday. I have noted particularly your statement to the effect that in order to achieve the goal that you have identified you are today directing agency heads within the Department to begin a review of all programs they administer in which age is a consideration.

I also note in that paragraph that you are directing them to report back to you within a period of 90 days. I simply would like to say to my colleagues I feel this is typical of the way in which you have approached your duties as Secretary of Health, Education, and Welfare. When you identify an issue, you move, and you insist on the rest of the Department moving also. This kind of a directive is very, very encouraging to those of us who are trying to come to grips with the issues that you have so clearly identified, and as you know, the members of this Commission deeply appreciate the fact that you had moved in a similar manner insofar as the enforcement of our civil rights laws are concerned. We are very, very grateful for this kind of leadership.

I am delighted that you did stress a rather unique character of these hearings. It is certainly true that there is very little in the way of legislative history as far as this act is concerned. You may or may not have noted when the Congress authorized this Commission to hold public hearings, it put into the law many of the rules that really govern the proceedings of the House of Representatives, so that they apparently did have in mind from time to time that we could perform the kind of function that you have identified.

We feel that we do carry a very heavy responsibility in an effort to help identify the nature of the problem and also in order to help in recommending rules, regulations, and also possible changes in the law. We will certainly look forward to receiving the kind of suggestions that you have indicated Mr. Tatel will be making to us later in the day, but, again, I just want to express our appreciation for the leadership that is reflected in your statement and also in the actions that you have taken and propose to take.

MR. CALIFANO. Mr. Chairman, thank you very much.

VICE CHAIRMAN HORN. Mr. Secretary, you correctly raised the real dilemma any administrator faces, here on page 8, when you talk about not raising expectations unduly and the problems and difficulty of competing choices. I wonder what criteria or what possibilities you have seen at this point one could use to draw the line where you render services where age might be relevant. Is it the greatest good or the greater number, given the world of limited resources, or what?

MR. CALIFANO. I'm not sure, to be candid with you, how to do it. We have obviously in some areas unconsciously made judgments like that, but in some of those areas—take student financial assistance for an example, particularly at the higher educational level. The world has changed quite a bit. There are more and more and more adults, par-

ticularly women, married women, going to school in middle age. I don't know which is more important for them, to have that opportunity and after the children are grown have a fulfilling and varied life over what now will be another 30 or 40 years, or to put students that are 20 years of age there; and shouldn't women in that situation be entitled to the same kind of financial assistance that their children are if they're going to college? I think the world has changed quite a bit, and we just have to examine every one of these things.

I'm not sure who will be the greatest number affected is a determining characteristic. I guess, particularly in the statute in which we are looking at, discrimination—and there may be pockets of it that affect relatively small numbers of people, but pockets to which we should direct our attention. I think this is very tough. This is a whole new world as far as I can tell, unprecedented in American society, and perhaps unprecedented for any society, to make a decision to eliminate discrimination on the basis of age. Never before have we had so many people with such ability and talent with extended lifetimes. It is very easy in our country today for a man or woman to have three careers, if they desire, so that it is new for all of us, and we are all going to find our way.

VICE CHAIRMAN HORN. I completely agree with you. You cited as a good example, and as a university president I see older and older students; we specifically encourage them to come back to the university. I think many of us have been disturbed with the guaranteed student loan over the years, where there seems to be age cutoff of 30 in terms of bank lending practices.

You also mention, and I commend you for it, that the administration is recommending to the Senate Human Resources Committee, the effective date on increasing the upper limit to 70, you would like to see January 1, 1979. As perhaps you know, this Commission was precluded from looking into employment discrimination as such when this particular statute was passed, but since you have raised it, I would just like to raise a question with you, and that is again you cited the handicapped act where there were hardly any hearings. There've been limited hearings in this area and yet a major impact is about to be made, certainly in American universities where we have thousands of unemployed Ph.D.s minted out of the graduate schools of America, and all of a sudden the age limit of mandatory retirement and with all reasonable arguments is extended 5 years; have you got any wisdom or suggestion what we do with the thousands of unemployed Ph.D.s which we've used as the basis of rejuvenation of American universities?

MR. CALIFANO. One of the reasons we asked for, Mr. Vice Chairman, if the Senate passed that bill that it place a date of January 1, 1979, on it, is because there have been virtually no hearings on this legislation in the Congress and because we think time is needed. That would perhaps give time to think through this impact and other im-

pacts from an administrative point of view, from an economic point of view, and I think it would also permit time for universities. I know also some of the high technology corporate enterprises could appeal to the Congress early in the next session if they thought that that was necessary.

We're obviously very mindful of problems related to that statute, including the specific one you mention. I think the basic feeling of the administration was unquestionably, on the whole, the overwhelming number of citizens if they wanted to continue to work were fully capable of working at full capacity, as sharp mentally at 65 as they are at 70, in what's happened in health care and extension of life, but we're not unaware of the difficulty, particularly in universities.

CHAIRMAN FLEMMING. Thank you very much.

Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Secretary, I also want to express my appreciation for your remarks. The Vice Chairman has spoken on his background as a university president and his concern for the unemployed Ph.D.s. I'm going to speak from another dimension, and that is from what I call the triple jeopardy: I am black, I am female, I am an older citizen. So I come from within that category where there are implications for the compounding of the discrimination based upon the categories which I had mentioned. We will be waiting with great interest for the testimony of the Director of the Civil Rights, Mr. Tatel, because as we have received information from the testimony of witnesses in the three prior hearings, there has been an additional impact by a group of minorities and especially the minorities who happen to be female, and we will be waiting with great interest for the extent to which the regulations will reflect a recognition of the compounding of the problem.

MR. CALIFANO. I hope we can ease the problem. You remind me, by your comment, when I was a kid, one of the jokes I remember in the days when the Ku Klux Klan was after Catholics as well as blacks in the South, of a little black boy standing on the road in a pouring rain in Mississippi, trying to hitch a ride, and this car driving up, door is thrown open, there's a Catholic bishop sitting driving the car and saying, "Hop in"; and the black boy replies, "No, sir, I've got enough trouble being black." So I understand that problem, and we'll try and deal with it.

CHAIRMAN FLEMMING. I'm mindful of the fact you are tight on your time schedule. Have you got a few minutes?

Commissioner Ruiz.

COMMISSIONER RUIZ. For purposes of my question, allow me to make a preliminary observation. I'm from California and California has a State commission on aging, as you know. California has just passed a new State law to become effective in January 1978 prohibiting employers from requiring employees to retire at the chronological age of 65 years and to raise the mandatory retirement to 70 years. Now, it

is my understanding that altogether there are 13 States that have some kind of a ban on forced retirement; that is, Alaska, Connecticut, Florida, Hawaii, Illinois, Iowa, Maine, Maryland, Montana, Nevada, New Jersey, New Mexico, and South Carolina. Now the question is, will this Age Discrimination Act be intended to preempt and occupy the entire field or will this sequel result in overlapping laws?

MR. CALIFANO. There are two different acts. One of the acts, that this Commission is considering and holding hearings on, as you know, does not apply to employment. The Employment Discrimination Act, which is before the Congress now, I do not know if in the version—I can't remember whether in the version that passed the House it would be preempted. If it is typical of statutes like that, it would be preemptive at a minimum at least in the context of employment and institutions having more than a certain number of employees, usually around 25. But I have to—I just don't have the statute.

COMMISSIONER RUIZ. When you say preempted—

MR. CALIFANO. You can't have a lower mandatory retirement age than 70. A State can go beyond that and prohibit mandatory retirement before 72 or 73, for example, but they cannot have a statute that would lower the age below 70 for mandatory retirement.

COMMISSIONER RUIZ. Will States be able to provide coverage along that point that go beyond the Federal Age Discrimination Act? Is that what you're telling me?

MR. CALIFANO. I think that is right, but as I said, Mr. Commissioner, I do not have that statute in front of me; when Mr. Tatel testifies this afternoon, he'll have that statute and be able to answer that question.

COMMISSIONER RUIZ. Thank you very much.

CHAIRMAN FLEMMING. We appreciate very much your being here and giving a statement and replying to these questions and we'll certainly be back in touch with you as we move along with this assignment.

MR. CALIFANO. Thank you, Mr. Chairman.

MR. DORSEY. Dr. Robert Butler?

[Dr. Robert N. Butler was sworn.]

TESTIMONY OF ROBERT N. BUTLER, DIRECTOR, NATIONAL INSTITUTE ON AGING, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CHAIRMAN FLEMMING. Dr. Butler, we appreciate very much having you as a witness. We recognize that we could engage a dialogue with you on virtually every area that we're going to have under consideration during the next 3 days. I know something about your schedule and I know that I just appreciate your rearranging it so that you could be with us. Counsel will proceed.

MR. DORSEY. Thank you, Mr. Chairman.

Dr. Butler, if I may, I would like to start out with just getting your reflections on the general area of "ageism" as a term you yourself

coined first. I wonder if you might elaborate for us what you meant by this term and some of your observations which led you to use that term?

DR. BUTLER. It's very painful for many people of all ages, including unfortunately older people, to face the painfulness, the loneliness, the difficulties, the stereotyping that often relates to being older. On the primitive basis this is connected with our own fears of such pain and isolation and loneliness. These prejudices, it seems to me, were of such importance and so all-pervasive that it was crucial that we find a term to identify them, and I thought it reasonable to model that term after racism and sexism, also unfortunately pervasive. So it is meant to suggest and apply to all of the evidences of discrimination and prejudice that are connected with being old.

MR. DORSEY. In terms of ageism as you have observed it, could you indicate some of the areas in which it is most severe and most common?

DR. BUTLER. Well, I think in the first instance a question of attitude. Many of our terms in our language, unfortunately, bear upon this; "out to pasture, old crone, old biddy, boring, garrulous, useless." In medicine tragically, often the term "crock," which applies, I might add, to a middle-aged woman, is a term that you hear in the back corridors of hospitals or in the privacy of doctors' offices and refers to patients who have thick charts and for whom they find very little redeeming interest medically. It is a most cruel epithet in my judgment. But these attitudes sort of frame the whole issue and then you get into a very great many specifics, which affect housing, medical care, and a whole range of subject matter.

MR. DORSEY. You have noted yourself the attitude problems in the area of medical care and attitudes which prevail in that area. I wonder if you might give us some more of your personal experience in the area of attitudes which affect the delivery of services to older persons in the area of medical care?

DR. BUTLER. Well, in the first place, our educational system does not include comprehensive, systematic teaching regarding older people in our medical school curricula. There are 114 medical schools and there are some electives and some selective courses, but there is not a systematic teaching program in the first mainstream of medicine, pharmacology, bacteriology, pathology or in the last, clinical experience and very selective opportunities to meet with different groups.

As a consequence of this failure to teach adequately, you don't protect older people when they are patients. For instance, it is not known by a great many doctors, unless they learn it the hard way, that about 13 percent of people over 60 years of age who have a coronary have no chest pain. Instead, because of a drop in blood pressure, they may present as confused, and this may be misdiagnosed as senility or confusion. You may have hyperthyroidism, which ordinarily is demonstrated, revealed by hyperactivity, rapid pulse rate; not so in a substantial

number of older people who have this condition. Instead, the condition may present appendicitis, tuberculosis, pneumonias, may proceed silently without recognition because the body's way of responding to any type of infectious agent changes; in fact, the body changes in reaction to pain, temperature—that is, heat—or its capacity to respond in a regulatory manner to any type of thermal change, so the very presentation of symptoms may vary. There are also diseases that are new to old age, and those may go unrecognized if they are not properly taught. So this is not only a matter of attitude, as important as it is, but a matter also of hard facts which physicians need to know in order to properly diagnose and effectively treat older people.

Another interesting problem conceptually is whether an older person has his own physician. Figures seem to vary. I have seen some that only 1 older person out of 10—frequently have selected a doctor, as we tend to, older than ourselves. A doctor retires or dies and the older patient is left without someone. It may be harder to get a physician at that point. In some hospitals, there has been evidence of a kind of quota system, in which 10 percent only, for instance, in one hospital that I have been told of, but it is hearsay, has a rule that after they have accepted 10 percent of patients who do not have their own doctor, then the patients go to the city hospital, independent of their social, economic, or other means. In other words, a system of Medicare which was designed to be uniform for everyone, regardless of position in life, is not in that sense being honored.

We have seen in the community mental health centers a very low percentage of older people on the rolls. Estimates vary between 4 and 5 and 6 percent. Those are probably high percentages. There are again we find attitudes blending with hard facts. The attitude may be "they are only senile, they are older people, you have to expect that, they're going to be confused," without undertaking systematic, careful, diagnostic examination to be certain that so-called senility isn't in fact due to a variety of other conditions. We can count up to more than 100—drugs, unrecognized congestive heart failure, even fecal impactions, electrolyte derangements causing major changes in central nervous system functioning, and all you really need to have happen is to have some compromise of brain circulation, oxygen, food supply, and you will get some type of intellectual derangement which can be recognized as "senility" and written off in that manner without systematic examination and treatment.

MR. DORSEY. Directing myself to that specific problem, the problem of health care centers and the like, program administrators have indicated that one reason for age disparities in the participation is that older persons, and in some cases adolescents, tend to elect not to participate in programs, so-called self-selection, and I just would like to know from your experience how much of a factor you think self-selection plays in this particular underrepresentation?

DR. BUTLER. Of course, I haven't seen the testimony to which you refer, but I have often heard something like that said. To my mind that fails to point out the fact that older people need the benefit of an outreach program, that you can't wait and expect older people to always be able to attend the community mental health center. For one, they may have severe physical limitations. Some 7 percent of old people are house-fast in some manner, chair-necessary. A substantial number of people of the community do not have the financial capacity even to afford transportation often for regular visits. So this question of self-selection, if I understand you, and making a judgment in terms of what that testimony might have meant, can be another very easy way of allowing oneself to think one has done well by older people and not have done so; it's a convenient excuse.

MR. DORSEY. Thank you very much. I have no further questions.

CHAIRMAN FLEMMING. First of all, I think the record should show that Dr. Butler is the Director of the National Institute on Aging, which is the youngest institute in the NIH [National Institutes of Health] complex. Because I did a little introducing myself at the beginning, my counsel didn't ask the normal question to ask you to identify your present position. I think the record should likewise show that Dr. Butler has come to this particular position from a very distinguished career as a practicing psychiatrist and as a leader in the field of gerontology, not only in this country but in the world. This is reflected in the fact that his latest publication, *Why Survive?*, has been awarded the Pulitzer prize.

Dr. Butler, assume a community mental health clinic that includes in its group of persons that are being served only about 2 percent persons 65 years of age and older, also assume that that community mental health clinic is not going to get any additional resources over the period of, let's say, the next year or 2 years. What do you think it can do in order to put itself in a position where it is rendering better service to more older persons?

DR. BUTLER. There is always the scarcity of resources theory. I don't think the excuse can be that we have a scarcity of resources. We must have inservice education and training programs, and we must meet responsively the obvious mental and emotional needs of older people; and we benefit, I might add, not only older people as a result of that, but their adult children, their grandchildren, and the very fabric of our society, depending as it does upon a decent and respectful relationship across the generations, certainly requires that of us. So I think that we must make certain that our psychologists, our nurses, our social workers, our physicians, our psychiatrists in community mental health centers simply make up for this educational deficiency.

The extent of illness can be considerable. It's often surprising in my experience for audiences to find that 25 percent of all of the suicides are committed by people over 65 years of age, that depression goes up decade by decade throughout the course of the life cycle, and I

think for obvious reasons. I know of no period with the possible exception of adolescence that's as struck by turmoil, by crisis, by stresses, by losses, the loss of loved ones, the loss of one's position, one's job, one's functioning capacity, and as I mentioned earlier in terms of social status and attitude, the loss of one's person in society as a person of worth. So these stresses are enormous. Little wonder then there is this steady increase in depression, but also there are the beginnings of organic brain diseases, mysterious to us yet, we don't fully understand. Perhaps 20 percent are due to cerebrovascular conditions—that is, hardening of the arteries—but perhaps 50 percent of those conditions are due to a condition that is reflected in destruction of brain cells, called senile dementia of the Alzheimer, who was a German physician—Alzheimer, who described this condition first in 1909, of in fact a middle-aged woman.

So these conditions require very special attention. All too frequently and I think this is important to stress, people will say, "This is due to age. It is not really a mental condition." Or you'll hear comments that older people are, don't need to be in hospitals, mental hospitals, they should be in the community, because being in a hospital is unfair to them, because the only reason they have to be there in any case is because they're old and have no family; it is not because they have any kind of mental disease.

I'm fully sympathetic to the concept of keeping people at home. I'm fully sympathetic to trying to find decent community facilities in which older people can exist, but it is not correct to say that inevitably with age comes something with senility or organic brain disease. In fact, one of the most promising developments of the last 25 years is the realization that these are diseases and since they therefore are diseases, they are subject to study, so that we can understand their causation and their prevention and treatment. They are not something which is automatic or inevitable with age. If we take older people, refuse to admit those that have mental and emotional conditions into our mental hospitals, into our various hospitals, and if we dump them out of hospitals, even under what would appear to be appropriate and significant efforts like returning people to the communities, if all we do is take them out of the mainstream of health care and out of opportunities to learn new things that will help us to prevent and treat these conditions, we're making a very serious mistake.

CHAIRMAN FLEMMING. I gather in connection with your response to question by counsel, that you believe, among other things, that the community mental health clinics of the country have a definite obligation to carry forward an outreach program to try to convey to older persons the services that they are prepared to render.

DR. BUTLER. That outreach program should include direct work with senior centers, of which there are 5,000 in the United States, a variety of church and other groups where older people gather together, chapters of organizations like the National Council of Senior Citizens—I mean outreach in the sense of sensitive, major effort.

CHAIRMAN FLEMMING. Another group of persons that can be reached in that way are those who are participating in the nutrition program all over the country, also.

DR. BUTLER. Right.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Dr. Butler, I wonder if you would comment on the employability of older persons and the extent to which, based upon your experience, the ability to perform is diminished by age.

DR. BUTLER. The question is not so much diminished by age but diminished by concomitants of age; if the person is physically ill, has congestive heart failure, has a disabling arthritis, has a residual of a stroke, it may impair one's functional capacity in certain types of work activities, but age all by itself is rarely the culprit. It is the associated conditions, and that is important too because of the kinds of efforts that can be made to match skills with work. That is, for instance, there's work by Dr. Leon Coyle [phonetic] in Canada, in which one takes into account functional disabilities that come with age and matches various types of work, piecework, other types of activities; but the employability of older people and studies which have been done often indicate that in fact older people are more reliable, more dependable, have less absenteeism, are on work on time, and have a productivity rate not different from other age groups.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. No questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Dr. Butler, you might be able to help us distinguish between reasonable and unreasonable discrimination, which I think we have to address. In relationship to that differentiation, may I take the specific that you mention, though it is hearsay, the 10 percent unspoken rule by doctors. I'm sure we would want doctors to have a general practice, in particular, a varied kind of practice in relationship to their needs and aspirations. Is there a reasonable quota system that could be applied or is any kind of quota unreasonable?

DR. BUTLER. Perhaps I misunderstood you, but it is not my impression that physicians should have a privatistic rule that decides whom they should treat or not. There should be an openness with respect to the treatment of people, and I was not meaning to advocate that physicians have such an internal quota system.

COMMISSIONER SALTZMAN. I realize that. I understand you're saying you are opposed to that.

DR. BUTLER. Right.

COMMISSIONER SALTZMAN. But is there any reasonableness to the interest of doctors to have a varied practice in accordance with age, etc., or do you think they should take whoever is ill, irrespective of disease, nature, or of age?

DR. BUTLER. I think we have to distinguish between the primary specialties and the other specialties. For instance, I think a gynecologist should see people of all ages. That's a primary specialty. The problems of older women are enormous. That's one of our most disadvantaged of our older age groups is the woman, because in fact, they constitute the greater majority of older people. It is inappropriate for primary care physicians to do gynecologic examinations on younger women and not do them on older women, which is not an uncommon fact of life, or for a practicing physician to do very necessary rectal examinations to determine the possible presence of rectal carcinoma in a younger but not in an older patient. These are very strange and curious practices, where you'll read, "pelvic examination deferred, or rectal examination deferred," so primary care must not operate on a quota system.

Now, obviously there are specialties like pediatrics which are related to specific age groups. There is neonatology, which is concerned with infant-type deaths, and there are specialties in which you are more apt to see one particular population than another, like younger people who suffer injuries due to trauma in accidents. But there should be no systematic exclusions within the primary care specialties.

COMMISSIONER SALTZMAN. Second question, sir, you mentioned the rate of suicide amongst people of 65 and older is somewhere around 25 percent?

DR. BUTLER. Twenty-five percent.

COMMISSIONER SALTZMAN. What is or do you know the rate of suicide among adolescents?

DR. BUTLER. The rate of suicide among adolescents has peaked a bit in recent years, but it is not nearly so high and I would be very happy to supply the Commission with the exact figures in terms of decade-by-decade analysis, but the highest suicide rate in the United States is, for instance, men in their eighties, and while it is very painful and very awful to see young people commit suicide, and you do get a peak in terms of the overall graph, the greatest incidence is in those later years.

COMMISSIONER SALTZMAN. May we have for the record the submission by Dr. Butler of the decade-by-decade suicide rate?

CHAIRMAN FLEMMING. It will be entered in the record at this particular point. Commissioner Horn?

VICE CHAIRMAN HORN. Dr. Butler, do we have accurate data in your judgment on the extent and physical location of people with senile dementia as between those living in homes, those living in privately supported nursing homes, those living in State mental health institutions, and I wonder if you could summarize what that dimension is as we think how does one reach these different types of people?

DR. BUTLER. Unfortunately, we don't have the kind of data we need. I am happy to see that the National Institute on Aging has decided to select an epidemiologist who worked closely with the National Center

of Health Statistics. For instance, senile dementia of the Alzheimer's type, which I referred to, is perhaps the number four or number five cause of death in the United States, but it is not even listed among the 263 causes of death under the U.S. vital statistics, because it hasn't been ordinarily recognized by physicians and diagnosed as the primary cause of death. Pneumonia, congestive heart failure, the more immediate causes of death are what get put down on the death certificate. That bears upon your question because the types of data that are collected as to the location of people turns often upon diagnosis on charts, upon diagnosis upon death, and we don't have that kind of firm data either in mental hospitals, nursing homes, or homes for the aging. As a matter of fact, in terms of homes for the aging, in nursing homes, with the type of charts which are maintained which are not uniform or not problem oriented, we have some very serious questions as to the quality of the data contained there, and the National Center of Health Statistics' studies of nursing homes often depend upon the reports of administrators. There's very little direct access to patients where they themselves are studied in any manner in institutions.

VICE CHAIRMAN HORN. Along that line, that's why I'm considering if this community mental health center program is our best way to reach this population clientele. What is your professional judgment?

DR. BUTLER. I think we have to reach a number of different places. I think the community mental health centers is a very major and very important one. But I think also we must reach the nursing homes. There are now more patients in nursing homes than there are in hospitals, over 1.2 million people, about 950,000 of whom are people over 65 years. So it is an appropriate place to certainly ask and to be certain that proper services are provided. Similarly, mental hospitals, even though there's an exclusion at the gate and a reduction of older people in them, systematic over the last 10 or 12 years, and a systematic effort to remove those people over 65 in them to outside facilities; nonetheless, there are a great number of older people in State mental hospitals. So I think the answer is that each and every one of these particular settings must be the basis for effective diagnostic and treatment and care systems.

VICE CHAIRMAN HORN. Thank you very much.

CHAIRMAN FLEMMING. Dr. Butler, we deeply appreciate your being with us and repending to our questions. It has been very helpful.

DR. BUTLER. You're welcome.

STATEMENT OF JOHN BRADEMAS, REPRESENTATIVE, FOURTH CONGRESSIONAL DISTRICT, INDIANA

CHAIRMAN FLEMMING. We are honored at this time to have with us Congressman John Brademas from Indiana, Majority Whip of the U.S. House of Representatives, Chairman of the Subcommittee on Select Education, Committee on Education and Labor. I know that if it were

not for the leadership of Congressman Brademas, with the able assistance of his staff director, Jack Duncan, we wouldn't be here today. We wouldn't be holding hearings on the Age Discrimination Act of 1975. I just want to say to Congressman Brademas how much I personally appreciate the leadership that he provided in the Congress which made it possible for this particular act to be included in the Older Americans Act Amendments of 1975. It's just one additional illustration of how indebted all of us who have been working in the field of aging are to you and to the quality of your leadership. We do appreciate and we're so grateful that you have found it possible to come here and be with us at the opening of these hearings. I know you have a hearing on the Hill very shortly, and we will be delighted to hear from you at this time.

MR. BRADEMAS. Thank you very much, indeed, Chairman Flemming and distinguished members of the Commission on Civil Rights. Allow me at the outset to express my own very warm appreciation for your generous comments and to salute you and your colleagues on the Commission for the leadership that you have given in this and other fields important to securing equal opportunity for all of the people of our country.

I am delighted to be able to appear before you today to testify at your national hearings on age discrimination. It is perhaps appropriate that, as sponsor of the Age Discrimination Act of 1975, I begin by reviewing some of the history that brings us here this morning.

As you know, the Age Discrimination Act of 1975 provides that "no person in the United States shall, on the basis of age, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The act further provides that this prohibition against age discrimination shall be implemented pursuant to regulations promulgated by the Secretary of Health, Education, and Welfare. These regulations may not take effect before January 1, 1979. The act also specifies that it is not a violation reasonably to take age into account when necessary in order to achieve the objectives of Federal programs. Finally, the act charges the Commission on Civil Rights with undertaking "a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance."

Mr. Chairman, this law, like most laws that chart new legislative territory, was the product of compromise. My House colleagues and I were persuaded that age discrimination was a serious and shameful problem and that it should be prohibited immediately. Our Senate colleagues agreed that there was a problem, but they were troubled by the unanticipated dangers that might exist in the uncharted territory into which we were forging. The outcome of our deliberations was the creation of a multistaged process. We set forth immediately the principle of nondiscrimination on the basis of age. We provided for the study which the Commission is now conducting and, finally, we

delayed enforcement of the prohibition against age discrimination in federally-assisted programs until January 1, 1979.

Thus this Commission and your study will play an important role in the realization of the goal of ending discrimination based on age. You are a link between the recognition and enunciation by Congress of the principle that age discrimination is repugnant to the ideal of human justice in our nation and the implementation through specific regulations of that principle in day-to-day practice. Your study will provide a data base and detailed analysis that will help the Secretary of Health, Education, and Welfare to formulate regulations that will be effective in ending age discrimination while at the same time producing regulations that are not arbitrary, capricious, or unnecessarily burdensome in their impact.

Mr. Chairman, I would like to commend the Commission for the thoroughness and diligence with which you have undertaken your complex and difficult assignment. I am particularly impressed because you have taken your inquiry to the people. You have sought information and counsel from officials at all levels of government. You have received the views of advocate groups and representatives of a wide variety of citizens affected by age discrimination. You have aggressively pursued your investigations and research at six sites throughout the Nation rather than being a passive instrument to receive whatever constituents could find their way to Washington.

In my view, the sweep of American history as reflected in public policy reflects the unfolding of a basic theme. This theme is the progressive lowering of barriers that deny to some citizens full access to the opportunities and benefits of our society. One can trace this history from the elimination of religious qualifications for voting in the early 19th century, to the 13th, 14th, and the 15th amendments to the Constitution following the Civil War, to women's suffrage, and to a national policy encouraging collective bargaining and providing workers the opportunity to have a voice in shaping their destiny in the work place.

In the last two decades this movement has accelerated. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, religion, or national origin. Title IX of the Education Amendments of 1972 prohibits discrimination based on sex. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against the handicapped persons. The Age Discrimination in Employment Act of 1967 prohibits age discrimination in matters such as hiring, job retention, and compensation. Legislation to strengthen and broaden this act is currently pending before Congress. And most recently there is the Age Discrimination Act of 1975 which complements the Age Discrimination in Employment Act.

I believe that all of these are basic civil rights laws. They are all based on the principle that every individual should be judged on his or her merits and not on the basis of irrelevant factors like race, reli-

gion, national origin, sex, handicap, or age. Each of these civil rights laws affirms that judgments about people should be based on their abilities and performance and not on stereotyped assumptions and prejudices. These are legislative enactments all founded on the belief that it is a fundamental injustice to deny to any individual access to the fruits of our society based on such arbitrary criteria as age. It was in response to the self-evident justice of the proposition that there should not be age discrimination and it was in concert with the tide of the history of American public policy that Congress enacted the Age Discrimination Act of 1975.

We also, of course, on the subcommittee which I chair, heard testimony illustrating in great detail age discrimination in education, health programs, social services, transportation, housing, and nutrition programs. So we acted not only on the basis of principle but also in response to evidence of pervasive and unconscionable age discrimination in our society.

I very much hope that the Age Discrimination Act will become the national example to combat ageism in our country, for no longer can we deprive our society of the special contribution offered by older adults. I would also emphasize that the problem of age discrimination is not confined to the elderly. As you well know, even someone in his thirties can be discriminated against on the basis of age, if, for example, he or she is applying for admission to medical school.

We have made some significant strides in combatting age discrimination. We still have a long way to go. But we are headed in the right direction, and I believe that we are swimming with rather than against the tide of American history. My commitment to Federal policy that enhances the dignity and civil rights of every citizen remains unwavering.

I shall not take more of your time this morning because in a sense my appearance is only ancillary to your central task of gathering hard evidence and doing careful analysis that will serve as a foundation for effective implementation of the Age Discrimination Act of 1975. I do, however, want to take this opportunity to, first, commend you for a job that has, thus far, been very well done; second, express my own continuing commitment to and support for the objective of ending ageism in our nation; and third, to indicate the importance that I attach to your report and my eagerness to see the finished product in the near future.

Finally, Mr. Chairman, let me just add one other word, as this is the first time that I've ever had the privilege of appearing before your Commission, just to say a general word about, I believe, the extraordinarily valuable contributions which this Commission, its present members, and your predecessors have made to wider understanding of the whole range of civil rights problems to which I referred in my statement. I have a particular interest in this Commission in a personal sense, I suppose, because one of the distinguished predecessors, Mr.

Chairman, is my friend and constituent, the Reverend Father Theodore Hesburgh, the president of the University of Notre Dame. I have been deeply impressed by the contributions that Father Hesburgh has made as Chairman of this Commission. I have been equally impressed, Mr. Chairman, by the contributions that you yourself have made, so I'm all the more pleased to have had the chance to appear before you this morning.

CHAIRMAN FLEMMING. Thank you very much, Congressman Brademas. We deeply appreciate your comments relative to the role of the Commission, contributions that those who have served on the Commission and are now serving have made, and we again are grateful for your putting the Age Discrimination Act of 1975 in the setting which your testimony does put it. You indicated that prior to the passage of this act, your committee had taken a great deal of testimony which reflected the kind of discrimination on the basis of age that exists in our society. Certainly, no committee in the Congress has been more diligent in obtaining evidence of this kind. I might say in the hearings that we have held in San Francisco, in Denver, and Miami we have also received evidence which certainly reaffirms what you have set forth in your testimony. We do look forward to the opportunity of bringing everything together, weighing the evidence that has been made available to us, and then making findings and recommendations to the President and to the Congress which we hope will facilitate and accelerate the implementation of this very important act. Commissioner Horn?

VICE CHAIRMAN HORN. Congressman, was there a reason why employment was removed from the jurisdiction of the study of this Commission when the bill passed Congress? We are apparently precluded from getting into questions of employment at this time.

MR. BRADEMAS. I can only tell you that my recollection is that this was one of the ingredients of the compromise to which I earlier alluded.

VICE CHAIRMAN HORN. Obviously this has concern to some of us. You as a political scientist and former member of the university faculty will appreciate that, while I agree with you in all of these sentiments that we should judge people based on individual merits and not ages or any other isms, the fact is, as Secretary Califano mentioned this, high technology societies, universities, face a very real problem. We have thousands of unemployed Ph.D.s being turned out of the universities of the country, and yet all of a sudden we are faced with Federal law coming through the Congress to extend the retirement age to age 70. Based on your own experience in the university, do you have any words of advice as to how one can make those judgments at age 65 with fairness and equity, given our system of tenure that we have in most American universities?

MR. BRADEMAS. I talked earlier this week, Commissioner Horn, to Jack Peltason, who is the new executive secretary of the American

Council on Education, one of the principal organizations that speaks for higher education in this country, and we had a conversation briefly on the same point, and I suppose that I would only have to—I reply to you by making a couple of observations, which really is not responsive to the substance of your question but makes a point that I hope you will not feel unfair for me as a legislator to make.

I told him that he was the first person in the field of higher education even to raise this question with me, although I think I have been on the Subcommittee on Postsecondary Education longer than any other member of the House Committee on Education and Labor. You are, Commissioner Horn, the second person to raise this question with me and this is, of course, the Monday of the Friday on which the House of Representatives passed the bill which I think with not more than 3 or 4, I can't remember now, a handful of votes against it. So I said to Dr. Peltason that I thought that one of the things that higher education needed to do was to pay attention to these problems, not at the last minute but early on and analyze the problems, think about them, set forth alternative approaches for dealing with the tradeoffs to which you and your question alluded, because otherwise we in the House of Representatives who do not sit on the committee that happens to be handling a piece of legislation like that, as I happen not to sit, are going to make our judgments on the basis of some overriding principle or some overriding commitment like the one that undergirds my own statement here today.

It will not do, in my judgment, for colleges and universities a day or two before the House of Representatives, at least—I speak not for the Senate—votes on such legislation to go and say, “Oh, by the way that will cause us trouble.” We want to know early if it causes trouble. We want to know why it causes trouble. We want to know what alternatives are proposed for dealing with the problems which the legislation is designed to cope with in a fair and equitable way. So I guess what I've done, Commissioner Horn, is not really answer your question but to bounce the ball back to you.

VICE CHAIRMAN HORN. Let me say a number of people do cause trouble, but the steam roller was rolling.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. I should merely like to identify myself, Congressman, as a fellow Hoosier from Indianapolis and to express my pride in that identity, based on the fact of his intelligent and compassionate leadership for the people of Indiana and indeed for the general Nation at large. Thank you, sir.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Congressman, this act has given recognition to a large segment of forgotten people. Your sponsorship of this act has been noteworthy. All of the answers are not in, as you can glean from the conversations that are going on, but all new legislation is the same. Many people forebodingly look to the future, they take you through

the gloom chamber, and after the law has been in effect and developed, these problems seem to go away. One can hardly expect the usual youngster of 45 years to concern himself with issues which affect persons over the age of 65 years. Even from the testimony thus far, psychological factors have continued to be attributed to older persons to apparently submit to retirement and going to pasture without complaint, but this act has now given those persons a voice upon issues which concern them intimately.

I simply wish to congratulate you and say the act opens great possibilities in programs and activities receiving Federal financial assistance and that just about covers everything, and we certainly are happy and glad we have had you come here today.

MR. BRADEMAS. Thank you, sir.

CHAIRMAN FLEMMING. Thank you very much. We look forward to the opportunity of continuing to work with you in this very, very important area.

MR. BRADEMAS. Thank you very much, it was a great pleasure, Mr. Chairman.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MR. DORSEY. Sam Brown, Director of ACTION, accompanied by John Lewis, Director of Domestic Operations.

MR. BROWN. I brought along the whole team today.

CHAIRMAN FLEMMING. You and members of your team will stand so I can administer the oath, please. We're delighted to have you and your associates with you.

[Mr. Sam Brown, Mr. Dan Donata, Ms. Helen Kelly, and Mr. John Lewis were sworn.]

TESTIMONY OF SAM BROWN, DIRECTOR; DAN DONATA, DIRECTOR OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS; HELEN KELLY, DIRECTOR OF OLDER AMERICANS VOLUNTEER PROGRAMS; AND JOHN LEWIS, DIRECTOR OF DOMESTIC OPERATIONS; ACTION

CHAIRMAN FLEMMING. Counsel will proceed.

MR. DORSEY. I noted that you had an opportunity to listen to some of the testimony that we had earlier and, relating to that testimony, I would like to direct your attention to one particular area.

CHAIRMAN FLEMMING. Counsel, did you want Mr. Brown and members of the panel to identify themselves for the record?

MR. DORSEY. Yes, sir.

MR. BROWN. I am Sam Brown, Director of the ACTION agency. I'm accompanied today by Mr. John Lewis, who is the Associate Director of Domestic Operations; Ms. Kelly, who is the Director of Older Americans Volunteer Programs at ACTION; and Dan Donata, who is the Director of Congressional and Intergovernmental Affairs for the agency.

MR. DORSEY. Thank you.

As I was saying, one of the areas in which our study and our testimony has pointed out very, very major problems and issues were scarce or inadequate outreach services, particularly in the delivery of health and social service programs. Throughout the country, program heads have indicated that within their limited resources they are unable to conduct effective outreach even when statutorily or by regulation they are required to do so, and that lack of outreach has contributed substantially to age disparities in program participation. Further, it appears that utilization of volunteers to perform outreach functions might be one solution which might address that particular problem.

I would like to give you a two-part question if I may. To what extent has ACTION and its volunteer programs been involved with agencies and programs such as Title XX, Medicaid, and food stamps to bring potential participants into the social service delivery system and also to what extent has ACTION taken steps to develop new opportunities to deal with these agencies, for example, to use the RSVP, Retired Senior Volunteer Program, in such areas as community mental health centers, legal services offices, and community health centers, and those other programs to which I referred?

MR. BROWN. If I may, Mr. Chairman, I have a brief statement which I would like to either read or submit for the record or read parts of and summarize and submit for the record if I may at some point.

CHAIRMAN FLEMMING. If you could just summarize it and submit it for the record we would be delighted to make it a part of the record for this hearing.

MR. BROWN. Thank you, Mr. Chairman.

It is probably the failing of one who once held elected office, there is almost a pervasive need to make a comment on broad, general principle before starting any specific discussion, and recognizing that failure as my own, I would like simply to comment on the question of ageism in general as we see it, or as I see it, and then go directly to Mr. Dorsey's questions from there, if I may.

CHAIRMAN FLEMMING. Perfectly satisfactory.

MR. BROWN. The issue of age discrimination is one in which I have a very direct and personal concern. I, as it happens, am one of these people under the age of even 45, I nonetheless have the concern because ageism has been historically directed at the very young as well as the old. Ageism is perhaps unique among the social problems which we face in that and other respects. First, ageism is based on the theory of relativity. Ageism says, "She is too young," or "He is too old," and too young or too old compared to what? Ageism is a totally subjective social phenomenon. That is partly why it is so pernicious; every person guilty of ageism has his or her definition and interpretation.

There simply is no objective reality. That perniciousness is, of course, built into our own laws, and the House's action last week began some steps in the direction of removing what was intended to

be a healthy possibility for retirement, which has too frequently been a mandatory retirement imposed on people against their will. But it is pernicious in a second way. Old people are old only because of their age, not because they lack will, perseverance, wit, savvy, ability; age is simply a number, not a social condition.

Our problem, it seems to me, in the country is not old people, it is the remoteness of too many of our Federal programs. Old people are not the problem. We too frequently are the problem. For that reason I applaud you and the Commission for not going off so much to study the elderly who have been studied to death, but to study us, because it is us who are the source of the problem too frequently, those of us in government with remote and at times unresponsive programs. It is us who need to be reformed. Having talked broadly about that problem, I would like to turn to the specific question of our involvement.

Although many Federal programs are open to all on an equal basis in theory, in practice the programs tend to discriminate against the elderly. The elderly have a set of unique problems, including limited mobility which can block their full participation in programs. Consequently, without outreach and without some advocacy, standard operating procedures will mean that the elderly too frequently continue to live in isolation and in fear; they'll remain cut off from the society to which they have contributed so richly but now frequently shuns them in favor of the young, a society which locks them away in institutions supposedly for their own good. In spite of that characteristic of American life, we found volunteers can in fact help break down that barrier through advocacy and outreach. They can link the isolated and elderly with programs that benefit them in their own communities.

In New York City, for example, an older American in a Senior Companions program may help a depressed and elderly man from going into a nursing home. The volunteer helps to obtain homemaker health and assistance, supports him through his troubles, and introduces him to a Title VII nutrition center, where they can receive a balanced meal and the ability to socialize with others. As a member of the local community in which they both live and through special training, the volunteer is familiar with the social service programs and knows where to go and who to talk to. Volunteer participation like this benefits the community as well as the individual. Our programs have shown that volunteering fosters both individual and community self-esteem and respect. It brings out the best in people and contributes to a climate of positive community cooperation.

I would like to refer to a couple of programs in which we have particularly been involved, with some detail about them. In Colorado, my home State, since 1974, 70 VISTA volunteers, two-thirds of whom are over the age of 60, recruited more than 2,000 additional local volunteers across the State in a program primarily designed to meet isolated

older people, especially those living in rural areas. The project, sponsored by the Colorado Congress of Senior Organizations and funded by ACTION, has been, we think, very successful. More than 100,000 of Colorado's 325,000 residents age 60 and over have been reached. More importantly, 90 percent of the elderly residents in rural communities have been contacted through that volunteer network beginning from 70 older VISTA volunteers reaching out through additional volunteers.

That, of course, involved a great deal of knocking on doors, visiting, talking, and informing the elderly about Federal programs available to them and then followed up on those initial contacts to determine the progress individuals have made in receiving benefits. It is, I suppose, sort of an ombudsperson program for the elderly staffed primarily by volunteers. I hardly need tell you that, in a Federal budget severely pressed for dollars, that use of dollars is, in addition to having tremendous human and humane effects, a very cost-efficient way of reaching a large number of people.

Throughout that program's tenure, cooperation with Federal and State and local agencies has been excellent. I would of course as a former State official like to say cooperation was great, but it has been with a broad range of agencies over which I have very little control, so it must simply be a pattern of cooperation that has developed there. The volunteers were trained through the area agency on aging and the State office on aging with Title VII funds. The Social Security Administration has arranged regular, scheduled, exchange meetings for the volunteers and State representatives to the training projects. The project has a director who feels it has reached most of the rural and isolated elderly citizens of Colorado. The systems have been established and seem to be working effectively and two surrounding States, Utah and Wyoming, are now studying that model of outreach.

In a new approach to social service programs through the use of volunteers, ACTION has sponsored a demonstration project for the purpose of counseling and helping people who live on fixed or restricted incomes. For the last 2 years, this program has provided bilingual aid and counseling to 10,000 individuals, including senior citizens, displaced homemakers, welfare recipients, and the unemployed, treating senior citizens as another group of people not to be isolated but to be treated as a group with needs.

Three hundred professionals with unique skills assist the program voluntarily on a part-time basis, hold counseling seminars, compiling and distributing applications, and write manuals and guides. The counselors, volunteers, possess expertise in a broad range of areas, including nutrition, health care, credit, legal aid, tax law, and so on, a series of skills which, frankly, would not be available to the government if they didn't come through the volunteer system and would not be available to that network if they weren't volunteered. In that program, elderly people comprise the largest single element who have worked,

with volunteers having worked with approximately 5,000 older people; indirectly, through appearance on television talk shows, radio programs, and in newspaper columns we have delivered it to an additional 10,000 older people, although I wouldn't think everybody has been reached.

In addition to those programs which are not in fact older American volunteer programs but rather VISTA programs predominantly or statewide programs funded by ACTION, the largest bulk of the outreach from the ACTION agency has been directly through the older American volunteer programs there, Foster Grandparent and Senior Companion programs, which are designed for people who have reached the age of 60, but whose retirement income is below the poverty line and possess the desire and physical and emotional skills to help others in need. Foster Grandparents is well known, and I think well received in most places. Senior Companions, a much smaller program, funded only in 1974 and still having only 2,600 volunteers working with it, but for 20 hours a week the Senior Companions serve in a variety of ways doing outreach work into the community.

In each case it has been our concern that they cooperate with the Administration on Aging, with Title VII, and other supporting programs for older programs. I hardly need tell the Chairman and members of the Commission that that has been at times a controversial question about whether in fact all of these programs coordinated and worked with each other or whether they were constantly running across each other's tracks, and it has been something in which I've taken a direct personal interest since I've been at the agency, because we don't have the kind of resources as a society to do everything twice; we ought to do it well once instead of running over each other, and there has been a great concern to ensure that there has been cooperation.

The largest of our service is RSVP which has approximately 225,000 volunteers serve in a wide range of ways. I will say to you very candidly that while we know many of those volunteers work with the problems of food stamps, tenant-landlord relations, a wide realization of problems which impact on the elderly, we have, in putting together our 1979 fiscal year budget, tried to make a thorough evaluation of what it is that those retired senior volunteers do. The common and long-term statement about the program is that it's good for the volunteer to volunteer; we have been concerned, as well, to know what is it that the volunteers are doing which has a larger social purpose.

In doing that, it is quite clear that the bulk of the volunteers—and I am hesitant to get too deeply into that, because we are in the process now of evaluating the results which have been returned on that—we would like to submit that, if we may, at a later date, but we have discovered that a great many of those older American volunteers in fact like to work with other older Americans on the problems that they face, but I'm not able at this time to give you the precise detail that I think we'd all like to have.

In any case, we are certain that use of volunteers and the use of them as advocates in the community provides a resource which otherwise wouldn't be available and which extends substantially beyond the dollar resource which is put in there; we will, of course, want to contribute in any way we can to the Commission's work.

To come back specifically and to conclude with the response, I simply want to say that, if we may, I would like to submit to you the sort of statistical information of where it is those volunteers are working, the RSVP volunteers, but to say in broad and general terms, our clear understanding and discovery is that most of them work either in direct service delivery for other older people or frequently in advocacy, and I think it is our view that advocacy work is the strongest way in which to use that rather limited resource.

MR. DORSEY. Mr. Chairman, at this time, I would ask the prepared statement by Mr. Brown be admitted into the record and also that we reserve a place for the statistics that he referred to and I have no further questions.

CHAIRMAN FLEMMING. Without objection, that will be done.

We are grateful to you for coming and giving us this bird's eye view of the activities of ACTION in relation to some of the issues that we have under consideration. I would like to say this as one who has followed ACTION over a period of time: I personally appreciate the kind of imaginative leadership that you are providing, and there isn't any doubt in my mind at all but that under that leadership those who volunteer in connection with many of your programs will be shown what opportunity they have to in turn carry forward advocacy programs, outreach programs, in behalf of the older persons, and I note, also, of course, that many do participate in the direct delivery of services. But I think the testimony that we have received in Denver and in Miami and San Francisco and here has all underlined the absolute necessity of outreach programs if we're going to relate mental health services, for example, in an effective way to the lives of older persons. So the resource you represent is going to be a very, very important resource in dealing positively and constructively with the issue of age discrimination.

COMMISSIONER RUIZ. Mr. Brown, your developing success story will constitute a very important part of this record and, as the Chairman said, the key to volunteers is strong and inspirational leadership. Your report contained various figures and I just wanted to be sure that I didn't skip on the one item that is of interest. How many volunteers does ACTION have within the United States?

MR. BROWN. Approximately 235,000 of which the largest bulk are—I'm sorry, 240,000—the largest bulk are RSVP volunteers, with approximately 220,000 volunteers in that program at any given time, followed by the Foster Grandparent program, then VISTA, with about now just over 4,000 volunteers, then the Senior Companion with 2,600. I'm sorry, there are 15,000 Foster Grandparents I neglected to

mention, 2,600 Senior Companions, and approximately 4,000 VISTA volunteers at this time.

COMMISSIONER RUIZ. You must be growing very fast because you started out by saying 235,000. That must have been last month and then you ended up with 240,000.

MR. BROWN. The reason why I say that, because when I started to add them up—they didn't come out correctly, but those numbers I think are accurate.

CHAIRMAN FLEMMING. If you want to correct the record on the statistics at any time, we will be delighted. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No, thank you.

CHAIRMAN FLEMMING. Thank you very much. We look forward to keeping in touch with you and with your associates in connection with this very important area.

MR. BROWN. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MS. GERE BENICS. Dr. Bernadine Denning, Director of Office of Revenue Sharing, Department of the Treasury, accompanied by William Sager, Marcella Peterson, and Treadwell Phillips and Dana Baggett.

[Ms. Dana Baggett, Dr. Bernadine Denning, Mr. Treadwell Phillips, and Mr. William Sager were sworn.]

TESTIMONY OF DANA BAGGETT, MANAGER, INTERGOVERNMENTAL RELATIONS AND TECHNICAL ASSISTANCE; BERNADINE DENNING, DIRECTOR; TREADWELL PHILLIPS, MANAGER, CIVIL RIGHTS DIVISION; AND WILLIAM F. SAGER, CHIEF COUNSEL; OFFICE OF REVENUE SHARING, DEPARTMENT OF THE TREASURY

CHAIRMAN FLEMMING. Thank you very much, we appreciate very much your being with us.

MS. GERE BENICS. Would each person give your names and positions for the record?

DR. DENNING. I am Bernadine Denning, Director of the Office of Revenue Sharing, Treasury.

MR. SAGER. I am William F. Sager, Chief Counsel for the Office of Revenue Sharing.

MR. BAGGETT. I am Dana Baggett, managing director of the Intergovernmental Relations Division of the Office of Revenue Sharing.

MR. PHILLIPS. I am Treadwell Phillips, Manager of the Civil Rights Division, Office of Revenue Sharing.

MS. GERE BENICS. Thank you. Before I begin, let me say I'll be directing all the questions to you, Dr. Denning, but feel free to defer to your staff at any time.

The 1976 amendments to the State and Local Fiscal Assistance Act added age to the nondiscrimination provisions, to take effect concurrently with this act on January 1, 1979. But we have noted that data

collected on the use of funds provided under this act do not allow for the determination of age breaks or age differentials of the beneficiaries, so it would be difficult to tell how funds are used in regard to a ban on age discrimination. As your office has responsibilities to ensure that all services are provided free of discrimination, including age, I was wondering what procedures the Department plans to use to enforce this ban on age discrimination?

DR. DENNING. Yes. We appreciate your question and together with our legal staff, we met the other day on this very issue, and we have some concerns about our jurisdiction as far as age discrimination is concerned. As we interpret the Age Discrimination Act of 1975, we do not have any authority or jurisdiction to look in the area of employment as far as age discrimination is concerned. We do, however, feel very strongly that we have jurisdiction of age discrimination in the delivery of services. As you mention, I have my experts with me, and Mr. Sager is our attorney and he might want to speak a little bit more on how we came up with this interpretation of our lack of-jurisdiction in that area.

MR. SAGER. Well, I think counsel's question is really directed to how will the Office of Revenue Sharing receive information from recipient governments regarding their use of the revenue sharing funds in the aged programs or programs or activities for the aged.

Now, we have developed, in cooperation with the Bureau of the Census, use report forms as required under the act. Those use report forms, however, are not broken down into specific programs and activities under the various large, broad categories that the Bureau of the Census uses to collect its data and information. Accordingly, we would really have to consider whether those use forms should be modified after January 1, 1979, in order to find what type of questions should be asked of recipient governments in the use of the revenue sharing funds. The present forms, which have still not been fully decided upon for use reporting forms, have not required a breakdown of specific activities other than under broad expenditure categories which the Bureau of the Census uses for its statistical gathering of information.

MS. GERE BENICS. The delivery of services is not broken down by race, color, creed, sex?

MR. SAGER. No, it is not.

DR. DENNING. Mr. Phillips, who is Manager of the Civil Rights Division, whose responsibility is to conduct all the investigation in the compliance reviews, might want to bring you up to date on the process of when we go into a jurisdiction and the kind of investigation and documentation that we look for.

MR. PHILLIPS. Basically, when we go to the jurisdiction we will notify the jurisdiction we have received the complaint and are engaged in entering into a compliance review process, at which time we will ask for the breakdowns as far as his employment statistics, we'll ask for information relating to the services they provide insofar as different com-

munities and things of this nature. Obviously, at this point we are not involved and have not been involved directly with the Age Discrimination Act, but we do ask specific questions as far as employment in services and, just recently—this doesn't relate to the age discrimination—but we are involved asking also information about the banks in which revenue sharing funds are deposited. But we acquire this information even before we make our initial entry into the scene in order to set us up so we can do a very thorough and impartial investigation.

MS. GERE BENICS. So far as the actual reporting requirements and the forms that are being developed by Census, will your Division be working with the Census people in developing these forms to ensure that all the categories, I believe religion and handicapped, are also being added with age? Is that true, that all those will be covered?

DR. DENNING. We do have those forms completed and they are following the classification that the Census follows.

MS. GERE BENICS. I have another question about the 1976 amendments, which added a provision requiring governmental units to endeavor to provide senior citizens and their organizations with an opportunity to be heard prior to the final allocation of funds. I was wondering if your department had specific regulations or any means at all to determine either adequacy or sufficiency of efforts by these units to ensure that older persons are involved in the hearing process through public participation?

DR. DENNING. Prior to my asking Mr. Baggett, the Manager of Intergovernmental Relations Division, to speak, I would like to just say that the Office of Revenue Sharing talks about our trilogy of compliance and when we talk about our trilogy of compliance, we are speaking to our audit requirements, the financial disclosure that was included in the '76 amendments. We're talking about human and civil rights, which is Mr. Philips' division, and on our third leg of the trilogy is our public participation, and Mr. Baggett is the Manager of the Intergovernmental Relations Division, whose responsibility it is to oversee the compliance in that area; Mr. Baggett will speak to your question.

MR. BAGGETT. In Subpart B of our final regulations, which were just printed in the *Register* on Thursday, September 22, 1977, this question of what "endeavor to provide senior citizens with an opportunity to be heard" was more fully addressed. The regulation was left as it had been in the interim version, but we did add an explanatory note and what we hope will be a directory explanation in the background statement; it is only one paragraph long. Shall I read it to you?

MS. GERE BENICS. Yes.

MR. BAGGETT. This is in the background statement.

Supplementary information. This section remains unchanged. [That's a referral to the regulation itself.] A number of comments were received requesting clarification as to how a recipient government is to endeavor to provide senior citizens and their organizations with an opportunity to be heard. It is expected that

recipient governments will identify the senior citizen organizations located in the jurisdiction and contact them directly concerning public hearings to be held. Recipient governments should give special attention to the location of the hearing place to assure that it is accessible and convenient to senior citizens. A recipient might also provide senior citizens with transportation to the public hearing. Public hearing notices, budget summaries and other required information might be posted in senior citizen centers and other locations frequented by senior citizens.

So we intend in that statement to give direction and more explicit guidelines to recipient governments as to what "endeavor to provide" does mean.

MS. GEREENICS. Thank you, I think that clears it up.

DR. DENNING. I think Mr. Sager wanted to add something.

MR. SAGER. I think in each of these instances where the act requires the recipient government to "endeavor to provide" and so on, I think these will have to be decided on a case-by-case basis, as I'm sure you are aware. We can visualize situations where a recipient government has its budget hearings in its council chambers on the third floor of a building without an elevator, so it is inconvenient for the aged to climb three flights of stairs to get there, so they move that hearing to a very small room on the first floor which is entirely too small to accommodate the folks who want to participate in the public hearing. So we're faced with the question, is that an endeavor to provide the facilities and the convenience for the aged? So these are the types of questions we've been wrestling with on this particular legislation, and I think we'll have to just wait and see what type of complaints we receive about recipient governments who do not endeavor to provide the facility for public hearings to the aged.

MS. GEREENICS. I was wondering if you had any thoughts about how effective advocacy is in general in terms of getting more services or having any sort of impact on planning process?

DR. DENNING. On whose part?

MS. GEREENICS. Well, for instance, the senior citizen advocates that Mr. Baggett referred to. How much impact does their participation have on the final process?

DR. DENNING. Well, in the proposed use hearings, it is that they bring their shopping list of needs in for the officials to hear. It is our thought that, with our program analysts doing an educational job and providing technical assistance as they go out and do their workshops, they would help the senior citizens understand some strategies that might be used to go into at the public hearings.

For example, we had one senior citizen come in to visit with us and was very concerned because a handful of seniors went to a hearing and they had certain needs that they wanted put into the budget and they were unsuccessful in getting their needs in there. Of course, we tried to help them understand that there are some strategies that they need

to develop that would help them, in taking more than a handful to the hearing in the first place, and then applying the kinds of pressure to the elected officials so that their needs will be heard, and there's some things that our State analysis can do to help them in the education process as far as that's concerned.

If they are organized when they go to the hearings, it is my personal opinion that the elected officials would be hard pressed not to give in somewhat to some of their needs, with the press covering the hearings, and it has been our experience that, in most cases, the budget hearings and the proposed use hearings have not been attended by large numbers of people, and if the seniors can be helped to understand that if they can get enough to go, they will get a lot of press because there won't be anybody else there to cover; so we've been trying to help them understand that they can have their planning and their coordination a part of that process if they can get themselves organized before they go there and many people are doing that.

Ms. GEREBENICS. Thank you.

Mr. Chairman, I have no further questions, but I would ask at this time that Dr. Denning's statement be submitted for the report.

CHAIRMAN FLEMMING. Without objection that will be done.

Dr. Denning, we appreciate your being here. We appreciate your testimony. I've been particularly interested in the dialogue relative to the public hearings and, as I listen to the regulation that you have included now in your final regulations, it seems to me that sets a very good standard. If, looking down the road, it was determined that some local jurisdiction had not either held a public hearing or had not conformed to the provisions of the regulation, what corrective steps would you be authorized to take under the existing law?

DR. DENNING. We presently have a couple of cases that, come the 7th day of October, their checks will be delayed because we had complaints that they had not had the necessary public hearings. We had received a complaint. We have asked them for documentation on the publication and that they send us a copy of the newspaper where the notice of the two hearings appeared, and as I said, until such time that they conform with the regulations and the requirements, we delay the payment of their revenue sharing funds, and Mr. Baggett, who is the manager of that division, might want to elaborate on that.

MR. BAGGETT. Mr. Chairman, with the government that simply blundered, we would require them to make the trust fund whole again. They would return all revenue sharing funds spent without the required public hearings back to the trust fund, and citizens would have an opportunity to express their views as to how the entire trust fund, once made whole, should be spent. If, of course, the government is noncompliant and unwilling to do that, then we would have to proceed through an administrative hearing and follow a more vigorous pursuit of other remedies and, as Dr. Denning indicates, in any event their future revenue sharing payment would be delayed until that judicial process takes place.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Dr. Denning, I also want to express appreciation for your participation. This Commission has had a continuing concern about the data collection process and because, as we have held hearings in the other areas in attempting to receive information about compliance, the answer has been given that, "There is no information; we do not break down, we do not break down these data." So it seems this would be an excellent opportunity for the Department to require the recipients to cross classify as to race, sex, and age. This would be, it seems to me, able to give the Department information that would enable any governmental body to make a determination as to whether the beneficiaries or whether there was any class of beneficiaries that was being excluded. I wanted to know if you could comment.

DR. DENNING. Yes, Commissioner Freeman, that is quite a job. We are this year for the first time working with the Bureau of Census in an effort to improve upon our data collections. We have not used this form yet. We will be using it very shortly for the year ending '76, and I think we would have to see what we get in this line of data first and see how, you know, efficiently this operates before we would put another layer on it and it may be that before January 1 of 1979 we will have something of that effect operable.

Right now, we're very cognizant of the criticisms of our data and this was one of the reasons why we have contracted with the Bureau of the Census for them to do it because they have the expertise that we do not have presently. I think we would need one run-through at least to see if this is going to work, and if this works, maybe we could add cross-age sets and race along with the classification of expenditures that we're asking for presently.

I don't at this point feel that we're able to comment on that in any specific terms. It is something that we would be very happy to explore as we did the possibility of working with the Bureau of the Census and it did materialize. Perhaps some of my other team members may have some other ideas on that and would like to comment if that's appropriate.

MR. BAGGETT. I'll be glad to comment, Dr. Denning. That's a tall order, Commissioner Freeman, in spite of the well-intentioned idea behind it, because what we're talking about is the full panoply of all State and local government expenditures of which revenue sharing is a part.

The Census Bureau, up until this point, has never surveyed the expenditures of all local governments as a universe. Thirty-nine thousand local governments, they have surveyed something, my understanding is, on the order of 5,500, 6,000, to develop trends. So I'm concerned that we not expect too much of that survey when we realize that the burden of reporting is placed on the recipient local governments and in our recipient government universe the great majority of them, perhaps 30,000 of the 39,000, can be typified as rural, very small, with part-

time staff. They honestly don't know who benefits from some of the services, and for that matter, metropolitan governments don't know either who is in the parks, who is enjoying the playgrounds. So that the determination of benefits conferred by governmental services is a very cutting edge, academic question of how to do it.

COMMISSIONER FREEMAN. Mr. Baggett, you have said the governments do not know who is enjoying the parks; I would like to know what your opinion is and yours, Dr. Denning, as to whose responsibility in the distribution of Federal funds, who has the responsibility for ensuring that all of the people will enjoy the park?

DR. DENNING. The chief elected official signs our assurance forms that they will follow our laws, regulations and that the revenue sharing funds will be distributed in an equitable manner.

COMMISSIONER FREEMAN. What I want to find out is, who distributes the funds, the Federal funds?

DR. DENNING. State and local jurisdictions.

COMMISSIONER FREEMAN. From whom does that State receive the funds?

DR. DENNING. From us.

COMMISSIONER FREEMAN. From the Federal Government?

DR. DENNING. That is right.

COMMISSIONER FREEMAN. What it seems to me is that ultimate responsibility for ensuring, that the buck stops with Federal officials and that's the point that I'm trying to get.

DR. DENNING. Well, as I said earlier, when they sign the assurance form to us, we assume that they are in good faith. I don't want to sound defensive, and this is why I'm being a little hesitant; as Mr. Baggett has pointed out, we distribute funds to 39,000 units of government across the United States; we have a staff of 170 people. So we have to, in some way, depend upon our local citizens to help monitor, to send their complaints into the Office of Revenue Sharing. Unfortunately, because of the size of our staff, we have been reacting and complaint oriented. We hope some day that we will get to the point that we will be able to initiate compliance reviews and be able to go out and take a look and assume our Federal responsibility for seeing how these funds are distributed.

The way we are staffed right now, we have to depend upon our citizens, and this is one of the reasons when our IGR [intergovernmental relations] staff goes out, our managers go out, I go out, speak to national conventions, to regional conferences; we try to educate the public and tell them how much we need them to monitor what's going on at the State and local level and for them to keep in touch with us because, you see, it is easier to really operate as a team with the Federal Government and the local citizens, and we hope that people hear our message as we go out and they will respond by sending in complaints. A lot of people, when I speak to national conventions, you're really asking for a lot of work, but you'd be surprised that

people tell you while you're there that they are going to go back and they're going to see what their revenue sharing money was supposed to have been spent for, how much money came in, did they have their public hearings, and we really are not being bombarded with individual complaints.

Now, I don't know if that answers your question or not, but it tells you a little bit about the constraints within which we have to work, and Mr. Sager has been trying to say something for a little while if it's all right.

MR. SAGER. Commissioner, I think there is a distinction between a gathering of statistics on a prefunding level or even a postfunding level, between a gathering of statistics from the 39,000 recipient governments, and the statistics to show where the funds are going, what programs and activities are being benefited and who are the beneficiaries of those programs and activities on an age basis, race basis, or any other type of basis. There's a distinction between that and the ability of the Office of Revenue Sharing to examine a particular recipient government once a complaint has been received that the funds have not been spent in compliance with the nondiscrimination provisions of the act.

I believe that the Office of Revenue Sharing has adequate legal authority through its civil rights investigators and its audit examiners and others, in this trilogy of compliance that Dr. Denning has spoken about, the Office has adequate authority to require the recipient government to provide those statistics in the event of an investigation. However, I think, as I said earlier, there's a distinction between that requirement and the requirement that all 39,000 recipients provide some advance indication of how the funds are to be used, are to be spent, or some postfunding questionnaire regarding the beneficiaries of the specific programs and activities which they have funded with revenue sharing.

COMMISSIONER FREEMAN. You're saying that your authority is limited with respect to assuring compliance with Title VI, of the requirements of nondiscrimination of the revenue sharing role?

MR. SAGER. No, I don't intend to imply that our authority is limited. I am saying that our authority—I believe we have adequate authority to require a specific recipient government against whom a complaint has been lodged to require that government to provide the Office of Revenue Sharing with statistical data. I question either the advisability or the feasibility of requiring all of the 39,000 governments to provide statistical data, either prior to funding in a prefunding questionnaire or even a postfunding or use questionnaire; that is, to provide the type of data as to the nature of the beneficiaries of the program and activities which have been funded.

DR. DENNING. Could I just say something to follow up on what Mr. Sager has said and it is a little bit in line with what Commissioner Freeman has said, and that was, when the revenue sharing program

started in 1972, it was a program advertised as a program with "no strings attached." And I guess we need to just say, in response to asking for the additional information on age, race, and sex, that we now are receiving criticism across the country because we do have strings attached. We now have the trilogy of compliance that says very definitely what you must do in the way of the public participation and includes the seniors participating.

We say very definitely that you may not discriminate on the basis of race, sex, and the whole gamut, and we also say that you must have an independent audit of your financial statement, not less often than once every 3 years by an independent accountant and it must cover a 3-year period. So people are beginning to say to us, "Hey, what happened to the no strings program? You're now adding each little bit," makes it a bit difficult for us, and when you put that up against the President's request to cut down on some of the reporting forms that we send out, it makes it kind of difficult for us. And I think to support what Mr. Sager was saying, it is not our experience, except you heard me say earlier two cases we could not get this documentation, and it isn't that they are not going to send it; it is just they may not get it in time for the payment in October.

Ninety-nine percent of the people respond in a very positive way and follow the law of the land. We have very few people that really are contrary and really don't want to do what they are supposed to do. To impose the additional reporting requirements for the sex, race, and age—when we are exploring it, we have to weigh the balance because when we go out to investigate, our investigators get this information when we need it. We say to the Governors in most instances and to the mayors and the city managers that, "It is your responsibility to keep this documentation and these records on file for 3 years. Any time we want it, we want to be able to come in there and see it or have you send it to us." So in our exploring the possibilities of going deeper into the reporting requirements that Census will be collecting for us, I think we're going to have to weigh all these things.

COMMISSIONER SALTZMAN. One question, Dr. Denning. Our staff studies around the country indicate that additional employment opportunities for the aging would be enhanced by the provision for part-time employment in State and local governments. Indeed, it seems that in the private sector, lawyers and doctors, for example, are providing part-time employment for women in their offices. Is it within the jurisdiction of the Office of Revenue Sharing to encourage State and local governments to advance opportunity to the aging by the provision for part-time employment?

DR. DENNING. I would see no problem in our encouraging it. We don't have any jurisdiction over it; we would be happy to encourage.

COMMISSIONER SALTZMAN. How might you proceed to encourage?

DR. DENNING. It could be very much in the same way we're doing with the banks. You see, we have no jurisdiction over the banks, but

we're encouraging the local officials to take a look at their bank's affirmative action program and see if they are using minority banks; we're encouraging them to do that in our letters, in our newsletters.

As far as our audit requirements are concerned, we are encouraging them to look at the CPA firms that they are using to meet this audit requirement and to look at the affirmative action program of the CPA firms that they are using. So we might take the same step and encourage the State and local officials to take a look at using part-time seniors, you know, there. But as I say, we have no jurisdiction, but we can encourage.

CHAIRMAN FLEMMING. Commissioner Horn? Commissioner Ruiz?

COMMISSIONER RUIZ. I was interested in those two cases that you made reference to where there was defective notice as an issue. Have you in fact delayed the payments?

DR. DENNING. I would like to correct that for the record. We are not saying there was defective notice. We're saying we had a complaint from an individual, I believe, that there was not a hearing, an inadequate notice, and we have written to the jurisdictions for them to send us documentation that they did have the hearings, and until we get that documentation we will be delaying their payments.

COMMISSIONER RUIZ. Now, what is the distinction between the delaying of a payment and the cutting off of a payment?

DR. DENNING. Well, the delaying of a payment means we can pay them manually after the check date when we receive the documentation.

COMMISSIONER RUIZ. In other words, delayed payments are monies held in trust until you get compliance; is that correct?

DR. DENNING. Right.

COMMISSIONER RUIZ. The reason I ask that question is because, looking at the law on enforcement, it refers to a section 305(a) wherein the Federal department or agency may terminate, refuse to grant or to continue, which means delay and then in subsection (d) it relates to the fact that Federal agencies involved shall transmit a written report to the committees of the House of Representatives and the Senate having legislative jurisdiction. Is that required or—I like the idea of what you're doing, but I am just looking at the law here. Does that require you to— can you answer the question?

DR. DENNING. I'll have my Chief Counsel answer it.

COMMISSIONER RUIZ. Okay.

MR. SAGER. Commissioner, one of the things that we are concerned with in the Age Discrimination Act, as compared with the revenue sharing act and amendments, is—and it is really an unanswered question at this time and we are wrestling with it—is whose enforcement procedures are going to govern if we find age discrimination?

Now, we have a set of procedures for the civil rights compliance and the revenue sharing act as amended, which is a very modern and a very updated set of enforcement procedures. I would venture to say

that we would be compelled to follow our own enforcement procedures as Stated in section 122 of the revenue sharing act as it has been amended, rather than follow the procedures in section 305 of the Age Discrimination Act. However, I cannot say this for a certainty now because this is one of the things that has us concerned with the way the Age Discrimination Act is referenced in the revenue sharing act.

COMMISSIONER RUIZ. I hope your interpretation is the one that will be effective because the other one just seems to lead to longer delay and is very complicated.

MR. SAGER. Yes. Well, perhaps that will give us some encouragement to continue with our present line of thinking that our procedures, as provided in section 122 of the revenue sharing act as amended, should be the governing procedures rather than the enforcement procedures in section 305 of the Age Discrimination Act. We're wrestling with this problem, we don't have a definitive problem.

COMMISSIONER RUIZ. Good luck, I like your interpretation.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. Dr. Denning, would you furnish for the record a list of the allegations that have been filed with the Office of Revenue Sharing in terms of violation of civil rights under the provisions of your law, how many investigations have been conducted, what the result of those investigations have been since the beginning of the revenue sharing act? Myself, other members of this Commission, met with the Director of the Office and Management and Budget early in the formulation of this legislation, expressed some concerns about the way that particular section of the act was structured, and I think, in terms of the deliberations we have to make as to age discrimination, we would like to know the effectiveness with which the Office of Revenue Sharing has dealt with racial and ethnic discrimination.

CHAIRMAN FLEMMING. Without objection that will be done.

VICE CHAIRMAN HORN. At this point in the record.

COMMISSIONER RUIZ. At this point in the record, also, when you get working on your brief with relation to the interpretation it might be well to have it offered as a next exhibit in order because this is most interesting to me.

CHAIRMAN FLEMMING. Dr. Denning, and your associates, thank you very, very much for being with us and responding to the questions that have been addressed to you. If you have any questions about the request that has just been made for an exhibit to be included in the record at this point, you or your associates can talk with members of our staff and I'm sure you can reach a meeting of minds on that. Again, thank you.

DR. DENNING. Thank you for inviting us.

CHAIRMAN FLEMMING. Counsel will call the next witness.

MS. GEREENICS. Mr. William Clinton and Ms. Doris Dealaman.

[Mr. William Clinton and Ms. Doris Dealaman were sworn.]

TESTIMONY OF WILLIAM CLINTON, ATTORNEY GENERAL OF ARKANSAS AND
MEMBER, COUNCIL OF STATE GOVERNMENTS; AND DORIS DEALAMAN,
FREEHOLDER, SOMERSET COUNTY, NEW JERSEY, AND MEMBER, NATIONAL
ASSOCIATION OF COUNTY BOARDS

CHAIRMAN FLEMMING. I am very appreciative of both of you being here at this time. Counsel will proceed with the questioning.

MS. GEREHENICS. Beginning with you, Mr. Clinton, if you would identify yourself giving your full name, for the record, and your position?

MR. CLINTON. William Clinton, and I'm the Attorney General for the State of Arkansas, member, Council of State Governments.

MS. GEREHENICS. Ms. Dealaman?

MS. DEALAMAN. I'm Doris Dealaman. I'm a chosen Freeholder from the County of Somerset in the State of New Jersey, a member of the National Association of County Boards.

MS. GEREHENICS. Thank you. Beginning with you, Mr. Clinton, I understand that you have some particular concerns with the CETA [Comprehensive Employment and Training Act] program, particularly as they relate to the participation of older persons, and I was wondering if you would relate some of those concerns to us?

MR. CLINTON. Well, I have been active in my State both as attorney general and more particularly with regard to this question as chairman of the board of a group called the Housing Development Corporation. We seek to channel public funds and public-funded jobs into the work of improving the housing of mostly older citizens but all poor citizens in the State of Arkansas. There are some problems with the restrictions which are put on these grants for people who wind up working in some of the programs. Let me demonstrate.

The Green Thumb program, about which I'm sure you've heard a great deal here, which employs older workers to go out and do various public projects, may go into a county in rural Arkansas, for example, and work on repairing an old person's home. They can do the complete job. They may weatherize the home. They may, if the person has become handicapped and needs to get around in a wheel chair, they may put a ramp up the front steps; if the steps are broken, they may build the steps there.

By contrast, if we send out people into the rural areas of Arkansas to help work on weatherizing people's homes and we have most of our money through the Community Services Administration, or some of it now coming through the new energy department to work on weatherization, we may be sending people, we'll say, 40 miles out into a rural community from the nearest sizable city to do some work, and they will be restricted under the terms of this grant to properly weatherize the home which is a very good thing, it will keep the old folks' utility bills down and promote conservation, but if there's a broken step, they literally cannot fix it under the terms of the grant.

I think that's a waste, a fracturing of our resources. I'm quite concerned—I'm sure some of them do fix those steps out there when they're not held accountable. It is a source of real concern. We get these Federal funds—at home, at least the ones I have anything to with, are properly administered and stay within the confines of the grant, but I do think for the benefit particularly of rural senior citizens that the funds which are being expended to improve their housing should be coordinated in such a fashion that whenever anybody goes there, working under a CETA grant or any other form of Federal money, they should be able to complete the job as far as possible and do whatever is needed.

MS. GEREBENICS. These are Federal restrictions you're referring to?

MR. CLINTON. Yes, I mean, these are reasonable restrictions except when you consider how they work. If, you know, if you have money for weatherizing it ought to be spent for weatherization. But I'm saying, as a practical matter, by the time we go around and hunt up the folks to do the work and weatherize the home and send them into a county—for example, the congressional district in which I live, half the people live in communities under 5,000 and roughly 20 percent of those people are over 65 years of age. It's just a fracturing of resources; all this money is coming in now to improve houses, being mostly in the energy field, and it seems to me we ought to consider whether or not the grants can be restructured, particularly when you're dealing with senior citizens who may be handicapped or physically limited, to allow a more complete job of working on the home.

MS. GEREBENICS. I know that you were listening to Dr. Denning's testimony and she was very concerned about citizen participation and feedback from citizens, and I was wondering if you or any advocate groups in Arkansas communicated these concerns to the proper Federal authorities?

MR. CLINTON. Well, we are now in the process of having established in our State through my office and in cooperation with the office on aging, a legal services developer who will go around the State and try to assess in a series of hearings these source of needs and communicate them at one time. I have basically told our people who are dealing with the Community Services Administration that we would like to see some loosening of the requirements, but beyond that I have not gone at this time. I hope to present a more comprehensive report in the very near future.

MS. GEREBENICS. I understand you also have some concerns about the vocational rehabilitation program and the community mental health service program, particularly as they concern outreach. Would you care to comment on those at this time?

MR. CLINTON. We have in our State at this time a vocational rehabilitation program of which I am very proud, but there are very few older citizens in it and I'm sure that's typical of the experience of every State.

We also have community mental health centers which now serve most of the State; for example, in the city of Texarkana, which is in southwest Arkansas on the border of Arkansas and Texas, about 15 percent of the residents of that city are over 65 years of age; 1.5 percent of the people who have gone through the community mental health centers in some form or another in the last year and a half have been over 65. We have some transportation programs operating in Arkansas, but ironically most of them are operating in rural areas and we have not done nearly enough to reach out to people to let them—particularly the older people are sensitive about going to a mental health center more often than young people.

We ought to use the television. In our State the average person over 65 years of age watches TV 30 or 35 hours a week. They watch television at times when a lot of other people aren't watching television, and we could use TV and public service announcements, and we could have public funds provide for more outreach that would get these people into vocational rehabilitation programs and mental health centers when they are needed, and I think people who know more need to devote time to thinking about that, and we have found particularly with regard to the mental health center there are just terrific problems in getting older people who need help to take advantage of it.

You don't have the problems, of course, in vocational rehab. Any State where the governments say, "We've only got so much money and younger people benefit from it more."—I think the only way to deal with that problem over the long haul is to require at least the Federal funds, which go to pump up these programs, have certain percentages earmarked for older citizens based on a percentage of those people in the State.

MS. GEREENICS. Thank you. Ms. Dealaman, I understand that you also have encountered problems with the CETA program, particularly in obtaining positions for older workers, and I'm wondering if you could describe those problems?

MS. DEALAMAN. One of the major problems that we have encountered and I was interested in hearing previous testimony on the questions about part-time employment. Under our Title I program, as I'm sure you're all aware, you've got the 1-year cutoff. Now, this is all very fine for your young or your middle-age worker who is unemployed because they are looking for upward movement, hopefully, into the private sector.

This is not necessarily true of your senior citizen. For example, we had a project that we brought into our CETA office which is doing, in our judgment, a very good job, for—and it was a rather simple thing—we are required by State law to do traffic counts and we usually do them in the summertime so we can decide where the traffic light should go and if the system is working properly.

Well, in the past we have frequently used high school students to do this, without too much accurate success in the judgment of our en-

gineering department. So it seemed like a very logical thing this summer to put in a proposal to CETA asking if we couldn't hire and find, with the slight training that's involved, and employ two senior citizens to work in a single day doing this traffic count. The proposal was turned down because of the regulations that inhibited their continuation in that particular kind of employment. This is the kind of thing we get involved with.

Apropos of the attorney general's comments, we are beginning a new project—when I say “we,” I simply mean our own county—we have this problem sometimes with State override—but we are starting a new program in October aimed toward basic education for senior citizens, particularly Hispanics or non-English-speaking senior citizens, who literally want very much to work either part time or full time are not able to cope with the language problems. They're not able to cope, for example, many of our seniors, with budgeting, and I'm not talking about the metric system, I mean just the way we know it. So in cooperation, three of our offices on aging, our CETA office, and one of our CETA components which has an educational overtone have developed a project together that is going to be funded by the State as an experimental project to do it. Again, this isn't vocational rehabilitation, but it is basic education to help these folks who are interested to become employable. Our CETA is trying to be as flexible and as responsive as it can, but it has its problems.

MS. GEREBENICS. I also understand that your community mental health centers in New Jersey are much more successful than we have found in serving the elderly population, and you just heard Mr. Clinton's view of the problems in Arkansas, and I would like to know, to what do you attribute the success in New Jersey of these programs?

MS. DEALAMAN. I think there are a couple of factors involved here, two very major factors; one is in the State of New Jersey they have an active program toward deinstitutionalization so that the person, regardless of age, requiring service can find it, hopefully in his community. We have the same kind of transportation problems, too, and so the movement and the direction that we have taken in most of the counties, especially in my own which obviously I know better, has been to decentralize the service centers. We currently have four decentralized centers in operation. The other thing that we have done with them is to include not only a mental health component but an office on aging component, a legal services component, so that, as available as we can make it, a multitude of services are there.

Very seldom do you find a senior citizen with one problem. It is usually a combination of problems, and with the kinds of transportation difficulties that we do have in the county it is all very fine to say to a senior citizen who, one, first is motivated enough to come or has been contacted by outreach and brought in, “Well now, we can take care of this here, but if you're interested in food stamps, you go three blocks down and two blocks to the right.” So we're trying very hard

to put these service centers together in the best possible locations on a decentralized basis so that no senior citizen and/or any other person requiring services is too far to avail themselves of that service.

Ms. GERE BENICS. Along the same lines, are you in your position responsible for needs assessments within your county under the Title XX program and, if so, how do you communicate those needs then to the State planning committee?

Ms. DEALAMAN. Not very well. Yes, indeed we are, and we have—we function on the county coalitions in the development of programs for the expenditure of Title XX funds; we also do it with the office on aging.

We have done our own needs assessments in, I think, a very interesting fashion because we developed the information seeking system along with our social science classes at the community college, and it was approved as a project for those social science classes. So the young people did indeed a very fine, we think, needs survey.

Now, the problem begins when you put together a needs survey with very active participation of very many, many dedicated volunteers who are rapidly becoming quite disillusioned; you go down with your plan that has been developed, that has been subjected to public hearings back in the county. You take it into the State and you give the State your Somerset County plan with one hand and they hand you the State plan with the other. The timing factor has been very, very bad; I will say it has improved simply because our State coalition was thoroughly incensed, "What's the point in having counties?" and again many, many volunteers, interested citizens wanting to do a job and realizing that all the input, all the work, really wasn't counting for anything. One of our major areas there, as a matter of fact, was the distribution of funding at the State level because, as it came back to us, it was not responsive to the needs that we in my own county had already identified, so we're working on that one, but it is difficult.

Ms. GERE BENICS. Thank you.

I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. If I may go back to the mental health program, New Jersey does stand out as a State that's certainly been more successful in relating mental health facilities to older persons than many other States. Do you have formal outreach programs in the mental health area designed to acquaint older persons with the resources that are available in the mental health area, Ms. Dealaman?

Ms. DEALAMAN. A specific outreach component is not isolated in mental health. The thing we tried very hard to do, Chairman Flemming, is pull all of them together. Under our county mental health administrator, he is a member along with others of our human services committee. They have pooled all of their information, all of their resources so that, for example, I don't know whether I have one with me or not, we have this kind of very simple brochure that lists all the services that might be of assistance to any one person. This is dis-

tributed widely. It goes out through the SSI offices. It is available in all the county service centers. We send it out occasionally when we do a newsletter mailing. We simply send it along so that people know where the services are available.

You and I both know that's only the first step. The motivational step is the one with which we keep working. I wish we were more imaginative about it, quite frankly, but we do it through the speeches, through talking with Kiwanis Clubs, by working with all of our senior citizen groups. I speak not only of the nutrition sites, but all the club groups. I work as a volunteer with one. We deliberately plan meaningful programs—it is not just an afternoon of pinochle with a cup of coffee; we try to build good programs into it. So resource people, for example, our mental health coordinator has spoken to practically every one of those groups, so that there is the beginning effort to at least familiarize and hopefully to motivate.

CHAIRMAN FLEMMING. Passing to various parts of the State, there isn't any special emphasis on talking with older persons about what a community mental health clinic can mean in their lives and so on?

MS. DEALAMAN. No.

CHAIRMAN FLEMMING. This leads me to ask the attorney general whether in his judgment if a community mental health clinic or any other agency working in the mental health field fails to carry on an outreach program, that that should be regarded as an outreach program related to the older persons, that that should be regarded as discrimination against older persons in the mental health area? In other words, here you've got a situation where a community mental health clinic really just ignores the older population. They make no effort to reach them, no effort to indicate to them what resources and services are available. In your judgment, does that in and of itself constitute discrimination against older persons?

MR. CLINTON. Mr. Chairman, I think it does, and I think that the purpose of these hearings, if nothing else, is to demonstrate one of the most elementary and oldest lessons of our democracy, which is, you can have a right to anything—if you don't know about it, then you can't exercise it, then it might as well not be there. I think if you can help this country to move to a position so that discrimination is defined in terms of having a real, realizable right to take advantage of public benefits, you would have done a great thing; I think it is discrimination in and of itself. One reason we're trying so hard to get this statewide legal services program set up is that you see that principle played out over and over again in a lot of other ways.

Let me give you just another brief example. The Federal Government now is, it is obsessed, and I mean that in a very complimentary fashion, with trying to find out whether or not there is Medicare or Medicaid fraud in this country and root it out, and they are concerned really about two things. They're concerned about finding any doctors or institutions who are perpetrating such fraud, and worried about the

taxpayer losing their money. That's all very laudable. We are now looking in Arkansas into the possibility when these nursing homes, for example, get their payments for every month, they may not get adequate payment and not be paid too much. But they may be double-billing the patient for some of the minor services. That's patently illegal and it's not age discrimination on the part of the State not to do anything about it, but if you don't have a legal service organization that can go in and acquaint them with how to look and examine it in action is discrimination, too. And I think a major part of what we have to do in this country is just to make these people or put them in a position to defend themselves and take advantage of what's there for them. If we don't, it is discrimination.

CHAIRMAN FLEMMING. Thank you. Commissioner Horn, please.

COMMISSIONER RUIZ. On this rural senior citizen receiving funds that we are speaking about, are those funds which are received by senior citizens where they can't do a proper finishing-up job on their structures in the houses, funds that are received from HUD [Department of Housing and Urban Development] or funds that are received from revenue sharing?

MR. CLINTON. Well, it depends. The particular funds that I'm concerned about, just because the Federal Government is placing so much emphasis on it, are weatherization monies to go into homes that are improperly insulated, which is virtually every home that a poor person lives in rural Arkansas, and the point I was trying to make is, if a person gets a home loan, for example, from the Farmers Home Administration or if a person is declared eligible to receive help from Green Thumb or some other public program, then a comprehensive job can be done on the home. But most of the money is going into these energy programs, and the thing that bothers me is there ought to be some way if a person gets a grant or is approved to have his or her home insulated, if somebody goes all of the way out he ought to be able to fix it if there's a health hazard in the home, if the senior citizen needs help on.

COMMISSIONER RUIZ. What I was going to ask with respect to this weatherization is to cue in on from whence the money comes in order to ascertain whether it is an administrative problem or lack of enforcement.

MR. CLINTON. The weatherization monies, basically, come either through the Community Services Administration and through the local economic opportunity agencies therefor, through the successor of the Federal Energy Administration, whatever that is—under the new Energy Department.

CHAIRMAN FLEMMING. The bulk comes from the community service group?

MR. CLINTON. There's a great legal battle going on.

COMMISSIONER RUIZ. And unless you made those complaints to those particular agencies, you mean?

MR. CLINTON. I have notified our people, our local and regional people, that I think this is a problem, but I suppose they feel constrained by the fact that Congress is appropriating this money for the purpose of weatherization. And my theory is maybe there ought to be a separate appropriation or some way of pairing two sources of money once somebody goes through the trouble of starting to work on this home.

COMMISSIONER RUIZ. Do you feel you don't have a remedy up to the present time?

MR. CLINTON. Yes, I do.

COMMISSIONER RUIZ. Have you referred this matter to the Department of Justice?

MR. CLINTON. No, it never occurred to me that there was anything illegal about it. Again, I just thought they overlooked this problem.

COMMISSIONER RUIZ. Well, it certainly is discriminatory, as you indicated, in an indirect way, for those people who need this separate push. It might be a good idea to check into that.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. To pursue the example which you gave, it seems to me there certainly would be those who demonstrated the need for more coordination. I can even take that same example in which you said that a team would go out and weatherize a home in which maybe the steps were falling down, the porches are halfway off, the roof is leaking. This would certainly include, I hope, repairing the roof. But it would not necessarily include repairing the steps or repairing the porch. As a public official at almost the highest level of the State, perhaps you would consider proposing specific changes in regulations that might be submitted to this Commission because it is our responsibility to make a report and proposal of changes in rules, regulations, and if necessary, legislation, and I would like to ask, Mr. Chairman, if the attorney general will make these specific recommendations, if they could be, they could be received in the record at this point, and we might consider them later.

CHAIRMAN FLEMMING. Without objection that will be done. This could prove to be very helpful.

MR. CLINTON. Yes, sir, I'll be proud to do it.

CHAIRMAN FLEMMING. In many instances, the discrimination against older persons is going to be cured only to the extent that there is coordination and a pooling of the resources, and you observe things at the grassroots level that if called to our attention might help us in making recommendations on regulations.

MR. CLINTON. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Ms. Dealaman, are you familiar with the vocational rehabilitation in New Jersey?

MS. DEALAMAN. Yes.

COMMISSIONER SALTZMAN. Our staff studies have indicated that the rate of success for older people is just about the same as the rate of success for young people. On the other hand, however, it seems that, at the point of entry and prior to the point of entry, there are problems related to the inclusion of the aging in the vocational rehabilitation training program. Can you comment on the discriminatory aspects; that is, who is severely disabled and who is not and the net impact on the aging?

MS. DEALAMAN. I think there are two factors here that concern me. One is indeed the definition of disabled and the awful time span in that determination if Federal funding of disability assistance is included. You sometimes have a 6-months' time gap while that definition is being finely honed, so that the person is or is not eligible. This again is a regulatory process and in my judgment could be speeded up. The other aspect, and this I'm afraid runs through so many of our programs and quite frankly I have no answer to it, is the pressure for achievement.

Every one—as you know, it's a State operation with us. Every one of our State agencies, our legal services, every one that is State operated and reports to the State, is required, quite logically, to make statistical reports as well as qualitative reports. So much hangs on that statistical report that many agencies, in my judgment, fall into the trap of taking on board the client for whom prognosis is very positive. It looks good on paper. It does not serve the need of the senior citizen.

CHAIRMAN FLEMMING. We appreciate the fact that both of you have taken the time to come here and share your views with us. Personally, and I'm sure I speak for my colleagues, we like the very positive approach that both of you are taking to the issues which confront us in this area of discrimination on the basis of age. Your comments, your observations, will be a real help to us. Thank you very, very much.

Counsel will call the next witnesses.

MS. GERE BENICS. Prior to that, Mr. Chairman, I was wondering if I could ask Ms. Dealaman to leave with our clerk the pamphlets which you have with us. Thank you very much.

CHAIRMAN FLEMMING. I've been asked to announce that there are interpreters for the deaf here, and if their services are required, we'd be very happy to have you so indicate. Thank you very much.

[Ms. Dorothy Lasday, Dr. Bernice Sandler, and Ms. Tish Sommers were sworn.]

TESTIMONY OF DOROTHY LASDAY, COORDINATOR FOR STATE PUBLIC AFFAIRS, NATIONAL COUNCIL OF JEWISH WOMEN; BERNICE SANDLER, EXECUTIVE SECRETARY AND DIRECTOR, ASSOCIATION OF AMERICAN COLLEGES, AND MEMBER, NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS; AND TISH SOMERS, COORDINATOR, TASK FORCE ON OLDER WOMEN, NATIONAL ORGANIZATION FOR WOMEN, AND MEMBER, CALIFORNIA COMMISSION ON AGING

CHAIRMAN FLEMMING. We appreciate very much your being with us.

MS. GEREBENICS. Would each of you state your full name for the record, your position, and organization?

MS. LASDAY. I am Dorothy Lasday, coordinator for State public affairs for the National Council of Jewish Women.

MS. SOMMERS. I am Tish Sommers, coordinator of the task force on older women of the National Organization for Women and a member of the California Commission on Aging.

DR. SANDLER. I'm Bernice Sandler; I'm executive secretary and director of the Association of American Colleges, and I am a member of the National Advisory Council on Women's Educational Programs.

MS. GEREBENICS. Beginning with you, Ms. Lasday, I understand your national affairs committee, of which you are the chairman, has been monitoring the Title XX program on all three levels, Federal, State, and local, to determine whether all age groups are being served at each of those levels. I wonder if you could describe that project and findings?

MS. LASDAY. I'm the past chairman. We rotate it every 2 years and I have just gone off as chairwoman. We had worked for passage of Title XX of the Social Security Act. Consequently, this meant that when the program was implemented in our local communities, we would make every effort to see how it was implemented, particularly to become involved in the citizen participation on the planning, both on needs assessments and the followups on it.

So our reports of facts on this come in a number of different ways. Each year when the States and the local communities are developing their proposed plans, we get inquiries from our local sections which are what we call our chapters and from our State public affairs chairwomen, who are nationally appointed in 38 States and the District of Columbia where we have members.

These reports come in, and we coordinate them, and I as State—now, back to doing coordinating of State public affairs and just getting back on this, when I got the call on Monday, I began to call around to find out some of the information on this and it is a very mixed bag. We came up with three areas where we feel there is age discrimination. Not all of it is against the elderly. In some cases it is against children.

MS. GEREBENICS. Could you identify those for us?

MS. LASDAY. They roughly come into the areas of funding, regulations, and attitudes. Would you like me to expand on that?

MS. GEREBENICS. Please, yes, please.

MS. LASDAY. On funding, we have the problem of a ceiling that was established with the passage of the 1972 State and Local Fiscal Assistance Act which provided a ceiling of funds distributed to the States on the basis of population, and there has been no effort made to accommodate to the extensive inflation of the ensuing 5 years. Because of this, there has been a competition for the limited funds and this because, as you heard Secretary Califano this morning talk about

our delivery system, which is based primarily on services to meet the needs of a particular age.

This puts the one group against the other. This is also because the act, when Title XX came into effect, it was put into effect without any time lag at all. There was no opportunity for a needs assessment of any detail to be done. With this it meant that localities simply implemented under Title XX those contracts for services and those continued services that they had been doing under the prior method, which was an openended funding under purchase of services through Title IV(A) and Title VI, I guess, and XVI, with no recognition at all of the changing neighborhoods and changing needs to the neighborhoods.

Inflation has actually caused a reduction in services all across the country. But with this also has come an awareness of how people look at services and the funding of services. Everybody is focusing on Title XX when it is a small part of the total funding for services. There was never any implementation, no fiscal assistance to the States to implement the part of the act that required that there be a compilation and coordination of all funds for services.

I guess Commissioner Ruiz can tell you more about it, but our State of California gave me a very good example. We had a lot of complaints from people in California that the Title XX act was not serving senior citizens, yet one-third of all Title XX funds in the State of California are for homemaker chore service which primarily serves senior citizens, but that is only 47 percent of all the homemaker chore funding in California because the State funds 53 percent of it. There is no child day care funding under Title XX in the State of California. They have an extensive child care funding which is funded from State funds. Unless we examine the total package of funding, we don't know what social services are being provided in the State in total. Title XX is such a small package it can't service it.

MS. GEREENICS. Let me ask how you would define the role of an advocate group and to assess the impact the advocate group could have on the State planning process in distributing all of these funds, not limited to Title XX?

MS. LASDAY. I think we could describe our participation. When the Federal regulations were published, we examined them and we sent in a statement expressing concerns. One of our concerns was the regulation permitting administrative costs to be charged against service funds, which had never been allowed before, and with no restrictions and none of the prior restrictions and limitations on the cost of administration. We've been watching this, and all across the country there has been less and less purchase of services with Title XX funds except in States like New Jersey, which operates its own services such as child day care and homemaker chore services of the State agency operation in the local communities.

We find that caseworkers' salaries, supervisor salaries of local and State departments of social services or human resources, whatever they call them in a particular State, are being charged against the Title XX funds. In California they call it case management. In New York State it is usually charged against social adjustment, which is a counseling program. There is no breakdown of costs to really determine how the money is spent and there is no relationship between the comprehensive annual social services plan in any district and what is actually spent.

This is where the citizen comes in, asking questions, pushing in on any hearings that are being held, asking for hearings, going before the local legislature to ask questions about it, and this can be effectively done. In my own county, I chair an advisory committee for the legislature on child development which serves as the county day care council, and I have raised it at three consecutive budget hearings why the \$100,000 in the title limit 22 comprehensive service plan was marked for child day care, but only \$6,000 of that was for purchase of services. All the rest of that is some way of spreading out the administrative costs. And that's how the citizen participates.

Ms. GERE BENICS. Thank you.

Miss Sommers, I understand, as national coordinator of the task force on older women, you particularly have a particular concern with the CETA program. And I was wondering if you had identified age discrimination within that program and, if so, if you could describe that for us?

Ms. SOMMERS. Yes, I think that the age discrimination in CETA is purposeful. It is evidenced in the publications, in the figures, but it all is based on very reasonable arguments to the planners and prime sponsors who are the ones who really decide where the money is spent. But then I think we have to, therefore, tackle this question of reasonableness because discrimination has always seemed reasonable to persons who benefit from it and, until the victims cry out about it, it continues. For example, women, it seemed more reasonable to limit women to certain occupations until they refused to be reasonable about it, which is not surprising because we're not supposed to have all that much reasoning ability.

The point is that I think this is the basis of the thing. Women in the middle years and especially older women, over 65, as well as older men, suffer the greatest structural unemployment of any particular age group. The reason for that is age discrimination. That's it fundamentally, and conventional wisdom, which is not challenged by prime sponsors or by the planners, goes unchecked—"Why train them if they can't be placed; they have social security or SSI, or they're not in the labor force so they're not our concern." But this is in fact a new poor and especially women who are not married, either widowed or divorced, if CETA does not go that extra mile, it might as well hang up a sign saying, "Older women need not apply."

I think CETA has not caught up with the fact that many older people have to work to combat compounded inflation. Fortunately, Congress is beginning to see the light, so send that reasonable qualifier back to the congressional drawing board. I think the reasoning ability of the administrators is a weak substitute for the law in the fight against discrimination. I have spelled it out in detail in a written report, but that's the substance of it.

Ms. GERE BENICS. Have you found that the interrelationship and interdependency of various governmental programs such as Title IX of the Older Americans Act and CETA serve as a rationale to deprive or keep older workers and specifically older women out of the labor market?

Ms. SOMMERS. Very much; the Title IX program is a separate but very unequal program. It is the key rationale for exclusion in CETA. It is designed to serve the needs of older workers according to the literature, yet on reflection, it is unchallenged age bias, first in amount of funding. It has enormously increased until it is 2 percent of the manpower funds. Secondly, it is half-time employment without any option, and the excuse always given there, "These people have social security." But half the people are under 65 who are under Title IX. It provides minimum wage or slightly over.

There are occasions when people have been pushed out of CETA onto Title IX programs, being forced to take actuarial reductions in their social security, working next to people receiving one-quarter of the income; the eligibility requirements are much tighter, even tighter than SSI. I think this brings us to the question of categorical versus mainstream programs. It is possible to have categorical programs which are supplements, not substitutes. This is true in some of the youth employment programs. I think that you must address the question of the volunteer programs, which some of them are semivolunteer or disguised under minimum wage programs for the low-income older worker, where they may be doing great services, but they could be paid on the same level as CETA. I think that should be one of the areas to attack, the reasonableness again—when the reasons are unraveled, the end is age discrimination.

Ms. GERE BENICS. Thank you.

Ms. Sandler, 1975 census data show that now women comprise nearly half of the first-year enrollment in graduate and professional schools and the age of these women is rising, well, 100 percent from 1970 to 1975 of women ages 25 to 34 now attending those colleges. I wonder if you would at this time describe the impact of the age-related admissions policies on older women?

DR. SANDLER. I'll be happy to try it because I went back to school at the advanced age of 35; the first thing I was told was "We don't take too many older people, particularly older women."

Fortunately, I got in, but there is a myth in academe that older students are not serious; if they were really serious, they would have

come to undergraduate school when they were 18 or to graduate school when they were 22. The myth is that they don't perform as well and yet the data that we do have, particularly for women who go back to school, indicates they will perform quite well because they know more about life by the time they're 35 and are far better motivated than maybe the younger student who is still figuring out what the world is all about.

There is indeed a lot of discrimination in higher education, certainly, at the admissions level in many, many places; it comes out in a variety of ways. They don't come in with a written statement and say, "We will not admit anybody over 35 or 32 or 48," or whatever. It varies from school to school to school; it varies from department to department, and there's no consistent rationale that everyone or anyone has. It is always in each individual's head as to what's wrong with being an older student.

Certainly, for students who have been out of school a long time, particularly for women, who tend to have an irregular work history and an irregular school history because they have either stopped and started because of child rearing and family responsibilities or they may have moved throughout the country with their family. That kind of work history is viewed as not particularly good, and therefore again it is held against the woman and she doesn't have as good a chance of getting in.

Similarly in financial aid, we have a good deal of discrimination; again, it comes out in a variety of ways. There may be many scholarships, very prestigious scholarships, which are restricted to persons under 35 or under 30 or whatever—usually 30 and 35 are the cutoffs; this is a particular hardship on women who have postponed their careers and then come back to school.

Part-time study restrictions, even though it falls fairly on everybody, supposedly, does have a disproportionate impact on women who very often do have family responsibilities and cannot attend school part time because there is restriction on either part-time study or on part-time financial assistance.

It comes out even in some of our Federal programs. I heard of one woman whose husband is quite ill. She had four daughters, all of them in college, and four sons in high school, so she applied for financial aid for the four daughters and all four of them received it.

She then applied also because her husband is quite ill, and clearly she will have the responsibility of putting the boys through college as well as what she can help with the girls. She was not eligible because partly—if you are an independent person as contrasted with a married person, you are therefore defined differently. Then, even though the income and information was absolutely identical for her daughters as for herself, so it comes in the some of the formal programs as well.

I want to make a note here. That is, that, unlike all the other statutes that either prohibit discrimination on the basis of age or pro-

vide special services on the basis of age, all of those statutes have an extension of age of 65 or older. These statutes that we're talking about today just say that "age," so that someone 25 can easily be discriminated against on the basis of age and that does indeed happen in many of our academic institutions.

MS. GEREBENICS. Is there a problem with evaluating the credentials of women in the admissions program? I mean, for instance, taking into account life experience over a number of degrees?

DR. SANDLER. Yes, we are beginning to see trends in that direction where some schools are indeed looking at what women and other persons have done during the time they were out of school. That's happening with the drop in the birth rate; there are less students applying for undergraduate work than previously, so schools are more eager to take other students, including women, including older students, including older women, so they're going to be bending some of those rules in an attempt to get extra students in their programs.

But there is a problem; again, if I may be personal, when I went to graduate school and my master's degree was considered as expired, that was what I was told. Therefore, I had to take a whole bunch of courses over again at the same time I was teaching them. This happens to many, many persons, particularly again older women because they are the predominant group that is going back to school at an older age; they are going on to further education, call it a second career, and I suspect eventually we will have the third career phenomenon as well. But women are more likely to do that. They are certainly going to be there in larger numbers, and women, being devalued by our society in the first place, an older woman was sort of doubly devalued. Another example of this is even worse if you are older, minority, female, and handicapped, you get that much more.

MS. GEREBENICS. Thank you.

Mr. Chairman, I have no further questions, but I would like to ask that Ms. Sandler's and Ms. Sommers' statements be added to the record at this time.

CHAIRMAN FLEMMING. Without objection, that will be done, with an expression of appreciation for those statements as well as for your response to questions that have been addressed to us so far.

VICE CHAIRMAN HORN. Dr. Sandler, I am very familiar with the fine job your project has done for higher education. While it is not directly relevant to this hearing, I would like your advice as long as you're here because there's a problem of equities involved. You mention that we have less students applying because of the falling birth rate. As you know, we have a plateauing of enrollments in American higher education. In fact, the recent statistics of the *Chronicle of Higher Education* showed a decline, although my own university has a large increase.

Now, we have been trying to make room in American higher education for women and minority groups in faculty and staff positions in the classroom, under affirmative action policies. We are now faced

with trying to eradicate unreasonable barriers due to age and, say, arbitrary retirement at age 65, which as you know, a bill is going through the Congress, so we are faced with this situation which means that we get no new positions. Extending the retirement age 65 to 70 means all those there currently can stay on another 5 years, which means as we reach out to bring in blacks, Mexican Americans, Indian Americans, and women into higher education, there will be proportionately less and less positions for which they are eligible. Now, do you have any advice as to where the equities are in terms of mandatory requirement as it clashes with affirmative action considerations in American higher education?

DR. SANDLER. I'm well aware that the formal position of most of the higher education associations has been really concerned about the mandatory age requirement not being lifted. I think the women's groups take a different point of view for several reasons. Their feeling is that's a problem throughout the society, not just in higher education in terms of opening up jobs, also that women have earned less money and may very well need to work longer so they can have higher retirement when they do retire. Most retirement plans indicate theoretically that women are supposed to live longer, so that a man and woman who have made the same amount, the woman will be getting less when she retires. Women, as a group, are more likely to be alive at 65 and willing to work while most of the men will have died off by that point. I think it is a difficult problem. I think it is one in which one balances all pros and cons, but I think it is not a problem that is limited only to higher education but really affects the entire society.

VICE CHAIRMAN HORN. I can understand that position that, if women were at age 65 now, they would probably benefit more even than men at age 65, given their lengthening longevity and so forth. I guess our problem is the transition to get from here to there because in the transition period we might well be precluded from starting women and minorities on the track, in their just proportions, because the positions aren't there, so that they will really be delayed to have this opportunity to even be extended when they reach age 65.

DR. SANDLER. It might be. As a transition there might be grandmothers-in of persons already on jobs and perhaps they could retire at 65 rather than 70 if a person is currently on the job, and I suspect there could be some transition written in the legislation when it reaches the House. I believe it passed the Senate.

VICE CHAIRMAN HORN. My concern is that the grandfathering-in is precluding the grandmothers-in. That's all.

CHAIRMAN FLEMMING. Commissioner Ruiz.

COMMISSIONER RUIZ. No questions.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. No questions.

CHAIRMAN FLEMMING. I appreciate, and I know my colleagues do, the point of view that has been expressed by all three of the members of this panel. I noted particularly the response to the questions relative to Title IX and CETA, and I very much am interested in, of course, the dialogue between the Vice Chairman and Bernice Sandler on the issue that he has raised. I think this points up the fact that we do have to do some fresh thinking in this particular area if we're really going to come to grips with this whole issue of discrimination on the basis of age. We again appreciate your statements. We appreciate your response to the questions and we look forward to continuing to work with you in this area.

MS. LASDAY. May I ask for permission to submit a statement from the information that I gathered over the weekend and didn't have time to run it?

CHAIRMAN FLEMMING. We'll be delighted to do that. It would add a great deal of information for us which we should have asked for. I'm glad that you brought it up.

Counsel will call the next witnesses.

MR. DORSEY. The Honorable Ray Marshall, Secretary of Labor, accompanied by Carin Claus, Solicitor, Donald Elisburg, Assistant Secretary for Employment Standards, Ernest Green, Assistant Secretary for the Employment and Training Administration.

[Ms. Carin A. Clauss, Mr. Donald E. Elisburg, and Mr. F. Ray Marshall were sworn.]

TESTIMONY OF CARIN A. CLAUSS, SOLICITOR; DONALD E. ELISBURG, ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS; ERNEST G. GREEN, ASSISTANT SECRETARY FOR EMPLOYMENT AND TRAINING; AND F. RAY MARSHALL, SECRETARY; DEPARTMENT OF LABOR

CHAIRMAN FLEMMING. Secretary Marshall, I want to express on behalf of the Commission our deep appreciation for your coming here and being with us and participating in what we think are some very significant hearings, dealing with problems that we know you have dealt with not just since you became Secretary of Labor, but over a long period of time, and we certainly welcome very much the opportunity of having the benefit of your insights and your views on these matters. We're also very happy that you are accompanied by the new Solicitor of the Department. As one who has engaged in quite a number of meetings dealing with this particular issue, it has been my privilege to participate in many of the same programs with her, and all of us in this field developed a very deep appreciation for her leadership. Consequently, we're delighted she is now in the post she is in. I see you are also accompanied by Mr. Elisburg, the Assistant Secretary for Employment Standards, who has likewise been in this field for quite a while.

If you have a statement, we'd be very glad to have you handle the statement any way that you desire—read the entire statement or, if you want to summarize it in part and insert the entire statement in the record, we'll be glad to have you do that, but any way at all that you desire to proceed.

MR. MARSHALL. Thank you, Mr. Chairman. I would simply like to summarize that statement, but before we start, let me thank you for the opportunity to come and express some of our views on the problem of age discrimination. I will shortly be joined by Assistant Secretary Ernest Green, who is between here and the Labor Department somewhere, and because of commitments that I have, I won't be able to stay with you the full time, but they will be able to remain behind and answer questions for you.

Mr. Chairman, we recognize that there are problems in adequately providing services for older Americans. We also recognize that older Americans are not receiving their proportionate share of benefits under the programs receiving Federal financial assistance through the Department of Labor.

This disproportionate treatment appears to exist even in the Comprehensive Employment and Training Act programs, which have been subject to a nondiscrimination provision in that act since 1975. We view this as a very serious problem of employment because the Department of Labor exists to protect and promote the interest of American workers. We think that discrimination is extremely costly to the Nation, to the workers who are discriminated against, and to the people who do the discriminating. And therefore, we are examining our programs to try to improve our enforcement of them and that applies across the board, as we're concerned about any discrimination against people in employment for reasons unrelated to their merit and productivity.

The Department of Labor administers a number of statutes designed to advance the public interest by promoting the welfare of wage earners, improving their working conditions and advancing their opportunities for profitable employment. The Department's responsibility for older workers is the same responsibility it has for other population groups, namely, the optimum utilization of the Nation's human resources. The Department's goal is to eliminate any existing practice which results in the denial to any individual of the right to be considered for employment and training on the basis of his or her ability to do the job. Unless individual ability and productivity is encouraged and developed, we cannot maintain productive economic and employment policies for the Nation.

For these reasons we are very much interested in the outcome of your current inquiry. Two years ago Congress enacted the Age Discrimination Act of 1975, which has as its purpose the elimination of unreasonable discrimination based on age in activities and programs receiving Federal financial assistance. This is certainly a most

worthwhile objective and deserves everyone's active support. The act gives your Commission a considerable amount of responsibility for finding ways to implement the act by requiring that your report on the age discrimination in federally-assisted programs precede the development of implementing regulations. We are pleased to have this opportunity to render whatever assistance we can to you in your important undertaking.

As you know, the Department of Labor administers the Age Discrimination in Employment Act which has been in effect since 1968. The ADEA is the corollary of the ADA, and as between the two acts the Federal Government has, or will have, the legal machinery necessary to have a significant impact on age discrimination in employment and in federally-funded programs. Accordingly, our experience under the ADEA should be valuable in developing enforcement mechanisms under the ADA.

There is currently pending in the Congress legislation which would amend the ADEA to raise the upper age limit under that act from 65 to 70. The administration supports the extension of coverage. The measure passed the House of Representatives just this last Friday and is currently under consideration by the Senate Committee on Human Resources. The President has reflected this personal support of this principle but has asked that the measure reflect his concern that a bona fide occupational qualification for law enforcement activities where appropriate be made clear under the statute. In addition, in view of the impact to the legislation the administration is requesting an additional 6 months' delay in the effective date.

The prepared remarks outline for you some of the known characteristics of unemployment among older workers and indicate some of the steps which we are taking to fill in the great gaps which exist in our knowledge. Statistics indicate that the unemployment rates for workers aged 45 and older and 55 and older are among the lowest of any age group in the labor force. On the other hand, the duration of unemployment for the older age groups is significantly higher than for the younger age groups in the labor force.

No one is fully aware of the numbers of older workers who are not counted in the unemployment statistics or the reasons why they do not show up. We can expect that persons in this age group make up a large number of the discouraged workers who have withdrawn from the work force and therefore do not appear in employment statistics. We are aware, however, that the reasons for involuntary loss of jobs among older workers include changes in the state of the national economy and economic changes affecting one section of the Nation, such as the decline in the textile industry in New England. Almost forgotten are rural older workers who have been adversely affected by a continuing reduction in the number of family farms. Many older workers are capable of using their skills and are willing to do so. Many can make a contribution both to the employer and themselves by working part time.

Above all, in a society which places high importance on the value of work, is the need for all to be able to work who have skills to contribute. It is important to aid these citizens who prefer work to idleness, but present available findings, data, and beliefs are inadequate for a complete understanding of the problems of the older worker and do not provide an adequate base upon which to determine the effectiveness and impact of federally-assisted programs on these workers. The employment, unemployment, and related problems of older workers are becoming of increasing concern as the number of older persons grows in absolute terms and as a proportion of the working population. In addition, recent economic conditions have made more severe the problems of older workers who want to remain in the work force.

To obtain new knowledge and analytical findings useful to the formation of future plans and recommendations for improving services to older workers, the Employment and Training Administration has contracted with the American Institutes of Research to prepare a research and development strategy concentrating on the employment-related problems of older workers. The details of this study are set forth in the prepared testimony and include areas of study which should be of great interest to the Commission. Results of the American Institutes of Research study will probably be available the latter part of this year. In addition, we have funded several other research and demonstration efforts related to older workers. With a broader knowledge attained through these and related efforts, the Department of Labor will be able to make better recommendations on public policy concerning workers at or near retirement much more sensitively than has been possible heretofore.

As I have indicated earlier, we are aware of the employment needs of older workers and share the concerns of the Commission that this Department takes effective action to ensure full participation by older workers in the Department of Labor programs. The principal federally-supported and training programs are authorized by the Comprehensive Employment and Training Act, CETA, and are administered by this Department's Employment and Training Administration. Persons in all age groups participate in programs which provide financial assistance to States and units of local government acting as prime sponsors to provide comprehensive employment and training under Title I, in public services employment under Title II and VI; however, the prime sponsors determine the appropriate mix of significant groups to be served in their areas.

On December 31, 1974, CETA was amended to require that grants, contracts, and agreements under that act specifically provide that no person with responsibilities under the act will discriminate in the operation of such programs on the basis of age—thus adding age to the existing categories of race, creed, color, national origin, sex, political affiliation, and beliefs.

In regards to complaints about specific programs or involving particular individuals, CETA has a process which permits anyone to file a complaint which will be processed and resolved, oftentimes after a formal hearing before an administrative law judge. We recognize that a complaint procedure can only take care of situations which are brought to the attention of the Department and that it is necessary for the Department to make an affirmative effort to discover problem areas. In this regard we've been made aware of the problems created by prime sponsors failing to serve all of that significant segment of the population which are eligible to CETA programs.

We have this year strengthened our CETA regulations for fiscal year 1978 to ensure that under the basic CETA titles the unemployed population is served equitably in terms of age, race, and sex. Prime sponsors are required to present a demographic breakout of their unemployed population to indicate the significant segments they plan to serve, and to provide adequate justification in instances where service to a significant segment results in a variance of 15 percent or more from a demographic group's incidence in the unemployed population. Although we realize that this approach does not take into account all possible factors, such as the unknown number of discouraged workers, we feel this emphasis on identifying groups for service will go a long way in stressing the need for prime sponsors to consider all groups, including older workers, in planning their CETA programs. In addition, the prepared remarks set forth several actions aimed at ensuring consideration of the older worker which have been taken by the Employment and Training Administration.

During the first three quarters of fiscal year 1977, 3.2 percent of the approximately 1.1 million persons served under Title I of CETA were 55 or over. The comparable figure for Title II was 6 percent of the 313,200 served, and for Title VI was 6.1 percent of the 370,700 served. While these figures represent a significant improvement from those of a year ago, we believe that the CETA track record on providing services to older persons can be further improved. Within the limits of statutory authority, we will continue to take steps to ensure an increase in the overall level of CETA services to older persons.

In addition to the CETA programs, the Employment and Training Administration is also responsible for administering the senior community service employment program established under Title IX of the Older Americans Act. This program assists low-income elderly by offering them subsidized, part-time employment opportunities in community service work. During fiscal year 1976, the Title IX program provided for about 12,400 jobs. In July 1976, the program was expanded to nearly 15,000 jobs; and the fiscal year 1977 appropriation and the Economic Stimulus Appropriations Act boost the total fiscal year 1977 Title IX appropriation to \$150 million, providing for an even greater expansion for a total of 37,400.

Although it is a relatively modest program, it is usually regarded highly in the communities where it operates. Although the authorization for the Title IX program is scheduled to expire at the end of fiscal year 1978, we will ensure that the elements of this program which have proven so effective will be retained.

We are concerned that the senior community service employment program may, by its very existence, give CETA prime sponsors a rationale for ignoring the elderly and, thereby, may cause an overall reduction of employment-related services for this group. However, we are committed to doing what we can to prevent this.

Within the broad framework set forth by the Wagner-Peyser Act the Federal-State employment service system has established programs of special services for those applicant groups who are confronted with various obstacles in their search for work, and among these are veterans, migrant and seasonal farmworkers, the handicapped, members of minority groups, and older workers. The employment service has a mandate to provide a complete program of intensive counseling, assessment, job development, placement, and referral to training and social services to meet the employment-related needs of middle-aged and older workers with the use of staff specially trained to recognize and to cope with age-related employment problems. However, the facts and statistics indicate that the results may not be adequate.

The statistics show that the older workers are not being placed in the same proportion as other job applicants. In order to improve this record, the Employment and Training Administration has funded five State demonstration projects in which retired men and women are working in employment services local offices on a half-time basis to provide intensive development and placement services for older workers. In addition, the employment service is participating in a national study funded by the Administration on Aging of HEW to clarify income and other employment-related needs and expectations of older workers.

In the prepared remarks I have attempted to provide an overview of the current participation of older workers in certain program areas and on the studies we're conducting to assess and deal with the problems and to provide more equitable access to Labor Department assistance programs. I realize that I am not commenting on all the issues which interest the Commission, but I have two Assistant Secretaries and a Solicitor with me. I see that Mr. Green has joined us, and they will be available to answer any questions which you might have. I also can be available for a time, Mr. Chairman, and members of the Commission, to respond to any questions that I can answer. Thank you.

CHAIRMAN FLEMMING. Thank you very much, Secretary Marshall. We appreciate this statement. It does give us a good frame of reference within which to consider the issues that you have identified. We appreciate your willingness to remain for a period of time to see

whether or not members of the Commission have questions that they would like to address to you.

I have noted your comments relative to Title IX of the Older Americans Act and the impact that that can have on the utilization of CETA resources as far as older persons are concerned. Do you feel that problem that you have appropriately identified is an insurmountable one or are there things that can be done, say, within existing law, to tie these together more effectively, or are there possible amendments to Title IX that should be considered by the Congress when it takes a look at the Older Americans Act at its next session which might make it possible to mesh the two a little more effectively than they are now?

MR. MARSHALL. I believe there are things that we can do within the framework of existing law to make this program more effective. However, I think that we ought to give very careful consideration to legislation to overcome some of the obstacles that might be involved in making it difficult for us to target on the problems of older people.

As you know, if we work within the CETA system as it currently is, we have to rely pretty heavily on the prime sponsors to take the action that we've indicated. You always have some tension between the desire to let the local prime sponsors shape their programs in accordance with the very good purposes of CETA and the other desire to target on areas of special need. This is a common problem that we have in CETA. For example, we have had difficulty getting the CETA prime sponsors to focus on the problems of young people. Half of all unemployed people are under 24. We believe very strongly in the Labor Department in the targeting concept, as we believe we can make much better use of our resources if we target them on these areas of special need and people with special need, and this includes both young people, particularly between the ages of 16 and 21, as well as older people.

We believe that it might be necessary for us to recommend more targeting in the revisions to CETA as well as in the Older Americans program, and to view it comprehensively. One of the problems that we have now is that it is very difficult to take a comprehensive approach to the employment problems of any group because of the fragmented nature of the legislation. We believe that it is necessary to do that in order to meet all the needs of that particular group, so we're giving very careful attention to that problem as we come up next fiscal year for our recommendations on amending these acts.

CHAIRMAN FLEMMING. As you probably know, the Older Americans Act, as a whole, expires also in '78 and consequently, if you or your associates have any specific suggestions that you would like to make to this Commission designed to tie Title IX of the Older Americans Act into the CETA program or any of the other programs, we'd be very, very happy to receive them and consider them in connection with the report we will be filing with the President and the Congress in November.

MR. MARSHALL. We will have some suggestions that we would like to make to you, Mr. Chairman.

VICE CHAIRMAN HORN. Mr. Secretary, one of my concerns with this mandatory retirement going from 65 to 70 are the young unemployed doctorates, especially women and minorities, who will not be having opportunities in American colleges or universities that they might have had. There are several options. One is employment by CETA. Another might be if the Federal Government launched a major program to export American higher education talent overseas in developing countries to help them from maybe a fourth level to a third level. In this process of trying to identify the extent of this impact, I wonder if you have any advice in several areas. One is what the Bureau of Labor Statistics can do to give us accurate data as to productivity in graduate schools of America, the 310 or so graduate schools, so that we would know the impact in relation to unemployment, and also, based on your past experience as a university professor, I wonder what your advice would be, not simply as Secretary of Labor, as to how we solve this problem?

MR. MARSHALL. I think that the first thing we need do is really know more about the impact than we currently know. We have some studies that have been done within the Department. We'll be happy to share with you—in connection with our work on the amendments to the Age Discrimination in Employment Act—what our main conclusion is overall: the raising of the age from 65 to 70 will not constitute a very significant problem in terms of its overall impact. That does not mean that when you look at particular groups like the universities that you might not have a problem. I think, however, that it is important to recognize that the problem for the universities does not come solely because of raising the age from 65 to 70. The problem comes because of decline in total enrollments and because the university personnel planning equipment was geared to much higher levels of enrollment, and there is a problem now for younger faculty members whether or not we raise the age. I think we ought not to confuse those. I think what we ought not to say is by raising the age we create these problems for people, because I think that would be a serious mistake to infer that, by permitting older faculty members to stay on for 5 years, that this is somehow a significant factor in the basic problem.

It might be—my own suspicion would be that it would obviously cause more faculty people to stay on rather than retiring at 65, but I think we need some hard evidence on that. Many universities already have 70. How many, I don't know. I think this is the thing that we can find out and ought to find out. There are many other things, of course, that can be done to improve the employment opportunities of young Ph. D.s other than teaching. For the past several years most of them in most fields have known that they were not going to be able to get positions in teaching, and I think it would be unwise to discriminate against older faculty members just to provide some addi-

tional positions for younger ones. This, I think, is what really needs to be done. We need to pay attention to the way the academic labor market operates and try to make it more effective, and in many cases this means a number of things. One, it could well be that what needs to be done is to strengthen education in academic institutions, anyway, to improve the quality. I think a good bit of that could be done and provide more opportunities for younger people that would be much more effective than simply requiring older faculty members to retire at 65. It is likely to be much more productive.

There are many, many situations where younger people are not qualified to teach. This means you've got to make a management decision, and I recognize that that's frequently difficult in a university setting, but I think that it is one that the universities should grapple with. Another one is that you can have smaller classes and pay more attention to more individualized instruction, improve the quality of instruction. My own suspicion would be if you did that and then concentrated on the nonacademic activity that young faculty members might be involved in, and be more effective. I think in most areas it has been recognized that teaching positions would not be available for a young Ph.D. and therefore he would have to go more into nonacademic type work. I think all of these things would have to be done.

Now, since I haven't made the study to see what the impact of raising the age would be specifically on faculty members, I might reverse my judgment if I found it had overwhelming effect, but I would be surprised after we get the evidence that raising the age is that significant as relative to most of these other things in providing opportunities for young faculty members.

VICE CHAIRMAN HORN. I agree with your premises, the problem of declining birth rate and declining enrollments. I mentioned this to previous witnesses and I know you understand that, but what concerns me is a lack of data. Here's a letter from the president of the American Council on Education, Jack Peltason, to Senator Williams dated September 7, in which he says, "According to one estimate," and I don't know the source for this, "it would reduce the number of new faculty hired in the decade 1980-1990 by 33 to 50 percent."

Now, what I think would be helpful is that the Bureau of Labor Statistics in the Department of Labor could examine this situation, because this has been one of our frustrations throughout the implementation of the whole affirmative action program in that nowhere in the Federal Government is there a central source of productivity statistics by discipline, where we know how many women, how many blacks, how many Asians, Mexican Americans, how many American Indians are being produced in these areas, and instead 3,000 universities are by sort of, if the book falls off the shelf, able to sort of figure out their own estimates in this area. I know I have suggested this to your predecessors as well as to the Secretaries of HEW for the last 5 years and others in the National Science Foundation, but I don't quite

detect that the government, which has the power and has the data base, is pulling this together, which could help a significant portion of the American enterprise community, in this case higher education.

MR. MARSHALL. I think that is right and I suspect what will have to happen is the information will have to be pulled together totally by discipline. I know I made such a study for the American Economic Association before coming here, on the labor market for economists, and I know a number of other disciplines have also done that and, because to some extent people are in noncompeting groups, probably the most meaningful assessment would be by major disciplines rather than in the aggregate, because I don't really know what it means to say that you reduced the hiring by 30 percent or—this might mean that if it means, say, fewer young people would get in than if you didn't require the retirement of these older people, if you assume that everybody who is 65 to 70 would have been forced to retire anyway, you get a different answer than if you take—I suppose one of the reasons that it would be so difficult to make such a study is you would first have to determine how many people were in that group and would be moving into that cohort area over the next several years and what the existing requirements were in major universities, but it wouldn't be hard. It is not a hard study to make. I think you could do as a first approximation what we already know.

VICE CHAIRMAN HORN. I wonder, for the record, could we have [what] the Bureau of Labor Statistics does know within the time the record closes just so we have some idea?

MR. MARSHALL. Yes. We can also make available to you the assessments that we made of the studies that have been done on the overall impact of the change from 65 to 70. What we found was that, as I mentioned earlier, as I recall the numbers, that it would be, in the aggregate labor market, the impact would be in the order of changing labor supplies from one-tenth to two-tenths of one percent, and that we don't really consider to be very significant.

VICE CHAIRMAN HORN. Well, my concern is as to whether the CETA program will adequately make up for this now new lack of job opportunities for highly talented people?

MR. MARSHALL. It could; as presently constituted, it probably would not. In other words, we would have to give special attention to CETA because now it is geared mainly to unemployed, very low, mostly, low wage workers, at or near the minimum wage, maximum of \$10,000 a year. But I think there are many things that could be done to make better use of people in public service jobs, and my attitude about that would be the same as it is about other unemployed: we ought to try to get them jobs in the private sector if we can, and if we're unable to do that, then we ought to provide the public service employment in order to facilitate both the employment of people now, as well as maybe retraining and redirection of their employment into other activities.

VICE CHAIRMAN HORN. Let me just say, Mr. Chairman, I would like to congratulate the Secretary on an idea launched several months ago and I'm not quite sure where it is, and that is, making greater use of American universities and colleges to solve some of the unemployment problems, a number of these ideas have been talked about for years, with the G.I. Bill for the unemployment, we think a lot more could be done and we commend you for your interest.

MR. MARSHALL. That was part of the work we will be doing in the Youth Employment Demonstration Projects Act of 1977 the President signed August 5. What we're going to do initially is to experiment with the idea to be sure that we know that it will work, and then if it does, we will make recommendations to the Congress that it be greatly expanded. From all that we know, we're reasonably certain that it will be a successful program, but we need to find out more about how to implement it. The basic idea—and of course, this will help colleges and universities, too, if we're able to do it—is that one of the reasons that many low-income people are unable to attend college and university has very little to do with the tuition cost. It has a great deal to do with the cost of living and maintaining yourself while in college or university or other secondary, postsecondary training, and the idea that we're developing is that if you can attach educational entitlement to people who are in our work programs, then you will have something like the G.I. Bill for these people, who can then redeem those wherever they would like, and we think that would help.

We also think that another way we can help is to provide part-time and full-time summer public service jobs to young people who are in college and university. We believe there are many things they can do and want to do to help provide services to people that will not get done without it, and this would simultaneously make it possible for them to stay in school or return to school as well as render a very important public service. We believe that many such public service opportunities exist.

VICE CHAIRMAN HORN. Could we get this material in the record?

CHAIRMAN FLEMMING. Yes, without objection it will be entered into the record at this point.

I may say I appreciated the dialogue that you've just had with Commissioner Horn. As one who is an ex-administrator in the university world, I can be a little more relaxed about the advent of a law of this kind than Commissioner Horn conveyed. I think both of you identified issues that should be looked at because otherwise we're going to be confronted with a whole series of sweeping generalizations and in many instances there may not be too much basis in fact for those generalizations, so I believe that if the various units of government can make some investment in the kind of studies that you and Commissioner Horn have identified, it can be extremely helpful. I personally have the feeling that time and again the people who reach 65 and who are retired from many institutions are at their peak and are in a posi-

tion where they can render the maximum of service; so that I have always reacted negatively to a system that tends to force them out at that particular point. I appreciate some of the practical issues that are involved. I hope that the passage of this law, and I rather assume that what's gone through the House will go through the Senate close to that form, will stimulate them to come to grips with those issues in a more positive way.

Commissioner Freeman, do you have a question?

COMMISSIONER FREEMAN. Mr. Secretary, in your statement, you indicated that the age group between 45 and 55 has the lowest unemployment rate, which seems to indicate that you do classify as to age. While under a particular concern about the compounding effect of race and sex and age which I guess is personal, since I'm part of a class, a race, a part of a class of sex, and older Americans—I call that triple jeopardy—and I would like to know if you have the information as to whether that low figure of 4 percent is true with respect to the black and other minorities between 45 and 55.

MR. MARSHALL. No, it is not. It is higher.

COMMISSIONER FREEMAN. What is that figure?

MR. MARSHALL. We can make that available for you. Generally, you have the figure—

MR. GREEN. I only have it, Mr. Secretary, on the basis of age. I would have to get it.

MR. MARSHALL. We've got it separate, but we don't have it for all categories together. But what is it with respect to race, let's just take race.

MR. GREEN. I don't have the breakdown on race. I only have here unemployment rate distribution of that by age 45-54, the rate is 4.2 percent and that represents 10 percent of the unemployed work force. At 55 and 64, the distribution is 5.7 percent and the rate would be 3.5 percent; 65 and over, the distribution is 1.9 percent, the rate is 4.7 percent.

MR. MARSHALL. We have, of course, all those figures and we can get those for you.

COMMISSIONER FREEMAN. It would be very helpful because in our prior studies of other areas, we have found that the discrimination on the basis of race is pervasive in this society, discrimination on the basis of sex is pervasive in this society, and if you add to that discrimination on the basis of age, as I said, in the triple jeopardy, it would be helpful for the record if the Department of Labor would submit to us the cross classification of data to indicate the extent to which it is further compounded.

MR. MARSHALL. We'll be happy to do that.

CHAIRMAN FLEMMING. I appreciate that and without objection it will be introduced into the record at this point. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Earlier this morning, Mr. Secretary, we had a witness who said that the concept in the Age Discrimination Act

of 1975 of reasonableness contains serious shortcomings. I should like to quote very briefly from the statement submitted to us in order to receive your reaction on the alleged prejudicial impact of the reasonableness concept.

Even if there were good reason for discriminating by age, the constitutional principle of equal protection and due process should take preference. As long as government programs are permitted to prioritize people by age, the older population will receive short shrift, especially in anything that promotes independence and self-sufficiency such as job-related programs. This type of reasonableness assumes that given a choice between young and old, the elders should lose, which reinforces stereotypes and is based upon a static image of the pie. As long as the reasonableness qualifier remains in the law, the status quo will endure. Good will alone as with race and sex is a weak substitute in the fight for equity by age.

CHAIRMAN FLEMMING. Commissioner Saltzman, would you mind identifying the source.

COMMISSIONER SALTZMAN. The source is Tish Sommers' testimony submitted this morning by Ms. Sommers.

CHAIRMAN FLEMMING. Thank you.

MR. MARSHALL. Well, let me give you my reaction to the concept. In the first place, I think that there is no question if you just left employers free, that there would be a preference for younger people in most cases, and there are many reasons for that that really have very little to do with the ability of older people to perform the work. But I think that in order to combat that it is necessary to do a number of things, and I believe in our programs it is important for us to have the concept of bona fide occupational qualification. That is to say, it might be, I'm told without having seen the evidence, and some of my colleagues know more about the evidence, that in some cases, like air control people, that age is important, not in every case but the cost of screening out the three or four, examining everybody in order to be sure about the three or four people over the age group, would make it prohibitive, and therefore it makes some sense to say that a bona fide occupational qualification would exist in that case. But I think we ought to be very hardheaded about that and be sure that it really is. Because what appears frequently to be a bona fide occupational qualification really is not a bona fide occupational qualification.

Now, in addition to that I believe very strongly in the targeting concept. I believe as one way in government programs that we can get around the problem of excluding people is to have a separate program; if you have a particular program that is or tends to exclude older people, then, and you conclude that there's some reason for continuing it, it makes sense then to have a program that targets on older people. That's the reason I like, for example, the Green Thumb operation,

mainstream type employment program, because you can arrange a program that will meet the special needs of the elderly, and they tend to vary some, say, from the special needs of very young people. One of the things that Green Thumb does for people, for example, is make it possible for them to qualify very early for social security. Well, you're not going to do that with a youth program.

The youth programs have a higher higher education and training component and work experience component because the difference between older workers and younger workers is that many younger workers have had very limited work experience at anything, so that to provide that in a separate program makes sense. In our apprenticeship programs, we have usually age limitations, but what I believe we ought to do, and to do now, is to make it possible for older workers to reach the same end without going through that program necessarily. For example, in apprenticeship, we have apprenticeship regulations, but we also have regulations for trainees and they get you to the same place; that is, journeyman status; and you meet the same qualifications when you go through it. It is just that you don't put older people in the classes with teenage apprentices because you don't put people who are beyond the maximum age group. So I think that, first, there is something to that, the idea of a bona fide occupational qualification, but I think we also need to have, and we do need to have programs that target, but in our general programs we ought to be very sure that there is some justification for making the exception.

Mr. Chairman, I'm going to have to excuse myself, if you permit me.

CHAIRMAN FLEMMING. I appreciate that. I was just asking Commissioner Ruiz if he had a specific matter he wanted to address to you or could hold for the members of your staff.

COMMISSIONER RUIZ. Yes, I have a specific matter.

Tracking into industry is available to prime sponsors of graduates from their vocational training programs into industry, and I was going to, for this question, just ask hypothetically, let's assume that there would be no discrimination on the basis of age, upon the part of training entities funded by the Department of Labor. Let's assume further that the CETA programs suddenly became older persons oriented instead of youth oriented, yet industry would not hire older persons. Is there any mechanism within the Department of Labor which requires complaints by prime contractors that their trainees are not being recruited and hired by industry? Is there a tracking and reporting requirement upon the part of prime contractors to monitor this particular thing?

MR. MARSHALL. Let me let Mr. Elisburg or Solicitor Clauss answer that.

MS. CLAUSS. I think that's a CETA question. Prime sponsors do not have to report although we get information from them on their placement performance.

CHAIRMAN FLEMMING. Could I ask you to identify yourself?

MR. HUITT. Bill Huitt, Employment Training Administration.

MR. MARSHALL. If somebody alleges discrimination on the basis of age in one of our programs, we do take that, we have a provision.

CHAIRMAN FLEMMING. Secretary Marshall, Commissioner Ruiz is prepared to follow that with some of your colleagues, and may I just express, on behalf of all of us again, our gratitude for your willingness to be here with us, and to share with us your very positive approach to the kind of issues that we are dealing with. Thank you very, very much.

Commissioner Ruiz, if you want to pursue that particular matter then I'm going to ask counsel if he has questions that he would like to address to some of Secretary Marshall's associates.

COMMISSIONER RUIZ. The reason I ask the question is because in the past I have been involved in manpower training programs funded by the Department of Labor, and I have noticed in existing training programs that the Department of Labor funds to a great extent monies for training purposes, and then they have graduates and then these graduates are not recruited by industry, and although this money has been invested, here we have a lack of recruitment allegedly because of discriminatory practices, and I was wondering why this mechanism which you say does not exist isn't utilized.

MR. ELISBURG. There is no real problem in having this kind of a process. I think the question is how much of this information comes to the Department level. To the extent we would get any information like that, or to the extent the Employment and Training Administration would receive any indication that there was a reluctance on the part of an industry to be employing trainees, I am sure that they would just furnish it to our agency, which is the Employment Standards Administration which deals with the Age Discrimination in Employment Act, and we would undertake appropriate investigative and remedial activity. I think the question is how much of it really has come to us; to the extent we have had any of that brought to our attention through that program, or through any of our other affirmative action programs, we would certainly take steps to do the necessary investigation and track it through.

COMMISSIONER RUIZ. Has that been encouraged?

MS. CLAUSS. I think the answer is as you have suggested, a a terrific tie-in between CETA and the Age Discrimination Act that we never thought of in drafting the regulations for either CETA or age discrimination, and I think that is something we should seriously consider, making it a requirement of the regulations that the sponsor advise the Department.

COMMISSIONER RUIZ. There is a natural tie-in there.

MR. ELISBURG. There certainly is.

COMMISSIONER RUIZ. And because of the fact there is a natural tie-in, as you have suggested, a part of the regulations not only should require encouragement but some sort of a requirement of reporting?

MS. CLAUSS. I confess I never thought of it. I don't know if anyone else did.

MR. GREEN. If the violation did exist where it occurred, both the regulations for ES [employment service] as well as CETA would require that we refer it on. One, where we have notice of it, we would certainly pass it on to the complementary agency standards administration, and they would then pursue the enforcement or the corrective action necessary, but I think we have a possibility of title linkages. We certainly—it has been my experience, we have possibilities of title linkages for all of our training activity and compliance activity that we have not had in the past; there are other examples similar to this in which we have on one side a developing training pool and on the other side not full utilization of the enforcement activity that lies in the Department.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz, you planted an idea. I'll ask counsel if he has any questions he would like to address to members of the panel in order to round out his own.

MR. DORSEY. Chairman Flemming, in terms of the questions from staff, they are more or less—we have gotten a considerable amount of data so they are more or less designed to elicit certain policy issues. So I would like to recommend to you at this time that perhaps we could utilize a system which we have discussed earlier, namely that we could submit these questions for a written reply which would give us some record for a report in terms of the policy directives in these areas.

CHAIRMAN FLEMMING. Well, if you are willing we would like to submit a number of questions to you with the request that you provide us with written replies. In the meantime, members of the panel have been listening to this dialogue and there may be points you would like to underline or emphasize, growing out of the dialogue that has taken place with the Secretary, and if so, we would be delighted to have you do it at this time. to have you do it at this time

MS. CLAUSS. Chairman Flemming, I might just make two points, one in answer to Commissioner Saltzman's question on reasonableness; we have a section of the Age Discrimination in Employment Act, section IX, which presented somewhat the same problem as the Title III language on reasonable, and there the Secretary is authorized to establish such reasonable exemptions as may be necessary and proper in the public interest. We have always construed that language very narrowly, and we've used it—the only case that I can recall was to permit the summer jobs program where companies are encouraged to employ so many young people for the summer and we have exempted that one program from the general proscription of the Age Discrimination in Employment Act. I would hope that the exemption language in the Age Discrimination Act of 1975 permitting action which reasonably takes into account age would be limited to the kind of targeting the Secretary was talking about, where a particular problem has been identified in the community that has not been taken care of by the

program and you, therefore, design a program to target it and not be interpreted more broadly. I would think the regulations should focus on that.

COMMISSIONER SALTZMAN. If I may pursue the use, is it appropriate to do something with the vagueness implied in the term reasonableness so that the dangers to which Miss Sommers referred, which make it possible that reasonableness become an excuse and rationale for continuing perpetuation of discrimination against the aging, be avoided?

MS. CLAUSS. I think certainly you'd want in the regulations at the very minimum, as we did in our regulations under the Age Discrimination in Employment Act, make it very clear how narrow that exemption is intended to be. I suppose ideally you might want to suggest legislative changes. I don't recall whether there was legislative history accompanying that which narrowed it. We always read it that way. I never thought it meant more.

COMMISSIONER SALTZMAN. That's why I think it important to get on the record on this occasion that reasonableness ought to be very restrictive in its application.

MS. CLAUSS. We might submit for the record the portion of our regulations which deals with the comparable problem under the Age Discrimination in Employment Act.

CHAIRMAN FLEMMING. This would be very helpful. If you'll do that, without objection, we'll enter it in the record at this particular point.

MR. ELISBURG. I might also point out that it was clear, we think, that Congress wanted these two acts to be read in conjunction with each other. There is a particular reference in the 1975 act which suggests that nothing in the '75 act should be construed to amend or modify the 1967 act, so that there was, we think, knowledge within the Congress that there was another ongoing statute that had dealt with some of these matters.

COMMISSIONER SALTZMAN. May I pursue with Mr. Green for a moment? It may be an aside, but it interests me in relationship to some other areas of our efforts. Would you construe the targeting concept as being somewhat analogous to affirmative action, and the supposed preferential treatment character of aspects of affirmative action?

MR. GREEN. As the Secretary indicated, we find that a number of our activities needs slightly sharper focus. Targeting is a concept that we are utilizing to a greater degree. As he indicated, one of the important parts of our Title I activity, a new regulation that the prime sponsors will have in front of them, or do have now, requiring detailed explanation of the population served and to hold a better measuring stick over how we judge the services of those programs. But in a sense, yes, it does get us to some forms of affirmative action, I think that could be said.

COMMISSIONER SALTZMAN. How do you resolve the philosophical concept? In the first place to overcome age discrimination, we're affirming the principle of equal treatment and then, in order to make

that an effective situation or effort, we're affirming targeting, which to some extent like affirmative action gives preferential treatment in certain instances to the aging or to minorities and women, under affirmative action in higher education, for example?

MR. GREEN. I suppose—my solicitors are here, not being a lawyer—that we try and achieve a point of greater equity of services in those communities that a CETA program exists for and as we in general—there are a lot of varied services that ETA [Employment and Training Administration] is involved in; employment service serves a somewhat different population than we would maybe in terms of our employment development programs under some aspects of CETA. Our apprenticeship looks at people who may be better prepared than some program we might have in Title I. So it varies, but the general rule of thumb is to try to have equity in terms of that population group that exists and that prime sponsor area, and it is where we see ourselves going.

COMMISSIONER SALTZMAN. The principle in balancing out these competing situations is equity to be achieved in redressing past and present discrimination directed at a specific group. Am I rephrasing it in an acceptable manner?

MS. CLAUSS. I think in terms of the regulations there, since the law requires that the groups—the disadvantaged groups be serviced equitably and there is a nondiscrimination section that by requiring the sponsor to focus on who are disadvantaged in his community, identifying them by race, sex, and age, then indicating how many of them are being serviced, that's a way the sponsor can determine if he's complying with the nondiscrimination requirement, the way we can check without waiting for a complaint.

Now, when you get into targeting, I think you may be getting into a question of once our investigations into the program show that a group has not been equitably served, then it seems totally consistent with the case law under Title VII to then target the groups to take care of the nonservice in the past.

COMMISSIONER SALTZMAN. Thank you very much.

CHAIRMAN FLEMMING. Do you have any other question or do any members of the panel have any further views they would like to express at this time? I appreciate again the dialogue relative to how we deal with the word reasonable or unreasonable, as the case may be, because this is obviously one of the major issues that confronts us in terms of the recommendations that we will be making to the Congress and to the President. Secretary Califano testified this morning and he indicated that through the head of the Office for Civil Rights they were going to make some recommendations for possible changes in the law which they would like us to consider because, under the mandate that the Congress has given us, we can not only recommend regulations but also recommend possible changes in the law. I would like to have your views growing out of your experiences in dealing with this

particular issue. If you have any recommendations that you would like to make to us on possible changes in the Age Discrimination Act of 1975 in order to relate it more effectively to some other legislation, we would be very happy to have you send along those ideas to us and we'd be very, very happy to consider them.

Is there anything else that anyone wants to add to the record at this particular time? If not, we're very grateful to you for spending this time with us. We look forward—I know members of our staff have been working with you and other members of your staff very closely—and we look forward to further association. Thank you very much.

MR. ELISBURG. Mr. Chairman, may I just mention to you that we have appreciated very much the way your staff has handled this matter, the way they have worked with us in the Department, and we hope we can continue that relationship.

CHAIRMAN FLEMMING. Thank you very, very much. The hearing is in recess until 1:30 this afternoon.

Afternoon Session, September 26, 1977

VICE CHAIRMAN HORN. The afternoon session of the United States Commission on Civil Rights age discrimination hearings will begin. Counsel will call the first witness, please.

MS. GERE BENICS. Robert Bynum, accompanied by Mr. William Rivers, also accompanied by Carol Butler, Patricia Rivers, and Karl with a "K" Tatel.

[Mr. Robert P. Bynum, Ms. Carol Butler, Ms. Patricia Rivers, Mr. William J. Rivers, and Mr. Karl Tatel were sworn.]

TESTIMONY OF ROBERT P. BYNUM, ASSOCIATE COMMISSIONER FOR PROGRAM OPERATIONS; CAROL BUTLER, DEPUTY ASSISTANT DIRECTOR, BUREAU OF FEDERAL-STATE PROGRAMS, BUREAU OF DISABILITY INSURANCE; PATRICIA RIVERS, DIRECTOR, BUREAU OF SUPPLEMENTAL SECURITY INCOME; WILLIAM J. RIVERS, DIRECTOR, BUREAU OF DISABILITY INSURANCE; and KARL TATEL, DIRECTOR, DIVISION OF INTERPROGRAM ACTIVITIES, OFFICE OF PROGRAM OPERATIONS; SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MS. GERE BENICS. Beginning with you, Mr. Bynum, will each one of you state your full name for the record.

MR. BYNUM. I'm Robert P. Bynum, Associate Commissioner for Program Operations, Social Security Administration [SSA], HEW.

MR. RIVERS. William J. Rivers, Director, Bureau of Disability Insurance, Social Security Administration.

MS. BUTLER. Carol Butler, the Deputy Assistant Bureau Director of Federal-State programs, Bureau of Disability Benefits.

MS. RIVERS. Patricia Rivers, Bureau Director, Bureau of Supplemental Security Income, Social Security Administration.

MR. TATEL. Karl Tatal, Director for Division of Interprogram Activities, Office of Program Operations, Social Security Administration.

MS. GEREENICS. Mr. Bynum, I'll direct the questions to you, but please feel free to defer to any of your staff for answers.

MR. BYNUM. Thank you very much. At some point along the way I'd like to make a statement of 2 or 3 minutes of some of the general questions that you have asked, if that's agreeable with you folks.

MS. GEREENICS. As I understand it, that statement is written, is that correct?

MR. BYNUM. Yes, it is.

MS. GEREENICS. In the interest of time, we'd appreciate if we could have it in the record with the full statement and summary that you prepared.

VICE CHAIRMAN HORN. Without any objection it will be entered into the record.

MS. GEREENICS. The referral system which is intended to link social security disability applicants to vocational rehabilitation incorporates age as one factor to be employed in screening these applicants for referral. I was wondering if you could explain to us why age is a criterion?

MR. BYNUM. I would like to ask Bill Rivers, the Director of BDI [Bureau of Disability Insurance], to respond to that question.

MR. RIVERS. This is quite an involved arrangement. It doesn't come out in our mind that sex is part of the criterion on basing discrimination in the sense—but age is a factor in the overall determining whether or not an individual is disabled because progressive degenerative disease is a factor of aging. Age is not identified as a selecting-in or selecting-out criterion for referral for rehabilitation services. I believe that is the issue before the committee: the matter of rehabilitation referrals rather than determinations of disability under Social Security's disability program.

We have guidelines for the State agencies under contract with Social Security, make decisions of disability on a national basis. And the guidelines are for their use in referring applicants, disability applicants, for rehabilitation services. We refer all applicants to the vocational rehabilitation agency that generally makes disability determinations throughout the country for us. There are some exceptions where the program is with health agencies and they have onsite counselors doing the screening of cases we refer to them, but the issue goes over to whether or not the individual applicants that SSA refers, as I say, are in turn picked up for rehabilitation services, and that's where the

guidelines come in, and they are tuned by individual States in keeping with the amount of resources the States have, the availability of facilities, the size of the workload they're able to handle. So in that process you do get the focus on those who are most likely, because of a culmination of factors, are able to benefit from rehabilitation services.

Now, we have several, you might say, segments of the activity. One is all applicants who come into Social Security district offices and file for benefits, whether they are allowed or denied benefits or told of rehabilitation services without reference to age.

Then we have the referral process of individuals who are disabled and the medical evidence, the vocational information is made available to the State vocational rehabilitation agency.

Then we have another facet that deals with beneficiaries who are selected for rehabilitation services, which services are paid for out of Social Security trust funds and this applies to both the Title II program and the SSI program. These referrals, as I said at the start, are the basis for the overall applicant population rather than slicing it at age.

The criterion, I believe, the criterion in one or two instances does refer, to be sure, to people aged 15 to age 45, but it does not preclude the referral of any individual to vocational rehabilitation agencies.

That's a long-winded background, but I'll try to be more specific.

MS. GEREBENICS. Would the distribution profile of these referrals indicate the preponderance being in that 15 to 45 range?

MR. BYNUM. We do have some figures on that, and I think the figures bear out what I've been trying to say in the sense of a spread—I have them here, yes. In the period January through June this year, the current year, 21 percent of the some 100,000 referrals that were made were in the 46 to 54 age group; 25 percent were age 55 to 60, and 26 percent were aged 60 to 64, leaving something under 25 percent for those below age 46, 45 and lower. The point here is that referrals as we make them in the disability program obviously end at age 65, or prior to age 65 since our program converts to retirements and survivors insurance program at that age level.

They break down just about a quarter under age 46, between 46 and 54, or 55, the 5 years from 55 to 60, and then from 60 to 65 just about a quarter in each of those categories.

MS. GEREBENICS. Could you submit that data for our records?

MR. BYNUM. Yes, we can, surely will. In fact, that will be in the material that you have.

COMMISSIONER SALTZMAN. Mr. Chairman?

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. I'm not sure whether you would have this information, but do you know whether or not there is a specific category of age by decade at which degenerative diseases begin to be typical, 40 to 50, 50 to 60, 60 to 70?

MR. RIVERS. We have not anything specific on that, sir. It varies with disease, of course. Of course, there are childhood diseases. We do

have a preponderance of our applicants, however, that are over 45, 55. I think I'd have to confirm this but, as I recall, our average age of the disabled applicant was around 50 to 55 the last I looked at it, so if that—you can draw anything from that, I think as one does get older, why the things start in weighing more on the individual's health as well as in the arduous labor activities, occupations, physical strains.

COMMISSIONER SALTZMAN. What leads me to be concerned, because there is a suggestion, it seems to me, that in defining disability, you may *a priori* be defining it in accordance with certain stereotypical views that aren't in relationship to the reality. Therefore, I wonder if there is any medical evidence which substantiates the idea that between 50 and 60 you begin to have to deal with increasing and intensifying numbers of degenerative diseases that explain the rise in disability numbers of 55. I wonder whether that is corroborated by any medical evidence, in other words.

MR. BYNUM. Commissioner Saltzman, we may well have some data. Certainly we would have data that would talk to the point of numbers of people who both apply for disability payments under our social insurance and SSI programs and the numbers who are allowed by age categories. We might very well have some data that would be useful to the Commission along the—

VICE CHAIRMAN HORN. Might we ask whether you might wish to cooperate with the National Institute on the Aging and put a joint statement at this point in the record?

Without objection it will be introduced at this point.

MS. GEREENICS. The use of social security funds for rehabilitation services to disability beneficiaries relies on an equation where the providing of services should result in a savings to the disability cash programs, and it often appears in this case that age is the decisive factor, and I wondered if you would comment on why age is a factor linked to the cost of services and in the consideration of the savings to the trust fund.

MR. BYNUM. Let me make just a quick general statement and perhaps Mr. Rivers would want to pick up on it. Obviously, cost does enter into the picture along with age because if you are talking about spending *X* amount of money to rehabilitate an individual, the cost element relates to the savings and social security benefits that result from removing the individual from the social security benefit rolls. Rehabilitation of an individual at age 64 can only save 1 year's benefits, since that individual converts to a retirement program at age 65 in any event. The younger the individual is, the greater potential there is, of course, for trust fund and general fund savings if the individual is rehabilitated.

It doesn't always work that way. Frequently there are instances where the older individual has something perhaps less debilitating, less difficult to take care of in terms of rehabilitation than the younger and it may be advantageous in terms of the cost element to spend your

money there. But typically that would not be the case, I guess, would it?

MR. RIVERS. Age is not the factor there. As Mr. Bynum indicated, the consideration is what group of beneficiaries are likely to be most returnable to the labor market to the extent that they would no longer be drawing disability benefits. The provision of the law was to use the available monies to the maximum extent possible to return people to the labor market, take them off the disability rolls, and in the application of the selection there, while you will have instances where an older person only needs a short period of disability, short expenditure of funds, or small expenditure, and will be restored into the labor market and the termination from disability benefits and that person would be provided rehabilitation services. On the other hand, you could have a younger worker that needed thousands and thousands of dollars and extended periods of time to be trained and retrained, and that person may not be selected. It is a combination of disabilities, age, in the sense of is that individual going to be coming off the rolls immediately at age 65, and there isn't enough time to provide the rehabilitation services in that situation or a situation where the individual has an illness that no degree of rehabilitation training would restore him—take him off the beneficiary rolls.

MS. GEREBENICS. Using employability as the major factor then, it would seem that mandatory retirement or the public and private labor sectors' focus on retirement at a certain age would be the determinant factor in deciding whether the beneficiary remains in it, goes to the cash system or remains in the service system; is that correct?

MR. BYNUM. I don't believe it would be determinant in itself, but it certainly would be an influencing factor if the individual wouldn't be employable in the sense of getting a job after rehabilitation.

MS. GEREBENICS. Do you happen to have any data on the, what would be the median age of those rehabilitated with SSDI or SSI funds?

MR. BYNUM. I don't have it with me, but I'm sure we can obtain it. We could produce that for the record.

VICE CHAIRMAN HORN. Without objection it will be inserted in the record at this point.

MS. GEREBENICS. What is the policy of the Social Security Administration relative to the role of the district offices of SSDI providing information referral services to SSI eligibles for other services for which they could qualify?

MR. BYNUM. I'm sure that my opinion is a bit biased in this regard. I think we have a very positive and very strong policy in this area. It's been traditional with us in Social Security, over all the years we've existed, that we will not only do our thing, if you will, in connection with deciding on benefit amounts and payment amounts under the different programs that we administer, but that we go out of our way to help individuals who come to us for social security purposes to get to other

agencies, other organizations, if a need for social services or other income maintenance help is evident. Going back as far as we've had statements of objectives and policy decisions, we have included a very positive statement along these lines. We run probably more referrals out of the social security system than any other governmental agency, State or Federal, and probably more than all the rest of them put together, simply because we deal with more people, if for no other reason.

We have very specific requirements that each district and branch office and teleservice center maintain a full listing by alphabetical listing by agency, alphabetical listing by service, by social service or subject matter, and that each individual who comes to the district office is considered for possible referral to other agencies, and we're not trained, we do not train our people as social workers. They are not able to investigate, to probe, to do the kinds of things that a good social worker would do in determining need. We have never been budgeted to do that in the first place, and in the second place, as I say, we're simply not trained for that purpose. But we do train our staffs to be very sensitive to needs that are raised, needs that are not raised but are evident, and to make referrals to other agencies of the Federal Government, to other State and local governmental agencies, and to the private sector as well.

In a given month, we run about between 400 and 500 files on referrals to different organizations around the country. I think we do a pretty good job. Some offices don't do as well as others when we have very heavy workload pressures. None of them do as well as they should, but the motivation is there and the intent is there and we try.

MS. GEREBENICS. The food stamp legislation currently being considered provides that SSI eligibles may apply for food stamps now at SSA offices and I was wondering how the Social Security Administration plans to implement this?

MR. BYNUM. We're working just now with the Department of Agriculture and some of the other players involved in setting up our rules and processes. We are in sympathy with the desire for one-stop service for our agency and for other agencies as well. It becomes a bit difficult, though, with unrelated programs, when we are charged with the responsibility for taking care of some of the issues relating to unrelated programs. Food stamps as a program is not that unrelated. I'm not being critical of that decision, but it will require considerable additional securing of information for us to work as an active and productive player in that particular arrangement. Pat Rivers is the Director of SSI and may have something she would like to add to that.

MS. RIVERS. I think I have just a very brief statement about what's involved in the food stamp provision. Again, as Mr. Bynum explained, we're trying to gear up to implement whatever legislation there is. It will not be because of lack of commitment or intent on our part in carrying out whatever role there is. but there are some problems to

be worked out in terms of, say, universal eligibility and that kind of thing which sometimes from the consumer's point of view takes the turn of perhaps not linking up adequately and perhaps not demonstrating the levels of commitment that they've been led to expect.

MS. GERE BENICS. Do you foresee that sort of interrelationship between food stamps and SSA offices being extended to other programs such as Medicaid and Title XX?

MR. BYNUM. We presently make the Medicaid determination in 28 States, I believe. Since the State rules and the SSI rules are one and the same, a determination, favorable determination for SSI benefits automatically entitles the individual to Medicaid benefits. Yes, I think the interest, the pressures, if you will, will continue to be towards folding into SSA and other public contact agencies a requirement to take care of as many needs of the individual as can be taken care of, and, again, one-stop service. That makes a great deal of sense to me, as I indicated a moment ago, so long as there is some commonality in programs and so long as you don't get too heavily involved in adding complications that no matter how you do it, take away to some degree from your basic programmatic mission, as you add responsibilities, as you add complexity, you don't do your basic job as well as you otherwise would do.

MS. GERE BENICS. I have no other questions.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Mr. Rivers, may I ask you, for my own information, is disability insurance for the aging differentiated in any way by sex?

MR. RIVERS. By sex?

COMMISSIONER SALTZMAN. Yes, male, female?

MR. RIVERS. No, sir, in general, but let me add that we do pay a disabled benefit to widows on the basis of their husband's account with certain requirements having been met, but that is the only one that I can think of that in the law specifically there is provision for a benefit to a group.

COMMISSIONER SALTZMAN. Is there any adverse impact, let's say, on a divorced woman?

MR. RIVERS. Not peculiar to the disability phase of the program.

COMMISSIONER SALTZMAN. Thank you.

VICE CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. I have no questions.

VICE CHAIRMAN HORN. Ladies and gentlemen, we thank you very much for coming. Social Security Administration has a solid record with this Commission and in the government for a very efficiently run organization. We appreciate the benefit of your testimony. Counsel will call the next witnesses.

MS. GERE BENICS. Mr. Chairman, the next panel isn't present yet.

VICE CHAIRMAN HORN. The Commission will stand in recess until we can bring the next panel in.

VICE CHAIRMAN HORN. The Commission will resume; counsel will call the next panel of witnesses.

Ms. GERE BENICS. Dr. Robert Derzon, Dr. Paul Willging, Dr. Peter Fox, Judy Boggs.

[Ms. Judy Boggs, Dr. Robert A. Derzon, Dr. Peter Fox, and Dr. Paul Willging were sworn.]

TESTIMONY OF JUDY BOGGS, OFFICE OF LEGISLATIVE PLANNING; ROBERT A. DERZON, ADMINISTRATOR; PETER FOX, ACTING DIRECTOR FOR POLICY ANALYSIS; AND PAUL WILLGING; ACTING DEPUTY DIRECTOR, MEDICAID BUREAU; HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Ms. GERE BENICS. Will each, beginning with Dr. Derzon, State your full name and position for the record.

DR. DERZON. I am Robert A. Derzon, Administrator of the Health Care Financing Administration [HCFA].

DR. WILLGING. Dr. Paul Willging, Acting Deputy Director, Medicaid Bureau.

DR. FOX. I'm Dr. Peter Fox, Acting Director for Policy Analysis, HCFA.

Ms. BOGGS. I'm Judy Boggs, with the Office of Legislative Planning.

Ms. GERE BENICS. Dr. Derzon, I'll be directing the questions to you, but feel free to refer to your staff at any time.

DR. DERZON. Thank you. I shall probably have to.

Ms. GERE BENICS. Okay. We've been studying the Medicaid program around the country and we found one of the major problems in the program in delivery services is that there is no outreach or advertising of Medicaid benefits in most of the States we visited, and what there was, was limited to the EPSDT [early and periodic screening, diagnosis, and treatment] program, and I was wondering if you could suggest any steps that might be taken relative to expanding outreach efforts and information efforts both in the Medicaid programs of EPSDT?

DR. DERZON. I'd be happy to take a try at that. First I should point out that I've been Administrator for Health Care Financing Administration for approximately three and a half to four months now, and I'm still extremely dependent on a very able staff so we probably will share this testimony, as you indicated you will be happy for us to do.

First of all, the EPSDT program is very specific with respect to requirements about outreach information—at least the requirements in EPSDT make it very clear that States have an obligation to make information available, so the law in terms of the mandate on EPSDT is a very different kind of law, as I understand it, than the Medicaid program. Now, there is a fair amount of information available about the Medicaid program, and I think States vary in their determination to make that information available, but the Department of HEW has

historically prepared most of the materials available on the HEW programs and on the Medicaid program. So that in Social Security offices where SSI determinations are made now and in other places where potential Medicaid recipients go, there is a great deal of information. Now, much of the stimulus for Medicaid eligibility comes about in hospitals and other provider service areas, by the providers themselves, because as a method of reimbursement Medicaid is still a better program than no reimbursement at all. So you have, for example, in most public hospitals eligibility workers and others who actually stimulate Medicaid participation.

I think it is a fair statement to say that most States at this point in time do not go out and strongly advertise the Medicaid program because each extra Medicaid expenditure represents another dollar of State financing. Perhaps one or two other people would want to say a word about that.

DR. WILGING. I think that's essentially the case; there is a cost incentive to the States not to be too expansive, which is not to say that many States are not expansive in their outreach, but there clearly are sufficient examples of States which do indeed allow the eligibility for Medicaid to be spread by word of mouth, if you will, rather than by any formal outreach mechanism, and that is reflected in the EPSDT law, at least a congressional recognition that this is the case because they did provide for special legislative authority, in terms of more effective outreach programs for children under 21.

MS. GEREENICS. We spoke to a previous panel about the idea of having Social Security district offices responsible for providing information on Medicaid, Title XX, food stamps, and tying all the programs and operations together to, I believe the witness referred to it as one-stop service. Do you think that it's an acceptable means of outreach?

DR. DERZON. First of all, to a large extent I think Social Security could report that is what they're trying to do. In fact, I've been in Social Security district offices where actually the State had an employee or several employees that worked on Medicaid eligibility and distributed information. So that I think that when Social Security appears here or perhaps it has already, I think you'd find that to some extent this effort is underway. Now, not all Medicaid eligibility lists would be determined at a Social Security office; therein lies the rub. The Medicaid program is, of course, tied in many States to the SSI, but not in all States. And Medicaid eligibility on its own is a very complicated process—it varies considerably from State to State—and so the Social Security office would not be the only place where this activity could take place unless we federalize Medicaid. If we federalized Medicaid, I think we could legitimately decide on a Federal point in each district or region of the country and in those field offices do a total job on it, in this regard.

MS. GEREENICS. Exactly what you mean by federalize?

DR. DERZON. Take State financing out of the Medicaid program. At the present time it is roughly 60 percent Federal dollars and 40 percent State dollars.

MS. GEREBENICS. We have also found in our studies across the country that Medicaid practices encourage placing older persons in institutional care settings rather than providing care for them either in the community or through home health care. I was wondering if you have any data about the number of persons in institutions who could be returned to the communities if there were any adequate alternatives, and if HCFA has made any studies of the policies or practices that favor institutionalization over home health care services?

DR. DERZON. You covered a multitude of issues in that question. I think one could conclude by and large Medicaid and Medicare tend to be medically-oriented programs, particularly Medicare, where the concentration on benefits is with acute care illness and where it, as you go down the spectrum of services, that the benefits structure for alternatives to institutionalized medical care are quite restricted. Medicaid, of course, is in the long term care field in a large way. Nursing home expenditures in many States by far are the largest item of Medicare expenditures and in fact in some States represent over 50 percent of it. Despite that, States that have been in the Medicaid program have been a little chary about increasing their home health benefits or their alternatives to institutional care. I think there are probably a few reasons why.

One is that, though it is attractive to think that home health services would be less expensive than nursing home services, some people feel that when you expand those benefits two things happen: you may save some nursing home services, but you also create a new marketplace for people who are not receiving care in the home at all, and so most of the studies so far do not indicate that this is a substitutable cost, they think it is an add-on cost. So the question becomes if you want to expand the program, should you expand in the home care or some others? Certainly, if the State could conclude very quickly that it was economical to do so, they would exchange their nursing home costs, I'm sure, for their home health service cost.

So, basically, we have what I think is essentially an economic issue. There is no doubt in our minds or any other person's mind who studies the issue that home health services and community services in lieu of institutional services would be a much more attractive alternative and certainly life enhancing. It would be much better for individual citizens.

I think the other point I mention, and perhaps one of our other staff would like to say a few words, is that despite the large numbers of patients in nursing homes, a little over a million people in the aged group 65 and over, first of all, how many are in those institutions that don't have to be there is really quite a judgmental issue, because we aren't that skillful yet in this country to try to determine just who has to be

in it and those who don't have to be in it. Some people would assess that based on the available services on the outside, or the lack of availability. Others will say it's a matter of personal attitudes, physician practices, a whole host of things that are not all that clear. But the fact is that of the older Americans, there are about three and a half million severely disabled Americans in the over 65 years of age and only a million in nursing homes, which suggests that there are an awful lot of people, a vast majority of people, of course, 5 percent of the aged roughly are in nursing homes at any point in time, that most people are taking care of themselves, are reasonably independent or at least not dependent on nursing homes or other institutional facilities. The question is really one of public policy, could that number be reduced to 3 percent?

And without really ducking the question, I think that we face no problem or obstacle to increasing home health services as a benefit under either Medicaid or Medicare if it could be demonstrated that there are tradeoffs in cost, but our problem has been, as we look over the history of this problem in HEW, that it inevitably, there is inevitably a conclusion that the cost of the program increased.

DR. FOX. Can I carry that a little further? The figure that is commonly used is that one-third of all patients in nursing homes are inappropriately placed. That one-third figure may be a little bit misleading, although to be sure there are significant numbers who are inappropriately placed.

If one looks at the statistics on the percentage of aged persons in nursing homes who are, say, incontinent, unable to feed themselves unassisted, unable to move around unassisted, one finds that 80 to 90 percent fall in that category, that they need ongoing assistance more than 1 or 2 or 3 hours a day. In addition, much of the misplacement means that they need to be in an institution but are in a skilled nursing facility instead of an intermediate care facility, which would represent a lower level of service.

With regard to expanded home health benefits, it is important to recognize that there are three effects. Effect number one is that an expanded home health benefit would for some people substitute for institutionalization. For a second group, it would be a new add-on benefit with new costs and new benefits, and people would be better off, hopefully, as a consequence of getting assistance they wouldn't otherwise receive. The third effect is that an expanded home health program may well identify people in the community who should be in institutions. So that the addition of a home health benefit may increase, and very appropriately so, but may increase total use of the institution.

Within HEW a number of us have increasingly questioned the basic incentives built into the Medicaid program with regard to long term care. The need for long term care is not purely a medical kind of a decision. It relates to a large degree to the person's living environment.

For example, the probability of being institutionalized is something like 10 times greater for a person who is single as a person who is married. One can quote other figures, too, to support the notion that the living environment has a lot to do with both use and with need, and we are, for example, within the Department developing concepts of experiments which might ultimately go national, of moving towards communitywide budgets that would give communities the incentives to make greater use of home health services.

Right now, the incentives are indeed in the direction of institutionalization. Often the family is tired of caring for the person or there may not be any family. For the doctor, caring for a person who is chronically ill is not professionally the most pleasing. The nursing home wants to get patients and not necessarily the most severe patients. So we're not persuaded in our mind that merely a tinkering with the home health benefit, which is fundamentally what people are talking about, is necessarily the thing to do, and indeed a tinkering with the home health benefit could prove very, very expensive. In Medicare the budget for home health centers, as I recall, tripled in the last 2 years or 3 years. Nobody quite knows why. Inflation would account for a minor part of it. Largely it appears to be due to relatively small changes in the way in which the benefit is administered. The law has not been changed.

MS. GEREENICS. Addressing that—Medicare home health benefits—it appears that several States or many States have used that same definition of home health services as the Medicare program does, and since it is fairly restrictive in its application I was wondering if HEW has done anything to stop that practice or has issued guidelines to encourage another definition under home health care.

DR. DERZON. Just to make sure on that question that we're clear, the question here is whether or not the Medicare standards have been applied to Medicaid in various States as they have defined the conditions for participation as a home health agency?

MS. GEREENICS. That is right.

DR. WILLGING. We have had some concern over a number of years that Medicaid State agencies have indeed applied the Medicare definition, which is primarily restrictive in that it does require, it is really a post-institutional benefit as opposed to the Medicaid benefit, which does not require as a prerequisite institutionalization. We have clarified that in regulations in home health that went out last year with respect to Medicaid home health benefit. We have submitted a couple of what we refer to as action transmittals to the States emphasizing the fact that there is a basic difference in the benefit. The States sometimes greet those activities on our part with quiescence and not too much activity because, in addition to the comments made by Dr. Derzon and Dr. Fox, there is yet another economic incentive, if you will, on the part of States to not utilize home health to the extent it could and to emphasize institutionalization, and that relates to whose

books are being kept. While it is true that one can make the argument that home health care per se is less expensive than institutionalized care, it depends on who is paying for it, because the Federal Government will participate not only in the medical aspects of institutional care as a benefit in the States, it also pays, of course, for the room and board aspects of institutional care. If home health is the benefit chosen for an individual by the State, depending on the individual's status, whether or not he is eligible for some other federally-supported relief program such as SSI, the State may be picking up the total dollars on the nonmedical aspect of that benefit, room and board, if the individual doesn't have resources of his or her own. So while we do recognize, and I think it is recognized, if nothing else, in the very minuscule funds available for home health or paid out for home health, which is less than 1 percent of the Medicaid program—we recognize that despite our attempts to work with the States, that we do have a fairly lengthy row to hoe because there are incentives which sometimes lead the States to second guess what it is we've suggested to them.

MS. GERE BENICS. Are these regulations to which you referred final regulations?

DR. WILLGING. They were final regulations, yes.

DR. FOX. I believe they are guidelines as well.

DR. WILLGING. There are guidelines, associated action transmittals, and what-have-you that we would be happy to provide you if you would like to have them entered in the record at this time.

MS. GERE BENICS. Yes, if you would, in the record at this time.

Another disincentive to develop alternatives to institutionalization that has been identified is that the States often employ a higher income standard in determining Medicaid eligibility of institutionalized persons, and persons who would not be eligible for Medicaid in a community might well be eligible for that if they entered an institution, and I was wondering, first, if you had any data on how many persons you estimate are in institutions rather than their own homes as a result of this particular standard and what steps could be taken to eliminate this incentive.

DR. WILLGING. We don't have any data.

DR. DERZON. Let me just talk to that for a moment because we know in the materials you submitted to us that this question came up and I must say it took us a little bit by surprise, because we have not found it to be a principal push for moving patients into long term care facilities. That doesn't mean it doesn't take place. It just simply means that we have not viewed it as the most serious of the problems that lead people into institutions. There is a long history on this and I wondered if Judy Boggs would just talk about this problem and perhaps we can give you some ideas of what perhaps could be done about it. It is not a problem, by the way, in all States. It is a problem in relatively few States.

Ms. BOGGS. Prior to the inception of the SSI program, Medicaid eligibility was keyed to the Federal-State cash assistance programs for the aged, the blind, and the disabled. I think what you're talking about is a provision under which people who have income within 300 percent of the SSI benefit level can be made eligible.

The States were able to use provisions for special needs allowances. What happened in many States was that, recognizing that people would be unable to care for themselves and that they required some sort of institutional service, States used the special needs allowances and said, if this person were outside of the institution, he would have need for a whole range of services, and therefore used higher income test for people who would be in institutions. When the SSI program came into being, they used a Congress-made provision for State supplementary payments and the concept of the special need was done away with, so the State chose to—States moved to the State supplementary payment system as a substitute mechanism for making people eligible who would otherwise not be eligible, and this basically is, I think, the phenomenon you're talking about.

DR. DERZON. I might say just a word in addition. This, first of all, is an issue, if it is an issue, in about 20 States, and it would be less of an issue if every one of those States had a program for the medically needy, but they do not. The medically needy provisions essentially tend to resolve the issue.

The second way in which this problem could be avoided would be for States to pay higher optional State supplements; I think that is a more difficult course to force, but on balance we would like to suggest to you that, unless there are other figures to the contrary, that this is a relatively minor factor in the question of deinstitutionalization of persons or factors that push people into institutions. We don't think it is the most important thing. We have some ideas of some other things that are the things that do drive people into the institutions that would come well ahead of this one.

Ms. GEREBENICS. Since you brought up the subject of medically needy, we found that age appears to be a major factor in consideration of State Medicaid agencies when they determine medical need and this is especially true where prior authorization is required. I wonder if you have any guidelines or provide any criteria for the States to employ in determining medical need in their prior authorization decisions or are these entirely left up to the States?

DR. DERZON. Basically the determination of medical necessity is an issue that is left up essentially to the physician, and to the State that administers the Medicaid program. The prior authorization issue was not set up to in any way limit a benefit across age lines or racial lines or sex lines or any other lines. Basically, it was set up for some reasons which some people feel are good reasons and some feel are bad reasons. In some cases it was set up to make sure that there weren't additional or unnecessary services, feeling that some providers, for ex-

ample, were doing too much surgery, some physicians, and therefore this in effect becomes a second opinion but prior obviously to the hospitalization. So that there can be merit to prior authorization for certain kinds of services, and this is not an uncommon way in which States tend to protect themselves against abuses in the system or try on a more positive note to assure better care.

Now, it is contrary to the plans we have approved in States and it is contrary to the law that the people could determine medical necessity based on age or employability or some other factor and though we have not received—we have not received to the best of my knowledge, maybe others here know—complaints about this, it would be clearly a violation of the terms of agreement between the States and the Federal Government in the Medicaid program, and we would be, in those situations we would take very aggressive steps to require the States to cease and desist.

DR. WILLGING. Indeed, there is a long standing, if not one of the most long standing, policy requirement with respect to Medicaid, that there may be no discrimination whatsoever in benefit on the basis of the recipient's medical condition. Indeed that's a provision that the States have taken as much umbrage over as anything else we have in our set of regulations and legislation, which is not to say that policy has not been violated, but when we do find violations, obviously, we would move with some forceful action, vis-a-vis the State, for bringing the States back into compliance.

MS. GERBENICS. I have one question about the early periodical screening and diagnosis and treatment program. As you know, the program is limited to those from 0 to 21, but we have found that the bulk of the program is directed at those 6 and under, and I wonder if you could provide any rationale or justification for targeting that particular group, as opposed to the 6 to 21 groups.

DR. DERZON. Well, I think that there is a rationale. I'm not sure I would want to defend it all the way, although I think that it is not unreasonable to suggest that in the early years of the youngster's life, that increased medical attention, greater periodicity of contact with the health care system has been pretty well established as good health care, and there have been a number of studies that suggested that and would suggest that and I'd be happy to provide that to you. So that in fact, for example, the American Pediatrics Association, or whatever the group is that we have generally used to gain advice and guidance on this, suggest that children have greater contact with the health system in their earlier years than in their, perhaps, post school years. There are some other good reasons, particularly among the disadvantaged, which is clearly the target group of EPSDT, and that is that, one, it is alleged that once children get into school, they have a greater number of observers and so in a sense they are in contact with a broader band of society than children are when they tend to be at home and in the care of their parents.

So on a number of grounds, EPSDT was really set up so that it could address the problems of the very young, and not necessarily, not certainly as great frequency in children in the older age groups. That may or may not be sound, but nevertheless I think that's what the people who direct the program and that in fact is what most providers who participate in the program do.

Under the CHAP [children's health assessment program] proposal which is a successor program to EPSDT, we do suggest certain steps that would increase, hopefully, the activities of the children over 6 and up to 21. We do that basically through increases in Federal match, in trying to develop a larger core of comprehensive health providers who can see children from their early years right through puberty and teenage life and so forth, so that CHAP should have some facets and features in it which will improve the coverage of services to the over 6.

But I think it is fair to say that there's been a fairly conscious policy of trying to target health care first for this group 6 and under.

Ms. GEREBENICS. If you have any data or studies which you could supply us that would support this, it would be much appreciated, and the record is open at this point.

DR. DERZON. We'd be happy to.

COMMISSIONER FREEMAN. Dr. Derzon, I would like to pursue the question concerning the early and periodic screening, diagnosis, and treatment services. First of all, to state that the requirement, this requirement by the State is certainly a worthy requirement, and I don't think anybody on this Commission would question the need for that. The problem is that the requirement is limited for children 6 or under and certainly it is my opinion that such a requirement ought to be across the board and particularly when States have the option to deny to the older adults such services as hearing aids, eyeglasses, and dentures, that this to me, this denial would constitute an unreasonable discrimination on the basis of age against such older adults, and I would like to know if you would comment on that.

DR. DERZON. This is but one of, I think, many distinctions at least between benefits for various age groups in our programs. There's no question that concentration on the children of this country, the poor children through the EPSDT program, is a more determined thrust than it is to take care of middle-aged Americans, a more determined thrust, I might add, than many families in the middle class take care of their own youth.

The point I'm making is not that I don't agree with you because I think we would all like to see very broad-based benefits equally and evenly distributed across all American society, and certainly for health care. Myself, I'm a little pessimistic about this, unless one or until one has some form of national health insurance where you can assure a uniform benefit to all Americans regardless of circumstance, at which time hopefully, assuming a reasonably even access to health care ser-

vices, when we would have a single set of benefits for all age groups across all economic lines.

But we are a long way from that, and as you look at the EPSDT program, which is essentially a Medicaid program, there are great gaps in the Medicaid program for the middle-aged Americans, and as you pointed out quite correctly, there are optional services of somewhat lesser range for the older people in the Medicaid program than for the young people.

COMMISSIONER FREEMAN. I don't believe I received a specific answer as to your opinion as to whether this denial constitutes unreasonable discrimination on the basis of age?

DR. DERZON. Well, first of all, without quibbling, I would have to know sort of what unreasonable discrimination means, and I gather that's in part what you're trying to determine here. I think that we would clearly have to say that this is a discriminatory benefit, that there is one group of Americans receiving a set of benefits, at public expense, and there is not another group. Now, I think, better you than I can determine whether or not this is unreasonable.

I do think, though, that in the process of this, there are some very important practical realities. That is, that the States at the present time, which are paying a substantial part of the cost of the Medicaid program, are making conscious decisions on optional services based on their total available resources, and I think it is a fair statement to say that when we demand of the States increased coverage of one set of benefits, if they do not have the dollars, they look to other avenues of social assistance in order to find those dollars and then we lose on another front; in other words, we're trading off benefits.

COMMISSIONER FREEMAN. Well, I will just make the final comment, sir, and that seems to me that the constitutional requirement of the 14th amendment that no State shall deny to its citizens the equal protection of the laws transcends the "very important practical realities."

DR. DERZON. Dr. Fox would perhaps like to add a comment.

DR. FOX. I think it is important to understand the historical origin of Medicaid and this be put in context because the specific services that you cite are only one of a whole myriad of services or benefits that are denied under Medicaid. Medicaid is an adjunct to a welfare program.

The whole history of welfare in this country is that one can somehow classify the poor into two categories, the deserving and the undeserving, and therefore we have certain cash benefits, for example, for unemployed women with children that we do not make available to men in the same circumstances, but that is built into our welfare system. It is built into our Medicaid system.

COMMISSIONER FREEMAN. And is discriminatory?

DR. FOX. And is discriminatory. The inequities are rampant. You have mentioned only one. The administration has proposed major changes in the welfare system. In the Department we're working on a

proposal for national health insurance. One of the issues we face constantly is to what extent do we make small changes in Medicaid now, or Medicare for that matter, but particularly Medicaid to redress some of the inequities and to what extent do we wait for national health insurance which may indeed be several years off, but the issue is a complicated one. The discrimination against the working poor, for example, particularly where there is a male-headed household, may be a good deal more severe than the inequity in not providing dental services or eyeglasses.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. No questions.

CHAIRMAN FLEMMING. Commissioner Ruiz.

COMMISSIONER RUIZ. Yes. Dr. Derzon, I understand that the identification of eligibility for Medicaid is usually a local-State function. Is this based upon a contract entered into between the State and the Social Security Administration on this matching State and Federal funds?

DR. DERZON. That's an important technical question and I may have to confer with my experts here a minute.

DR. WILLING. There's a general contract, if you will. We don't refer to it as that, but it effectively has the same impact between the State and Federal Government. It is called a State plan, wherein the State commits itself to applying the rules and regulations, the statutory restraints, limitations, and authorities as it implements its Medicaid program.

COMMISSIONER RUIZ. As a condition precedent to the receipt of funds?

DR. DERZON. Yes, sir.

COMMISSIONER RUIZ. How often are these contracts renewed between the Social Security, HEW, and the States?

DR. DERZON. The contract is not renewed; it may be amended. When a State enters into the agreement for the first time, it submits its first State plan. Other than ongoing staff reviews to assure that they haven't fallen out of compliance or out of conformity with what that plan says, it is changed only to the extent that a State may alter its approach to the program; that is, it may raise or lower eligibility levels, it may increase or decrease benefits. Each time, staff at the Federal level will review those amendments to assure they are in conformity with laws and regulations.

COMMISSIONER RUIZ. Now, has HEW ever withheld State funds because of the violation of these conditions precedent as a prerequisite for the receipt of funds?

DR. DERZON. Indeed we—

COMMISSIONER RUIZ. By virtue of their violation of their responsibilities under these, which I will refer to as contracts?

DR. DERZON. I can speak for the short term that I have been in office, Mr. Ruiz, and I would tell you that we have pending now against States in excess of a quarter of a billion dollars of penalties based on

the lack of State compliance in managing utilization review of long term care facilities, but this is one relatively small facet of the whole of the Medicaid agreement with the States. The point I am simply making is that there are various penalty provisions in the law, and we are determined that the law be carried out, and the Secretary has asked that we make sure that States are complying with regulations established by the Department and the law. Now, as a practical matter in all of us, it doesn't do us all that much good to impose huge penalties on States, financial penalties.

COMMISSIONER RUIZ. Well, there's where I was going to get to because you really penalize the beneficiary, don't you?

DR. DERZON. Yes, sir.

COMMISSIONER RUIZ. Now, the question is, would a regulation suspending monies which go the State administrators who fail to enforce obligations assumed by them under State contracts be in order?

DR. DERZON. You mean, a personal penalty against those individuals or—

COMMISSIONER RUIZ. With respect to that area of the State? In other words, without penalizing the target people, in some administrative penalty so that it would hurt in the proper place be in order?

DR. DERZON. I think, first of all, I would tell you that the greatest value in having a financial penalty is the leverage it gives you for people to perform. In other words, it is the strongest lever in the way that the Federal Government has to turn people into compliant administrators of the Medicaid system. There's a change in—the proposed change in the CHAP legislation which suggests that rather than penalize States that do not comply in EPSDT by fining them a proportion of their AFDC payment which is the current provision in the EPSDT program, which we, by the way, asked to have removed. The Department proposed a penalty provision that would withhold certain monies for administrative services of the program on the basis it's the administrators that have not done the job.

COMMISSIONER RUIZ. How far are you getting along with that particular concept at this time?

DR. DERZON. First of all, I have to tell you I don't share the happy view of the Department in this regard, because I think that we need better administration in the States, not worse, and I'm not sure that withholding money for administrative costs of State programs is necessarily going to get you the best management. But, nevertheless, the Department proposed, and we will naturally support and carry it out if it is passed, this provision on penalizing the State administrative costs, so where this is in effect is that the current penalty provisions under EPSDT we've asked to be amended out of the law, and the CHAP provisions we hope will be passed with the CHAP legislation. That's where we are on the problem.

COMMISSIONER RUIZ. Now, recently I read that the regional areas of HEW were restructured in a more centralized fashion at headquarters.

Do you anticipate that this may weaken the Federal control of State activities in the local area such as monitoring local State action, etc.?

DR. DERZON. I think it would be helpful if I clarified to some extent the reorganization of the regional HEW offices—

COMMISSIONER RUIZ. I would like you to do it.

DR. DERZON. As I see it, first, I do not think it was necessarily the intent of the Secretary in this reorganization plan to weaken the activities in the regional offices, but what he was concerned about was making sure that program administrators, such as myself, could carry out in the regions the activities necessary to run our programs, and he felt that under the former reorganization the regional administrators—that is, the chief executive, the regional directors of HEW that sat in those regions—tended to intersect the programs and sometimes get in the way of the effective management of those programs. Well, there are differences of opinion about that, but what I can tell you is that, as far as Medicaid and Medicare goes, these are programs that go into every nook and cranny in the United States and we have, if anything, the real desire to strengthen our regional activities and to move a larger proportion of our rather limited staff into the regions because that's where the action is, that's where the programs are, that's where the beneficiaries are, and that's going to be my goal to try to move our staffs out to closer to the program, closer to the recipients of care, closer to the providers of care.

CHAIRMAN FLEMMING. First of all, may I express my appreciation to you and your associates for being with us. I regret that I was held up. The Justice Department is having the national conference on the implementation of Title VI, with which you are familiar and are involved in, and I was asked to participate in it briefly and went a little longer than I expected, but I've been much interested. First of all, let me return to the dialogue on penalty or sanctions.

Like everyone else who has been involved in programs of this kind, I've always been disturbed by the fact that when we apply the sanction it was really hurting the innocent rather than getting at those who are responsible for not living up to their responsibilities. Many years ago I was involved in the administration of the Hatch Act when it first came into existence when I was on the Civil Service Commission. Under that law at that time—I won't swear that's the situation now—if you found that a State highway commissioner, for example, had violated the Hatch Act, you would then order the Department allocating those funds to withhold twice his salary for a year in an effort to get at the administrator who was responsible for the Department violating the Hatch Act. Under the Older Americans Act, we allocate a separate sum of money to the States for administration; that is, separate and apart from the money that is allocated for services, nutrition and other services.

We've always, we've had the feeling that we could, if we needed to apply sanctions, withhold a portion of administrative funds rather than

going directly to the service funds. I don't have any brief for any particular way of doing it, but I've always been sympathetic with the approach that would try to penalize the person who is responsible for their failure to act in conformity with the law or in conformity with a State plan. So I appreciated your reactions and sympathize with them because, from another point of view, we don't want to weaken the administration, we want to strengthen it. But yet I'm wondering if it isn't better in the long run to make it clear to administrators that if they do violate some provision of the law or a plan, that they're going to have to pay some kind of a penalty for it as contrasted with our jeopardizing the delivery of services to people who desperately need them. I don't know where we should come out on it, but this is involved in Title VI, as you well know. I mean, there again, in fact, you probably know this Age Discrimination Act almost parallels Title VI—it just put age in place of race and national origin—of all the experience under Title VI, it would be somewhat applicable to this particular title.

I don't know whether you've got any additional comment on that or not, but it is an issue and a problem that kind of fascinates me because I don't think we have yet worked out the soundest approach to it and because we put reliance on the withholding of funds for service—many, many administrators just don't want to apply those sanctions.

DR. DERZON. Chairman Flemming, I never suggested to you how to solve the problems of State compliance. I don't think there's probably any, certainly none in this room nor probably in this town, that knows about that issue as you do, but I do agree with you that it is an intriguing issue because, in effect, this among many other programs, these programs that we're discussing here, are partnership programs with States, and where we have good State government and where we—it is not just administrators, of course, it is our managers of those programs in the States, it is the Governors, the legislatures, legislators, all those groups and individuals who determine whether a State is going to conscientiously meet public social initiatives, and I suppose as we think through our own role with Medicaid because this is truly a massive State-Federal program, one that is different from many others because there are no ceilings on expenditures, as you know. It is a so-called uncontrollable. I think it probably is the most perplexing of all of my problems, and we have to address whether or not in fact States can work in participation on health care and health care financing programs because down the road we're going to have to make a decision as to whether States are going to be partners with the Federal Government in the administration of a national health insurance program, and there are many, as you know, who feel that States are too unpredictable, that we do better with sort of a totally federally-managed program, such as Medicare, which is essentially done without State involvement.

So in a sense we're in a little laboratory with two kinds of programs, one depending on private contractors in the case of Medicare and the other really State contractors. We are very interested in finding ways to help States do a better job with Medicaid. I think if I can make any contribution over the next year or two, it would be to help our staff, and have our staff help States do a more effective job of managing these large dollars and getting more care to more people. That's really the sort of general thrust we're taking. And I don't know of a better way.

CHAIRMAN FLEMMING. I noted the dialogue also relative to some of the built-in inequities in the Medicaid and to some extent in Medicare. Of course, I agree with Dr. Fox, those inequities grow out of the fact that essentially we're dealing with a welfare program. We've permitted a lot of inequities to be built in. There are also a good many inadequacies, particularly on the Medicare side, prescription drugs and so on. My own feeling has been, and I gather others may feel that way, that we're really not going to do a good job on ironing out those inequities unless and until we get into a national health insurance program for all age groups. We may not then, because of the compromises that may accompany legislation of that kind, but I have long since reached the conclusion that what we're really doing will give us a chance to eliminate some of them. I don't know whether you want to comment on that or not.

DR. DERZON. I'm sure Peter would, but I would just say a brief word on that, that there, even with a national entitlement of benefits, choices will probably be made about how extensive and broad those benefits should be, and there is really no assurance that many of the kinds of problems that we've been discussing today will be resolved. Other than one could hope at least that on the issue of entitlement, that all Americans would receive entitlement to a group of services, but, as you know and I know, access to even quality of services, adequate quantity of services in a country as vast as America is may lag behind those entitlements. So I think we would probably still be meeting here in a few years to talk about some of these inequities that exist.

CHAIRMAN FLEMMING. No doubt about that.

DR. DERZON. Peter, do you want to say anything?

CHAIRMAN FLEMMING. This may very well have been covered before I came back, but what is your approach to the desirability and importance and necessity of investing some resources in outreach programs as you relate, for example, Medicaid to older persons?

DR. DERZON. It would be helpful to me. We did discuss outreach a little bit. I just want to make sure we were talking about the same kind of outreach services, perhaps—

CHAIRMAN FLEMMING. I'm thinking in terms of a very positive program designed to locate the older person, let the older person know what services are available. Now, I well recognize there are two

schools of thought here because this is over on the welfare side, and there are those who say you don't go out into the highways and byways and build up your business on the welfare side, which in effect this would be doing. Personally, I've always belonged to the other school, but we have an obligation to get out on these highways and byways and let people know that services are available because they often are the people who need them the most.

DR. DERZON. My view on that as it affects our programs is that Medicare, which was very specifically addressed to all Americans turned 65, has done really quite as astonishingly good job of getting out its message and getting benefit information to beneficiaries and so forth. I think as good as Medicaid has done, Medicaid has not done as well, and we discussed a little earlier the reasons.

CHAIRMAN FLEMMING. I don't want to repeat that at all. I agree with you, the Medicare story is a rather amazing story in terms of the percentage of people that are covered. SSI has presented a similar problem. I don't think we did quite as well there, but made some progress, and Medicaid is still another type of problem.

May I just say this, personally I appreciate so much your coming because I think the reorganization that is reflected by the position that you now hold makes an awful lot of sense, and I'm so delighted that there is someone reporting to the Secretary who is dealing with the kind of issue you've been talking about with us in both Medicare and Medicaid. To me it makes a lot of sense, and I know that older persons are going to benefit from it. We're just delighted that the job is there, but I'm also delighted that a person with your background is in that job.

DR. DERZON. I am appreciative for those comments and I do hope that we, I and my staff, our staff, will be up to the tasks ahead. We have a lot of work to do. We are very interested in beginning to tie together Medicare and Medicaid policy and reimbursement practices. We would like very much to have these programs working in concert with each other and not in opposition, and we do feel that the combination of resources and talent that have been brought to bear in this reorganization will be such that many of the problems that are being discussed here today can be resolved and not, hopefully, at too long a period of time. We thank you very much for the opportunity to be present today.

CHAIRMAN FLEMMING. Did you have another question?

MS. BRADLEY. I just wanted to pursue a question just to have this on the record, although the dialogue between yourself and the Chairman may have somewhat answered it. Earlier, Dr. Derzon, you were talking about the trade-off that States had to make in terms of choosing services because of scarce resources. That is, although they had a great deal of flexibility in one respect, economic scarcity tempered that flexibility. We've heard in some areas of the country the fact that the mandatory package of services under EPSDT versus the optional

package of services under Medicaid has more or less compelled States to invest scarce resources in the EPSDT program to the detriment or cutting back of optional services, that indeed we have a statutory mandate that seems to be contributing or influencing whom both programs together are serving despite their open-ended appropriations. I wonder if you would care to comment on that, have you heard that, and indeed, do we have a statutory problem, and if so, what possible resolutions would you see?

DR. DERZON. I would make a comment that—I think perhaps Peter would want to say something, but let me give first of all a sort of general answer to this question. Without really studying the changes that have taken place in specific States with respect to their benefit coverage, how they have administered it, I think we ought to be a little careful about drawing that particular conclusion, namely, that EPSDT initiatives have driven scarce resources away from non-EPSDT Medicaid initiatives.

First of all, the number of mandated services is relatively small for EPSDT above the level of the mandated services for Medicaid, eyeglasses, hearing aids, for small children, relatively limited benefit, obviously; dental care, a big one, relatively high cost depending on how States do it. In some States it is my understanding they are still not spending an awful lot of money on dentistry. It would be my view that there are other factors that have had greater influence on the restricting of optional benefits under Medicaid, and the major one probably would be the overall inflation in health care costs, and enormous inflation in Medicaid costs in States, so that these costs were driven up by hospital costs, by nursing home costs, particularly these two factors; of course, the principal items of expenditures that have not been so easy for States to control. So it seems to me it's been the inflation and the extra utilization of services in that regard that tend to dwarf any extra efforts that have taken place in EPSDT, but without doing some economic calculations, I would like to be careful about that conclusion.

Now I could ask our economists, at least one of them—

DR. WILLGING. I don't purport to be an economist, but I would like to provide at least a little data that underlines what Dr. Derzon has suggested. Not only is the inflationary spiral most relevant in terms of the institutional services; that is, I believe what has most concerned the States. The inflationary spiral builds on a base which accounts for by far the vast proportion of the Medicaid budgets in those States. Close to 70 percent of the dollars expended under Medicaid are expended in the area of hospital and the long term care—approximately 38 percent goes to the long term setting, 32 percent to the hospital setting. The areas of mandated benefits—glasses, dental, and hearing aids for children—account for a minuscule proportion of the funds, so while I would not categorically state no State official has ever dropped a benefit so as to be able to provide those under EPSDT, I would con-

sider it highly unlikely and I'm not aware of any situation where that has taken place.

DR. FOX. You will bear in mind that Medicaid is the fastest rising component of State budgets in most States and this ties in again with the penalty issues and the benefits issues that were raised earlier. When the Federal Government mandates something on the States, we can often observe whether that mandate is being carried out or not. What is much more difficult to observe is the displacement effect. Does it displace private spending? If not, what component of State spending does it displace? Does it displace some other part of the Medicaid program? As pointed out earlier, the rising hospital costs in particular and, to a lesser extent, nursing home costs are eating us all alive: they're eating the States alive and are the major stimulus to the development of the cost control programs at the State level; they are eating the Federal Government alive through increases in Medicare that are not yielding concomitant benefits to the aged, or to anyone else.

I also point out that Federal programs have been criticized, and I think this is important for the Commission to realize, for overconcentrating expenditures on the aged. I'm not sure this criticism is well placed. I don't know what overconcentration means, but it is clear that medical effectiveness is, in terms of long term impact, probably greater among children and this is particularly true for preventive services. When all is said out, there are grave doubts about the value of preventive services, many of them among the adult population. There's a good deal less doubt among the child population. So, as I said earlier, there's some question as to whether the EPSDT program has indeed displaced benefits to the more elderly population. We don't really know, but just because of the magnitudes involved you have to suggest probably not, but even if it does, given the Medicaid program as it is now structured, maybe we have to live with that displacement.

MS. BRADLEY. That's all.

CHAIRMAN FLEMMING. Thank you very much, we appreciate it. Call the next witnesses.

MR. DORSEY. David Tatel, Director, Office for Civil Rights, HEW, Michael Middleton, and Norman Chachkin.

CHAIRMAN FLEMMING. Mr. Tatel, you are already sworn today so I'll ask your two colleagues if they will remain standing.

[Mr. Norman Chachkin and Mr. Michael Middleton were sworn.]

TESTIMONY OF NORMAN CHACHKIN, DIRECTOR, OFFICE OF POLICY PLANNING AND RESEARCH; MICHAEL MIDDLETON, DIRECTOR, OFFICE OF POLICY AND PROCEDURES; and DAVID TATEL, DIRECTOR, OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CHAIRMAN FLEMMING. Mr. Tatel, I'm delighted to have you here as a witness this afternoon.

MR. TATEL. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. Counsel will proceed.

MR. DORSEY. Yes, sir. I think you've already heard our offer as indicated earlier. I will be directing the questions to you and you may defer as you see fit to your colleagues. I would just like to start out by indicating, as we have heard earlier, of course, the Department occupies the lead position in terms of regulations and activities as relates to the Age Discrimination Act, and specifically, of course, your office has been designated as the action office. We are already aware of the fact that you have made some preliminary analysis, extensive preliminary analysis, of the Age Discrimination Act, and I just like to start off the questioning by asking you if you could indicate from your reading and analysis of the act, those areas within the act, those provisions which pose the greatest difficulty not only in interpretation of the intent of the act, but also in its implementation and enforcement?

MR. TATEL. I'd be glad to try. We have only just begun our examination of the statute in depth. Although it is a relatively short statute, the more we look at it, the more we realize that there are a variety of ambiguities which could make the regulation drafting process difficult and possibly complicate the enforcement process.

Let me just mention several of the features that we've been looking at most closely and indeed will be looking to the Commission for guidance on. One of them is the use in the statute of the word "reasonable." I think the statute does not simply prohibit age discrimination. It prohibits unreasonable age discrimination. The term "unreasonable" does not have a counterpart in any other civil rights law that we enforce. Title VI, Title IX, section 504, and the related statutes are clear and less ambiguous, so there is no body of case law or experience upon which we can draw to interpret that word.

Now, there are several options available to us. One is that, of course, the word reasonable, "unreasonable" appears only in the preamble to Title III. It does not appear in section 303, which is the operative provision of the statute. And we could simply view the word "unreasonable" as verbiage used by Congress to describe what it was trying to do in section 303. We could also interpret the word to apply only to those forms of activities exempted by other provisions of the statute. Or we can go further and interpret it as having some meaning of its own. We have no guidance on which of these to pursue. The latter two would make the drafting process considerably more complicated. There is little legislative intent to give us any guidance, and it is in the long run, I think, one of the more difficult problems we will have to deal with.

Likewise, the title gives us no guidance on what age range, what span of ages it is intended to deal with. Unlike the Age Discrimination in Employment Act, it contains no lower or upper limit. It is indeed part of the Older Americans Act and we could, for example, interpret it to be co-extensive with that, but we don't have much guidance on what that is, either. But the really difficult point is that the title itself

contains no limitations, thereby indicating that Congress probably intended to cover persons of all ages which opens up a whole new and difficult problem of statutory interpretation for us.

Perhaps the most difficult area we need to deal with occurs in section 304(b) of the statute, which contains several exemptions that are difficult to understand. One of them, which is in the second clause, number 2, exempts from the act coverage any program operated under any law which defines its beneficiaries or establishes eligibility in age or age-related terms. The question of what "age or age-related terms" means is not clear. The question of what "any law" means is not clear. Are they talking about Federal law? Are they talking about State and local law? And was Congress also thinking about regulations and administrative interpretations issued under those laws?

The other problem is, does the word "unreasonable" apply to this section also? In other words, are all such programs that operate under statutes exempted, or just those which define their beneficiaries or establish eligibility standards in terms that could be determined to be reasonable? Again, there's little legislative history on this, no guidance in the statute. This section of the statute, section—the first part of section 304, 304(b)(1), contains even a more troublesome section. It provides that any activity which would otherwise violate the act does not, if it is necessary to the normal operation of the program or to the achievement of the statutory objective.

Now, this is clearly a broad exception. If interpreted in accordance with its literal words, it would, it could perhaps render the entire statute a nullity. It raises all the questions you've been discussing today about administrative decisions to make statutes and programs more effective, and whether the age or age-related determinations made by administrators, which can be or at least arguably can be said, at least, to be necessary for the normal operation of the program would render it exempt from the statute. There are other such provisions in the law.

They are important to look at closely, not simply because of the drafting problem. We can draft these regulations. It is difficult because the statute is vague and because there is little legislative history, but we've had experience in the past with drafting regulations under statutes like this, and we have no doubt that particularly with the help of the Commission we can do the job. The serious problem that I would hope the Commission would consider carefully is the enforcement problem which a vague statute like this gives us.

We not only have to draft these regulations. We then have to enforce them. It is at that stage where a myriad of questions under the regulations develop, and where we at the Office for Civil Rights and other agencies charged with enforcement are sometimes hard pressed to convince recipients that our determinations are in fact the ones that Congress intended. So the problems are in my judgment more serious for enforcement because of the difficulty of convincing recipients that our interpretation is the right one.

We're facing this problem under section 504 of the Rehabilitation Act now. It is less of a problem under Title IX of the Education Amendments but still a serious problem. With better legislative history, and a clearer set of statutory standards, our enforcement responsibilities would be not only easier, but we think we could do a better job in the long run of bringing about Congress' intent in banning unreasonable age discrimination in federally-financed programs.

MR. DORSEY. Before I continue with following up on that, I did neglect to have the two colleagues you brought with you identified, their positions formally for the record, and I would ask you to do so if you would.

MR. TATEL. My neglect is more embarrassing than yours. To my right is Norman Chachkin; he is the Deputy Director of the Office for Civil Rights and Director of our Office of Policy Planning and Research. To his left is his deputy, Michael Middleton, who is the Director of the Office of Policy and Procedures. It is in the Office of Policy and Procedures that we have established a branch whose exclusive responsibility will be the development of the age discrimination regulations, and the interpretation of those regulations once the act becomes effective.

MR. DORSEY. Thank you very much. Following up on your comments just now, have you assessed the workability, if you will, of this statute as it is presently worded and assessed the potential effectiveness of its current language in terms of implementation and enforcement, and I mean, assuming for the moment that what is currently the law, given its absence or very minimal legislative history as you indicated, what is your assessment of its workability and its potential for implementation and enforcement?

MR. TATEL. Well, other than the problems which I have mentioned, the enforcement provisions of the act do, with one important exception which I'll mention in just a moment, attract the enforcement provisions of Title VI, Title IX, and section 504. They provide us, we think, with the remedy we need to enforce the statute, namely, the determination of Federal financial assistance. The administrative procedures which have been established are effective; the alternative remedy of seeking judicial enforcement is also effective; and I see no reason why, except for the problems we've just discussed, it wouldn't be equally within our ability to enforce this statute. There is one provision in, I believe it is section 305(b), which relates to enforcement which could be a problem. Section 305(b) mirrors Title VI, Title IX, and section 504 with the exception of the third sentence, and the third sentence is a real problem for us. What it does is it restricts our ability to terminate Federal funds to only those programs where a finding of discrimination has actually occurred.

That does not appear in Title VI or Title X or section 504. It appears to be an effort by the Congress to limit what has developed— has been called the infection theory, and which has made the other

statutes extremely effective, and that is our ability to terminate funding for programs where other discrimination in other non-Federal programs infect the program receiving the Federal funds. That sentence in section 305(b) could greatly limit our ability to enforce this statute and bring about widespread changes. Other than those, I see no reason why the standard federally-financed enforcement vehicles which are made available in this statute won't be equally effective in this area.

MR. DORSEY. Following upon your comments about the termination provisions for enforcement, I would just like to ask, the Chairman and other Commissioners indicated earlier in earlier questioning of the previous panel about the concern to develop alternative means of enforcement; that is, alternative, to the termination of the service delivery type funds. I'm wondering if within this statute you feel there is sufficient flexibility to deal with those kinds of issues or whether or not a legislative change would be necessary in order to build in the kind of flexibility that was alluded to?

MR. TATEL. I heard the Chairman's question and I would welcome the recommendations of this Commission. His experience and the Commission's experience are much greater than mine in this area, and your perspective is longer.

But I do have some thoughts about that. Generally, I would agree with you if you were talking about additional remedies rather than alternative remedies. My limited experience so far at OCR, and my longer experience having watched ORC in the past, is the termination of Federal funds is the most effective ultimate sanction available to the government. It has had problems in the past, of course, as this Commission well knows from the many reports it has issued. One of the difficulties over the past 8 years is the sanction has not been used and that no recipients of Federal funds have thought it to be a serious sanction. Our experience to date, and this is just 4 months, is that we can accomplish the purposes of this statute without using it as long as recipients understand that the government intends to use it. The President, as you know, recently issued a directive to all Federal agencies, reminding them, calling upon them to utilize the fund termination sanction in Title VI enforcements as the primary means of enforcing that statute. We are doing that in Title VI enforcements. We're doing it in our other enforcement areas, and what we are finding, and I think our experience will bear this out, is that once recipients understand that the government is serious about these statutes, and intends to enforce them, we'll be able to bring about compliance without the termination of funds.

Now, that's not to say that we shouldn't consider alternatives, not alternatives, but additional sanctions. It is not to say that we shouldn't have available to us less terminal sanctions to enforce the statutes where appropriate. I would worry, though, about the integrity of Title VI and these other statutes if any serious efforts were made to develop alternative sanctions in these or any other areas. You know, Congress

has a habit of passing ringing, important civil rights laws and then passing a variety of restrictions to their enforcement, and I'd be worried if the fund termination sanctions weren't left in, that other less successful, less appropriate, and less effective sanctions might replace it.

MR. DORSEY. Moving for a moment to another area, the OCR responsibility as it relates to other Departments which are affected by the act, I'll ask you, have you construed HEW's responsibilities as including the authority to review and approve regulations proposed by other Federal agencies to implement the act, and also ask you, what responsibilities specifically does OCR believe the program agencies themselves have to enforce or monitor civil rights compliance under the act?

MR. TATEL. On the first part of your question, that's another one of the statute's ambiguities. I think, however, it is not a serious one. The statute does contemplate that the agencies' regulations will be submitted to the Department, and that they should be consistent with the general regulations issued by the Department. I think implicit in that is at least the authority to review those regulations for consistency. We have the same problem, by the way, in section 504, and we have interpreted it, as I understand it, to limit us to reviewing agency regulations for consistency purposes only. It would be helpful to have this resolved, but I think the statute can be interpreted sufficiently to give us that authority, and in any event I think it could be corrected by an Executive order in clear enough terms.

On the second part of your question, I think, just like Title VI and Title IX and section 504, each agency is responsible for enforcing non-discrimination on the basis of age in its own programs. We, I think, do not have the same overall supervisory authority that the Justice Department does in Title VI. Each agency is responsible for enforcing its own regulations. Other than submitting their regulations to us in their initial stage, I think that ends our responsibility and each Cabinet officer and each agency head is responsible for ensuring that the statute is carried out with respect to his or her funds.

MR. DORSEY. Would that be true also within your Department?

MR. TATEL. Oh, I'm sorry, no. That may or may not be true in our Department. Obviously, the Secretary is the office with the statutory responsibility for complying with the statute. The enforcement of the Age Discrimination Act, like Title VI and the other provisions, has been delegated to the Office for Civil Rights. Now, one of the things—we will, of course, shoulder the major responsibility for that, particularly in the area of complaint processing and compliance reviews, which are normal enforcement mechanisms.

That doesn't mean, though, that the other agency heads and departments within HEW won't have a major responsibility in this area. Indeed they will. The Secretary has made it clear that all agency heads within HEW have responsibility under this statute and will be responsi-

ble for carrying it out. One of the initiatives that we are attempting with OCR is a concerted effort to encourage and help other agencies within the Department to shoulder a greater share of the civil rights responsibilities of the Department. It is our view that in the long run the most effective way we can enforce all of these statutes is to make sure that its enforcement is not isolated in OCR but is, in fact, an integral part of all the grantmaking agencies, and I would think as we moved towards developing our own program the Age Discrimination Act would be part of that effort, as well as our other enforcement responsibilities.

MR. DORSEY. Thank you very much. I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Tatel, we appreciate your being back with us this afternoon and we note that you have prepared a statement for inclusion in the record and without objection, I suggest that it be included in the record at this particular point. You certainly covered the principal points of your statement in response to the questions that have been raised. I'm delighted that in response to the last question you outlined the Secretary's philosophy as far as the involvement of the program units in the enforcement of civil rights laws is concerned. I assume that the same philosophy would apply to the Age Discrimination Act. You heard me say earlier I just participated in a conference on Title VI where I underlined what I think is the importance of this kind of an approach. I understood you were going to participate in that conference?

MR. TATEL. Yes. I was just going to add to that, Mr. Chairman, that we have recently reorganized the office and in order to make sure that this effort to involve other programs within HEW in our enforcement efforts becomes a reality, we have set up a new office within ORC called the Office of Program Review and Assistance, headed by a Deputy Director, to be staffed by a fairly large staff at the beginning of this next fiscal year, whose exclusive responsibility will be to work with the program and grantmaking agencies, to develop civil rights programs for them as well as the rest of the Department. So we've institutionalized it and have high hopes for it and would welcome the Commission's observation on this effort as we proceed.

CHAIRMAN FLEMMING. Thank you. I appreciate that very much. And I would say that is certainly a very encouraging development. I was very much interested in your reactions to the dialogue that I had with Dr. Derzon on the question of enforcement or sanctions. Of course, I agree with you that the Statement that the President sent to the Attorney General relative to Title VI certainly puts all of the departments and agencies that are involved in Title VI in a position where they should understand anyhow that he does expect the use of these sanctions, if necessary, in order to carry out the intent of the law. Without objection, I don't happen to have it with me right now, but I would like to have included in the record at this point the President's

memorandum to the Attorney General on Title VI, because I think it does have direct bearing on the question of the enforcement of the Age Discrimination Act. But I gather it is your feeling that with that kind of Presidential leadership, Presidential support, backed up by what I know is the vigorous support of the Secretary, that you can take a provision such as has been incorporated in Title VI, with a similar provision now in the Age Discrimination Act, and use it in such a way as to make people, the States, or whatever entity may be involved understand that the government really means business.

MR. TATEL. That is so, Mr. Chairman. I think that we can enforce these and our other statutes without depriving the intended beneficiaries of their statutory benefits.

I did not mean by my answer, however, to preclude the thought and consideration of additional sanctions. I think that my remarks were really intended to respond to the suggestion that we should perhaps think of alternate sanctions. I think the more varied kinds of sanctions we have available to us, the better we can fine tune the enforcement of this statute. I did not mean by my response to the question about fund termination to preclude any thought or careful consideration indeed of additional sanctions. The more and varied forms of sanctions we have, the better able we will be to fine tune the enforcement of this statute to both the accomplishment of its purposes and not interfere with the achievement of other sound statutory purposes. I was simply suggesting that to use, to consider as exclusive remedies anything other than fund termination, I think would not help the Age Discrimination Act and would in the long range not be in the interest of effective enforcement of Title VI and the other terribly important civil rights laws we enforce.

CHAIRMAN FLEMMING. I appreciate very much your clarification of your position on that matter and I would agree with you. I certainly don't think that we should eliminate by any means the present provisions relative to sanctions. Also, I appreciate your calling to our attention the difference between Title VI and the sanctions provision in connection with the Age Discrimination Act. We may very well want to consider making some recommendations for changes in the law there, because offhand I don't see any reason why the provisions should be weaker in connection with age discrimination than they are in connection with Title VI.

Commissioner Horn?

VICE CHAIRMAN HORN. I would like to commend Mr. Tatel for a succinct statement. It is a pleasure to see lawyers talk in declarative sentences that can be understood by laymen.

This afternoon, after you left, Secretary Marshall appeared, and in an exchange with him, I expressed the hope, as I have expressed it to some of your predecessors, that the Office for Civil Rights in cooperation with the Bureau of Labor Statistics could compile the best information available in terms of affirmative action to supply data by Amer-

ican graduate schools so that universities administering affirmative action programs might have one source that is recognized with some legitimacy, rather than as it is now with 3,000 affirmative action officers of American universities sort of stumbling into books that might fall off their shelves, that might have some relevance in determining by discipline what is the supply. He expressed an interest in that on behalf of BLS, and I wonder, since it is a continuing problem before this Commission, if OCR has made any overtures or avenues in this area to gather such data and share it with the higher educational community?

MR. TATEL. We have not since I've been in office, but your suggestion is not only an excellent one, but one which I think I would pursue with the Department of Labor. We have, just in my limited experience, already begun to run into that very problem in terms of affirmative action in higher education. We do have these programs and plans, and the question of the relevant labor market and the number of people in it is a difficult one. We have recently faced it most severely with our effort to supply guidance to Southern States in the desegregation of their former dual system of higher education, and the uniform problem that runs through, as you mentioned, is the difficulty in getting accurate labor market data. We have scratched around a little bit to try to find some but have not talked to BLS, but will pursue that as quickly as we can.

VICE CHAIRMAN HORN. Very good, I think that will be most helpful. That's all I have.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Tatel, your office is now charged with the responsibility of monitoring and enforcing Title VI and other provisions of the civil rights laws which prohibit discrimination on the basis of race and sex, and then will be adding the jurisdiction with respect to discrimination on the basis of age. One of the problems this Commission has found over the past several months is when we have asked the question of witnesses as to the extent to which they knew or could have information about the beneficiary or whether they knew or whether Federal agencies knew whether in fact the Federal assistance is being denied to any group, the answer sometimes has been, "Well, we don't keep that data. We do not have a breakdown as to race. We do not have a breakdown as to sex." It would certainly be helpful if the data is cross classified as to race, sex, and age. I would like to ask if you or your office is contemplating any such breakdown?

MR. TATEL. Our major—the answer is that we have not developed definite plans for it. I am advised that it is one of the things we're considering. Our major survey that we do is for elementary and secondary education, so the collection of data in that area would be somewhat limited, since the age span of the recipients is limited. But, to the extent that age becomes a part of our enforcement program, which it will after January 1, 1979, we will collect that data in addition to race, sex, national origin, and we have now added handicap.

COMMISSIONER FREEMAN. The other question that you spoke to was the problem about the ambiguity of "unreasonable." Now, it is, as you know, this Commission's responsibility to conduct the study and to make recommendations for statutory changes, if any, and also for any changes in administrative action. I would also like to ask if you would propose the deletion of the word "unreasonable" from the statute as it is now, or if you believe that, since there is an absence of the definition of "unreasonable" in the statute, as to whether HEW or the appropriate agencies could themselves define "unreasonable"?

MR. TATEL. That is a difficult question. I was frankly hoping to find its answers in the pages of your report, but I, as I said at the beginning, notwithstanding the fact that it is difficult to interpret, I think we can do the job. I think the approach we would take would be very much along the lines of the approach we took with section 504, and that was a fairly pragmatic approach to the problem where we did the best we could to identify the kinds of activities that we thought were discriminatory and thought Congress had in mind and then define the prohibition to include those kinds of activities. That's not the best way to do it, but in the absence of clear congressional guidance, I don't really know any other way to do it.

I am not prepared at this time to say whether I would recommend that the word "unreasonable" be deleted or how it would be interpreted. I think I would want to see the Commission's report and I would want very much to see the results of the study which Secretary Califano has commissioned today within HEW. It is that study, I think, that will give us, at least within our Department, the best record, the best factual record upon which to try to answer the very difficult question you've just asked.

CHAIRMAN FLEMMING. Mr. Ruiz.

COMMISSIONER RUIZ. An armament of cumulative remedies is far superior to remedies in the alternative, and your thoughts on this matter augur well for you in seeking out those activities which, for the moment, may be bedeviling you but which will constitute the tools of your office, and I'm glad you're thinking in those terms.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Mr. Tatel, along with "reasonable" and "unreasonable" as part of the difficulty in implementing the Age Discrimination Act, I think, is the phrase "cost-benefit." "Cost benefit" may be something that is founded on unfounded myth and prejudicial stereotypes. As some of the testimony may have suggested, the view of the aging person is not always corroborated by medical facts. How, aside from that and perhaps in addition to that, how much validity do you think ought to be given to the cost-benefit concept in the light of the equal protection act idea and commitment?

MR. TATEL. It, of course, is the cost-benefit issue which becomes most difficult in interpreting two of the statutory exceptions that I discussed earlier, and where we need to look at it most closely. I think

you need to look at it at two levels. I think I have an answer to one but not the other. Clearly what a statute like this requires us to do is give very close scrutiny to any cost-benefit defense which is given for an age or age-related determination. We must look at it carefully to make sure it is not based on stereotypes, on inadequate information. It is very much like what the courts are requiring us to do with testing. They are requiring us to look very closely at why tests are used, and to examine carefully the way they were developed and the evidence upon which they are based. I think the statute will require us to do that regarding cost-benefit defense under the Age Discrimination Act.

Now, once you have satisfied yourself that a cost-benefit argument is based on sound principle, it seems to me you have another question as to whether even then it is something that Congress intended or did not intend to prohibit. I don't know the answer to that question, and I think it is the kind of step that an agency like the Office for Civil Rights or even HEW should not take without considerably more congressional guidance on the matter.

COMMISSIONER SALTZMAN. If I may pursue it for a moment, in the latter instance, you are saying that there should be this practice of validation of cost-benefit just as there is a practice of validation of job testing. Am I right in that? And that should be one of the regulations?

MR. TATEL. Well, I don't know whether it should be one of the regulations. I was simply saying that as we think through the problem we'll have to give very close scrutiny to that. We have done it in section 504 and Title IX regulations. We do it in Title VI enforcement, and without more guidance from the Congress, I think we would have no choice but to face that issue in the age discrimination regulations. We are not at the stage in the development of the regulations now to know how we would approach that though.

COMMISSIONER SALTZMAN. With respect to the latter issue, do you think, as the chief legal officer for HEW and the Office for Civil Rights, that the cost-benefit argument is invalidated by the 14th amendment equal protection clause?

MR. TATEL. If you are in the age discrimination area, I don't know. I would hazard a guess, though, that unlike race and national origin discrimination, I doubt very much that the Supreme Court would hold that age discrimination is a suspect classification which requires the strict scrutiny test applied to race discrimination, which would mean that the only test would be one of rational basis, and I don't know whether the cost-benefit analysis would meet that standard or not.

I do think that it would not meet the standard in a race case, but that's because I think, in the state of the law today, the Court will give closer scrutiny to race determinations than it will to other forms. It has already declined to provide that same strict scrutiny to determinations on the basis of sex, and I, although it is not safe to predict these sorts of things, would doubt that it would provide that same sort of strict scrutiny to age discrimination.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Mr. Tatel, we appreciate very much your being here, your testimony and response to questions, and we certainly hope that at the time we get out a report that you will find that it will be of help to you in the discharge of what I know are going to be very difficult duties and responsibilities. We appreciate the approach that you are taking to this issue and the approach you are taking to the other issues in the field of civil rights.

MR. TATEL. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. Thank you all very much.

Counsel will call the next witness.

MS. GERE BENICS. Dr. Mary Berry, accompanied by William Blakey.

[Dr. Mary F. Berry and Mr. William A. Blakey were sworn.]

**TESTIMONY OF MARY F. BERRY, ASSISTANT SECRETARY FOR EDUCATION;
and WILLIAM A. BLAKEY, DEPUTY ASSISTANT SECRETARY FOR
LEGISLATION/EDUCATION; DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE**

CHAIRMAN FLEMMING. We welcome both of you to this hearing. I recall with real feeling of indebtedness the contributions that both of you have made to the work of the U.S. Commission on Civil Rights in the past. We look forward to your testimony today. Counsel will proceed.

MS. GERE BENICS. Will each of you please state your full name for the record and your position?

DR. BERRY. I am Mary Frances Berry, Assistant Secretary for Education in the Department of Health, Education, and Welfare.

MR. BLAKEY. I am William Arthur Blakey, Deputy Assistant Secretary for Legislation/Education, Department of Health, Education, and Welfare.

MS. GERE BENICS. Dr. Berry, I'll direct the questions to you and you may defer to your colleague at any time.

DR. BERRY. May I please be permitted to say thank you to the Chairman and to the members of the Commission, and I am indeed pleased to be able to come today to be asked to testify on this important subject.

MS. GERE BENICS. Thank you. With continuing education being one of the most rapidly growing areas in education today and the majority of students enrolled in post-secondary institutions being part-time adults, your job has become more difficult, especially considering the 208 programs and several Federal agencies which have continuing education components, and I'm wondering if you could give us some ideas about what steps will be taken to coordinate these various programs, continuing education resources and programs in the Federal government, to make the opportunities more widely available, especially to persons of varying ages?

DR. BERRY. There are two kinds of activities that are on-going in my office that may help to solve this problem. One is the activities of a

committee which I chair which is called the Federal Interagency Committee on Education, known as FICE. That committee is responsible for coordinating educational activities throughout the Federal Government in the various agencies. I would think that FICE could be an even more effective mechanism for pulling together the kinds of program activities in terms of information sharing, dissemination, and worrying about areas in which program activities are cross-cutting. The other kind of activity is in the lifelong learning program which was authorized but not funded in the previous administration. We have already gotten a project underway from some funds that were available to my office—a research project—and we'll be submitting a report to the Congress in January of 1978, a report which they required, and in that report there will be a number of recommendations concerning ways in which programs and activities can be coordinated, an assessment of what continuing education lifelong learning opportunities exist in programs and activities throughout the Federal Government, and some recommendations for how they will or should be better coordinated. I have seen some of these preliminary studies, and a large part of it does focus on making FICE the instrument for that coordination.

Ms. GEREBENICS. Could you give us some examples of the different kinds of programs you're talking about and particularly those that will ensure that these programs are available to persons over 60 years of age?

DR. BERRY. The lifelong learning and continuing education, as you know, have many definitions, so in part it depends on how you define them, but I mean, for example, the adult basic educational program which exists in the Office of Education, trying to coordinate that with CETA and the Employment and Training Act programs in the Labor Department is one particular kind of activity. And coordinating that with some of the VA programs in the Veterans Administration, trying to see to it that in all of those areas and activities the most appropriate learning situations are made available and that people know about what is available to them, and that the programs can fit together. So, they exist in a number of departments throughout the government, but I think the best examples are the activities between Labor and HEW.

Ms. GEREBENICS. Is that a program that concentrates on, specifically, on training or on vocational ends?

DR. BERRY. The CETA and the Labor Department programs focus on training, but the adult education program that I was referring to focuses on basic education, focuses in the main on literacy. We have also in HEW, in the Office of Education, we have vocational education programs also, and we have in NIE, another one of the agencies in the education division, National Institute for Education, an education and work group which engages in research leading to models and sometimes demonstrations on training activities as they relate to work, so there are all these various kinds of activities which exist.

Ms. GEREBENICS. Has the changing age distribution of colleges changed the complexion of these programs since their inception?

DR. BERRY. It has. What the changing age distribution of college students has done is to make the focus of education and work, and lifelong learning especially, to think more about the adult learner because these are the people whom colleges and universities are trying to attract in the first place and who are going in larger numbers to colleges and the universities, whereas the focus used to be on the typical 16, 17 to 21-year-old person. Now more of the programs are directed toward people in an older group.

I may point out, too I just came from a meeting for the Fund for the Improvement of Post Secondary Education, a board meeting, and they had before them just before I came over here, a proposal that they place emphasis next year on adult learning and adult learning opportunities to make colleges and universities more cognizant of the needs of older learners and not to regard them as simply people who are there to be taken care of after the traditional age groups, but as an important part and component of the student population of the institutions. So that I would say that in all of our programs where there is any opportunity to be concerned about adult learners, there is more concern now, more focus even in those that do not seem to sound like they would have something to do specifically with adult learners, and that is also the case in adult education, education and work, and the lifelong learning activities.

MS. GERE BENICS. Have all these changes entailed massive curriculum changes throughout the programs?

DR. BERRY. No, they have not. What they have done is think about how you go about getting massive curriculum changes so you can meet the needs of those persons. I am not at all implying that everyone has changed curriculum or the whole focus has been changed. I'm simply saying people are aware of the existence of this group of learners, that they should be concerned about them, and the question is what do you do next and how do you rearrange some of these activities and programs.

MS. GERE BENICS. Thank you. Mr. Chairman, I have no further questions.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. I'm going to ask you a question that I have asked other witnesses during the day, and that is about something that I define as triple jeopardy, and that is with respect to the class of race discrimination; I would be a member of that class; and sex discrimination, I'm a member of that class; and now with respect to discrimination against older Americans, I'm also a member of that class. And so, therefore, in those persons who are victims, either double or triple, find themselves in a society in which not very much has been done to enforce the civil rights laws in terms of the effect, to accomplish the end of discrimination, I wonder if you would comment on the extent to which, in the programs that you administer, you see that perhaps a triple effort could be done by some or could be required of some of the agencies or some of the recipients of Federal assistance.

DR. BERRY. You talk about triple jeopardy, Commissioner Freeman. I would say in some cases it is quadruple, if I may use that term. We have discrimination on the basis of race and sex and age and handicapped conditions, all of which we have to be concerned about in our Federal programs, and the question is, how do you take care of the discrimination that has most recently come to your attention at the same time that you try to do something about discriminations that came to your attention sooner or before, and some of us would believe that not enough has been done about those, and when you are twice or triply blessed, in terms of being in those categories, it becomes even more a matter of concern than it was before. We could add even discrimination based on a language where one speaks a non-English to that and make it five instead of four if we wanted to. I think that it is quite appropriate to add discriminations that we know exist even as they become more visible to those in which we would connect the provision of Federal financial assistance with intentions to comply with efforts to wipe them out. But I am somewhat, I am wondering somewhat how we go about enforcing—how we go about making it clear that we understand that the enforcement of these other provisions against discrimination has not been what we would like to it to be even as we extend ourselves to yet another area. So I think age discrimination, it is quite appropriate that it be added to the injunction of discrimination based on sex or race or handicapped condition, and maybe as we go through the process of learning how we go about getting rid of it, we'll learn something that will help us to enforce the other restrictions that already exist, and so I think it is appropriate to do what I'm also concerned about, the matter of how programs go about getting assurances in all of these areas and following up and monitoring and making sure we do an enforcement job for all of these purposes.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Dr. Berry, do you think that affirmative action mechanisms ought to be applied to higher education in relationship to the admissions policies for the aging?

DR. BERRY. That they should be required to set goals and timetables, for example?

COMMISSIONER SALTZMAN. Yes.

DR. BERRY. For a certain percentage of people who are at a certain age whatever the age limit happens to be? I would think that discrimination against age is not in the same category as discrimination on the basis of race, for example. I would agree with my colleague, David Tatel, who was just up here before me, that the kind of legal rationale that one would apply to cases involving age discrimination would not be the same, and that there one has to think more about a rational basis test, which is why I suppose the statute has in it the injunction against unreasonable discrimination as opposed to all dis-

crimination. I haven't read the legislative history, but maybe that's the reason why it does. And so, the tests there would be different and the requirements to remedy the discrimination would also be different too. So I would not think that it should be, the remedy should be to impose goals and timetables requirements in the case of age discrimination as we do in the case of race discrimination or sex discrimination.

COMMISSIONER SALTZMAN. If I may pursue that for a moment further, from personal experience I know friends of mine, for example, who in their early forties applied to medical school and had successful careers in related fields and who were refused entrance to medical schools on the basis of their age. It would seem to me that unless there were some affirmative policy or mechanism that we will not alter that with even good law and good intention as we've experienced with race discrimination, and indeed there may be a valid differentiation between race discrimination and age discrimination and I'm not sure of that point. I'm not a lawyer. I'm not sufficiently sophisticated to really deal with that yet. I hope I will be, but nonetheless it seems to me that, unless there are some mechanisms, the rationale of cost-benefit will continue to be applied to exclude and to discriminate against aging people. I mean aging in the late thirties and early forties.

DR. BERRY. Well, I can agree with you now, Commissioner Saltzman. I would think that the failure to admit someone to an institution just on the basis of that person's age would be a violation, and that the basis would have to be something other than the age of the person. I mean, if there are rational reasons, or reasons about which reasonable men and women could agree for not admitting the person, than that seems to me it wouldn't violate the statute, but if it is done solely on the basis of the age of the person, then it would be a violation, and I think that's entirely proper.

COMMISSIONER SALTZMAN. How are we going to monitor and enforce that, Dr. Berry, when the dean of the medical school, whom I know, to which my friend applied, volunteered privately to me that indeed it was age which precluded the entrance, but he would not say that publicly of this friend of mine.

DR. BERRY. Well, he could always be suspected, I guess, and be asked to say it publicly. I would simply say if, indeed, if someone said to you privately that the reason why they would not admit someone to an institution was because of their sex or race or something and they told you that privately, but refused to say it publicly, and said publicly it was for some other reason, there it is a matter of determining the facts of the basis for the failure to admit, and in the case that you described, once it is elicited from the dean or circumstances or whatever the evidence is that the real reason is a person's age, if there is no other reason, then that would be a violation, and I think we would support that.

COMMISSIONER SALTZMAN. Not to be overly persistent on this, but indeed in the issue of pupil transportation, everyone insists that it is not

bigotry or anything like that which has them in a position of opposition to pupil transportation, and yet in instance after instance the fact is that it is the color of the person's skin that is involved with their opposition to pupil transportation, and I am afraid unless we have mechanisms that the discrimination against aging people from 30 and up will persist in admissions policies to schools of higher education and professional schools.

DR. BERRY. Well, I agree with you, Commissioner Saltzman, and I think in the case that you described about pupil transportation, whether some people like it or not, courts have dealt with that problem. They have dealt with precisely the issue of whether people are opposed to pupil transportation because of somebody's race and where they had been opposed and that has been the basis and that has been the remedy needed to solve that segregation problem. The courts have ordered pupil transportation. So, I'm simply saying in the case where someone is denied admission solely on the basis of their age, as I understand this statute, that it would be simply a matter of proving that, and courts can deal with that just as they have dealt with this other issue, and I will be in favor of having to deal with it.

COMMISSIONER SALTZMAN. You don't think a program of affirmative action is necessary, that it could be remedied on the basis of court cases?

DR. BERRY. I would think now, my present inclination would be to say that it could be dealt with without the kind of setting of goals and timetables that were done in race cases, but if it should turn out that it could not be otherwise, then I would not oppose that.

COMMISSIONER SALTZMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Horn.

VICE CHAIRMAN HORN. Let me just say that with your answer on continuing education, obviously I agree with you, that's the trend and has been the trend in American higher education for the past decade and a half. In my own university we had a law passed by the California legislature that permits two of our campuses to admit any senior citizen who qualifies under our normal standard, which would be the equivalent of the upper one-third of high school graduates to go to the university, take a full load for only \$3, and we have two pilot programs in-State, and I must say they are immensely successful, their grade averages are excellent and they have found no generation gap between the traditional 17 to 22 year olds, and those who are older.

Getting to some of the programs in the education and HEW that are designed to help provide access to students, we do find difficulties, not simply with the senior citizens who might want to go back to school but particularly with the returning woman who might want to go back to school in terms of how our financial aid programs are structured in terms of need and really being geared more to the 17 to 21 year old who has parents who sign confidential financial statements and so forth. I'm wondering to what extent does the Assistant

Secretary for Education really have the opportunity to make recommendations having to do with various student financial aid programs such as the basic educational opportunity grant [BEOG], the guaranteed student loan, GSL?

DR. BERRY. I have the opportunity in every case, since one of my responsibilities to make policy recommendations is concerning all of the programs and activities that exist anywhere in the Educational Division, including the Office of Education.

Before I address that point, if I could comment on your comment, Commissioner Horn, about the program in California at your university. I don't know what the situation is there, but a number of older students have complained that in some universities and colleges they are permitted to register on the same basis as other students and they even pay a low fee, sometimes free, but that, in fact, it is on a course-available or auditing basis after the other students have signed up, which they regard as discriminatory, and which may be something that the Commission wants to look at, I don't know.

VICE CHAIRMAN HORN. This is correct, but there's a way around that when you get the cooperation of the faculty to let them in. Those were the terms on which the California legislature enabled it because the fear was that universities were merely trying to attract a new population to keep from losing financial resources, so our argument was, these resources are already available. It isn't costing you any more. These individuals have paid taxes to build this system of public higher education and with lengthening longevity, earlier retirement, the State has a obligation in terms of promotion of the soundness of society to avail these educational resources to senior citizens. But that has been a problem, I know, in 1 or 2 cases out of our 75 or so in the pilot program. We're hoping to get that changed, but first you've got to get it accepted that they can do the job and they are profiting for it and the State benefits from it, perhaps less people going to nursing homes with senility and so forth.

DR. BERRY. That is right, and there are a number of States where, of course, they do not permit that kind of things for senior citizens.

But to get back to your question, yes, I do have responsibilities for making recommendations concerning changes in legislation for any of the programs or activities in the educational division, which would include the BEOQ program to which you refer.

VICE CHAIRMAN HORN. Well, do you see any problems based on your own experience as university administrator, now as Assistant Secretary, with reference to age in these student financial aid programs?

DR. BERRY. The major problem seems to be the emphasis on the full-time students and people who are working toward a degree, requirements of that kind in the aid programs. The question of whether there should be some kind of change in those requirements is one that should be very carefully looked at, and we will look at it

very carefully and we will have to ask ourselves again when the requirements are based simply on age, which would not be permitted, or when they are based on some other kind of rational reason which makes sense in the given context. But we are aware of the burden that it places on students, and particularly, as you pointed out, some female students and some older students and students who don't want to go to school full time, to have the requirements always versed in terms of degree-seeking and full-time attendance of students.

DR. HORN. Well, I'm glad you're pursuing it. As I suspect, the graduate schools of America are increasingly filled with part-time students who are working for a living, partly due to economics and partly due to the individuals' wanting to update themselves in a particular field, and they are not necessarily, in fact, less and less, are pursuing a degree objective but they are pursuing particular learning to help them in either a professional situation or in terms of personal growth. But it is a legitimate avenue of educational endeavor, and you correctly point out that the thinking of many who designed these programs has not quite realized what has been under our nose for 10 years.

Now, one of the concerns I had in student financial aid is this guaranteed student loan program of which there are many abuses in terms of the failure of repayment, but certainly one of the abuses in administration has been that some banks have been permitted to put on an age limit of 30, perhaps, before making resources available. Would your office pursue these matters, are they pursuing these matters, or what?

DR. BERRY. That particular matter is being pursued in the context of pursuing a lot of matters relating to the operation of the guaranteed student loan program. I think it will be—we are looking at it in terms of our evaluation of the total program and whether we should make some recommendation for changes in the legislation. If you want to ask questions about the operational end of it, I think you should ask Ernie Boyer who is responsible for the day-to-day program administration of it, when he comes on after me.

VICE CHAIRMAN HORN. Commissioner Saltzman mentioned an age discrimination in medical schools and that leads me to a policy question which is of interest to this Commission just generally in our concern about the enforcement of civil rights laws, and that is on matters of age discrimination in medical schools. There are obviously Federal funds that go from HEW and various National Institutes of Health, Office of Education, etc., to medical schools' health-related programs. Let's say discrimination occurs 2 years from now in these schools, and we have the Title VI provision. As I understand it, your present enforcement mechanism within HEW is handled by the Office for Civil Rights?

DR. BERRY. That is right.

VICE CHAIRMAN HORN. Now, based on your experience as a university administrator, as a person who studied and practiced and acted on

civil rights matters for several decades, and now is Assistant Secretary, do you think the program enforcement responsibility should be centralized in HEW with OCR or should it be decentralized with the program areas, so that you can hold education or subunits within education or health or welfare, whatever, accountable for carrying out the laws of the land?

DR. BERRY. In general terms, I would think it would be better to have responsibilities for enforcement placed in the specific program activities working in conjunction with OCR. I think that civil rights enforcement in general in the Federal Government has been a failure from my standpoint, and that it has been a failure for a lot of reasons, some of the reasons having to do with lack of will to enforce the law, a lot of it having to do with unwillingness to ask that funds be returned or cut off once they've been given, and it seems to me that people who operate programs where funds are dispensed are in the very best position to make a decision not to dispense them or disburse them when there is a violation of civil rights that has occurred.

So I think that in general terms my preference would be to make sure that programs and activities are involved. Now, there're some reasons, some historical reasons, why this is not the case at the present time, why there is this division of responsibility. Part of it has to do with the fact that at one time, as I understand it, some programs and activities were supposed to be enforcing civil rights along with their normal responsibilities, but that didn't work out. Many program people all over the Department, not just in the educational programs, feel that their responsibility is to the institution program or activity out in the field and to get the funds out to them as quickly as possible because they are providing a service to a particular constituency group which is an important service, whether it is in health or education or whatever, which cannot be easily cut off because some peoples' very lives depend on the service, and so that when you bring in civil rights considerations and issues into their thinking that that is just too much to bear and it interferes with their relationship with the constituency group out there, if they have to worry about bringing in these considerations in day-to-day business of running their program or activity. So, the Office for Civil Rights, as I understand it, was supposed to be able to be an agency which stood aside from these considerations and worried only about enforcements and would carry out these activities with great vigor without worrying about the constituency group and so on. That hasn't worked because OCR, of course, is within the governmental structure and, of course, it can only act, go as far as those who have political control wish it to, and cutting off funds is a rather forceful weapon to be used if it means stopping an activity in its tracks.

So this is the reason why it all changed. I happen to think that it might be better now to go back to some kind of a system where you had joint responsibility for civil rights enforcement. The Secretary has said on a number of occasions that he shares that view, and that he

has asked OCR to work with the programs and activities and heads of the principal operating components in HEW and the agencies in trying to work out ways where there would be a compliance checkoff before funds are distributed. That isn't in place yet, but it is my understanding that he wants it to happen and I think it is something that we should do.

VICE CHAIRMAN HORN. Well, you have very well rounded out the arguments there. As you correctly state, the reason for centralization was the fear of co-option by the constituent groups of the responsible program agencies, and I take it what you and the Secretary perhaps are suggesting is a mixed strategy where OCR is still within HEW to keep their conscience to a fairly finely honed point and yet the people dealing with the program would realize they, too, have a responsibility in terms of enforcing the civil rights laws and they are not simply dispensing money for particular programs. Is there any study underway along this line, or is this just theoretical speculation in the halls?

DR. BERRY. The Secretary asked David Tatel, who was just here before me and who is the new ORC Director, to formulate some plans for doing this. The Secretary also appointed a Deputy in David Tatel's shop, a man named Chachkin, who is Deputy for Program Review and Operations, I think that's what he's called, and his major job is to be liaison between OCR and the agencies. He's been working with my office and trying to formulate a Strategy for putting that into operation in the education division and I assume that he's doing that elsewhere.

VICE CHAIRMAN HORN. Very good and I thank you very much.

COMMISSIONER RUIZ. Dr. Berry, I learned today from panelists that much of our aging process comes from stereotyped customs and mores and not necessarily from the ciphers of the calendar. Apparently, what I just learned is an old concept which is being revived by citizens organizations which may become affiliated with schools and universities, called peer-group teaching. I have a little newspaper article from the *Los Angeles Times*, the day before yesterday, and it says, "Senior Citizens Form School to Keep Minds Stimulated. Walking three miles a day didn't satisfy their need for mental stimulation, a group of retirees concluded and so they formed the Institute for Continued Learning at the University of California, San Diego." It goes on to say it started out with 20 students and now they have 125 participants. The San Diego group joins a national trend which began with the formation of the Institute for Retired Persons at the New School for Social Research in New York in 1952. Now there are similar groups in San Francisco, Illinois, Michigan, North Carolina, Ohio, and Texas, as senior citizens who are not content to waste away in rest homes, seeking new stimulation. It goes on and says the participants range in age from 45 to 85 years of age. Miss Gostman [phonetic] explained how peer teaching works. "Group leaders don't need to be proficient," she said, "they just have to be interested. This is peer-group teaching."

Now, is the department of education probing into such type of volunteer groups? This morning we heard from testimony that there were many volunteers in this area of aging throughout the United States. There was one organization, you might find it on the agenda—who are not necessarily seeking school credits but nevertheless can affiliate with schools once they got some sort of backing, probably—this is purely a volunteer group, I understand —from HEW. Is there any probe looking in that direction?

DR. BERRY. There isn't any over in our division. I don't know if there is anything going on in Human Development Services or not, or in the Commission on Aging. You can ask the Chairman that. I don't know. I know that in our area we have not had any programs that are operational in that regard. It has occurred to me there are two areas where we might begin an initiative of this kind. I have had some discussion with people from ACTION, Sam Brown's outfit, about volunteers being used in this way.

One of the areas where we might use it is in our adult basic education program, where our major difficulty seems to be delivering the educational services to the people who need them. The major problem with that, which is a basic literacy kind of program, as well as a number of our continuing education activities, is they do not go to these older people who are most in need in the first place, and we might be able to identify some older people in those areas who would be willing, as you say, to be peers of the others to help to educate them and help to tell us how to deliver the services to them. That would be one area where this would be very helpful to us.

COMMISSIONER RUIZ. You might look into the retired persons at this School of Social Research—it started in New York in 1952 and is apparently spreading throughout the United States—and focus in on it. It might be helpful and might get some ideas out.

DR. BERRY. I think it would be helpful in that. We will look into it. And the other place where it might be very helpful to us, in trying to devise parenting and tutoring programs for disadvantaged kids under our Title I programs, which we are looking at under the reauthorization process. I think volunteers could be very helpful in that program, and I will look at it.

COMMISSIONER RUIZ. Okay.

DR. BERRY. Thank you very much.

CHAIRMAN FLEMMING. Dr. Berry, in discussing services such as those in the area of mental health, we have received testimony and heard statements and made Statements to the effect that if a community mental health clinic fails to conduct an outreach program in order to make older persons aware of the services that are available, there is a presumption of discrimination on the basis of age. Do you identify or can you identify any comparable areas as far as the field of education is concerned where it might be said that a failure on the part of an educational institution in any way to conduct an outreach program

which will make older persons aware of the services that are available in effect constitutes discrimination?

DR. BERRY. I can think off the top of my head where a number, it seems to me, where it would be entirely appropriate. One would be vocational education programs, definitely some kind of outreach should be made absolutely necessary there. I would think that if we had some kind of provision which would require institutions of higher education—because there are a number who don't, even though we can talk about the examples of those that do—to have a special kind of outreach effort to adults and with programs—with requirements in the institution not framed in such a way to discourage the participation of such persons, that that would be very useful. I would think also some kind of provision which would encourage the persons who fund research to make it known in a forceful way that they are open to proposals and suggestions from older people as opposed to having it understood that they are only interested in some proposals, say, scholars who are writing their first book or have been out of school only so long, or if they get to the age of 35 or 40, we're not interested in having them apply, and things like that. Not only removing the discriminatory language but making it clear that they in fact are seeking to provide opportunities to persons in these age groups. I would think of those, off the top of my head, as areas where we could very definitely do that.

CHAIRMAN FLEMMING. Thank you very much. We appreciate your being with us. Thank you very, very much.

Counsel will call the next witness.

MS. GEREENICS. Dr. Ernest Boyer, accompanied by Mr. Albert Alford.

[Mr. Albert Alford and Dr. Ernest L. Goyer were sworn.]

TESTIMONY OF ALBERT ALFORD, ASSISTANT COMMISSIONER OF EDUCATION FOR LEGISLATION; and ERNEST L. BOYER, COMMISSIONER OF EDUCATION; DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CHAIRMAN FLEMMING. We're delighted to have both of you with us.

DR. BOYER. Thank you, we're pleased to be here.

MS. GEREENICS. Will each of you state your full name for the record and your position?

DR. BOYER. Yes. I'm Ernest L. Boyer, United States Commissioner of Education.

MR. ALFORD. I'm Albert Alford, Assistant Commissioner of Education for Legislation.

MS. GEREENICS. Thank you. Dr. Boyer, we've been conducting quite a long study and, particularly in the field of education, we found that, relative to the major elementary and secondary education programs administered by the Office of Education, that most Federal resources from these programs are concentrated at grades 1 through

6. The present situation indicates that due to limited resources even fewer funds are directed towards education or will be directed towards the education of children in grades 7 through 12. I was wondering what steps might be taken by the Office of Education to assure that all children will be adequately served under the programs under your jurisdiction?

DR. BOYER. The use of Title I funds primarily in the first six grades was an educational decision made with the States, and it reflects the assumption that the program would be most effective if it sought to be preventive, and the aim was to try to deal, since it was not fully funded, in terms of the eligible children. The assumption was that if they would focus on these in the early grades and seek to provide the compensatory help that it may be heading off problems that would emerge later on.

I have to tell you that the evidence that is emerging indicates that may be good logic but poor practice. The clear evidence, at least growing evidence, suggests that the early gains can in fact lead to losses, and I don't think anyone would argue that there would be logic to ignoring early problems preferentially for later ones, but the strong evidence suggests that if that help isn't sustained, you lose the early gains and some of the upper grade problems are really the reflection of an intensive early effort that did not have continuity. As a result, increasingly the States—and with our considerable encouragement, aided, to be sure, by our hopes for more money—will seek to extend that Title I compensatory support so that we won't have the early gain and then later loss, which I think is at least indicated by the practice that has been followed for the past number of years.

MS. GEREENICS. You used the word encouragement. Does your office offer any guidelines, policies, promulgate regulations concerning these acts?

DR. BOYER. Yes, within legislative limits. We do not have clear mandate to control in detail how the Title I funds are used. We have increasingly sharpened our regulations-guidelines around purposes that seem clearly to compensate for losses in what you call the basic skills, and it is about 75 to 80 percent of the Title I funds, as we interpret the reports to us, are geared, are targeted to that, and as you said, the majority at the lower grades.

I think it would not be within the jurisdiction of legislation for us to mandate through regulation that these be redirected to a particular age group exclusively. It would only be through the encouragement, but I think fairness requires that I indicate again the problem of fully funding that authorization is really the centerpiece as well, so that—but I can say that there is now active effort going on through conferences, conversations, and even some pilot projects that States have launched to target those dollars to the upper grades.

MS. GEREENICS. The Federal Government now spends a substantial amount of money on adult and continuing education programs, with

two of the most popular being the adult basic education program and community services and continuing education programs. We note that the greatest number of participants in those programs is in the age range of 16 to 24, and I wonder what action might be taken by your office to improve the delivery of adult education programs and services to ensure that it is reaching people of more varied ages?

DR. BOYER. Part of the explanation on that, again, is the method by which the programs are delivered. Take the Vocational Education Act. That is, those are actually grants to States, as you know, and the primary responsibility for the delivering of those funds to institutions and the mechanisms by which they serve the State through the State agency. Now it is true the States submit to us a plan, but the principal vehicle is through the State agency which is held responsible, and they in turn depend on existing institutions.

What I am suggesting is that there are not many innovative arrangements that bypass the institutions which are the ones who primarily serve the age groups you mentioned, high schools. In fact, what it is, Al, I think only 15 percent of the Voc. Ed. Act is assignable to post-secondary and adult programs, if my terminology is correct, as a requirement. Well, granted, that's the minimum. The minimum is rather more frequently the maximum. That means that the monies, 85 percent, are delivered through high schools. Now, they again are not limited in their imagination to the age, but it does tend to target about the population which that institution rather selectively is serving.

On the other hand, there's no question that we can—well, there's always a problem to know what is our discretion in terms of extending regulations beyond what is legally intended. I should make that a clear statement, and there is a great pressure on us not to use the regulatory device to impose constraints or expectation beyond what the law intends. At the same time, it is possible for us to at least encourage that the State plans demonstrate ways by which those monies could be more imaginatively used to touch age groups beyond the delivery system which, in fact, is relied on.

As to adult education, that's quite a different program, discretionary grant, and there we are able to give grants to agencies and institutions directly. And if my memory serves, there was some drop in recent years. I think those 55 and older served by the adult education program has dropped from about 10 to 8 percent. My friends have advised me that's because that age cohort has bulged in the younger groups and the actual quantity has increased although the percentage has slipped, reflecting a bulge of that young adult group that has been served by what Dr. Berry quite correctly called it, adult literacy program.

MS. GEREHENICS. In the programs that you just described that you fund directly then, are you able to be more definite as to guidelines and policies?

DR. BOYER. Al reminds me that I misspoke in saying that we had full discretion over even the adult education. It still goes through the States but not through the voc. ed. plan. I meant to separate that out, and I'm sorry I missed the question—I was so startled by the fact that I had in any way misspoke.

MS. GEREENICS. You just answered it.

DR. BOYER. Good.

MS. GEREENICS. This came up in a conversation with Dr. Berry and I was wondering what steps might be taken by your office to ensure that institutions don't discriminate against older, part-time students, in awarding aid under the financial aid under the programs administered through your office?

DR. BOYER. Yes. The student aid programs?

MS. GEREENICS. Yes.

DR. BOYER. I think there is no inherent restriction against age except as I believe the legislation in many of the programs seems to define part time as half time, and to the extent that older people would be engaged in higher learning but probably less than half or full time, I think there is implicitly in that a discrimination that where age becomes a disadvantage. I have always been troubled and perplexed by that. In fact, in New York there were even tighter constraints on how State aid programs were applied, and I would certainly encourage and I think the Department would support the notion of being as liberal on that as possible so that we do not have that barrier.

MS. GEREENICS. Do you have any concrete suggestions as to how that sort of—would that have to be legislative change or policy change?

DR. BOYER. It's the legislation I think now establishes the half time as the criterion for eligibility.

MS. GEREENICS. I just have one final question and it goes to the Education for the Handicapped Act, and although the allocation for funds under this act is based on the number of handicapped served and percent of the national average for pupil expenditure on regular programs, will this funding incentive encourage States to serve handicapped children outside of the compulsory school range or does it inhibit them?

DR. BOYER. I think the legislation in fact does clearly establish the age range of those eligible, ranging from 3 to 21, and it does make clear that this is to provide education free—appropriate education for all children and young adults within that age span.

MS. GEREENICS. The problem appears to be with children ages 3 through 5 and then children 18 to 21, if the State, in fact, does not have compulsory education laws for those age groups, and if there any sort of incentive to encourage States to serve children within that age range?

DR. BOYER. Well, I think the States are granted the option. Isn't that the way the law would be interpreted?

MR. ALFORD. The law allows the States to opt out of that 3 to 21 to that extent, and they only have to serve really the 5 to 17.

MS. GEREENICS. What would be your office's role in that, encouraging the States, or just staying out?

DR. BOYER. Well, I have to say that on this at the moment there is clear evidence that the States are going to have to make a dramatic effort to provide minimal adequate education as the law intends to cover those who are in the primary, age education spectrum of 5 to 18, and I could not encourage a State at this moment to extend those age lines unless I felt we had adequately delivered on the primary, school-going population.

And our biggest problem now is to see that the hopes and intentions and even the pledges of the law are going to be met in the classrooms, and if we don't deliver there, then I think the prospects of backlash and frustration can subvert what is a tremendously important social effort. So without being insensitive to those on either side of that bracket, I only know what day to day I sense about the efforts being made to deliver up within the major categories and would feel we'd have to defer judgment on vigorously urging extension if the center is falling apart.

MS. GEREENICS. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Thank you. Commissioner Horn.

VICE CHAIRMAN HORN. Let me pursue that vocational education program-Comprehensive Employment Training Act interaction, but I'd like to go beyond that as to interactions generally between programs in the Office of Education that further and encourage either secondary school work, adult education, and etc., and what tie-in they have, if any, and what coordinator mechanism you have, if any, with the Department of Labor and its human resources groups, because I'm concerned that sometimes we're educating people for jobs that don't exist and on other occasions we're really not sure what the job market is, not just in the job immediately after training but down the line, to provide the proper government resources to upgrade a work force or give people certain levels of competence. Could you tell me what kind of relationships exist between Education and Labor in this regard?

DR. BOYER. On that organizational question, Commissioner Horn, I have to say that the relationship is cordial but still not functioning in a way that I think is justified, given the remarkably important common agenda that is now emerging. Dr. Berry, just with you, is chairman of an agency called the Interagency Committee, and I'm confident that this will become clearly a point of connection not only with Labor but several others.

My own view, looking at it in a more parochial way, would be to propose and hope that it would be possible for the Office of Education, one agency that I have some responsibility for, to reach some operating agreements with the appropriate component in Labor—and

I don't know the nuances of their structure sufficiently to allow us to deal with particular operational patterns—in much the way we have in an exploratory way with the Office of the Aging where we have created an interoffice unit to try to choose a particular task that grows out of maybe particular legislation at this time and start to make that connection. The truth is that this problem has burgeoned and these two agencies have been given dramatically increased responsibility, most especially Labor, and I think our urgent need to build the mechanism to make these operational connections is very vivid but not fully in place.

On one other point, if I might, there is another area where we do have greater control internally. It relates to your query about the adults in the voc. ed. I just yesterday, Friday, I met with a group of representatives from postsecondary institutions regarding the percentage of the funds that are available in the delivery of the voc. ed. In many States it is 7.5 percent because the definition of adult education does not mean a postsecondary institution. It can be adult education through a high school.

And the reason I bring that discussion to you is the fact that what started at first very much like a political tug of war ended in a very more useful discussion about who is to be educated and which are the institutions best able to do it. It seems very clear to me, without I think being very evenhanded, there are institutions and structures beyond the high school that are attractive and useful and compelling to adults that may be used, and extending the funds into those institutions would be more serviceable to adults than to have, what would it be, nearly 93 percent of all the vocational education dollars moved into the pre-higher education or institute, whatever is beyond the high school. I bring that up to suggest again I think there's an institutional mix here that we might look at, not as a political tradeoff, one versus another, but who is to be served, what kinds of institutions would they normally turn to, and how can we distribute it in a way that will respond to the need, and what we have, at the bottom of all that reflection is, we are moving to see to it that there appears to be a potentially different kind of distribution even through the institutions.

VICE CHAIRMAN HORN. This morning we had a witness, in discussing the problems of getting the older student into higher education, make the statement that it really wasn't the tuition that barred access so much as it was the cost of living. I wonder how you feel about that. Is that a fair statement of the problems of denying access to the older student? Is it the cost of living, perhaps one, I guess an economist would say, foregone opportunities to give up jobs to a certain extent in order to take advantage of improving one's competency to perhaps regain years down the line. I think of a mature woman, others that have come back at age 30.

DR. BOYER. I think there's no question that the institution is the smallest problem. It is schedule, location, and competition with other

obligations. Our problem in higher education is to find a way to match the institution to the life circumstances of the adult. And the truth is, the higher education institution in conventional terms was based on the assumption you were dealing with a young adult who had no other commitments, who could give his life or her life exclusively to that institution and live by the rules of the institution.

When you talk about educating adults of different ages, the answer lies in figuring out a structure that matches the nature of that life. Almost without exception, in my view, the conventional structure is inadequate to meet it. Therefore, it builds in indirectly the discrimination because you have to play according to rules that don't match your circumstances. In the case of retirees they are able, they have the time. We, one of our entire resident halls in one campus on one occasion in New York was given over entirely to retirees. Some 700 lived on campus. It was marvelous. Made the campus a healthier place. They were able to go to classes as well and attend concerts, and I think it did the young students some good to see some older people around. It brought a little dash of wisdom here and there, but that's again a group that is relatively more free from obligation. But if you talk about the middle years of life, it is practically impossible for a housewife or a mother or an employed person to go across town Monday, Wednesday, and Friday at about 9. That makes no sense. On the other hand, if it can be arranged so there are evenings or independent study arrangements, get the same material but so it is compatible with your schedule, now you've matched the system with the life circumstances.

VICE CHAIRMAN HORN. You perhaps heard my question of Dr. Berry's guaranteed student loan. Do you have any studies going within the Office of Education to look at age discrimination as practiced by banks and others in the implementation of some of these student financial aid programs?

DR. BOYER. I must say if there are studies, I do not know of them at the moment. I'll be happy to inquire when I return, but they have not been brought to my attention. The only, I'd say, it does not in anyway represent either our policy or legislative intent. It would show up only as campuses that are administering campus-based programs which choose to be preferential in assigning the money, or be, as you just said, Dr. Horn, in the case of banks under the guaranteed loan where they are to make loans which we underwrite, and I do not have evidence at hand that in either instance there is locatable discrimination.

VICE CHAIRMAN HORN. For a while there was sex discrimination in one or two central California banks and we did protest that, and I'm wondering to what extent this is occurring elsewhere in the country.

DR. BOYER. I have no evidence, but we can certainly ask our program people to follow up, if that would be helpful.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. Ms. Freeman.

COMMISSIONER FREEMAN. I have no questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Schools oftentimes emphasize the need to create a person who may become a productive member of society. Testing by schools, I have noticed that universities are geared to this standard of creating and developing a person who may become a productive member of society. Dr. Horn emphasized it by using the words, "educating persons for jobs that do not exist." Now, is this necessary in the case of older persons? Aren't we more interested in having older persons who already produced to simply participate actively in everyday activities wherein they can contribute those talents they have always had, no matter how limited? Are the universities, in the concept just mentioned by my colleague here, perhaps in error seeking to train and looking at this older person for jobs or to become a productive member of society? These two categories perhaps should not be confused. The older citizen relates to a problem that has social propensities. We have a lot of money invested in educational institutions, and because we use the word "educational" I'm just wondering if we're going a little bit overboard there and not looking at this in a balanced perspective. What are your thoughts on that?

DR. BOYER. There are several objectives, depending in part on the age you are describing. I think there's increasing evidence that adults who have left school or college are in need of reeducation in order to keep pace with the job they are holding or possibly to prepare for a new job or a new career because of obsolescence in one way or another. So I think it would not be appropriate to draw a line sharply and say those who were older are not being prepared for vocations in a very precise sense. The answer is they may very well be, but it is true that for many older citizens education can take on the form of enrichment, if I understood your description, and can, and is not to be seen in the narrow sense of matching them to something that would be described as a market need. I may have missed the thrust of your question.

COMMISSIONER RUIZ. When you started your answer, I thought you would fall into the same track.

DR. BOYER. I probably did.

COMMISSIONER RUIZ. Of saying, "Well, we're taking care of these people but it is useless because of the fact that we are trying to match them to a job." Now, I wasn't thinking in those terms, and then you got away from that and you struck a halfway mark of saying, yes, there are some people may want to do that and other people with relation to the social part that I was bringing out?

DR. BOYER. Yes.

COMMISSIONER RUIZ. What I had in mind was oftentimes our institutions of learning are not thinking in terms of the second part of the question. And with relation to testing, with relation to the immediate problems, with relation to qualities of administration, etc., are they thinking in terms of, "Are we going to teach this person for a job that

doesn't exist?" when they don't necessarily have to do that. I'm trying to expand this in some fashion or another and utilize resources for that as well because there is a transition point there, and you can't just use one part of it and not the other, and I think as your mental processes were developing that you started to go in that direction and I would like to see you carry it a little further.

DR. BOYER. Well, I'll be happy to. There is no question that a great part of the adult education or education for older people has to do not with going through the hoops that relate to a particular job or placement but rather has to do with breadth of education and the richness of education and the satisfactions of education, which in my view is—these are wholly as defensible I believe as the other. My own experience is, though, that when an institution is committed to open its doors to older people, it has, I think, many institutions have been dealing with that. I don't think the hangups, my own bias is that the hangup isn't the narrowness of the curricular purpose for older people. It is the unwillingness to make the accommodations in structure and design so that the institution is accessible. If that commitment is made, then it seems to me the other diversified purposes of the educational experience tend to follow.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Commissioner Boyer, the Secretary when he was here this morning in his testimony said the Age Discrimination Act of 1975 was a landmark in civil rights legislation. "I want the Department of HEW to be prepared to move forward to eliminate unlawful age discrimination when the act becomes effective on January 1 in order to achieve this goal, and I am today directing agency heads within the Department to begin a review overall of programs they administer in which age is a consideration. I am asking them to report back to me with their findings within 90 days."

You will, I'm sure—definitely that kind of an inventory as I've been listening to the testimony today, I've just been wondering how long a list it might be in the field of education, but also what is running through my mind is this whole question of the affirmative obligation that may rest on educational institutions that are supported in part by funds from the Federal Government to go out of their way in order to develop linkages between these programs and older persons. For example, this figure is used quite often, that during fiscal 1975 more than 1,200,000 persons participated in the adult basic education program. Approximately 34,000 were age 65 or older, in other words, about 3 percent. I don't know whether you would feel that that was a fair share. Offhand, I feel that it wasn't, and if we assume that it isn't, what kind of an affirmative obligation rests on those who are getting funds for this program to get out there and find additional older persons 65 and older so that they will become aware of this resource?

DR. BOYER. Mr. Chairman, I think the obligation is there to be sure. If this law is to deliver what it intends—and we're determined to see

that within the authorities the law gives us, it will do so—then clearly older citizens who may have lived for years without such opportunity and therefore assumed they didn't exist and have given up hope and have long since stopped searching, should be made aware of it.

Now, I would expect that, just as in the other aspects of affirmative action, we would see to it that institutions not only passively received, but actively sought the participation among all the citizens who were worthy. I mean by that, who are legitimately to be served by that particular program, and especially the adult literacy is geared to make reentry into social transactions more profitable, and that has no discrimination. In fact, very often older citizens who find it harder to cope, who have less support from family and peers, and may be more lonely, more in need of their own inherent skills, would be judged high priority if that program is to do what it needs to do.

I have often thought that we might even have a matter of conscience in our culture regarding our eagerness to invest so fully in those who are young and able-bodied and very often need it least in one sense and those on the other hand who are more vulnerable and have less of the physical and social supports and need it most. I know the discussion of so-called utility of investment; that is, longer capital gain or whatever; but I have never felt comfortable converting human problems and social services into some kind of a dollar-and-cents equation. That, to me, does violence to the nature of the human spirit. So I would certainly hope that those programs where we have discretion and flexibility would be able to reach out and give some hope and added confidence to those who are older and could benefit most.

CHAIRMAN FLEMMING. May I say that I share the views that you just expressed. I react very negatively to a tendency to apply what is sometimes called a cost-benefit theory to the lives of persons. Let me go one step further, and obviously this isn't as tangible as the act that we're talking about at the present time. But the country's attention has been focused on the question of compulsory retirement and actions are being taken in that area. However, the fact is that there are millions of persons who, it might be said, are the victims of that policy, that are with us right now. Then there are many, many others, going into the millions undoubtedly, of persons who have taken advantage of voluntary retirement or who wish that they hadn't and are climbing the walls; this group in many instances desperately needs assistance and counseling, training, placement. In other words, they're up against the same basic issues that the younger persons are up against. Some institutions have recognized that in an endeavor to institute some programs to meet that particular need, but a great many have not moved at all in that particular direction.

Many of those that have not are getting funds from the Federal Government to support in whole or in part some counseling, some training, some placement. Is it going to be possible to identify their failure to again get out and share with older persons who fall into

these categories the opportunities that exist? If they fail to do that, is it going to be possible for us to pinpoint those programs and the funding sufficiently to really identify it as discrimination against the older person?

You may have been here when I was talking with Dr. Berry about the mental health area. We don't have much trouble in deciding that if a community mental health clinic just turns its back on older persons, doesn't get out on part of the program to build bridges, there certainly is a strong presumption of discrimination. But as we think of education as a service, it seems to me the same kind of thinking might apply. How do you react to that?

DR. BOYER. You're speaking of both schools and colleges?

CHAIRMAN FLEMMING. Yes, that is correct. This is across the board, really. As I say, I appreciate the fact that I'm not speaking very specifically here. I'm thinking of it as a broad problem, but I recognize that we have a fair amount in the way of Federal resources that are going into what we refer to as counseling and training and placement.

DR. BOYER. It's hard to know in advance of regulations, and I don't want to be legalistic, but I don't at the same time want to extend beyond what may be a reasonable interpretation to know whether your description of the absence of those services would constitute discrimination under the legislation that you—

CHAIRMAN FLEMMING. Not the absence of the services. I'm assuming the services are there, they are being financed in whole or in part, but the absence of an affirmative effort on the part of the educational institution to reach the older person and say, "These services are here. They are available to you under circumstances." In the absence of that kind of an effort, do we have evidence which would indicate that here are programs financed in whole or in part by the Federal Government where the administrators of the programs are really turning their back on the older person?

DR. BOYER. Well, I would think if such circumstances existed, it would seem to be in violation of the intention of this legislation in the spirit involved. I again don't know how to anticipate fully the way it would be dealt with in final regulation. My own personal vision, if that's not too sentimental of the end of a busy day, is that our schools increasingly, and I suppose one could move the colleges into that, but especially our schools will become more—viewed more as community service centers, educational centers, and this has been experimented with, with help from the Office of Education, as you understand well, over the years. And that these will be places where people of all ages will feel comfortably at home, and that once that happens, the doors will become much more widely opened both in terms of who comes and when they come. I think that's not an impossible dream, partly because our renewed interest in community as such, our new awareness in stimulation of conscience regarding age, and also the fact, I might add, fortuitously, that our schools are not growing at the same

rate and in some instances the enrollment declined, raised the question of space and how it is used. It seems to me the answer is, there are people out there to be helped and they, if there is an accommodating facility close by, we may find a fortuitous connection here between an expanding community vision and an institution.

The one thing you can say about the schools—there are many—but one is that they are every place, and they were built in America with community proximity as the design, and generally, I think the school, with some criticism, of course, but the school is still viewed as one of the most positive social institutions in a community. It doesn't carry the heaviness of bureaucracy or the threats of heavy legal structures. It still seems to be much more of a neutral, positive place. I would hope our outcome of all of this would not be limited only to the business of enforcing the intentions but, rather, can we develop some models and designs and stimulate us and sort of move us beyond the narrower patterns which, I think, have had secondarily the age discrimination.

CHAIRMAN FLEMMING. I share that dream with you, and I would hope that we would see developments of this kind and conceivably the law, and at least have the effect of nudging us in that direction or accelerating movements in that direction. I would like the record of the hearing to show that Commissioner Boyer's predecessor signed with me a working agreement between the Administration on Aging and the Office of Education designed to achieve some of the objectives that Commissioner Boyer has been talking about. And since Commissioner Boyer took office, he has provided the leadership within the Office of Education which is moving that document in the direction of meaning something as far as the educational system of the country is concerned in relation to the opportunities in the field of aging. I personally appreciate that leadership and it is reflected in Commissioner Boyer's responses to a number of the questions that have been addressed to him. I am very grateful.

DR. BOYER. Thank you, Mr. Chairman.

CHAIRMAN FLEMMING. We think there are some real opportunities that build bridges. Do you have a question? Thank you very, very much. Appreciate your being with us.

Counsel will call the next witnesses.

MR. DORSEY. H. Eugene Crawford, J. Jerome Ashford, Hilda Robbins, Sanford Brandt.

[Mr. Sanford Brandt, Mr. H. Eugene Crawford, and Ms. Hilda Robbins were sworn.]

TESTIMONY OF SANFORD BRANDT, VOLUNTEER, MENTAL HEALTH ASSOCIATION; H. EUGENE CRAWFORD, CHAIRMAN OF REPRESENTATIVES OF STATE MENTAL HEALTH PROGRAMS FOR THE AGED, NATIONAL

ASSOCIATION OF STATE MENTAL HEALTH PROGRAM DIRECTORS; AND
HILDA ROBBINS, VOLUNTEER, MENTAL HEALTH ASSOCIATION

CHAIRMAN FLEMMING. We appreciate your coming and being with us.

MR. DORSEY. Starting with Mr. Crawford, I'll ask each of you to state your full name for the record and your organizational affiliation and position.

MR. CRAWFORD. I am H. Eugene Crawford, chairman of representatives of State mental health programs for the aged of the National Association of State Mental Health Program Directors. More specifically, I'm Director of Geriatric Services, Tennessee Department of Mental Health and Mental Retardation.

MS. ROBBINS. I am Hilda Robbins. I'm a volunteer with the Mental Health Association. I'm just serving my third year as chairman of the legislation and services program, and in October I will be president-elect.

MR. BRANDT. I'm Sanford Brandt, and I, too, am a volunteer with the Mental Health Association. I am a vice president and past president of the Tennessee association, vice president of the national association, past president of the Tennessee association, acting at the local level, also.

MR. DORSEY. Thank you. Mr. Brandt, if I may, I'll start with you. Throughout the study under the Age Discrimination Act, the Commission has received substantial testimony which suggests that older persons may be discriminated against in community mental health center [CMHC] programs. At least the information suggests that they are disproportionately underrepresented. I'm wondering, based on your experience and your information, whether you believe there is age discrimination in these programs, and if so, what form it takes and what age groups it affects?

MR. BRANDT. I believe there is age discrimination, but, the language of the committee's study itself, the introduction, it is inadvertent. The percentage of mental health center patients 65 and older runs around 4 percent, as against 9 and 10 percent of the general population. The percentage of 65 and older patients, percentage of those patients of private psychiatrists in a fairly recent study—I think it was '72 or '73—was about 2 percent, so there is twice the number seen in your centers as in your private sector. I suspect one of the reasons for that is many of the centers do have outreach programs, go out into the surrounding area and make known that they are available.

But the basic discrimination is, in my opinion, an attitudinal one. That is, for centuries the assumption has been that when an old person—and I'm an old person; I'm 67, 68, I think, I'm not sure—when an old person shows signs of mental illness, he is diagnosed as senile. When a young person, a person your age, can have the very same symptoms, it would be diagnosed as a mental illness and therefore treatable. That is the basic discrimination that you get, is the assump-

tion that because it is age, there's nothing to be done about it. That is totally unwarranted. It is not correct.

I have a statement here from a physician in Stanford University who points out about one person in six of those aged 65 years or more have some manifestations of organic brain syndrome. On the other hand, as many as 25 to 30 percent—he switched over to percentages; that would be one in four—of the same group have some type of functional disorder, such as depression or neurosis. Many individuals have both, but the main point is that age per se does not necessarily indicate that the patient's emotional disorder must be due to organic brain syndrome. This assumption is carried into the Medicare laws. It is not in the CMHC laws where the directive is to serve the elderly, but it is in the Medicare laws. If you would like to go into that, I'll be glad to.

MR. DORSEY. Would you, please?

MR. BRANDT. All right, sir. I'm sure the committee is aware that Medicare has different provisions for the diagnosis of mental illness than for physical illness. The main discrimination is in part B of Medicare where if the diagnosis is unfortunately cancer or heart disease or some physical ailment, the patient may be reimbursed 80 percent of his doctor bills and related cost after deductible, no limit. If the diagnosis is mental illness, the reimbursement after the deductible, I believe, is only 50 percent, up to a total for the year of \$250, which does not buy these days much psychiatric help. Incidentally, if the deductible is also for mental illness, then the ceiling is \$202 because the same percentage gets applied against the deductible, I believe.

Now, the legislative history on that part of Medicare is very, very limited, but there is one slight clue to it where the assumption seems to have been made—going back to what I said about the other assumption—that mental illness in the older folks is senility, therefore there is nothing we can do except provide custodial care, the assumption being that once a person my age shows signs of mental illness, the best we can do for him is take care of him for the rest of his life, but we can't afford that so we're going to put a ceiling of \$250 a year on it.

The President's Commission—I guess reference has been made to the preliminary report of the President's Commission, which came out, oh, just September 15—recognized it. Incidentally, if I may, I would like to submit this statement from Dr. Leo E. Hollister, from which I just quoted, if the Chair would like it.

MR. DORSEY. I would ask the Chair.

CHAIRMAN FLEMMING. Without objection it will be entered in the record at this point.

MR. DORSEY. I also would suggest that the witness have the several other documents that are being referred to entered. I would ask that, if amenable to you, we would have them all included at the end of your presentation.

MR. BRANDT. That's amenable to me, but I don't want to mislead you. These are not all for the record. I wouldn't mind. This is the document I was reading from, by Dr. Leo Hollister.

The President's Commission, now that we've mentioned it, their preliminary recommendations were due September 1 and I think the final recommendations are due April 1. It mentions the major shortcomings in existing financing and reimbursement mechanisms, such as Medicare and Medicaid.

One important problem is that Federal financing mechanisms often have lagged behind changes in mental health services. The community mental health service centers program implies a strong Federal commitment to outpatient mental health care and the advantage of providing service in the least restrictive, most appropriate setting. Medicare and Medicaid programs provide limited mental health benefits and these are biased towards inpatient care.

There's a lot more in here, but I would be very pleased to hand in the preliminary report to the President from the President's Commission on Mental Health, September 1, 1977. I was quoting from page 17.

MR. DORSEY. Thank you.

MR. BRANDT. I could go on forever, but maybe you would like to hear from someone else.

MR. DORSEY. Thank you very much. I will address a few questions to the other panelists. I wonder if, Miss Robbins, if you would comment on your experience in the area of mental health as it relates to age and its availability. Have you noticed any age discrimination in the area of community mental health center programs?

MS. ROBBINS. Yes, I think that is rather obvious when you see some of the statistics that are beginning to be available on this. You know, when the Community Mental Health Center Act was first passed in 1965, the wording was that the mental health centers were to care for all of the people within their catchment areas. By the time we were looking very carefully at the renewal, which by then was about the third renewal of the act, in 1975, we specifically wrote into the act that the community mental health centers must serve children and youth and the elderly, and one of the reasons that we wrote that in, in such a way—when I say “we,” I mean, you know, the people in the mental health environment and community that worked on this. However, even writing in that service must be available for children and the elderly is not always an assurance that it is going to be there. For one thing, there are only 10 percent of all the psychiatrists in the country that are child psychiatrists and of course not all mental health services have to be given by psychiatrists, but for very severely emotionally disturbed children it is necessary to have some highly skilled person who can work with the other professionals and paraprofessionals who might be used in a community mental health center.

I think that one of the most, perhaps largest, group of people to be discriminated against by age is that group which is between 21 and 65 and are classed medically indigent, in other words, the Medicaid people, because no mental health services at all, none, are provided for that group from 21 to 65.

The group below 21 is grossly underserved in not only the centers and the private sector but in any situation where they present themselves. About 40 percent of the population falls in that group of 1 to 19; however, in a study of the community mental health centers, 69 of the community mental health services, only 1 percent of their admissions were under the age of 19. I think this gives you some indication of the lack of services that are available there. It is estimated that 89 percent of all Medicaid eligibles are under 21, and still only 18 percent of the funding for Medicaid was spent on that age group.

It would be, I suppose, inappropriate for me to suggest something that might be added to the gentleman's testimony immediately before me, but I do it in a sense of concern that those children who are between 3 and 6 and are to be taken care of under the education for all handicapped children might be getting a short stick. I can appreciate his concern that 6 to 18 is that usually thought about as school-age group, but for a handicapped child and particularly a retarded child, moderately retarded, an emotionally disturbed child, and some of the other kind having early identification and treatment—and treatment meaning partly learning to get along in the school system with others—is most important, and on the same basis those youngsters who fall in that category frequently have no instruction at all between the time school is out, the end of May and starts the first of September. Some of the more forward-looking school systems are providing just for that group of children with handicaps an almost continual summer education because they slip back so much faster than other children do.

I would also like to mention one other area here that I think is important that you are familiar with, what I consider one of the most blatant kind of discrimination, in House Bill 6706, which is now being considered. This is an update of what was provided for children under Medicaid. It was called EPSDT up until this bill was introduced. Now it is called CHAP, which stands for Children's Health Assessment Act, and this provides that schools who are—not schools, States, which are providing Medicaid services in joint effort with the Feds must provide this early screening in what they call Child Health Assessment Act. However, this is written into the language as it exists now. "All of the States must provide this, but not necessarily including those for the treatment of mental illness, mental retardation, or developmental disability." And needless to say, there are several organizations who are working extremely hard to have this highly discriminatory and detrimental kind of language taken out of this bill.

I would only mention one other area that we have been concerned about primarily in discrimination, and I think even though it is not precisely the aged, so many of the people in this category are aged that it would necessitate a careful looking at. I'm sure that you have read about those patients who have left State hospitals and are now living in many different kinds of accommodations in the community, many of them most inappropriate, and one of the things that was mentioned in the President's Commission preliminary report that Sandy referred to was a specific recommendation that the President "allocate additional section 106 funds to develop more group-care facilities, and provide through section 8 rental assistance funds available to those disturbed people living in group homes." This is directed to HUD. I think that I will close with that and come back to other things later.

MR. DORSEY. Thank you very much. You alluded to certain statistics as you talked, and if you have any data with you, I would ask that at the end of the panel's presentation that you would give it to us for submission into the record.

Mr. Crawford, Tennessee has achieved a much higher rate of service to the elderly in the community mental health centers program statewide. In fact, our information is that more than 11 percent of the services are to the elderly, which is considerably more than any other State. We were very interested in your explanation of how this came about and particularly your description of innovations and special funding and improved coordination with other programs, and your State's commitment in general to the goal of balanced distribution of resources by age group. I wonder if you would comment on that for us?

MR. CRAWFORD. Yes. When I, having cut my teeth on a State agency on aging, when I came to the department of mental health in September of '72—they had started the geriatric section in July—I knew the commission on aging didn't have all the answers. I found that the mental health department didn't have all the answers nor any other State agency, but together we had a lot of them, and one of our first tasks was to set up our Governor's Conference on Aging, the first one ever to be held in Tennessee, and your distinguished Chairman of this Commission was the keynote speaker at that time, if he will remember, and out of the committee that set up the Governor's Conference on Aging, a geriatric advisory committee was set up involving all State agency people who delivered services to the elderly. It has been an ongoing thing now for these years. We did get some limited funds the next year to set up nine pilot projects in the State of Tennessee in community mental health centers, so initially we had to start to work with our five psychiatric institutes in the State and develop geriatric programs of quality there and I think they are inhouse now.

But we made some mistakes there. We just went around and said, "We got some money. Would you like to have it." And being human beings, they wanted to have it. But in '75, it was decided that the

314(d) funds allotted to the mental health authority in the State of Tennessee, about \$273,000 would be given to geriatric outpatient services through the community mental health centers. This money historically had been divided equally among the 30 community mental health centers. We had no audit trail and we discovered we were out of compliance, so that was part of the rationale, but yet we still felt we needed this visibility, and this was before [Public Law] 94-63 came into being. So we sent out a request for proposals with these things in them: the centers' philosophy toward serving the elderly, a needs assessment of the elderly in the catchment area, goals and objectives for geriatrics outpatient programs, inhouse statistical reporting and evaluation, and budget breakdown. These little grants ran from about \$3,000 to \$20,000, depending upon what we had adjudged previously the center's ability to develop the program was. These all came in, much to my surprise. I thought that some of them that didn't get but \$3,000 or \$4,000 might not even want to apply. But it forced the centers to look at this population that was underserved. I do not know to what degree.

Our first year's experience, at the end of that, our geriatric outpatient caseload against the total caseload of the 30 mental health centers ran a little above 9 percent, and that was the first time I discovered that there was something different about our program. I did not know that other mental health centers were not doing the program that had been implemented here, and at this last, the end of June 30 of '77, it ran about 11.24.

We never envisioned that 314(d) funds were adequate to finance a geriatric program in a community mental health center. We went more on the philosophy that this was seed money and indeed it happened to be and has proven to be for, what I think in '75 the center that got \$3,000 went to the area aging agency, contracted there with them to do outreach services and the nutrition projects, the senior citizens and a rural upper Cumberland district of 14 counties. He works like a Trojan, but it's been a very effective means. Others have gone out into other centers. I'd like to highlight, if I might, at least a couple of them because I think they are really about discrimination or the lack of discrimination.

One is by the White Haven Community Mental Health Center in Nashville who were approached by the Good Will Homes, a social services agency of Memphis. They had established a day care center for adults and were finding that many of the persons who were attending the day care center in this predominantly—catchment area of White Haven, Tennessee, were mentally impaired to some degree, and they asked the mental health center if they would join with them in a collaborative effort of training their staff, but also setting up a geriatric psychiatric day care component because they were physically housed in an old abandoned children's home which had the cottage type environment. And as an offshoot of this collaborative effort of the mental

health center and Good Will Homes, the project meets and is sponsored by the Lutheran Social Services, and is serving the nutritious meal at noon; the Easter Seals is furnishing the department of human services its eligibility; the public health is doing physical health screening 1 day a week in the center plus Good Will Homes in the mental health; the legal services of Memphis for the aged is furnishing that. And one of the community colleges brings in younger age groups, are training these older people in how to repair small appliances and this brings in some income to the group.

MR. DORSEY. I would like to—

MR. BRANDT. You said earlier the White Haven at Nashville. I'm sure you meant Memphis.

MR. CRAWFORD. It is Meharry at Nashville. I'll get to that later if we have time.

MR. DORSEY. I would like to ask one more question, Mr. Crawford. I believe you indicated to staff that you are very much opposed to the prospective elimination of requirements for services targeted to children and the elderly. I wonder if you would discuss your reasons for that and what you believe should be done to avert the planned elimination and further reduction of services to these groups?

MR. CRAWFORD. Well, primarily in my experience as a gerontologist, unless we have some visibility and it is spelled out very carefully, the services will not be rendered to the elderly, and I think this though it is maybe not intentional on the part of community mental health centers, I think it would give them license not to, and I think the visibility is the important issue here, as far as I'm concerned, both for the elderly and the children and youth; I don't really like to talk about elderly because we are all aging and this is a whole thing.

MR. DORSEY. Thank you. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. I appreciate very much the testimony that has been given by the members of this panel. I recognize that the fact that those of us in the field of aging and gerontology are very much indebted to Mr. Crawford for his leadership in the area of gerontology over a considerable period of time, and we're grateful that that leadership is reflected in the area of mental health. As I listened to the testimony, I can well understand why Tennessee is up front so far as I know; I mean, in terms of the percentage of persons that they serve who are 65 and over. And, Mr. Brandt, you referred to some earlier testimony which indicated that possibly the low percentage of older persons being served, let's say, by community mental health clinics was inadvertent, and I'm sure that in some instances that's true, but as I have taken a look at the picture across the country, it seems to me that the fact that community mental health clinics are serving such a small number of persons 65 and above is a clear indication that, for one reason or another, they have just turned their backs on the older person. They certainly haven't carried on a vigorous outreach program. I think that's pretty well established, and I think all of us will agree to that.

Then also they haven't made a conscious effort to have on their staffs persons who have given some consideration to problems in this area. I know this is kind of a vicious cycle, because somebody will come back and say, even though they wanted to have them on their staff, they don't exist. This goes back to the medical school and training in psychiatric work and so on, where they also are ignoring, or have certainly up to the present time, this area. Dr. Butler, who was our second witness this morning—I don't know whether any of you were here when he testified, but you know him, I'm sure, and you know of the emphasis that he is putting on the fact that we have got to get to the root of this and get our medical schools and other professional schools in the position wherein they recognize we have many unique problems where they try to train people to deal with these. But I feel really that maybe the clearest evidence that we have relative to discrimination growing out of neglect, put it that way, is in connection with the community mental health clinics. That is a generalization for which there are obvious exceptions and some of these exceptions have been identified for us.

MR. BRANDT. May I respond to your observations?

CHAIRMAN FLEMMING. Sure.

MR. BRANDT. I certainly agree with you. When I say inadvertent, I think I should refer to the situation as of today rather than the period for which we have the statistics, but since the 1975 amendments of the CMHC act mandating the services for children and the elderly, I think anything now is inadvertent, because my own center, the one I've been closely associated with—

CHAIRMAN FLEMMING. Could I just interrupt for a moment and ask if all three of the members of the panel are in agreement with those amendments to the mental health act which Dr. Brandt means, mandating the children and the elderly. Yes?

DR. BRANDT. Yes, sir, I am.

DR. CRAWFORD. Yes.

MS. ROBBINS. There will be revisions that probably will be—well, there will be one more renewal as is and then some major revisions; I think at that time there might be some changes in that area, hopefully for the better.

CHAIRMAN FLEMMING. If they are headed in that direction, fine, because my observation has been that, as a result of that, those amendments, that community mental health clinic administrators have begun to talk with their agency people and say, "Look, we got a mandate here. What do we do about it? Can you help us?" so on and so forth. At least it has started a dialogue between the community mental health clinic and the area agencies on aging, I think.

DR. BRANDT. The center I'm closely associated with—I was one of the co-founders, one of the proudest things in my life, I think, was to start that center—has covered a five-county area out of Oak Ridge, Tennessee, and they send people out in the counties to talk to the

county judge and the visiting nurses; they find the folks who need the help and they are not mental health professionals, they are young people with a devotion to help people.

CHAIRMAN FLEMMING. Do they use any older persons to go out and talk with older persons?

MR. BRANDT. I think you have me there. I don't believe they do.

CHAIRMAN FLEMMING. How about it?

DR. CRAWFORD. Helen Ross McNabb Center in Knoxville has a team. They have contracted with three schools of nursing in the area, and last year they made over 300 home visits, and on that team of assessing the needs of these elderly persons there is a psychiatrist, a psychiatric nurse, a psychiatric social worker, and a trained volunteer.

CHAIRMAN FLEMMING. We've raised this issue at our other hearings, and in some instances the response that we got back, "Well, no, we don't have an outreach program. Maybe we should have a outreach program, but we don't have any money for a outreach program." Well, it doesn't seem to me we're going to cure discrimination simply by adding some additional funds. There we've raised the question of whether they thought in terms of relating to groups of volunteers, oftentimes older persons who can go out and at least tell about the services. They're not professionals always and they can't answer a lot of questions, but they can help build a bridge.

MR. BRANDT. Dr. Flemming, did you read the article in the *Post* a week ago Sunday on aging? It's a fantastic article and one of the findings from a study at the University of Maryland was that in many cases the aged themselves believe that there was no hope for them. There was nothing could be done for them.

CHAIRMAN FLEMMING. Well, older persons are apt to accept stereotyping of older persons, and this is one of the sad things. All right, yes.

MS. ROBBINS. On that same point, I think that your comment about outreach and the necessity for that is very well taken because my experience in working as a volunteer with patients at just about every age is that elderly people are not very demanding and some of them, if they have been in State hospitals for a long time, aren't very attractive by our terms, and they truly need somebody who has an understanding and willingness to go out and beyond because the professionals in some of the centers find it more exciting to treat, you know, cases, so to speak, that present something that is exciting to them and an innovation, and they really don't like to work with elderly people very much.

CHAIRMAN FLEMMING. Of course, you mention—and I recognize it as a very serious problem—the trend all over the country to release persons from our mental hospitals, mental institutions. Many of them are older persons who are released back to the community and there are no resources within the community to deal with the issues that confront them. Oftentimes it is a result of being out of circulation, so to

speaking, for years. I recall a dramatic one in the District of Columbia where a person 75 was released from Saint Elizabeth's back to the community. He had entered Saint Elizabeth's at the age of 17. We don't need to use our imagination very much to know he had some problems. Fortunately, there is a positive outcome to that story. I mean, some people were able to make some resources available and the process is going on with fairly positive results, but we recognize that that issue confronts us all over the country, and our society is not responding.

MR. BRANDT. Dr. Crawford can tell you that in Tennessee they will not put a person out of the State hospital if he's been there many, many years and that has become his home. They allow him, if he or she wants, to stay on. Is that so, Dr. Crawford?

MR. CRAWFORD. Yes, the general assembly gave us \$1.6 million, I would say, for community mental health services to develop resources for people coming out of the institutions, but the target population is the 21 through 60 age group. It is not the older person. If the older person who has become institutionalized is asked to go out and tries some other facility, of course, they have to be legally discharged. They can come back, but we have operated in our mental health clinics that if we get them in for outpatient, we are treating them in their community. I think that is one of the highest priorities that we have. Then, also, developing the treatment within the mental health institutes, and only two of the facilities that I get an opportunity to get any, just like sort of a geriatric profile of admissions and discharges last year, and of those that—one of them 60 plus, the total population of above 60 is 522—those 60 years of age that came in stayed 58 days, those 65 stayed 62 days. So I think it demonstrates that elderly people who do get in crises can be treated in an institution and returned to the community.

CHAIRMAN FLEMMING. Thank you very much. Commissioner Horn, Mr. Ruiz.

COMMISSIONER RUIZ. All of my questions have already been answered by this indepth discussion. I hope that our report will multiply you manifold. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Would you, Mr. Crawford, have any basis to provide factual data to validate an assumption of mine that were there additional educational opportunities, additional vocational retraining and rehabilitation efforts available for the aging, that probably this would mean a decline in the 6 percentile ratio of mental illness in the aging unless needs for mental health treatment for aging, were they to be able to move into new careers, and etc?

CHAIRMAN FLEMMING. In other words, you're linking it up with our testimony with the Commissioner of Education on the basis—

MR. CRAWFORD. I'm glad he did because I wanted to say something. The University of Wisconsin has two dormitories, high rise dormitories

that are empty because they do not have the students to put in them. I would like to put the elderly people that are retired who want to go back to school and get back into an environment where they intermix with young people, and many of the new colleges that I have worked with are putting facilities like this on the new campuses that they are building, but we have poor housing so why couldn't that be worked in together?

CHAIRMAN FLEMMING. Let me link it up with the Basic Education Act where to clear the 3 percent, only 3 percent of the persons being served by that are 65 and over. Now, supposing our educational community put on an outreach program and so on that resulted in a much larger percentage of older persons being served? Would that in some instances not—wouldn't that operate in some instances as a preventive program in terms of the mental illness, so that some of the people who participate in that program, who are placed as a result of that, are persons who'll not end up needing care in a mental hospital?

COMMISSIONER SALTZMAN. And thereby the social cost of mental treatment would be lessened and we could substitute that kind of cost with the effective educational vocational training which adds meaning to life.

MR. CRAWFORD. Well, I went back and got my master's degree in gerontology after I was 50. I would like to get my Ph.D, but I won't have time until I retire. Now that they've removed that restriction, I don't know that I'll ever get it.

COMMISSIONER SALTZMAN. Is there any—

CHAIRMAN FLEMMING. I don't want to see you retire from the field of gerontology.

COMMISSIONER SALTZMAN. I'm just wondering is there any statistical base—

MR. CRAWFORD. I have none.

MS. ROBBINS. One of the things people in the mental health field are working on most diligently now is that gray area of discrimination around health insurance, and I bring this in because we are talking about financing certain kinds of services, and I think if we can get a national health insurance that includes not only mental illness, which will be a big step and a big change if it is done adequately, but an understanding of the kind of social services that must provide the support system in the community for people.

CHAIRMAN FLEMMING. I agree with you. Thank you. We are appreciative of your being here.

MR. BRANDT. May I have 3 minutes? You've had an awfully long day, I know, I appreciate that, but you asked for specific—

CHAIRMAN FLEMMING. I noticed you've been listening most of the day.

MR. BRANDT. You asked for specific recommendations. I have three right here and an exhibit. Repeal these sections of Title XVIII which discriminate against the mentally ill. I can name them. It is XVIII

12(B)(9) and XVIII 12(C), and Part A, under Part B it is XVIII 33(C). Amend both Parts A and B to recognize community mental health centers as qualified providers of service under the Medicare program.

CHAIRMAN FLEMMING. I appreciate that recommendation.

MR. BRANDT. Of the 8 major bills on health insurance that I studied in Congress last year, of the 10 major bills, 8 of them incorporated Medicare practically as is with all these built-in discriminations, of something called Medigap insurance, which is offered to cover the difference between Medicare and what a person might need. You run down the list of coverage for mental illness and it is no provision, pays nothing, pays nothing, pays nothing. I would like, if I may, to submit this report from Consumer Union for the record.

CHAIRMAN FLEMMING. Without objection it will be made a part of the record at this point. Thank you very much for hearing us. Thank you all. We appreciate it.

MR. DORSEY. Please, if you would before—you've had some very, very informative documents before you and to the extent you can spare them, I would appreciate it if you give them to the clerk.

CHAIRMAN FLEMMING. We all appreciate that.

Recess until 9 o'clock tomorrow morning.

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Morning Session, September 27, 1977

CHAIRMAN FLEMMING. The second day of the hearings of the United States Commission on Civil Rights on age discrimination is now in session. If the witness will stand, I will swear the witness.

[Mr. Thomas Ehrlich and Mr. Edward King were sworn.]

TESTIMONY OF THOMAS EHRLICH, PRESIDENT, LEGAL SERVICES CORPORATION; AND EDWARD KING, DIRECTING ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER, WASHINGTON, D.C.

CHAIRMAN FLEMMING. Counsel, the first question.

MR. DORSEY. I would ask each of you, please, starting with Mr. Ehrlich, to state your full name for the record and your position and organizational affiliation.

MR. EHRLICH. My name is Thomas Ehrlich. I am President of the Legal Services Corporation.

MS. SARD. I'm not testifying, but my name is Barbara Sard.

MR. KING. My name is Edward King. I'm directing attorney for the Washington, D.C., office of the National Senior Citizens Law Center.

MR. DORSEY. Thank you very much. Mr. Ehrlich, as you are aware, a considerable amount of emphasis has been placed in the recent past not only in our investigations throughout the country on age discrimination, but I understand also in testimony which you have made before Congress on the relative underrepresentation of older persons within the area of services provided by Legal Services Corporation. Recognizing that you have on many occasions indicated the absence of recent hard data on the age distributions, I would like to ask first, what progress is the Corporation making in developing and implementing its project on reporting and, meanwhile, what the Corporation is doing in terms of monitoring its grantees to determine the clients who are in fact receiving services at this time?

MR. EHRLICH. Let me, if I may, Mr. Dorsey, answer each of those questions and comment more generally on what we are doing in that realm. First, we have underway the plan and design for a project reporting system that will enable the Corporation to determine each matter handled by each program involving each client, to determine the nature of the matter, the kind of issues that were involved, and some of the characteristics of the clients involved, including, but not limited to, age. The system will be implemented first in 38 demonstration projects around the country that are being undertaken as part of a delivery system study mandated by the Legal Services Corporation Act of 1974 and 12 staff attorney projects to try to develop comparative data. On the basis of that, we will expand the project reporting system, although not in as much detail as we will use at the outset, through the rest of the programs. It will be a period of time before we have that kind of detailed data from each program on each case, but we are convinced, for this Commission as well as for the Congress and for the programs itself, the information is needed.

To answer your second question, we have nine regional offices around the country who visit each of the 320 programs funded by the Legal Services Corporation four times a year, sometimes more if there are particular problems. In the course of that visit, they go through checklists of problems and questions and concerns about the program, including being sure that the program is acting in a manner consistent with the statute and with our regulations. It is specifically a condition of the grant to each program funded by the Corporation that it not discriminate in the provision of its services or in its employment practices on the grounds of age or any other basis prohibited by law, and we have also developed a complaint review procedure to ensure that any complaint against a local program alleging discrimination can be thoroughly reviewed and we will, of course, continue through the regional offices to ensure that no discrimination in fact occurs.

More broadly, I prepared a statement and submitted it which goes through in some detail the kinds of efforts that the Corporation is now

engaged in in terms of programs that focus particularly on the problems of the elderly and juveniles, and Mr. King, who represents the National Senior Citizens Law Center, one of those programs, is also here to speak to you on behalf of one of those groups, but the statement does try to go through what we are doing and what we see needs to be done in the future.

MR. DORSEY. At this time, Mr. Chairman, I would ask that the statement prepared and presented by Mr. Ehrlich be accepted into the record at this point.

CHAIRMAN FLEMMING. Without objection that will be done. We appreciate very much this very comprehensive statement.

MR. EHRLICH. Thank you, Mr. Chairman.

MR. DORSEY. I would just like to follow up on a couple of things you indicated. I wonder if you could give us some estimate as to the time of total implementation of that new reporting system. Well, first, let me ask you at what point will it be implemented in the model programs, in those preliminary sites, and then when do you anticipate the total program?

MR. EHRLICH. The project reporting system is now underway in the model sites. We expect to work out over the course of the year whatever problems we find in it. It is aimed at gathering a good deal of detailed information that is needed for the study of delivery systems, how to be sure that we are most effectively and efficiently, at least possible cost, delivering services to the poor people and in what ways and what kinds of environment, rural and urban, that works.

We won't need that degree of detail for the management information system that is used for all 320 programs. We do hope that by the following year, we will be able to have a management information system that reaches all programs and provides basic information, including the age of clients but not limited to that, throughout the country.

MR. DORSEY. So that would be calendar year '79 that you are expecting?

MR. EHRLICH. Yes.

MR. DORSEY. In terms of the one area of reporting, that being age, what kinds of breakouts are you looking forward to having? Will we have gross categories, for example, 16 to 21, 21 to 35, or will it be more narrowly-drawn categories?

MR. EHRLICH. I'd be pleased to submit for you the forms we are now using if that would be helpful. I'm not sure of the answer to the question and here's why. At the outset, we would get the exact age of the client, but at some point it will be important to try to categorize that, and the issue is what kinds of categories will be most helpful for what kinds of groups. If the key is age 60 or 65 or 70, obviously we want to try to do whichever one or ones were most useful to the most number of groups both in and outside Legal Services. I don't know the answer to the question now.

MR. DORSEY. One of the things that you know that has been alleged in many areas of the country is that there is, though hard data are not obviously available at this time, underrepresentation of older persons in the services. The dynamics of the legal service operation as the Commission has observed it in its study thus far goes something like this. Older persons and younger persons don't really come in and the reasons are varied: they include transportation, which is typical in many programs not simply the Legal Services Corporation, and also a lack of awareness of the benefits which are available and the services which are capable of being obtained. What I'm really groping with now is your feelings about the need for outreach efforts, Legal Services' responsibility in that regard, and what funds are reasonably to be used to provide that service?

MR. EHRLICH. We certainly do not suggest, Mr. Dorsey, that legal services programs are meeting the needs of the elderly and juvenile poor for legal services any more than they serve adequately any other groups of poor people, and we also do recognize the lack of mobility of elderly and juveniles does create special problems in the Corporation, and Legal Services around the country do have special obligations to work to overcome those problems, try to outline the ways we think that ought to be done and is being done and are prepared to state.

The most obvious difficulty facing our programs in helping the elderly and juveniles is the critical lack of resources those programs have. Their funds, of course, were frozen for 5 long and tough years while inflation soared, and even now there are far less resources available than can be well used to serve the poor. So the fact that certain groups, including the elderly and juveniles, may receive less individual service than the proportion of the population might indicate doesn't mean they're discriminating against them. What it means, then, is those offices are already besieged with far more requests for services than they can possibly meet, and it is an understandable response to totally inadequate funding conditions that they are unable to reach out, as must be done, to help elderly and juvenile groups. But we do expect that the substantial outreach activities into segments of the poverty community that are needed will be made. Programs now are receiving more funds than was true in the past due to increased support from the Congress. Many new programs are being established, which are essential to increasing services to the elderly and juveniles, and we are, as outlined in the statement, devoting considerable energy over the next years toward assisting particularly rural programs in developing means to overcome the barriers of distance and transportation that are necessary in order to really reach the elderly and juveniles.

MR. DORSEY. One of the areas of concern, I would say, as you noted, there will be increased funds and, of course, your program is certainly not the only one subject to Federal funding which has found

itself in a crunch over inflation and also, as you said, ceilings on funds. The concern, obviously, is that within the available funding whether or not, in this case age—in other cases other factors—have a representative share of that which is available. Now, in that regard one of the things which is built into this system and others is the requirement of setting priorities. In that regard, it is presumed, and I think we believe rightfully so, that unless people who are affected by the setting of priorities are involved in that process, they often do not fare very well in the ultimate decision on priorities.

In your particular organization, there is in fact a requirement for a priority-setting process and one which our study thus far has indicated there may be some problem in terms of input from older persons. I would just like you to comment on that system and the means through which your [Legal] Services Corporation has attempted to involve older persons in setting those priorities?

MR. EHRLICH. Quite right, Mr. Dorsey, that our regulations—and I'll be pleased to submit a copy of those, too, for the record, if that will be helpful—do require programs to set priorities in the allocation of the resources and that, in setting priorities, programs take into account, among other things, the urgency of particular legal problems, the general effect of the resolution of a category of cases on persons least able to afford assistance. We do not mandate the particular procedure because of the enormous variety of local circumstances, but we do require that clients as well as employees of the program participate and the demographic distribution of clients be considered. That regulation has been in effect for about 9 months. Our regional officers in their quarterly monitoring visits are working to ensure compliance with the regulation and in addition to those efforts—which as far as I can tell from discussions with our regional staff, are going well. In some areas different kinds of procedures are being used, but programs do understand the importance of not simply saying first in the door is first served no matter what.

But in addition to those efforts, programs must describe the nature of their priorities and the process through which they set them in their funding applications, and some have used surveys of clients, in an effort to reach the broadest cross section of them, but we have stressed the importance of making special efforts to include the views of elderly and juvenile potential clients, and indeed also of the community agencies that serve those groups. I do not want to pretend that in every program there is taken full account of the particular needs of the elderly and juveniles. I don't know that for sure, but I can say that regional offices are aware of those problems, the need to do that pressing with the programs that do want to do it. One of the glories of Legal Services in my view, is an extraordinary group of women and men who care very much about what they're doing, who are there to serve poor people, all poor people. I know you're not suggesting it's lack of desire so much as just limited resources, but I am convinced

on the basis of 2 years' working with those women and men that they are committed to the goal you suggested.

MR. DORSEY. I believe, I'm not sure I understood you correctly, but you made some reference to reports on activities in this regard? Is there some standard reporting system from the regional offices to the central office?

MR. EHRLICH. Every regional office visit has after it a report of what emerged from that visit, which is given both to the program and to our office. So we, through our Office of Field Services, keep in touch with how often the visits are taking place and the kinds of particular problems they are finding and the ways in which they are working together to improve the delivery of services.

MR. DORSEY. In terms of those reports—as I understand it, they are required on a quarterly basis?

MR. EHRLICH. Four times a year, yes.

MR. DORSEY. And do they as a matter of guidelines or policy include within them a review of the priority-setting process?

MR. EHRLICH. I will not say that each report covers that issue, because they don't, but I have certainly seen a number of reports that do refer specifically to the priority-setting process and in the course of a year would certainly conclude that the issues involving priority-setting process would come up in terms of each program that was visited.

MR. DORSEY. I wonder if we could—could you make the last two quarters available to us in terms of regional offices?

MR. EHRLICH. You're welcome to review any of the reports you would like to. There are 320 programs, and that's quite a few reports.

MR. DORSEY. As I understood, though, the reports are in terms of regional offices?

MR. EHRLICH. No, no, each program visited has in most cases at least a report based on that visit, so I'm suggesting you may not—you're welcome to see two times 320 or four times 320 reports.

MR. DORSEY. I really would like to be able to accept that right now officially for our staff to be able—

MR. EHRLICH. Actually what might be most helpful would be to go through with someone from our Office of Field Services the kind of issues that are raised, checklists, and by all means, if you see ways in which they can be improved and issues pinpointed that we may slip by, we'll be eager to accept your counsel.

MR. DORSEY. I appreciate your offer and we will accept. Thank you. I would also like to deal with another problem which actually occurs in tandem. It has to do with the relationship, if you will, between the mainstream services provided by the Corporation and those which are either by cooperative agreement or were actually granted specifically to a program to be done by funds other than legal services funds to meet various categories, in this case the older persons. One of the issues that has consistently arisen is the question of to what extent does

a particular targeted fund program absolve the Corporation from meeting its basic obligation to serve the full range of clients? I would just like to have your comments in terms of the appropriate relationship, not only in terms of funding but also in terms of staffing, as to where the Legal Services Corporation obligation continues even in the face of a specifically funded program to meet the needs of specific categories of persons?

MR. EHRLICH. A short answer is those outside funds do not absolve the Corporation program. What we have found in many cases, and somewhat to my surprise, is that those special funds, for example from Title III, when they are used to add paralegals or attorneys to perform outreach and community education services, do not result in less Corporation funds from a program being used for the elderly, but rather more. It is, I think, against what one's initial instinct would be, but we have found most often when funds from an outside source are available for a particular program, that will generally mean the program ends up providing even more service with Corporation funds for the particular group involved.

MR. DORSEY. One of the issues in this regard, to follow up on that, I'm wondering if the Corporation has done any studies or collected any data in that regard because one of the problems we face is the exact opposite allegation has been made throughout the country, and if you do have that kind of data, if it could be made available to us, we'll really appreciate it.

MR. EHRLICH. Well, when my colleague, Barbara Sard, reviewed the testimony that was given before the Commission, she did bring my own attention to the comments of the Legal Aid Society of Denver, and the Greater Miami Legal Services Office, too, both of which seem to me at least to indicate the kind of pattern I suggested.

We have not done a detailed analysis of each program along those lines and that will really depend on the reporting system that was described earlier. What we can do is provide for you what material we have and also show particularly in the demonstration projects that are now underway that focus particularly on the needs of the elderly, because a number, as my statement indicates, of those demonstration projects that are designed particularly to serve the elderly show the kinds of results over time they are finding in this area.

MR. DORSEY. I only have one last question myself and that is, to what extent has the Corporation as a matter of policy encouraged or specifically provided for the use of paralegals, particularly in this case paralegals from the older persons category, and also worked with law schools and other training institutions to develop this kind of training across the board for use in Legal Services or generally?

MR. EHRLICH. We do have an active program of paralegal training in our Office of Program Support. There are now far more paralegals indeed than there were when we began operation in Legal Services and one of—probably the major advantage is that oftentimes they can

be citizens drawn from the particular community, particular background, age, and ethnic background of those they will be working with and that's enormously helpful. Salaries are so low in Legal Services for lawyers and paralegals that those who suggested this was a great way to provide greater services at low cost—it really isn't so, but it is a better way to enable elderly poor to be helped by an elderly person from that community, and we have worked in developing paralegal programs for training and will continue to do a good deal of that in the future.

MR. DORSEY. Does that work that you have done in the paralegal training include a close association with any particular law schools?

MR. EHRLICH. We have not tied that training program into any particular school and currently the Legal Services Corporation Act under the so-called Green amendment precludes grants or contracts for training. All training must be done by the Corporation. That provision has been proposed to be deleted in the version of the new authorization act passed by the House, so up to now we could not enter into contracts or grants for training with other organizations. But I will also say that our own studies by the Office of Program Support show that very few schools do have paralegal training programs that are relevant to Legal Services. Antioch has one, a consortium from Loyola, UCLA, USC have one, but so far as we are aware, at least, there are not many that are aimed at the kind of work done by those in Legal Services as opposed to those who train for paralegal work in major metropolitan law firms.

MR. DORSEY. I did indicate that was my last question, but there is just one other question that I really believe is very important. Another issue that has arisen is the question of whether or not in view of the possible, at this point likely, underrepresentation of older persons in legal services delivery, there is in fact a need to earmark funds, and I would just like your comment on the necessity of earmarking to provide for sure services to the older person?

MR. EHRLICH. From time to time some have urged that a portion of the appropriations to the Corporation be earmarked. We think that would be a mistake. We think earmarking for any group would be a mistake because the mandate of the Corporation is to provide service for all poor people, concentrating only under the statute on those least able to afford this service. Earmarking funds would inevitably mean, we think, less efficiency in reaching that goal, would fractionate what is frankly a relatively small, in terms of political muscle, group, the poor.

In our view any effort to fractionate that group in terms of age or ethnic background or whether they're veterans or whatever would be a mistake. It would mean that some poor people who are not in that group would be denied access, and that kind of tradeoff ought not to be necessary when the basic sound and right solution is to provide the Corporation with sufficient funds to perform the job that Congress

mandated it to do, provide legal services to all poor people throughout the country. That's our job, and that's what we can do with adequate resources.

MR. DORSEY. Thank you very much. I have no further questions.

CHAIRMAN FLEMMING. We certainly appreciate your being here this morning. I have followed the dialogue between you and counsel with a great deal of interest, and I think the important issues confronting this Commission have been dealt with very effectively. I would like the record to show that there is a working agreement between the Legal Services Corporation and the Administration on Aging, designed to deal with some of the issues that have been identified here this morning. Without objection, I would like to have that working agreement inserted in the record at this particular point. I would also like to note that in connection with that working agreement, and in order to effectuate it in a meaningful manner, the Corporation has made some details to the Administration on Aging which will certainly help in building bridges between the area agencies on aging and the Legal Services Corporation.

I am very much interested in your recognition of the fact that outreach is needed in connection with undoubtedly many segments of the population, but certainly in connection with older persons, because not only in this area but in other areas, if resources are used simply for those who in effect walk in, it is clear that in many instances older persons will not get what might be regarded as their fair share of these resources. They will be unaware of the existence of the service. There will be obstacles that stand in the way of their actually walking in, so I appreciated your recognition of the fact that special outreach activities are needed. Of course, here's where the linkage with the area agencies on aging proves to be very effective because they in turn can help carry on an outreach program of this kind.

I was also interested in the discussion on paralegals. You indicated that there are just a few law schools, at least that you are aware of, that are involved in this particular area. There is one at George Washington University, which is not tied in exclusively, certainly, with the Legal Services Corporation, but which does put its emphasis on recruiting older persons for training as paralegal personnel. Do you feel that this does constitute an opportunity for growth or strengthening of legal services, namely, trying to persuade more and more law schools to provide training opportunities of this kind, possibly with special emphasis on utilizing the services of older persons?

MR. EHRLICH. I certainly think that the paralegal movement is a vital one for Legal Services and that more training areas and opportunities are needed. I'm not sure that, having come from the world of legal education for lawyers before I came to this job, that in all cases law schools are the best vehicles, at least in California where I was teaching. It seemed to me that the community colleges there could, and I worked with a number of community colleges in California,

probably provide the counterpart to paralegal training far better than could the law schools. Law school involvement was needed to help design the materials and organize the courses, but I'm not at all sure that in terms of best allocation of resources that it's the law schools themselves that ought to take the lead in actually doing that training as opposed, for example, to the community colleges.

CHAIRMAN FLEMMING. Certainly, as you indicate, a good many community colleges have taken the initiative along this line. I think it is all to the good. Is there any emphasis in connection with the staffing of the Legal Services Corporation on the desirability of utilizing older persons and do you have any feel at all as to what percentage of persons that are tied in with Legal Services Corporation might be legitimately regarded as older persons?

MR. EHRLICH. Well, we do have some age breakdowns of those in the 320 programs, approximately 3,200 lawyers. Most are relatively young. Most come right out of law school with a great deal of dedication and not much funds, spend—approximately one-third have been there less than a year, another third a year to three years, and another third beyond that, according to the last statistics I saw.

How many are above 40, 50, or 60, I don't know. Not a great many, for one reason, the legal services movement isn't very old itself, but I have heard of a number of cases of elderly lawyers, retired from what they were doing, coming into Legal Services, some pro bono and some for a small amount of funds and providing and performing a very important service.

If I might add one addendum to one of your questions about paralegals and paralegal training. One of the concerns we had over the past 2 years is that too quickly the area of paralegal training would become encrusted with rules and regulations that would structure it in a way that might impede opening up and experimenting with different kinds of procedures. Just as the legal profession is somewhat of a guild with its own rules and regulations, we're worried that the paralegal world might become that too, and we have urged that standards not be set so quickly that they might preclude open access to the world of paralegal training for those, particularly elderly people, who might come in, not wanting to do probate work or work for a large corporate firm but rather provide housing or social security or consumer advice for poor people.

CHAIRMAN FLEMMING. I appreciate your comments along that line. This is an issue in other service areas also; it has to be kept in mind, I think, at all times.

Commissioner Horn.

VICE CHAIRMAN HORN. I notice in your prepared testimony on page 9, you said in 1977 the Corporation provided basic skills training to more than 500 paralegals, approximately 10 percent of whom were elderly paralegals employed in special programs for the elderly poor. Is that the total amount of training the Legal Services Corporation has provided or is that simply the 1977 year?

MR. EHRLICH. That was just 1977, and that was just to paralegals. We had some 51 or 2 training programs, I believe that's the right number, that provided new lawyer training to lawyers new to Legal Services, provided management training to managers, provided training in specialized fields, such as housing, consumer law, Federal litigation.

VICE CHAIRMAN HORN. I just wonder how many paralegals have been trained since the Corporation began?

MR. EHRLICH. I'll try to find that figure for you, Commissioner Horn. I don't have the total number offhand, but I do know that's the figure for 1977.

VICE CHAIRMAN HORN. When you say basic skills training, was that education from the beginning or had they already been trained in community college and law school programs?

MR. EHRLICH. Most, although there were some exceptions, most had no training other than what the program to which they went provided them. On-the-job, on-the-site training, in an area such as social security, by working with a lawyer overtime, with a basic manual of the questions most commonly asked and the answers, is the kind of training that every program gives to every paralegal.

VICE CHAIRMAN HORN. Have we found any differences between the elderly and the nonelderly in their capacity to benefit from, say, paralegal education, either conducted by the Legal Services Corporation or other schools of which you're familiar?

MR. EHRLICH. I don't know that there is. I will ask the person who is head of our Office of Paralegal Training, Catherine Da-Jermy, whether she has found any differences. I suspect that the key normally, coming back to Mr. Dorsey's question, is the extent to which they have grown up in a particular community and related to the needs of the citizens as opposed to their age.

VICE CHAIRMAN HORN. I take it elderly paralegals are not confined to dealing with problems of the elderly; is that correct?

MR. EHRLICH. Oh, no, sir.

VICE CHAIRMAN HORN. It seems to me, as I suspect your own feelings are, this is a great opportunity for a number of people who have been perhaps in other careers in their life to help the work of the Corporation and to provide outreach and additional hands and arms to get the job done.

MR. EHRLICH. Exactly.

VICE CHAIRMAN HORN. So if you would furnish for the record any further answers you want on this, we can have it inserted at this point.

CHAIRMAN FLEMMING. Without objection that will be done.

Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Ehrlich, I would like to refer you to a statement made in your prepared statement on page 4. You indicated with respect to the priority-setting process, when you said,

because of the enormous diversity in local circumstances, the Corporation does not mandate what procedure a local program should follow to determine its priorities. We do require, however, that clients as well as employees of the program participate in the priority-setting process, and that the demographic distribution of eligible clients be considered.

My concern is with respect to those local communities whose boards do not include any persons who are over 55 and whose clients are not among those over 55 and whose employees are not among those over 55, that because of this, their perceptions are limited to their own problems, and that by this process and by leaving it completely up to the local program, that the Legal Services Corporation may itself be locking in a preexisting discrimination. So what I would like to ask is if you have any guidelines, or if your Corporation has any guidelines, with respect to the membership of the board, number one.

MR. EHRLICH. Each of the 320 programs, as your question suggests, is governed by a board. The board under the Legal Services Corporation Act must have 60 percent lawyers and at least one client or representative of clients. Under our regulations, we go further, and, in fact, one-third of the members of the board must be clients or client representatives. It also must ensure a fair reflection of community needs and interests. I can provide you for you the exact language in the regulation, as well as in the act, if that will be helpful.

COMMISSIONER FREEMAN. My concern is if you have made any appraisal of this guideline to determine whether it needs any revision or not. I am aware of the guideline, even the 60 percent lawyers, you see, legal profession—I'm a member of the legal profession, so I can tell you how racist and sexist that is, so combine the ages. And I have also served for a short period as a member of the board in St. Louis in which there was one black. I think that was supposed to take care of all three categories. My question is the extent to which the Corporation, your corporation, which funds such programs, recognizes that maybe the delegation to the local program may be in itself defective in carrying out your responsibilities.

MR. EHRLICH. We did hear concerns raised about the racial composition of some boards. We did do a study, the results of that we do know, which show breakdown by race. I have not heard before the concern that boards aren't adequately reflective in terms of age before.

COMMISSIONER FREEMAN. May I ask, have you—has the Corporation considered requesting a cross classification by race, sex, and age as to the board composition, employment composition, and client composition?

MR. EHRLICH. Yes, but we have not—yes, as to race; yes, as to sex; no, as to age—have not heard that charge made or the concern raised as to the composition of boards before, and we haven't done that classification insofar as I'm aware, at least, as to age. We have as to race and as to sex.

COMMISSIONER FREEMAN. I want to be sure I understand you. You're saying in all of the life of the Legal Services Corporation no concern has been brought to your attention concerning the composition of local boards?

MR. EHRLICH. In terms of their age, yes, I am saying that. I do not say that in terms of race and I don't say it in terms of sex, and that's why I said our Office of Equal Employment Opportunity did do an analysis of every employee and every board member of every program as to race and as to sex, and we did do an analysis based on that study.

COMMISSIONER FREEMAN. What did you do following your analysis?

MR. EHRLICH. We have found—and it was just completed, in fact—that on the whole there is in most programs a fair representation by sex and by race. In those situations of which there seemed to be questions or problems, we will work to help those programs in affirmative action efforts to improve the staff composition or lawyer composition to ensure that it does include significant numbers of whatever groups they were representing.

COMMISSIONER FREEMAN. Maybe I had better get at those questions because again we're talking about perceptions. What is the composition of the board of the Legal Services Corporation classified by race, sex, and age?

MR. EHRLICH. The board of the Corporation itself, which, as you know, is appointed by the President of the United States and confirmed by the Senate, is all men currently.

COMMISSIONER FREEMAN. One hundred percent male?

MR. EHRLICH. Let me add only this, that there is, under the statute, 11 places on that board. There is currently one vacancy. Four of those are up for either reappointment or new appointment. That was scheduled last July but hasn't yet occurred. The others will be up next July. It is, incidentally, as I hope is clear, an area in which the staff of the Corporation has no involvement or responsibility.

COMMISSIONER FREEMAN. Oh, yes, we are familiar with the responsibilities of the President in this regard.

MR. EHRLICH. It is entirely male. It has one black, one Mexican American. The rest are white males. They are all lawyers. Their ages, I'd have to go through one by one which I'll try to do for you, but I'm not sure I know each one exactly. I can certainly find it out for you. No one is less than 35, I think at least one is over 60, and several are between 50 and 60.

COMMISSIONER FREEMAN. Thank you, I think you probably understand my concern.

MR. EHRLICH. Oh, I certainly do.

CHAIRMAN FLEMMING. Commissioner Ruiz.

COMMISSIONER RUIZ. I have a couple of thoughts, yes. The Secretary of HEW, Mr. Califano, called our attention yesterday to the needs of the handicapped and, of course, we are here to make a record of discriminatory practices which affect not only the handicapped but the

elderly as well. There is a community of interest there. One common issue in a class action which would bind it—many of the aging and many of the handicapped—is the exclusion of access to public buildings, common carriers, and other locations that are accessible to persons who are not physically handicapped.

Now, under recent Supreme Court decisions legal services may now be advertised. Restrictions that heretofore were imposed by bar associations have been declared as in violation of the antitrust laws. These rules that you mentioned as being rather guildlike in the past are being phased out very fast. In California I have witnessed advertising by TV and advertising by radio, which is going to make more facile and simple this outreach problem that we've had before.

Has attention been called to your grantees of the possibility of instituting class actions on special community needs which exist under the specific classification of age or handicap? For example, in the case of transportation facilities, a suit mandate wherein Federal funds are used in the manufacture of buses, so that an extra step or elevator to get aboard? I read in the newspapers about these things. The use of seeing-eye dogs, the use of ramps in public places, the use of electric cars, conveyors in parks.

I think that there's a field here for class action litigation that can do away with the barriers which impede the equal protection of the right and the use and availability of public accommodations. It might be in order to make a survey of this type of legal services development. It could well be a research project or a major litigation effort. Since you may now advertise for clients, as I said before, outreach by radio and television is not only considered ethical but is a new instrument, I think, that your Corporation could use for the public convenience and necessity. You might even get affirmative—have action and cooperation from the television media whose licensing existence depends upon services being rendered by standards of public convenience and necessity. Have you been thinking along those lines or developing anything along those lines and, if not, what do you think of the concept?

MR. EHRLICH. In fact, legal services programs have been always allowed to advertise their existence and their availability to poor people under a specific opinion from American Bar Association ethics committee. The problem, sadly, has not been the inability to advertise the existence of services but too little services, and those programs or prepared statements suggest they haven't progressed in outreach concerning the availability of services have not done so because of any provision in the Code of Professional Responsibility but rather because they already are swamped with more clients with real needs and real problems than they can—

COMMISSIONER RUIZ. Allow me to interrupt you with relation to what you just said about too little service availability. That is the specific reason for the existence of class actions. You only need one

lawsuit and you don't need 2,000 lawsuits. And that is the reason I'm wondering if you're thinking along those lines with relation to the particular matters that involve this classification of communities of interest, a common problem, one legal issue involved, and are you doing that, and what have you done if you are doing that in the sense that I've just mentioned?

MR. EHRLICH. I understand the point, and you're quite right, that very often a single class action can take the place over a great many individual suits, and a number of programs, consistent with terms of the act, have, under guidelines established by their boards and the approval of their project directors, brought class actions along the lines you have suggested. Whether the particular ones that you are referring to have been brought, I'm not sure, but certainly take the suggestion very much in mind.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Thank you. We're, again, very appreciative of your being here. There is one item that counsel discussed with you—if you do have any evidence on it, it seems to me that it would be helpful to provide it for the record. That's the question of whether or not when legal services for older persons are supported through Title III of the Older Americans Act or in other ways, that has an effect or doesn't have an effect of lessening the pressure on the Legal Services Corporation to meet the needs of older persons, because, as you well know, that issue is going to arise probably within the next few weeks as a result of legislation that has been introduced in the House of Representatives. I know it isn't easy to obtain, but if you have anything along that line, I think it would be helpful.

May I ask, do you, would you like Mr. King to make any statement in connection with the way in which his operation relates to the Legal Services Corporation? I know it is in your—I think you've referred to that in your opening statement a number of times, but if there's anything that you would like Mr. King to add to it, why, we'll be glad to listen.

MR. EHRLICH. I was myself eager that Mr. King have an opportunity—

CHAIRMAN FLEMMING. Our time has expired, but we can take a few minutes on it.

MR. EHRLICH. To speak not on behalf of the Legal Services Corporation but rather on behalf of an outstanding program funded by the Corporation that does pay particular attention to a very important area, the needs of the elderly poor.

CHAIRMAN FLEMMING. Mr. King, if you would like to make a brief statement and, if you have a statement that you prepared for the record, we would be more than happy to include it as a part of the record at this point.

MR. KING. Thank you, Chairman Flemming. I am in the process of preparing a statement. If I might file the statement later for inclusion in the record, I would appreciate the opportunity to do that.

CHAIRMAN FLEMMING. We'd be very glad to receive it.

MR. KING. I would point out, briefly, a couple of conclusions, and if I might, a couple of suggested recommendations and asking the Commission to bear with me, and I hope I can support those recommendations in my written statement.

Basically, first, let me point out that I believe that the failure of the Corporation and the understandable failure for the reasons outlined by President Ehrlich—that is, the absence of adequate funds to perform all the services that are immediately demanded of programs at the present time—falls more heavily upon the aged than any other group because of their special problems of mobility and also problems of image running both ways, that legal service attorneys cannot emphasize the problems of the aged without sensitization, and the aged, by and large, do not recognize their rights are being violated and tend to trust the kinds of institutions that have such great force upon their lives at that stage.

I believe very strongly that emphasis needs to be increased in the area of outreach or there will be this continuing disparity until we have a perfect situation where all programs have the funds that they are entitled to, or that they need to do a absolutely comprehensive job. Until that time I think it is quite likely that groups such as the aged, as Commissioner Ruiz suggested, the handicapped, are going to have particular problems and are going to pay the higher price for the underfunding and are going to be relatively underserved, although, it is true, as President Ehrlich has said, everybody is underserved today in the legal services field.

That points to a number of things. Support centers need to have at least equal representation in the overall legal services budget in order to work with various programs across the Nation. Presently the Corporation seems to be moving in the direction of attempting to increase what it refers to, I guess, as physical access. In our view that is very dangerous and tends—will tend to increase the problem of the aged being relatively underserved because attorneys do not have the support that they need to have and the sensitization and the education that is essential to carry out their particular work.

The affirmative action point that is suggested by Commissioner Freeman, we would like to emphasize, we believe, and I personally believe, that affirmative action in employment for the aged is a major failing both of the Corporation itself, which has a relatively young staff, and for legal service programs across the Nation. I think this compounds the problem that already exists in Legal Services for the reasons that I have already outlined.

Training needs to emphasize the needs of the elderly. President Ehrlich pointed out in his statement in many instances active work on the part of the Corporation has programs that redound to the benefit of others, that there are, when a victory is won for the poor in any situation, that does help other groups. That is true, but that can easily be

overstated. The key areas mentioned by President Ehrlich are indeed key areas, but when one looks at it in relation to the needs of the elderly, one recognizes that in the area of income the elderly face all kinds of unique problems. For the first time, individuals become dependent upon income from programs such as social security and SSI, pensions, Veterans Administration payments, and the like, which other people don't have difficulties of that sort with, and even age discrimination, the problems of mandatory retirement are unique to the elderly. And unless an attorney is prepared in those areas, the attorney or paralegal working with the person may not recognize the problems, and the elderly tend to not recognize their rights are violated. There are special housing programs for the elderly, section 202 under the National Housing Act, nursing or rest homes in the form of housing that is unique to the elderly, almost unique to the elderly—there may be some exceptions. There are special programs, of course, in the field of nutrition for the elderly, food stamps programs, and there are programs such as Medicare that relate to the health care of the elderly, that have special impact, all of which call for special training and special substantive knowledge.

With respect to Commissioner Ruiz's point, on the importance of class actions we're in firm agreement. As a matter of fact, there was one case in which, and I cannot speak comprehensively for our program because our offices are divided, and it is difficult to keep tabs of all things that are going on in both places. Our main office is in Los Angeles. We have a substantial office also in Washington, D.C. It is difficult for me sometimes to keep track what's going on in Washington, D.C., let alone in Los Angeles. However, I do know that our Los Angeles office did do an *amicus* brief in connection with a Philadelphia public interest program calling for access, against the Department of Transportation, class action on behalf of the aged and the handicapped, calling for a requirement in regulations of the Department of Transportation that there be, that the buses that can kind of kneel down to allow access be required under certain circumstances, and eventually that case has gone into a regulatory proceeding, and the Department of Transportation has indicated that it was going to respond to the demands being made of it.

That's it in a nutshell.

CHAIRMAN FLEMMING. I don't want to interrupt, but I'm afraid I must. We appreciate those comments very much and would appreciate your filing a statement with us, filing those and identifying any others that you feel should be identified, and again, thank you so much.

Counsel will call the next witnesses.

MR. DORSEY. Elsa Porter, Assistant Secretary for Administration, Department of Commerce, accompanied by Dave Lasky, Director, Office of Civil Rights, Economic Development Administration [EDA].

[Mr. David Lasky and Ms. Elsa A. Porter were sworn.]

TESTIMONY OF DAVID LASKY, DIRECTOR, OFFICE OF CIVIL RIGHTS,
ECONOMIC DEVELOPMENT ADMINISTRATION; AND ELSA A. PORTER,
ASSISTANT SECRETARY FOR ADMINISTRATION; DEPARTMENT OF
COMMERCE

Ms. PORTER. Thank you, Mr. Chairman, and members of the Commission, I'm very pleased to be with you here today. I bring you regrets from Secretary Kreps, who would have liked to have been here herself. She is out of the country, and she asked me to convey her regrets to you, since this is a subject that is not only of a personal concern but a long, as you know, professional concern of hers.

CHAIRMAN FLEMMING. Secretary Kreps is certainly one of the outstanding leaders in the field of gerontology not only in our country but in the world, and we are very, very happy that she is in the position that she is in because we know that she is not going to overlook opportunities to be of help in the field of aging.

Ms. PORTER. Yes, that's quite true. Thank you very much, Dr. Flemming.

The Commission, I understand, is particularly interested in the administration of our local public works [LPW] program, and the effects upon different segments of the population of the job creation activity that goes on through local public works. The question has been raised as to the similarity between LPW and CETA programs and whether the same problems that this Commission has discovered in the administration of CETA programs exist also with respect to LPW. I would like to clarify, if I may, the differences between the two programs and then, I believe, that that will make clear the problems that we now have in dealing with the subject of this particular hearing.

CHAIRMAN FLEMMING. If you could do that and then counsel may have some questions based on that and the members of the Commission. If you have other points covered in your statement, we'd be more than happy to have you summarize them and then we'll include the entire statement in the record at this point.

Ms. PORTER. All right, thank you very much. While the objectives of the Local Public Works Employment Act of 1976, the LPW act, are similar to those established for CETA, the administration of the two programs is really quite different because under CETA employees are employed by the State and local governments and receive their jobs through the employment services. Under LPW we contract with the States and local governments who receive our grants, contract with private construction firms, and therefore the hiring practices within the LPW program are essentially governed by industry practices in the construction industry and by union practices as well, so that the issues which the Commission has identified that relate to CETA are really not applicable to the local public works experience.

You asked us, for example, what the age distribution of the participants in the public works program is, and how this compares to unemployment rates for each age grouping, and I regret to say, Mr. Chair-

man, that we do not have an answer for that. We have not collected data in that area and we simply are unable to respond to the question. The issue is raised, though, by that question as to whether we should, indeed, conduct research and evaluate the LPW program with respect to its impact on different age segments of the population.

You asked us how participants in the programs are recruited and to what extent the employment practices and policies of State and local governments receiving funds affect the age distribution, and, of course, again, the only information that we have there again relates to the practices in the construction industry. Firms usually have a regular crew of employees which they utilize on a project, and, of course, they can go out and hire other employees, but it is the institutional hiring practices of the construction industry rather than the hiring practices of State and local governments that tend to affect the age distribution.

We did attempt in one instance to try to construct a survey which would get at the question of age distribution and are now considering whether to include the question of age in our overall civil rights evaluation of local public works. As you may know, we do ask the construction firms to report to us regularly on the sex and race of employees who receive jobs under the LPW program, and those reports and the degree to which hiring meets our goals in the LPW program are closely monitored by EDA civil rights staff in our regional offices and through Mr. Lasky's office in Washington.

We have not included, up to this time, the question of age in those reports. In considering the question of collection of age data, EDA has developed a form, a sample form, and conducted a pilot survey on one public works project in Washington, D.C. This is a very small sample and it relates to the Washington, D.C., area.

The response rate was only 50 percent. The employees who responded tended to be the more skilled employees rather than the unskilled, so that the results, I think, are certainly not reliable for generalization. However, the percentage of employees by age in that project, the results did bear out, surprisingly, the results of the Commission's study of CETA programs, indicating that at the—that the very young, the teenagers, age 15 to 19, only 3.5 percent were employed, and that bears out, I think your experience in some of the other programs. At the upper end of the scale, 45 and older, there were 14 percent employed but, again, at the very old, the 55 to 60 age group, a very small percentage, less than 2 percent.

We are now considering adding these questions to our civil rights evaluation forms on a sample basis in Round 2 of the LPW programs. The data that we have will not be available to you for some time because this is a new program and unlike CETA has not had enough history to give you an idea of the impact upon age groups. However, it will be useful. Probably a year or 18 months from now we would have a better picture of what happens to the employees.

You also asked us what types of positions are supported and the distribution of jobs within those type positions and the general skill levels which have been required and to set standards for those. The information that we have to date represents 65 percent of Round 1 projects, those that were started in 1976, and in Round 1, 87 percent of the jobs were construction jobs. Thirteen percent were administrative and clerical jobs. Of the total number, 68 percent were skilled labor and 32 percent were unskilled. Of course, again, standards for establishing these skill levels are determined by the construction industry and the unions.

Finally, you asked how the Department monitors its grantees relative to the range of participants and in the light of unemployment objectives. We have monitored the program through an evaluation of, very highly structured statistical evaluation process, which takes a stratified representative sampling of contractors involved and asks these questions that are returned to us on a form every pay period. That is the sampling technique to which we would in the future perhaps add a question on age on a sampling basis so that we would have a basis of information to make, to project and to make generalizations.

As you can see, we are in the early stages of the LPW project, and we do not have enough data, really, to answer your questions in the degree to which we would like. We are concerned that—one of our concerns which I'm sure you are sensitive to is with the reporting burden that we lay on the public, and the need, while the need for data is critical in many areas, we have always to weigh that need against the cost of collecting the information. This is a constant problem for our Census Bureau, but we do wish to do everything that we can to make visible the problems that exist as a result of our programs and would like very much to have the view of the Commission on what you think are the essential data elements that we should be looking for in this program.

CHAIRMAN FLEMMING. Thank you very much. Mr. Dorsey.

MR. DORSEY. Thank you. You have, in fact addressed the whole range of issues that we had intended and I appreciate that very much. I would like to just make one clarification for the record. In terms of similarities between your program and CETA, it should be noted that our information is CETA does have the similarity, that they also contract with local area employers, and they also are subject, as we have developed our information, to the industry practices and the industry stereotypes, etc., and impact factors in terms of age, so that CETA also is subject to the problems in the marketplace and the labor force marketplace. But, again, the similarity seems to be—and what you said seems the bear this out—that, in fact, given those problems, we have two programs essentially designed to meet a problem of high unemployment which by statistics seems to be impacting on certain age groups disproportionately, and, again, in both instances the problems of the marketplace seem to be continuing in this area of Federal sub-

sidies. In other words, the Federal Government has made a policy determination to try to deal with high unemployment and in the administration of that policy it gets somewhat, at least, perverted by the problems in the labor market force, so that this program is still not being concentrated on those very high areas of unemployment which seem to be age related.

Again, recognizing the problem which has already been referred to in the CETA information that we've developed, and that is the baseline necessity to depend substantially on a labor force, not a labor force but a labor market, which has in it certain discriminatory impacts. In that regard, how do you see your agency as trying to get beyond, in other words, dealing with the labor market force problems that you have, to get more of that Federal subsidy to those areas, apparently age related, that need it most? That's the only followup question I have.

MS. PORTER. We really haven't developed a strategy to do that. We have focused so far in the LPW program on race and sex. We have, we think we have succeeded in an enormous breakthrough in terms of employment of women in the construction industry and we hope that we will be able to press, to use the LPW grants as a major opening of the door to women in the construction industry. We have simply not focused upon the age, the disparity in employment in age, and I don't know how we can do it. If there were a way to do it, we would try to. The problem is, as you say, within the industry, and I don't know how, since we are—since we work through State and local governments and with private contractors—how we can focus on those problems in the construction industry.

One of the complicating factors is the nature of the jobs themselves, short-term jobs, and the union, the practices of the union, which require union membership for skilled labor. I think that what we feel—and, again, we do not know because we don't have the statistics—we feel that we are not assisting effectively the high unemployment of teenagers. We are not getting at that through LPW grant construction projects, and we are not—probably the percentage of the older people over 55 are not getting as many jobs. I think our concern in this particular instance is on the—in terms of the over 45 and that large category of older Americans—I think the record is probably pretty good. They are the ones who have experience and generally are hired. I don't know how we can assist through the LPW program in having an impact on high unemployment rates for the very young.

MR. DORSEY. I have no further questions.

CHAIRMAN FLEMMING. We certainly recognize the problem that you have identified. However, I'm sure the Department recognizes that when the Age Discrimination Act of 1975 becomes operative on January 1, 1979, that there will be a legal obligation resting on the Department, as well as other departments and agencies of the government, to recognize that, as things now stand, there is in fact a situation

where older persons are not getting their fair share and that some methods will have to be developed in order to bring about a correction of that situation. Of course, it will be a responsibility that will rest on all departments and agencies and some things that Labor does, in turn, will be helpful, I'm sure, as far as Congress is concerned. We do recognize the nature of the problem as you have identified it.

COMMISSIONER FREEMAN. Ms. Porter, I listened with interest to your statements about the standards being determined by the construction industry, and I would like to first ask about your office. How much money goes from your office to State and local governments in local public works program?

MS. PORTER. Round 1 is \$2 billion. Round 2, which will conclude at the end of this month, there was an additional \$4 billion. A total of \$6 billion is being given to State and local governments for the construction of local public works as a part of the President's counter-cyclical economic development program.

COMMISSIONER FREEMAN. The statements we have read during the past several weeks, there was even an admission by the President that the black unemployed had not benefited significantly from this program. Now, what I would like to ask, there seems to be a lack of any program to evaluate this "standards determined by the construction industry" and to use the clout of the Federal Government to see whether those standards are realistic or whether there are double standards. What you have indicated, that you have obtained information about the breakdown as to race and sex, when there has been—have you found that there were obviously discriminatory practices?

MS. PORTER. I'd have to ask Mr. Lasky to answer that in detail. We have not, since the program is so new, we have not—

COMMISSIONER FREEMAN. When did the program start?

MS. PORTER. The program started in 1976, the first \$2 billion was granted in 1976—

MR. LASKY. In early fiscal 77.

MS. PORTER. We are now in the process of conducting a very in-depth evaluation to find out, exactly, answers to your questions.

COMMISSIONER FREEMAN. Let me ask you first, before any money was given, were there any assurances of nondiscrimination required?

MS. PORTER. Yes, yes, indeed.

COMMISSIONER FREEMAN. Has there been any report from any of those State and local governments based on their activities since they received the money?

MS. PORTER. Yes. Perhaps Mr. Lasky will describe for you the monitoring and evaluation process with respect to discrimination in race and sex in this program. It is a very—we have a very concentrated effort to try to use the clout of LPW to gain additional employment, not only employment for minority groups but also to develop minority businesses, and in the second round of LPW, the \$4 billion that is going out this year, we have a 10 percent—a requirement for a 10 per-

cent setaside of every grant which would be directed to minority contractors.

COMMISSIONER FREEMAN. I wanted to know, was there a finding of discrimination in any of the existing programs?

MR. LASKY. Let me say, Commissioner Freeman, that we in the LPW program were basically enforcing two Federal requirements: we're enforcing Title VI of the Civil Rights Act of 1964 and Executive Order 11246, which covers federally-assisted construction.

To try to answer it very briefly and clearly, our Title VI responsibilities indicate that in effect we should not be giving monies to grantees who discriminate in a particular program being funded, which I'm sure you're aware of. To enforce that, we did require, prior to giving the funds to grantees, information on their employment posture, which is submitted in something called an EEO-4 form. We did require information on the availability of that project, accessibility of that project, to the minority community in terms of its location and the kinds of services they were offering, and if we found that there were indeed deficiencies in the design or location of the project, we asked that it be redesigned or relocated or we held up—or another project had to be substituted before we would approve it. If we found there was serious employment discrimination by that local government, then we required a plan from them with goals and timetables, an affirmative action program prior to funding the project which would correct the deficiencies that were noted.

This was a very difficult job because we've had over 10,000 projects affected in one fiscal year. We did the best we could and we did look at each project before we approved it. Now, on most of those employment plans that are presented to us, we haven't yet gone back because we simply haven't had time. We are going to be going back. Round 2 quickly followed Round 1, so the preapproval work overwhelmed us at that point and it is still overwhelming us.

CHAIRMAN FLEMMING. I think it would help the Commission if you could just identify this time span. When were the first allocations made and when was the second made?

MR. LASKY. The first allocations were made, I'm sorry, I don't have the precise dates, but early FY 77, last fall, I think, between October and December.

CHAIRMAN FLEMMING. It is less than a year ago.

MR. LASKY. Yes, less than a year ago.

CHAIRMAN FLEMMING. Then the second allocations have been made when?

MR. LASKY. Second allocations are being made now, wind up the 30th of this month, and they've been made now for about the past 60 days.

CHAIRMAN FLEMMING. In terms of operations, we're dealing with a time span of about 11 months.

MR. LASKY. That's correct, sir.

COMMISSIONER FREEMAN. The point I'm trying to get at it, are you funding or refunding any communities, any State and local governments where under the first allocations the projects were operated, practiced discrimination on the basis of race and sex?

MR. LASKY. No, we're not.

COMMISSIONER FREEMAN. Are there any State and local governments that are not refunded in the second round that were funded in the first round?

MR. LASKY. Well, if I can explain for a moment, because of problems of discrimination that were found during the first?

CHAIRMAN FLEMMING. That's what you had in mind.

COMMISSIONER FREEMAN. That is right.

CHAIRMAN FLEMMING. In other words, are any being penalized as far as the second round is concerned because of performance or lack of performance under the first round?

MR. LASKY. I don't have a precise list, but there are several projects in several communities that have not been funded because of problems found in the first round, but I would have to get that to you in writing.

COMMISSIONER FREEMAN. Would you please submit that information?

CHAIRMAN FLEMMING. Please.

COMMISSIONER FREEMAN. With respect to one final question, in obtaining the information, is the information requested to be cross classified by race and sex?

Ms. PORTER. I don't understand the question, Commissioner Freeman.

COMMISSIONER FREEMAN. What we are talking about is to avoid the double counting. I can give you a personal example, when you get age, you can triple count me, black, female, over 55, then they said, one and one and one and you, somebody, might count three when there's only one person.

MR. LASKY. The information is submitted in such a manner so that we may differentiate.

COMMISSIONER FREEMAN. That's what we mean by cross classification.

MR. LASKY. Yes.

COMMISSIONER FREEMAN. Do you now have cross classification?

Ms. PORTER. Yes, we're able to say, yes, we do, the numbers of employees by race, the numbers of employees by sex.

COMMISSIONER FREEMAN. As to categories of position?

Ms. PORTER. That's correct, as to whether it was skilled work, administrative, clerical work, or unskilled labor.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Horn.

VICE CHAIRMAN HORN. Weren't your basic criteria for Round 1 the level of unemployment in the particular area?

Ms. PORTER. That's correct.

VICE CHAIRMAN HORN. Among others. In looking at that as the basis for allocation, did you take into account the number of minority people in that unemployment area, or was it strictly unemployment regardless of race?

Ms. PORTER. Strictly unemployment.

VICE CHAIRMAN HORN. Is it not true that in Round 1 many communities in order to be eligible used high unemployment that occurred in minority sections of those communities to secure the public works project even though the public works project was then not erected in the high unemployment area but often erected in the parts of the community that were not that badly affected?

Ms. PORTER. That is an allegation that was raised. I am sorry that I am not familiar enough with the formula and the situation that existed before to really respond to that question. I do know that in Round 2 the formula was changed and there was a much greater effort to have the civil rights staff in the regional offices review the grants so that the questions that Mr. Lasky presented were answered before any grants were made.

VICE CHAIRMAN HORN. Well, that's correct. Congress changed the criteria on the advice of the Economic Development Administration to overcome the abuses that occurred in Round 1.

Now, with reference to hiring for the construction of projects in Round 2, what is the requirement in law or by regulation of EDA as to the use of union construction in implementing this program? Do you have to go to a union first?

MR. LASKY. No. EDA, as far as we know, the Federal Government and EDA do not have any rules that affect it one way or the other. You're not required to by Federal regulation or by EDA.

VICE CHAIRMAN HORN. What are you required to do in terms of your source of labor for Round 2?

MR. LASKY. You use the normal, whatever the traditional methods are, be they union or nonunion.

VICE CHAIRMAN HORN. Well, what I'd like inserted, my impression is, under a couple of these laws, and maybe it is State regulation, that you have had to go to the union hiring halls on implementation of painters, etc., for some of the minor projects. Now, maybe I'm mistaking two programs because they both came at once, but, as I recall, there were some difficulties here in getting the work force, and obviously, we know with the restrictions on the apprenticeship programs, we would then have difficulties getting older workers in, if that's the criteria being applied. So I'd like to put in the record at this point: what are the criteria in terms of the legislative history, the conference reports or report, EDA regulations, etc., that might pertain to selecting a certain type of work force which, in turn, might by practice and tradition have excluded older workers.

Ms. PORTER. We'll do that. We will provide that for the record.

CHAIRMAN FLEMMING. When received it will be inserted in the record at this particular point.

MR. DORSEY. Commissioner Horn said older workers, and because of the impact on young workers, I would ask that that effect be indicated, also.

CHAIRMAN FLEMMING. Okay, would you? That's fine. Commissioner Ruiz.

COMMISSIONER RUIZ. Mr. Lasky, is the Office of Civil Rights an ad hoc committee or a division within the Department of Commerce?

MR. LASKY. It is a division within EDA, Commissioner.

COMMISSIONER RUIZ. In terms of personnel, is the division dispersed in regions throughout the United States or is it just located here in Washington?

MR. LASKY. It is dispersed in regional offices, sir.

COMMISSIONER RUIZ. Do those regions have attached to them civil rights lawyers, or is there a civil rights attorney or staff of lawyers within the Department?

MR. LASKY. No, sir, there's not. There is a regional attorney who is responsible for the legal work within a region, and the civil rights staff within that regional office must use the services of that attorney, who is not specifically a civil rights attorney, and it is the same in our headquarters office in Washington. We do not have a civil rights legal staff. We only have a chief counsel's office that we use.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Thank you both very, very much for being with us. We appreciate it.

Counsel will call the next witnesses.

MR. DORSEY. Alan A. Butchman, Deputy Secretary, Department of Transportation, accompanied by Martin Convisser, Acting Assistant Secretary for Environment, Safety and Consumer Affairs.

[Mr. Alan A. Butchman and Mr. Martin Convisser were sworn.]

TESTIMONY OF ALAN A. BUTCHMAN, DEPUTY SECRETARY; AND MARTIN CONVISSER, ACTING ASSISTANT SECRETARY FOR ENVIRONMENT, SAFETY AND CONSUMER AFFAIRS; DEPARTMENT OF TRANSPORTATION

MR. DORSEY. Would you please state your full name for the record and position?

MR. BUTCHMAN. Alan A. Butchman, Deputy Secretary, Department of Transportation.

MR. CONVISSER. Martin Convisser, Acting Assistant Secretary for Environment, Safety and Consumer Affairs.

MR. DORSEY. Thank you very much. You have with you a statement which at this time I would ask be admitted into the record.

CHAIRMAN FLEMMING. Without objection we'll enter it in the record at this particular point. Thank you very much for it.

MR. BUTCHMAN. Thank you, Mr. Chairman.

MR. DORSEY. The Department of Transportation, we understand, it has entered into a fairly comprehensive interdepartmental agreement

with the Department of Health, Education, and Welfare. The 1977-1978 agreement specifically acknowledges the lack of coordination among Transportation programs, insufficient technical assistance relative to interpreting Federal regulations and policies, and operational problems, including availability of adequate insurance coverage at reasonable costs, as problems in meeting transportation needs of older persons. I wonder if you would comment on the question, what steps the Department of Transportation has taken in light of this agreement to address the special transportation problems of older persons?

MR. BUTCHMAN. Yes, I would be very happy to. There is a little bit of history, as you know, to this. We had the first agreement with the Administration on Aging [AOA] in 1974 that was aimed specifically at a better coordination of transportation and transportation services aimed at elderly and handicapped people. As we had further legislative initiatives and developments in the area, we upgraded our memorandum of understanding, if you will, so that we had one in '75, and it is my understanding that currently the Department of Transportation has signed off, if you will, on the one that you just referred to, and we're awaiting signature from HEW. The basic thrust of the agreement is to better coordinate those programs within the Department of Transportation and those within HEW so that we can get at the very real needs of the elderly and the handicapped.

MR. DORSEY. In terms of specific actions on the part of the Department of Transportation, what programs are you specifically into to address these special transportation needs?

MR. BUTCHMAN. Okay, I think the good way of getting at that response—I think that's quite well covered in the testimony, but if I may, I might highlight some of those items there.

MR. DORSEY. We would appreciate it.

MR. BUTCHMAN. We have basically five or six different categories of attempts to get at this program. I think, first, is research. We have, for instance, programs, ongoing programs, looking at driver licensing requirements, motor vehicle design deficiencies that can be overcome to be better adapted to the concerns of the aged, and also driver visual limitations.

Of course, in the development area, I think the Secretary's Transbus decision that was announced earlier this spring—that will require by September 30th of 1979 any buses that are going out for bid after that time to have an 18-inch floor level with "kneeling" capability, so that it will be much easier for elderly and handicapped to get on and off the vehicles.

Certainly, in the demonstration area we have a very extensive program. We currently have 106 different demonstration programs going on in 48 States. In FY 76, I believe, there was approximately \$15 million expended in this area and that was a substantial increase over the approximately \$9.5 million that was spent in FY 75.

Also, the programs that I just suggested were actually under section 147 of our rural highway public transportation program, which is a program under the Federal Aid Highway Act of '73, and these basically are programs to enhance the access of the rural population, be able to get to employment opportunities, medical facilities, and generally to assist them in being able to get around.

Certainly, we have put a good deal of effort on the planning side. We have interrelationships with 250 MPOs [metropolitan planning organizations] and 50 State organizations that require special efforts to plan mass transportation facilities and services so they can be utilized more easily by the elderly and handicapped.

Another area of things that we're doing within the Department is within a construction area. As of the first of July in '76 we have a Federal aid highway requirement that any new intersections or any new construction having to do with curb configurations that we have gradual decline as opposed to the old abrupt curb configuration that you and I are both very well acquainted with, once again, to ease the access, particularly of those confined to a wheel chair.

In the capital grants area, we have a requirement that anybody receiving capital grants has to include off-peak pricing for elderly people. This is where, during this non-rush-hour traffic time, they may not charge in excess of half the normal fare. I think this is very important both to get a better utilization of our transportation facilities but certainly to make it, once again, easier for our elderly people to get around.

MR. DORSEY. Could I just interject, one moment, in that area?

MR. BUTCHMAN. Certainly.

MR. DORSEY. The guidelines in that area, do they specify age range, or is that optional with the grantee?

MR. BUTCHMAN. That is optional with the grantee.

MR. DORSEY. Do you have any feel or data which indicate the range of ages which are provided for by the various grantees?

MR. BUTCHMAN. Pretty generally. It is between 60 and 65 years of age.

MR. DORSEY. And just one last thing. Has there been an assessment of the extent of use under that program?

MR. BUTCHMAN. We're still studying that and collecting data, nor do we have the final findings on that at this time.

MR. DORSEY. I'm sorry.

MR. BUTCHMAN. No, quite all right. Please do.

Picking up with the capital grants area, we have a program under XVI(b)(2) of the UMTA act whereby monies are made available directly to private nonprofit organizations to provide services directly for the elderly and the handicapped.

A final area, I think, that I would point to is in the safety area. We have a State and community highway safety program under the National Highway Traffic Safety Administration and that is an educational process that they have with the States.

MR. DORSEY. Thank you very much. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Thank you, we appreciate very much your being here, appreciate the testimony. I might say that I appreciate very much the willingness on the part of the Department of Transportation to really engage in pioneering activities in terms of entering into working agreements with the Administration on Aging. I had the opportunity just a few days ago to sign the latest update on that particular agreement. It is one of the best I think that we have, and your testimony points very definitely to the kind of results that can flow from an understanding of that kind.

You passed over very quickly XVI(b)(2), but I think the capital funds that have been made available for the elderly and handicapped under that section have given the whole program a real shot in the arm. It shows that the working agreement is a little bit more than just language but that the language or the rhetoric has been implemented. As you look down the road, thinking in terms of XVI(b)(2) as far as you can see, will that kind of investment continue to be made by the Department of Transportation?

MR. BUTCHMAN. Yes, I certainly think that it will be. I think that it has been a very beneficial program. And if I might back up just a very slight bit, I would like to say that I really am pleased to be here this morning. I wanted to come over here particularly to show the continuing interest and commitment of the new administration, as we take office, to this particular program. I would like to say that I appreciate your long-time and early interest in this area, and I know that our respective departments and agencies have worked very well, and we think that the value that we get from the program that we have entered into certainly can be seen by the fact that we are now into our third agreement in, within 3 years and that really has been driven by things that we have learned that have to be done and certainly the underpinning need, of realization of a need to better coordinate the various programs that we have. So yes, I think that program is going to continue and I think we're off to a good start. There is a lot yet to be done, but I think we're off to a good start.

CHAIRMAN FLEMMING. As you look at the total field of transportation, as you look at the responsibilities the Department has, do you feel that there are things that can be done, possibly, in addition to what is being done, to open up opportunities for continued involvement on the part of older persons, full-time employment, part-time employment, or are there some of the programs that where you even, where people might even rely on older persons in the area of volunteer service? But as you look at the total industry, do you feel there are some possibilities there that could be identified and where the Federal Government could exercise leadership?

MR. BUTCHMAN. I'm sure there's always something that can be done in that area, Mr. Chairman. I know, speaking within the Department,

the President has expressed an interest very recently in a, I think, all of the Federal Government taking a look at what it might be able to do, for instance, in the part-time work area. We're studying that particular area, and I think there might be some avenue to explore that there.

Certainly, I'm sure that there is room for improvement in this area within private industry. I am not really terribly conversant with that side of it, so I'm afraid I can't give you anything really specific at that point. Do you have anything you could add, Martin?

CHAIRMAN FLEMMING. I'm glad you identified the memorandum from the President to all of the departments and agencies encouraging part-time employment and putting particular emphasis on the involvement of older persons. At this point, I would like to have that memorandum to all departments and agencies included in the record if there is no objection, because I think that it does provide the kind of leadership that can be very meaningful in this area. Commissioner Horn?

VICE CHAIRMAN HORN. No questions.

COMMISSIONER RUIZ. I have no questions.

COMMISSIONER FREEMAN. Mr. Butchman, I believe the Department of Transportation has done some evaluating of the employment practices of the various transit agencies. My question, however, is I see some of the reports of the findings. Does the Department go beyond the bus driver to the administrative and decisionmaking level of the agency in making its appraisal?

MR. BUTCHMAN. Yes, it does, Commissioner Freeman.

COMMISSIONER FREEMAN. What has been your finding with respect to the employment practices of the participation and involvement at the administrative decisionmaking level? What has been your finding?

MR. BUTCHMAN. Commissioner, I am very delighted to say that I have with me Ellen Finegold, who is the head of our Office of Civil Rights, and I think she could more appropriately answer that question.

CHAIRMAN FLEMMING. Be delighted to hear from her.

MS. FINEGOLD. I'm delighted to be here. Commissioner Flemming, I heard your rousing speech to the Title VI conference yesterday where you really charged up the people assembled there to carry out a vigorous program, and all the words that you said with regard to Title VI apply to the act that we have under consideration here today. I think people at that conference are very much encouraged with the kind of support that they're getting both from the administration and certainly from the Civil Rights Commission and now through the Department of Justice, to move much more vigorously in this area.

I can't speak specifically to the findings with regard to transit agencies other than what we know generally to be the case, which is that minorities and women and the elderly are underrepresented at the administrative level of virtually all public agencies of the United States. Our Department is going to be addressing this much more vigorously now than it has been addressed in the past, both through the vehicle

of Title VI with regard to our grants programs to transit agencies, with regard to Executive Order 11246 with regard to employees of other kinds of recipient organizations. I don't think that there is any way of saying that the employment record of our recipient agencies has been as good as it ought to be, and we will be addressing it very forcefully in the next couple of years.

COMMISSIONER FREEMAN. My next question is with respect to procurement. Does your—and the subcontractors—does your Department inquire into the procurement practices of those agencies?

Ms. FINEGOLD. Very much so.

COMMISSIONER FREEMAN. What are your findings?

Ms. FINEGOLD. It is not just an inquiry. We have minority business enterprise requirements of varying kinds. The Department is comprised of a number of different agencies which have different styles of operation. But every one of our constituent agencies is involved at this point in establishing a more vigorous program with minority business enterprises, something we're very, very conscious of. Secretary Adams is in the process of putting into effect a setaside program on the Northeast corridor with regard to minority business enterprises, which I think is the most far reaching of our minority programs. But we also have requirements, for example, on our general contractors in a number of areas for a certain specific portion of subcontracts to be allocated to minority business enterprises, and this whole program is really receiving, I think, a really unusual amount of attention from the Secretary himself at this time.

COMMISSIONER FREEMAN. My concern is if the requirements for non-discrimination on the basis of race and sex are not being dealt with, then we'll not be able to anticipate progress when we add the requirement of age.

Ms. FINEGOLD. You're right.

Mr. BUTCHMAN. Might I just chime in and reiterate the point Ellen just made? The Secretary has a very real and deep commitment to the activities that Ellen was speaking about and we have paid—and Ellen has been very deeply involved—a great deal of attention to the Northeast corridor project. That is a very, very large dollar-volume project, and we recognize it as an opportunity to make a mark early on and a very significant one within the Department as far as minority participation is concerned. That's very much in my mind, very much in the Secretary's mind, and very much in Ellen's.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Just a few superficial items. Mr. Convisser, I direct the question to you. Probably more appropriately, it should be directed to the gentleman whose name is opposite yours in the agreement, Arthur S. Flemming.

VICE CHAIRMAN HORN. We can swear him later.

COMMISSIONER SALTZMAN. The Administration on Aging is charged with making a study on page 3 relative to that agreement, relative to conflicting age requirements of various Federal programs. Has that study been completed, to your knowledge?

MR. CONVISSER. It has not been, to my knowledge.

COMMISSIONER SALTZMAN. Is it underway?

MR. CONVISSER. It is underway.

COMMISSIONER SALTZMAN. Do you know when the completion date tentatively is?

MR. CONVISSER. I don't know when the completion date is, but—

CHAIRMAN FLEMMING. We could supply that for the record.

MR. BUTCHMAN. If I could continue on that, we have been in discussion with HEW about initiating a study, but it has not actually been initiated yet.

COMMISSIONER SALTZMAN. Oh, it hasn't. Are there any particular reasons, since the agreement was entered into? My concern is, how realistic is this agreement and how well is it being implemented if a requirement for a study is not proceeding? Is it more—

MR. CONVISSER. We've had—

COMMISSIONER SALTZMAN. Page 4 of the—

MR. CONVISSER. 1975.

COMMISSIONER SALTZMAN. 1977 to 1978.

MR. CONVISSER. That agreement has not been signed.

MR. BUTCHMAN. That is the one we just were informed earlier in this proceeding had been signed possibly today or within the past few days. We had signed off on it and had sent it to HEW, so it is prospective.

CHAIRMAN FLEMMING. Been signed 2 or 3 days ago.

MR. CONVISSER. But nevertheless we have been discussing initiating that study.

COMMISSIONER SALTZMAN. In reference to that, there is also on page 8 a reference to school buses and the use of school buses for the transportation of elderly and handicapped and the attempt to discern whether there are communities proceeding in that direction. Has that been acquired yet? Is there any information about any communities using school buses for the elderly and handicapped?

MR. CONVISSER. Yes, in fact, we had a demonstration project on that in the Department of Transportation and we have under the previous agreement, which was cosigned also by the Office of Education—they worked with State offices of education to try and encourage them to permit the use of school buses by elderly groups.

COMMISSIONER FREEMAN. Outside their neighborhood?

MR. CONVISSER. Not necessarily outside their neighborhood, but the several States have in fact during the past few years, and partly as a result of encouragement given by HEW and our Department to change State laws which previously had limited the use of school buses only to the use by school children, so those laws are being changed in some States.

COMMISSIONER SALTZMAN. You do have examples of communities now using school buses for the aging?

MR. CONVISSER. Yes, we can supply those for the record.

COMMISSIONER SALTZMAN. I would appreciate that.

COMMISSIONER FREEMAN. We would like to receive that information for the record. Maybe we can use it at another area.

CHAIRMAN FLEMMING. The fact of the matter is there is some good case history right out of northern Virginia along that particular line.

COMMISSIONER SALTZMAN. In terms of the accumulation I'm sure that has taken place about transportation for the elderly, and information disseminated throughout the country, to whom is the information disseminated? How broad is that? Because I, in my own community, have found it unavailable as I have tried to work in my particular congregation with elderly groups we have developed. I found it very difficult to get information about what are the available resources with which we can serve the elderly in our community.

MR. CONVISSER. There have been several channels of communication to this information, for one, to the State agencies on the aging, HEW has disseminated—we have furnished HEW information and material about how our programs work and how they can be used for the elderly. In fact, we have a publication here, Urban Mass Transportation Administration, *Transportation Assistance to Elderly and Handicapped Persons*, and I'll be glad to supply this also for the record. This has been made available to HEW and, in turn, they have made it available to State agencies on the aging. Hopefully they have in turn, made it available to local—

COMMISSIONER SALTZMAN. State agencies, apparently at least, I don't say all, but in some instances, file such information in such a place that those interested citizens can't discover where it is. I wonder whether there is a way of disseminating it to private agencies which are dealing with aging and aging problems, and not necessarily problems, but serving the aging? Is there some way for that kind of an outreach to private agencies?

MR. CONVISSER. Well, perhaps the Chairman can answer that better than we could in a sense.

CHAIRMAN FLEMMING. Material of that kind is distributed not only to the State agencies, but to all area agencies on aging: that material is in Indianapolis in the area agency on aging. You happen to have a very active network there led by a very active State director on aging. In turn, material of that kind finds its way into the information and referral units within a particular community, sometimes public, sometimes private, sometimes it is the United Appeal, it depends on the community. But the area agency has a responsibility of making sure that there is an information and referral service reasonably available, generally available to older persons, and I think if you check with the area agency in Indianapolis you'll probably find that material right there.

COMMISSIONER SALTZMAN. Thank you, Mr. Chairman, thank you, sir.

CHAIRMAN FLEMMING. We appreciate very, very much your being here with us discussing these issues, and this Commission is convinced that the Department of Transportation does and will continue to recognize the parallels between Title VI and the Age Discrimination Act because the comment that was made earlier is certainly correct. In fact, if you look at the language, you can see that the language almost parallels Title VI, and there isn't any doubt in my mind that the agencies that are doing an effective aggressive job on Title VI will do the same thing on the Older Americans Act because the same approach and the same mechanisms can be used, and having been involved in other departments in the field of aging, I very, very much appreciate it and I'm sure we'll get a great deal of assistance on this particular act from the Department. Thank you for being with us. We appreciate it.

MR. BUTCHMAN. Thank you very much, Mr. Chairman.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. DORSEY. Mrs. Arabella Martinez, accompanied by Mr. Joseph Motolla and Mr. Michio Suzuki.

[Ms. Arabella Martinez, Mr. Joseph Mottola, and Mr. Michio Suzuki were sworn.]

TESTIMONY OF ARABELLA MARTINEZ, ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT; JOSEPH MOTTOLA, REHABILITATION SERVICES ADMINISTRATION; AND MICHIO SUZUKI, ACTING COMMISSIONER, PUBLIC SERVICES ADMINISTRATION; OFFICE OF HUMAN DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CHAIRMAN FLEMMING. We appreciate very, very much your being here, and before counsel begins to ask questions, I just want the record to show that the three persons who are participating in this panel have been associates of mine over a period of the past 11 months, some of them for a longer period of time than that, and that I have deeply appreciated the concern of Secretary Martinez and those who are associated with her for the issues that confront us in the field of aging, and I am confident of the fact that they will provide leadership in dealing with the kind of issues that are identified in the Age Discrimination Act of 1975. Probably I should disqualify myself as chairman at this particular point in view of my dual relationship, but, in reality, I'm not going to do it. The fact is that I feel the two things interrelate in a very significant and meaningful way.

MS. GEREBENICS. Ms. Martinez, I'm going to direct the questions to you, but please feel free to defer to your colleagues at any time. I'm beginning my questions with the vocational rehabilitation program. The Social Security Act mandates that funds available under Title II and XVI for rehabilitation services be provided to persons under the age of 65 only when they can result in a savings to the disability cash fund. What effect does the nonreferral by SSA of persons 65 or over

have on the ability of vocational rehabilitation program to identify and serve persons 65 and over?

MS. MARTINEZ. Your question recognizes that there is this provision under Title II and Title XVI of the Social Security Act and for the automatic transfer of disabled and blind individuals to the "old age" category of benefit payments. It is not correct to assume that this procedure in itself limits referrals to VR services. Individuals transferred to the "old age" category which have previously received disability or blind benefits have been eligible for referral to VR, although we recognize that these referral criteria may have placed unwarranted weight on age.

We recommend the voluntary self-referral of individuals of age 65. As you realize, society has defined this age as a period in life when an individual may choose to retire from vocational pursuits, and any mandatory referral mechanism would be punitive to this group. In a practical sense, increased awareness of the availability of VR services to this population could best be achieved through increased VR public information materials at the Social Security Administration district offices. We have recently taken steps to improve the situation with communications.

MS. GERE BENICS. We have also found in our studies that persons most frequently rehabilitated to homemaker status are older persons, and I wondered what criteria are employed to determine whether individuals should be rehabilitated to employment or to homemaker status, who makes this decision, and who reviews it in the final end?

MS. MARTINEZ. Essentially, the homemaker status is also an employment category. It is not—we do not do independent living services under the VR act; it is all vocational linked. Anyone who is trained with respect to the homemaker status program has a vocation. This has been long recognized in VR field. I'm not sure why it is that it seems to be an older age group. It doesn't seem much older than those that are trained for other vocations other than the homemaker status. One thing that does do, by the way, since we now have an emphasis on the most severely handicapped, is that those individuals that are trained to the homemaker status frequently release, if they are trained in that manner, they release other workers in the home to go out and work. That's one of the functions of that particular program. With respect to a determination, that is usually made at the counselor level, at the State VR counselor level rather than anywhere else, and I would assume that these would be reviewed by the counselor supervisor. I would have to let Mr. Motolla answer that for certain. I'm not sure exactly how they process the supervisory responsibilities.

MR. MOTTOLA. The counselor makes the determination, and in most States there is a review of the counselor's activity by supervisory levels.

MS. GERE BENICS. Thank you. As you know, many of the age disparities seem to occur because of the emphasis in the vocational reha-

bilitation statute on employability and also the measurement of the program's success on the basis of closures or placement into gainful employment. I wonder if the current measures, if you feel the current measures of program success and counselor evaluation are acceptable in light of their apparent limiting of older persons' participation in the program?

MS. MARTINEZ. It, certainly it would have an effect. However, the measure of closure has been, I guess, almost an administrative requirement for all of these years, and my feeling is that that has to do, one, with being able to ensure that there is adequate funding for the program, that much of the financial support for programs like VR come as a result in "their success."

Now, how that measure could be defined more precisely so that it would not discriminate against older persons, I'm not sure. I'm not sure whether we are required by law to make the measure of closure or whether it is really an administrative procedure. Again, I think Mr. Mottola can answer that question.

MR. MOTTOLA. The measure is, certainly, administrative procedure, but it stems from the basic purpose of the legislation. The purpose of the program is to provide rehabilitation services for people with a vocational goal, and the objective is to have persons who receive these services enter into some kind of a vocation as described in our regulations. The way to measure the program, since that is the given purpose of the legislation, is to reach some kind of a conclusion about whether we, indeed, are placing people into vocations, and I think this is where the measure stems from. There may be other measures. I would say that probably the better way to do it is not to deal with the measure of the program but to talk in terms of changing the basic purpose of the program through legislation rather than the measure itself because it is designed to measure the program in accordance with its legislative purpose.

MS. GEREENICS. Under the change in title of the legislation from vocational rehabilitation, is vocation really the critical objective any longer, pursuing vocation?

MS. MARTINEZ. Under which change? Under Title II of the Social Security Administration?

MS. GEREENICS. Right, from vocational rehabilitation to rehabilitation services?

MS. MARTINEZ. No, the measure still is vocational objectives and employability. There has been no change to independent living. There have been demonstrations that have been developed and those demonstrations will be completed next year, but there has been no change in the basic purpose of the vocational rehabilitation program.

MS. GEREENICS. Turning for a moment to the Title XX program, we have heard in testimony around the country that the pattern of social service delivery in predecessors to the Title XX program has historically emphasized children services, and when the ceiling on Title

XX was set, expansion of these services for other age groups in many States was very difficult. Do you concur that resources under Title XX and its predecessors have been directed disproportionately towards children, resulting in underservice to other age groups, particularly older age groups?

Ms. MARTINEZ. I think that's somewhat difficult to determine, and I've been looking at some of the statistics on this, and basically, we do not collect statistics based upon age. We, it is mostly categories of service that we collect statistics on. Mike does have statistics which he can put in the record or he can give them to you directly.

Ms. GERE BENICS. I think entering them in the record at this point—

Mr. SUZUKI. Could I make one comment on the historical? I think we have to put into perspective the fact that although Title XX is 2 years old, when you talk about historic antecedents, it really was directly related to the cash program. It was an adjunct to the cash program so that when you talk about a distorted pattern, you have to recognize, and I just have the current figures, but, for instance, AFDC really has 11 million recipients and the SSI has 4.2 recipients. Before we had SSI and the aged, blind, and disabled, and presuming the numbers are roughly equivalent, because the service was related to people who got cash assistance, and even now where you have a 50 percent requirement that these people get 50 percent of the Title XX program dollars, you have already—I don't want to say a built-in bias, but you have a built-in system which relates to the age provision of cash assistance. So that reality is there, whether you argue that's good or bad, I am really saying that, it is really that pattern that is there, and I think you have to keep that in mind or you will read into, I think, the figures we have on services which really distort what I think is the reality.

Ms. MARTINEZ. There is the other matter, which is that, in fact, the more money than 50 percent is devoted to the cash assistance program, so that the skew is even higher if you then look at the number of those clients on AFDC versus those clients on SSI.

Ms. GERE BENICS. Given the State's discretion and flexibility in determining what services they are going to provide, I wondered what steps your office has taken to reduce imbalances, correct perpetuation of prior inequities, and correct the age differentiation, age disparities in the provision of services?

Ms. MARTINEZ. Well, one of the things that we are certainly trying to do is to develop a better needs assessment capacity at the State level. We have begun to work with States and had a number of meetings during this year. Actually, we had one in April of '77 and there's one planned in October of '77, in which the technical assistance in terms of needs assessment is being, I guess, you could call them seminars with the States, with respect to how they should develop their needs assessment capacity. I think we have—the components of this technical assistance document really includes an analy-

sis of checklists of discussion by, this much applies to our meetings with the States—there are examples of public participations and needs assessment tools and there are what we call exemplary models of needs assessment.

I think one of the critical things that I should say here is that, in addition to needs assessment, the real issue also is resource assessment, and that's where you begin to get into difficulty because, what resources do you say really go to which age groups? Do you count social security? Do you count Medicare, do you count—?

And the other issue on needs assessment which I think is critical and one I am discovering that is a real problem in determination of who should be served, whether it is this program or any other program, is the fact that, for example, with Head Start, you have only 18 percent of the population being served, but it is income related, it is with respect to the poverty line. On the other hand, nutrition programs for the elderly sponsored under AOA are not income related. We only serve 13 percent of the people with respect to the elderly nutrition program, but in reality we may be serving more poor people and minority people with the nutrition program than is served in Head Start because of the differences in eligibility requirements for those programs. I don't know if that complicates your life at all, but it is one of the complicating factors of our programs.

MS. GEREENICS. Do you find the needs assessment an effective measure of who should be served? We have heard in testimony that the needs assessments that are done are virtually ignored by the States in their planning process and I'm wondering if you have found that that's true?

MS. MARTINEZ. There are some studies being done of the State planning process, and I think there is a big one in Oregon right now going on to determine whether it is possible to do a needs assessment and program it into the State planning process. I can let Mike talk more about the studies that are going on.

MR. SUZUKI. I think you're asking how responsive is the resource allocation to the needs assessment. I think it varies again depending on which States, States who were at ceiling when Title XX came into being and had already committed. Alaska had spent in July, August, and September, before the ceiling was put on, for instance, their whole allocation under predecessor programs. I'm really trying to make the point that for States who are close to the ceiling the ability to respond to needs assessment is very difficult. You have to rob Peter to pay Paul. In other States where there is significant room for expansion, I think you have a better opportunity for the needs assessment and its analysis to be picked up in the implementation. I would make no claim that there is, that the needs assessment, one, is done as well as we want it to be done, nor with the limitation of resources can States, particularly those at ceiling, and half the States are at ceiling, so each year they have expended the Federal dollars they can get. Many

States, though, are beginning to spend pure State dollars in response to the needs assessment, just the pressure of the need there. So it is an imperfect process. It is not as responsive, and if you talk to a State that's been at ceiling for some time, they may very well say, "We were locked in before the process started." Look at a State where there was room for growth. Then the growth presumably is in response; I think is a little more responsive to the needs assessment.

MS. GERE BENICS. Could you supply for the record the list of the States that were are at ceiling at the beginning?

MR. SUZUKI. Yes.

MS. GERE BENICS. I have just one final question, Ms. Martinez. We have found in some States that categorical programs for services to older persons have been considered by State administrators and Federal administrators as justification for not providing services to older persons under the Title XX program. However, we have also found that categorical programs for other age groups are not similarly taken into consideration in making these determinations, and I wondered what the position of your office is regarding this attitude on the part of Title XX administrators?

MS. MARTINEZ. I think that's a arbitrary decision on their part, if that's what they are, in fact, doing. We do not support that kind of analysis. We do not say that AOA can cover programs for the elderly, can cover all the needs of the elderly, and I don't think that is an accurate justification for not allocating Title XX resources. But I don't know that States actually do that. You've heard the testimony, I haven't; there is allusion to it. If that is happening, I'd like to know, and we would certainly move to ensure that, that they do not justify their expenditures on that kind of a basis.

MS. GERE BENICS. What steps would you take, exactly?

MS. MARTINEZ. First of all, all of the States must—of course, it's is really quite difficult because we have no age discrimination regulation yet—all of the States are, must follow the civil rights regulations, whether it is Title VI or Title IX or the employment, the handicap regulations, and we would certainly work with the States to ensure that they do not. I don't know what kind of legal mechanisms and Mike might be able to speak to that better than I can, but we would work, first, on an informal basis with the States to ensure that they do not use other programs for the elderly as a justification for not allocating Title XX resources, but maybe Mike can speak to what legal mechanisms we have available to us.

MR. SUZUKI. First, may I comment, knowing I was coming here, I happened to meet with a group of children advocates yesterday and I casually mentioned that I was coming here today, and while it was the question of age theoretically in all directions, I said that it was connected to the Older Americans Act, all of this, and they said, "You go tell them that we've been beaten, that somehow the aged, the senior citizens' groups are doing much better than we are." That's their bias.

But let me point out some specific things. One thing is illustrative of both the Federal concern, Congress, and I think the States, because the law resulted from it. For instance, in the prior law under IV(a) 1, 10, 14, we had group eligibility for services. Title XX did not have that, and it was basically in response to the concerns of people who are using senior citizen centers, States who wanted to provide this service, that there was really a massive kind of educational campaign that went in the Title XX law, and subsequently our regulations were changed to permit the use of group eligibility. There's no question that that whole mechanism of group eligibility was made in order to make it possible for States to contract with senior citizen centers in order to continue this. Now, we did not say it was only for the aged, but every evidence we find is that it has been utilized, and specifically the law prohibits the use of group eligibility for day care, for children, so that the law built in very clearly the use of this eligibility, group eligibility, as something, I think, that was seen as a factor to perhaps balance the imbalance that goes—let's be very frank, day care is 25 percent or more children of the Title XX Federal program at State option, and recognizing this kind of development, there was concern and because of the concerns particularly of the senior citizen groups there was this change made. That's just one, but I think there is an attempt by Congress to at times respond to what might be a built-in imbalance.

Ms. GEREBENICS. I have no further questions, but before I turn the questions over to the Chairman, I wonder if you could also for the record provide a list of the States which have reinstated group eligibility.

Mr. SUZUKI. Certainly.

Ms. MARTINEZ. Could I make one comment before you turn it over? One of the things that the Secretary has made a commitment to, as you all know, is that all of us would examine, all of the Assistant Secretaries will examine all of their programs to see if there is any arbitrary kinds of distinctions about age, whether it is Title XX or vocational rehabilitation program, and we are committed to ensuring that there are no such arbitrary distinctions made.

CHAIRMAN FLEMMING. Thank you very much. I'm glad that Secretary Martinez made the last comment because the Secretary when he testified yesterday morning indicated that as of yesterday morning he was directing a request to all of the units within HEW to identify the areas where age is a factor and to make recommendations to him within a period of 90 days. Also, I think the dialogue that is taking place between counsel and members of the panel points up the wisdom of the Secretary in developing a reorganization plan for the Department in deciding or in determining that all of the service units or all of the units that have responsibility for service programs should come in under the leadership of Assistant Secretary Martinez. It is clear that in the field of aging there are a good many issues that cut across all of these service programs, and it is possible now for the kind of di-

ologue that is taking place here to take place on a regular basis, day to day, week to week, month to month, and it is that kind of a dialogue that I think is going to open up some new possibilities for older persons.

I'm, of course, particularly interested, or at least I have as one of my interests, the relationship with the whole area of vocational rehabilitation, and in the discussion, the emphasis has been placed on the fact that the program's effectiveness is judged within the executive branch and judged by the Congress on the basis of closure; that is, the number of persons that have been rehabilitated and either put back into a former vocation or who have gone into a new vocation. Taking the law as it is at the present time, in connection with our field hearings, we have asked some of the people who are on the firing line on vocational rehabilitation whether the present system of justifying their activities by closure does in fact operate against older persons from time to time. That is, those who make the decisions as to who is going to come in under the program and who isn't going to come in under the program, according to this testimony, are influenced by the fact that this society as of today doesn't provide older persons with very many employment opportunities in terms of new vocations or maybe even going back into their old vocation. So when an older person is before the persons who are making these decisions, and at the same time there's a younger person, it is rather natural and normal for them to say, "Well, I have a better chance of getting a closure with a younger person than with the older person." Now, he's reflecting, of course, or she is reflecting, society's bias against continued involvement on the part of older persons. And there we're dealing with a much more basic and fundamental problem because if we open up more and more opportunities for vocational experiences on the part of older persons, perhaps that in turn will have an impact on the decisions that are made in connection with vocational rehabilitation.

However, at these hearings, I have just expressed a personal hope—and I don't ask anybody to comment on them because I recognize it involves legislation and legislative policy—but I express the hope that the day will come when the test of the vocational rehabilitation program will be whether or not a person has been rehabilitated to the place where she or he can once again become involved in life in a significant manner. Now, that may be the wife of an older couple who has had a stroke being rehabilitated to the point where she can once again become involved in the life of the household, or it may be an older person being rehabilitated so that that person can become an active volunteer in connection with some community service program. That's something that can be measured, but today that doesn't get into the picture. It seems to me, at least personally, I would like to press for that kind of a broadening of the mission of vocational rehabilitation. I appreciate that that has fiscal and other implications.

In terms of Title XX, I think the dialogue has identified some things that have happened that have resulted in progress, such as the group eligibility. That has been seized on by senior center groups all over the country. But considering the fact that there is kind of a built-in inequity for historical and other reasons—and I'm not placing blame on anybody, but that inequity is there—do you think of any other things that might be done to open it up a little bit more for the older person, probably by a change in legislation? I don't know that anything more could be done administratively, but are there things that we as a Commission should take a look at with the possibility of recommending them so that the existing inequity could be corrected to some degree. Again, I want to underline the fact I'm not saying that this inequity exists because people have been guilty of age discrimination or anything of that kind. I know the history of the title, and I know why these inequities have been built in, and yet at the same time I am interested in whether or not we as a Commission should consider making some recommendations to the Congress that might help to at least alleviate those inequities.

MS. MARTINEZ. I think there are a number of options that this Commission can take and certainly that the administration can take if it desires to do so. One, of course, is to change the whole nature of Title XX and instead of having a noncategorical program, to make it more reflective of the needs of society. Again that's a very difficult thing to determine. I think there have been requests not to go that far but to earmark funds for specific groups, and of course there's been great resistance from the States with respect to that kind of an approach. I think our emphasis basically at this point in time, because we have not proposed any changes in Title XX law at this point, is that we would like to work closely with the States, providing technical assistance in terms of a more effective needs assessment and also more effective resource assessment and a better citizen participation mechanism.

I think the issue that was raised as to the planning and the actual resource allocation, we should begin to address that issue more aggressively at the Federal level. That issue is not just with respect to aging programs, but it is also with respect to cities. Cities are claiming they are not getting their fair share of Title XX resources.

So, I think part of the responsibility is for the Office of Human Development Services to take a very aggressive posture with respect to technical assistance to States and to assist them in any way that we can to improve their needs assessment, their resource assessment, and their allocation process. The citizen participation mechanism really needs to be strengthened. As you know, I believe very strongly in citizen involvement in the decisionmaking, not just in the planning but the eventual resource allocation.

CHAIRMAN FLEMMING. Along this line, I think the record should probably show that the Governors of each State have the final decision on the allocation of the funds under Title XX. Sometimes the legisla-

tures figure out a way of getting into the act, but under the law the Governors have that authority. Also, under the law and regulations in the Older Americans Act, the Governors must submit a plan each year for the approval of the Administration on Aging, and under the present regulation, the Governor in his or her State must demonstrate that an action program has been developed between Title XX and the Older Americans Act. We just had a year of experience with that, but conceivably that's one way of getting an additional entering wedge, but I appreciate your response very much, Ms. Martinez.

Commissioner Horn?

VICE CHAIRMAN HORN. Mr. Mottola, what sort of relationship exists between vocational rehabilitation and the Department of Labor's employment services in terms of placement of any of the handicapped, regardless of age?

MR. MOTTOLA. We have situations which are basically local situations where we cooperate or the State rehabilitation agency would cooperate with the local CETA organization in working out suitable employment opportunities for handicapped people. We have an informal liaison with the Labor Department here in central office, in Washington.

VICE CHAIRMAN HORN. Are the local-State rehabilitation agencies personally doing most of the placement on a one-to-one basis? I mean, are they drawing on the network of the public employment services offices?

MR. MOTTOLA. Yes, we are. We have good examples of cooperation of that and we have, obviously, situations where the cooperation is not so good. But we have some very interesting working level situations where the CETA people involved locally have cooperated to the fullest extent in trying to develop job opportunities for handicapped people who come from the State vocational rehabilitation system.

VICE CHAIRMAN HORN. From your own experience what could we do in doing a better job in placement of people that come under your auspices for rehabilitation?

MR. MOTTOLA. Well, are you speaking specifically in terms of relationships with the Labor Department?

VICE CHAIRMAN HORN. I would be open to other options. But I sort of get the feeling a number of people go through the program and then have great difficulties in placement, and I realize all the problems of placing the physically handicapped, but I would like to know what your assessment is of the effectiveness with which we currently do this the job.

CHAIRMAN FLEMMING. Do you have figures indicating the number of persons who have completed a program but who have not actually been placed? Do you have reports that provide that kind of information?

MR. MOTTOLA. Mr. Sachs, the Assistant Commissioner for Program Management for RSA, tells me we do have.

VICE CHAIRMAN HORN. Let's insert information in the record at this point. What we would like to know for the last 2 complete reporting years, whatever you have and whatever that is, how many people completed the particular vocational rehabilitation program that they were engaged in, what was the record of placement? Do you have any figures, say, for that 2-year old group as to whether they have been placed during the past year, etc.? I'm trying to get at the length of unemployment for people that have come under the either Federal and/or State programs in vocational rehabilitation. I would be open in that regard to suggestions as to how we could get a better network and liaison with industry, education, local government, in placing handicapped people.

MR. MOTTOLA. I might give you two very specific examples of the kinds of things we are trying to do with industry and with local government.

We have authorized under the act a projects with industry program, and I just got a very heartening report back from a major project with industry which involves the cooperative effort between the Electronics Industries Foundation and the vocational rehabilitation system. They have recently gone to the Los Angeles area, which is the home of a great number of electronics industries. They had a meeting at corporate levels of these industries and they brought in people from the State-Federal vocational rehabilitation system. Their objective is to identify jobs at all levels of electronics industries, that would include assembly-line type situations and jobs that we generally regard as higher quality jobs, the purpose being to identify where the openings are and to have industry work hand in hand with the State-Federal system in training handicapped people who come out of the State-Federal system to do those jobs, so that we would set up a direct relationship between industry and the Federal VR system.

Placement traditionally has been a problem in vocational rehabilitation. Obviously, it is associated—the problem is associated with labor market conditions, among other things, but in it, in this era of emphasis on civil rights, we hear from industry and I'm sure you've heard, that they are besieged by calls from all kinds of civil rights oriented groups who want to place their people in industrial situations. What we're trying to do in this particular project with industry is bring at least the rehabilitation community together in making its advances to industry. We're hoping that we can replicate this in at least two other major industrial areas in the country and we can make it an ongoing part of the State-Federal program. It is in its incipient stages, but we have great hopes for it. We have another project with industry which is geared specifically at getting people, handicapped people, involved in government work, if you will, but the industry that we're dealing with in this situation is a local government, and we're hoping that we can work out a similar kind of situation.

Placement is, as I say, a historical kind of problem that is depending on a lot of things. We are trying to get people within the vocational system itself to focus more on placement. There is a feeling, I think, that counselors may have a tendency to provide services all the way up to placement and not bring the thing through to fruition, which in terms of our particular program means to place the client in the job.

So we're trying to put emphasis on that and we will have that as an area of emphasis in fiscal year 1978. We realize the problems and we hope we're beginning to do something about them.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. So that the record is rounded at this point in terms of the problems that confront vocational rehabilitation, notice should be taken of the fact that in recent years—I don't know whether by congressional direction or administrative direction—the administration has been told it must give a very high priority, if not the highest priority, to the difficult to place. I forget what term you use. That's all to the good and that's understandable and all to the good. I suspect that means, however, for those who don't fall within that classification, your resources in terms of placement are a little more limited.

MR. MOTTOLA. That's true. We have been required by the Rehabilitation Act of 1973 to give priority to people with severe disabilities. We—by implication, of course, people with moderate disabilities, some people with those kinds of disabilities, must find their services elsewhere because the resources have to be concentrated where the priorities are.

I might also add that, although one of the measures of the program traditionally has been the numbers of people rehabilitated and closed and cases closed, that those statistics have gone down in the last few years, which you may be aware of, and we are not terribly troubled by that, except from the point of view, obviously, we're not serving as many people as we'd like to. But this is indicative, I think, that numbers are not the most important criteria to follow in terms of vocational rehabilitation program.

CHAIRMAN FLEMMING. Commissioner Ruiz.

COMMISSIONER RUIZ. Yes. Ms. Martinez, in assessing the needs of older persons with English-language difficulties—that is, Asian, Pacific Islanders, Philippines, Mexican Americans, and others—what could be inserted in State plans to assure your Department that Governors or State governments, to assure services to this category of older Americans? For example, the requirement of dissemination of information, be it by the printed word or radio or TV, along that line or any other line that might occur to you.

MS. MARTINEZ. There are a number of things that have been done, although certainly not to the extent that I think is necessary. I think the emphasis in the older administrations acts programs on serving a greater number of minorities and poor elderly people is one of the examples and there are all kinds of things that they recommend with

respect to that emphasis. I think we certainly, in terms of assessing plans, ought to look in those areas in which there are a great number of bilingual people, that the plan does take into consideration that fact. I don't think we have done very much in Title XX with respect to that element of bilingualism and differences in culture. We are, with respect to Native Americans, examining at this point in time, and as an ongoing study, as to how programs for Native Americans should be financed, not just Title XX but many of our other programs. I do not know that we have requirements or guidelines that say that States with respect to Title XX must serve people of different cultures and of different language bases.

COMMISSIONER RUIZ. Don't you think it would be a good idea to have guidelines with relation to, inasmuch as States receive so much money for the delivery of services that such guidelines would be helpful in the monitoring subsequently by your own staff?

MS. MARTINEZ. I would think that we would provide guidance. I'm not sure we would go so far to provide regulations. I think, again, if we could work with States more directly than we have been doing, that through the provision of technical assistance and guidance that we could get them to address the needs of bilingual, multilingual people in need. I think it is important that we ought to stress that.

COMMISSIONER RUIZ. Do I understand that perhaps you don't have the control over the local delivery of services that you would like to have? Is that what you were telling me?

MS. MARTINEZ. Well, quite frankly, programs in the Office of Human Development Services, about 85 percent of those resources go directly to the States, and that includes the programs for the elderly, it includes child welfare services, Title XX, vocational rehabilitation. The only programs that are locally based or community based are Head Start and the runaway youth shelter programs. Within Head Start we have a specific program for migrant and Indian children, but that's the only program that we have within the Office of Human Development Services that really, and that is a special project—I should say it, that way—in Head Start.

The programs within the Administration on Aging, the Commissioner has emphasized funding of programs for Spanish-heritage people, for Native Americans, for Asians, and he has done, I think, a very fine job on that matter.

COMMISSIONER RUIZ. Among the guidelines, have you submitted requirements having to do with bilingual counselors in the area of rehabilitation programs or do you just leave that to the States to decide?

MS. MARTINEZ. According to Mr. Motolla, that is required by regulation, that they must provide interpreters. Now, I'm not—I'm not sure to what extent that is and maybe Mr. Motolla can answer that question.

COMMISSIONER RUIZ. Does the regulation provide to take into consideration the percentage of the population in given areas that may be bilingual or monolingual in the sense that they have difficulty with the English language? I'm trying to find out what control you have, if any, and to what extent, if you don't have too much control, what could be done for purposes of furthering that objective.

MR. MOTTOLA. In the case of the vocational rehabilitation program, there's a general requirement that interpreter services must be provided for people who speak different languages and cannot communicate in English. There is no analysis of need and that's a local determination. I would imagine that the States in areas where there is a heavy proportion of people who do not speak English would, on their own, based on the Federal regulation, be required to provide interpreter services.

COMMISSIONER RUIZ. Just one more question, interpreter services assume that the target person has already arrived there and has gone into the system in some fashion or another and therefore now needs interpreting. I was wondering about, we've been talking a couple days now about outreach, getting counseling out, getting that information out, and from what I'm able to gather here, there's not too much control from the Federal level in this particular category, leaving it up entirely mostly to the State excepting where there are special situations such as indicated by Ms. Martinez.

MS. MARTINEZ. The Federal Government itself does put out informational material in various languages, but it is general material. It is not specific to a locality or to a State, and some programs, again, we have very little control over how programs are actually administered by States or by the various area agencies, for example, on aging, as to their outreach. We do have a tremendous amount of information—I won't say tremendous amount. Let me correct that. We do have information and referral services paid for by Title XX. My assumption is, and I'd like to look into this because it is a question which I would be most interested in, is that because of the information-referral services, that they do try to reach out to those individuals that do not speak English or who do not need it. Mike, you might want to answer that question with respect to Title XX.

MR. SUZUKI. I would like to make a couple of comments. Part of the very structure of Title XX relies heavily on what we call the open planning process and the needs assessment and really articulating, and we require that over the Governor's signature he articulate how this plan, whether in fact but presumably addresses itself to the needs of all people of the State, and if the State wishes to divide, it has to describe. Now, we are in a phase, and I guess I support it, that we really can't regulate more than the statute gives us, but in certain areas we try very hard, and in the area of this open planning process, for instance, you will say it is kind of weak because our lawyer said you didn't have the clout to require it.

But for instance in the display, we have the right to require it, that 90 days before a plan goes into effect over the Governor's signature, he has to articulate how he took the needs of everyone into account. We could not find in the law that it had to be in foreign languages, but we were able to get into our regulation that this announcement which we refer to advertisements, again, and it cannot be in the legal section. We required it to be in the body of the newspaper. We've got even complaints about this, because New York State, it says, costs \$60,000 each time they go this route, just to advertise. We say such advertisements must be published in the newspaper of widest circulation and in foreign languages or foreign language newspapers, where appropriate, in each geographic area described in the proposed and final services plan. Now, you can say we don't require it. Well, we were told we didn't have a legal basis to require it, but we put it in and our lawyers told us that's a homily—it's friendly advice, but at least get it articulated in the reg. and the States know we can't bang them on the head, but they certainly clearly get the message as we've gone around that you really need to get this open planning process. In many States, I think the count is four—I can try to find it—but I know one State has advertised in four languages, I think.

COMMISSIONER RUIZ. Probably California.

MR. SUZUKI. I think it is, but some States translate their summaries into Spanish in some States. So there is this attempt. I wouldn't claim that it is done as much as it should, but our staff are out there, and we hope that this process will be pursued as we go along.

COMMISSIONER RUIZ. Thank you.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I have no questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. May I engage with the staff for a moment just to ask, I recall in the staff report it was indicated there is an almost parity of success for older people as for younger people in VR. Does that mean or include the older people who are referred to homemaking or do you mean for actual vocational placement, Ms. Bradley?

MS. BRADLEY. It's both. In other words, once the older person—and in this instance we'll consider age 45 or plus—is into the vocational rehabilitation system, once that person is into the system, and I'm not talking about the screening that takes place before one enters the system, that success rates in terms of placement or closure are equivalent or on a parity level with other age groupings.

COMMISSIONER SALTZMAN. And that doesn't include just homemaking, the closing of homemaking?

MS. BRADLEY. It includes all categories of closure.

CHAIRMAN FLEMMING. Are we clear on what is meant when we use the term "homemaker."

COMMISSIONER SALTZMAN. Will you define that?

CHAIRMAN FLEMMING. Mr. Mottola can define that. You don't have to give a refined definition, but just to identify the area that we're talking about, and then if you want to, you can submit the formal definition for the record.

MR. MOTTOLA. Basically, we're talking about bringing a person to the position where they can manage the work of a home. I think that's a broad definition that would be acceptable, and we can provide a better definition for the record, but we're talking about cooking, doing laundry, keeping a house clean, doing all the kinds of things, marketing, for instance, that are required.

COMMISSIONER SALTZMAN. I think I understand.

MS. BRADLEY. Could I add another point, Commissioner Saltzman? Even excluding the homemaker closure category, the data that we have, which I believe are the same data that RSA has, indicate that the success rates by age are on a parity level.

COMMISSIONER SALTZMAN. So then there is no reason statistically to focus closure on one age group over another because one age group is more successful in VR programs?

MS. BRADLEY. We found that success is not age dependent, that once in the system—and I underline once in the system—success is not age dependent.

COMMISSIONER SALTZMAN. Does that agree with your statistics, Mr. Mottola?

MR. MOTTOLA. Yes, it does.

CHAIRMAN FLEMMING. The important thing to underline is "once in the system."

COMMISSIONER SALTZMAN. Yes, I understand.

CHAIRMAN FLEMMING. Older persons, for the reasons I indicated earlier, are oftentimes are not going into get into the system, and one of the reasons they are not going to get into the system is that the people who have the obligation or responsibility look down the road and say, "Look, the way society is now organized, we don't think we can get a closure out of this."

COMMISSIONER SALTZMAN. That's an erroneous stereotype from our statistics.

CHAIRMAN FLEMMING. Now, wait a minute,

COMMISSIONER SALTZMAN. That's what we just said.

COMMISSIONER RUIZ. My wife does the plumbing and the electricity in the house.

CHAIRMAN FLEMMING. But here again you've got to come back, once in the system, then you've got to look at the number of older persons in the system as contrasted with middle age and younger, so you've got to look at what kind of vocations they had in mind when they permitted them to come into the system.

COMMISSIONER SALTZMAN. My question—I think the staff understands my concern here—are they being excluded on a stereotypical myth that has no basis?

MS. BRADLEY. I think—

CHAIRMAN FLEMMING. Let me say this, I think the evidence will indicate that to some extent maybe, but by and large they are recognizing the realities of the way our society deals with opening up opportunities for older persons—they don't open them up.

COMMISSIONER SALTZMAN. But closure does indicate there is the possibility of placing.

CHAIRMAN FLEMMING. Okay, but we have got a highly selected group.

MS. BRADLEY. Could I make another statement, if you don't mind? The point I was also making in saying that once into the system you have fairly even success rates by age is that indeed there is a prescreening process. Counselors that we have interviewed around the country and we have heard in testimony in two of our prior hearings, that in that prescreening process, age may very definitely be taken into account because of prospective actual or perceived notions of ability to get through the rehabilitation process and into placement, or closure, be it homemaker or not. Because of the deemphasis on or concern about emphasis on closing certain age groups to homemaker, and I believe the policy that homemaker status is to be used as little as possible, the prescreening process takes age more into account. This is what we've been finding or the information that we have been developing.

CHAIRMAN FLEMMING. Commissioner Saltzman, I think the point I make is this. I think the figures to which you have referred are encouraging from one point of view, but I certainly wouldn't want you or anyone else to reach the conclusion that, because of that experience, there is no such thing as age discrimination in the area of employment or society generally. In other words, I'm willing to be encouraged by that. I mean that's a sign of hope, and I think it is evidence that can be used when people insist that their age discrimination has got a practical basis when in reality it doesn't have.

COMMISSIONER SALTZMAN. One last question: does the outreach efforts of VR extend to aging people who live in residence homes, not as distinguished from nursing homes?

MR. MOTTOLA. I don't know that we can describe any nationwide outreach attempt on the part of the VR program. Outreach differs from one State to another. There are some situations where we have projects of a national scope, for instance, dealing with older blind. Those could legitimately be described as outreach programs. Basically, I would have to say that the VR system operates on the basis of referrals. There is outreach in some areas, but it is not nationwide.

CHAIRMAN FLEMMING. We do appreciate very, very much your being with us, and this testimony has been very helpful. I think it is fair to say that in our field hearings that probably as much time was devoted to the programs for which Secretary Martinez has responsibility as any other programs, and that's why we appreciate very much having the benefit of your insights and your suggestions. Thank you very much.

Ms. MARTINEZ. May I make a comment? I think the hearings have not only been enlightening to the Commissioners, they have been enlightening to the Assistant Secretary and to the Secretary, and that enlightenment is very important in terms of any change in policy, and we have appreciated greatly hearing of your concerns. I can assure you that in this 90-day study some of the issues which you have raised and which Commissioner Ruiz has raised, that we will take into consideration what our regulations do in fact do to people, if they do in fact discriminate. The Secretary, as you know, is absolutely against any kind of discrimination, and I think if the 504 regulations are any indication of his concern, that the regulations for the act on the discrimination against the aged will be of the same quality and level.

CHAIRMAN FLEMMING. Thank you very much. The hearing is now in recess until 1 o'clock.

Ms. GEREBENICS. Excuse me, if any of the panel has statements, letters, statistics, would you please leave them with our clerk at this time.

Afternoon Session, September 27, 1977

CHAIRMAN FLEMMING. The next panel is Carol Foreman accompanied by Herbert Scurlock and James Frazier.

Ms. GEREBENICS. There are two more: Nancy Snyder and Mr. Lewis Strauss.

[Ms. Carol T. Foreman, Mr. James Frazier, Mr. Herbert Scurlock, Ms. Nancy Snyder, and Mr. Lewis B. Strauss were sworn.]

TESTIMONY OF CAROL T. FOREMAN, ASSISTANT SECRETARY, FOOD AND CONSUMER SERVICES; JAMES FRAZIER, DIRECTOR, OFFICE OF EQUAL OPPORTUNITY; HERBERT SCURLOCK, DIRECTOR OF CIVIL RIGHTS, FOOD AND NUTRITION SERVICE; NANCY SNYDER, DIRECTOR, FOOD STAMP DIVISION, FOOD AND NUTRITION SERVICE; AND LEWIS B. STRAUSS, ADMINISTRATOR, FOOD AND NUTRITION SERVICE; U.S. DEPARTMENT OF AGRICULTURE

CHAIRMAN FLEMMING. Counsel may proceed.

Ms. GEREBENICS. Would each of you, beginning with you, Ms. Foreman, give your full name and position for us?

Ms. FOREMAN. I'm Carol Tucker Foreman, Assistant Secretary of Agriculture for Food and Consumer Services.

MR. STRAUSS. I'm Lewis Strauss, Administrator of Food and Consumer Services, Department of Agriculture.

Ms. SNYDER. I am Nancy Snyder, Director of the Food Stamp Division for Nutrition Service.

MR. SCURLOCK. I'm Herbert Scurlock, Director of Civil Rights Staff of Food and Nutrition Service.

MR. FRAZIER. I'm James Frazier, Director, Equal Opportunity, USDA, Department level.

Ms. GEREENICS. I'll be directing the questions to you, Ms. Foreman, but feel free at any time to defer to your staff.

Mr. Chairman, Ms. Foreman has presented the Commission with a statement, and I ask for it to be included in the record at this point.

CHAIRMAN FLEMMING. Without objection that will be done and we appreciate your preparing a statement for us.

Ms. GEREENICS. In studying the food stamp program for some time around the country, one of the major problems, particularly affecting older persons, is accessibility to food stamp benefits. Outreach efforts appear to barely touch the problem for various reasons, the major reasons being inability because of costs or staff resources to implement the outreach effort adequately or reluctance to relocate the new recipients because of likely eligibility for other services, Title XX or Medicare, although new legislation should make certification more accessible by utilization of home visits or any mail applications. We wonder, though, what assessments has the Department made of program outreach efforts around the country?

Ms. FOREMAN. In my prepared statement, you'll find some elaboration on that. The 1974 Food Stamp Act exclusively directs the Department to undertake effective outreach for food stamp recipients. I think there's no question that was not pursued vigorously enough in the past. In 1974, in a lawsuit, Butz against Bennett, the Department's enforcement of this requirement was found to be inadequate, and, accordingly, various stringent outreach activities were undertaken. We cannot determine even now that those outreach activities have substantially increased the number of people receiving food stamps. At that time there were about 19 million people on food stamps, and the number has dropped to 16 million; obviously, that has a great deal to do with the fact that the economy has improved. But we are continuing to pursue outreach activities.

As you know, the food stamp program is administered largely by the States, and the key to effective outreach is our ability to persuade the States to undertake those activities in a manner that's appropriate. Recently, we have made clear to the States that we will demand adequate clearing out of the outreach program, and as a result, we have cancelled some Federal matching funds to the State of Indiana quite recently as a result of their inability to submit an acceptable outreach plan. A formal warning to the State of Iowa because of deficiencies in its outreach program resulted in the State's taking corrective action, and we expect some improvements there. We will systematically go from State to State, asking for verification that an outreach program is adequate.

Ms. GEREENICS. What criteria do you use to determine the adequacy of an outreach program?

Ms. FOREMAN. I'll ask Ms. Snyder to answer that.

Ms. SNYDER. We look at the potentially eligible population in comparison to the number of participants.

Ms. GEREENICS. I see. What projected effects would the new legislation have on the issue of accessibility and/or outreach?

Ms. FOREMAN. Well, I think perhaps the most important aspect of the new legislation is the elimination of the purchase requirement. We found that there were large numbers of people who were unable to participate in the food stamp program simply because they didn't have adequate funds to purchase the food stamps. In studies that have been done by the Department in the past, this has been the single largest reason for nonparticipation in the food stamp program.

Another reason that limits participation, and this appears to be particularly true among the elderly, is the stigma attached to using food stamps. People don't want to be seen, particularly people who are using food stamps. This is particularly true of people who have worked hard all their lives and always been independent and they suddenly find that they are in line in the grocery store with people who are dependent, and many people, particularly in rural areas, particularly among the elderly, simply do not want to be seen using food stamps.

The new legislation eases that problem to a certain extent because, by eliminating the purchase requirement, we are also eliminating the stamps paid for by the individual. The only stamps to be used in the future will be the bonus stamps, those that come as a result of being in the program. We expect this to reduce the number of stamps in circulation by about half. We hope that more elderly people will participate as a result of that.

Let me run through a couple of other very detailed provisions of the legislation in this regard. It calls upon the Secretary of Agriculture to set standards for points and hours of certification and issuance. Congress' intent is that the services be provided in such a way that people don't have to travel long distances, obviously a problem for the elderly, in order to apply and obtain food stamps. We've asked for the use of roving certifiers to make periodic visits to senior citizen and other community centers to take applications for food stamps so that the accessibility can be improved.

The legislation directs the Department to prescribe standards under which States are required to use the mails, telephone interviews, or home visits to certify people, who, because of age, disability, or transportation problems, are unable to reach certification offices or to apply through authorized representatives. In other words, where the elderly can't get to the program, the law very clearly directs us to get to the elderly.

One of the most important provisions in the law as regards the elderly is the requirement that households in which all members receive

SSI payments be able to apply for food stamps in the SSI office, and this will completely eliminate the need for many households to make two separate visits in order to get both SSI and food stamps.

Simplification of the certification process that has been written into the law should make the program much more accessible. At the present time you have about eight itemized deductions, and coming up with the necessary records has sometimes necessitated two or three trips to the food stamp office. The new simplified standard deduction system should make the program most accessible.

The Secretary is directed to prescribe standards for State staffing. In many States we found they simply don't have enough people and the right kinds of people to make food stamps adequately available. A minimum staffing standard is included in this law and should be substantially of assistance.

Eligible households must be given an opportunity to submit an application for food stamps on the day they request it, and an opportunity to obtain food stamps within 30 days of the date of application. For elderly households, certification periods of up to 12 months will be permitted, and all households must be notified of the expiration of their certification period in time to reapply without loss of benefits. For eligible households with no income, food stamps must be issued on an expedited basis, and households, with good cause, can be permitted to designate an authorized representative to apply for, obtain, and use food stamps for them.

There are some other features not quite so important, but I think still deserve some mention. The requirement that households have access to cooking facilities has been dropped. This was of particular interest to the Senate Committee on Aging. The upper age limit for work registration has been dropped from 65 to 60. Reimbursements to volunteers, many of whom are elderly, for expenses incurred will not be counted as income, and more generous access limits for \$3,000 for households of two or more persons, one of whom is over 60, have been reinstated. The limit for all other households has been increased from \$1,500 to \$1,750. The law continues to have food stamps pay for meals served by private establishments if those are establishments which contract to offer meals for the elderly at concessional prices, and elderly people who purchase from Meals on Wheels using food stamps. One other point, for persons over 60, and their spouses, food stamps may be used to purchase meals prepared by and served in senior citizen centers, apartment buildings occupied primarily by elderly persons, and people who are residents of subsidized housing for the elderly.

Ms. GEREBENICS. Can you give us an idea what impact this new legislation will have on program participation, both generally and for the elderly?

Ms. FOREMAN. Generally, we expect when the program is fully operational to have about 2 million additional people total brought

into the program. The elimination of the purchase requirement we estimate will bring in about 3.5 million people. At the same time, we've instituted a maximum limit of income for the food stamp program which will cut out many of those people who are at the upper reaches of the food stamp program initially, and benefits have been reduced to some other families.

With those coming in and coming out we expect a net increase of a couple of million people by the time the program is fully operational. Nancy, could you—

Ms. SNYDER. I believe it is in the handwritten thing you have there.

Ms. FOREMAN. Thank you. We expect households with SSI income, about 1.06 million people; households with retirement income, about 61,000 people; and households with social security income and all household members are over age 59, about 734,000 people.

Ms. GEREENICS. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. We appreciate your statement. We appreciate the response to the questions. It does give us a clearer picture of the implications of the new law.

Based on your experience, do you have the feeling that included in the increase in participants as a result of the new law will be a substantial number of older persons for the reasons that you have identified? I am wondering whether or not you have advised the States in connection with their outreach programs to undertake any particular kind of activities as related to the older population?

Ms. FOREMAN. Yes, sir. Some of these are—well, I'm sorry, we will. We are just now beginning to draft regulations for this program. It will include very specific approaches to more adequately reaching the elderly. The President hasn't yet signed the food stamp-farm legislation, so we're just—we don't anticipate that our program will be operational prior to July 1, 1978.

CHAIRMAN FLEMMING. Is that the effective date? I mean, does that mean between now and then you'll be operating under the existing law?

Ms. FOREMAN. Yes, sir. However, if we find that it is possible to implement portions of the regulations prior to July 1 of '78, we'll certainly do so. We have scheduled over the next 6 weeks 18 hearings in both urban and rural areas around the country to get food stamp recipients and assistance officials and others into a hearing so they can tell us ways that they think that we can most adequately implement this new legislation, and Ms. Snyder, her staff, Mr. Strauss, have several task forces underway to begin drafting those regulations. We'll get them into effect as soon as possible. We anticipate having all of them in effect by July 1.

CHAIRMAN FLEMMING. I assume that, in connection with the hearings, that some contact will be made with the aging network or with national organizations of older persons urging them to get older persons out to the hearings?

Ms. FOREMAN. Yes, sir, absolutely.

Mr. STRAUSS. In fact, in those cases where would-be participants require assistance, financial assistance to get to the hearings, such will be provided.

CHAIRMAN FLEMMING. You have identified one of the factors that has stood in the way of older persons participating, namely, what you refer to as the stigma, as they say it, attached to participation in the program. I gather from your testimony that you feel that the removal of the requirement for cash payments in order to qualify may help a little bit or far as that particular issue is concerned?

Ms. FOREMAN. Yes, sir. It helps in two ways: first of all, there are just many elderly people, those living on the absolute minimum amounts of social security or very small pensions, who simply did not have the money to meet the purchase requirement. They needed the food stamps. They needed the additional income, but after you've paid the rent and after you've paid the electricity bill, there simply was not enough money left to make the purchase of food stamps. We think this is going to make the program much more available to those among the most in need.

In addition, because we are eliminating a large number of the stamps, people will be using them in fewer transactions, and there may be elderly and there may be other people who previously were unwilling to participate in the program because they didn't want to go to the store every time with food stamps. They don't mind going to the store with food stamps once or twice during the period of a month.

We hope that these minimum staffing standards, in addition, will generate somewhat more receptive help at the State level for the people who are in need. Obviously, many people are turned away from all sorts of assistance programs because the experience itself is degrading. That's not acceptable, and I think that our staffing patterns at the State level will go a long way toward removing the judgmental aspect that creeps into many of the food stamp issuing and certification offices and therefore encourage more people to come in.

As far as we can tell, there are only about 44 percent of the elderly who are eligible for the food stamp program who actually participate. That's lower, I believe, than the average overall, which is about 50 percent. There are a lot of people out there who either don't know about food stamps or just don't want to have anything to do with them and we're trying to change that.

CHAIRMAN FLEMMING. Well, I participated in an effort along that line in '71 or '72 in connection with the White House Conference, namely, Project FIND, and I know the experiences all of us had at that time bear out your conclusion.

There are those who feel that the new law could operate in such a way that some older persons would not make as heavy an investment in the food budget as they have been making under the existing law; that is, the cash that they were required to put up, of course, was cash

that was used in connection with their food budget. Now, they will not have to put that amount of money up, but it will not be replaced, I mean, under the food stamp programs, so that there are those who argue they may simply take the stamps, use those for food, and not continue to use the amount of money that they were formerly required to put up. That's theory. No one has any experience with it or no one knows whether it will work out in practice or not, but I'm just wondering whether you and your associates have heard that argument and whether or not or how you may have reacted to it if you have.

MS. FOREMAN. Chairman Flemming, of course, this was one of the arguments used quite heavily against elimination of the purchase requirement, that and the fact that it might encourage large new numbers of people to come in.

Let me first say that the studies that we do have indicate that large numbers of food stamp recipients, about 63 percent of food stamp recipients, already spend more than their monthly allotment of food stamps for food. Many of those spend up to \$26 or more per month more than their allotment for food.

The food stamp allotment provides about 27 cents per person per meal. It is hard to believe that responsible people are able to get a minimum diet at 27 cents per person per meal. The argument that is used that food purchases may fall off substantially is not borne out, either, by the figures that we have from the Economic Research Service about what we estimate the potential impact on total food purchases to be. We don't believe—they will fall off, we believe, a small amount, from about \$180 million to \$179.5 million, not a great deal.

I think that the arguments to that effect have an underlying assumption that the poor are irresponsible. It is simply an assumption that I don't accept, and that none of our data give us reason to accept. In fact, our studies indicate that the poor use their money much more wisely than you and I. They spend more for the food and house, less for recreation and alcohol and tobacco, and according to the Agriculture Research Service's study back in 1965, the poor generally got a higher level of nutrients per dollar of food purchased than middle-class Americans, and we just have no reason to believe that that's true.

CHAIRMAN FLEMMING. I happen to agree with you completely on that. Is there anything in the new law or the regulations that may be issued under the new law that bears at all on the question of how older persons can relate their use of food stamps to the new nutrition programs under Title VII of the Older Americans Act?

MS. SNYDER. The law does mandate a number of studies, and we also have been given a mandate on nutrition education alone, a new mandate. We've had it, but we have not pursued it in the past. We believe that the evaluation studies and the research studies that we are now beginning for the first time, the demonstration authority, funds or authority for research, will give us the opportunity to look into these

areas. We have several designed. It is inappropriate at this time to identify them, but we will be looking into this both in research and evaluation studies.

CHAIRMAN FLEMMING. I hope you'll contact the Administration on Aging on that because we feel under, not a mandate from Congress, but under a mandate to be more involved in nutrition education than we have been up until the present time. I think there's opportunities there for coordination.

One of the things I had in mind, however, was, as you know, the issue has come up from time to time about people using food stamps for the purpose of making contributions in connection with the meals programs that are financed under Title VII of the Older Americans Act. I think I ought to preface that. Under the law people are not charged for those meals, but they do have the opportunity of making a contribution. It shouldn't be a fixed amount—sometimes it evolves into a fixed amount, but it shouldn't be—and from time to time the question has been raised if a person who has food stamps could use a portion of the food stamps as a contribution, and I think there have been varying rulings on it and so on. I'm just wondering whether the new law or the new rules and regulations will deal with that at all? I might interrupt by saying that some of us think they shouldn't be used for that purpose, that they ought to save them for the weekend meals and so forth, when there are no meals under Title VII. I'm just interested in that point.

MS. FOREMAN. Yes, under the new legislation you could use the food stamps to make a contribution, and it has been pointed out to me that previously only people who were both disabled and elderly had this option. Now, they can apply those to either elderly or disabled, at a Meals on Wheels program.

CHAIRMAN FLEMMING. Going back for a moment to the outreach program and linking it up with your observation, under the new law, probably a good many persons who felt that they couldn't spend any money for food stamps would now become involved in the program, certainly will have the opportunity of becoming involved. Large numbers of those persons, of course, are in the locations where there are large numbers of low income and minorities. I would assume that the guidelines or instructions to the State on outreach programs are going to underline that fact and urge an aggressive outreach program in the areas where low income and minorities are living?

MS. FOREMAN. I think that's absolutely essential to carrying out the law as intended by Congress. I also think that it is worth noting that by eliminating the purchase requirement and eliminating the money and personnel that we used to have to use in printing stamps and distributing stamps, accounting for them, getting the money back into Washington, we freed up between \$25 and \$50 million in administrative expenses that we can now use, personnel to do better outreach, to administer the program in ways that we can reach people that we

weren't reaching before. We think that's a delightful side effect of elimination of the purchase requirement.

CHAIRMAN FLEMMING. Thank you. Commissioner Freeman.

COMMISSIONER FREEMAN. Ms. Foreman, I would like to refer to your former statement and, first of all, you indicate that under the Older Americans community service employment program, Title IX of the amendments, that the Forest Service is productively employing more than 2,500 low-income men and women 55 and older. Could you indicate the total number of employees of the Forest Service?

MS. FOREMAN. I think I saw the figure recently. Is it 17,000?

MR. FRAZIER. I believe it is about 17,000 to 20,000. I am guessing at this point. We could supply that for the record.

CHAIRMAN FLEMMING. Would you do that?

COMMISSIONER FREEMAN. We would appreciate this. On employees, and I'm referring to the total number of the 17,000, are they cross classified by age, race, and sex?

MS. FOREMAN. Mr. Frazier, can you—

MR. FRAZIER. Yes, they would be cross classified by race, by sex. I'm not sure about age in terms of the aggregate. Obviously, on any personnel indication there is an indication of one's birth date.

COMMISSIONER FREEMAN. Could you supply the information and cross classify it by age, race, and sex?

MR. FRAZIER. Certainly.

COMMISSIONER SALTZMAN. Do you have any category which shows up as the student population?

MR. FRAZIER. I think we could supply that also. I'm unable to give you that precise figure now.

COMMISSIONER FREEMAN. I would like to ask that the information which is to be submitted should be inserted in the record at this point

CHAIRMAN FLEMMING. Without objection that will be done.

COMMISSIONER FREEMAN. In other paragraphs that follow it, in the paragraph, the one that I just referred to, the breakdown was older persons 55 or over. With respect to the housing, the housing provided older persons by the Farmers Home Administration, a person 62 years or over. Then under the family food plans, the age breakdown is 55 or over, and then under food stamps, 60 or over. I would just wonder, is the differential, that is, that ranges from 55 up to 62, I believe, is this a requirement of the various laws or is this by regulation, the differential?

MS. FOREMAN. It is both. I can't speak to the Farmers Home Administration issue. I will have to submit that for the record. In the case of the food stamp provision, the reference to age 60 is in the law, and this is with regard to the ending of the requirement to register and search for work.

With regard to the Consumer and Food Economics Institute, family meal plans, we do meal plans through the Agriculture Research Service, that does meal plans for a whole variety of people; one of those

groups is people aged 55 or over, another is family aged 30 to 45, with young children, and families in that age group without young children. It is, if you will, an educational tool. It is an attempt to try to provide information according to age because the more we learn about nutrition, the more we know that it has some very age-specific requirements that we have not paid enough attention to in the past. So breaking down by age in that program is a physical tool.

MR. FRAZIER. If I may comment, with respect to the Farmers Home Administration's program, I am informed that the age limitation there is by legislation, the age 62 years of age or older.

COMMISSIONER FREEMAN. Well, I would like to request that with respect to the programs referred to in this formal statement where there is the differential, and those differentiations always have been indicated, if you would indicate whether the differential is a statutory requirement or is there by regulation, and if so, Mr. Chairman, if that information could be inserted in the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER FREEMAN. That's the final question that I have. With respect to the publications dealing with nutrition programs for the elderly, food guide for older folks, and budgeting for retirement, my request is, how does one get a copy of these publications?

MS. FOREMAN. They are distributed through a variety of mechanisms. In some cases they are included in senior citizens' homes, but one of the problems we have in the Department—and it doesn't apply just to the elderly, it applies fairly much across the board and the Secretary has ordered us earlier to do something about it—to take advantage of what we have requires perhaps more motivation than people in energy, than people may judge is needed or worthwhile to participate. You have to write in to get a lot of these pamphlets. We'd like to expand the distribution of them.

I think there's another problem with them. They are frequently printed in type that those of us with the healthiest of eyes can't cope with, let alone somebody's eyesight may be failing as a result of age. In many cases they are written in language that is far too detailed, far too sophisticated for use by the people that may have the greatest need for them, and the Secretary has asked us to go through all the nutrition education materials that we have in the Department and to try to find ways to revise them and use them so that we're actually competing in the marketplace of ideas, because right now our information does not compete. Certainly it doesn't compete with television ads for a variety of foods that are offered.

COMMISSIONER FREEMAN. Could I request that copies of these publications, if they are available, be made not only available for the record but each of the Commissioners could have it so we could make our own determination of how many we can read them and understand them.

MS. FOREMAN. Surely.

CHAIRMAN FLEMMING. Without objection that will be done. Commissioner Horn.

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. I know it is in the record by reason of its being in the statement, but for the sake of my colleagues I would like to tell them that the cancellation of Indiana's funds has been since withdrawn because Indiana met the requirements, I believe. But with respect to when the—

CHAIRMAN FLEMMING. That's a citizen of Indiana speaking here.

COMMISSIONER SALTZMAN. In the case that warrants cancellation of funds, does your office undertake affirmative steps to bring this State in compliance with the regulations?

Ms. FOREMAN. Oh, yes.

COMMISSIONER SALTZMAN. In relationship to the provision of foods by private contractors, is there monitoring of the quality of food and the delivery service of foods?

MR. STRAUSS. Well, certainly one of the requirements of the State agency on aging in administering the program, which is administered, as you know, through the Department of HEW rather than the Department of Agriculture, is that the food served be palatable. Our desire is the commodities that are supplied for these meals be those that we can use in the end.

COMMISSIONER SALTZMAN. I wasn't aware. This is administered by HEW and not the Department of Agriculture?

MR. STRAUSS. That is right.

Ms. FOREMAN. We just supply commodities under the elderly program.

CHAIRMAN FLEMMING. Anyone else? Commissioner Ruiz?

COMMISSIONER RUIZ. To what extent is public television utilized as an educational tool for food and consumer services?

Ms. FOREMAN. With regard to the food stamp program, I'd have to refer that to Ms. Snyder.

Ms. SNYDER. I had the privilege of attending an outreach conference last week in North Carolina, where 400 people jammed a meeting room. Sixty percent of them were volunteers from all walks of life, elderly themselves who are healthy and able to walk the back alleys, 4-H clubs, Boy Scouts, Girl Scouts, League of Women Voters, and so on, including also representatives of public TV and public radio broadcasting who carried the message of outreach in the State of North Carolina.

There is, as you can well imagine, across these United States great variance in the capability and ability of a State to carry a well-defined and effective outreach program, but we do have States that are very innovative, making great use of public media to carry the message in radio spots, TV spots, and so on.

VICE CHAIRMAN HORN. I take it, Commissioner Ruiz, your question is not only on public television as we define it but private television in terms of public service advertising?

COMMISSIONER RUIZ. That was the first question with respect to public television; she bridged it over so we have some more information. But my reference specifically to the public television was to get into the record a matter of an article that has appeared on October 3, 1977, issue of the *U.S. News & World Report* at page 51.

Whether our statistics which relate to the percentage of people who see public TV, either frequently or occasionally, and the following appears as to sex, age, and race: reference to the article is made for the purposes of the record, and it starts out, "Public television is entering its silver anniversary season." The specific matters are as follows: "who watch public TV? Sex, males, 65 percent; females 63 percent. Age, 18 to 29 years old, 63 percent; 30 to 44 years old, 69 percent; 45 to 59 years old, 65 percent; 60 years and older, 56 percent. With relation to race, whites, 66 percent; nonwhites, 52 percent."

So, that was my purpose of making the specific inquiry. Now you go right ahead.

VICE CHAIRMAN HORN. The reason I raise it is because I think you're on the track of a good point—probably very few people proportionately see public television. You have given the statistics who do see it; I guess I would lead to his question in terms of outreach, to what extent has the Department of Agriculture utilized public service advertising time just as the United States employment service utilizes it to get through the commercial television, particularly network stations and affiliated stations, the fact that your services are available?

Ms. SNYDER. I only spoke from the State's point of view. I would have to ask Assistant Secretary Foreman to speak to USDA as a whole.

Ms. FOREMAN. The Department has not used public service television advertisements as an outreach tool for food stamps. We have used it to a very limited degree in trying to convey nutrition information. It is one of our chief goals for the next year to try to use public service announcements as a tool of nutrition awareness in order to compete in the marketplace of ideas, as I pointed out earlier. Certainly, the legislation that we're going to have wouldn't forbid us to use it, and I think that probably we will move into that. In New Mexico a few years ago there was a very successful series of public service commercials done by major New York firms that were very successful in bringing low-income rural people in New Mexico into the food stamp program, people who were almost impossible to reach with personalized outreach services, and it was very successful.

VICE CHAIRMAN HORN. I assume the Department that made Smokey the Bear a national hero would be able to do the same here with nutrition and food stamps.

Ms. FOREMAN. That assumes, of course, that the Department of Agriculture wanted to get more people into the food stamp program, and that's an assumption you shouldn't make prior to January 20, 1977.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. No further questions.

CHAIRMAN FLEMMING. Thank you very, very much for being here and providing us with this testimony. It is very helpful and I know that the food stamp program plays a major role in the lives of many, many older persons. I personally hope that the outreach programs that will be undertaken under the new law will prove to be very, very successful.

Ms. FOREMAN. Thank you.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

Ms. GEREENICS. Robert Ahrens, Edwin Wood, and James Piscioneri.

[Mr. Robert J. Ahrens, Mr. James Piscioneri, and Mr. Edwin L. Wood were sworn.]

TESTIMONY OF ROBERT J. AHRENS, PRESIDENT, URBAN ELDERLY COALITION; JAMES PISCIONERI, FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF AREA AGENCIES ON AGING; AND EDWIN L. WOOD, BOARD MEMBER, NATIONAL ASSOCIATION OF STATE UNITS OF AGING

CHAIRMAN FLEMMING. We're delighted to have you with us.

Ms. GEREENICS. Would each of you please state your full name for the record, your organizational affiliation, and your position?

Mr. AHRENS. My name is Robert J. Ahrens, and I'm the president of the Urban Elderly Coalition.

Mr. PISCIONERI. First vice president, National Association of Area Agencies on Aging.

Mr. WOOD. My full name is Edwin L. Wood. I'm director of the Virginia Office on Aging and also a member of the board of the National Association of State Units on Aging.

CHAIRMAN FLEMMING. If I might interrupt, I would like to suggest that the first two members of the panel also identify their grassroots occupation in addition.

Mr. AHRENS. My grassroots are in Chicago, where I'm director of the Mayor's Office for Senior Citizens and Handicapped.

Mr. PISCIONERI. I'm also the executive director of Home Care Corporation of Springfield, Massachusetts, which is also an area agency on aging.

Ms. GEREENICS. Thank you. Beginning with you, Mr. Ahrens, one of the problems that we've identified in all these hearings and our study over this past year is there are many, many groups competing for program services which are funded by in all cases a finite resource, and it is the competition among these groups that is causing the

problems, that results in discrimination against certain groups. I wonder if you would comment on the role of the advocate in aging in terms of various programs in the funding and how effective advocacy is?

MR. AHRENS. Well, advocacy, I think, in the first instance if it is going to be effective has to be based on facts, and the facts are very difficult to come by, except in categorical programs. I can take a look, for example, at funds that will come down to the City of Chicago, to my office, generated by the Federal Government or city funds, and I know that I have a data collection system which enables me to look at it on a monthly basis and tell you where they're spent. I know how many people, what age, and what the color, and what background, and so you can do effective planning because you have these facts and you can do advocacy and where you see imbalance of services, underservice, and the thing that strikes me right up front is that we've got \$2.5 billion of social service money going into Title XX of the Social Security Act, and you can come up with no factual data that would clue you in to what people are getting this by any kind of age bracket. I will be willing to go a step further on that because our attempts have been over a period of years to collect this kind of information so we can do sensible planning even with the resources we direct. So I think it is deliberate that these data are not being collected and being made available.

MS. GEREENICS. Specifically with regard to Title XX, how would you characterize the specifics of the discrimination that seems to occur in that program?

MR. AHRENS. Well, I can look at instances, State by State, and, of course, you speak from your own circumstances with which you're most familiar, say that only in the last 2 years have we been able to access any kind of dollars in the State of Illinois specifically earmarked for older people, and that's less than about \$1.3 million. Now, we know those are going to the elderly because they're earmarked for them and are being spent through the area agencies on aging, but we simply do not have the information on any other kind of service being funded under Title XX, and again I would have to repeat, we've sought this by special trip, by sending staff, by trying to do studies over a period of at least 7 or 8 years.

MS. GEREENICS. Assuming that the Age Discrimination Act could alleviate some of the problem, what recommendations would you have for seeing to it that it is effectively implemented?

MR. AHRENS. Well, I happen to believe in categorical programs. I happen to believe in the advocacy agency. This is the responsibility which I think uniquely under Federal law perhaps the State agencies on aging, State units on aging, the area agencies on aging are charged with; in addition to that, since my office is an agency on aging, the city of Chicago charges my office with being an advocate for the elderly and the handicapped, and the elderly and the handicapped of the

city of Chicago have a right to look to me and to my office to ensure that they are getting equity in the services that are delivered. I would emphasize that point. I don't think any of us are looking to create additional or other imbalances in services. What we're fighting for, really, is equity for the older and the handicapped people whom we represent.

Ms. GEREBENICS. I know the program in Chicago has been successful with CETA and older workers, unlike other parts of the country we've studied, and I wonder if you could give us some idea how you did that?

Mr. AHRENS. Again, it is your rule of advocacy, and also the placement of the agency in government. I do not think that you can be a successful advocate if you're so far down on the structure that you can't deal with other agencies, even of your government, as equals. In the City of Chicago, we operate out of the mayor's office and on a level with all of the city's departments. Therefore, you're talking with the other departments as an equal. I sit on the manpower council. I sit on the priorities committee. We have access to information; therefore, our staff develops the facts and with the information and service we were able to demonstrate to manpower council and the mayor's office on manpower that the elderly, and also in this instance the handicapped, were being underserved. As a result, the council voted to amend the manpower plan in the City of Chicago. So for the last few years we are allocating CETA jobs in slots in proportion to the actual need that is represented by older and handicapped people in the community.

Ms. GEREBENICS. Thank you.

Mr. Piscioneri, would you like to comment on either of the two programs we have been discussing, either CETA or Title XX and age discrimination problems within either one of them?

Mr. PISCIONERI. In administering Title XX contracts with a number of providers in the community, we find less of an attitude to try to hire older people, or as well, we have to go in and become really a part of their staff in terms of their training, in terms of working with their attitudinal concept of activity, in order to bring more thinking into the kinds of things that bring into the training program, whether it be homemaker, home health aide, or transportation service or protective services. Our staff has to go in and spend time in the actual training programs with Title XX contractors. Since we have quite a few of them, it leaves us with quite a bit of time playing that type of role with Title XX contracts.

As far as service CETA program in our area particularly, since we're a nonprofit agency, we really have not had any real input or contact with the consortium that operates in our area where we've been able to impact as far as older people having access to some of the positions, even in our own case, for example, where we have requested CETA slots for our agency with the idea that we would bring on staff from our service population.

We really have not been able to nick that shell, so to speak. For example, Title IX in our area, we were once the contractor with the State agency. We now find that, with the city getting that particular contract, we find that older people are being turned away because they can't pass the city's physical, which means that, you know, there are people who are being rejected for the program because they may have high blood pressure or they may have a minimum of a mobility problem, which could very well find jobs for them working in non-profit agencies, that type of thing, so that our activity in those areas haven't been that productive.

Ms. GEREENICS. What specifically has your national organization done in terms of age discrimination in various programs?

Mr. PISCIONERI. Right now, since the association has just completed its first year of operation it really is just beginning to formulate various positions out of the different area agencies that we have in the country; since there are over 500 area agencies, they are coming together in the sense of looking at these issues as part of the resolutions, passed at its second annual conference this past June, as well as having a working task force; as a matter of fact, we're trying to bring some of these kinds of things together.

Ms. GEREENICS. Does your organization feel that the Age Discrimination Act when it goes into effect will assist in alleviating some of the discriminatory practices of these programs that we've been discussing?

Mr. PISCIONERI. Yes, it does. As a matter of fact, in terms of the information that we have been able to view at this time, they feel that this new law will have a definite bearing on behalf of the older people at this point in time.

Ms. GEREENICS. Thank you.

Mr. Wood, I'd like to discuss the role of the State agencies on aging in attacking problems of age discrimination in social and the health delivery services and employment services. What specifically is your organization doing?

Mr. WOOD. I think that States as a whole are attacking this kind of issue on a lot of different fronts. A couple of the things that have already been mentioned this afternoon, include Title XX and CETA. It comes to my mind that several States have older people represented on manpower planning councils at the State and local level. It calls to mind the fact that in Virginia probably one of our most effective advocates for older people in the CETA program, a physician, who I think is 93 years old, who is the gentleman who is constantly bringing the age discrimination issue before the CETA authorities.

I think that the State agencies' role in working with older people as well as speaking out on their own is certainly a vital part of the job they have to do. There are quite a number of States, through their own legislative processes, that have introduced State legislation to remove discrimination, and I think for the most part you will find that every

State agency is behind that kind of effort in some shape or form. They may not, of course, be the prime movers, as it were, that being the legislative process, but the advocate role, the selling of that kind of removal of discrimination, I think, has been demonstrated at the State level.

The other program that has been mentioned, the Title XX program as far as social services is concerned is of direct interest to every State agency on aging. The majority of States I'm sure have made presentations to the agencies that handle the Title XX funds. They serve on planning boards. They have in most instances been quite fortunate in having the area agencies able to testify and present testimony at the local level as far as the local level Title XX planning process is concerned.

So States, as I noted, are looking at these kinds of issues from a variety of fronts; the same thing is true, certainly, in the health care field, including nursing homes, homes for adults, and the total Medicaid program.

MS. GEREENICS. What have been some of the activities of the organization at the national level?

MR. WOOD. I think we certainly at the national level have taken positions. Insofar as the national board is concerned, it's been the kind of issue that has been on the agenda at national conferences. In turn, our national staff has worked very closely with the House and Senate committee staffs and members thereon, as well as I trust your own staff as far as providing information as to what States are doing.

MS. GEREENICS. Thank you. I have no further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. Thank you. As members of the panel know, the Age Discrimination Act of 1975 when it becomes effective on January 1, 1979, specifies that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

You all in a very real sense represent consumers. As you look at the Federal programs that you have had or are having experience with, which ones do you think we should give special consideration to from the standpoint of their programs operating in such a manner as to deny older persons their fair share or in such a manner as to discriminate against older persons? We have the responsibility of making findings, making recommendations, and making suggestions relative to regulations and possible changes in the law in the report that we'll develop in the latter part of November. What programs supported in whole or in part by the Federal Government should we really be especially concerned about? Let me add, from the point of view of your experiences—I might say the members of this panel represent a good deal in the way of experience from various vantage points but always with the concern of the consumer and with the older person in mind. Bob?

MR. AHRENS. Thank you, Dr. Flemming. I mentioned Title XX, so I'll get off it right now, and then mention one other program and then go to something which I feel rather deeply about.

I would be concerned that the Legal Services Corporation, which has, I believe, been allocated more money than has all of Title III, really accept the responsibility for serving the elderly in the Nation because I feel kind of funny when agencies funded by that come to me to ask for meager Title III funds when I know that they've got many dollars and really ought to be serving that population, certainly in proportion to its existence in the constituency.

But going back even to my earlier grassroots, I could talk about education because educational opportunity is the kind of thing that ought to be available to everyone. I was disturbed last week to read in the *New York Times* the reaction of some of the administrators in universities around the country to the passage in the House of the bill to end mandatory retirement because if we ought to do creative thinking on what to do about this anywhere, it ought to be in our institutions of higher education around the Nation.

The very fact, you know, you wipe people out from going into undergraduate work at a given age, denies educational opportunities. We talk, you know, the game of continuing education, and that people want to continue to learn for as long as they can live, and we don't provide the opportunities for them to go on and use that education. We know that changes in jobs and just in living in a community require a kind of ongoing continuing education. We know also, I would think, that, if we ever get an educational system that involves all of the people at all ages, they're going to learn from each other—young people in proximity to the older people on our campuses and even going below higher education, the youngster, the same models of successful aging.

We're going to be able to look perhaps at human development as something that really does involve a whole life span, and I would also charge our educational institutions with doing something about the people in major and graduate work at all levels. An office such as mine tries to get out a lot of services to people who need them very badly and need them now, but you're in there also for systems change, to make the transportation system, the housing systems, the health systems, all of these, do a better job for people, yet you're dealing in these systems, people have been trained in our educational system. And who have not been—not only formally trained in gerontology or geriatrics, we know the problems in medicine, but have not really been sensitized to the simple needs of older people, and, you know, what they might need to give them a long fulfilling life in the community.

CHAIRMAN FLEMMING. I gather then that you feel that one Federal program that ought to be looked at carefully from the standpoint of discrimination on the basis of age is the program that is financed through the Legal Services Corporation, I gather.

MR. AHRENS. And all funds that would be going to institutions of higher education.

CHAIRMAN FLEMMING. Going into the field of education, I was going to ask you if your office has had any particular experience with the basic education act and if so whether or not you feel that older persons are being discriminated against in terms of the use of the funds under that act?

MR. AHRENS. Well, I would have to—don't want to speak beyond my facts. We have not collected data in this area. I think again in Chicago we may be a little more fortunate. We've got some of the outstanding gerontologists who, like a Bob Hafkers [phonetic] at the University of Chicago, happens to relate to broader field of reeducation as well as as gerontology, by just and simply being on the campus.

I spent more years of my life in the field of higher education than in city government, so speaking from that background, that it was always the programs for the adults that were supposed to generate money to carry some of the other activities at the university. It was very difficult at times to fight things like adult degree programs through faculty senates. There is today the beginnings of a reaching out. I see it in my own city, but it's far from adequate.

CHAIRMAN FLEMMING. Do you feel that some of the funds that are made available to institutions of higher education in your area are being spent in such a manner as to be discriminatory when it comes to older persons?

MR. AHRENS. I would say yes.

CHAIRMAN FLEMMING. Have you had any particular experience with the use of the funds that the Federal Government makes available in the area of mental health, and if so, what is your reaction?

MR. AHRENS. Well, the data we had locally—and I don't have it with me—would indicate again that the community mental health centers are not serving the elderly or families about problems of the elderly in the proportion that would be indicated by the numbers of older people in the catchment areas.

Now we've just, beginning this week, had a series which we've worked with the mental health department of our department of health; they've joined with us and we're going to experiment for 4 weeks with a series called "You and Your Aging Parents." We're presenting it first to employees of the City of Chicago to see if it will go over and if the bugs can be worked, and then we'll go public with it. We hope having planned in this and worked on this to generate enough enthusiasm with that kind of staff to develop some ongoing relationships with my people in the field and with their centers, so that we begin to address this better service to the older people of Chicago and to families. Some of them are completely ridden with guilt if they have to place someone in a nursing home, and this general problem on aging in any event.

CHAIRMAN FLEMMING. We are, of course, charged with the responsibility of trying to identify where, in fact, there is discrimination against older persons on the part of programs financed in whole or in part by the Federal Government, and then if we do identify it, we have a responsibility to make recommendations designed to bring about a correction of the situation. So if any further examples occur to you growing out of your long experience in the city of Chicago, why, I would appreciate your just giving us a little memorandum on it. We can put it in without objection, we'll put it in the record at this point.

MR. AHRENS. Yes.

CHAIRMAN FLEMMING. Let's go down the line here.

MR. PISCIONERI. I'd like to add in terms of the area of mental health, especially in areas where I serve, urban-rural type area where community mental health services are very limited at this point in time. As a matter of fact, we have a contract for mental health services for older people, and the problem is getting that contract.

We went to the various agencies that provide mental health services in our catchment area, and no one wanted to do business with us. Neither did they want to expand their capacity. The psychiatrists in the agencies funded in turn by United Way, for example, just felt they didn't want to spend the time or had the resources, nor did they want to go out to the home as in our case where any contract that they do business with, one of the elements of that contract is you've got to be available to go into the homes. So we now find ourselves contracting with the clinic, with a psychiatric caseworker and a psychiatrist available to go into the home of the individual, rather be an ongoing counseling basis or emergency type situation, and it took really 3 years to get through and have that kind of contract available for services. And the thing that distressed me most is the attitude of the community agencies that really felt that, you know, why spend the time or the resources; and this in terms of our advocacy role means we have to go out and utilize our limited Title III resources and with the mandate of the mental health community, we find ourselves in a very poor position, especially with the fact that as more and more Title III, Title XX services are available, the other types of service needs come to the surface, such as the mental health problems or the drinking problems, those kinds of things are more apt to come to the surface once you have a base level of service system available, and this becomes a real problem in terms of being able to deal with that type of situation.

CHAIRMAN FLEMMING. The mental health legislation has been amended so that community mental health clinics are charged by law with giving special consideration to the problems of children and older persons. Has that change in law led to any community mental health clinic in your area coming to you as head of an area agency on aging and asking for any help in terms of locating older persons who may need this kind of assistance?

MR. PISCIONERI. No, not at all. We had to go to them, as a matter of fact. When we did, the situation was what we ended up finding ourselves is their requesting Title III money for additional staff, so it is just not working the way it should be.

CHAIRMAN FLEMMING. Can you think of any other programs growing out of your experience that are financed by the Federal Government and in your judgment are discriminating against older persons?

MR. PISCIONERI. I really feel that some of the elements of the social security regulations really impact the ability of an area agency to hire older people, for example, and we find ourselves with a staff of over 60 people and of those 38 are 55 and older, and to get that many people on staff, given the various regulations with Title III, Title XX, and social security limitation of income, we really find ourselves playing all kinds of games, so to speak, to try to find people. It is a crime in the sense we have to turn competent people away, if they are \$100 over or \$400 over, and we've lost a great deal of resource that would play an important part in the delivery of our service system in our area.

CHAIRMAN FLEMMING. There you're dealing with a requirement of law, the earnings of the retirement test under the social security system. Thinking in terms of service programs for older persons within your community that are getting Federal funds, do you think of any other service programs in the community where in your judgment they are discriminating against older persons, where older persons aren't getting their fair share?

MR. PISCIONERI. I think Mr. Ahrens pointed out Legal Services. We have found the problem on some of the limitations imposed, impossible to serve people above a specific income, and we find people who are in that area just above the guidelines that need the service.

We also look at the area of what happens to the public image that has been created in terms of discrimination where the media establishes in the public's eye "The older people don't want to work. They just prefer to enjoy their retirement." We find this, of course, affecting our programs because people don't apply for service or they don't apply for some of the opportunities that are available.

CHAIRMAN FLEMMING. Okay. Well, what we're particularly interested in is programs at the community level that are financed by the Federal Government in whole or in part, where, growing out of your experience as an advocate for older persons, you feel are discriminating. If you can identify some others as you think in terms of your experience, we'd appreciate a memorandum on it.

MR. WOOD. Thank you, Dr. Flemming. I think certainly our experience has been similar to recognizing those same services that the other two gentlemen mentioned. It dawns on me that really, Mr. Chairman, there are in my view two types of services that older people need, or at least two ends of the spectrum, as it were, these visible services and those hidden services, where I think particularly older people have not had a fair share, as you say.

For most perhaps service, those visible services in the total area of housing. I think that local housing authorities have made good attempts at seeing that older people do have adequate housing through physical structures. I think all too often there have been letdowns. Service people are concerned who live in those structures as regards the other community services that might be available there. Housing is an area, too, where people can drive by an older person's home and see that the house, this physical structure, needs upgrading. It needs a new roof, perhaps; it needs a window repaired. It is the kind of program where, here again, income limitations often stand in the way of getting loans. I talked to a banker the other day who said that, while they weren't supposed to discriminate, they certainly did in granting loans for home repair for very elderly people. It is an area, I think, of prime concern but one that often older people don't seek out adequate help for.

There are a couple of other areas, too, that are critical as far as our own planning in the State of Virginia are concerned. That has to do with those services that are rehabilitative in nature. The Rehabilitation Act would seem to key in on those people who are deemed most employable. I think in the past, at least prior to the types of things that your key focus is for your hearing today, they have looked at younger people. The rehabilitation folks have spent massive amounts of money in rehabilitating younger people so that they might be employable, and many times the older person was left out of that service spectrum. I think it is a critical area as far as preventing or delaying institutionalization for older people.

I think another visible area, too, is transportation. While we are aware of the strides that the Administration on Aging has made as an example with the XVI(B)(2) funds for capital expenditures, I think that the transportation is another very visible area where older people have probably not received the attention they deserve.

There are, too, a couple of hidden areas, hidden areas of need. The areas of mental health and mental retardation and local clinics have been mentioned. If I am not mistaken, the percentage of older people in Virginia participating in local mental health clinics is somewhere in the neighborhood of 3 to 3.5 percent of all participants in those clinics. I don't know frankly whether it is a result of the new Federal legislation about the emphasis that mental health and mental retardation agencies must have on the elderly, but our State department of mental health and mental retardation has picked older people as a priority for new services in the coming year, so I'll trust we'll see some changes in that area.

There are two areas that I would mention very briefly, one is in—these also are in my hidden set of needs—the whole area of substance abuse. The alcoholic problem was mentioned. I think there are drug problems, those drugs that are both prescribed and over the counter, the potential for abuse there, and the fact frankly that many

older people have not been sought out, have not had appropriate outreach as far as substance abuse clinics are concerned.

The one other area that I would note for you would have to do with the crime and fear of crime area. The grants and so forth that come through the LEAA [Law Enforcement Assistance Administration] group, we are doing some work in Virginia as far as those types of funds are concerned, and we hope we would be able to pull out on a statewide basis the aspects of crime and fear of crime that could be more appropriately addressed than they have been in the past.

I think, too, speaking from the National Association of State Units on Aging point of view, that these are some of the areas that are of concern nationwide in State agencies.

CHAIRMAN FLEMMING. Thank you very much. Commissioner Horn?

VICE CHAIRMAN HORN. Mr. Ahrens, I was interested in your comment that you felt the funds spent on higher education have been used in a discriminatory manner. I wonder if you could elaborate on it, what particular funds and programs do you feel have been used to discriminate against senior citizens?

MR. AHRENS. Well, I have not, you know, pinpointed it in terms of given programs or acts. I am suggesting that most of the institutions of higher education do receive Federal funding of whatever nature, and whatever nature the funds going in there, there ought to be some requirements that would open up the institutions both in enrollment and all programs, and I would include this in graduate programs.

People are living longer and they are having second and third careers. I would include this in terms of special programs to reach out to the adults and to the older adults, and I would certainly hope we're going to find ways of keeping our professors on now that the retirement age—we're almost halfway there in getting it lifted up to 70, and I would hope one day knocked out so that the only question we are concerned with is a person's ability to function and to teach, to learn, based on their own merit. So I haven't pinpointed this to any source of funds.

To my concern when you get down to anything in a democratic society and a free society, the ultimate answer is always education, and that kind of persuasion. These are the institutions that create our leadership. As I said earlier, the leadership that we have to work with to try and effect systems change in every system there is, you look at what Iowa University talked to us about, that was a great advance, to schedule 1 day in the field for medical students so that they might learn about the elderly.

Well, 1 day isn't enough. I'm sure there are plenty of Federal dollars going into medical programs at their university-affiliated medical schools that could help us redress this and ensure that, before our doctors get out into the communities, that they've had some experience with elderly and senior centers or with the elderly, or not have more people in nursing homes and hospitals, yet this is absent in the training of the medical students.

I would even note the law that we are committing again some of the limited Title III funds to a local college and its law school, hidden agenda there because what we are using are students placed out in our information referral centers, under the supervision of professors, so that these students who will soon be lawyers will become sensitive to the problems of older people, so the professors who are supervising the teachers will go back and alter that curriculum a little more effectively to address issues that affect older people. I'm sure that institution has Federal funds in some ways, but I'm not sure under what act.

VICE CHAIRMAN HORN. Let me pursue this. I agree with you, as a university president, I have been trying to do that; at my college we have one of the two senior citizen programs which I recommended in California, which permits any senior citizen to take a full load for \$3, which is the cheapest education in America for any group.

Our problem comes on Federal funding. There is no Federal money to colleges and universities of institutional aid. There is only categorical Federal funding to either give training grants in particular fields, such as nursing capitation or some medical school assistance, or to conduct research which is mission oriented on behalf of the Federal agencies or the large number of student support programs, such as the Veterans Administration with the G.I. bill, the basic educational opportunity grant, the supplemental education opportunity grant, the guaranteed student loan, national defense student loans, etc.

Now, I have mentioned with previous witnesses the difficulties of age discrimination carried out by some banks on the guaranteed student loan. I think that's a very real problem; HEW should have cleaned that up long ago, and so should the Congress, but really there is no other money an institution gets that permits it any flexibility to expand its services to anybody unless there's direct support of that particular clientele because education is not a Federal function, it is a State function. And if you're talking about public education, it essentially means the State legislature has got to put up the money and they cut your budget the minute you don't have students, which gives you no margin for new clientele group, so we take it out of our hide when we go into new categories that have no way to fund themselves, and while we're glad to do it, there does come the breaking point. I just want to clarify the record on that. We think it would be tremendous if the Administration on Aging at the national level and the State level started recognizing that universities have tried, some of them, and could contribute in this area, but somebody has to pay some of the bills.

Now, in terms of our own senior citizens program, which in essence is coming out of our hide when we only charge three bucks for a full load, the two things that the participants in that program tell me that block their access to higher education, you've touched on a little bit, and that is transportation to the campus and back and fear of crime and night classes and so forth. The way we can solve that, of course, is to get the professor out to the people. It has taken us 7 years to

do that in California. I chaired a task force that's since then turned in a report—we hope that will solve some of those problems, but that won't solve it for the rest of the country. And I wonder if you have any advice as to what your type of agency can do to provide the broker relationship between where the elderly people are and where the educational resources are to bring the parties together.

MR. AHRENS. We've done two things. One is to help the University of Illinois create—and it just opened a week ago Monday with its first program—an all-university center for gerontology. The second thing we've done through our office is to create a research and training advisory group which all of the institutions of higher education at the local area represented meet with us regularly to address some of these issues.

I think in all fairness also the Administration on Aging, they do fund programs to a number of our universities that helped establish programs to train people in graduate degrees in gerontology, and I also know there's been a good deal of leadership expended to try to bring the community college movement into better service to older people and as well the professors on aging.

But to back up a minute, listening to the sources that you have indicated Federal funding is limited, I would believe and further ask, don't medical schools get any kind of funding for equipment from the Federal Government, don't public health services, don't other agencies put money into some of these programs?

VICE CHAIRMAN HORN. I don't have a medical school so I'm really not an expert in that area, but I believe you're correct. There are substantial resources that go into medical schools, and I would completely agree with you that it would certainly be appropriate in the education of doctors that they ought to have experience in rural life as well as in elderly communities, etc., to have well-rounded training as practitioners, and I mean medical schools like Stanford University, for example, have done some of this on their own initiative.

MR. AHRENS. I would point out, too, things have their causes and you can, on the one hand, say that the mental health centers aren't doing their job. They're being run by the people who are trained by our institutions, and if you teach courses in human development that never go beyond adolescence, people then never learn there is a state of life called maturity. When they get out in the field to work in mental health centers or other places, they're not amenable to the kind of systems change which we must have unless they do get sensitized and have the educational experience, and I think bringing elderly onto the campuses is also one way of doing this, as well as altering the curriculum.

VICE CHAIRMAN HORN. I completely agree and we found that works. We have this with our own community psychology centers, our folklife centers, and that operates our nutrition programs that operate in elderly centers and it is an invaluable experience.

MR. AHRENS. Also the reason I address that, and I address it with some feeling, since I spent 18 years in the field of higher education before I came to city government, is that I believe this is the root, the central thing, and I would say that today, whether there wasn't one Federal cent in this, that that's our leadership that's been trained there and, you know, that's where some of the great leadership of the country ought to be coming from, our institutions of higher education. And again, as I say, I say it with a little sense of dismay, the most recent thing I have read were articles over the weekend in which not one university official who was quoted had anything kind to say about the idea that we should end mandatory retirement in this country. And I don't think that that's the kind of leadership that can get us the kind of programs which I'm asking for today.

VICE CHAIRMAN HORN. Well, I will confess until we have the transition period, until we can change the tenure systems, I don't have too much time to say myself, and I'm very sympathetic to people working hard with regard to restriction, but when we're stuck with some of the people we're stuck, with no way to weed them out, it means we've got to somehow get peer group responsibility to solve the problem, which we don't have.

MR. AHRENS. No doubt about it, and there are good and bad things to say about tenure, but we do know enough in this Nation. Already we have had researches funded, which indicate that we can make some judgment about a person's ability to function in a given job. The Department of Labor has funded researches at the National Council on the Aging in this direction; these things are on the record. I would think that universities that would have some staff that's competent and capable in the area of industrial gerontology would be up to date on this and could begin to perhaps introduce some of these new forms into our systems.

VICE CHAIRMAN HORN. Let me just express the hope that, say, the Urban Elderly Coalition and others will sit down with legislators and educators at the State level and build up some pressure to get this within the scope of higher education, because some of us have been trying and frankly we haven't gotten much help. There's more immediate needs, I will grant you, in many of the elderly groups, such as nutrition, decent housing, etc. I completely agree that education should be a vital resource, not simply in gerontology. That's fine for training people to work with the older population, but almost any field in terms of keeping people mentally alive beyond a certain age.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Relating to pressure which may be exercised by advocacy—on our agenda you are designated as aging advocates—the word advocates sometimes includes political lobbying. As the median age of the United States population has been rising, Congress has begun to show respect for the political heft of older people. If you are a nonprofit association, how much lobbying are you permitted to in-

dulge in? I notice Mr. Woods said that he had been cooperating with staff, that he had gone up on the Hill on some committee; how much lobbying can you do?

MR. WOOD. Are you speaking as a national organization?

COMMISSIONER RUIZ. As a national organization, yes.

MR. WOOD. I think that since you bring to mind the Internal Revenue regulations regarding nonprofit organizations which are national organizations, then you are probably familiar that there are a couple of types of nonprofits, and the political lobbying activities are restricted somewhat on the one hand, and another type of nonprofit group that does permit a broader range of lobbying on the other.

I think that the use of the term lobbying also has several connotations. One of the jobs that we would see as advocates would be simply education and the provision of information to individuals who are in responsible positions in order that they make appropriate decisions based on facts. So I would say certainly that we are limited as far as lobbying. We don't throw grand parties for Members of Congress, and we don't entertain lavishly, but we do certainly try to educate as we can.

COMMISSIONER RUIZ. Well, the Vice Chairman's designation of the word "pressure" brought this inquiry to my attention. Now, as I see the picture, apparently there is a war of ages here that is lining up, as in the career ladder there is a blocking by senior employees, and competition is going to become complex. Already shaping up in this conflict over this is the Nation's social security structure, pension plans, which may require revision of taxes. There are certain economic realities just as mentioned in the prior panel at this particular moment don't reach out too far on food stamps temporarily. It may not be good politics as I heard.

What I am interested in and the specific question, is there anything developing in an organized manner in the private sector that you as advocates may know which may be identified as a private lobby on behalf of older persons? I ask that question because businessmen, like politicians, are going to have to start taking older people into consideration and seriously. What is developing along that? I ask this advocacy panel that because you might be closer to the picture on that.

CHAIRMAN FLEMMING. We will be taking testimony a little later on from organizations in the private sector that are carrying on activities on behalf of older persons. I forget whether that's later today or tomorrow, but we will have representatives of those organizations before us.

COMMISSIONER RUIZ. Fine, then you're off the spot.

MR. AHRENS. I was just going to say, having seen Maggie Kuhn walk in a minute ago, there are advocates in the city of Chicago and just in the immediate suburbs, there are now in existence more than 1,000 independent senior citizen groups and clubs which have their agendas for action.

CHAIRMAN FLEMMING. It is the next panel.

COMMISSIONER RUIZ. They will be all set then.

CHAIRMAN FLEMMING. They'll follow right along after this panel.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. One of the manifestations that occurs to me of ageism is the attitude that "whatever you do to the elderly is enough, after all they're old," and inadvertently, I assume—I'm sure, not that I assume—the elderly contribute to that attitude in this society because they don't want to be a burden to the society or to the family or to the young, and in order not to be a burden, from their point of view, they don't complain when there is a failure of effort. And that leads me to the question in terms of the services they receive—the food they are offered or the nursing homes to which they are brought or the resident homes—and the responsibility of State agencies on aging and advocate groups that they represent to make sure that the monitoring of these services rendered to the elderly are not slipshod.

For example, I do know or I've heard and have it on good authority in Chicago that a contractor who had a contract for supplying food to Hispanic language groups was providing kosher foods to the Hispanic language groups, not only kosher, but they were frozen and they were foods with which they were totally unfamiliar, like frozen blintzes, and they didn't know what to do with them and ate them frozen. My inquiry is, is there adequate monitoring of—

MR. AHRENS. That's a new one on me.

CHAIRMAN FLEMMING. I would suggest that, if you have any information on that, you give it to Mr. Ahrens. He does not recognize it and we obviously cannot indulge in names here.

COMMISSIONER SALTZMAN. You mean name cities. I withdraw the name of the city.

CHAIRMAN FLEMMING. Okay; anything further?

COMMISSIONER SALTZMAN. Is there adequate monitoring going on?

MR. PISCIONERI. In that type of situation, I'm involved with a very close situation now where the area agency is in a role to do that. The problem is that many older people are afraid to speak up because they have no other place to go. As a matter of fact, we're working on two fronts on this particular problem, but the interim problem is we have 16 older people who are in a situation right now that some real harm can be done to them because they're getting inadequate nutrition, the living conditions are poor, and the area agency as an advocate either at the national level, even at the local level, has a means of getting in and assisting that group, either through its legal service contracts or by other community resources.

The major problem is getting the older person to work with you because the thing is that they're afraid because in some situations there's no other place to go. And this crosses the whole line as far as, you know, people with mental health problems or who have just been placed in such a warehouse as this type of facility, and the area agency really finds themselves in a tightrope situation because there are legal

questions, but there is also the question of how do you protect the individual today; you can't wait for the legal procedure to take place.

CHAIRMAN FLEMMING. We will have to move on to the next panel. Do you have a followup on that?

COMMISSIONER SALTZMAN. That's all.

MR. AHRENS. Our aid nutrition sites in Chicago, nutrition advice and everyone who tend to be the best monitors, and all of the sites that serve ethnic foods serve the ethnic foods that are asked for and are prepared on their own site.

CHAIRMAN FLEMMING. I want to thank all three members of the panel for being with us, sharing your viewpoints not only from standpoint of your own particular operations but also from the standpoint of your colleagues. It has been very, very helpful. Thank you very much.

Counsel will call the next witness.

CHAIRMAN FLEMMING. I should call attention to the fact that a representative of the Spanish heritage organization was going to be with us for this panel, but I understand that because of a death in his family, he cannot be here. Counsel will proceed with the questioning.

MR. DORSEY. Maggie Kuhn, Delores Davis, Juana Lyon.

[Ms. Delores Davis, Ms. Margaret E. Kuhn, and Ms. Juana Lyon were sworn.]

TESTIMONY OF DELORES DAVIS, DIRECTOR, NATIONAL CENTER ON THE BLACK AGED; MARGARET E. KUHN, NATIONAL CONVENOR, GRAY PANTHERS; AND JUANA LYON, EXECUTIVE DIRECTOR, NATIONAL INDIAN COUNCIL ON AGING

MR. DORSEY. Starting with Miss Kuhn, would you please state your full name and organizational affiliation for the record?

MS. KUHN. My name is Margaret E. Kuhn, Maggie; I am the national convenor of the Gray Panthers. My home is in Philadelphia, and for the record I am 72 years old.

MS. DAVIS. My name is Delores Davis; I am director of the National Center on the Black Aged. Today I am also representing the National Caucus on the Black Aged in the absence of our chairman, Mr. Aaron Henry, and our founder, Mr. Hobart Jacks.

MS. LYON. My name is Juana Lyon, L-Y-O-N, and I'm executive director of the National Indian Council on Aging and project director of the National Indian Conference on Aging of the National Tribal Chairman's Association.

MR. DORSEY. Thank you very much. Ms. Kuhn, your experience and activity in the area of advocacy for the elderly is very widely known and widely appreciated by many, including all of us at the Commission, and I wonder, based on that background and experience, if you could now help us by building our record in terms of your experience on some of the specific ways in which older persons in this society in general are being discriminated against if you would?

Ms. KUHN. Thank you. Before I do that, I would like briefly to express appreciation and commendation to the Commission for the study which you have undertaken, and very probing analysis of the ageism of our society that you have undertaken to disclose. I am grateful indeed and I always have been for the leadership and advocacy of Commissioner Flemming and I rejoice that he is continuing in this important work with you and with us.

Ours is an ageist society, as you know very well, and the pervasive ageism takes many forms that are discriminatory and even oppressive. The ageism that I would like to cite has to do briefly with employment, with the entitlement to certain services like mental health and health care and housing.

The civil rights act does give protection for people between the ages of 40 and 65 in employment, as we know. But violations have been found in the acts; it allows for judicially ordered reemployment, reinstatement, and awards back pay. That's good as far as it goes, and it looks very good, but it is very limited in its protective power only to the age 65, and even the fact that people over 65 are not so protected under the law makes reemployment or even continued employment in the thirties and forties and fifties extremely difficult if a job change is in order.

The lack of effective enforcement has greatly weakened what would otherwise be a good law. Courts have put many procedural obstacles in the way of enforcement of violations when they have been cited, and in addition the funds that have been appropriated by Congress for the enforcement procedures are so niggardly. Two million for a nationwide assault on a massive system seems hardly enough. The fact remains that our society as a whole reflects this pervasive bias based on chronological age, a bias that affects the young as well as the elderly.

We are entitled under law and public statute to a great many services, but we do not know those services, and in our claims-based society, unless there is adequate flow of information and adequate availability and accessibility to those services, this is as though they did not exist. I'm thinking, for instance, of the fact that information channels are often clogged and the services that we are entitled to are delivered from many different places, so that there is a question of transportation and fragmentation and duplication of services that makes the services themselves inaccessible.

Other witnesses have spoken about the effect of transportation. I think we've not really taken into full account how people with physical handicaps, various ages, particularly old people like myself who suffer from arthritis, it is very difficult for me to use public transportation, and unless we have accessible buses and accessible environment we're not able to go to where the services are available.

I'm thinking particularly of the kind of ageist views that the mass media, particularly electronic media, dump on us. We are persuaded

by our omission in the media. There's an enormous bit of documentation that we've done in our media watch to document and to make the case for the actual omission of older people in any prime time television. The derogatory kind of humor that some of the leading comedians dump on us is demeaning and diminishing, and it doesn't certainly enhance society's view of us.

I have great questions, indeed, from other people in our Gray Panther movement raising provoking philosophical questions about the ageism age-segregated services. We've had a long and discouraging history about racially segregated services and programs in housing and communities and schools, and I'm wondering in the long view whether our present age-segregated arrangements of living will not suffer the same kind of question, whether they will be socially useful.

I think this is a big philosophical question for the Civil Rights Commission to wrestle with. How can the civil liberties and rights of Americans be preserved when there isn't some public will at the national, State, and local levels to enable a diverse society with many cultural strains and groups to live in harmony and on a community-based, community integrated basis.

I think that there are several questions also about the means test that has been devised to limit the utility and the accessibility of many of the services. The legal services, for example, are not available to people who have even a modest income above the poverty level. It is true we are making some inroads on the persistent poverty among the elderly, but the fact is that the means test keeps us from what we are entitled to.

We have been exploring in our question about retirement, arbitrary retirement, and our advocacy of the elimination of arbitrary retirement for all employees, Federal and private employees and State employees, and we rejoice in the legislation that has been enacted in several States, in the State of Maine, in Los Angeles, in Seattle, and we hope that more prompt attention to age discrimination in the matter of employment will be speedily addressed. But I think along with the abolishment of mandatory retirement we have to look at the whole meaning of work, and I like to think of work as continuing through life, not necessarily in the same job or the same level but of different kinds of activities, opportunities for career change, for the enhancement of life in one's later years. I like to think of flexible work schedules, long vacations, sabbaticals, team, use of formula. I like to think of whole new categories of work in the public interest that old people ought to be able to do that would begin to get at the inaccessibility of services and demonstrates the need for other services.

We are testing on placing in certain institutions, notably nursing homes and extended care facilities and in the clinics and emergency wards of hospitals, patient advocates who are older people trained to be advocates of the people who have all kinds of diseases or impairments. We are training a group of old people to be monitors of public

bodies, including the services that are now provided in the centers for older Americans and nutrition sites.

We are training monitors for the courts to get at some very basic penal reform. I think we've got to tackle crime at a root level rather than to put more police dogs and police on the streets. Of course, we need that kind of protection, but we need to look at the way in which rehabilitation and judgment and justice are handled or not handled in penal institutions and the courts; I think the old people who are free to initiate changes and try out and test new models for doing things are the ones who ought to be working in that regard.

Those are matters that have deep concern to me and I welcome the opportunity to share them with you and to respond to any questions that you may want to raise later. Thank you.

MR. DORSEY. Thank you very much.

Miss Davis, we have on a number of occasions heard of instances in which ethnicity seems to act to multiply the disadvantage of age in our society; in fact as you may have heard before, Commissioner Freeman has often spoken in terms of double and triple jeopardy. I wonder if you would talk from your experience in terms of the kinds of ways in which that double and triple jeopardy may serve to diminish services to the elderly.

MS. DAVIS. It is my pleasure to be here. I feel like I'm among friends, especially with my aging colleagues and advocates, we share many panels together and also because of the Civil Rights Commission and the previous work they have done to help to enable the National Caucus on the Black Aging, the Center on the Black Aged, and their efforts to secure employment opportunities for minority older workers. And regarding unemployment in terms of age, as we all know, the problem only becomes more severe, more complex when we add to that age discrimination the discrimination of race and then the discrimination of sex, and then when we add to that the discrimination of lack of educational opportunity that was referred to earlier, we are indeed studying very complex problems, and as regard to our work here, I think we have just begun to tip the iceberg, so to speak.

Rather than talk about these problems in abstract form, I would like, and I know I can help you best, if I secure the hard data and give you the hard data that you need to make recommendations to the appropriate agencies. So, therefore, I would like to discuss the employment problems and I have chosen the male; the difference between the males of whites and black males, even though the differences between white females and black females are even greater in terms of discrimination problems in terms of our society, but I think Tish Sommers probably addressed those problems when she appeared before your panel yesterday. So I thought I would talk about the problems of the black male, particularly in terms of black males, because in our society the black male is a symbol of dignity, a symbol as a breadwinner and often these are denied to the black male because of unemployment problems.

Between 1970 and 1976, the unemployment rate for white males 45 to 55 years old increased 1.4 percent, from 2.3 percent to 3.7 percent; for black males of the same age, 45 to 54 years, the rate more than doubled from 3.3 percent to 7.2 percent. Between the same years, 1970-76, and these are all statistics available from the Department of Labor, the unemployment rate for white males age 55 to 64 jumped from 2.7 percent to 4 percent. Again, the situation for black elderly in the active labor force was worse. For the latter, the unemployment rate climbed from 3.4 percent to 6.2 percent.

It is important to stress the modifier active, active labor force participant, because especially black, especially the middle age and older blacks drop out of the labor market, that term you know so well as a discouraged worker that often are not indicated when we compile our statistics in terms of unemployment problems, and the black males, particularly middle age and older black males, of course, become more discouraged much faster and with good reason than white males.

Some of those reasons are blacks do not know, particularly middle aged and black elderly, because the educational opportunities have not been provided to black older males. In fact the education, comparing the illiterate rate for white males is about 2 percent as compared to 12 percent for black males, so blacks do not know how to get jobs readily as whites, and especially through the informal system of relatives, friends, and contacts. The best way to get a job is to know somebody. It certainly is true in our society today. We have many, many systems established, as you know, but still the informal network is often the best way to secure a good job.

Two, as industry has moved out of the city into the suburbs, it has left the older black workers behind. Three, again the discrimination of race alone, being black makes, imposes a barrier within itself of denying more often an opportunity for a black older person more than a white older person.

A comparison of the recovery of older black and white workers will again emphasize the need, as was discussed earlier today, the need for a strong remedial action because between the years 1975 and 1976, which we call the recession years, the percentage of white males 55 to age 64 years old not in the labor force increased 6.4 percent. The percentage of blacks of the same age increased 11.1 percent. The percentage of employed white males showed a slight decrease of 0.2 percent for the same period. For black males, the number of employed decreased 2.9 percent.

Some reasons for this even intolerable situation are the following. The older black workers suffer the triple jeopardy of discrimination of age and also less education and racism. Two, the black elderly have a poor self-image, reasons reinforced by a lack of success in finding a job. As Ms. Kuhn so aptly stated, that the older worker and the older person in our society should be the freest to pursue any line of advocacy they so choose, but unfortunately our society has not made this

possible for many of our black elderly, particularly those black elderly living in the rural South, and some, believe it or not, living in public housing projects in the urban North who are afraid that, if they complain that the light bulb is broken or their fixture in the hallway is not fixed or they do not put a lock on their front door, that they might be evicted because they might be labeled as a troublemaker and then be evicted and have no place to go.

So, there for the black elderly it is a different and a more subtle aspect of the problem. Also, the latter situation points out the need for more counseling, more training, more technical assistance, more outreach. We spoke earlier about educational programs. I was in Delaware on Saturday speaking to a group of black older people who talked about the free educational programs in Delaware. And they did indeed address the problem of no transportation. Why can't we be creative to design educational programs so that the office—you asked me about what particular programs in the Federal government, how about the Office of Consumer Education? Those programs are directly responsible for providing educational programs to the consumer, and I think we have to talk about when we reach 60 and 65 a different kind of education, not the traditional A,B,Cs, but education for understanding the legislative process, for understanding how laws are made, for understanding how older people can themselves appear before a hearing and address their own needs, to break down all the complicated red tape and measures.

In terms of outlining a course for real action, there is no advocacy program for older minority workers, as you well know. The national contractors of Title IX are advocates for older workers because they serve as role models in general, but not for minority persons because the percentage of the Title IX program, the percentage of white workers as compared to black workers in the Title IX program, there are 14,843 white workers, older workers, 55 years of age and older in the Title IX program, but there are only 2,559 black older workers. Now, in terms of meeting the national average, that does meet itself national average until you're looking at the percentage of black older persons in the population.

But what happens to these programs when they reach local community levels? They do not have regulations built into the program at the local level that would ensure that minorities are served in proportion to their constituency at the local community level.

As you know, you prepared, under the direction of Mr. Buggs, a report to the Department of Labor concerning the National Caucus on Blacks and on the National Center on the Black Aged receiving a Title IX contract from the Department of Labor because at that time in 1975 the Department of Labor asked us not to ask them anymore about receiving a labor contract. So we asked the Civil Rights Commission to explore this case for us, and they did chastise, indeed, the Department of Labor.

Since that time, Report 9558 regarding economic stimulus package states that, "We recommend Secretary of Labor take into consideration the special needs of minority older workers and he contract with national aging organizations, minority aging organizations, to administer on their behalf." DOL, Department of Labor, had the opportunity to move in this direction. Congress appropriated over \$15 million in Title IX for the economic stimulus package, and received all kinds of congressional support to support our evidence to operate this program. However, the Department of Labor chose to ignore congressional intent in this regard.

I would like to say that Mr. Henry and I and some other members of the staff met with Mr. Marshall last week, and they did indicate that they had overlooked the word aging, national minority aging organizations, so they were confused in terms of how to appropriate the funds. They didn't know which minority organization they should fund, and we pointed out to them that there are only three federally-recognized by the Administration on Aging, three minority aging organizations, so they would have no problem identifying minority aging organizations. So they promised us that this would not pose a problem in terms of allocating funds for expansion of their programs, so that we could ensure that at least a contract can be made to minority aging organizations so there can be support in communities for employing those black and other minority older workers that need help at local levels.

I also would like to just put into your record for you to further study a report from the ACTION agency. I don't know, you might have seen this already, but the cover of the report is to the ACTION staff as a memorandum, the subject is "new policy and program direction." This was a study taken by their agency and which says "the number of minority people who participate in ACTION-supported programs is so low as to suggest an institutional bias."

I'll be happy to answer any other questions you might have.

MR. DORSEY. Thank you very much.

Mrs. Lyon, I would like to address a question to you along the same lines. Also, let me recognize you as a SAC [State Advisory Committee] member of the Commission, as I understand it?

Ms. LYON. Formerly yes, in Arizona.

MR. DORSEY. And I appreciate your work with us in that regard.

Ms. LYON. Thank you.

MR. DORSEY. I would like your comments in terms of the effect on older Native Americans in terms of the compounded problems in delivery of service to the elderly.

Ms. LYON. Mr. Chairman, and members of the Commission, I want to first express my pleasure at working with you again, this time from a different side of the rostrum, and I would also like to acknowledge the various strong support and encouragement of Chairman Flemming of the National Indian Council on Aging. I doubt whether without that support we would be here at all today.

To clarify some of the statements I will make, I would first like to describe the three categories into which Indian people and Alaska Native people of the United States fall. In the first category, we have members of federally-recognized Indian tribes and Alaska regional corporations whose members may reside on Indian reservations or other trust land; that means land held in trust by the Federal Government for the Indian people. Secondly, in rural nonreservation areas and thirdly in urban areas—the second category would be members of Indian tribes or groups recognized as such by a State with members residing on State-recognized reservations in rural nonreservation areas and again, thirdly, in urban areas. The third category would be individuals not belonging to either of the previous categories but claiming to be of Indian descent or heritage.

At this time, I would request, Mr. Chairman, that the summary report on the National Indian Conference on Aging, which was sponsored by the National Tribal Chairman's Association, be admitted into the record of this hearing.

CHAIRMAN FLEMMING. Without objection let it be entered in the record at this point.

MS. LYON. Thank you. I would also request that a paper which we submitted on social services to American Indians through Title XX be so admitted.

CHAIRMAN FLEMMING. That will be admitted with the above statement.

MS. LYON. Thank you, Mr. Chairman.

Getting back to the status of the first category, the federally-recognized Indian tribes and Alaska regional corporations, I would like to enlarge on that subject by mentioning that this status conference on the members of these entities, the special privileges and the special relationship which exists between the federally-recognized tribes and the Federal Government. The federally-recognized tribes and Alaska regional corporations are recognized in law as quasi-sovereign domestic nations, and as such they are on the same, if not a higher, level than a State because they are Federal entities, not subject to State jurisdiction with very few exceptions.

As a result of the special relationship between these tribes and the Federal Government, there were certain commitments made in solemn treaties, in Executive orders, and in special acts of legislation to provide certain services to the members of these entities because of their status as Indians. This Federal responsibility for certain services is executed primarily through the Bureau of Indian Affairs and the Indian Health Service. However, both the Bureau of Indian Affairs and the Indian Health Service take the attitude that their services are residual and that Indian elderly persons must first appeal for services to those agencies which are responsible for services to the general population.

In most instances, since the States are prime sponsors for these services, these services are then relegated to the States, and it should be

pointed out that at no time has the Federal commitment to provide these services been legally relegated to the States. Conversely, many States, in fact the majority of States, take the attitude that Indians are a Federal responsibility, that Indians do not pay taxes to the State, and that Indians are therefore not entitled to services from the State.

I believe you will readily see that what happens is that the Indian elderly fall between the cracks. One very strong area of discrimination against Indian elderly, and I should explain that when I speak of Indian elderly, I am including Alaska Native elderly as well. One very strong area of discrimination is in the area of statistics. We have, for instance, one million Indians and Native Americans in the United States of which 450,000 live on reservations and in Alaska Native villages. We have 266 federally-recognized tribes, bands, and groups and 200 federally-recognized native villages in Alaska. Forty-eight percent of Indians on reservations are living below the poverty level. Approximately 55 percent of all Indian housing on reservations is recognized as inadequate.

The life expectancy of the average American Indian is 10 years less than that of other Americans. This means that many Indian people don't live long enough to benefit from services for the elderly. The average unemployed on reservations is over 40 percent. In nonreservation areas among Indian people it is 20 percent.

The publication of the Administration on Aging, based on the 1970 census of the population, gives a listing of Indians 65 and over living on identified reservations. I might mention that the States, in planning services to the Indian elderly, use the population statistics provided by the 1970 census. For example, the figure given for Indian people 65 and over living on identified reservations by the U.S. Census for the State of Arizona is 3,714; by the Bureau of Indian Affairs, 6,573. New Mexico, the Census, 2,181; the Bureau of Indian Affairs, 4,793. State of Washington, 407 by the Census; 1,616 by the Bureau of Indian Affairs. State of Wisconsin is 350 U.S. Census; BIA, 997. I'll just give one more figure, in the State of California, the U.S. Census figure, 123; the Bureau of Indian Affairs, 2,615. I do not need to emphasize that since program funds and their allocation are based on population statistics that this indicates a very strong undercount of the Indian service or target population.

The other problem that we experience is that, even in those agencies which have a mandate to serve the Indian people, the elderly are at the bottom of the priority list. The Bureau of Indian Affairs, even in its social services branch, has no mandate to serve the elderly. Arizona is the only State where the elderly Indians are served, specifically, by the Bureau of Indian Affairs because that State has no Medicare program.

The Indian Health Service, which again has as its only mandate to serve the members of federally-recognized tribes, has the elderly as its lowest priority. When funds are allocated, for instance, for eyeglasses

or other prosthetic devices, other age groups are given preference, and the elderly do without.

A very good example of exclusion is in Title XX. One State, which I shall not name here, in fiscal year 1976 sent back \$12 million of Title XX monies and failed to serve any of its two Indian reservations. In fiscal 77 the same State contracted for Title XX services with two tribes and those were general services, including services to the elderly; it contracted with one tribe for child day care services only. Again, out of a total of 22 reservations which received no services.

Another area of discrimination is the fact that there is a failure on the part of eligibility workers to recognize the traditional Indian marriages. When performed by the legal entities of these Indian tribes, these marriages have been legally adjudicated to be valid, and yet an Indian woman married by Indian custom often is not eligible for the social security benefits that would accrue to her through her husband.

The Hill-Burton Act is another problem area. Funds for the establishment of nursing homes and shelter care facilities go to the States for administration, and the States will not fund the establishment of such institutions on Indian reservations unless that tribe is willing to give the State jurisdiction on that jurisdiction for licensing and monitoring. I do not need to tell you that we are in dire need of such facilities on or near our reservations because our elderly, when they are sent to an unfamiliar environment away from their home to nursing homes and are unable to understand the language, they suffer from cultural shock and this many times hastens their untimely death.

Another problem area is in the area of housing. There is a requirement by the Department of Housing and Urban Development that a person be at least 62 years old and in good health to qualify for admission to a housing project. As I mentioned, many of our people not only do not live that long, but because of the much greater hardships of a harsh physical environment in which they live, they often cannot qualify for the good-health portion of that requirement.

Transportation and the funding of transportation programs through States again is a problem. Indian tribes have very few chances to be even considered for funding through Department of Transportation because they have to compete with other State entities, and since "Indians don't pay taxes," the States are not too much inclined to listen to the needs of the Indian people.

Another problem is in the area of matching requirements.

CHAIRMAN FLEMMING. Unfortunately we are running out, but we have run out of time. If you just have one or two additional points, we'll be glad to have you make them, but I do want you to understand that we would like to have the complete statement for not only inclusion in the record, but so that we can utilize it when we are developing our report and our findings and recommendations. I don't like to interrupt because you know that I schedule this tight for many people and I'm afraid our time has run out.

Ms. LYON. I understand. I just have one more sentence. On the subject of matching requirements, since Indian tribes usually do not have access to any funds other than Federal funds and they cannot be used for matching purposes, that does create a very serious problem, for instance, in Title XX. Thank you.

CHAIRMAN FLEMMING. The panel has been listed as a panel of advocates and, as all members of the panel know, I have had a good deal of experience sitting on the other side of the table and listening to the advocates, and I know how effective all of you have been, and I know how effective you are right now and will continue to be.

This Commission appreciates your sharing with us your insights. In view of the fact Mrs. Kuhn identified her age, which happens to be the same as mine, I am moved to tell one story, I think it might be an interesting story. It's kind of a break here. She and I participated in a meeting in the Cabinet room of the White House under another administration, not under this administration, and the same thing happened that's happening right now. Time began to run out as far as the President was concerned, and so somebody wanted to be recognized, and he said, "All right, I'm going to recognize you, but I want to hear first from the young lady on your left." Miss Kuhn replied, "Mr. President, I appreciate being recognized, but I'm not a young lady, I'm an old lady and I'm proud of it."

Commissioner Freeman, you have one comment?

COMMISSIONER FREEMAN. Yes, I want to comment because I want to express my appreciation to each one of you because you have made a very significant contribution to this record. I am concerned and have been concerned that in all of these 3 days we would not have recognized some of the problems that you have put forth, you have articulated so well.

The point that Miss Kuhn makes with respect to the value of age-segregated services, questioning the value of age-segregated services, is certainly one this Commission ought to be concerned about because when we live in isolation from each other, that is one reason for the perpetuation of the myth about the inferior report and superiority of one group over another.

I would like to ask Mrs. Lyon, however, even though you were not identifying that State, because this Commission is continuing its studies about the problems and discrimination against the Indians, if you would submit to this Commission the name of that State that sent back \$12 million and failed to include two Indian reservations, we would like to have that for the record. We are recognizing defame and degrade, but certainly we have a responsibility to at least pursue that.

And again, with respect to the statement made by Ms. Davis, where the question was asked of your organization, which minority organization they should fund in their total of three, this also demonstrates a problem, you know, in the whole universe of the other organizations that are being funded. Nobody ever questions which majority organiza-

tion. It is usually when it comes to a minority that one says, "Well, which one of you black shall receive the part of the action?" You have really made a significant contribution and I want to express my own personal appreciation to all of you.

CHAIRMAN FLEMMING. Thank you very much. Mrs. Lyon, if you would give counsel the name of the State, we'd appreciate it. Thank you all very, very much, we appreciate it.

Counsel will call the next witnesses.

MR. DORSEY. Dr. Julius Richmond, Assistant Secretary for Health, HEW, accompanied by Dr. Thomas Plaut, Deputy Director, National Institute of Mental Health; Dr. Steven Sharfstein, Director, Division of Mental Health Service Programs, NIMH; Dr. Gene Cohen, Chief, Center on Studies for the Mental Health of the Elderly, NIMH; Y.B. Rhee, Associate Bureau Director for Office for Community Health Services, Health Services Administration.

[Drs. Nancy Miller, Thomas Plaut, Y.B. Rhee, Julius Richmond, and Steven Sharfstein were sworn.]

TESTIMONY OF JULIUS RICHMOND, ASSISTANT SECRETARY FOR HEALTH; NANCY MILLER, CENTER ON STUDIES FOR THE MENTAL HEALTH OF THE ELDERLY; THOMAS PLAUT, DEPUTY DIRECTOR; AND STEVEN SHARFSTEIN, DIRECTOR, DIVISION OF MENTAL HEALTH SERVICES PROGRAMS; NATIONAL INSTITUTE OF MENTAL HEALTH; AND Y. B. RHEE, ASSOCIATE DIRECTOR, BUREAU OF COMMUNITY HEALTH SERVICES, HEALTH SERVICES ADMINISTRATION; DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CHAIRMAN FLEMMING. We appreciate your being with us very, very much. Counsel will proceed.

DR. RICHMOND. Might I make a correction in terms of the staff who are with me?

CHAIRMAN FLEMMING. Yes.

DR. RICHMOND. In place of Gene Cohen we have Dr. Nancy Miller.

CHAIRMAN FLEMMING. Very glad to have her with us. Dr. Richmond, I understand you have a time problem here in terms of an engagement, I guess, on the Hill. We'll certainly understand if you decide you have to leave and if your associates can remain until we do finish the questioning, why, we'd appreciate that very, very much. We're delighted to have you and your associates with us.

DR. RICHMOND. I might say, Mr. Chairman, it is a deep pleasure and I feel a great privilege to appear before you and the other members of the Commission in view of your own efforts in particular on behalf of older Americans and have admired them very much, and I think your efforts have stood as a model for most of us at this point. It ought to be a very clear, as a long-time observer of the human services scene, this shouldn't go unrecognized.

CHAIRMAN FLEMMING. Thank you very much, and those of us who have had the opportunity of observing your services when you were in the public services before certainly are delighted you are back, and back in this key position.

DR. RICHMOND. Thank you, sir.

MR. DORSEY. I just want to inform you that the questions will be directed to you and at any if time you want to defer to staff, please feel free, again recognizing that we are a bit behind schedule and you do have an important appointment, there may be some questions that we wish to propound after you're gone. Perhaps you could leave with staff policy for a written reply in those areas that are a matter of policy best answered by yourself?

DR. RICHMOND. Yes, we will be pleased to do that.

MR. DORSEY. Statutory provisions which require community mental health centers to seek reimbursement for services from third parties such as Medicare and Medicaid, in these areas the centers claim that these larger funding sources which might provide incentives to older persons are in fact not available. Medicare restricts payments for inpatient and outpatient psychiatric care services and Medicaid costs exclude psychiatric services to persons between 21 and 65. Specifically I would ask what, if any, recommendations should be made relative to the fiscal relationship between Medicare, Medicaid, and community mental health centers?

DR. RICHMOND. Well, you have asked a very complex question indeed. I think before calling on my colleagues to make some more detailed comments, I would just like to mention that third-party payments for psychiatric services generally at all ages tend from our vantage point to be relatively inadequate. The private carriers, the third-party public expenditures, the administrations of, for public funds tend to be very apprehensive about across-the-board authorization for psychiatric services in the same sense that, in general, there is insurance for general health services.

While some of us appreciate that apprehension, we realize there is significant discrimination involved, and I just wanted to make the point that it is not only for older Americans. I would also make the point that we are in the process of trying to develop guidelines on which proposed legislation for national health insurance will be based and, just last Saturday afternoon in New Haven, the Secretary's advisory committee on national health insurance had its hearings devoted exclusively to the issues of mental health coverage under national health insurance as we are beginning to prepare for that, so that we have been very concerned about the relative inadequacies of coverage for mental health services generally. I think, in terms of details, I will let my colleague, for some comments.

DR. PLAUT. I have a few comments and Dr. Sharfstein will respond to some of the technical aspects of the question.

The President's Commission on Mental Health, of which Mrs. Carter is the Honorary Chairperson, recently delivered to Mr. Carter and he released to the public the preliminary report of that Commission. Dr. Richmond to my right is an ex officio member of that Commission and Florence Mahoney, who is well known, is also a member of that Commission.

One of the recommendations of that Commission deals directly with the specific issue that you mention, having to do with the difficulties that community mental health centers have had in getting mainstream third-party funds like Medicare and Medicaid, and it is an issue that the Commission has under intensive study and will be tackling further.

The one specific recommendation, just take me a moment to read it, "that the Secretary of HEW work in cooperation with the task force, with local doctors and administrators to modify certain certification requirements under Medicare and Medicaid for State mental hospitals and other psychiatric inpatient services to ensure that they are not unduly restrictive."

In addition to that, there are similar problems around the community mental health centers in terms they are defined as eligible providers under some of these issues. I know that Dr. Sharfstein will want to elaborate on this briefly.

MR. DORSEY. What was the date of that preliminary report?

DR. PLAUT. The first of September. The report went to the President—and it was actually released on the 15th—and copies have been made available to this Commission.

MR. DORSEY. Thank you.

DR. SHARFSTEIN. As you probably know, the grant program is a seed money grant and will decline over time; what is expected over time is that other sorts of funds become available to centers so that at some point in time they become self-sufficient in terms of the direct Federal grant.

It was hoped at the outset of the program that the Federal third-party programs, notably Medicare and Medicaid, would make up a big portion of the shortfall as the Federal grant declines. However, Medicare especially so, in [inaudible], there have been great disappointments in this area. The Medicare generally provides less than on the average 2 percent of the operating costs of community; in Medicaid, it's been around 9 percent.

The 2 percent that's provided by Medicare is almost entirely inpatient, about 90 percent of that 2 percent. In part, that's due to the restriction in Medicare to outpatient reimbursement for psychiatric services, an extraordinary, irrational restriction which allows you only to do an adequate diagnosis and evaluation of persons over 65 when they are in the hospital and promotes hospitalizations and in many instances longer term institutionalization rather than what's been the movement in the past to less restrictive settings and outpatient care. I think it is been costly to the Medicare program, yet repeated attempts to modify this restriction in the Medicare program have not met with success because of fears around costs.

In addition, there are restrictions in the Medicare program in terms of home health care. Home health agencies are very strictly defined under Medicare; there are very few of them. Community mental health centers do not qualify as home health agencies. One very promising

development that could occur in terms of the prevention of hospitalization and institutionalization of the elderly would be to provide incentives to community mental health centers to deliver care in the home for the elderly. This, at the present time, is not reimbursable under Medicare.

When I was in Boston and worked on, in community health centers, one of the programs that we were able to institute with basically State money in Massachusetts was a home program for the elderly in the Jamaica part of Boston, and I felt strongly this was extremely effective in both followup of mentally ill elderly in the home and also prevention of hospitalization. However, there was no way that we could get the Medicare program to help reimburse for that kind of service.

In addition, community mental health centers have had difficulty in becoming providers of services. The provider status category in Medicare is conferred primarily on general hospitals and a large number of centers are for [inaudible] of general hospitals, and this is where they can get some Medicare reimbursement. There are also a number of centers free-standing or affiliated with other kinds of hospitals and they have had a difficult time getting provider status under Medicare. I think I'll stop at this point.

DR. RICHMOND. If I might just make a very brief comment, I can't provide a promissory note that these kinds of guidelines will be corrected, but I can suggest that there are some reasons to be more hopeful. I think, one, the experience which Dr. Sharfstein has described as a kind of irrational approach and in most respects, we think, an uneconomic approach should no longer prevail now that we've had some experiences with this.

The other is I think you're aware of the fact that, since the Secretary has come into office, there has been the development of a new Administration, Health Care Financing Administration, and I think yesterday you heard from Mr. Derzon who is the Administrator. I mention this because we have had an opportunity now to begin to work closely together, and I'll be seeing him tomorrow and you may be assured that I'll be communicating to him some of our concerns about this very issue.

MR. DORSEY. I assume from that statement that you are projecting some recommendations which would help to alleviate this particular problem in terms of the relationship between community mental health centers and Medicare, Medicaid?

DR. RICHMOND. Yes, that's correct.

MR. DORSEY. The 1975 amendments to the Community Mental Health Centers Act mandate programs of specialized services to older persons and to children. However, some centers have interpreted the mandate narrowly, concentrating services to older persons only in nursing homes, thereby tending towards institutionalization. Other centers employ consultation and educational services only in serving older persons or children, with no connection to the provision of clinical ser-

vices, and other centers, unfortunately, in our experience, are not implementing the provisions at all. Although 1 year's extension has been granted for centers to meet the mandate, what action will NIMH be taking to step it up toward full compliance?

DR. RICHMOND. I think I might call on Dr. Plaut to answer that.

DR. PLAUT. Again let me make a general comment, then Dr. Sharfstein will fill in the details. Under the new legislation which you refer to, Mr. Dorsey, the centers that are funded under that new legislation have to meet the requirements of the new act. There are a large proportion of centers that continue to be funded under the old act and, while that mandate can also be read as requiring service to the aged, does not have the same teeth in it as the new act does. The details, as I say, I'll let Dr. Sharfstein respond further on that, perhaps have something to add to the end of his remarks.

DR. SHARFSTEIN. At the present time, there are about 670 funded community mental health centers of which somewhat over 600 are fully operational at this point. We estimate that about 200 of those should be in compliance with the requirements of the Public Law 94-63, at least 200. A number of centers who don't receive yet Public Law 94-63 funds or who don't need to comply with the requirements for specialized services for children and elderly do have services for these targeted groups, as the old legislation required that centers meet the needs of the catchment area, and, of course, the needs of the catchment area include these special groups in terms of target population, these specialized needs of the elderly and children.

We administer the program and monitor for compliance purposes through the regional offices. We have developed a monitoring package and have been working with the regional offices in making sure that centers comply with the myriad of requirements under the old act as well as Public Law 94-63. We have just recently, in the process of working toward full compliance in terms of the law, drafted guidelines for section 201 and services to targeted populations, children and the elderly, and these are the kinds of things which we would expect of a community mental health center which is in compliance with the law.

We would expect for children services and for elderly services a CMHC should, (a) identify a professional person on the staff knowledgeable of each group's special needs with responsibilities and accountability for the development, implementation, coordination of programs on a full-time basis; (b) identify additional administrative and clinical staff for the provision of services; (c) identify, earmark financial resources in the CMHC budget; and (d) insurance that governing and advisory boards will have adequate representation of persons who are knowledgeable of and advocates for programs for the children and the elderly.

In addition, we stress that it is necessary to conduct mental health needs assessments in catchment areas, particularly oriented toward the

elderly and toward children, and we also mandate in these guidelines that programs for the elderly must address the full range of services made available to the center geared to the physical and/or emotional needs of the elderly. It is important that programs for the elderly be integrated within the center's program to avoid a sense of isolation. At the same time, we say there has to be a target effort; it is important that all of the services of the community health center—day treatment services, patient care, inpatient care, emergency services—be available to this group.

In addition, we say, in planning for programs for the elderly, attention should be paid to the special problems of old age; diagnostic services, for example, should include a physical health assessment performed by a physician, in addition to relevant cognitive emotional and social evaluations. Treatment services should stress accessibility, recognizing the difficulty some elderly persons may face trying to reach service; accordingly outreach services and home visits should be an integral part of any program of service to the elderly. Liaison services should focus on these resources and agencies which regularly deal with elderly populations so as to prompt coordination and more ready access to other health and human service. Since for many elderly opportunities for social contact are restricted, it is particularly important that followup services be carefully planned and implemented with the aim of therapeutic gains and reducing the impact of isolation. I can provide a copy of the guidelines to you.

DR. PLAUT. I think we would be less than honest if we pretended that the centers have done a superior job of meeting the needs of aged population. There are some exceptions. There's one center in Florida which has had a tremendous program for serving the aged and it has been written up in a number of places. There are several problems. One is community mental health centers still tend to be staffed primarily by traditional mental health professionals who on the whole, although there are exceptions, partake of the therapeutic nihilism and pessimism about services for the aged. So that requires consultation and technical assistance, as Dr. Sharfstein has indicated his major responsibility for this, because this is a partially decentralized program which is with the regional office staff. I think Dr. Richmond would probably agree with me that in recent years the staffs of these regional offices have found it extremely difficult if not impossible to maintain more monitoring responsibilities in relation to this program.

A second difficulty is that there are still relatively few professionals and paraprofessionals in the mental health area with particular interest in training in relation to this target group, and through the center which Dr. Miller represents here, as well as other parts of NIMH, we are endeavoring to do two things; one, get more attention to the needs of the aged in generic training programs for mental health professionals and paraprofessionals; and secondly, develop some demonstration and pilot projects for training of specialists in relation to community based services for the aged.

CHAIRMAN FLEMMING. Go ahead, Steve, because I want to ask two or three questions.

VICE CHAIRMAN HORN. I have one for Dr. Richmond that is on this very point of how we get better training for those practitioners who will be dealing with an older population. This came up in the previous panels of aging advocates, and I wonder, Dr. Richmond, to what degree should Federal grants to medical schools be conditioned with the requirement that future doctors be sensitized to the problems of older persons?

DR. RICHMOND. Well, I think you've asked a very important question, having recently arrived from one of these medical schools where we were trying to do something about this. I think I can report that there has been some consciousness raising in connection with this issue. We have on the Harvard Medical School faculty, just as one, Dr. Alexander Luaf who is the professor of medicine at the Massachusetts General Hospital, and whose specialty really is the study of aging and particularly longevity; his great interest really is in people who live beyond the hundred years and he's gone all over the world studying such people. I mention this because it provides a model on which to build, and since most students learn best from models which faculty members provide for them, we think this is important.

At the Hebrew Rehabilitation Center we have a group collaborating with the Beth Israel Hospital of Medicine that also are providing interesting opportunities for students, and I think that the past bias that we've tended to accept—that is, the reports of bias of young people against working with the elderly—really is just that, bias. When we provide them with the appropriate models, my experience is they catch on, they get excited. One other very important dimension of this, I think, that often goes unmentioned is the tremendous gratification that professionals have expressed to them by older patients, and even though I'm a pediatrician, in the years when I have practiced medicine with adults, I've been very much impressed with the gratification that comes from taking care of older patients because they generally express so much appreciation for what they are offered.

I think we need to build on models like this, but we're at the early stages; I think Dr. Butler indicated to you and I think the very existence of that institute is going to spearhead a good deal of activity, and indeed that's part of what stimulated our interest at the Harvard Medical School over the past 4 and 5 years. We were interested, but as the institute came into being about 2 years ago there was a great surge of interest, so that I'm hopeful. We do have quite a job to do here, and I think that we should indeed think of providing some stimulus through some funding approach, and I'm not quite sure yet what the best vehicle would be. Dr. Butler, I know, has had some ideas about this, but I've been here relatively a short period of time and he and I have not had a chance really to match some strategy on this.

VICE CHAIRMAN HORN. Let me pursue that a minute. As I understand your answer, you believe some models are now being developed. This is a worthwhile endeavor. You would hope that these would spread to other medical schools to train future doctors. You think it might be possible for the Federal Government to stimulate either these models or their replication in other medical schools, but specifically on my question, and obviously the question is based on what Congress has been doing as a condition, which has upset the medical schools, such as saving space for those Americans who are trained abroad in medicine, Guadalajara and other places, would you favor, or do you think that is the wrong approach in terms of public policy, a specific requirement in congressional enactment pertaining to the grants now given to medical schools where it would be conditional upon appropriate geriatric programs being available for all graduates of those medical schools as a condition of Federal law?

DR. RICHMOND. Well, I think, again, you're raising a very complicated issue. I certainly am in favor of developing sounder teaching and training programs in the medical schools and in postgraduate education in this direction, but what the best carrot is for doing this I'm not at the moment sure.

In the current issue of the *New England Journal of Medicine*, Dr. Alex Comfort makes the point that the time has come for us to have chairs in geriatrics in all of our medical schools. He was stimulated to write that letter to the editor because Cornell Medical School had just established a chair in geriatrics.

Now, that might indeed be one way of going about it. I'm afraid that, if we put too many categorical tags onto the current funds which the medical schools get, we may find that self-defeating in that we have a variety of interest groups who would want to see the medical schools directed toward one or another emphasis.

So that I think we should move in this direction. I'm just not yet prepared to suggest what the best strategy is.

VICE CHAIRMAN HORN. Thank you.

CHAIRMAN FLEMMING. I would like at this point, first of all, to say that I'm impressed with the guidelines that have been read. I'm also impressed with the fact, as a result of our field hearings and my own observation, that the area of mental health is one of the major areas where there is discrimination on the basis of age. The figures that you and others have used certainly point very definitely to that particular conclusion. What I am concerned about is what can be done in order to bring about some kind of a service so that today's older person will really be given help because I am convinced that today's older persons need help, and some of the things we talk about are things that are going to be helpful not to my generation but to the next generation.

For example, some of the testimony that was presented to us came in response to questions about outreach programs on the part of community mental health clinics. It was clear they didn't have an outreach

program that related to older persons. When pressed, the response typically was, "If you get us some more money, we'll have an outreach program."

Then in addition to that, we had testimony which would indicate that the cost-benefit concept had worked its way into their thinking and that they definitely felt society would get a better return if they focused on the problems of mental illness in the middle age; they didn't mention the children very often, either, and that really maybe we wouldn't get too much of a return on investment made with older persons, but again the suggestion, if we get some more money, maybe they'd do something about it.

Now, my feeling is that within our present resources we have got a built-in inequity as far as older persons are concerned. It seems to me that those of us who are in government are really challenged to try to figure out how within the present resources, we can correct an inequitable situation. I'll give you just one illustration growing out of the evidence.

I think one person was kind of reversing the questioning process and in effect saying to me, "Well, all right, we can serve one additional person. We've got a child, we've got a middle-age person, we've got a woman 80 years of age." I'm sure that she felt that the response that should be made to that question was obvious, that they should—at least that the 80-year-old woman was out of the picture. I just asked whether it was possible, in view of the fact that we are going to have an effective law against age discrimination, to develop criteria, professional criteria for making that kind of a choice that did not involve the consideration of age.

I just cite that as an illustration. It seems to me that this is the basic problem that we have in front of us. I don't know what the prospects are for additional resources in the mental health area. You know that better than I do, but I'm just assuming, just for the moment, that they are not too good and that we're going to have to live within our existing resources. Now, assuming that then, how can we live with or work within those resources in such a manner as to correct what has become kind of built-in inequities?

DR. RICHMOND. Well, I might make some brief comments and then call on my colleagues again. I think, as Dr. Sharfstein indicated at one point, one of the things we can try to redress are the irrational inequities that drive us in the direction of the inappropriate expenditure of funds; as he pointed out, when we have authorization predominantly for inpatient services there is, of course, the inclination to use inpatient services for diagnostic and therapeutic work which might otherwise be conducted in an outpatient setting. So I think that that is one very clear issue that we mean to redress, and as I indicated, I certainly will be talking with Mr. Derzon about that.

CHAIRMAN FLEMMING. As I say, I certainly agree on that. I long felt that's an irrational type of provision, and I hope if you make any

specific recommendation along that line that we might have the benefit of it because it seems to me that this is the kind of an issue we should address ourselves in our recommendations to the President and our Congress.

DR. RICHMOND. We would be glad to provide you with that. I think the other issue, of course, is the matter of limitations by third-party payers in general. We think this puts an undue burden on the patients and the providers who are trying to take care of psychiatric problems, patients with psychiatric problems, so that that is another issue that I think we need to take care of.

I think the third matter that Dr. Plaut and Dr. Sharfstein have commented on is, through the judicious development of guidelines and judicious work with the community mental health centers and other organized psychiatric settings, that we begin to really have them attend more equitably to all patients in need. And my suggestion, Mr. Chairman, would be that if we are dealing with relatively scarce resources and, of course, resources will always be finite, that we make the judgment to try to divide those resources proportionately among all those in need rather than our making the value judgment that some human beings are in less need than others.

So in addition to our having those direct responsibilities to our mental health services, I think we will shortly be seeing the emergence of a new force which could be useful for this purpose—that is, developing greater equity in the services—and that is the health system agencies and our national council on planning and resources. It is very interesting that in spite of the fact that that act was passed, I think it was in 1974, there had been only one meeting of that council prior to this administration's coming into office.

We, last Friday and Saturday, had the second meeting of that council. It is a council which has been added to, and since there will be well over 200 such agencies responsible for health and mental health planning throughout the various States, we think that as they begin to generate guidelines that we will have another force, not a direct one, necessarily, but at the local level. Those are the groups that are going to have to make some of the judgments about priorities and allocations such as you suggest.

I think you might have noted in this morning's *New York Times* was the report of the first guidelines which were published, which in an indirect way have some influence because what those guidelines were suggesting, among other things, that we conserve some of our health dollars generally, removing health beds from circulation in order for those funds to be available for other purposes. There are other suggestions to communities in terms of how they might conduct their planning for the conservation of resources.

I'm just suggesting that as we approach health planning more rationally, perhaps there will be greater equity in the system. I would also add that I think the President and the Secretary are deeply com-

mitted in the national health insurance planning to genuine equity in the system, and when we speak of that equity we speak across the board: no age group should be exempt when we speak of equity in that sense. So these are some of the issues, Mr. Chairman, I think we're addressing.

CHAIRMAN FLEMMING. I appreciate very, very much your response. It is a very heartening response and one that gives real hope.

On the guidelines, as the law now stands, how tough can you be with the people that are getting the money in terms of conformance to those guidelines? Are they advisory or if they don't follow them, can you follow up and insist on action?

DR. RICHMOND. Certainly in connection with the expenditure of Federal funds, Medicare, and Medicaid we do have considerable leverage. I think we're going to have to feel our way in this because these health system agencies are new; they haven't had a great deal of experience in how to make their presence felt. But we do have the feeling that the Secretary does have the responsibility for establishing guidelines under which the Federal expenditures for services will be made, so that we do have the potentiality for exerting a considerable influence, and since Medicare and Medicaid out of the total of approximately \$140 billions amounts to sometime \$40 and \$50 billions, it's a sizable amount.

CHAIRMAN FLEMMING. I'm sure you stayed longer than you should have already, and we do appreciate it very, very much. Again, I hope that, if you and your associates have some additional ideas as to things that government might do to correct the kind of discrimination we have at the present time, feel free to get them to us.

DR. RICHMOND. Thank you very much, and I'm sure my colleagues will be happy to answer additional questions. I regret very much having to leave.

CHAIRMAN FLEMMING. Thanks a lot. I interrupted your questioning, Mr. Dorsey. Do you have any further questions?

MR. DORSEY. We have prepared a listing as I indicated earlier so that if it is—Commissioners could continue their questioning at this time; the staff could pass on those questions for a specific response in writing for the record.

CHAIRMAN FLEMMING. If this is satisfactory from your point of view, we would give you these questions. Then if you could give us written replies that we could consider and also make a part of the record at this point, it would be very helpful.

DR. PLAUT. It will be a pleasure to do so.

CHAIRMAN FLEMMING. Commissioner Horn, do you have further questions?

VICE CHAIRMAN HORN. Well, I guess my only additional question, would be, Dr. Plaut, in your responsibilities within NIMH, do you see any need to condition those programs for which you are responsible in grants to medical schools to encourage the development of programs in this area to deal with the elderly?

DR. PLAUT. You've chosen your use of words very carefully, Commissioner Horn, as I was listening to you. One of the five priorities that we have for all our training activities in the mental health field—annual budget of about \$65 million in grants going out primarily to traditional grants institution—one of the priorities is we have emphasis on services to underserved groups, particularly minorities, aged, and the children. Very specifically, during the past fiscal year we've initiated some special programs to train primary care health workers in relation to the psychiatric problems of the aged.

I think we anticipate within the next 2 or 3 years sharpening the requirements for training in institutions before they can receive funds from the Federal mental health agency. Also working fairly closely, Commissioner Horn, with the service delivery systems, namely, the eventual employers of the trainees, to make sure that the training is relevant to the kinds of service that have to be delivered, particularly here the State mental health authorities. I think certainly steps to encourage, to develop that kind of a carrot, to use Dr. Richmond's terminology, is very much in line with our thinking.

VICE CHAIRMAN HORN. Fine.

CHAIRMAN FLEMMING. Mr. Ruiz, do you have any questions?

COMMISSIONER RUIZ. I don't have a question, but this is the proper place to insert another statistic, Mr. Chairman. The end of the youth culture and the bringing of America reached the—another article, dated October 3, 1977, issue of the *U.S. News & World Report*, and to enter into the record at this time the statistics on the coming age mix as reported in this periodical based upon the U.S. Census Bureau figures, and I make reference to the following in quotations: "Today more than half of all Americans are under 30. In 2000 middle age will outnumber the young. In 2020 elderly will number nearly one in five Americans." So the pioneer work that the people on the panel are doing is indeed pioneer work because the youngest ones here will be alive in 2030. The young adults and middle age will still be around in 2000; we're really talking about ourselves. And the impact is very important.

CHAIRMAN FLEMMING. Talking about you and I, all right, I doubt that, but in the *U.S. News & World Report*, I appreciate the fact they are paying some attention to this issue and I'm also grateful that you read it and called it to our attention.

VICE CHAIRMAN HORN. I must say I admire to my colleague's ability to listen to the witnesses and to read the current periodicals and put them in the record.

COMMISSIONER RUIZ. Along that line—

CHAIRMAN FLEMMING. Wait a minute, we're behind schedule here. The Chair has got to move it along, but as many of you on the panel know, I am deeply interested in this particular issue, and I appreciate the contributions that have been made and I do hope that you'll get these questions, but in addition to that, if you've got other positive

ideas that you think we ought to consider from the standpoint of getting behind it, so as to accelerate a movement in the direction of today's older person having access to this service and not being discriminated against, we'd really appreciate it. Thanks a lot. Delighted to have you.

DR. PLAUT. Pleasure to be here, Mr. Flemming.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. DORSEY. Angie Cruz, Samuel Cagey, Ben Callender-Gaxiola, Raul Yzaguirre.

[Mr. Ben Callender-Gaxiola, Mr. Samuel Cagey, Ms. Angie Cruz, and Mr. Raul Yzaguirre were sworn.]

TESTIMONY OF BEN CALLENDER-GAXIOLA, DIRECTOR OF PROGRAM DEVELOPMENT, NATIONAL EDUCATION SERVICE CENTERS, LEAGUE OF UNITED LATIN AMERICAN CITIZENS; SAMUEL CAGEY, CHAIRMAN, LUMMI INDIAN TRIBE, AND MEMBER, NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION; ANGIE CRUZ, BOARD MEMBER, PACIFIC-ASIAN COALITION; AND RAUL YZAGUIRRE, NATIONAL DIRECTOR, NATIONAL COUNCIL OF LA RAZA.

VICE CHAIRMAN HORN. Please be seated. Counsel?

MR. DORSEY. Beginning with Ms. Cruz, I wonder if you would please, each of you, state your full name, organizational affiliation, and position for the record?

MS. CRUZ. My name is Angie Cruz. I am a member of the national board of Pacific-Asian Coalition, the only national Pacific-Asian association in the country. I am also former chairperson of the Asian American Council of New York, and the present vice chairperson of the Philippine Americans for Community Action Development.

MR. DORSEY. Thank you. Mr. Cagey?

MR. CAGEY. I'm Samuel Cagey, Chairman of the Lummi Indian Tribe of the State of Washington, also a member of the National Tribal Chairman's Association.

MR. CALLENDER-GAXIOLA. My name is Ben Callender-Gaxiola. I am director of program development for the national educational service centers of the League of United Latin American Citizens.

MR. DORSEY. Mr. Yzaguirre?

MR. YZAGUIRRE. My name is Raul Yzaguirre. I'm national director for the National Council of La Raza.

MR. DORSEY. We have found in some areas of the country a combination of age and ethnicity may inhibit the participation of certain groups of older persons more than others in federally-assisted programs. Many of you were present for the earlier panel which spoke to this very issue. I'd ask each of you to respond to the following question. What role do age, ethnicity, and other factors play, do you believe, in regard to social service delivery programs? If I could start with Ms. Cruz?

Ms. CRUZ. Actually, I tried to summarize. I have a 16-page written testimony, but I will save you the trouble. I will just give you the summarized answer that I have prepared.

MR. DORSEY. However, I would like—

Ms. CRUZ. A copy.

MR. DORSEY. Yes, for the record.

VICE CHAIRMAN HORN Without objection, your statement will be submitted in full and printed in the record at this point.

Ms. CRUZ. Among the major problems that we have seen in the Asian American and Pacific Island communities are the following: lack of statistics, operational positive stereotypes, the strong immigrant background, the uniqueness of the Asian-Pacific Island Americans, the lack of homogeneous neighborhoods, and the simple fact that we are always left out. I can briefly explain each one if you would like me to.

MR. DORSEY. If you could just summarize for each of those categories?

Ms. CRUZ. Okay, as far as lack of statistics go, I'll just give you one recent example, the experience of the only—well, I don't know if it is really the only one, but it is one of the most important projects on the elderly, Pacific-Asian elderly research project in Los Angeles, they tried to make a survey of 116 area agencies in 7 States, the States that include the biggest Asian American and Pacific Island populations. Of the 116 area agencies surveyed, only 70 responded; of 70, 45 only gave census data figures; they did not give the service delivery, the needs based on information, and so forth. There was very little information given aside from the census data information, so that is just one example of the problem we have. How can you give us our needs? How can you help us in our problems if you do not know what they are?

Now, the other problem, I said, was the operational positive stereotypes. A lot of people believe that Asian Americans take care of themselves, that we take care of our elderly, that we don't want to accept anything from the government, that we don't need anything from the government. Of course, that is a very positive picture, but that is far from the truth, as, for example, in the 1971 White House conference, it was mentioned in the final report that really Asian Americans do have problems, and these problems are even compounded by the fact that they have a different culture and a different background.

Now, the strong immigrant background that I was talking to refers to both the very old, I guess elderly or old, but I mean, two types of elderly people. The first type we call the oldtimers; they were the ones that came here as farmworkers. They were tilling the soil and so forth. They grew old in this country. The second type of elderly that we have are those who just came recently. In the sixties a lot of professionals came in, so they petitioned for their parents and the parents are here now. These are the two types of Asian American elderly we have at the moment.

Now, if you will, because of the strong immigrant backgrounds, they are not used to fighting for their rights. The oldtimers have been subjugated; they have really been discriminated against. We can see that in history, even the laws, like the Chinese Exclusion Act, Philippine Exclusion Act, and so forth. All these show discriminatory attitude of this society towards the Asian Americans. So they don't want to fight. They don't want to ask anything from the government. Many of them don't even want to become citizens, and because of that, they feel they cannot ask anything from the government. Now, the new elderly immigrants, those that have been petitioned by their children, they have a different kind of problem, but again they are not fighting for whatever rights they have.

Now, the uniqueness of Asian Americans, I guess, you know that, too, we have a different cuisine, we have a different language, we have a different outlook on life, and so forth. Because of these realities, sometimes, many of our needs are not met.

Lack of homogeneous neighborhoods, also there are many Asian Americans, Pacific Island elderly, there are many of them now, but the problem is that they are not concentrated in major areas, except for Chinatowns and Little Tokyo and Manilatown in California. They are scattered all throughout the metropolitan areas and because of that it is hard to develop a center or a program just for them.

Now, the sixth part, that we are left out. I will just give you three examples. First of all, in that 1971 White House conference I was talking about, the special session on the Asian American concerns was only added a month before the actual conference. We, of course, know that preplanning had started way before then, but we were only invited a month before because a militant group tried to push our way in.

Now, the second example I will give you in that only recently when Mrs. Carter convened a meeting in the White House to discuss problems of the aging, not one Asian American was invited. I hate to mention this, but actually our organization was only contacted 2 or 3 weeks before the actual hearing, when I know that the hearings started in June. Thanks to Laura Wilmot who most persistently tried to contact our organization and get someone from our communities, if she did not insist or really work hard on it, perhaps nobody would be here. These are the things.

MR. DORSEY. Thank you. Mr. Cagey, would you respond?

MR. CAGEY. Could you—I didn't get the question.

MR. DORSEY. What role do you feel that age, ethnicity, or other factors play in regard to social service delivery programs in terms of the Indian community?

MR. CAGEY. Well, the role that the Indian elders play in our communities?

MR. DORSEY. No, what I'm really getting at, do you see a problem in the delivery of services to the older American Indians in terms of discrimination on the basis of age?

MR. CAGEY. Well, not on the basis of age, it is by agency, and where we're being discriminated against is that we're being handled under National Retired Teachers Association who has no knowledge of what goes on in Indian reservations.

VICE CHAIRMAN HORN. I'm not quite clear on that. Would you elaborate on the problem there with the National Retired Teachers Association?

MR. CAGEY. In the Indian communities we have our natural roots, our natural setting, our natural cultural needs, through theology and whatever else that Anglos brought in, it doesn't pertain to us on Indian reservations or Indian country, so we made a deal with our Indian people in a manner that's not consistent with our culture. One of the things they bring in was a nutritionist, that wants to give us chicken gravy on toast, when our people eat black ducks and salmon and deer and whatever is available on the reservation—that's what our Indian people desire. And I say consistent, then if we're going to deal with the elders in your community, you deal with them, and you give them the kosher foods, as I heard mentioned, but when you deal with our Indian people on reservations, we want what's good for them.

Also, we want to utilize our elders in a manner that is consistent with our culture where they were the teachers. The way we're set up, mom and dad both working, the children are left alone. We're in houses separated many miles in some cases from the extended family. And we have come across, I think, every community has come across alcohol, drug abuse problem, delinquency. In our culture this was not possible because we had the family in a group, and this is what one of the reasons I'm here is because we have submitted to the Department of Labor a proposal to get our elders involved in the community as it was in our culture, trying to overcome the thing that's happened in the past 30, 40 years where the extended family has drifted apart.

So that, I don't know if I'm consistent with the hearing here, but it definitely deals with my elders and how I want them treated.

MR. DORSEY. As a matter of fact, you are very consistent, especially insofar as you alluded to that proposal that you made to the Department of Labor. Do you have a copy of that with you at this time?

MR. CAGEY. No, but it is in the district here.

MR. DORSEY. I wonder if you could make that available to us?

MR. CAGEY. I could make that available to the Commission.

MR. DORSEY. I would ask that it be inserted in the record at this time.

VICE CHAIRMAN HORN. Without objection it will be inserted in the record at this point.

MR. CAGEY. I also have a written statement that I want to submit.

MR. DORSEY. Very good, we would like for receive that to the record.

VICE CHAIRMAN HORN. Without objection that will be inserted also at this point.

MR. DORSEY. Ben Callender-Gaxiola?

MR. CALLENDER-GAXIOLA. I made some notes; I don't have anything that has been prepared. So if you don't mind I would like to sort of look down now and then so I can use them as a guideline.

It has been said that the U.S. is the fifth largest Spanish-speaking country in the world, and we have approximately 15 million Hispanics. Although some or many can communicate both in English and Spanish, the generally recited geographic areas are sections of cities where Spanish is required on a day-to-day basis, so naturally this reduces their English-speaking abilities and reflects in job aptitude tests, which in turn can lead to elimination from employment consideration. Linguistic barriers should be taken into consideration, therefore, when determining employment and eligibility of receipt of services.

Now, I found an article that was published by the AFL-CIO *American Federationist* magazine, very startling data that I would like to cite if I may. This was the June 1977 issue. The name of the article was "The Change of Functional Illiteracy." Now, this article presents some rather frightening statistics; they're very short and to the point.

This was a study that was conducted covering an adult performance level project by a research team that was sponsored, I believe, by the industrial and business training bureau of the University of Texas headed by Norwell Northcot. Here were the findings. "A startling 56 percent Hispanics tested out at the functionally incompetent level. This compares to 44 percent blacks, 16 percent whites. The median years of schooling shows the following: Hispanics, 8.1; blacks, 9.8; whites, 12.2." Now, the most disturbing figure in the study was the following: "2 out of every 3 Hispanic children who begin school in the 1st grade drop out before completing the 8th grade."

Now, if we have this as the basis, we must take into consideration that language is a prime factor. Now, as far as the single largest group affected by age discrimination in the Hispanic community, of course, are the elderly. Most Hispanic elderly are monolingual. The problems with social service delivery to this group begins with lack of information and the availability of services in Spanish. Another issue is the lack of sufficient sensitivity and awareness of special planners and providers of these services to the cultural values of the Hispanic community. Among them are pride and independence. Another, well, of course, is their reluctance to take advantage of any program which faintly smacks of welfare. This is a characteristic that's very prominent. And, of course, the traditional value that the family should take care of its own.

When the Hispanic elderly finds himself in a position of being forced to face the necessity of seeking social services, it is a terrible blow, not only to their self-esteem, but to their social structure and traditions. It is not only necessary to provide bilingual outreach, in my opinion, on informational and guidance of services, but sensitive bicultural outreach as well, with emphasis and continued followup and effective counseling.

If I may, I would like to briefly relate some of what we do because I think we approached a problem that affected the Hispanic community, and we believe that we have helped resolve partially, at least, some of these problems by applying precisely this formula. Our prime concern is, of course, with higher education, placing young people in higher education, and last year we were responsible for approximately 10 percent of all Hispanic freshmen that enrolled in the United States. We were able to do this because we have developed a counseling network; let me put it this way, through 12 field centers throughout the Nation we emphasize very, very strongly the bilingual and bicultural counseling and guidance. We also stress, of course, the bicultural aspect by working with the parents of the youngsters so we can orient them properly and get them involved. Now, I'm going to keep it short and just mention that to us it seems that the crux of this whole thing is to have adequate personnel at the level of providing the services that can orient the services properly.

All the statistics that have flowed through this hearing room yesterday, today, and tomorrow—if you apply them to Hispanics, they are magnified or perhaps multiplied. We found, for instance, in the higher education situation that approximately 2 percent of Hispanics go onto a postsecondary education notwithstanding the fact that we represent 6 percent of the population. And I cited figures as far as the condition of funds, what was it again—I forget the terms that they use in this study—functionally incompetent. This is at the root of the whole thing in our opinion. And I don't know whether I have answered fully your question, but that's what I want to say.

MR. DORSEY. Thank you very much. Mr. Yzaguirre?

MR. YZAGUIRRE. Thank you very much. Let me try to be responsive to the question. It is a little bit difficult to do so because the fact that statistics on participation rates of Hispanics and Hispanic elderly in many of these programs are just simply not available. We hope that with the Roybal resolution being implemented by all government agencies which might have some corrective effect and come back with more precise data and more precise response to your question.

But the impact on our people has got to be measured against one big fact: that is, we don't live long enough to enjoy some of these programs. The average or, let me put it this way, the number of people, the percent of people 65 and older in the total population is about 14 percent. For Chicanos it is only 3.1 percent, which means that we just don't have that number of elderly around. We don't live that long. The average median life expectancy for a migrant farmworker is 48 years of age. So we don't live long enough to enjoy social security benefits.

The second point that needs to be made is that, to be fully responsive to your question, is that the programs that are designed to benefit elderly in this country tend to be based on a nuclear family concept as opposed to an extended family concept, so that, if you were to send your child to your grandparents and you were an AFDC recipient, if

the welfare worker came around, he or she would deduct payments because that child was not in your home. That's a form of discrimination against a different kind of a parent. The parental role in our culture, as with many of the other culture representatives at this table today, is very much part of our lives. If we spend millions of dollars, perhaps not enough, in housing for elderly, but if I were marginally poor and I were trying to apply for some housing grants, and I were to include in my needs in terms of defining my needs that I needed an extra bedroom for my grandmother or my mother, that would be denied, because we don't include those kinds of folks, the elderly, as part of the needs, again because we have a nuclear family concept in this nation. That is evidenced by the fact that 88 percent of all Chicano elderly live with relatives, as opposed to something like 80 percent for the rest of the population.

The other fact that must be made is that the Chicano elderly are more than the rest of the population, more than the rest of the Chicano population a monolingual Spanish-speaking population, so that something like 88 percent of all the Chicano elderly use Spanish as a primary language, and if you don't have an outreach program that effectively deals with that reality, then you're going to fail in reaching this particular client population.

Those are, I think, some of the more salient points that need to be made. Again, I stress the fact that until we can accept in this society a different cultural value system that tries to incorporate the elderly not in an institutional setting away from the family, but at home where there's a role to be played in child rearing, in authority, in passing on the wisdom of the culture, unless we accept that kind of a role, that kind of a culture, that kind of a value, then the Chicano elderly are going to go the same way and suffer the same kind of alienation that the elderly of this country are suffering.

MR. DORSEY. Thank you very much. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. The ethnicity that the panel speakers indicates the priorities of the particular minority involved, I think it is rather patent and clear, for example, the last speaker and Mr. Callender-Gaxiola as well, that the training of medical personnel and education which has not been forthcoming from medical schools is really a natural priority because the delivery of health services to older people within that group becomes superfluous without this training and background. I'm glad the record is more clear on this. For example, the treatment of Indian elders was mentioned, both by the Chicano speaker and the Indian, the first American, the treatment of Indians who are ailing whether young or old by Indian medical personnel is a priority, an approach which is not necessarily taught in medical schools.

I have observed Indian patients in Mexico and I know exactly what you're talking about. The problem is here, and it's been submitted to these Commissioners, and how that's going to fit into the rigid formulas established I'm not sure myself. We have learned about the extended family here. Darned if I would send my grandmother to an institution, but we must find out ways and means of helping and expanding on this particular matter that's been brought to our attention. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Just one thought, Mr. Chairman. On the basis of what each panelist has said and others, that we must take into very serious consideration a recommendation along with others to be presented to the President and Congress that those agencies which serve the aging, of course, the entire spectrum of Federal agencies, must have the widest possible representation from ethnic, religious, racial backgrounds, so that the consciousness of the Federal agencies should be heightened in their attempt to serve the needs of all people within the United States.

CHAIRMAN FLEMMING. Thank you very much. I certainly concur in those views, and we do appreciate your coming here and presenting your views to us. It's been very helpful. Thank you.

MR. YZAGUIRRE. Mr. Chairman, I have a paper developed by the vice chairman, Dr. Montes-Maye, on the welfare of the Chicano elderly which I would like to introduce into the record at a later time.

CHAIRMAN FLEMMING. We'll be happy to submit it for the record and without objection it will be included into the record at this point. Counsel will call the next witnesses.

MS. GEREENICS. Dr. Mervin Garretson, Elizabeth Anderson, Irving P. Schloss, and Reese Robrahn.

[Ms. Elizabeth H. Anderson, Dr. Mervin D. Garretson, Mr. Reese Robrahn, and Mr. Irving P. Schloss were sworn.]

TESTIMONY OF ELIZABETH H. ANDERSON, PRESIDENT-ELECT, NATIONAL REHABILITATION ASSOCIATION; MERVIN D. GARRETSON, NATIONAL ASSOCIATION FOR THE DEAF; REESE ROBRAHN, BOARD MEMBER, AMERICAN COALITION OF CITIZENS WITH DISABILITIES; AND IRVING P. SCHLOSS, DIRECTOR, GOVERNMENTAL RELATIONSHIPS, AMERICAN FOUNDATION FOR THE BLIND

MS. GEREENICS. Mr. Chairman, I believe the interpreter accompanying Mr. Garretson was sworn in at the beginning of the proceedings yesterday.

CHAIRMAN FLEMMING. Counsel will proceed.

MS. GEREENICS. Would each of you, beginning with Dr. Garretson, state your full name and organization for the record?

DR. GARRETSON. I would like to ask the interpreter to speak for me so speech will be understandable. I am Mervin D. Garretson, from Mead, Maryland, and I represent the National Association for the Deaf.

Ms. GEREBENICS. Miss Anderson?

Ms. ANDERSON. My name is Elizabeth H. Anderson. I'm president-elect of the National Rehabilitation Association.

Ms. GEREBENICS. Mr. Schloss?

MR. SCHLOSS. I'm Irving P. Schloss. I'm director of the governmental relationships office, American Foundation for the Blind.

Ms. GEREBENICS. Mr. Robrahn?

MR. ROBRAHN. I am Reese Robrahn, staff member of the American Counsel of the Blind and a board member of the American Coalition of Citizens with Disabilities, and designate to represent them at these hearings.

Ms. GEREBENICS. Thank you. I'll begin the questioning with you, Dr. Garretson. Would you explain the role of advocacy organizations such as the National Association of the Deaf, the role they play in promoting and recommending legislation for deaf persons?

DR. GARRETSON. Sure. National Association for the Deaf is made up of 45 State associations for the deaf. We work with States, at the State level, represent them at the national level. Our role is basically dissemination of information, developing stands on issues, comparing groups like Senate, House, Department of Health, Education, and Welfare, and in general representing the views of deaf people in this country.

I might explain that I do not work in the office of the organization per se. I am executive director of the house. And I happen to be in the president's committee, so that's my role, the elected president, so I am really replacing the executive director.

Ms. GEREBENICS. Dr. Garretson, is there in fact a correlation between deafness and age?

DR. GARRETSON. Well, we are not sure. I think that if by definition you mean deafness you mean a decrease in hearing, there's a very strong correlation. I have some figures. In 1970, we conducted a 3-year census study in Federal Government and came up with some figures. The total figure of hearing impaired in this country was given as 13,372,000, nearly 14 million, and now this is broken down.

I am giving the figures per 100,000. In the 18 to 44 year group, we have 1,906 per 100,000. In the 45 to 64 year age group, we have 7,182. And in the over 65 year group, we have 34,342 per 100,000. That means that the incidence of hearing loss for the over 65 year age group is 26 times as high greater than the rest of the other age groups, but that doesn't really mean total deafness.

Ms. GEREBENICS. Thank you. Is there any coordinated effort between your organization and organizations which represent older persons?

DR. GARRETSON. Not to my knowledge.

Ms. GEREBENICS. Do you have any suggestions for the development of regulations when the Age Discrimination Act goes into effect based on your work with the development of regulations for section 504 of the Rehabilitation Act?

DR. GARRETSON. Suggestions for—?

Ms. GEREBENICS. Regulations that might be incorporated into the Age Discrimination Act relative to your particular interest and those of your organization?

DR. GARRETSON. Well, I think a lot of the legislation that has been enacted for section 504 and Public Law 94-142 is very important, particularly the parts that relate to providing of interpreting services as is obvious right now. Deaf people without an interpreter are totally excluded from almost every kind of Federal service. They are even more isolated in homes for the aged with no means of communication.

Ms. GEREBENICS. Thank you.

Miss Anderson, what has been the role of your organization in the development and implementation of regulations of section 504 of the Rehabilitation Act?

Ms. ANDERSON. Well, I'm glad you asked that question because I'm very proud to say that the National Rehabilitation Association through a great executive director, E.B. Winton, was one of those in this nation who saw the need not only for 504 but for the entire Rehabilitation Act of 1973 and with particularization to Title V of that act of which 504 is the last number. So we have been in the vanguard for 52 years in this nation as proponents, as advocates, as those who are creating the leadership in rehabilitation for all of those who are disabled or handicapped without age limits, and I think that's a significant statement that I just made— without age limits.

We have a national policy as I presented. I don't suppose you've had to time to read it. I've presented a rather fat package to you already, but we have a national policy on aging which sets no limits in rehabilitation services for those who need it, and as well as a national policy which would not prevent service to any disability.

I say that because we are sitting at a table today talking about discrimination against elderly persons and our field—all of those at the table are representing rehabilitation, but as you notice there are certain areas of those would-be rehabilitants who are not represented here, and I dare say that they may have a problem getting in the room because the National Rehabilitation Association is for accessibility. Now, that's a simple statement, it doesn't mean necessarily architectural, but it does include it. But it means societal accessibility across the broad spectrum of our society and America ethos which is basically just unfair and considering all other societies has made probably the most major step in trying to accommodate to the needs of its citizens in a beneficial way.

But I say that, in terms of rehabilitation, the rehabilitation of the severely disabled is one that has been put into the act of '73 and its

amendments so that some of the States are emphasizing that those people who need services who heretofore were excluded based upon not feasible, not acceptable, too severely disabled, are now being included in.

Okay, now, on the other hand we notice that even with the White House conference of this year in May which I was a moderator and which took 72 years to happen, the one area that was most weak, if not almost excluded from consideration among all disabilities, was that of mental health. In my own State, the position of those who need mental care, mental restoration, restorative care is such that our mental hygiene department has fragmented down to three separate departments, and all three will be, you know, competing with each other to get the limited funds that are available for all mental health services. We now have mental health developmental disabilities, mental retardation, drug abuse, and alcohol abuse, okay? Now, that's all right; there's nothing wrong that except that realistically and pragmatically there's only so much money to go around.

We don't want to look at disability at somebody having deafness or blindness or orthopedic disability or emotional disability because in almost all disability there is some emotional overlay, and we do have many people in our rehabilitation programs who have multiple disabilities, okay? So that our role has been consistently for inclusion of all disabled persons in all rehabilitation programs. Now, in practice, we have IWRP, that little amendment, the individual, written rehabilitation plan; and we also have the limitation of 8 and 20, application of 8 and 20. That's the Federal funds that States use. So you have the numbers game, when you get a client is at status 26, the attitudinal conclusions that your organization has come up with certainly do exist.

You find that about 45 is the cutoff date in the application of services, that there is observable if not measurable attitudinal discrimination on the part of counselors—that's our first layer of services we have—against those who are aged.

And this, of course, becomes a matter of the State organization trying to fulfill the requirements of the Federal funding agencies in terms of what do you do with the money. Now, the legislature has done its job with the help of NRA and other help to see that the law is on the books. Now, we're talking about section 504. We want those laws to do in fact what the law says it should do. We don't want to go back to the legislature. Now we're dealing with the executive branch of the government. The judicial branch has already done its job, but I think we have to do a lot more in terms of sensitivity in the executive branch to get the most effort from those dollars we so precisely appropriate for the rehabilitation of disabled persons in this nation.

I think I'd better stop unless you have something else to say because I've really extrapolated that 504 and given you a whole lot of our program but I don't want to preempt the possibility of anyone making a contribution to your panel.

Ms. GERE BENICS. I was wondering if your organization had any specific ideas about increasing the participation by older persons because as you mention not only is the cutoff age around 45 in this program, but the median age served is 32?

Ms. ANDERSON. Exactly.

Ms. GERE BENICS. And has your organization done anything specifically about that situation?

Ms. ANDERSON. No, it has not done anything specifically. We did have our, the one—I'll take that back, specifically, we have a group of seminars named in honor of Mary Switzer [phonetic] who is a great lady in rehabilitation, and last year for the first time we had seminars specifically on the elderly blind and in cooperation with the American Foundation of the Blind and other organizations, so that was our very first step in this area.

Now, in order to get the job done, you just have to include the Federal-State rehabilitation program because that's the largest program probably in the world that serves handicapped individuals. Without that kind of input—and I'm not sure that we have that kind of clout as a national organization that sets policy and standards, and even professional standards at the first level—the counseling level—has the ability to go into each individual State and make them do what they ought to do in terms of providing services to the elderly handicapped except through the policy statement and except through reinforcing through our publications, our meetings, on the regional level, local level, State level, etc., that this must be done.

Ms. GERE BENICS. Thank you. Mr. Chairman, I would like to ask at this time that Ms. Anderson's statement be admitted to the record.

CHAIRMAN FLEMMING. Without objection it will be done and we appreciate your thoughtfulness in preparing it for us.

Ms. ANDERSON. It's great to be here, thank you.

Ms. GERE BENICS. Mr. Schloss, I was wondering if you have noted any correlation between blindness and age?

MR. SCHLOSS. Very definitely. Leading causes of blindness in the United States are conditions which principally affect people in middle age and later in life. Statistically, the National Society for the Prevention of Blindness indicates that three-quarters of the legally blind population are 40 and over, 53.4 percent are 65 and over; using severe visual impairment, which is inability to read ordinary printed material with the best corrective lenses available, the National Center for Health Statistics has found that 1.306 million severely visually impaired persons in this country, 909,000 are 65 and over.

Ms. GERE BENICS. How effectively do you feel State agencies for the blind are serving different sections of the age spectrum?

MR. SCHLOSS. This varies considerably depending on what State law permits—what State law directs, I should say. Right now, your State agencies for the blind are largely funded through the Federal-State vocational rehabilitation programs, so most of the services will have the

basic weakness in terms of serving older blind people that our program has generally in serving older handicapped people.

There is authority for special projects in rehabilitation of older blind persons in the Rehabilitation Act of 1973. Unfortunately, this was watered down due to a couple of vetoes late in 1972 and early in 1973, but with this special project program some close to 1,200 older blind persons were served in fiscal 1976 and 388 of them were actually vocationally rehabilitated in accordance with the current definition of vocational rehabilitation. Others who were not closed as vocational rehabilitation did receive the benefit of what you might characterize as training in independent living skills, which certainly enabled those persons to live more independently and delay much costlier institutionalization. We feel that there is need for additional legislative authority to actually reach this group effectively through the Federal-State rehabilitation program.

MS. GERE BENICS. Has your organization made any specific efforts to focus attention on the problems of blind older persons?

MR. SCHLOSS. Yes, we have. It's our major priority. Although it is the largest segment of the blind population in this country, unfortunately, it is the least served in a wide variety of what might generically be called social service programs. We are working with and have worked with the Administration on Aging and in some projects with the mass membership organizations of older persons, and we're trying legislatively to improve statutory authorization for specific specialized services to older blind persons which would enable them to live more independently and perhaps a substantial number of those might also become rehabilitated for employment or being able to continue in existing employment.

MS. GERE BENICS. Thank you. Mr. Robrahn, would you explain the role of both the council and the coalition in the development and implementation of regulations in section 504 of the Rehabilitation Act?

MR. ROB RAHN. Yes, the American Council of the Blind was founded in 1961. However, the American Coalition of Citizens with Disabilities was not founded until 3 years ago, so actually the Rehabilitation Act of 1973 and its 504 section were actually law by the time the coalition was founded. But the American Council of the Blind participated in the development and passage of the Rehabilitation Act of 1973, and both organizations were very active in the development of the regulation. And very frankly and honestly the coalition was the organization that demonstrated in Secretary Califano's office and sat in during that period when all organizations, national organizations of handicapped individuals, were trying to get a signature on final regulations. I was there myself.

MS. GERE BENICS. Have there been any coordination efforts between either the coalition or the council and organizations representing older persons?

MR. ROBRAHN. No, there has not been. Unfortunately, we, both the American Council of the Blind and the American Coalition of Citizens with Disabilities, that is, some of the leaders, have attempted to establish communication with the leaders of organizations of aging individuals, and thus far for the most part the reception has been rather cold from the aging groups because they do not look upon themselves as handicapped in anyway, and they feel that the problems are quite different.

However, we know that a very high percentage of the aging population have one or more debilitating chronic conditions which are handicaps, under all definitions, virtually, and the major ones, for instance, are deafness, blindness, heart condition, and diabetes. I might add to that that I know that this Commission during its year-long study has heard a great deal about discrimination against the aging, and when you combine with the factor of aging one of the major handicapping conditions, such as blindness or deafness, then the incidence of discrimination and the extent is doubled or becomes very much magnified, and it is a much greater problem than just the matter of aging because I think that it could be said without contradiction that handicapped people are perhaps the most discriminated-against persons in the United States.

MS. GEREENICS. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. No questions.

CHAIRMAN FLEMMING. Mr. Saltzman?

[No response.]

CHAIRMAN FLEMMING. The presentations that have been made by the representatives of the rehabilitation organizations have been very helpful, and I noted particularly the comments that have been made about relationships or lack of relationships in some instances with the organizations of older persons. I understand the issue that you have identified because I also have identified it. Personally, I believe that it makes a lot of sense for rehabilitation organizations and the organizations that are concerned with representing older persons to work very closely together because we do have common issues and we ought to be dealing with them in that spirit.

I have also noticed running through your testimony, your statements, your feeling, I think I interpret it correctly, that in terms of our Federal-State rehabilitation program, there ought to be a broadening of the base, and, as Ms. Anderson knows, that has been an issue confronting us in the rehabilitation area for a long while. I have always been interested in it, but I think I've become even more interested in it as I have worked with some degree and intensity in the field of aging. Because one of the great issues confronting us in the field of

aging is the issue of making it possible for older persons to continue to be involved in life in a significant manner.

I feel that the government as it develops programs should put the emphasis on rehabilitation for involvement in life. Now, that may be sometimes part-time employment, sometimes it may be full-time employment. Other times it may be serving as full-time volunteers in order to carry forward a program of a particular community service agency. As I indicated this morning when we were discussing this issue, sometimes it may be rehabilitation of one who has suffered from a stroke, for an example, so that that person can once again become deeply involved in the life of the home. I have always appreciated the fact that the organizations that are represented here are pressing for that kind of a program in our society. I think that we must achieve that if we're going to achieve the objective of involvement on the part of older persons; noninvolvement leads to a rapid mental, physical, and I believe, spiritual deterioration, and nonemployment deprives our society of contributions that we can ill-afford to lose.

So I just want to say that I've appreciated the leadership of these organizations in your special areas, but I also appreciated the broad view that you take of the field of rehabilitation, and again, we're so grateful for your being here today and sharing these views with us. It helps strengthen our record and will help us in developing our report. Thank you very much.

Counsel will call the next witness, please.

Ms. GERE BENICS. Mr. William Bechill.

[Mr. William Bechill was sworn.]

**TESTIMONY OF WILLIAM BECHILL, CHAIRMAN, TASK FORCE ON AGING,
AMERICAN PUBLIC WELFARE ASSOCIATION**

CHAIRMAN FLEMMING. May I say that I appreciate very, very much Mr. Bechill's willingness to come and testify at this hearing. He's coming as our agenda indicates as chairman of a task force on aging of the American Public Welfare Association, but I think of him as one of our outstanding pioneers and leaders in the field of aging. I have been serving as the third U.S. Commissioner on Aging. He served as the first U.S. Commissioner on Aging, and in that position rendered all of us outstanding service, and he has continued to do that since leaving that particular post, so that personally, and I know I speak in behalf of my colleagues, we welcome you and appreciate your willingness to come and share with us some of your insights on issues which I know you've given a great deal of thought and consideration.

Counsel will proceed with any questions that counsel may have and then we'll come back to the Commission.

MR. BECHILL. Thank you.

Ms. GERE BENICS. Thank you. Mr. Bechill, in our study in looking at various programs and one of the major programs we've been studying

is Title XX, and we found that as a result of historical patterns that many of these funds in the social services programs are going to children's services, and implementation of Title XX has not resulted in a redirection of services or any change in those patterns, and I wonder if you concur that these resources are directed disproportionately towards children in the public welfare area and to what do you attribute this emphasis?

MR. BECHILL. First of all, I'd like to identify who I'm speaking for today because I am here wearing the organizational hat. I am speaking as a representative of the American Public Welfare Association, which does consist in its membership of all of the State and territorial departments of welfare human services, approximately 1,700 local agencies that are related to that kind of activity, and about, I think, 6,000 or 7,000 individual members.

I don't think from the data that I've seen that there is any denial of the fact that services to older people as a result of the Title XX program have been somewhat underrepresented. I think that your statement of both general findings and certainly the specific program findings speaks to that fact.

As to the reasons why this might be, let me first throw out what is not meant to be a non sequitur but a statement of sincere conviction. I started my career years ago in the field of public welfare, as a line worker in the city of Detroit, and I think I know the people in public welfare, particularly those who have administrative leadership. I think by and large they are not interested in discriminating necessarily against old' people—for that matter, any group. Basically, I think what motivates them is the idea of providing services to people within obviously political priorities, fiscal constraints, etc., that really represent the day-to-day life of anybody who has been in that role.

I think that there are a lot of historical and traditional reasons that create this kind of a situation that we apparently do find in Title XX. As a professor and as a teacher, I think that one has to look at the various professions and the relative lack of attention they've given until very recent years in incorporating in their curriculums any kind of concern or interest with the needs of older people and the impact of aging on our society. It's a very new development to have this kind of emphasis now, for example, in schools of social workers. We're also beginning to see this in schools of law. There is great resistance still in medical schools to incorporating this kind of material. So when you have the professionals from those fields and others as they move up and occupy these positions of leadership, then you get a situation where I can see that it is very difficult sometimes for them to give a priority to a group that they themselves have not been sensitized to as to having any particular kind of needs.

I think there are other reasons that may be contributing to this, and I must say, in a way, I might be talking off the top of my head about part of this, because one of the concerns that I have about Title XX

is it is so very difficult to get any kind of meaningful data about who is getting what services and what those services are accomplishing, etc. This is a huge gap and it certainly affects a discussion of this kind and I suppose even more discussions about how the program is really operating in a general sense.

MS. GEREENICS. Would either you or your organization have any recommendations for creating a better balance of distribution of these social services, not just Title XX but all social services, to ensure that they reach all age groups of the population?

MR. BECHILL. Well, I would like to refer you to some general recommendations which we can submit for the record that represent policy positions and recommendations that the board of directors of the American Public Welfare Association has adopted, not only with regard to the needs of older people but also with respect to the very important area of health care and social services, but beyond that, I would like also to mention that this is a very difficult problem from an administrative standpoint. In other words, we're at a period in our history, I think, where there's a strong pressure to have more general, more universal approaches to helping people and some reaction to the sort of categorical approaches that we have had dominate a lot of our social welfare programs until recent years.

If we go in that direction, more universal direction, where all people, regardless of their needs, etc., regardless of financial need are potentially eligible, it seems to me that not only in the case of older people but in the case of some other groups in the population there is going to have to be something built into those programs.

I'm referring to a concept that Richmond Titmus [phonetic], the late Richmond Titmus who is a British social welfare scholar, talked about. He called it "diswelfare," and this "diswelfare" phenomenon is where certain groups just, even though they are entitled, find it very difficult to obtain their right share under those entitlements, and so the kinds of special interest structures that really ought to be built into all of the programs in your excellent statement, I mean, those ought to be built into Title XX, to Medicaid, to the food stamp program, etc., where special efforts are made to reach, find, persuade, and see that older people receive the services to which they are entitled. Now, obviously, when I say that, I am well aware that those kinds of efforts certainly ought to be built into the structure of and operations of both the public welfare agencies and State agencies.

MS. GEREENICS. That was the major problem that we've identified, the lack of outreach, which has particular severe consequences for older persons who are harder to reach or isolated.

MR. BECHILL. I do have a couple of other recommendations.

MS. GEREENICS. Okay, keep going.

MR. BECHILL. I think that, if you look at the experience under the Age Discrimination Act of 1967, which I realize is not in issue today but certainly related, that act had very minimal impact for any number

of years. The reason for that was that there was not sufficient attention given to the kind of personnel that was needed to really monitor and implement that kind of legislation. I think that's one of the reasons. I recall that the Department of Labor, which had the responsibility, for years carried that responsibility with a very small staff. There was sort of a bushel basket approach to information about the program. Very few people knew about it, and if in order to carry out the intent of this act when it does become effective there's going to have to be a better machinery for implementation than existed.

The other point that I would make, in a very general sense, is that it, and I speak in behalf of the association, that the American Public Welfare Association does stand ready to work with the Federal Government, with State and local governments, in terms of carrying out the intent of this legislation. I realize there's some very difficult legal problems in defining age discrimination. I don't think those are insurmountable. I think it is incumbent, however, that there be on the part of organizations like APWA and others that are testifying before you a real commitment in this area because I think anyone who would deny that age discrimination is present in the operation of these programs would be doing a disservice to the treatment.

MS. GERE BENICS. Mr. Chairman, I have no further questions, but I request at this time that Mr. Bechill's materials be included in the record.

CHAIRMAN FLEMMING. Without objection, that will be done.

I would like to pick up on your last comment because I certainly agree with you. This Commission has addressed itself, of course, from time to time to Title VI and what has happened or hasn't happened under Title VI, and it seems to me that the failure to move forward under Title VI is due almost exclusively to a lack to commitment, beginning at the top and moving on down to program managers. I think that's reflected in the fact that there's been underway the last 2 days a national conference on Title VI that's sponsored by the Department of Justice, which does have the lead role. That's the first conference of its nature in 11 years. They had one 11 years ago and there hasn't been any since, so there hasn't been very much in the commitment.

I'm sure you recognize that the language of the Age Discrimination Act of '75 parallels the Title VI language. We're not going to get very far unless there are those at top level, the program level within the government who are willing to make a commitment, but I think it is very important for an organization such as the American Public Welfare Association, to think this through to the place where they are willing to make a commitment and help keep the feet of those in government to the fire. I appreciate it so much, that comment, because it does require the strongest kind of leadership from the private sector if we're really going to move on this. Otherwise, this could just become another law that gathers dust that doesn't mean very much in the lives of persons.

Your comments and observations—we have an opportunity here, and it's kind of an unique opportunity to take a look at the possibilities of a law before it goes into effect, and conduct hearings, trying to develop a basis for findings and recommendations, with the hope that those recommendations will maybe help the Congress make a few changes in them in order to make it better and also will help in this case primarily the Secretary of HEW in terms of developing the basic regulation and how others will be involved in them, but primarily he has the lead responsibility just as the Attorney General has the lead responsibility in the Title VI—

MR. BECHILL. Dr. Flemming, I would like to just interject and certainly compliment the staff or whoever was responsible for putting together the statement on specific program finances because I assume there's considerable data based on testimony behind that and I think that this is quite an effective case that is made, and you and I, I think, of all people know that these problems exist.

The question is how to get at them and, when you speak of leadership, which I would agree with, on the part of volunteer organizations, I would also say, sir, that this is going to require great leadership and commitment on the part of those holding major positions in government to see that the intent of this law is actually carried out. These are situations that have been known for some time. As I looked at the community mental health center data, that material has been known for over a decade, as you know.

CHAIRMAN FLEMMING. That is right. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Bechill, I also want to express my appreciation for your testimony. There's one aspect of this law that I don't believe you addressed yourself to, the question has been raised, that is in the statement of purpose, where it says "it is the purpose of this title to prohibit unreasonable discrimination." That is a term, the term unreasonable has created quite a bit of concern. If you heard some of the earlier witnesses, you know that this is one that perhaps may create some problems, especially if there happen to be persons charged with implementing the law who do not have the commitment that we believe ought to be required. I would want to know if you would indicate your thinking with respect to the "unreasonable" and whether perhaps one of the recommendations of this Commission ought to be the deletion of that word?

MR. BECHILL. I'm not an attorney, but years ago I learned in helping people draft legislation that one of the great weasel words in the English language is the word "reasonable," and that can be even multiplied more when it comes to "unreasonable." I think it would be best, frankly, to delete that particular language from the act altogether, either "reasonable" or "unreasonable," and just speak of discrimination and then attempt to spell out in terms of intent what is meant by discrimination. That can either be done in the law itself or it can done in a committee report amending the law, which is another mechanism

for expressing legislative intent. I'm serious about this; I really think that the word "reasonable" is a good clean English word, but "reasonable" and "unreasonable" in law create so many problems, particularly the word "unreasonable."

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. I would like to reflect a moment before I come to my question on the statement of the Chairman relative to leadership commitment and your earlier statement about the public welfare worker who does not approach his task with a sense of intent to discriminate. I say this as a reflection on my own-self produced by these hearings. I think it is not the overt intent to discriminate. It is rather the insensitivity which is so insidious and which is perhaps in many instances more dangerous than the overt intent because the insensitivity really immobilizes a society in its effort to confront and meet rationally its problems.

I feel that my sensitivity has been assaulted during the course of these hearings on the problems of the aging, and with respect to the varieties of people who have spoken from various cultures and backgrounds and their unique problems and their aging within their respective cultures. I wonder whether the Public Welfare Association has undertaken an effort in the same way that we are experiencing it here these several days to bring together people of disparate backgrounds, particularly in your own, under your hat, so that the sensitivities would be heightened. Our consciousness would be so well seated that we would now really more fruitfully and creatively know how to address the problem as a result.

MR. BECHILL. To my knowledge, the association has not conducted any activities of that type. It might be the sort of thing, however, that it ought to do. I would say that we, through the work of the staff within the association, over the years that there has been an effort made to build up the capabilities of State and local public welfare agencies to serve older people, but I would also have to say it's been sort of an uphill fight.

COMMISSIONER SALTZMAN. I don't think commitment can be developed until the sensitivity is cultivated, and I think another recommendation perhaps, which might be included in those that we're prepared to make, might suggest that the various government agencies and associations dealing with Federal funds and Federal monies relative to the aging run some kind of training sessions that heighten the sensitivities to the needs in the aging field.

MR. BECHILL. I think those are excellent suggestions. I'm going to take them back and discuss those with the executive leadership on the board.

COMMISSIONER SALTZMAN. Thank you, sir.

CHAIRMAN FLEMMING. Commissioner Horn.

VICE CHAIRMAN HORN. Based on your experience as an administrator and in the public welfare field for many years, do you think there are too many agencies developed for the problems of the elderly? Is it feasible to ever get one-stop or a few-stop service? What are your thoughts in this area?

MR. BECHILL. I probably could write a book on that, but I'll try to be brief. I do think a lot of times we have too many cooks, and one of the problems that we have in the field and had for a number of years is, where is there any kind of final accountability to see that the kind of services, kind of programs, kinds of activities older people need should be made available?

I have been, in the past, identified at times with a minor school in our field which has out of frustration sometimes argued, Commissioner Horn, for the creation of a separate system for older people. That's when I am in the depths of frustration.

I think as a more practical basis for what we recommend here, 36-member committee, social policy committee on the aging, was a general personal social service system but also accompanying it a companion system for some years, we're referring to the Older Americans Act, and I think this current effort under the Older Americans Act to establish a service network, planning and coordination—that's been a step in the right direction, but even so there's still seems to be some uncertainty as to who actually is responsible for the provision of direct services. Now, I think States, localities are working very hard at this, but in the meantime I think we do have a lot of problems, a lot of gaps because of the situation that exists. I don't know if that speaks for the point or not.

VICE CHAIRMAN HORN. One thought that comes to mind, is, let's take the Local Public Works Act. Round 1 was \$2 billion, Round 2 was \$4 billion, maybe Round 3, if there is one, will be \$6 billion. A simple thought to get public works into the local community and yet also bring about some coordination in dealing with services of both a public and private nature to the aged is to erect buildings on school-grounds in areas that are central to an elderly population if it is concentrated, if it isn't just in the most convenient location, where you could then take the secondary schools of America, and many of them are already, I know in California have been for 50 years, and have adult education programs. You could move in some of your public welfare and your various elderly services, older person services that go with various privately-funded community agencies, and you would have a cultural center, a new nutrition Meals on Wheels, all of these things we do now, scattered all over the whole area, and people could get some sort of one-stop services and some coordination and assessment of their needs. I just wonder how that is feasible. We're spending billions of dollars.

MR. BECHILL. I think we have it in some parts of the country. I'm very proud, for example, of what is going on in the city of Baltimore.

I think that that needs to be looked at. I'm not saying that it's perfect, but it is very close to what you are discussing.

CHAIRMAN FLEMMING. Identify that, for the record, you are talking about the Wagster Center.

MR. BECHILL. I'm talking about the Waxter Center.

VICE CHAIRMAN HORN. Why don't you explain a little bit what's involved?

MR. BECHILL. All right. Thomas Waxter Center, which I served on the board for a few years, is a large multipurpose center in downtown Baltimore. That is also the site of the Baltimore City Commission on Aging office and other kinds of social service offices. It relates to a citywide system of health, education, recreation, and housing services for older people within the city of Baltimore. The only thing that is holding that program back from even being more effective than it is, is money. Baltimore is organized to the point that it literally probably could spend easily 3 or 4 times the funding on these various programs.

Now, there must be similar examples. I think it's been years since I have had to depend on what is in the literature. I saw it firsthand. At one point the city of Chicago also comes very close, I think, to the sort of thing that you might be describing. Unfortunately, these are exceptions rather than the general rule.

Now, I would assume that more of these kinds of examples might be developing as the Older Americans Act moves along. But, even so, the success of so much of what's been happening, I think in Baltimore and a few other places, is contingent on money flowing from other programs into the central planning operation.

CHAIRMAN FLEMMING. I just would like to say that there is a trend in that direction at the present time. There isn't any doubt about it. In fact, we've been spending time just recently trying to figure out how that trend can be accelerated, particularly in view of the fact as you noticed that Congress have decided to put some money into senior centers in Title V of the Older Americans Act. That provides some opportunities for developing linkages and trying to see what is being done along that line.

Commissioner Ruiz, do you have a question?

COMMISSIONER RUIZ. Dr. Bechill, as a philosopher and a semanticist, as well as eliminating the vague word of "reasonable" from the English statutory language, I believe it has been fitting that Mr. Bechill is the last witness because he has philosophized. Only a person with great insight and wisdom can philosophize without ruffles and deliberate over-view upon the reaches of historical traditions and past experiences and innate frustration that I noticed who could write a book in response to the question put by our Vice Chairman. Your contribution, Doctor, has been thought provoking, in retrospect, which indeed opens the door to the future in our deliberations and I appreciate it very much.

CHAIRMAN FLEMMING. I think Commissioner Ruiz has summed up very, very well how all of us feel. If, as a result of your being here,

as a result of your hearing possibly other testimony, any additional suggestions occur to you as to the kind of recommendations that we might get into our report, we'd appreciate very, very much your getting in touch with us.

MR. BECHILL. Very glad to do that.

CHAIRMAN FLEMMING. The hearing is in recess until 9 o'clock tomorrow morning, unless I get contrary instructions.

Morning Session, September 28, 1977

CHAIRMAN FLEMMING. I'll ask the hearing to come to order. There has been a little transportation problem as far as our Vice Chairman is concerned, but in the interests of staying on schedule, we'll get underway. I'm sure he'll be here in a few minutes.

The first witness this morning is Nelson Cruikshank, who is the Chairman of the Federal Council on Aging.

[Mr. Nelson Cruikshank was sworn.]

TESTIMONY OF NELSON CRUIKSHANK, CHAIRMAN, FEDERAL COUNCIL ON AGING

CHAIRMAN FLEMMING. The procedure here, Nelson, is that counsel will have some questions that she will address to you and then the members of the Commission will be interested in engaging in dialogue. I would like to have the privilege, in effect, of introducing the witness in this particular instance. As already indicated, Mr. Cruikshank is Chairman of the Federal Council on Aging. He is also Special Counselor to the President in the field of aging.

Yesterday, we had a couple of panels that were labeled as advocates on behalf of older persons. I do not know of any more effective advocate in behalf of older persons than Mr. Cruikshank. He's been at it for a long period of time. I was aware of his effectiveness as a advocate during World War II when I chaired the Labor-Management Manpower Policy Commission of the War Power Commission and he headed the labor staff personnel for that particular committee. Then later he became the head of the social security department of the AFL-CIO and during a portion of that time I was serving as Secretary of Health, Education, and Welfare. Then when I came back into government in the field of aging, he was functioning as the president of the National Council of Senior Citizens, and in that capacity he did a very, very effective job as an advocate on behalf of older persons.

Those who have had the opportunity of noting the biographical sketch that is contained in our file for these hearings will have taken note of the fact that he started out by graduating from Ohio Wesleyan,

and I did the same thing, and I was just a sophomore when he was a senior, but I became aware of his talents as an advocate at that particular time. I regard him as a person who has been an advocate on behalf of older persons in the private sector—now he's shifted to the public sector, and he's still an advocate for older persons but operating from the inside rather than from the outside.

We're very, very happy as a Commission to have him as a witness. He knows we're charged with developing a record on the discriminatory practices against older persons that exist in programs financed in whole or in part by Federal funds. Then having developed our record, we're charged with the responsibility of making recommendations to the President and to the Congress. One of the persons that will be examining our recommendations to the President in this area very carefully will be Mr. Cruikshank. We're very happy to have you as a witness before the Commission today, and as I indicated, our practice has been, first of all, counsel will be working with the staff and will have some questions that will be addressed to you and then the Commission will look forward to engaging in dialogue with you. Gail?

MS. GERE BENICS. First I was wondering if we could have the gentleman accompanying Mr. Cruikshank identify himself for the record and spell your last name, please?

MR. FOSTER. I'm Robert Foster, F-O-S-T-E-R, on the staff of the Federal Council on the Aging.

MS. GERE BENICS. Thank you. Mr. Cruikshank, we've been studying Federal programs, age discrimination in federally-funded programs, and in our studies have found that there are many barriers to participation in these programs by certain age groups, mostly due to administrative mechanisms employed by the various agencies and the lack of effective coordination among these agencies that administer the programs. It is our understanding that the Federal Council conducted a study on the interrelationship of benefit programs, identifying similar barriers to participation, and I wonder if at this time if you would discuss some of the Federal Council findings with regard to these barriers as they affect older persons?

MR. CRUIKSHANK. Yes, I'll be very glad to do that.

CHAIRMAN FLEMMING. If I could interrupt for a moment, I think the record ought to show at this time that the Federal Council on Aging is a body authorized under the 1973 amendments to the Older Americans Act, a body of 15 appointed by the President and confirmed by the Senate, and the Chairman of the Council is designated by the President. In a good many respects the Federal Council on Aging has a role in the field of aging comparable to the role of the Civil Rights Commission in the field of civil rights.

MS. GERE BENICS. Thank you.

MR. CRUIKSHANK. Thank you, Mr. Chairman.

Counsel, could I preface my response to your question by, one, thanking the Chairman and the Commissioners for the privilege of

being here and particularly thanking the Chairman for his kind words. He's particularly generous in mentioning the fact that I was an upper-classman when he was a lower class member in Ohio Wesleyan because that's the only time in our long relationship I ever outranked him.

I'm happy to be here and respond to your questions and would like to say in further preface that, while this response is in many respects negative and would seem to be complaining and objecting to the difficulties and the barriers that are presented by these programs to the aging, that we're not unmindful of the fact that the government has done many things on behalf of the aging. The Older Americans Act itself is a big step in recognition of their special needs, and there are programs for which age is a matter of eligibility on the positive side, and we're not unmindful of that, but in the very nature of those programs there have been some lapses and there are areas such as training and so forth that have been neglected and we point these out, but in doing so we're not unmindful of the fact that this government is not unaware of the needs of the aging and is doing some things, and many more things need to be done and barriers need to be removed, but we're not unmindful of what has been done.

You're quite right, counsel, the Federal Council on Aging did conduct this study which was completed in December 1975, had directed—it was directed—I have a copy here, I don't know, I suppose you people have, but if you would like one for the record, it can be left. It's quite an extensive study. I think it one of the best studies that the Council has carried on. It examined the interrelationships of supplemental security income, Medicaid, food stamps, low rents, public housing and rent supplement programs, pensions for veterans and non-service-connected disabilities, and pensions for widows and children of veterans.

One of the findings of that study was that new programs have indeed been established in response to the special needs of the elderly but very little concern has been shown for the relationships and the interrelationships, and the result is a bewildering patchwork of programs. It certainly was never intended, but the result is much the same as if someone had intended to make all these little separate watertight compartments designed to aid the elderly and then put such barriers between them that one gets lost in the maze. As I say, that's not the intent, but the result is much the same.

The study shows, for example, that 22 percent of older Americans received assistance from at least one of three income-conditioned programs in 1975—that is, SSI, food stamps, and Medicaid. Of these, 49 percent participated in one, 34 percent in two, and 17 percent in all three. This has led to great administrative complexities. The Federal Council on Aging, noting the results of these studies, made recommendations in five areas. First, the implication of the ways in which some programs count income received from other programs. Some programs

reduce their benefits as benefits from other programs increase. This certainly was never intended when the specific program was adopted. But, as they established eligibility for one, they fail often to take into account the advantage of the other, and then when the two get meshed in the actual operation in the field, one to one extent cancels out the other. While the principle underlying this benefit reduction may be sound with respect to each individual program, it can lead to failure to pass through cost-of-living adjustments, and, two, the high cumulative benefit reduction rates on earnings and other nontransfer income.

Now, the second recommendation was that the income test used in the programs for older Americans with low incomes should be altered. Currently some of these tests, first, do not always take into account changes in the cost of living—some do, some don't. A second thing, they vary substantially, even in their definition of income. Sometimes income in kind is recognized, sometimes only cash income is recognized, and sometimes the opposite is true. Three, they do not always phase out benefits smoothly. The notch development has not always been universally and equally applied, so that it's possible for one to lose an entire benefit because of an increase in another area of a small amount. In some programs the standard income test is waived entirely if a person is already receiving benefits from another program.

Thirdly, the asset test in most programs for older Americans with low income. The test currently, first, does not phase out smoothly as assets increase, and secondly they treat homeowners and renters differently. The impact on their standard of living may be identical, [but] they're treated entirely differently. And third, they discriminate against the elderly versus the nonelderly. And fourthly, they vary substantially both in the treatment of assets from program to program.

Fourthly, the several programs have low rates of participation. This leads to a situation where some persons are getting benefits while others similarly situated or even worse off are not getting the benefits. This is one of the major things I'd like to emphasize and the need for broader informational program and outreach programs in all of these areas.

The fifth, the administration of the program evaluation—currently, the application process for the needs-tested programs is spread across many agencies. The result is that people can spend a good bit of their time going from one agency to another, located in different areas, and under different auspices, and as they get older and as they need more help and assistance in this kind of thing, it gets more and more confusing.

Some of the recommendations of the Federal Council have been adopted, and some have not. Among those that have not been implemented are these: one, that the income standards, benefits schedules and income disregard allowable and asset levels and exclusions from assets of SSI, and food stamps and Medicaid and pensions for veterans with non-service-connected disabilities and pensions for widows and

children of veterans' programs be increased at the same rate adjusting the cost of living. This was one of our recommendations. It has not been taken into account. You now have sometimes the increase of cost of living in, say, social security benefit will automatically cancel out the veteran's benefit. Very often this is true of the veteran's widow and we get lots of complaints about that, about so that an increase in cost of living in one benefit actually results in a net loss of income because of a complete wiping out of a benefit in another area.

In order to reduce complexity as well as improve equity, we recommend that what is included in accountable income and allowable exclusions be made more uniform across the income-condition programs. Then, the asset testing be studied, since assets tests are presently used and as presently used cause four types of inequities. First, an actual income in the person's assets, in theory, even as little as a dollar, can result in loss of eligibility for a program yielding sizable benefits.

Just an example of how arbitrary all this can be, you have asset tests, which are very rigid, applied to cash in the bank. If a person leaves that cash in the bank, and the interest accumulates almost without the person knowing it, at the end of a quarter, an entry can be made in the passbook of several dollars' interest, and all of a sudden they're ineligible for certain benefit programs. Second, because there is usually an exception for older occupied housing, asset tests discriminate against persons who rent rather than owning housing. And third, asset tests discriminate against the aging vis-a-vis the non-aging, since elderly have been given economic status and are more likely to have accumulated wealth than the young and middle-age and are more dependent upon wealth income. Finally, definitions of accountable assets vary among the programs, leading to inconsistency and complexities among these programs.

As long as there is a limit to total assets, there will be an abrupt cessation of benefits after assessing rising value, and as long as certain types of assets are excluded, persons in similar economic circumstances will be treated differently. Particularly, some of these programs have arisen because of cultural attitudes, some just because of convenience. The exclusion of assets of the home, for example, is a reflection, I think, of the—it's the all-American thing to do to own your home and to purchase a home, and sometimes it gets to where that home, which is listed as an asset, may be in fact a liability for other reasons, the rise in taxes, the change in the structure of the neighborhood, the different type of dwelling that is needed for people in their younger years while they are raising the family, as against what they need in their older years and so forth, so that the blanket—the almost universal blanket useful exclusion of the home as an asset, while other assets are not treated in the same way, does cause a lot of confusion.

I have read from these notes, and I hope I've been responsive to your questions at least in part, but we think that the Federal Council's study in this area, as I said, was one of the most extensive and one

of the best outputs that Council has had. We commend it to you for further study because, as I say, there are many areas that are recommended. Some improvements have been made, but there are many areas that recommended in this study that have not been improved.

MS. GERE BENICS. Mr. Chairman, I would ask at this time that the Council study be admitted to the record.

CHAIRMAN FLEMMING. Without objection that will be done.

MS. GERE BENICS. I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Cruikshank, one of the responsibilities of the Federal Council on Aging is an oversight responsibility. In that sense it is comparable to the role of the Civil Rights Commission in the civil rights area.

This law that is the basis for our hearings, as you know, becomes effective January 1979. At that time certain practices that are now in effect in the various departments and agencies will in effect be outlawed; for example, we've established in our hearings that in the area of mental health just a very, very small percentage of the total clientele of community mental health clinics are persons 65 and over. We've established the fact that in many instances that's due to a failure on the part of the community mental health clinics to carry on outreach programs to let old persons know what resources are available and invite them to use these resources. As you know, the Secretary of HEW is charged with the responsibility of issuing the basic regulations for the implementation of the law and that other departments are supposed to come along with regulations applicable to their particular programs.

As you think in terms of the future of the Council, do you feel that the Council will be in a position to perform an oversight function in terms of checking up on the way in which the various departments and agencies implement the Age Discrimination Act, the way in which they implement the regulations that may be issued under it, so that the President and the Congress will have the benefit of an oversight report from time to time that comes from a body made up basically of people who are outside of the government and who are not tied into any of the departments and agencies?

MR. CRUIKSHANK. Well, Mr. Chairman, I think we should. I don't think frankly right now we're equipped to do the job and carry out the mandate in this area that the Congress has given us. We have to avoid, I think, the building up of a duplicate staff. I mean, we can't be an extra OMB [Office of Management and Budget] looking at all of these agencies or an extra General Accounting Office, but there is a specific role for an organization like the Federal Council that is made up of people who are selected to be broadly representative. As you know, the act requires that the membership of the Council be made up of those who represent business and labor. Five of them, at least, must be older persons themselves. The minorities must be represented. That's not specifically in the act—maybe it should be, but

the institution of the Council always has had minorities represented. If these people can get some help in the field and draw on the services of other agencies, and they can put the time on the Council so that they can bring their observations as they come from coast to coast and representing many facets of our community life, they can bring in their experiences and that can serve as a check.

There is a certain anomaly in the act, however, that in the oversight function that's described by Congress, the equipment for the Federal Council on Aging must be given to it, really, by the Secretary of HEW. The act says that he should provide the services and support as are necessary, but it doesn't say who says it is necessary. Up to now it hasn't been the Federal Council. It has been the Secretary. There has never been to my knowledge a real clash between the Federal Council and the Secretary, but that's something we need to look at it and should an agency which is subject to oversight have the control over the staff and the people that are doing the oversighting, if that's a proper word.

The Council can do much, though, without trying to duplicate these other agencies by bringing their experiences in. Then another thing, I think the Council has not carried out one of its provisions, or one of the things it is authorized to do, which is doing what your Commission is now doing, holding hearings. We have not been staffed to do that and members of the Council serving on the Council have been short of time in doing it. In getting new members of the Council, one thing we're going to ask them is if they can give the amount of time that is needed to hold some hearings and so forth in their regions, and then we'll be able to pick up from the people that are right on the front line of this battle against deprivation and discrimination of their experiences right in the field. This will be done without trying to set up another overall agency.

CHAIRMAN FLEMMING. I gather you think it would be wise for us as we think in terms of the recommendations that we're going to make to the President and the Congress to make some recommendations as to what we may feel could be, should be, the role of the Federal Council in following up on the Age Discrimination Act.

MR. CRUIKSHANK. I think it is appropriate and I would greatly appreciate it if you would do that. It would certainly support the contentions that we're going to make, that if we're going to carry out these responsibilities, we need to be better equipped.

CHAIRMAN FLEMMING. Thank you. Commissioner Horn.

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Cruikshank, I would like to refer you to the act itself, which is similar to Title VI, as you know, in which section 303 says, "Pursuant to regulations, [etc.] no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under

any program receiving Federal financial assistance." However, the purpose clause states, "It is the purpose of this Title to prohibit unreasonable discrimination on the basis of age." Under the testimony that this Commission has heard in the three prior hearings and this one, there appears to be some problems and I would like to know if you will comment on this, if you would comment on your perceptions of whether "unreasonable" is a word that probably ought to be included for deletion in the report of this Commission to the Congress containing its recommendations?

MR. CRUIKSHANK. Well, Commissioner Freeman, it just seems to me as I look at this act, and I'm not a great student of it, but I noted that it seems to me there's kind of a contradiction of terms here, that if, denying or outlawing unreasonable discrimination would imply there's some kind of reasonable discrimination, and that seems to me to be a basic contradiction. I think that the discriminations that arise come unintentionally as a kind of byproduct of other motivations and other attitudes. For example, in the rehabilitation programs on the disability provision of the Social Security Act, there is an explicit provision—I know just how it got there, went through all that battle in 1956. There is an explicit provision that the disability trust funds should be used in a way to reduce the cost of the system. Now, this means that people will get rehabilitation services if there's a chance for curing them and getting them back in the labor market. A person may need rehabilitation services for purposes that will be much more costly and perhaps never get them back in the labor market but give them a more enriched life, particularly if they're an older person and there's not much hope of getting them back in the labor market.

Because of this specific drive, which is operative in other programs where it isn't as explicitly spelled out in the act, you get a result of discrimination. I don't think it's reasonable discrimination at all, although someone might say it is because it is designed to reduce the cost.

Now, going back in other areas, such as in workman's compensation, we know that there were rehabilitation services provided in many cases by the insurance industries. They reduced their claim loss if they rehabilitated the person and got them back to work; that is, take a person off permanent disability if they could make that an impermanent disability and got them back to work. The insurance companies really financed some of the better rehabilitation services in this country, but it meant they were going to do it for younger people and not for older people. Who is going to spend \$10,000 or \$15,000 rehabilitating an injured worker who is 63 or 64 years old? We know this is true. They didn't spend the money that way. They took the younger people.

Some of us who have been connected with legislative efforts have unwittingly contributed to this because, knowing the attitudes of Congress and the public on these piling-up costs, we have sometimes argued that, "this is going to save you money," and sometimes that's

valid. I for one am ready to stop that kind of argument. I think we have to have an attitude that this is going to enrich people's lives and this is particularly true of the aged, because you're not going to save the Federal Government money if you rehabilitate and enrich the lives of these older people. You may actually spend more, but you have added to the social values of people's lives. So when you come into that, I don't know how anybody would want to try to draw the line between reasonable and unreasonable discrimination. It just seems to me it is a basic contradiction in terms.

COMMISSIONER FREEMAN. I appreciate your comments. Thank you.

CHAIRMAN FLEMMING. Commissioner Ruiz.

COMMISSIONER RUIZ. Mr. Cruikshank, did you state that there was a conflict of interest insofar as overseeing the activities of HEW were concerned?

MR. CRUIKSHANK. I think there's a potential one.

COMMISSIONER RUIZ. There's a potential one?

MR. CRUIKSHANK. I don't know if the history since AOA was established or since the Older Americans Act particularly, extensive revisions of 1973 and the Federal Council was established with the mandate that it has. I don't know that there has been clamping down on the activities of the Federal Council. Now, part of that may be because they didn't do much in the area of oversight. It's conceivable that if they would start in on some critical problem like nursing homes or something, and they would get in and find the regulations weren't being enforced, that the Secretary of HEW would say, "Well, you don't need all this support; you don't need this staff." But it hasn't happened.

I think we ought to be cognizant of the fact that there is a potential conflict in the law where oversight responsibilities are given to a small office, such as the Federal Council on Aging. The major area where they would want to exercise oversight would be in HEW because there is social security, Medicare, and the Medicaid, the rehabilitation services, and the welfare programs. All of the vast areas that affect people's lives, for the large part, are in HEW; some of them are in Treasury and the Labor Department, but the big one is in HEW. The act says that the Secretary of HEW will give this little agency that has oversight over them such staff and support as they need. Now, there obviously is the time when they begin to get busy and begin to touch a sensitive nerve that the Secretary would say, "Well, you don't need this support."

COMMISSIONER RUIZ. Have you requested funds specifically for oversight from HEW?

MR. CRUIKSHANK. No, the history of the appropriations don't show any such line item. There is a small budget given to the Federal Council on Aging for its operations through whatever they are. For example, some hearings have been held, not particularly in the oversight area that I'm aware of. Bob, has there been any hearings on the oversight of the operation of HEW?

MR. FOSTER. The major hearing was in the special problem of older women, and Dr. Flemming participated and testified at this hearing.

MR. CRUIKSHANK. We had a number on hearing aids and that industry, but not hearings on the operation of any program of which HEW was involved.

CHAIRMAN FLEMMING. Commissioner Ruiz, you have identified an issue on which I think we as a Commission will undoubtedly want to make a recommendation.

COMMISSIONER RUIZ. Yes, particularly since the Chairman stated and stressed the independence of the Federal Council. This appears to be anomalous to me.

CHAIRMAN FLEMMING. There's one other part of the law that's a little anomalous from that point of view. That is that the Secretary of HEW and the Commissioner on Aging are by virtue of their offices made members of the Council, and that differs from the setup such as the Civil Rights Commission. So I think we'll want to take a look at that particular issue.

Mr. Cruikshank, we deeply appreciate your being here, sharing with us your insights, and if as a result of the dialogue there are any additional recommendations that you'd like to make to us for us to consider as we develop our report to the Congress and the President, we'd certainly appreciate receiving it. Thank you.

MR. CRUIKSHANK. Thank you, Mr. Chairman. I appreciate the opportunity to be here. I think we probably will want to add to our statement.

CHAIRMAN FLEMMING. Keeping in mind the fact that our report must be filed by the end of November.

We're honored to have with us the Honorable James Jeffords, who is the ranking Minority member of the Subcommittee on Select Education of the House Education and Labor Committee. We're delighted that it has been possible for you to arrange your schedule so you could be here with us and share with us your views on the issues that are confronting us as a result of the assignment from the Congress.

TESTIMONY OF JAMES JEFFORDS, U.S. REPRESENTATIVE, VERMONT

MR. JEFFORDS. Thank you, Mr. Chairman, I certainly am very pleased to be here, and in fact, I expect to learn more myself than I perhaps can share with you. But I will be looking forward very much to the report of the Commission which will be extremely important to us in trying to make sure we have designed the laws in a way that will be most effective.

I would like to share with you a few thoughts and spend most the time, of course, in a dialogue with you on the problems we have in this area. But as you are well aware, of course, our society has undergone many changes which have affected our attitudes towards the elderly and that is why I have such deep concern in this area, having

viewed it in our State. I am concerned also with the way our laws go and some of the difficult problems you are faced with in trying to determine the difference in discrimination between inadequate services and that which is normally considered a civil right type discrimination in the gray areas of types of discrimination, whether reasonable or unreasonable, as you were just recently discussing.

I would like to point out some of the things that I see and feel, and as our society moves along with all of our changes and the added life expectancy, these problems are becoming more and more apparent to us. Many of them are connected with problems not just for the elderly but with the handicapped, generally, and our society is now a very mobile society. The insensitivity to the needs of people who are not mobile is something which we have to pay more attention to, not only attention in view of laws but also in adequate proportions to take care of these problems. I am concerned, of course, about the implementation of our 504 regulations which are related to this and the fact that we do have many barriers not only to the handicapped but just as much as to the elderly in the area of architectural barriers. Yet, we have no funds yet to implement these very important new rules.

We need many changes and this is a closely knit thing, an area that's hard to distinguish whether it is discrimination or inadequate services if there is a difference, but with the elderly, the inability for them to participate in many of our programs because of the lack of mobility. They need comprehensive home care, nutrition, and other support service so they can stay at home. Whether this is discrimination or whether it is inadequately designed services is, of course, a matter of question. Take, for example, the inability of our senior citizens to participate in transportation. Again, we have designed in the Older Americans Act some fine services but have seen no appropriations, and the need for funds in this area is very great.

Also, very basic to the problems of the elderly in their ability to face later life is our inadequate pension programs. Our hopes within our own Committee on Education and Labor are that we can design a better system for ensuring the adequate pensions as our senior citizens retire.

But, more basically, in the area of discrimination, we have built-in problems, psychological problems which are very damaging and create serious problems of discrimination. That is the feeling generated that our elderly should be idle, that they should stay home, and we should write them off after a certain age. These are the problems which we have to deal with in discrimination and attitudes.

I see this as I travel about and it is very alarming to note the changing attitudes in Americans towards their elderly. The feeling that we should write them off at a certain age causes psychological stress, loss of self-esteem, and a feeling of no purpose in life after they reach a certain age. The economic hardships, which I know you are deeply concerned about, especially in the age groups of the fifties and sixties

are extremely difficult to deal with. I don't know if we can adequately deal with these problems with laws without changing attitudes towards the people who are suffering in this age group. Of course, any time that we do not take full advantage of the people that we have in our society, whether they be elderly or otherwise, we suffer as a nation from lost production and loss of gross national product and all of the other things which will be helped if we had a better participation of all our groups in solving the problems in our country and participating in its economics.

What can we do about some of these things? Of course, you are concerned over inadequate enforcement of the age discrimination laws as well as the new one which has been passed by the House and awaiting action in the Senate. I'm deeply concerned right now. This is true, not only in this area, but in other areas of discrimination, at the lack of staffing in both the Department of Labor and the Office for Civil Rights to enforce the laws against discrimination. My understanding is there are some 2,700 complaints in the Department of Labor in aging. There are around 3,500 unanswered complaints in the Office for Civil Rights, regarding discrimination in all areas. The inability of our executive branch and administrative agencies to enforce these laws is a serious problem which has to be dealt with primarily by the Office of Management and Budget, as you well know, to provide adequate staffing for both these Departments in order to ever end discrimination. For a law without adequate enforcement is almost worse than no law at all because we raise expectations with no means of delivery.

The CETA program—in our State, I don't believe is a problem, but throughout the Nation there are tremendous problems with the CETA program delivering services and public service jobs to those that are in the critical ages which you have in consideration here. I think the delivery of services by CETA must be examined very closely to determine whether or not there are built-in discriminations caused by the psychological feelings, or the feelings of the people who deliver the services. I'm deeply concerned that the older citizens are not being given the advantages that they deserve from that program.

Also, of course, and as I mentioned briefly earlier, the critical age and the ages that I find from my travels that are receiving the worst kind of discrimination are in the fifties and sixties, where people are just not looked to as being the type of person that want to be hired, and they are sort of written off at a certain period in favor of younger workers, and unfortunately this problem is not going to be solved unless we solve the greater problems of unemployment. Because with the forces of unemployment working on the people providing employment, naturally, they [look] towards those who will give them the longest term assistance. Unless we can solve the problems of unemployment, of course, we're not going to be able to do too much in this area.

I would like to say, also, that in the context of welfare reform, the Older Americans Act, and all of these programs, we have to be more

specific and look more towards the problems of the elderly and think in terms of designing programs which fit their needs better than we have.

These are just a few of my thoughts, Mr. Chairman, and I listened with great interest to Mr. Cruikshank and I would hope that we'll find the dialogue with you as stimulating; I'm sure I will from your side, I'm not sure you will from my side. But it is a pleasure being here and I'm certainly appreciative of your efforts in this field and am looking forward very much to reading your report.

CHAIRMAN FLEMMING. Thank you. We are very grateful to you for sharing your thoughts with us. Your presentation reflects a very deep-seated commitment to the field of aging and a clear understanding of the basic issues that confront us in the field. We just appreciate the kind of leadership that you are providing.

In your comments you referred to the inadequacy of certain services, as far as older persons are concerned, and you said you didn't know whether that should be identified as discrimination or simply having enough resources for particular types of services. I won't attribute this to anyone but myself, but as we have been holding hearings on this matter in the field as well as the hearings that we have been holding here, I have developed the feeling that there are certain programs which are important as far as older persons are concerned, where discrimination does in fact exist against older persons, and where those who have responsibility for the programs are willing to say, "We'll eliminate the discrimination if you give us the money." You heard my exchange with Mr. Cruikshank on mental health. That is, it's a good illustration of the point that I'm trying to make. There are community mental health clinics that for one reason or another have turned their backs on older persons and the needs of older persons. They in many instances are willing to accept that fact. Then you talk to them about an outreach program that will make older persons aware of what's available in the mental health area, or you talk with them about serving older persons and the response to that could be, "Well," in effect, "get us some more money and we will serve them."

My feeling is that this issue of discrimination should be looked at within the framework of existing resources, and if within the framework of existing resources there is discrimination against the older person, then even though that is a very difficult and troublesome thing to do, there should be a rethinking of the use of existing resources with the end in view of at least moving in the direction of eliminating the discrimination. I was wondering what your reaction might be to that kind of an approach?

MR. JEFFORDS. Well, I certainly tend to agree with you. I'd just like to point out, for instance, something along this line in the food stamp program. Here at least we have made a commitment through an entitlement program to resources. And yet I find even in the Congress, even though I brought to their attention and successfully got through

the House a provision which would allow us to design a program that would take care of the problems of the elderly, the stigma problems and the inability to just use food stamps, I found that we were unable to move that through both sides. There was not really the kind of fervor that ought to have been there to design a program to allow them to participate in the existing program. We have only something like 18, 20 percent of our elderly who are eligible to participate in the food stamps program, primarily because of the stigma problem.

The fear of increasing the budget and therefore increasing demands for food stamps exceeds what everybody wanted to spend on food stamps by maybe a few hundred million dollars. To remove the problems that the elderly have, you don't find it there because they're afraid if they use the resources, even though it is an entitlement resource, the resources will not be available for something else for the nonelderly. These problems even plague the Congress, which is my point. It is not an easy one to face and to fight. I think we have to constantly bring it to people's attention. If we do nothing else in the existing programs, we ought to at least make sure that through outreach or whatever that the people can take advantage of then rather than writing them off, rather than saying, "Good, they didn't participate, so somebody else can have it." That's the kind of problem we have.

CHAIRMAN FLEMMING. Commissioner Horn?

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Congressman Jeffords, I happen to believe if there's discrimination, there's no such thing as being reasonable or unreasonable, that it ought to be eliminated. With that in mind, I have listened with great interest to the exchange. We have received a great deal of testimony about the problems of actually pitting the needs of one group against the other. I wonder when this society, this country, when we really can get to the point of recognizing the value of each and every one, and that, if there are three, you only have bread for three, then at least everybody should get a piece of it. It seems to me that perhaps one of the problems is in the composition of the decision-making bodies, the lack of sensitivity and the lack of commitment, that if the elderly and if the young were a part of the bodies that make the decisions, at least there could be input there. There would be some sharing and some recognition that whatever we have, we will divide it accordingly. Unfortunately, I still think that in this country we put too little value on social needs. I just want to know if you will comment on it.

MR. JEFFORDS. Certainly a very excellent statement. I heard your previous dialogue on the definition of unreasonable discrimination. I couldn't help wondering, as you seem to agree, that probably that is in evidence, that a feeling that maybe the people who designed that law felt there should be some kind of discrimination against the el-

derly. We just don't want to make it too bad. We just don't want really to do too much, but we recognize there should be some discrimination. I don't agree with that and I realize you don't agree with that. If there is discrimination, then we have said it is wrong. Of course, it is conceivable in that definition they meant that there are some areas where older people may not have the stamina to do things. I don't know whether that was their understanding of it, but it's no different from any other group of people who may be healthy, unhealthy, strong, weak. There's no reason to point to the elderly and utilize those words. I think we almost show discrimination in the choice of those words. I would agree with you that if a person is alive and well, he ought to have the ability to compete with anyone else in the same area, and have the same resources available to him as anyone else, whether he be young or old. If they be less than perfect, they ought to have the same kind of opportunity as anyone else at least to compete for that opportunity.

COMMISSIONER FREEMAN. Then would you give consideration to proposing that the word unreasonable be deleted from the purpose clause?

MR. JEFFORDS. I certainly would, because I think it, as I said, more likely reflects our own psychological discrimination within the law itself, which I think is very bad.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Horn.

VICE CHAIRMAN HORN. Let me follow up on that, Congressman, if I might.

As Commissioner Freeman suggests, one criterion with which we're struggling is reasonable and unreasonable in age discrimination. Let's take a specific example now, the education of medical doctors. One could argue, as educators have argued with regard to race, that one should reach out, if we follow the analogy with older persons, and attract older persons to medical schools, to educate them as doctors in order that an older person clientele might be served. That would be the analogy with why we try to reach out to various minority communities, or one can say that, since extensive State, Federal, and private resources are involved and expended in the education of medical doctors, that it is in the public interest that those who complete the program should be able to render at least 15 years, perhaps 20 years, or perhaps 25 years' service to that profession and in the process might provide greater service to society and greater service to older persons.

Now, given that example, what I'm interested in is, where would you draw the line?—because that is the question. It is a practical operating problem faced by American education and it is a question as to what is reasonable. Should we have a right to expect that a doctor, when he completes 5 years beyond the undergraduate level of medical school, plus intern, plus residency, should give us 10 years of service, give us 15 years of service, give us 20, in which case beyond the ex-

treme we would not admit anybody who would complete medical school after perhaps age 40, 45, or if we said only 10 years' service, perhaps they would have to complete all the requirements by age 55 or 60. I want to know where you strike your standard.

MR. JEFFORDS. That is an extremely difficult question and it is well phrased. It certainly pinpoints the service problem when you go to the calculated resources, where you should take these things into consideration, and what the line should be is always difficult to say. I can see that it may be necessary in some circumstances to make judgment on the allocation of scarce resources, and to draw the lines which we may not desire or like to see drawn, I can see that that may be necessary. The example you've given makes a very good example of the possibility of having to draw these lines. But certainly I don't believe that, up to certain ages, there should be this kind of discrimination in terms of opportunity to the individual.

Now, certainly I don't think we should deny or pass a law stating that anyone would be admitted to medical school at any particular age. That's not the question. The question you pose is whether or not we should dedicate our resources to assist him in pursuing that profession. In that area, I have difficulty in saying that someone who is 75, using the the worst example, where you might finish at age 80, with a life expectancy of a few years beyond that, we ought to dedicate our resources to him, versus someone in their twenties. I would have to agree with you. Where the line is it is difficult to say. It is certain, however, that anyone with a sufficient life expectancy ought to be given the opportunity. How far back with that age you go, I don't know.

VICE CHAIRMAN HORN. Well, I agree with you. It is a very difficult problem and there's no simple answer.

MR. JEFFORDS. No, there isn't.

COMMISSIONER RUIZ. Where would Mr. Jeffords draw the line? Mr. Jeffords is a legislator, who could well answer the question differently than perhaps a person in another occupation. In my opinion the word "reasonable" was put in there to actually gut it. For example, I have heard juror instructions, which instructions refer and make reference to the word "reasonable." And they start out by putting up a straw person, the ordinary prudent person, and we get into trouble right away because we don't know who the "ordinary prudent person" is. Now then, it goes further, what this straw man would think, taking into consideration all of the surrounding facts and circumstances.

Now, these are the juror instructions, all of the surrounding facts and circumstances. Well, who knows what they are because everyone looks at the surrounding facts and circumstances in a different fashion. I personally believe that that was put in there to make this innocuous. What is your thought on that?

MR. JEFFORDS. Well, as I stated earlier, I tend to agree that it probably either showed a feeling in Congress, either conscious or un-

conscious, that in effect there should be some discrimination. "Everybody is bugging us about it so we had better pass a law that says we aren't going to have anymore." And I have a feeling that maybe part of what happened when that word got in there was a feeling and perhaps, though as the Vice Chairman's question goes, if there is a real genuine concern for some areas where there perhaps needs to be discrimination in the allocation of scarce resources. I tend to agree that the use of that word in instructions to jurors practically does gut the law. From the point of view of a jury with all of their own feelings and about the questions, they have an opportunity probably to find nondiscrimination in almost every case. I agree with you that that word could be very damaging to the attempt to end discrimination in this area.

CHAIRMAN FLEMMING. It seems to me that what all of us are being challenged to do is to think through these various situations to see whether criteria for selection can be introduced which do not depend on age but which mean that the individual will be judged as an individual in terms of his or her merits or abilities and so on. That is one thing to say that; it is another thing to develop that type of criteria.

We appreciate so much your being with us, and we are delighted that someone with your insights and commitments will take a look at some of the recommendations that we will incorporate in this report.

MR. JEFFORDS. Thank you, Mr. Chairman. I look forward to the report. I can assure you that it will receive my very personal and intense attention and hopefully some legislation may result which will assist you in your work.

CHAIRMAN FLEMMING. Thank you very, very much.

We are privileged to have with us also this morning Congressman Biaggi, who is the Chairman of the Subcommittee on Federal, State, and Community Services of the House Select Committee on Aging. We will be delighted to have him come forward and share with us his views.

May I say that the House Select Committee on Aging is one of the newest committees of the House of Representatives, but from the standpoint of those of us who are involved in the field of aging, it has become one of the most active, most aggressive committees on the Hill, and there are many of us who felt there should be such a committee. The activities of this committee since its creation have certainly made us realize that we are right. We appreciate your work and the work of Chairman Pepper and so on very, very much, and we are just delighted that you could be here with us and share with us some of your views on these important matters.

TESTIMONY OF MARIO BIAGGI, REPRESENTATIVE, TENTH CONGRESSIONAL DISTRICT, NEW YORK

MR. BIAGGI. Thank you very much, Mr. Chairman, and Commissioners. I'm privileged to be given the opportunity to address you and speak to you especially, Mr. Chairman, to congratulate you for your work over the years. I couldn't agree with you more insofar as the effect of the Select Committee of the Aging on legislation with relation to the elderly. I think we've been more productive now than ever before in this direction with even greater impetus under the leadership of Senator Claude Pepper. I'm just delighted to be here this morning to give my views in connection with discrimination against the elderly.

As Chairman of the Subcommittee on Federal, State, and Community Service, I am representing the House Select Committee on Aging at this hearing on age discrimination in Federal programs. As you recall, the distinguished Chairman of our Committee, Mr. Claude Pepper, testified before a similar hearing in Miami. I support the comments and suggestions he made during his presentation. Today I will offer additional remarks on the subject of age discrimination.

For all of my public life I have fought discrimination. It is an evil which affects many groups. While much publicity has been centered on sex, ethnic, and racial discrimination, age discrimination has only recently received attention. While age is not limited to any particular group or segment of our population, I believe Congress wished to draw special attention to this nation's older population by attaching the Age Discrimination Act of 1975, which authorizes your study, to the Older Americans Act. It is this group which I particularly wish to discuss today.

Age discrimination or ageism is as vicious as any form of discrimination this country has known. It is a deplorable state of affairs when this discrimination is allowed to exist in the administration of Federal programs. It is a situation which must be rectified. Certainly, the Age Discrimination Act of 1975 is an important first step. Yet, unless it is rigidly enforced, it will amount to nothing more than window dressing and will only serve to embitter our senior citizens. One of the functions of these hearings is develop policies which will allow for full implementation of the Age Discrimination Act. I welcome the opportunity to offer suggestions.

My efforts to combat age discrimination are by no means new. In 1970 I successfully offered the elderly and handicapped transportation access amendments to the Urban Mass Transportation Act. The intent of the amendment was clear. It states:

It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services, that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to the elderly and handicapped persons of mass transportation which they can effec-

tively utilize will be assured, and that all Federal programs offered in assistance in the field of mass transportation, including the programs under this Act, should contain provisions implementing this policy.

At the heart of my amendment was the knowledge that discrimination against the elderly with regard to transportation was in the form of inaccessibility. The result was the same as the deprivation of other fundamental rights. For 6 years the elderly and handicapped of this nation waited for the Department of Transportation to implement the guarantees of my amendment. The regulations state that beginning in 1979 Federal subsidies for buses may only be used for the purchase of low-floor, wide-door, ramp-equipped buses which are accessible by the elderly and the handicapped. While these regulations are an important first step, they do not totally implement my amendment, which covers all forms of mass transportation.

During the House consideration of legislation to extend the life of the Legal Services Corporation, I again detected discrimination against the elderly in the existing program and offered a legislative remedy. A survey conducted by the Legal Research and Services for the Elderly, a research arm of the National Council of Senior Citizens, showed that in 10 States today persons over 65 comprised 21.7 percent of the poor population, yet represented only 7.1 percent of the Legal Services caseload. A good deal of this was due to the lack of outreach by the programs and accessibility to the programs. In an effort to guarantee the elderly a fair share of legal services, I sponsored an amendment which was approved, giving the legal services need of the elderly priority consideration by the Corporation. Justice for all in this country, however, can never be achieved if someone is denied access to legal services.

Last week the House of Representatives overwhelmingly passed legislation which I co-sponsored and fought for to eliminate mandatory retirement of Federal Government employees, and extend protection to have this anticipated in the private sector. This measure is an important step in guaranteeing the elderly of the Nation a fundamental right to work as long as willing and able.

During your hearings on this subject you have heard testimony from a number of federally-financed programs that discriminate against the elderly. One of the more glaring is the Medicare program, which is meant to benefit primarily the elderly citizens of this country. It fails to meet the real medical needs of older persons. Covered services are more in tune with the acute short-term illnesses that younger persons might experience, and yet one must be 65 years of age or totally disabled for 24 consecutive months to be eligible for Medicare. Long-term care for chronic illnesses, prescriptions, eyeglasses, hearing aids, dentures—items of special importance to the elderly—are not covered. As a result the program established for the elderly discriminates against the elderly.

I realize that most employment-related activities are not within the scope of the study mandated by the 1975 act. Public service employment under CETA, however, is specifically covered and I believe the record in this area demonstrates extensive, unreasonable discrimination based on age. The Committee on Aging has devoted particular attention to the level of services received by older persons from Federal employment programs. The Committee's findings indicate that older persons receive an extremely low level of services in comparison to the other age groups, a level not justified by the facts. For example, the statistics at the time of our review last year showed that those 55 and over constituted less than 3.4 percent of the 1.5 million job holders under CETA. On the other hand, the over-55 age group represented 8.9 percent of the unemployed and had an average period of unemployment two and three times as long as the younger workers. Since then, some small improvement has been registered. When you are starting near zero, small improvements leave an unacceptable situation.

When our Committee was undertaking this review of funding of Federal programs that benefit the elderly, we ran into a major problem. Namely, there was a dearth of age-related data for most federally-funded programs and activities; while some agencies tried to maintain some sort of records that indicate the age of the beneficiaries, most do not. Those that do, do not have similar systems that allow comparisons. Perhaps one of the best recommendations that this study could make would be for the development of an age-related reporting system that would provide the data base needed to determine the existence and the extent of age discrimination in federally-financed programs.

I would like to suggest the use of an age audit that would demonstrate how the funds of service programs are distributed among different age groups. Like any other order, this method would seek to account in detail how resources are expended. The difference is that age is the major independent variable and that all the others, including money program services, are related to it as dependent variables. In such an audit a matrix is established with age variables along the vertical axis of program services of monetary allocations. Variables are along the horizontal axis. An age audit could become an important part of the system utilized by Federal agencies so that policies and programs can be assessed and modified to assure that no age discrimination occurs to older Americans in federally-financed programs. Moreover, such a procedure would provide the basic data needed by congressional committees which may be responsible for legislative changes under the programs. By having a standard age-reporting system, the various committees and Federal agencies would be able to talk the same language.

Once the existence of age-based discrimination in federally-financed program is detected, and I believe it could be, I fear that strong affirmative steps must be taken to eliminate this form of discrimination. In

particular, I would advocate the establishment of the affirmative action type programs for older persons to ensure that they receive their fair share of programs meant to serve the people of this country. It would seem to be within the spirit of the 1975 act to require those responsible for the operation of programs and activities financed in whole or in part with Federal funds to make an age analysis of the programs and to submit an annual report which would include the findings, goals and timetables for action to correct imbalances and discrimination. I believe it is time for the rights of this nation's elderly to have the same status as rights based on sex or race. The abuse or neglect of these rights over the years more than justifies the need for such an affirmative action program for the elderly.

The 1975 act uses the term "unreasonable age discrimination," and I'm sure that such a phrase may cause you in the future enforcement of the act some problems. Should we judge the severity of discrimination? I say we should direct our efforts towards weeding it out entirely. I am hopeful that your study will recommend a very limited interpretation of what constitutes reasonable discrimination. In fact, I hope you second the opinion of our Chairman, Claude Pepper, and myself that any age discrimination is unreasonable.

On that point, I was here while the panel was engaged in dialogue with my colleague, Mr. Jeffords, and observed Commissioner Ruiz's comment. I couldn't agree with you more that the word unreasonable when brought to my attention just sent up a flare of danger. It provides a loophole a mile wide. To use your word, it has the potential of "gutting" the intent of the legislation. I understand that sometimes we have difficulty in administering law to the fullest extent of the intent of the legislation, but as Vice Chairman Mr. Horn gave an analogy with relation to medical education—I believe the occasion would be so rare that would hardly permit it to interfere with the general application of the rule. It is a question of which course will it take. Would you expose the people to the peril of malevolent exploitation of the term reasonable or unreasonable? I would, in the light of history in this America, would choose not to. I think on balance that the term unreasonable really should be eliminated. I think well-intended people can administer law properly without being fearful of negative impact on any programs. But more importantly, I'd like to deal with rule rather than admiration.

To conclude with two observations, when we think of age discrimination that is focused indirectly on the elderly person being discriminated against, consider if this person is a member of an ethnic or racial minority and has suffered discrimination all of their lives, must they now meet up with a new form of discrimination for their remaining years? Is it not in our best interests to eliminate all discrimination before individuals must endure a lifetime of it?

Finally, Mr. Chairman, yesterday my subcommittee conducted a hearing examining age in the world of tomorrow. We held these

hearings to help determine our policies for dealing with the rapidly aging society. Yet these hearings today may help pave the way for the future for the elderly of this nation. If you are successful rooting out discrimination against the elderly in Federal service programs, we will provide the elderly with greater opportunities to receive services in the future; therefore, the impact of these hearings will be felt now and in the future.

On that point I say, thank you very much.

CHAIRMAN FLEMMING. Mr. Congressman, the testimony that you have presented to us and the record of leadership that you have established in the House of Representatives and in the Congress points very clearly to the fact that you are and I know will continue to be a very effective ombudsperson in behalf of older persons. We do appreciate the fact that as various pieces of legislation have come before the House, you have recognized the relationship between that legislation and the whole area of discrimination against older persons.

Your testimony provides us with as fine a bill of particulars as we have received from any. I am very, very grateful, all of us are very grateful to you for it. We do appreciate your picking up the dialogue on the use of the word "unreasonable." As you know, under the law, the Congress, authorizing and directing us to make this study, also authorized us to make a report containing findings and recommendations with the recommendations addressed both to the President and to the Congress. We have felt that means that if as a result of these hearings we think that we have identified ahead of time some weaknesses in the legislative language, that we not only can but we should call it to the attention of the Congress, so that, and I personally appreciate very much the note which runs throughout your testimony, that when programs of those who are responsible for programs turn their backs on the needs of older persons, that that's discrimination. This is the kind of thing we're trying to get at.

MR. BIAGGI. Mr. Chairman, I don't believe that discrimination is malevolently intended. I think society has been conditioned mentally to deal with the elderly in a certain fashion. That's our responsibility to change. The hearings we had yesterday on the futures of the elderly were most revealing. The fact is, they're living longer, will continue to live longer. It was predicted that they will be living to 90 and 100, 110 before the year 2025. So even if we, Commissioner Horn, get a young man of 75 tender years who decides to go to medical school, if he is sufficiently vigorous, he can look forward to living to be 100 in the year 2000. You do make a point. I don't quarrel with you, but I say the event is so unusual, that we shouldn't base our considerations on the extraordinary. There's no legislation that's perfect. There's no rule that's perfect. That's why we have to deal ultimately with the good intention of men and women.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I was glad that you commented on the word "reasonable" which has been bantered quite a bit in this hearing and it's looming more in importance as the hearing proceeds, because in the language of the act to prohibit unreasonable discrimination accepts the premise that there is such a thing as reasonable discrimination. Supposing our civil rights laws had been worded to the effect that one could reasonably discriminate against the blacks? We would still be in a society which accepted separate and equal in a definition of what reasonable is because the normal prudent white man under all of the surrounding facts and circumstances—I mean that's the legal definition—

MR. BIAGGI. I understand.

COMMISSIONER RUIZ. We would have made no progress whatsoever. I am happy that you concluded to the fact that something has to be done.

MR. BIAGGI. Commissioner, I would say that, notwithstanding the fact that our civil rights laws don't contain that word and it was the intent of Congress to eliminate discrimination, we're still having difficulty in universal application of the law. But we are making progress.

We never contended that the Congress produces the perfect piece of legislation. That's why we have the executive and they have to promulgate their rules, and they do on occasion bend them to suit the intent rather than the actual word, and that's why we have the amending process and that's why we have continuing sessions of Congress to correct our errors with other errors.

CHAIRMAN FLEMMING. Commissioner Horn.

VICE CHAIRMAN HORN. Let me pursue some of these matters, since I guess my role would be the hair shirt and occasionally we say the Emperor is not wearing any clothes, and so that doesn't bother me.

I appreciate your thought that these instances are so rare that we shouldn't worry about them. I wish that human nature were such that we didn't have to worry about them, but I'm in a funny position. Whereas I sit on this Commission and help formulate recommendations to you and the executive branch to enact, on the other end, I'm a full-time university president that has to live with some of these regulations, which by the time they're rewritten, I think have very little relationship to what we discussed on Capitol Hill or what we discussed anywhere else. One of the things that concerns me in the whole area of discrimination is, how many cracks at the bat does a person get when they challenge an administrative decision? We all agree there ought to be some process of appeal and my concern is, when does that become unreasonable and where does it become reasonable? Let's take an example.

If we're talking about charges of racial discrimination in a public university system—my own would be an example—the person gets not simply three cracks at bat in three different forms, which any member of the faculty gets, the person gets three additional times at bat. Our

traditional system is our own internal disciplinary processes, say, when we're measuring one's competency with right of appeal to outside arbitration, the American Arbitration Association, right of appeal to our board of trustees, through a State hearing officer, right of appeal to the State personnel board. If you happen to be a member of a protected minority group, you not only get those, which everybody gets, you also get the State fair employment practices commission, the Office for Civil Rights of HEW, and the EEOC [Equal Employment Opportunity Commission]. And occasionally—no one likes to admit they might be incompetent, either white, black, brown, red, yellow—and occasionally when these tough administrative judgments have to be made, an administrator is faced with not only arguing the case once but arguing the case six times. I've just gone through one of these, after 7 years, where the person clearly was not qualified and finally every Federal and State agency has ruled in my behalf. If I approach this searching for some answers ahead of the promulgation of the rule, it is with having many experiences in mind and seeing others which I regard as overregulation, miscarriages of administrative rules in this society.

Now, I don't have a medical school, so I don't know why I'm raising the medical school question except intellectually it appeals to me as a very real trauma. As you heard in my exchange with your predecessor, I am concerned that in these very difficult choices, one not simply rely on the holier-than-thou statement which we as members of the Commission frequently rely on and members of the Congress and others rely on. Let's abolish all age discrimination, and that's wonderful, nobody can disagree with it, it's good, it's motherhood and apple pie. The question comes when you're faced with the tough choice of thousands of applicants for a few dozen or at the most a hundred positions, where thousands of American students are going abroad to get a medical education because there's no capacity in this country. The last time I looked in the State of California we needed 1,400 M.D.s a year to meet the retirement-death replacement rate of the medical profession. We were only producing 400 M.D.s per year and we were importing 1,000 M.D.s from not only the rest of the U.S. thus draining their resources, but we were bringing them from India, from England, from all over the world, thus draining the opportunities of the developing nations. This is a very real problem. Where does society get the greatest amount of service for the dollars of public investment? I'm not talking now about private investments such as Georgetown, but I'm talking about State taxpayers' dollars, Federal taxpayers' dollars, investing in medical education and a choice an admissions committee would have to make.

My own drawing of the line, I would say I'd let them into medical school up to 45 or 50, and I figure I'd get 15 or 20 years. If they're a surgeon, I would worry a little bit about motor coordination after 60, and a shaking hand on the operating table and maybe we can get a

job-related requirement that deals with that, but again searching, I would just like to know where you would strike the balance on these equities, of limited resources, impacted programs, thousands of people want to be doctors, yet very few slots are available, and do we give them to the citizens 55 and 60 that have 5 to 10 years of service. Do we give them to the thirties and forties or forties and fifties? I'm just searching for answers.

MR. BIAGGI. I'm sure you are, Mr. Vice Chairman. There are no simple answers. I'd like to deal with your threshold comments in relation to the difficulties of the administrators to dispense with the services of the incompetents. I share your concerns on that, and I think that unnecessary burdens are there, but if there were standard procedures established for all, equitable standard procedures established for all that could protect the rights of the individual and also determine finally in relatively expeditious fashion without jeopardizing the rights of either, it would be a highly desirable objective. But, see, we've come full cycle—at least I think we're midway. Initially the rights of the individual were given short shrift. The pendulum response produced what we have today. I think we'll level off because the problem is becoming one of substantial magnitude, and my experience tells me that when we have something of that nature reasonable men will work out reasonable solutions.

In relation to the medical school problem, it is not easy. I know there's no easy answer, but let me go a little afield but on point. The law school has very similar problems. I would like to, for the record, let you know that if that attitude of age was an important element, I might not have entered law school. I entered when I was 45 years of age. I became an attorney when I was 49. Some few years have gone by, God willing, I'll live a few more, but for that, I probably wouldn't have been in the Congress.

You're not going to have any perfect situation, that's what I'm saying. Decisions will be made difficult. You're weighing one side, when you say the benefit to society. What you really have forgotten is the individual rights, the right of that one individual who aspires, who is otherwise qualified. What I'm saying, if that be the case, is that his age should not mitigate against his entry, because if that were the case, I would not have been permitted to enter law school.

VICE CHAIRMAN HORN. Let me say I agree with you on that principle, but—and may I say this, I'd let them into law school at any age. As an educator this is a very inexpensive form of education. Law schools make money, medical schools lose money, so in the selfish sense of the use of citizens' resources, welcome to law school at any time. But on this medical situation, our problem is we've got hundreds we reject that are qualified, with straight *A* records in many cases, and frankly there's no rational way to choose except almost a lottery and using a dart board. For some of our medical schools, because so many people are highly qualified, and again, I guess the concern is that if

you then make a ruling against a highly qualified person who happens to be a certain age group, who then happens to have another way for redress, you know, "boy, am I letting myself in for a lawsuit," even though I might have had another hundred in that category of all ages below that person.

MR. BIAGGI. I share your concern, and I concur. It is not an easy question. It is a difficult question, finding the perfect—there's no perfect answer.

CHAIRMAN FLEMMING. Congressman, again may I express our gratitude to you for coming and sharing these views growing out of your long experience and commitment to this area, and we look forward to preparing a report which we hope will be of help to your committee and other committees of the Congress as they continue to come to grips with this. Thank you.

Counsel, will you please call the next witness.

MS. GERE BENICS. Graciela Olivarez, Director, Community Services Administration.

[Ms. Graciela Olivarez was sworn.]

**TESTIMONY OF GRACIELA OLIVAREZ, DIRECTOR, COMMUNITY SERVICES
ADMINISTRATION**

CHAIRMAN FLEMMING. We're happy to have you with us. Counsel will proceed with questions.

MS. GERE BENICS. Please state your full name for the record and your title?

MS. OLIVAREZ. I am Graciela Olivarez, G-r-a-c-i-e-l-a, Director of Community Services Administration, formerly known as the Office of Economic Opportunity.

MS. GERE BENICS. Thank you. Community Services Administration, in which you perform a major role as an advocate in the antipoverty realm, I wonder what contribution or what the role of your agency could be in combatting age discrimination?

MS. OLIVAREZ. Well, as you know, we don't have the primary responsibility for servicing the aged. Our budget allocation has been \$10 million, and it has been constant for a few years. The most that we can do is try to fill in the gaps that are left by other programs funded by other agencies. Our primary activity right now is in the area of outreach to be sure that all the elderly who are eligible for programs either by AOA or Labor or whatever agency, whether it is a Federal agency, a State agency, or even a private group, to be sure that all the eligible are reached and referred and transported if necessary to necessary programs. In the process of doing this, we are able to offer in a limited way a variety of services in the area of employment, retraining, health, education, transportation, nutrition, even legal services, so that our program is broad based in that with our limited funds we try to reach all the eligible and be sure that they're getting the services that they need or that they qualify for.

Ms. GEREBENICS. Well, we're particularly interested in that because we've identified outreach as a major problem and as a barrier to participating in social service programs. I was wondering if you could explain some of the various outreach activities that your agency employs to ensure that full participation is occurring in different programs?

Ms. OLIVAREZ. Well, we function primarily through what is known as community action agencies. Right now we have in the neighborhood of 860 community action agencies throughout the country. Within that realm, we have a hundred and somewhat thousand employees, 400,000 volunteers. Through the efforts of the volunteers and the staff we are able to do our outreach programs. We feel that we've been very successful in outreach, particularly in rural areas. The urban elderly have a larger panoply of programs than the rural areas, so I don't mind telling you that we do place extra effort in our outreach programs in rural areas.

Ms. GEREBENICS. How do you, does your agency monitor for provision of outreach?

Ms. OLIVAREZ. Well, unfortunately, we have had the responsibility under our act for monitoring the activities of other agencies who are mandated to serve the elderly. With us the emphasis must be on the low income. We have never been given any funds to staff up the evaluation of the monitor component. We're hoping that this coming fiscal year we will get a few dollars to start monitoring and evaluating the effectiveness not only of our programs but also the effectiveness of the other Federal programs who have that responsibility.

Ms. GEREBENICS. Other agencies and individuals have indicated to the staff that there are a number of roles that older volunteers could perform to ensure more complete service delivery to the elderly, and that this whole process might assist in eliminating some of the disparities in service benefits. I wondered to what extent the Community Services Administration has taken steps to develop these kinds of opportunities with other agencies, such as community mental health, Legal Services, Medicaid, food stamps?

Ms. OLIVAREZ. It is done at the local level. We don't do it at the Federal level. It all depends on how active and how efficient the local community action agency is. We do use the elderly as outreach workers themselves because they're in a better position to be outreach workers. I'm not sure that—in terms of volunteers, of course, we use quite a number of them, but as a rule, the people that we're dealing with need services more than they're able to offer volunteer time to our projects. I just recently visited one where it was amazing, I guess the median age at that village was 80. I discovered most of the people in that village were quite lucid. Their problems were in hearing, in sight, in broken hips, and inability to be mobile. In terms of being able to think and communicate, I was amazed at the lucidity with which they conversed with me. I was just very impressed with that program. I should let the panel know that I come from a family of longevity.

My maternal grandfather died at 107 and one of his sisters is living at 102 and still functions quite well by herself. We just recently hired a consultant to work with our senior opportunity program who is 71 years old, simply because I find that they have the experience that we can't find in some of the younger people—no offense to you young faces around here.

MS. GEREBENICS. Thank you. No further questions at this time, Mr. Chairman.

CHAIRMAN FLEMMING. As a Commission we appreciate your being here with us this morning because certainly your agency does play, as you have indicated, a very important role in terms of opening up opportunities for older persons for services. As you know, there is a working agreement between the Community Services Administration and the Administration on Aging which we have appreciated operating under. I feel that the experience of many of the area agencies on aging has been a very positive one in terms of being able to relate to the personnel and the resources, particularly on the CAP [community action program] agency. It has been my observaion as I've been in the field that there has developed and is developing a very healthy relationship. We all appreciate your leadership along that line. The emphasis and the discussions so far have been on outreach, finding the older persons who are isolated and consequently oftentimes are unaware of the resources and services that are available. Here again, I feel that the CAP agencies can, have been helpful along that line. It is very consistent with their mission down through the years.

As you think in terms of this act, which will be effective January 1979 to prohibit discrimination on the basis of age, do you think of any particular impact that may have either on your own organization or on your ability to get help and assistance from other organizations?

MS. OLIVAREZ. We don't anticipate any difficulty at all. I can't imagine—I'm sure there's going to be some, but as of this moment, we just don't see that as a problem or giving us any difficulties.

CHAIRMAN FLEMMING. In your relationships with other agencies and other programs that are supported in whole or in part by the Federal Government, have you identified any situations or have your colleagues identified any situations where they feel that these agencies, maybe not deliberately, but in some cases inadvertently or because of what they regard as lack of resources, are not opening up opportunities to older persons in the way in which they should? For example, we have taken a good deal of testimony in the area of mental health, and I'm sure that the CAP agencies as they carry on their work identify the need for older persons to have access to mental health resources. Have they experienced any difficulty in getting these resources opened up and available to older persons?

MS. OLIVAREZ. Not to my knowledge. As a rule, the CAPs have been in place for 12 years. I think they have a track record. They know the in's and out's and they know all the arguments and they also know

how to counteract the arguments. To this day and of course, you understand, I've only been in my job for 5 months, I haven't heard of any difficulty or any resistance in getting services or access to services for the elderly.

CHAIRMAN FLEMMING. I noticed here your emphasis on the desirability of having older persons involved in the program, and I, of course, share this feeling with you. As the work of your agency moves forward, are you placing emphasis on the desirability of having on staff of the CAP agencies as well as persons who serve as volunteers for older persons?

Ms. OLIVAREZ. Well, I've got to start with my shop. In other words, I can't go out to the CAP agencies and tell them to do something that we ourselves aren't practicing. Our staff does include older persons, and I'm not sure I know what older persons means any more because we discovered the other day that middle-aged was really 40, since most people don't live beyond 80. When you talk about the older person, I'm not sure what age you're talking about, because just like you said, we just hired a 71 year old, who if I had my druthers, I would have hired as my special assistant. As of right now, we don't have the slots. We don't have the positions. In any event, I personally don't look at the age or sex or color and I know that sounds very pollyannyish, but the condition that the agency is in right now we need talent, and we need commitment and we'll take it in any way that we can get it.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Miss Olivarez, I would like to express my own appreciation for your coming and the contribution which you've made. I have known you for a great number of years and have followed your career. I want to ask a question about the 860 community action agencies. As you have indicated, they are involved in outreach and this hearing has demonstrated that outreach is one of the weaknesses in terms of reaching the elderly. Do you have reports from those agencies about the projects that they are engaged in, or can you say whether each of the 860 agencies would be involved in outreach for programs to reach the elderly?

Ms. OLIVAREZ. I would say that as a rule all 860 would be involved, some in a more effective manner than others. It all depends on where the major problems are. In the urban areas, as I said, right now, the emphasis has been on employment, unemployment, underemployment, nutrition; in the rural areas we find that our CAP agencies place more emphasis on reaching the elderly than they do in the urban areas. But as far as reports from the CAP agencies, no, this is one of the weaknesses—

COMMISSIONER FREEMAN. You don't have any reporting requirement that would give you information—

Ms. OLIVAREZ. Oh, yes—in terms of statistics?

COMMISSIONER FREEMAN. Yes.

Ms. OLIVAREZ. Yes, we do, and I believe I have some here that I can leave you.

COMMISSIONER FREEMAN. That's what I was going to ask. The reports from the agencies indicating the extent of their involvement in outreach programs, if you have such a report, if it could be submitted for the record, and Mr. Chairman, I would like to ask that such report be included in the record.

CHAIRMAN FLEMMING. Without objection it will be included in the record at this point.

MS. OLIVAREZ. I guess I'm just concerned that statistics don't really tell the story. All they give you is numbers, and we would prefer to change our reporting system to indicate not only how many have been served but in what capacity and to what extent.

COMMISSIONER FREEMAN. If you have that information and would have it available before it is necessary for this Commission to make its final report, even that would be very helpful.

MS. OLIVAREZ. All right, our Regional Directors are meeting in Washington tomorrow, and I can ask them to collect the kind of information you're looking for.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman?

COMMISSIONER SALTZMAN. No, thank you.

VICE CHAIRMAN HORN. No questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. I just want to remark, I have known Grace Olivarez for many years and of her humanitarian endeavors. She is one of the most unselfish persons in the giving of her talents as an activist that it has been my privilege to know.

CHAIRMAN FLEMMING. Thank you, Commissioner Ruiz, and may we again express to you our deep appreciation for your being with us, and if as a result of this dialogue, it occurs to you that there is any additional information that you think might be of help to us, we would appreciate very much your submitting it. Thank you very much.

Counsel will call the next witnesses.

MR. DORSEY. The Honorable Patricia Roberts Harris, Secretary of Housing and Urban Development, accompanied by Monsignor Geno Baroni, Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection; and Gwendolyn S. King, Director, Consumer Complaint Division, and also Chester McGuire, Marilyn Melkonian, and Toni Thomas.

[Msgr. Geno Baroni, Ms. Patricia Roberts Harris, Ms. Gwendolyn S. King, Ms. Marilyn Melkonian, Mr. Chester C. McGuire, Jr., and Ms. I. Toni Thomas were sworn.]

TESTIMONY OF GENO BARONI, ASSISTANT SECRETARY FOR
NEIGHBORHOODS, VOLUNTARY ASSOCIATIONS, AND CONSUMER
PROTECTION; PATRICIA ROBERTS HARRIS, SECRETARY; GWENDOLYN S.
KING, DIRECTOR, CONSUMER COMPLAINT DIVISION; CHESTER C. MCGUIRE,
JR., ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY;

MARILYN MELKONIAN, DEPUTY ASSISTANT SECRETARY FOR DIRECT AND INSURED LOAN PROGRAMS; AND I. TONI THOMAS, CITIZENS PARTICIPATION ADVISOR TO THE ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CHAIRMAN FLEMMING. We're very, very happy to have you with us. We appreciate the fact that you have just come back from a trip and we are grateful to you for your willingness to come and share some of your insights with us, as we undertake to discharge the responsibility that Congress has given us in this area. We'd very happy in beginning for you to proceed in any way that you would like to proceed, Secretary Harris, and we may have some questions we would like to address to you or your colleagues.

Ms. HARRIS. Mr. Chairman and members of the Civil Rights Commission, it is always a pleasure to appear before this group or to participate in the activity with which you are charged. Not only have I just returned from a trip but I have a commitment that may require me to leave before you finish with our Department, but I have accompanying me a very able person, sitting next to me, who is Dr. Chester McGuire, who is the Assistant Secretary for Fair Housing, Equal Opportunity, at the Department, and next to him is Assistant Secretary Geno Baroni, who is responsible for the program on Neighborhoods, Voluntary Associations and Consumer Protection. In addition, Mr. George Braun, who has direct responsibility, and George if he would come to the table next to Father Baroni, who has direct responsibility for programs involving older persons, is here. I think that among us we ought to be able to indicate to you with some authority the concerns that we have for the area that you are now looking at.

I commend your valuable work on behalf of older Americans, a concern we've all had, and which I think you've had perhaps in other capacities even more than some of the rest of us, Mr. Chairman.

The Age Discrimination Act of 1975 provides that pursuant to regulations developed to implement the act, and I quote: "No person in the United States shall on the basis of age be denied the benefits of, or be subjected to discrimination, under any programs or activity receiving Federal financial assistance." Although the purpose of the act is to protect any person from discrimination on the basis of age, its legislative history indicates that special concern for the treatment of older persons by Federal department policies and programs. Accordingly, I will focus my brief remarks on the Department of Housing and Urban Development programs and policies toward older Americans.

Mr. Chairman, regardless of our individual differences, those racial, ethnic, economic, political, social, and cultural variables which contribute to our individuality, we are lucky that we share at least one common condition, we are all aging, and more than ever before older Americans comprise a significant portion of our population. In 1900, for example, only 4 percent or 3 million people were 65 years of age

or older. Today more than 21 million persons and at least 10 percent of the total population are in that age bracket. Clearly, the dimensions and problems relating to age have changed and are still changing as the elderly portion of the population steadily increases.

One of our principal responsibilities at HUD is to provide housing opportunities for low- and moderate-income persons. This responsibility is an outgrowth of a 40-year commitment to a decent home and suitable living environment for every American family. Since 1956, Federal housing policy has recognized the special shelter needs of older Americans, and the special user status for elderly families and individuals has been retained in subsequent legislation authorizing the various federally-assisted housing programs.

Partly because of Federal concerns and partly because of the general economic advances of the 1960s, the housing conditions of older Americans showed significant improvement in the 1970 Federal census. The proportion of elderly-headed households living in standard quality housing rose from 80 percent in 1960 to 92 percent in 1970. For the approximately 30 percent of the elderly who rent, rent income ratios decreased from 24.1 percent to 21.9 percent. And more than 70 percent of all elderly-headed households own their own homes.

Despite improvements in the housing conditions and housing opportunities for older Americans, we know that there is still a substantial unmet need. The 1970 census showed that of nearly 3.8 million older Americans who rent, nearly 1.5 million had annual incomes of less than \$3,000 and paid more than 35 percent of that income for rent. Although income for older Americans is rising more rapidly than income for other Americans, the rate of increase is still not a comfortable cushion against the increased cost of living. Further, the purchasing power of a person who is 65 years of age is most often half of what that person's purchasing power was at 45.

Clearly, there is the continuing need for the Federal Government to maintain its commitment to providing older Americans a life which, in Louis Mumford's phrase, offers "a greater degree of self-direction, self-expression and self-realization." Members of the Commission, decent, safe, and affordable housing is the foundation of that commitment.

On September 15 of this year, I announced the commitment of \$637 million to finance the construction and substantial rehabilitation of approximately 21,000 additional housing units for the elderly and handicapped. More than 200 private nonprofit sponsors were awarded reservations under section 202 of the Housing Act of 1959 as amended.

Section 202 is perhaps the Department's most visible and popular program for older Americans. With the eventual construction of this year's allocations, it will bring to more than 65,000 the number of units constructed under this program. Section 202 is a direct loan program which carries with it section 8 housing assistance commitments

to guarantee that low-income elderly persons will not be excluded from the program's benefits. Because the annual demand far exceeds the annual authorizations, this year's requests were from 1,300 applicants for 194,000 units, more than eight times the authorized level. And because it is an effective way to provide better housing for older Americans, HUD will continue the 202 program and give it full support under the Carter Administration.

I want to state for the record that of the 21,000 units reserved under this year's section 202 program, 3,000 units or 14 percent were reserved for minority sponsors. The Carter Administration is cognizant of its other commitments to social justice. In addition to the housing provided by the section 202 program, even greater opportunities have been provided through other HUD programs. As of April 1 of this year, some 260,300 units of housing for the elderly have been provided under the various assistance and insurance programs offered by the Department. Section 232, the nursing home mortgage insurance program, has provided 128,000 of these units. In addition to these 325,000 units that I have just enumerated, the low-rent public housing program has provided some half-million units in the past 21 years for the elderly. We expect the section 8 program under its construction, rehabilitation, and existing components to have reserved more than 300,000 additional units for the elderly by December 31, 1977, and we are committed to getting these reservations built and occupied. The grand total of all programs exceeds more than 1,125,000 units for the elderly. It is a record of accomplishment that reflects the Department's philosophy toward older Americans. We will do whatever is necessary to meet the housing needs of the elderly.

As the record indicates, our commitment to older Americans is not rhetorical, and I am pleased to state that it extends beyond our housing programs. In order to provide more information on the full range of activities and programs on behalf of older Americans, I have asked my colleagues from the Department to be available, as I said earlier to you, to answer any questions that you may have about our program.

In conclusion, it is my belief that through our various programs HUD has expressed in real and tangible terms our national concern for the special housing needs of older Americans. You can be assured that under this administration there will be renewed determination to meet those special needs. Thank you very much.

CHAIRMAN FLEMMING. Secretary Harris, thank you for that excellent statement. It gives us a very good bird's eye view of what has happened and what is happening. I noted particularly, and I noted in the press, the emphasis that you are giving to providing leadership in connection with 202 and its relationship to section 8. As you well know, the persons who have worked in the field of aging over a long period of time, with particular emphasis on housing, have always been impressed with the potential of 202. It is clear that for a period of time that potential was not realized by any means, but I personally am

delighted that once again it has moved out and has become a very, very effective instrument for dealing with the problems that confront older persons in the area of housing.

I'm just going to suggest this, and this could be followed up because I want to provide my colleagues with the opportunity of engaging in dialogue with you, but it would be of help to us as we discharge our responsibility if you or your colleagues could identify provisions in law, for example, that in your judgment operate against the best interest of older persons, that may tend to contribute to discrimination against older persons in the field of housing. As you probably know, the Congress has charged us with the responsibility of a report with findings and recommendations to the President and to the Congress, and consequently, we feel if, as a result of our study, as a result of our hearing, we identify both in terms of legislation that gets in the way of fair treatment of older persons, then we have an obligation to call that to the attention of the President and Congress. Any suggestions along that line would be very welcome.

I would like to recognize my colleague, Commissioner Freeman.

COMMISSIONER FREEMAN. Secretary Harris, I want to add my personal appreciation to the very excellent statement which you have made for the record. I have known of your work for many, many years, and we have known each other for many, many years, and you know of my long-standing many years of working in the field of housing.

Yesterday we received testimony from some representatives of civil rights organizations, a representative of the Indian opportunity committee, I'm sure you know her. One of the concerns which was presented there was a concern that had, I believe, not been recognized with respect to the age requirement for housing for the elderly. She said that the age requirements of HUD are unrealistic for the Indian elderly because they don't live that long, and she cited statistics that were very meaningful and rather tragic—that if the age requirement was 62 and the Indian does not live beyond 55, live beyond 50, then for those persons this is sort of a remedy that is not valid. I wonder if your members of your staff have given any consideration to this and perhaps, maybe not answer it, but this is something that we're going to have to deal with as we consider the various implications of the impact of the double and triple discrimination that many groups have encountered.

MS. HARRIS. It seems to me that that issue is an issue that is not our elderly housing issue so much as it is our ability to provide decent, safe, and sanitary housing to the Native Americans of this country. I would submit that the longevity figures are, or lack of longevity is a great tragedy, but we ought to address that concern as we deal with the issue of Native American housing. This is a very difficult problem because of the locations at which Native American housing must be built, and the spiraling costs involved.

I have assigned responsibility for making recommendations to me about the way in which the Department can deal more effectively with the overall need for sanitary housing by Native Americans to the Counselor to the Secretary, who even at this moment, I believe, is still in Alaska looking at that segment of the needs of native Americans. I would say that that is not a problem of the aging; it is the problem of non-aging and the problem of housing. I would urge that not be the direction in which one goes if we are probably culpable with respect to failure generally to provide for all age groups and Native Americans. We're very conscious of it and can only say it is under study now.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. Commissioner Saltzman.

COMMISSIONER SALTZMAN. Secretary Harris, at the same panel we had testimony from a representative of the Chicano community who indicated they similarly had, with respect to their needs, had requirements that precluded the cultural factors in their lives; that is, they have an extended family culture and HUD requirements preclude having parents and grandparents living with them. In effect, the requirements destroy the cultural heritage of the Chicano community. Can you comment on those regulations which preclude a young family having parents and grandparents living with them?

Ms. HARRIS. We've been trying to address this issue of the family relationship. You may recall some difficulties we ran into as we tried to deal with the regulations. It is precisely because we do not wish a rigid definition of family that we have been trying very hard to enable local housing authorities to make a judgment about what aggregations of human beings constitute a family. We do not wish to have that result. I will again look at our regulations. We are attempting to avoid that. May I say that the converse of the coin of the attractive picture that I presented to you this morning of housing for the elderly is a picture that troubles me greatly, and that is the fact that our construction and rehabilitation of units for large families has not been at the levels I would like them to be. The programs for the elderly are very popular because the elderly do not run down the halls, do not cause elevators to break, and don't make noise. And the extended family and the large family needs, we are trying very hard to persuade our constituent local housing authorities to give more consideration to. I think that that is the direction in which we are moving to get a greater balance.

COMMISSIONER SALTZMAN. As a counterpart to this question, what about the segregation of the elderly? What's the Department's experience with that? Do the elderly really want to be segregated in housing really for the aging? On the other end of the coin, how about the exclusionary policies that preclude families with young children from living in a particular area?

Ms. HARRIS. That's a very complicated and complex question which, in a way, is like jumping into a cockpit for a fight. I was questioned

on this at a hearing recently in which we were accused of forcing the elderly to live in units with children where they did not wish to live. The member of my family who would not acknowledge that she is a member of anything called elderly, nonetheless, would prefer not to be segregated from the normal life flow. I think this is a matter that has to be handled very delicately by each manager of each housing unit. I think for us to make an assumption that people who are in the elderly category prefer integration with families or prefer segregation would be to make a judgment that can only be made on the scene. I have urged, when this question has come up, that we provide options for people, and I think going beyond that would get us into more trouble than we realize.

CHAIRMAN FLEMMING. May I say, growing out of my last 6 years of experience with the position that you've just identified, I think that is the only sound position. I mean, I think our objectives should be to provide options, and older persons are not a monolithic group by any means in terms of their desires along this line, but I think if our society can be so organized that they have genuine options to make the decision in the way in which they feel is best, why, that should be our goal and our objective. But you do get these expressions.

COMMISSIONER SALTZMAN. May I continue with the concern I have about urban renewal? Just as in the past, the urban renewal has worked to the detriment of poor families in the city, wiping out the availability of housing for them. I assume this is also true of the availability of housing for the aging in the cities under urban renewal. Are there any statistics that would show that or is that a true assumption on my part?

MS. HARRIS. Well, I think that insofar as existing low-income neighborhoods did include low-income elderly that that was probably the case. I'm sure we can probably find some data, but since we are no longer functioning under the old urban renewal legislation, I'm not sure that it gives any direction for the future. Our concerns now are to be certain, first of all, that we have citizen input into decisions about community planning insofar as there is a Federal component to the financing, and secondly to take a look at rehabilitation, stabilization instead of destruction. Now, this doesn't mean that there will not be times when existing structures are demolished in order to achieve an overall plan, but I think the kind of mass clearance that did take place 20 years ago is over. I'm not one of the people that say that it was all bad. I want to make that clear. There were some socially useful goals achieved by it. But we're not working that way any more, and quite the contrary, we're trying deliberately to maintain economic, social, and age mix in communities on which we have an impact with our Federal programs.

COMMISSIONER SALTZMAN. One final question and I'm not sure whether I am directing it correctly to you. Are there any statistics, is there any information available with respect to bank loans for aging

people who do have their own home and yet their home has gone into disrepair, and is the availability of loans for the aging equal to the availability of any group? I mean, for example, those who are under retirement, can they readily secure loans for fixing up their homes?

Ms. HARRIS. This is tied in with the whole concern for redlining, for unfair approaches to the grant of credit. That is the responsibility of Assistant Secretary Baroni, and I don't know whether in the redlining study, Geno, that we've been doing that we've looked at the age question.

MSGR. BARONI. We may have not exact numbers, but we have evidence that older neighborhoods, that their money is being taken as deposits, and in a sense when you want to borrow from their own neighborhood, particularly in older or changing neighborhoods, they're being disinvested, thus the redlining. But even in those older neighborhoods, there are persons who are older that may not have the resources to fix up decaying houses or porches or roofs, and we do think we have strong evidence that they are being discriminated against because of age, and I think that's a serious problem. In fact we had a large meeting yesterday with the regulatory bodies about that factor, you know, the home loan bank and the other Federal regulatory, and that issue keeps coming up. We don't have the data. Somebody will have to do that study.

CHAIRMAN FLEMMING. We are down to the position that all of us are held by the amendments to the lending discrimination act which has now included age as one of the considerations.

COMMISSIONER SALTZMAN. You said you do have some evidence?

MSGR. BARONI. Yes.

COMMISSIONER SALTZMAN. Can that be submitted to me?

MSGR. BARONI. Yes.

CHAIRMAN FLEMMING. Without objection that will be entered in the record.

MSGR. BARONI. Can I respond to a another question, you asked a very important question about the elderly in Chicano communities. I was in San Antonio last week, particularly with Hispanics, a Chicano community, where they didn't want necessarily to be segregated, and they did want the question of families and a lot of that is a question of allowing options, I think, at local levels, and hoping that the law doesn't impair that. In San Francisco recently I saw a very good example in Mission district where elderly were living with a lot of newer younger people, older people in a community where they wanted to stay and they weren't moved away somewhere else. But they had won the right, their own right, to stay in their community and to get more decent housing opportunity, and the local people worked that out with HUD, so there are those problems, you know, and, I believe, the options.

The other problem with this is—I've asked my mother that a number of times—if you have an option of living in older beat-up housing and

moving into What she calls a project, with other older people, what would you do? It would be a tough fight to get her into that project, separated from other people. But sometimes people have no options—there's no heat, if the housing is deplorable, and sometimes people want to go so there has to be that option. I think that's the kind of thing that is happening around the country.

CHAIRMAN FLEMMING: Commissioner Horn.

VICE CHAIRMAN HORN. Let me pursue that point. I agree on this need for options, but it seems to me what is driving the elderly into destitution and poverty is the tax structure in this society, particularly the property tax structure administered by States and localities. Now what I'd like to know is has any creative thinking been done by the Department of Housing and Urban Development into some sort of Federal tax incentive programs somewhat like the unemployment compensation program we've had since the thirties, whereby certain incentives have been given for the States to begin a program of their own in which case employers get a discount, and while there is not an exact analogy, what I think is needed is some system which we would either waive property taxes for people over 60 and up to a certain value of the house, whatever, because this is what is wrecking communities, this is what is driving people into bureaucratic, ghettoized structures. I think this is of concern to anybody that walks any neighborhood as we see the dwindling of older citizens because they simply can't afford to pay increased property taxes. What type of creative thought, Madam Secretary, has been given in this area?

Ms. HARRIS. You put me in a very bad position because you use that modifier creative and I'm not sure I am.

VICE CHAIRMAN HORN. What kind of noncreative thought?

Ms. HARRIS. As I said, we've been giving thought to this, and one of the matters now being considered in the Department is a whole series of suggestions for local approaches to property taxes. Not only are we concerned about this from the standpoint of the elderly, but also we're concerned about the low-income person who lives in a neighborhood that is being revitalized, where the property values are going up and there is the major automatic reassessment and increase in property costs. We are looking at devices for encouraging and persuading localities to deal with this. The reason I am not yet prepared to say that we are creative is that we have not yet come up with a recommendation that we are prepared to go forward with, but we recognize the problem and are engaged in studying it.

VICE CHAIRMAN HORN. I share Commissioner Saltzman's concern on these elderly ghettos and I wonder, since the jurisdiction of this Commission is to look at Federal programs that have age discrimination requirements, and we have elderly housing programs, what your feeling is that HUD should really be dealing with housing for people in similar circumstances rather than housing for people of particular age categories? Do you think we could solve the problem if we just faced up to

housing for people whether they be young or old, of given economic circumstances?

MS. HARRIS. No, I do not. I think that this is an issue that over time has proved that the older citizen has, one, a different need for housing, housing size; secondly, has a different wish despite the relatives and Father Baroni and myself. May I explain why Father Baroni and I are sitting here, that our parents tend to be more concerned about interaction than some other peoples, but there are large numbers of the elderly who do not wish to be included in a housing unit that subjects them to the noise levels, the varieties, and the uncertainties that are familiar to me, at least a happy part of having families around. I would say that it would be similar to the "comes the revolution everybody eats strawberries and cream," for us to assume that what for us at younger ages is desirable is equally desirable for all members of the elderly population.

Here as in so many other areas, I would hope that we would provide options that for relatives and Father Baroni and myself, we provide the kind of options that make it possible for them to live in a dynamic, vibrant, and frequently noisy community. For those who like the quiet and indeed the sterility of the efficiency and one-bedroom community which tends to be the need of the elderly, I think we ought to provide that, and that we would make a serious mistake to eliminate those options in terms of equality. Equality is not identity.

VICE CHAIRMAN HORN. But I would argue that you could find two-person families at younger ages in similar economic circumstances to two-person elderly families, and therefore it isn't that age is the criterion, it is the particular family size, the particular space needs, particular habits, etc., and you could still provide those options without having special categorical aid programs. I realize the way these things happen—our constituent groups get them to happen and that's good to keep them continuing to happen—but I wonder if it really meets the problem.

MS. HARRIS. I have a basic bias that says that if a constituent group consistently says that this is the approach to be used, that I ought to have a very good reason for saying that their own judgment of what is best for them is wrong. Now, there are instances where we must say that, but our knowledge of the realities of the preferences of people who are older tends to confirm the validity of special programs designed for the elderly.

VICE CHAIRMAN HORN. You have surveys on this, do you? Has HUD conducted satisfaction surveys of elderly citizens in senior citizen housing projects?

MSGR. BARONI. I think it is not an either/or situation, but let me give you some evidence. As related in the Secretary's testimony, HUD recently committed for 202, 200 projects. These were submitted by nonprofit groups, sometimes church groups, sometimes other groups in the community. Now, I think that the evidence here is what's impor-

tant to this point: we are now getting phone calls from the 1,100 groups that we didn't fund. We talk about committing \$637 million—we had requests for another \$5 billion. So 1,100 groups went through the process of putting together the program, talking to people, getting constituency, going through their city, and putting something that was technically viable and coming in, so that pressure now of 1,100 groups that did not get funded and the 200 that did is evidence of a need.

Now, there may be other options in your question which I omitted.

VICE CHAIRMAN HORN. I agree with you that the need for housing in this country is obvious, for younger people, middle-age people, and elderly citizens. It is a tragic state of affairs in this nation right now with the housing costs, but what I'm wondering is, in terms of your research operation have you polled, sampled, interviewed elderly citizens as to their housing needs, their experience, satisfaction, so that in the future design of projects to meet their needs you can meet them in a realistic manner and all I want is—I don't need the answer specifically now, but if you have such documentation, I want them furnished for the record and inserted at this point in the record.

MS. HARRIS. May I ask Bob Wilden of our policy development and research program to comment on the study that just been completed on 202.

MR. WILDEN. Within the last 6 months a study has been developed of evaluation people and housing side on the old 202 program. That program covers about 335 projects throughout the country and houses about 4,400 people. These projects were built roughly between 1960 and 1969.

While we don't have the final published piece on that, it is very clear that the satisfaction level of these projects is very high. That comes out in a lot of ways—it came out with interviews in individuals, it came out on the management statistics on these projects. Vacancy rate is less than 2 percent. Typical waiting lists go 2 to 3 years before a person can get into the project. They are gorgeous to manage, very little turnover. People come into these projects and typically live out their years there until they became so frail they have to go into health care facilities. I think we'd have to say there is a very strong demand for this kind of housing and the satisfaction level is very high.

I suppose you could say, "Well, that may be the only option they have in certain instances." On the other hand, to state this more positively, these projects are integrated into the community. Many of them are very well located.

If I can give you a vignette. I have an 89-year-old uncle who lives in one of the old 202 projects, located at the bank of a river. He's been there for 6 years. His main fear is that he may have to leave because of his own frailty. His satisfaction with the place is very high. His complaints have to do with things like being able to get in and out of the bathtub and whether the rails are located right, which I think is a very minor kind of complaint.

So, in sum, I think that there is a very real demand for this kind of housing and that the satisfaction level is indeed higher than it is for almost any other kind of housing that the Department could provide.

VICE CHAIRMAN HORN. Well, if we could have that for the record at this point.

CHAIRMAN FLEMMING. Could I interrupt to say I think probably there is some other research along this line, either sponsored by HUD or by the Administration on Aging, and I'd be glad to see to it that some of that is identified and made available. Just this before I recognize Commissioner Ruiz, I would like to make this comment. One of the great things about working in the field of aging is that whenever you're talking about a person, they've always got an illustration growing out of their own family and their own experience. Commissioner Ruiz?

COMMISSIONER RUIZ. Miss Harris, comparable housing for persons dislodged by redevelopment agencies continues to be a problem in many areas. This kind of disruption falls most heavily on the aging. I have known of housing areas where 90 percent, for example, of the owners are elderly, enough to make a class of persons having a common interest in a possible class action. Now, for the first time we have age discrimination acts and certainly redevelopment agencies are receiving Federal financial assistance in their condemnation programs involving the public. Do you believe that age discrimination acts might constitute a tool for your Department which could be used to deter overambitious local agencies who may need some restraining influence because of age discrimination consequences, such as a threat of holding up funds? Do you think these acts coming into existence will constitute some sort of a tool for your Department in this area that I am mentioning?

MS. HARRIS. Commissioner Ruiz, there is no doubt that the effectiveness of the statute will require us to examine its self-administration over all of our programs, and under the statute, regulations that are to be issued by the Secretary of Health, Education, and Welfare on these matters. However, until I have had an opinion from the General Counsel of our Department, or if it was, is a more extensive one, I would not wish to comment on the specific legal consequences of this statute with respect to the programs we administer.

However, I would wish to say for the record that we have demonstrated, since January 21, and intend to continue to demonstrate our intention to use all of the elements of the law to secure the effective administration of the programs which are our responsibility. We have already informed local communities that as they administer community development block grants, we will monitor the degree to which they apply the laws involving discrimination and other areas in which the Congress has stated its purposes. However, as a lawyer and as the one responsible for the Department, I would prefer not to make a categorical statement about the consequences of this statute with respect to any program except to say that we will apply it fully.

COMMISSIONER RUIZ. Don't you believe it would be worthwhile perhaps as a lawyer since it is a legal question to get some sort of an opinion?

MS. HARRIS. May I say, it is my understanding that one of the purposes of this hearing and one of the purposes of the examination in which we are now all engaged is to ascertain exactly that question, and we are part of that process at this moment. But you ask me to state a conclusion. I have indicated to you that we are not prepared to state a conclusion any more than I think this Commission at this moment is prepared to state a conclusion, but we are in the process of examining the effect of this statute and of the contemplated regulations upon the administration of our program.

COMMISSIONER RUIZ. That's good enough.

CHAIRMAN FLEMMING. Commissioner Ruiz, that gives me an opportunity of saying that, as I understand it, the Commission on Civil Rights and your associates have been examining certain questions and certain issues, and if satisfactory from your point of view, we would like very much to ask questions that might otherwise have been asked here in the open hearing be provided the staff with the expression and the hope that they could provide us with written answers which we in turn can use as a basis for developing our report. Does that cover the situation, Mr. Dorsey, from your point of view?

MR. DORSEY. Yes, and also I believe they have been developing some questions and responses on their own which additionally would be helpful for inclusion in the record.

CHAIRMAN FLEMMING. If this is satisfactory all around, that would help us a great deal. Again may I say to you thanks so much for coming here and we deeply appreciate the leadership that you are providing.

MS. HARRIS. Thank you very much. It will be a lot of fun to see how this law can be implemented in this particular area. Thank you.

CHAIRMAN FLEMMING. Counsel will call the next witnesses.

MR. DORSEY. William Pierce, Frank Rafferty, Chauncey Alexander, John Wolfe. It is my understanding, Mr. Chairman, that Mr. Alexander will be accompanied by Robert Cohen.

CHAIRMAN FLEMMING. Those whose names who have been called and those who may present testimony because they are accompanying someone else will please stand and raise your right hands.

[Mr. Chauncey Alexander, Mr. Robert H. Cohen, Mr. William Pierce, Mr. Frank T. Rafferty, and Mr. John C. Wolfe were sworn.]

TESTIMONY OF CHAUNCEY ALEXANDER, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF SOCIAL WORKERS; ROBERT H. COHEN, SENIOR STAFF ASSOCIATE, NATIONAL ASSOCIATION OF SOCIAL WORKERS; WILLIAM PIERCE, ASSISTANT DIRECTOR, CHILD WELFARE LEAGUE OF AMERICA; FRANK T. RAFFERTY, AMERICAN PSYCHIATRIC ASSOCIATION, AMERICAN ACADEMY OF CHILD PSYCHIATRY, AND AMERICAN ASSOCIATION OF CHILD

PSYCHIATRY; AND JOHN C. WOLFE, EXECUTIVE DIRECTOR, NATIONAL
COUNCIL OF COMMUNITY MENTAL HEALTH CENTERS

CHAIRMAN FLEMMING. Counsel may proceed.

MR. DORSEY. Starting with you, Mr. Alexander, I wonder if each of you would state your full name and position and organizational affiliation for the record?

MR. ALEXANDER. I'm Chauncey Alexander, executive director of the National Association of Social Workers.

MR. COHEN. I'm Robert H. Cohen, senior staff associate of National Association of Social Workers.

MR. RAFFERTY. I'm Frank T. Rafferty. I'm a psychiatrist and child psychiatrist, director, Institute for Juvenile Research, Illinois Department of Mental Health and Developmental Disabilities, and professor of psychiatry at the Abraham Lincoln school of medicine. This morning I have the privilege of testifying for the American Psychiatric Association, the American Academy of Child Psychiatry, and the American Association of Psychiatric Services for Children.

MR. PIERCE. My name is Mr. Pierce. I'm assistant executive director of the Child Welfare League of America.

MR. WOLFE. I'm John Wolfe, the executive director for the National Council of Community Mental Health Centers.

MR. DORSEY. Thank you. Beginning with Mr. Alexander, as the organization that represents both the administrators and staff of social service agencies, what have you found to be the most important barriers in delivering as services to particular age groups, for example, children and older persons?

MR. ALEXANDER. Well, to begin with, I think we're working against what is consistently a problem of ideology in this country which separates the vulnerable population, the aging and the children, out and differentiates them for a variety of reasons which I think are evident. We have found that from among 75,000 members that the barriers to delivery of service start with the lack of any comprehensive network of child care or day care or services, which often bars both the aging and children from obtaining services. The lack of any network of supporting social and ancillary service to facilitate access to existing programs, secondly, I guess. The example of that would be child care and problems of transportation, for example, for the elderly.

Secondly, because we lack any comprehensive social services and health care system in this country, the cost effectiveness and relevant services are often rejected in favor of more expensive and less beneficial alternatives. In the absence, for example, of adequate home health care and the network of supportive services, institutionalization, particularly of the minimally incapacitated adult, it has become a very common resort, and thus is in effect a major discriminatory item.

Third, I think, is the adherence to the medical model of health care delivery which limits access to the system and denies services which might well be provided by qualified nonmedical personnel. In that

respect very specifically, under Medicare and Medicaid, reimbursements for services are limited and those provided, for example, by qualified clinical social workers are not recognized and are denied, and yet the clinical social workers are the largest provider group within the judicial mental health team for services, and it's these kinds of automatic and built-in barriers that create sources of discrimination.

MR. DORSEY. Thank you very much. Dr. Wolfe, extending that discussion on problems involved in the area of Medicare and Medicaid reimbursements, what have you found in your experience to have been the problems associated with community mental health centers and their efforts to obtain reimbursements in those areas?

DR. WOLFE. The laws governing Medicare and Medicaid prohibit many of the centers from being able to capture reimbursements for services provided, both the children under Title XIX, elderly under Title XVIII, unless community mental health centers indeed are part of a hospital-based community mental health center or affiliated with the hospital. Many of the community mental health center in rural areas have no such affiliation. Consequently, they cannot gain provider status under the current legislation for Title XVIII and XIX and therefore are not apt to capture reimbursement that could be provided to the elderly and to the young.

MR. DORSEY. I understand that you have, I believe, a survey of Medicare/Medicaid participation by community mental health centers that is available for submission to the record, and I would ask at this time that a spot be designated for reception of that information.

VICE CHAIRMAN HORN. Without objection it will be inserted at this point in the record.

MR. DORSEY. Dr. Rafferty, if I may, do you believe there is discrimination on the basis of age in the community mental health centers and, if so, what age groups do you believe are affected and in what forms do you believe it takes?

DR. RAFFERTY. I think there's serious discrimination in community mental health centers on the basis of age. I think it works both for the young and for the old. It's very difficult to find the appropriate statistics and valid statistics to give to you, and I think there are reasons for this. I think that the fact that we really do not have the appropriate statistics reflects the kind of ageism attitudes that are in our society, but let me give you a few that I think are important.

With respect to community mental health centers, the data reported in 1971 by the NIMH biometry and epidemiology department indicated that 25 percent of the patients in community mental health centers, new patients, were under the age of 18, and 4 percent were over the age of 65. Now, that represents, of course, a population that was perhaps 40 percent of the total population for the young at that time and 10 percent for the elderly, so you can see that they were very much underserved.

Most recently, data from the same source reported essentially the same statistics and this makes it even more confusing, for in 1971 it was evident that community mental health centers had failed to serve children and Congress responded with a special program referred to as Part F that appropriated an almost infinitesimal amount of money, \$10 million, for a total Federal national program to correct this problem. And then later in this past year, Congress, in revising the community mental health center law, tried to mandate child and adolescence services. This has generally been rated as a failure and lack of money, lack of trained personnel, and administrative difficulties which were rated as the causal reasons on that.

These cumulative statistics really obscure, I think, what we know to be the real pervasive ageism and age discrimination against the two groups, the young and the old. For example, the cumulative statistics include some services devoted exclusively to these age groups, usually preexisting the presence of the community mental health centers and sometimes funded by other sources. I specifically refer to the fact that many communities had child guidance clinics and, as we look around the country, the community mental health centers that have developed children services are usually those in communities whereby, built on the currently existing child guidance clinics.

Also it obscures the facts, these cumulative statistics, that ageism in some centers is such that few if any children or elderly may be treated by a particular center. It also obscures the discriminatory attitudes of providing, for example, consultative services or only consultative and education services to children in school or to the elderly in nursing homes, and that these kind of statistics inflate the numbers that seem to have been served while at the same time we know that really substantial services were perhaps not given to those groups.

With respect to the Medicare and Medicaid, the picture is even more difficult to interpret, of course, since these programs were designed to correct problems of inadequate health services to the young and to the old. Ageism attitudes are reflected in these problems by other problems that cause the young and the old to receive inferior health care, such as distribution of talented physicians and confusion of discrimination against the poor and the mentally ill.

Medicaid and Medicare programs had built-in discriminatory provisions that prevent the young and the old from having fair access to mental health services. For example, only 29 States as of June 1, 1976, have elected to reimburse under Medicaid for hospitalization of those under 21 and inpatient psychiatric services. Only roughly half the States reimburse for outpatient clinic services, and as a matter of fact, community mental health centers are excluded by legislation from reimbursement for inpatient services under Medicaid.

I might continue with some of the other Federal legislation things if you would want or would you like to wait?

MR. DORSEY. If I could, I want to follow up on one of the things that you raised, and that is relating to the staff at the community mental health centers and I would like to direct this to Dr. Wolfe. Federal staffing grants are made available to centers on a declining matching basis. What has been the impact on the centers in terms of delivery of service to children and older persons as they reach the end of the Federal staffing grants?

DR. WOLFE. Well, it is not clear from a very recent study that is still being written out of the Secretary's house, and I serve as consultant to that study, but preliminary data indicates that as a community mental health center ends its Federal funding, the first programs that are dropped are much things as consultation, education, and satellite services, and this means to me that those services that really reach out to both of these populations, the elderly and the young, will be ones which will be curtailed and the reason is an obvious one, because there's no reimbursement mechanism to provide monies for the staff and for the services. So the very thing the Federal Government initiated in the beginning to set up a system of care that would be indeed accessible and available to people in the final analysis as the Federal funds run out and there is no ability to pick up the monies to continue that program: it is changing and dying in the form it started in.

MR. DORSEY. Thank you. One of the areas that has not been addressed right now is the area of Title XX funding, and that is an area that has received a considerable amount of attention by the Commission.

Mr. Pierce, I understand that Child Welfare League has conducted a study of the Title XX resource allocation patterns. I wonder what your findings have been regarding utilization of Title XX funding, especially in terms of what age disparities in allocation of resources you found?

MR. PIERCE. Well, one thing that we can start off with is to look at the number of recipients that have been served. Sixty-four percent of all the recipients have been served so far are adults, and 36 percent children, so in terms of the population, clearly, adults are far ahead of children in that respect.

An HEW publication tried to break out Title XX spending based on whether it was for children's services or adult services, and they estimated that about 60 percent of all Title XX expenditures had been for so-called children services. The problem with their estimates was that they included day care services, which are really a support service for people in work or training, as a child benefit service. Well, most of the day care—in fact about 25 percent of all of the money under Title XX is for this kind of day care. It doesn't have anything to do with the needs of children. It has to do with the place to store children while their parents take jobs or take training.

If you look at the real child benefit services under Title XX, you find that only about 25 percent are being spent for what we call child

welfare services, like adoption, like foster care, like services to try and maintain a child in his or her own home. As far as we're concerned, there's a fairly equal split.

The real problem in Title XX is not that children got too little or that the aged get too much, but is that it is a far too small a pie. We're reduced constantly in this town, those of us who are advocates for special groups are, to fighting among each other. It would be like the question I'd ask our commissions, where is the worst discrimination, against the black poor or the Chicano poor or the Anglo poor? That's a question that you can't have a good answer to. If you have a Title XX program with a ceiling of \$2.5 billion, what has happened in State after State is that advocate groups all too often fought among themselves—the aged, they're deserving; the handicapped, they're deserving; children, they're deserving; addicts, they're deserving.

We're all fighting over a constantly shrinking pie. It's not so much a matter of discrimination, I think, with all due respect to the subject of the hearing; it is a matter of very hard ethical choices, of hard political choices, and of the fact, not the theory but the fact, that we only have so much public money available from tax sources and how are we were going to allocate it. We must discriminate; that is, we must choose. The basis on how we choose, we have to examine. I think it's going to be a mix of things, like politics, the aging people vote. You know, like people's determination as to what is deserving. The welfare recipient, the so-called welfare bum mother—she is the lowest of the pile; she gets the last scrap. Kids are a little above that, aging above that and handicapped above that and then the working poor above that. So we have all of these little categories of equally deserving people trying to scramble over after the same amount of public benefits.

MR. DORSEY. Did you find in your study of Title XX that whether or not within—I suppose there are two issues that need to be separated. First of all, there is the problem of the limited amount of money to be divided in whatever way, and within that structure, have you found that there are some by age categories which are more or less excluded within the limits of what is available?

MR. PIERCE. If there is one, it would be the fact that the children's groups in cooperation with the aging have fought for and obtained some beneficial prejudice on behalf of the aging. We have advocated with the aging groups to make sure that aging services can be offered on the basis of group eligibility, because aging people and ageism services, it is very clear just don't work if people have to say, "I qualify because I'm poor." We made a political coalition and the children's groups and the aging groups got together and we changed Title XX so that senior centers can give services without regard to income, just group eligibility; if you're older, you get the service. So I think that aging, if there's discrimination, it's probably beneficial discrimination on behalf of the aging at least in respect to that service.

MR. DORSEY. Do you believe that within the area of Title XX, for example, that the solution to the problem of competition between equally disadvantaged groups is to be found in some sort of predetermination in terms of targeting, in terms of earmarking, or is the current system of State allocation of resources more or less what you would be in favor of?

MR. PIERCE. The Child Welfare League is a categorical interest group and we do strongly advocate on behalf of children. So do other groups that have categorical interests. We believe very strongly in federally-targeted programs because looking at Title XX over the last few years we found that the planning process is really a charade. The decisions are made before they consult any of the consumers, whether they are aged or handicapped or children's groups. States—you know, the unsavory prejudices, whether it is in respect to civil rights legislation or manpower legislation or any other legislation, tend to cluster the further down you get.

You get a more ethical view, I think, of society's needs when you can look at it from a national scope. You know that's where we had to pass civil rights legislation. That's where we have to pass fair wage legislation. We do really believe in nationally targeted categorical programs. You say you want to try and do something. You try to do it nationally, and you say it will be done this way. Administration of the Aging has been a very successful program because these people are extremely well organized, they're targeted, they get real results for their constituents. So could groups like National Council on Senior Citizens and other aging groups.

We found that there is no necessary conflict between strong advocacy on the part of the aging and strong advocacy on the part of children; we get together and advocate for parallel categorical programs which will meet the needs of our interest groups.

MR. DORSEY. I just have one last question to follow up on your comments. One of the indications you made early in the testimony was that problem in differentiating the actual beneficiaries of programs. Now, in terms of the act's intent to isolate and to rectify areas of age discrimination, do you have any recommendations as to how the regulations in terms of monitoring age discrimination might be designed to ensure that actual distribution of funds is monitored and therefore actual discrimination, if it exists, is isolated and dealt with?

MR. PIERCE. We had a problem a couple years ago. We were working with a number of other national organizations, including some of them represented here at this table, to try to make some changes in the community mental health center program. We couldn't find any data about the real spending for real services which were targeted on children.

I think that somehow we have to improve the data-gathering mechanism without respect to partisan politics. For several years I think we had a real hesitancy on the part of the Federal Government

to gather data about the needs of all of its citizens because if there was data gathered, pretty soon somebody would say if there's a need we would have to spend Federal funds to meet that need.

I think now we have an opportunity to have several years of real needs, gathering data so we can look and say, "This is the problem," whether it's a problem for aging or the children or the handicapped. We need to improve it. We need more appropriate paperwork in the Federal level and less inappropriate paperwork.

MR. ALEXANDER. May I comment just in connection with Title XX particularly? I would like to support what Mr. Pierce is saying, particularly relative to the conflict of interest, and also to recognize its relationship to the prior charge of the Commission which has to do with the fact that as these conflicts develop between interests as a result of this varied approach it affects minorities the most. They are the most vulnerable and the least able to organize. That's particularly a result of it, although there is built into Title XX, the requirement for a planning process. That planning process has generally been ignored or has been pushed through. Part of that has to do with the way in which the program first got started and there is better work, but the access to the planning process of the elderly and the children or representatives thereof is in itself the limitation and has been demonstrated as a limitation.

There's another feature that I think has to do with what's happening and goes back to what Bill was saying about where the responsibility should lie. That has to do with what's happening in the States', in effect, dumping the responsibility for service delivery. That is, through the contract mechanism in many States we find that the contract mechanism just takes the State off the hook and they say, "Well, we'll give these contracts to these various agencies to develop service."

Well, there's a certain amount of that that is fine, but on the other hand it eliminates the responsibility for somebody monitoring the process or the level at which or the balance in programs that is necessary, and the State in effect abdicates public responsibility for dealing with that question, both of planning and of balance in programming within the limited funds that are there.

On the programs themselves, I'd like to suggest, aside from the data, that also these two groups ought to be approached with an affirmative action approach, that there is a basis for that, and they receive preferential treatment because of the very nature of the discrimination, and secondly, that there needs to be some kind of outreach program that guarantees that affirmative action is working, you see, and the third would be the very significant program that has to do with the training of the people who are in the programs to recognize the nature of this problem, and then to serve as advocates for people in obtaining balance, participation in the planning process, all of these things that we talked about.

MR. DORSEY. Thank you very much. I have no further questions.

CHAIRMAN FLEMMING. Commissioner Ruiz?

COMMISSIONER RUIZ. Dr. Rafferty, psychiatric services relate to a healing technique. Did I understand one of the members of the panel correctly that psychiatric services are not reimbursable under Federal funding?

MR. ALEXANDER. Under the Medicaid program?

COMMISSIONER RUIZ. Under the Medicaid program, is the psychiatric approach of treatment the only way of treating emotional disturbances?

MR. ALEXANDER. I presume by your question that you're addressing it to me?

COMMISSIONER RUIZ. I notice that he is a psychiatrist and you are likewise a—

MR. ALEXANDER. No, I'm a social worker and I was the one who raised the question about reimbursement.

COMMISSIONER RUIZ. Maybe both of you can answer the question; you go right ahead.

MR. ALEXANDER. I would like to respond to it in this way, that by your question, you're defining psychiatric treatment in a relatively narrow sense, I would gather, and in the mental health programs, including mental health everywhere from the State mental hospital programs through the community mental health centers, there is a team approach that is traditional in this country of the psychiatrists, psychologists, and social worker and now the nursing profession that are trained in dealing with psychological, psychiatric, and emotional disorders, and it is our point of view that, for example, speaking only for one segment of that team, social workers in this country provide virtually 50 percent of the service in mental health services, and as a result of that, however, those are not available, for example, in community mental health service for reimbursement under Medicaid, and as a result it is our view that a sizable portion of service delivery availability is not being utilized by many.

COMMISSIONER RUIZ. Has not been utilized but may be utilized?

MR. ALEXANDER. Yes.

COMMISSIONER RUIZ. In other words, there are options, then, that aren't available in order to give the service, given the narrow interpretation of this particular technique?

MR. ALEXANDER. Correct.

COMMISSIONER RUIZ. Which are reimbursable?

MR. ALEXANDER. Yes, sir.

COMMISSIONER RUIZ. You have something to add, Dr. Rafferty?

DR. RAFFERTY. Not to that point specifically, Commissioner Ruiz. I would say we're struggling with a major problem in health and mental health in that we're trying to pass from a cottage industry of 25 or 30 years to a industrialized approach to it, and health has become very big business as everybody keeps telling us; it is big business not only in terms of the amount of money that it costs, but of the technology and of the number of different kinds of people that are involved in it,

so that some 50 years ago who would think of the medical profession as being the predominate and even only provider of health care.

Over the past 50 years, of course, in addition to the nurse has been added many other professions and paraprofessional groups that are providing both health and mental health care. We are at a point now in the process where sometimes we're quite confused and we're not able to tell whether we're providing social service care, health or mental health care, or even correctional care. It is a difficult problem.

With respect to the specific issue that Mr. Alexander raised, I think that social workers of course have been traditionally identified with social services. They have been traditionally identified with working in the public sector and more often than not working for a salary. There's a new group of social workers who are interested in working of course with the health and mental health sector, working in the private sector and working on a fee-for-service basis, and that is in a sense it is a new guy in the block breaking into a system.

With respect to that, I would try to point out, in ways, though, that as we deal with this problem I think we have some difficult issues, and I would like to respond to something that Bill was taking about. I think the data that we're talking about, age discrimination both for the young and the old is simply sort of visible and measurable indicators of a much more pervasive kind of problem that is gradually being referred to as ageism, and I think there is something called ageism that is analogous to sexism and racism. I think it is as pervasive and as universal and as destructive as is sexism or racism, and that it may manifest itself in a variety of different kinds of ways that make it very difficult for us to deal with, since it is hard to define and hard to delineate and most people, of course, deny having it, the same way we all deny being racist or being sexist.

Let me see if I can define for a moment because I think it is important. I would define ageism as the automatic attribution of a disability or of incompetence or insignificance or lack of merit to an individual or a group on the basis of age.

As you can see, this would be very important in our technological society that automatically in a sense uses knowledge, competence, and meritorious achievement as a way of distributing differentially the rewards in the society, so that what we do, then, is we have these stereotypes developed on the basis of age that deny knowledge and competence to the easily identifiable age group. We ascribe to such groups, you know, various and invidious characteristics. For example, we refer to adolescence as usually "emotionally unstable." We mark on their cards their "immaturity," their "callousness", and then we look to old people and we see old people as being "self-centered" and "rigid" and "sick" and "dependent" and "enfeebled in mind and body," and when we build these stereotypes, then turn these stereotypes around, and we have a circularity and then we designate roles to these age groups, both the young and the older, on the basis of

these ageistic type attributions of a lack of knowledge, of immaturity, of incompetence, and we then push the old and the young into positions where they are really in nonparticipating roles in our society.

So with respect to this that I wanted to address myself to something that Mr. Pierce said. It is true that Title XX and other welfare programs are presumably positive, affirmative action programs to help the young and the aged, but I suggest to you that in many ways, no matter how much we need such service welfare type programs, that we would never in a sense be able to develop enough service programs for either the young or the old as long we continue to push those particular groups into nonparticipating roles, that in some sense we're prepared better to pay for a certain amount of limited and sufficient welfare or health for these groups rather than to make way for them in our real society.

I think that there are many ways and many situations where Federal legislation contributes directly to these kinds of not only housing ghettos but in a sense participatory ghettos, if you would, where we do not allow the young or the old to participate. Unfortunately most of these regulations are usually well-intentioned; they usually are designed for the benefit of people, and we are not aware of how tightly we constrict and control people by "helping" them.

MR. PIERCE. Commissioner Ruiz, if I comment on your question.

COMMISSIONER FREEMAN. Make it very brief please. We're running out of time.

MR. PIERCE. I just wanted to go back to what Mr. Alexander said about his concern about discrimination based on professional models; that is, what he referred to as the medical model. I think what he may have been trying to say is that the aging, or for that matter, the children, may want to have a variety of service deliverers give them treatment. It may be pastoral counseling from a priest or a rabbi. It may be social services or mental health services from a psychiatric social worker. It may be services from a nurse or a homemaker or a physician or a psychologist. It may be a whole variety, and in order to make sure we do not discriminate against what the aged or the children themselves want in terms of services, health services and mental health services, we have to make very sure we do not have a discriminatory system of delivering them, and there is now in terms of reimbursement a somewhat discriminatory system.

In some cases the only way that you can get the services you want, because there are going to be paid for in Blue Cross—in fact, in Ohio, the Blue Cross has now said that they will not pay any services in certain kinds of agencies unless they are accredited by a kind of a hospital group, and there are a lot of services that are provided by pastoral counselors and psychiatric social workers that are not in a hospital type base.

So there is a discrimination thing. It is something you may want to look at because not all the aging or all the children for that matter want the same kind of services from the same types of professionals.

COMMISSIONER FREEMAN. I want to first ask if there any materials which you wish to leave for the record? We would be pleased to have it and it certainly would be helpful for the record. I believe if there are any additional questions that may come up or to pursue the points that you made, that the staff can submit to you the questions and you can supply the answers and it would be very helpful to have them for the record.

On behalf of the Commission I want to express our sincere appreciation for the contributions which you made, and I am very sure that we will look forward to hearing and receiving additional information that will come and I regret that the time is so tight—we've got so many witnesses to hear in this last day that we are not able to pursue the very important point which was just being made. This hearing will be in recess until 1:20.

Afternoon Session, September 28, 1977

VICE CHAIRMAN HORN. The afternoon session of the United States Commission on Civil Rights age discrimination study is now in session. Counsel will call the first witness.

MR. DORSEY. David Levy, David Marlin, Bernard Veney, Melville Miller.

[Mr. David Morris Levy, Mr. David Marlin, Mr. Melville D. Miller, and Mr. Bernard Veney were sworn.]

TESTIMONY OF DAVID MORRIS LEVY, ACTING EXECUTIVE DIRECTOR, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION; DAVID MARLIN, EXECUTIVE DIRECTOR, LEGAL RESEARCH AND SERVICE FOR THE ELDERLY; MELVILLE D. MILLER, CHAIRPERSON, PROJECT ADVISORY GROUP; AND BERNARD VENEY, EXECUTIVE DIRECTOR, NATIONAL CLIENTS COUNCIL

MR. DORSEY. Starting with Mr. Levy, I'll ask each of you to state your full name for the record and your position and affiliation, organizational affiliation?

MR. LEVY. I am David Morris Levy, acting executive director, National Legal Aid and Defender Association.

MR. MARLIN. I am David Marlin, executive director, Legal Research and Services for the Elderly, which is a program sponsored by the National Council of Senior Citizens.

MR. VENEY. I am Bernard Veney, executive director, National Clients Council.

MR. MILLER. I am Melville D. Miller, Jr. I am both the director of a local legal service program in New Jersey and chairperson of the Project Advisory Group, a national association of Legal Services programs.

MR. DORSEY. Starting with Mr. Miller, as you know, we've identified certain issues within the area of legal services, for example, a lack of appropriate outreach, failure to include representatives of certain age groups in planning processes, inadequacy or absence of training in areas of law which are particularly important to certain age groups, and reliance on age categorical programs such as Title III of the Older Americans Act. As issues within the legal services area, would you agree that these are in fact the primary issues within that area, especially as they affect older persons?

MR. MILLER. I think that those issues that you've run down are the primary areas for analysis and discussion in terms of the performance of programs. I think there is a tremendous variation in what local programs have actually been able to achieve. That's particularly true since the advent of the Legal Services Corporation and its increased proportions and the additional sort of resources the programs have begun to have available to more adequately deal with the needs of senior citizens. So those are the areas, but I think that in terms of that the actual performance of the program is, each one of those is sort of a major area of inquiry.

MR. DORSEY. You have contacts on a nationwide basis, obviously, and in terms of where Legal Services is now in providing direct services to older persons, where do you see the nationwide issues at this time?

MR. MILLER. Well, I think that what has happened in terms of Legal Services Corporation funding, particularly, is that in the last 2 years there's been a very sizable increase in resources, and the programs who have been aware for years of the need of ways to reach out to seniors have finally begun to be able to really start to address those needs. For instance, one of the major things that goes on now, I think, in programs—goes on in my own program in the last year and a half—is the hiring of senior citizens as paralegals who are able, in addition to playing sort of the conventional paralegal supportive role, legal representatives are able to do a great deal in the data communication, radio shows, testified on dozens of pieces of legislation, has met with perhaps a hundred clubs over the last year and a half. So what's happening is there are more resources coming in and programs who know how they would have been able to use the resources if they had them in the prior 6 years of the freeze are finally being able to get in. It is a very hopeful picture, I think, in terms of the future. We have a very sizable resource in communication services programs this year, \$5 million, and I think we're able to do many things with the resources.

MR. DORSEY. When you speak of increased resources, are you speaking of age-categorical resources or are you speaking in terms of

increased Legal Services general monies which are being applied to meet these needs?

MR. MILLER. I'm speaking of, for instance, my own experience for the most part, the experience of New Jersey, which is where I'm from, there is a Legal Services Corporation with general funds. The Title III money in New Jersey has not effectively been available for legal services for the most part for several years. It has been spent out, selected out, and we've had to rely on Corporation's funds for our work. For instance, in the special needs grant from the Corporation last year we were able to pick up a senior citizen paralegal who was able to do the kind of work I've been describing.

MR. DORSEY. Thank you. Mr. Marlin, I wonder if you might respond to that same question in terms of where you see the issues today in terms of legal services to older persons?

MR. MARLIN. Well, I think your beginning categories of major issues are fairly accurate. I guess I see the topography a little bit differently than Mr. Miller does. I see a broad underservice of older persons. I do think it is true, I do agree with what you said, that some programs with additional funding that has been made available have made some progress over the last months, but it seems to me it is still minuscule compared with the need, and compared with the historical imbalance that older persons are faced with at the hands of the Corporation and its predecessor, the Office of Economic Opportunity. I must say that it is not only older persons who have been traditionally underserved. It has been the crippled, the disadvantaged, the retarded, the mentally infirm—the whole category of other Americans who have been, for reasons that can be understood, but nevertheless have in fact failed to receive their just share of the resources that have been made available by public funds to supply legal services.

In our program we provide for the Administration on Aging technical assistance to 20 States. One of our major responsibilities is to assist State offices on aging, and now the lawyers attached to those State offices, in developing legal representation for older persons. It is an effort we've been involved in—we're the first program in the country to be involved in it. We've been involved in it since late '73. We have seen with those efforts and with the efforts supplied by the Administration on Aging a substantial increase. I'm not sure of the word substantial, but at least a significant increase in the services that are made available for older persons. I don't want to just carry on a monologue. I have some other things to say perhaps about the Corporation efforts or failure to make further progress at some later time.

MR. DORSEY. We'll get back to that, but I would like to address the question to Mr. Veney. I speak in terms of attempting to substantially meet the needs of the elderly and also in terms of enforcement of the Age Discrimination Act. Where do you see the role of Legal Services in this regard? I'm particularly interested in tying that more or less to the traditional role of Legal Services in the area of law reform, in the

area of increased access to various rights, if you will. I wonder if you could comment on that?

MR. VENEY. I have no question that the elderly have been underserved by Legal Services, but I would point out to the Commission that there are some 15 million poor people in this country who do not have any access to government-funded legal services at all. The elderly are certainly included in that 15 million, but I suspect that one of my primary concerns is not just the elderly but the 15 million who are not covered because of the short resources in the Legal Services Corporation.

I think that the act that you are considering gives me considerable concern because traditionally when the rights of poor people have had to be protected, it is the legal services programs that have had to do the protection. They have had to bring the suits. My concern is that much of the existing resources of the legal services programs would have to go toward the enforcement of this particular bit of legislation. I do not want to comment on whether it is artfully drawn, badly drawn, or just does not consider the fact, but it does allow for judicial review. With the experience that we have with HEW, with social security and SSI, the experience we have with Labor Department and many other agencies of government, it is not sufficient just to have them issue regulations and then anticipate they will live up to their own regulations as this act could call for them to do. It is the poor persons going to the legal services program and the programs recognizing the discriminatory act or the failure of the Department to follow its own regulations or established statute, and that's going to take endless resources. I am very much concerned that this kind of utilization of resources was not taken into account when this particular act was drafted.

MR. DORSEY. I have to apologize for that because for the moment I cannot recall whether or not there is any provision in the act for any reimbursement of legal fees.

MR. VENEY. There is no such provision.

MR. DORSEY. My impression was there was not. I assume from your response here that such a provision would be a recommendation on your part in terms of assisting Legal Services to do that which you project it will have to do in the final analysis. Is that type of provision in antidiscriminatory legislation an effective means of limiting the detrimental effect in terms of resource allocation for Legal Services? In other words, what I'm basically saying, would such a provision enable a legal services office to effectively work for the rights of older persons where they are being violated and be yet reimbursed for that allocation of resources?

MR. VENEY. I would hope it would. It would certainly be desirable, but I would defer to Mr. Marlin and Mr. Levy, who have run legal services programs where they have been delivering them.

MR. DORSEY. Would either of you care to comment on that?

MR. LEVY. I'm not sure I can say exactly, but I think Bernie's point about the enforcement provision is very true. I'm not sure that putting a fee would enable legal services programs to go into that area. I think the remedy section of the act itself is poorly constructed. It does not lead to a specific remedy for an individual but rather one would have to go to a Department head to change the regulations for effective enforcement process inside the Department. That will cause a lot of trouble in enforcement. The process would be very cumbersome.

MR. DORSEY. Mr. Levy, I want to follow up on your reactions to the act but, before I do that, I do want to follow this reimbursement question just a bit further. In terms of—not in terms of whether or not it would push you into the area of enforcement, but rather whether or not that, in fact, such a provision aids in the allocation of resources is the question that I'm not sure that you answered, but I do want to have the answer.

MR. LEVY. I'll speak to that more specifically. It has been my experience insofar as very few programs in their priority setting see the financial inducement of operating in a particular area as something that directs them to set priorities in that area. They are not in the business to make money. They're in the business to bring lawsuits that represent community felt, crime felt, issues. The incentive for a legal services program that does not pay its staff on any other basis than a salary would be very limited. For the private bar that would not otherwise get involved, there perhaps would be some incentives to bring these actions.

MR. DORSEY. I understand what you're saying. What I'm more curious about is whether or not if Legal Services chose to go into this area and granted their limited resources, whether they can use this provision to recoup—

MR. LEVY. Sure. There is ample precedent that would allow them to collect these fees and to put them back into programs and the way the Legal Services Corporation is set up now in terms of funding does not penalize programs for outside income in this area.

COMMISSIONER SALTZMAN. Mr. Dorsey, could I suggest that if Mr. Levy could provide precedents relative to this kind of situation, it would be helpful and it might be admitted at this point as evidence in the record.

VICE CHAIRMAN HORN. Without objection it will be inserted in the record at this point.

MR. DORSEY. I believe you indicated, well, you did indicate by virtue of your comments that you have some feelings about the current language of the act, and some shortcomings, one of which is at least the remedy. I wonder if you have any other reactions to the act as it is currently written that you might share with us?

MR. LEVY. I'm not an expert on discrimination law. I think it would be preferable coming from someone other than myself, but I do believe that the burden of bringing a lawsuit to enforce the remedies sec-

tion in the act would be so great that it would involve, say, legal services programs in fairly lengthy litigation and operate really as a nonincentive, as a detriment to their getting into this area.

MR. DORSEY. Recognizing, as you have stated, that this is not your area of expertise, but in terms of following up on this kind of issue, a deprivation of class category of race, are there regulations or laws which you have encountered which make the process easier and which may or may not serve as a model, in this act, for making some kind of effectuation of remedy more amenable to people whose rights have been violated?

MR. LEVY. I would expect that the other members of the panel might want to comment on this, but I would cite something on the order of race and sexual discrimination provisions for individuals to enforce against individual employers. There one would have to go to the Equal Employment Opportunity Commission, but frequently nothing happens at that level, allowing a private lawsuit to be brought aside from other remedies in that area. Similarly in housing, it has been very effective in my experience to have the private right of action to be brought against the agency or persons which discriminates and to have stipulated damages that would be corrected, even in the absence of otherwise provable damages.

MR. DORSEY. Does any of the panel members wish to respond to that issue?

MR. MARLIN. I make this comment, that I didn't really come prepared to examine that. I did serve as a trial lawyer in the Civil Rights Division of the Department of Justice for 4 years, and I was an Assistant General Counsel of this Commission, so I do have some background in civil rights enforcement. It would be my judgment that the agency entrusted with the enforcement responsibility is pretty critical. The enforcement of the Age Discrimination in Employment Act by the Department of Labor has left a good bit to be desired. On the other hand, the Civil Rights Division of the Department of Justice has, when given authority and resources, provided the major enforcement activity, and I'm sure that when the Commission makes its report to Congress and the recommendations that will then be considered by Congress, that that will be one of the avenues of exploration, and I would like perhaps at that time to be able to make some more specific recommendations.

MR. VENEY. I must say that as I read the act I was struck by the fact of leaving the enforcement at the level where poor people have had the problem, the elderly poor, the younger poor, and the poor in general, I think I have said that the fox is being left to guard the hen house and I wondered why that was true. I don't know whether it would be possible or whether it would seem self-serving for the Commission to recommend that it be the body of enforcement for this particular act, but I would certainly think far more desirable would be to have that happen than to have the individual Department, such as

Labor, in charge of enforcing something as important as the Age Discrimination Act.

VICE CHAIRMAN HORN. I think at that point that the Commission has never assumed an enforcement role. We are strictly a research clearinghouse and a monitoring agency, which gives us a certain independence. Maybe it does not give us the practicality of dealing with the things you recommend. So you might have a good suggestion.

MR. DORSEY. Mr. Miller, do you want to comment?

MR. MILLER. There's one point to sort of tie this discussion into the earlier discussion about the fee reimbursement. The Legal Services Corporation Act as it now stands requires the referral of fee-generating cases out to the private bar, the first instance by a program, so there is not a duplication of resources and so on. We have found that there are certain types of cases, an example not entirely unrelated to this discussion today, social security, disability matters, where the private bar as it is now constituted in a lot of States simply does not have the requisite expertise to really do a full job in the area. Referral is a very difficult thing. There is some lack of clarity in the Legal Services Corporation Act as it now stands as to whether or not, under what circumstances, certain types of matters may be sort of en masse retained by the program if there is this kind of problem in terms of the referral to the private bar. It strikes me in the age discrimination area, generally, there is an enormous amount of expertise that needs to be developed and that, in areas of this country outside of your urban centers where there might be very large law firms which might be able to develop that kind of expertise, that staff legal services programs might well be focused or concentration of resources which would allow the development of that kind of expertise, just something in terms of the Commission's final report. It might be worthwhile taking a look on the fee-generating section and referral type of mechanism that is indicated and see whether by appropriate language change, perhaps in this statute, perhaps even in the Legal Services Corporation Act, other sorts of clarification by regulation, in areas where it is really simply not possible for the private bar to develop that kind of expertise, because the law firms are not big enough and they're too diffuse in rural areas, and that a more systematic sort of retention of those kinds of cases by legal services programs might be possible.

MR. DORSEY. I would just like to address one last question to each of you, and that is, the issue of outreach has consistently been raised in terms of provision of services to older persons, and I'll ask each of you in your own opinion what you feel is the best way to assure that this kind of outreach is accomplished. If I could start with Mr. Levy?

MR. LEVY. I'm not sure I can say for sure. Outreach represents a commitment of resources that would otherwise be used in other areas. There are, one can stipulate this by legislation or provide a special source of funding for outreach, but in the overall context of how a legal services program runs or how you deliver services to the elderly,

you're going to have so many different concepts of outreach—what is involved in outreach? Does it involve actually having to go to a person's home? Does it involve transportation services, which relate to a whole other set of issues? It is really hard to specify for programs to do outreach. There's so many individual solutions that I'm familiar with that I'm not sure I can choose one as more successful or less successful. It is something I would direct to everyone, but it is a question which each program has to investigate.

MR. MARLIN. I think, Mr. Dorsey, that's the key question. It seems to me that there has to be a statutory requirement. Guidelines should be established in order to achieve and to mark the progress towards securing outreach. I think Mr. Levy is quite right, outreach can take different forms in different localities. But the mechanics are there for the legal services projects in their communities. Every State has a State office on aging, and every State has area agencies on aging. Tied into a network are a lot of voluntary systems and voluntary groups and national organizations of aging. There are senior centers throughout the country. There are literally thousands of opportunities to secure outreach; what might be best in any community would depend upon influencing forces.

I might say that in the testimony that we urged the House and Senate this year to add an amendment to the Legal Services Corporation Act, addressed itself specifically to the establishment of guidelines so that outreach could be secured and could be measured. Although the Corporation posted the language, posted the principle, both the House and Senate have adopted language which unfortunately could really be more accurately described as advisory, but it will be an improvement and we hope that it will further the efforts that the Corporation has made through the interagency agreement to secure more representation for older persons.

MR. VENEY. I think Mr. Marlin has made a very clear point, that the Congress has recognized that the presentation he made to both the Senate and the House, and has indicated that in the priority-setting process of each of the local programs there would be the inclusion of the elderly, the handicapped, and other interest groups who would need government-funded legal services. I am very much afraid of a Federal statutory mandate that would provide for almost anything as regards to legal services because it undercuts local autonomy.

There is an underlying assumption here that I guess I will react to very quickly. That is, that there are no senior citizens involved in decisionmaking positions on the legal services program. I did some quick research before coming here because I didn't want to be blown out of the water, and I find in Indianapolis, Long Beach, Washington, D.C., Los Angeles, St. Louis, in other words, the locations of all of the Commission hearings, there are senior citizens on all of those boards of those programs. In St. Louis, a matter of fact, the president of a board is a 70-year-old, ex-VISTA volunteer, eligible client, who hap-

pened to be on the vicinity council board up to recently. In Washington, D.C., the vice chairman of the board is a senior citizen, although not an eligible client. There is an eligible client on that board who happens to be a senior citizen. So that on each one of the program boards and that program does know about the process of this advice of the senior citizen, and I think that must be recognized and I would hope this body would not do anything that would undermine the allocation of resources by those people who know best what the needs of that particular community are. I would remind the Commission that pioneer work has been done by legal service attorneys in nursing homes, in institutions for the handicapped and the mentally deficient, and that work is not at the encouragement of anything other than people at the local level.

MR. DORSEY. Thank you, Mr. Veney. Mr. Miller?

MR. MILLER. As has been pointed out, I think, the current proposed legislation contains prefatory language. I think that the sentiment of programs around the country is very strongly that any attempt to deal with it in statutory terms other than encouragement would be really almost meaningless and would be in effect a waste of resources. As Mr. Marlin pointed out and as Mr. Levy pointed out, there are enormous differences area to area, county to county, even town to town in terms of the characteristics of the senior citizen population, where they live, how they are reached, what their interests are, what their problems are, and in 1978 or 1979 a statutory section which requires concentration on senior citizens, and then 1980 when it concentrates on migrants, and so on and so forth, puts the legal services program in a position really of being sort of a national political football, sort of buffeted about, which inhibits the ability of those boards to really look at the unique needs and unique situations of all the clients in their area. The key, I think, the making or the remedying of whatever underservice exists in legal services, whether it is older or young, or whether it is other population groups as well, is for the Corporation to work in hand with local programs in a constant sort of evaluative monitoring, supporting technical assistance sort of way, to suggest new ideas, bring in experiences from other parts of the country, where necessary, to stimulate action. All of this is so—it simply is so difficult to reduce, to boil down, distill to the level of the national regulation, even more a national statute.

MR. DORSEY. I have no further questions.

VICE CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. Is anyone on the panel willing to hazard an opinion upon what is meant by the words unreasonable discrimination on the basis of age? Any volunteers?

MR. MARLIN. Why do you ask, sir?

COMMISSIONER RUIZ. Pardon, sir?

MR. MARLIN. Why do you ask?

COMMISSIONER RUIZ. I'm looking at the word unreasonable—does that unreasonable discrimination mean that there is reasonable discrimination?

MR. MARLIN. I think in the context of application of law reasonable or unreasonable has a fairly well-defined historical pattern. I don't know if that gets one anywhere to compare reasonable or unreasonable, but it has served as a method of making all sorts of judicial judgments in a whole variety of matters, civil, criminal, the kinds of disputes that citizens engage in, whether the plumber fixed the sink well as he contracted to do, or whether it is something far more of a national import. That phrase has a fairly well settled application in the law.

COMMISSIONER RUIZ. Well, it isn't so in the area of civil rights. Either you discriminate or do not discriminate and there has been a lot of discussion, yesterday and today, by people that are cueing in on this particular word with relation to aging, and that is the reason.

I'm aware of the fact that in your instructions to a jury we have the strawman, prudent man, as to whether he will, is, or is not doing something that's reasonable with relation to all of the surrounding circumstances, etc. But let us assume that in the South on the question of discrimination, the civil rights laws have said there shall be no unreasonable discrimination. Now, they thought they had reasonable discrimination equal, but then the law changed. I'm very much interested from a lawyer's point of view how you are going to get out of trouble.

MR. MARLIN. I would submit, sir, the word reasonable has always been read into discrimination, whether it is there as a separate set of letters or not, and that was true as applied to what was discrimination, as it applied to racial discrimination in the South. What is the *Brown* decision but an attempt to define what discrimination is? And "reasonable" is really applied to reflect the conscience of the Nation as it applied to segregation of races in school. I don't think the word reasonable creates some new and artificial disability to applying the principle of equity and of the Constitution to whatever the problem is, whether it is race or age. That's just my opinion, sir.

MR. VENEY. If I can comment as a nonlawyer. I cannot give you a legal definition. You certainly can do that for yourself. If I can get into my field just a bit, a program might decide it will not represent juveniles for abuse brought before youth courts because there is the requirement of the court's that representation be provided through defenders or appointed counsel, and the program might decide to use its limited resources to provide other forms of representation not for juveniles in those kinds of areas. I don't know whether that is unreasonable or reasonable, but it certainly may be the best allocation of that program's resources and while the program would not be serving juveniles charged with crime, and therefore be discriminating in the sense that the staff definition says discrimination occurs, it might in fact be reasonable for them to do that.

VICE CHAIRMAN HORN. Any further comments?

COMMISSIONER RUIZ. No further questions.

VICE CHAIRMAN HORN. Commissioner Saltzman?

COMMISSIONER SALTZMAN. Could I just ask for two things that each of you would be willing to address yourself to this. One, the recommendations relative to enforcement—having looked at the present law, what would you recommend the Commission recommend in relation to enforcement? Secondly, whether there are any Federal restrictions or regulations applied to your organization which presently operate from your point of view to the disadvantage of the aging disproportionately to other population segments? You understand what I'm asking?

MR. MARLIN. The second question was as applied to our organization?

COMMISSIONER SALTZMAN. Are there any Federal regulations, restrictions in terms of your organizations which apply disproportionately to the aging, to the disadvantage of the aging? I'm suggesting that there is a principle of equity when there is limited resources, then those limited resources must be distributed with some sense of equity, and in fact in principle, if that equity isn't present in the operation of your organization, I would reply to you, if you would, to indicate to us what are those Federal restrictions or regulations. Thank you.

VICE CHAIRMAN HORN. Well, do you wish this as a matter in the record?

COMMISSIONER SALTZMAN. Yes.

VICE CHAIRMAN HORN. Without objection a place will be held in the record for the insertion of the response at this point.

VICE CHAIRMAN HORN. Are there any further questions, Mr. Saltzman?

COMMISSIONER SALTZMAN. No questions.

VICE CHAIRMAN HORN. We deeply appreciate you for sharing this with us. We appreciate any further information you could furnish based on the interchange and exchange that has occurred here. Thank you for coming.

Counsel will call the next witness.

MR. DORSEY. Alvin Rucher, Dr. Walter Robinson, John Martin.

[Mr. John Martin, Dr. Walter G. Robinson, and Mr. Alvin M. Rucher were sworn.]

TESTIMONY OF JOHN MARTIN, LEGISLATIVE CONSULTANT, AMERICAN ASSOCIATION OF RETIRED PERSONS AND NATIONAL RETIRED TEACHERS ASSOCIATION; WALTER G. ROBINSON, BOARD MEMBER, NATIONAL COUNCIL ON AGING; AND ALVIN M. RUCHER, ASSISTANT TO THE EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF SENIOR CITIZENS

VICE CHAIRMAN HORN. I'm sure if Chairman Flemming were here, and he will be here shortly, he would want to recognize his distinguished predecessor, Mr. Martin, as Commissioner on the Aging. Welcome.

MR. DORSEY. I would ask each of you to state your name for the record, please, and your position and organizational affiliation?

DR. ROBINSON. Walter G. Robinson. I am on the board of directors of the National Council on the Aging.

MR. MARTIN. John Martin. I'm legislative consultant to the American Association of Retired Persons and the National Retired Teachers Association, and former U.S. Commissioner on Aging.

MR. RUCHER. My name is Alvin M. Rucher. I am the assistant to the executive director of the National Council of Senior Citizens.

MR. DORSEY. Thank you very much.

MR. RUCHER. And my specific responsibility is personnel and special projects.

MR. DORSEY. Thank you. I wonder if I might start with you, Mr. Rucher. I would ask, do you believe that older persons are excluded from participation in social service programs for intentional or unintentional reasons?

MR. RUCHER. Yes, I think there is some discrimination, both intentional and unintentional.

Let me make one further comment, please, which will be a little different. I want to explain my position. I did not know until this morning at 9 o'clock that I was coming to this meeting. There was some mixup on the responsibility of Mr. Marlin. We thought he was representing our office and until Mrs. Belton came to my office and insisted that I come to represent Mr. Hutton who has been ill and has just returned to the office recently working part time, and somehow the correspondence got mixed up and we didn't know that he was coming.

VICE CHAIRMAN HORN. We're glad to have you here.

CHAIRMAN FLEMMING. Yes, indeed.

MR. RUCHER. Mrs. Belton gave me three questions that she said I should talk to and I have put in mind my answer to those questions. I haven't had time to do it so I'll be glad to read those if I may. Shall I do it now?

MR. DORSEY. You certainly may.

MR. RUCHER. With respect to the question that you just asked, I said that with scarce resources available, it seems to me that it is both intentional and unintentional, that administrators when faced with hard questions on how to allocate scarce resources tend to lean toward the young at the expense of the elderly.

We sympathize with these administrators and agree that the young must be helped. For instance, we think it is terrible that in many communities unemployment rates among the blacks approach 40 percent. Of course, youth must be helped, but we feel, also, that more conscious effort should be made to increase elderly participation in social services and employment programs.

MR. DORSEY. Thank you very much. Mr. Martin, the CETA program is a major area where older workers are not participating according to their eligible numbers. What assessment do you make for the reasons for this underrepresentation?

MR. MARTIN. Well, the CETA program is a program which is applicable to all levels of the population, all ages of the population, and the statutory language under which the CETA program is conducted specifically requires that in the making of plans for each year for the CETA program in each State that there be a careful delineation of the significant segments of the population which have problems of employment and which need to be served. For some strange reason, the CETA program has been somewhat successful in getting statements into these work plans, but it has not been successful in getting those statements carried out. That is, the implementation of the plan has been very weak and as a result the CETA program has tended to favor the younger worker rather than the older worker, either the middle-aged or the older worker.

We have conferred with the Labor Department several times on this, and have written them, and trying to stress the importance of the Labor Department taking some responsibility for those carrying out those plans as they are developed, but it is quite beyond me to know the reason why the Labor Department has never been willing to put pressure on prime sponsors to make good on the commitments in their work plans. Until that happens, the older part of the population will not have a share of the CETA funds and a share of the CETA programs.

One thing has occurred to us. That is, CETA's prime sponsors in some cases seem to lean on what is called Title IX, the Title IX program, which is a program for older, low-income workers for part-time jobs, into which \$190 million will be put in the coming year. That sounds like quite a lot of money, but in terms of the larger CETA program, it is a drop in the bucket. I think sometimes, however, that the Department and the prime sponsors take the attitude that after all there is this little categorical program for older workers and that discharges their responsibility for seeing that older workers get a fair share of CETA program monies.

MR. DORSEY. Thank you. Dr. Robinson, are there any other areas of age-related problems in the area of employment that particularly affect older persons in terms of employment?

DR. ROBINSON. Well, we find that, as been stated recently, that the legislation as it is allows the prime sponsors various programs to sort of not push for having older workers into the programs. We find that, according to Under Secretary Brown's statement alone, that largest percentage of the monies that were expended, CETA program, expended for young programs. We also find that the regulations for agencies that do the screening encourage not hiring older citizens because they are looking for what they consider those who are more likely to be productive and able to get in the jobs successfully, and the older American is not considered among that group. The older American is considered one who will not have much time to continue to contribute productivity. The older American is one who is considered who may

not get maximum benefit from the program at the time. So we find that those have been discriminatory factors against the older American in the service programs.

MR. DORSEY. Do you have recommendations for ways in which this particular problem can be addressed effectively?

DR. ROBINSON. One of the things we find that is a critical problem to us is that there is not enough data on the reporting and from the States who have addressed itself to the numbers that they are trying to recruit or get into the service programs. We feel that there is a greater need to get the data out on the aged. We know that agencies are flooded with paperwork and what-have-you to keep the statistics, but we also know we aren't able to get the data communications that we need to see how effective these programs are and to see what we really can do, what changes can be made in terms of being sure that the senior citizen is equally served in all the programs.

The second thing is, I think, that we need to have a very strong commitment to outreach. There are numerous people who are not brought into the programs for various reasons, for fears, most of the time because they are not wanted into the program and they are not included in all these programs, and unless we go out and let them know that they are a part of the program and they are entitled to participate in these programs, we won't get them. So outreach is very much needed.

I think another thing that is very important, we do not have enough trained staff in the field who understand the programs that are available to senior citizens. I think this is a shortcoming of the program, that we are not moving in terms of our institutions of higher training in fact to provide enough technically trained people. In fact, most of the programs we have now in gerontology, they are mostly geared towards research-oriented programs instead of direct delivery programs.

MR. DORSEY. Thank you very much. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. First of all, may I express my own appreciation that the three organizations that are being represented here are here and are participating in this particular hearing. I am in a position where I'm very much aware of the leadership that the three organizations have provided in the field of aging and, in terms of the Age Discrimination Act, if it is to be implemented in an effective manner, we're going to be very dependent on the leadership of these three organizations.

I would like particularly to express my appreciation of the fact that John Martin is here representing, well, really two of these organizations, but one being the American Association of Retired Persons, National Retired Teachers Association. Mr. Martin was, as the Vice Chairman has already indicated, a former Commissioner on Aging. Yesterday we had the opportunity of listening to the testimony from the first U.S. Commissioner on Aging. Mr. John Martin served as the

second. Prior to that time, he had rendered outstanding service in the field of aging through service in the State of Michigan and through the private sector.

During his period of service, the 1973 amendments to which we have referred a good many times in the course of this hearing were enacted into law, and he got things underway in terms of the implementation of those amendments. All of us in the field of aging are very much indebted to John Martin for his leadership and for his continuing involvement in a very significant way in the field of aging.

Nelson Cruikshank, who was the Chairman of the Federal Council on Aging, Counselor to the President, was a witness this morning, primarily in his capacity as Chairman of the Federal Council on Aging. I would like to take note of the fact that Mr. Martin is also a member of the Federal Council on Aging by appointment of the President and has been a member since the beginning of the work of the Federal Council.

I asked Mr. Cruikshank what his views were as to the role that the Federal Council on Aging might be able to play in providing oversight in connection with the implementation of the Age Discrimination Act because I'm confident there's going to have to be a great deal of oversight. The National Council of Senior Citizens and the National Council on Aging, as well as the organization that Mr. Martin represents, I know are going to be extremely helpful from an oversight point of view because you're out there in the private sector. You are going to identify the situations where there isn't enforcement, and that is going to be of great help to the government. Mr. Martin knows I've taken note of the fact a number of times that, in some respects, the Federal Council in the field of aging is comparable to the Commission on Civil Rights in the civil rights area. The fact of the matter is the language of their law is very similar to the language of our law. So I'm wondering, John, if you would be willing to comment on what you think might be the role of the Federal Council on Aging in providing oversight and in monitoring the implementation of this act.

MR. MARTIN. Yes, Mr. Chairman, I think the Federal Council has an important responsibility in that regard. I think that the Federal Council, however, cannot do an enforcement job. In reading or reviewing the act that we're talking about here today, the legislation, it seems to me that there is a necessity for some other organization that has enforcement powers to—I don't want to use the slang phrase but to "ride hard" on what is going on so far as each of these agency's activities in carrying out their responsibilities under the age discrimination legislation are concerned. I think that each agency, with all the goodwill in the world, will find itself sort of paying attention to or working on its own constituency when age discrimination matters occur, and that means that there's a certain tendency to deal leniently with the situation rather than to come down hard.

I think the Federal Council can't take an enforcement role, but I think the Federal Council can take a review role, a monitoring role, and can hold hearings from time to time of an oversight character. The Council has been given authority and responsibility to hold hearings on matters related to the aging, and even includes age discrimination, and it seems to me that there is an opportunity there for the Council to improve the performance under the Age Discrimination Act by keeping alert to situations that might arise and from time to time conducting oversight hearings in different parts of the country on the operations under the legislation.

CHAIRMAN FLEMMING. Thank you very much. In the discussion with Mr. Cruikshank, it was brought out that the way the Council is constituted presents to some degree a possible conflict of interest to two of the designated members of the Council, Secretary of HEW and the Commissioner on Aging. Then also, of course, the way the law is now worded, the Council in effect, initially anyhow, looks to HEW for resources in order to carry out its work. The discharge of the responsibility that has been given us, have been asked to make recommendations relative to possible changes in law as well as to possible regulations.

I agree with you, I don't think a body like the Federal Council could ever have responsibility for enforcement. We get that question in the civil rights area. Every now and then people think we should have some enforcement responsibility. But I do think it could evolve into an ideal body to perform an oversight function. We indicated to the Chairman that if he had any specific ideas as to changes that he thought should be made in the law in order to make it more effective along that line, we would welcome them, and we certainly would welcome them from you because you've sat on both sides of that table, serving on the Federal Council and also serving as Commissioner on Aging.

I really think that, if this law is going to be something more than something that gathers dust, that right from the beginning a good deal of emphasis should be placed on the oversight aspect. I'm wondering if any of the other members of the panel would like to make any comment on this question of oversight, seeing to it that once the law becomes operative in January 1979 somebody takes a look at it, makes sure that it becomes a reality.

MR. RUCHER. I would like to say that we have an established network of over 3,800 affiliated clubs around the country and we certainly, as we do on other legislation, exercise some oversight activity with respect to the operation of this law.

CHAIRMAN FLEMMING. I appreciate that and I know from experience that the organization does perform oversight functions, and it is all to the good.

DR. ROBINSON. It seems to me, Dr. Flemming, that the various organizations that are involved with aging, with the broad coverage that

they have in terms of community and what-have-you, if they were involved somehow legitimately and being responsible for taking care of the business of overseeing, I think it would do one thing in particular; it would help to not allow for cases to get bound up as they have been for other civil rights cases and what-have-you and would allow us in many cases then to also go ahead and be troubleshooters before it is necessary to litigate any such cases.

CHAIRMAN FLEMMING. I came in a little late on your testimony, but I notice that all of you focused on CETA, and some of the problems that confront us there. You obviously are performing an oversight function in that respect. Growing out of your own experiences, I mean, experience of the organization, are there other Federal programs that you have identified where in your judgment as a matter of fact there is discrimination against older persons, and programs that we ought to pay particular attention to as we file our report with the President and the Congress?

MR. MARTIN. Could I come back to the earlier question that was asked me with regard to CETA? One of the things that concerns me very much is the fact that the new welfare program which proposes 1,400,000 jobs is aimed squarely away from the older population of the country as I can read it. I am very much concerned that even the little that is now being done with the older people under CETA will be submerged in trying to find jobs for the persons who are supposed to be found jobs for under the new welfare program. I think, it seems to me in the planning for that program, nobody has paid any attention to the fact that you have a very large population of older people in this country who need jobs and who might even be thrown out of those jobs in order to make room for this 1,400,000 under the welfare program. I think this is something that must be looked at.

CHAIRMAN FLEMMING. I think Mr. Martin's point is well taken. I would like to request that staff obtain from the Secretary of Labor a memorandum giving us the benefit of his views as to the impact of the proposed welfare reform legislation on the employability of older persons. When we get that, why, we can take a look at it and react to it in terms of whether or not we decide to make some recommendations in that area.

DR. ROBINSON. It seems to me that one area that continues to discriminate against older people is that of rehabilitation. Rehabilitation programs, as we know them, are primarily geared to deal with the younger handicapped person in trying to get them some work, so they can enter into the job market. I am on faculty in an institution and I'm on faculty of a rehabilitation program and I know in our training we are not training our students to be ready to deal with this situation, and in our laboratory situations the clients that we see in our laboratories are all younger people and we have not yet devised those programs or services in rehabilitation that addresses itself to the older American.

Every older American who is somewhat handicapped is not completely incapacitated. Every older American who is somewhat handicapped because of various reasons can perform some kind of jobs, and we are finding ourselves not in the business of doing that. The person who finds himself crippled from some minor forms, from arthritis or rheumatism, there are certain kinds of things that can be done to retool that person and can be productive. In rehabilitation we're not doing that.

CHAIRMAN FLEMMING. We have had quite a little discussion on this issue and it is a very important issue, as I see it. Do you feel as a nation we'd be further ahead if that law were amended in such a manner that the test of the effectiveness of the rehabilitation program would be the number of persons who are rehabilitated for continued involvement in life?

DR. ROBINSON. Exactly.

CHAIRMAN FLEMMING. In other words, rehabilitated, yes, so they can occupy full-time jobs, rehabilitated so they can occupy part-time jobs, rehabilitated so they can serve regularly, systematically, effectively as volunteers, in connection with, particularly, community service organizations, and in the case of a member of a family who has had a stroke, rehabilitated to the place where she or he could resume active involvement in the life of the family or the life of the home?

DR. ROBINSON. That kind of wording would be very helpful, particularly when we find that a family all of a sudden is faced with a trauma or a crisis such as stroke in the family and feeling totally despaired, nothing else available for my relative, or whatever the relationship, who has had a stroke or who is handicapped by whatever the situation is.

CHAIRMAN FLEMMING. Okay. Yes.

MR. MARTIN. This is particularly important, I think, in the search that we've been making here in this country for some way of keeping people out of nursing homes who don't need to be in nursing homes, and keeping them at home under circumstances where they need some additional support. It may be just one other person who comes in from time to time or it may be somebody who lives in. It may be one of a number of types of persons, but this is a tremendous area where we could benefit the older population both by the service we could give them and by the service that could be given by older persons. I think that is something we must pay attention to.

CHAIRMAN FLEMMING. I appreciate that. Dr. Robinson, if I could come back for a moment. Does your institution get some Federal funds?

DR. ROBINSON. Yes, we do.

CHAIRMAN FLEMMING. Let's assume—I noted your comment to the fact that no attention really is given to the rehabilitation of older persons. I won't say no attention but minimal.

DR. ROBINSON. Minimal.

CHAIRMAN FLEMMING. Do you feel that, if after this law is passed and your institution continues to give only financial attention to training for rehabilitation of older persons, that conceivably it might be in violation of the law?

DR. ROBINSON. Oh, yes, I conceive that can happen, but there's one exception. If we can get the law modified where we could encourage the other agencies to do the funding to support the training and involvement of doing something for older Americans, I think our institutions would be one of the first to rise to that occasion.

May I speak just on one thing in terms of the statement of Mr. Martin here, in terms of nursing homes? I would like to add one other statement which I think is very critical about nursing homes. I think something must be done about the critical factors that nursing homes are paid out of HEW funds to keep the older people sick and in bed. As fast as we rehabilitate them, get them out of bed where we can do something else, the funds are reduced.

The funds are reduced. I think there's something wrong in the law that allows that when a person gets to the point, because he has a stroke or what-have-you, now we're able to get them to feed themselves or tie their own shoes, that the monies now are reduced because you don't have them on continuous bed care. What we are doing is subsidizing nursing homes and forcing them to sedate people, to keep them in a position to get more money to operate. I think somehow we need to look at the law and reverse it.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Dr. Robinson, that's a very perceptive point that seems to me that on that point perhaps this Commission ought to direct an inquiry to the agency even before a report and begin to get some responses.

Each of you represents a large organization that has made a significant contribution in your field. I would like to ask if you would speak to the point, the special problems of those elderly who, in addition to being elderly, are handicapped by reason of impaired vision or hearing or are members of minorities, as in my case, female, black, and elderly, and what programs each of your organizations would have to identify and work with the solution of the special problems of those groups that find their problems compounded as a rule. I would like that from each of you.

MR. RUCHER. I'd like to say to the Chairman that for reasons I explained before he came in—

CHAIRMAN FLEMMING. I listened to that explanation you were making just as I came in.

MR. RUCHER. I would get at your question by using an answer to one of the questions I thought I would be asked, and that is what is the role of our organization. If I may read that and then come back, if there's still questions in your mind, I'll be glad to do that.

COMMISSIONER FREEMAN. Yes, would you do that?

MR. RUCHER. The National Council of Senior Citizens is a private, nonprofit, action-oriented, membership organization. We support our operations out of the voluntary dues of some of the three and a half million members of the 3,800 senior citizens clubs around the country which are affiliated with us. We are the largest organization of senior citizens clubs. About 50 percent of annual budget of the \$1.7 million comes from the older people themselves.

A voluntary annual contribution of \$3.50 guarantees home delivery of our monthly newspaper *Senior Citizen News* and participates in an excellent discount prescription drug service, a discount travel organization, and a health insurance program to wrap around Medicare which is one of the best of the lowest cost of any such program existing in the America. The most important thing to remember about these services is that the savings achieved by mass merchandising through the organization are reflected in lower costs for the participants. The National Council of Senior Citizens treasury does not benefit one penny from these ancillary services, and like everything else at NCSC they are administered without regard to race, color, creed, sex, or age.

I would say that our major role is one of advocacy for the welfare of our nation's elderly citizens and helping them to keep in the mainstream of American life. We do this by giving testimony to Federal, State, and local legislators, pushing for legislation in the interest of the elderly, and by having our principal offices give speeches through our completely integrated groups all over the Nation. We also maintain a constant flow of communication with our membership to ensure that they are kept informed about legislation and issues of vital interest to their welfare. We work very closely with the American labor movement and other civic, education, civil rights, consumer, and senior citizen groups to help ensure that the elderly are not discriminated against in sharing in the benefits provided by the Federal, State, and local governments.

We also operate a number of programs financed by the Federal Government. These include a senior citizen community service employment program which we call senior aides. Under this program the Department of Labor gives us funds which we parcel out to approved, local, nonprofit sponsors to hire persons over 55 years of age whose family incomes are below the poverty level to work on community service occupations on a part-time basis. Through this program we currently employ some 7,000 poor older persons in the 108 projects in 27 States and the District of Columbia. We operate a program—the program at the lowest administrative costs of any other contractor, 8 percent, and actually put \$27 million annually directly into the pockets of these elderly poor. On the senior aides participants, about 50 percent are over 65. All are over 55 and about 50 percent are women and 50 percent are minorities. The other Federal programs we operate are under the supervision of Mr. Marlin, who has already appeared here, and I assume that he told you about this program.

COMMISSIONER FREEMAN. If I could interrupt. I wasn't here for the entire time, but if the other organizations represented did not have the opportunity of putting in a statement relative to the nature of the organization's services rendered, we would be happy to have you submit such a statement for the record. We would include it in the record those statements at this particular point.

VICE CHAIRMAN HORN. I would like to ask counsel that for all of our witnesses we will have the very good background material put in the record at the appropriate place.

COMMISSIONER FREEMAN. Mr. Robinson?

DR. ROBINSON. The National Council on Aging has been very much involved in looking at those groups that are victims of multidiscriminatory practices. Up to the last White House Conference on Aging, NCOA participated in establishing the National Center for Black Aged. It also participated in working with the Native American groups and the Spanish American groups.

We also have at our conferences—at our annual conference—workshops that are specifically geared to how-to kinds of things in looking at the special problems of these special groups. I think that is not enough. I think other kinds of things that need to be done is State agencies and their staffs need to have the kind of training that will allow them as they administer the monies that are geared towards programs for the aged, should be trained and the area agencies on aging should also have the similar kinds of training. Because it is not enough for us to do it at our national conferences which happen once a year, and many times agencies that serve the local population do not send their people to these conferences. We must, however, make a nationwide effort then to take the training to the agencies that are responsible for administering these programs. I think, and be sure what I think, very sure, that the National Council on Aging would be amenable to trying to take that kind of test.

MR. MARTIN. If I can respond briefly to the same question. The American Association of Retired Persons and the National Retired Teachers Association has about 11 million members throughout the country. We are similar to NCSC and the membership fee is low. It is \$3. We have a drug program, a travel program, and an insurance program as they do. We have health education programs and a tax aid program in which we help people make out their tax returns. We have publications which are varied in character.

I think the most important thing, aside from the social pleasure of belonging, is the level of advocacy which we undertake with the Congress and with the State legislators throughout the country. We have joint legislative committees in each State and we have a staff in Washington who deals with Congress daily on matters that are of concern to older people. Some of the matters that we are working on now include national health insurance, social security financing, hospital cost containment, no-fault insurance, changes in the Older Americans

Act, legal services, and the program that we have called community service aides, which is Title IX of the Older Americans Act. We are trying to develop a multifaceted program which will express the concerns of older people in many different ways, and which will lead to better circumstances for older people as they move through life and move into the more advanced ages. These are things that other organizations are also interested in, but there is a growing constituency in this country, as is probably obvious, of older people who are, unlike their situation a few years ago, are now organized and informed and active in the direction of developing programs for older people.

CHAIRMAN FLEMMING. We're within 3 minutes of the time for the next panel to get underway, so I'm going to say, if any of my colleagues have a pressing question or questions, why, I would be glad to recognize them at this point, but I want to try to keep on schedule as much as we can.

We're delighted that you were with us. You're talking about membership here in the last few minutes, John Martin and I were both involved in the first White House Conference on Aging in 1961, and at that time I think the total number of older persons belonging to national organizations certainly didn't exceed 250,000 because it was that number. Now we are talking in the range of 14 to 15 million, so when people talk about senior power, it is there. Thank you very, very much.

Counsel will call the next witnesses.

Ms. GEREENICS. Dr. Millard Ruud, Dr. John W. Ryan, Dr. August Swanson, Dr. Sam Messick, Dr. Jack Peltason, and Dr. Phillip R. Rever.

[Dr. Samuel Messick, Dr. Jack Peltason, Dr. Phillip R. Rever, Dr. John W. Ryan, Dr. Millard Ruud, and Dr. August Swanson were sworn.]

TESTIMONY OF SAMUEL MESSICK, VICE PRESIDENT, RESEARCH, EDUCATIONAL TESTING SERVICE; JACK PELTASON, AMERICAN COUNCIL ON EDUCATION; PHILLIP R. REVER, DIRECTOR, WASHINGTON OFFICE, AMERICAN COLLEGE TESTING PROGRAM; JOHN W. RYAN, ASSISTANT TO THE PRESIDENT, COUNCIL OF GRADUATE SCHOOLS IN THE UNITED STATES; MILLARD RUUD, EXECUTIVE DIRECTOR, ASSOCIATION OF AMERICAN LAW SCHOOLS; AND AUGUST SWANSON, DIRECTOR, DEPARTMENT OF ACADEMICS, ASSOCIATION OF AMERICAN MEDICAL SCHOOLS

CHAIRMAN FLEMMING. Counsel will proceed.

Ms. GEREENICS. Beginning with you, Dr. Ruud, please give me your full name for the record, your position, and your association?

DR. RUUD. My name is Millard Ruud. I'm executive director of the Association of American Law Schools, a professor of law, University of Texas, on leave, and perhaps I might mention in this connection, as this concerns admissions, until I came to the association, I've been active in the work of the commission council for about the last two decades and was its presidential chairman for 3 years.

DR. RYAN. My name is John Ryan; I'm assistant to the president of the Council of Graduate Schools in the U.S. The council is an organization of 359 colleges and universities located throughout 49 States. Collectively, our membership awards 99 percent of all doctorates and 85 percent of all master's degrees conferred annually.

DR. SWANSON. August Swanson, director, department of academics, Association of the American Medical Colleges, which is the organization that represents the 120 medical schools and 400 teaching hospitals, 160 academic societies.

DR. MESSICK. I am Samuel Messick, senior research scientist and vice president for research of Educational Testing Service [ETS], and adjunct professor of schooling at City University of New York Graduate Center.

DR. PELTASON. I am Jack Peltason, president, American Council on Education.

DR. REVER. Philip Rever, director of the Washington office of the American College Testing Program, a nonprofit public trust whose corporation headquarters is in Iowa City, Iowa.

MS. GEREBENICS. I'll begin the questioning with you, Dr. Ruud. I wonder if you could explain how, to what extent or degree that the age of applicants is taken into account in determining acceptance or rejection to law schools?

DR. RUUD. We have, I think, only one systematic study and that is still in a draft stage. This study is an examination, if my notes are correct, of those who were admitted to law school in the fall of 1976. That indicates—and it divides the applicants up into four age groups, below 23-1/2, and the oldest group is age 30-1/2 and above.

It indicates that the older applicants are receiving admissions at a somewhat higher rate, given equivalence in the quantitative credentials, if you look at that alone. That is not to suggest—I don't think you should draw the conclusion that the younger applicant is being discriminated against. It is that there is some general association with age of certain experience, perhaps interesting work experience which the law schools will take into account in a nonquantitative factor in making admission decisions as they seek not only to try to select the class of students made up of those likely to do well in law school, but also to select those who are likely because of their diverse backgrounds, education, work, and other to contribute to the education of the other students.

I think I might say one additional thing. There is one other study that examines how well the conventional quantitative predictors work for the different age groups. That one doesn't use these four groups. It indicates that the LSAT [Law School Admission Test] scores, whether in combination with rate on average or not, slightly overpredicts for the older applicants. I know that is probably counter to intuition about these matters, but that's what that study which has recently been completed indicates.

Ms. GERE BENICS. Mr. Chairman, that is contained in Mr. Ruud's statement which is submitted and I ask at this time it be admitted into the record.

CHAIRMAN FLEMMING. Without objection it will be done.

Ms. GERE BENICS. Thank you.

Dr. Ryan, your association publishes annually the admission manual for its prospective graduate students. I wonder if you have any knowledge about whether age is stated as a factor in any admissions policies or procedures that you know of in the institutions included in the document and, if so, whether these age policies vary among the different disciplines or fields?

DR. RYAN. There is no indication at all that age is used in any questionnaire. The questionnaires are submitted from our office to the membership and processes at ETS in Princeton, but age is never asked so we have no way of knowing in terms of what the cross section—the closest information that I would have, referring to the study on the American graduate student published in 1971 by the American Council on Education. In this particular study, a sampling was taken of 153 institutions, approximately 33,000 graduate students were surveyed. Of the total number, 30 percent were aged 35 and over. Quite substantial.

In addition, there have been additional studies conducted in terms of degree recipients. In 1976 close to 30 percent of all doctoral recipients were aged 35 and over, which would lead me to think age is not a limiting factor in the admissions process.

Ms. GERE BENICS. Thank you. Dr. Swanson, your association stated in the annual medical school requirements document that age can in fact be a limiting factor in gaining admission to medical school, which corroborates some of our findings gathered in the testimony at various hearings around the country. I wonder if you could explain some of the justifications or reasons for having such policies and, since this study in fact deals with unreasonable age discrimination, whether you could discuss the reasonableness of such policies?

DR. SWANSON. The statement that you refer to, which is the medical students admissions requirements book, I think, does not reflect policy but is simply informing medical school applicants that there are a variety of factors taken into account in selection of students for medical school, some of which may be age-related rather than absolute chronological age. If one looks at the statements made by the schools in that same publication, each 114 for the 1977-78 application year, 42 percent do not mention age as a selection factor, 6 percent state specifically that they had not discriminated because of age, 28 percent published a range and that should be explained, either a range or mean age.

Beginning about 1973, with the rapidly rising numbers of applicants in the medical school pool, medical school applicant pool, there was concern amongst the schools that students be given a fair amount of information regarding what might be their chances be of being ad-

mitted. At that point schools began providing information about the characteristics of the previous system, grade point average, Medical College Admission Test [MCAT] scores, and mean age or—the reason I think the age was used as a surrogate bit of information, to sort of demonstrate the total picture of medical school admission outcomes.

There are 23 percent of the schools demonstrated that say in their selection factor section in this publication that age is taken into account. Very often there is a tendency towards these statements being to discourage the older applicant, but in none of the instances of 114 school publications is chronological age used as an absolute reason for not considering applicants' credentials.

To expand on this matter, I think the schools are using age where they do speak to it to clarify as an index of the complexity of admission decisions. In admissions to medical school, many factors are taken into account. Certainly, college record, evidence of being able to achieve, particularly in the sciences and particularly in medicine, are taken into account, but in the process of making these decisions between one candidate and another, or the rest of the applicant pool, other qualities are sought. Students are looked upon from the standpoint of the personal qualities they potentially will bring to medicine, what their motivation is, what their potentials may be for fulfilling certain roles in medicine. Recently, the emphasis in the last 10 years has been on choosing people who might certify for a degree in certain areas. I emphasize these simply because the reason for choosing one student over another is a complex process in decisionmaking.

MS. GEREBENICS. Thank you. Dr. Messick, could you briefly explain the types of achievement the tests administered by your organization attempt to measure and tell us whether you identified any biases in the use of these tests and grades particularly as they relate to older, more nontraditional students?

DR. MESSICK. Yes. Typically the tests that are used in admission testing programs, like transition into college from school to college, or the transition to professional schools such as law school or into graduate schools, tap verbal and quantitative scholastic aptitude and the variety of special subject matter achievements, depending upon the field of the major subject that the individual aspires to.

The question as to whether there are age-related differences or differences as a function of age is a very complicated one. It is impossible to give a simple and unequivocal answer to that, although there are some data that bear on the issue. There are some definite reasons why it is impossible to give a simple unequivocal answer to it. I would like to review those briefly because I think those are important in our understanding of the relationship between intellectual functioning and age.

There are really three basic issues involved here. One is essentially the distinction between developmental or maturational differences in intellectual function as opposed to generational cohort definitions in

function. When we ask the question about age differences, if we're thinking of the performance, whether the performance of an older candidate, say a 45-year-old candidate, is higher or lower than that person's performance would have been at age 20, we can't answer that question at all. Such data, to my knowledge, does not exist.

So our addressing of this topic has to be based on cross-section information. We're also talking about the relative performance of older candidates, compared with younger candidates taking the test at the same time. Because of that, any differences between the age groups are going to be compounded with differences between the generations from which the age groups were drawn, and these differences can be profound in education because of the changes that have occurred in the educational sequence. That is, a simple variable, such as the amount of time spent in high school, has changed dramatically over the past 50 years. This has led to generational differences in the general direction of higher performance for younger age groups because of more time spent in school on school-related learning types of activities.

What that means is that the component of age differences has the effect that those of us who will grow older will probably have higher performance levels than those individuals who are old now. Because of this compounding of developmental differences or generational differences, it is not possible to make simple differences before test difference of functional age, although I will review those with some caveat in mind.

Another important issue here is whether or not we can speak of intellectual or achievement changes as kind of general effect or whether we must speak quite specifically. That is, can we generalize intellectual deficit as a function of age or a general intellectual increase as a function of age? Must we talk about the responsibility of some abilities increasing and some decreasing? I think the answer to that one is fairly clear; general statements cannot be made. Some abilities and some achievements tend to increase for the various age cohorts that we have data for. Some abilities and achievements tend to decrease at different rates and at different age groups and for the various age cohorts that we have data available for.

VICE CHAIRMAN HORN. Excuse me, but do you have specifics as to what abilities and achievements are?

DR. MESSICK. Yes.

VICE CHAIRMAN HORN. Will you furnish those for the record at the conclusion of your testimony?

DR. MESSICK. Yes. In general with respect to the scholastic aptitudes that are typically examined, one is verbal aptitude and the other quantitative aptitude. There is a tendency as we look at the average scores of these different age cohorts, for the scores on verbal aptitude to decrease somewhat up to about the age group of 30 years of age, 25 to 30, and then to remain relatively stable for the age groups that have

taken the test at these later periods. For quantitative aptitude there is a tendency for that score to decline systematically for age groups. It becomes relatively stable later for the later ages, but there's a systematic decline.

I think it is important to consider what the basis for that decline might be. One possibility, of course, is that there's just a general detriment in quantitative thinking as a function of age, but there are many other compelling possibilities that must be considered. One is related to generation cohort differentiations as I mentioned. The nature of quantitative training in schools for the various age groups is going to be radically different over any extended time periods and with time periods with as much as 30 to as much as 40 years ago.

There's several selection factors as to why individuals in the later age cohorts would choose to take an entrance examination to graduate school or an entrance examination to college at that particular age period. The purposes and reasons for higher education for those age groups are different from the purposes and reasons for individuals who take the test at an earlier age. There's also a sex difference in quantitative aptitude and the sex composition of the older age cohorts differs from the sex composition of the younger age cohorts, with more women appearing in the older age cohorts. There also have been important cultural changes during the period which affect attitudes toward education, the attitudes towards the role of women and older people in educational life.

The quantitative functioning is also related to the need for quantitative functioning in the intended field that the individual aspires to enter, and in general quantitative ability is needed, individuals will tend to take every opportunity to develop and maintain quantitative skills, and the intended fields for older age cohorts are radically different from the intended fields of younger age cohorts, with many individuals in the later age cohorts going into the field of education and administration, and public administration, guidance, nursing, library science, and fields that traditionally do not require high levels of performance.

So the decline in test score that's a single simple function of the mean score indicates the various age of the cohort is multiple interpretations, and it is very likely that all of the factors I recited contribute somewhat to the difference in test scores. So it is not possible in any simple way to relate those differences to age.

When we turn to achievement levels, it turns out that mean performance on achievement tests in fields like education, social science, and humanities tend to increase with age; fields that are related that have heavy quantitative components like mathematics and physics and natural sciences tend to decrease with age. And other fields tend to remain relatively stable with age.

There's one other factor that I think must be taken into account in dealing with the issue of age and intellectual performance and test per-

formance, and that's the issue of individual differences. Whatever age differences we find, with all the caveats that I've emphasized, those age differences are relatively small compared to the enormous range of individual differences and performance that appear within age. These individual differences are such that for almost any age cohort it is possible to find individuals, say, at age level of 50 or 60 or 65, who will perform above the average of the cohorts taking the test at age 20 or 25. So the distributions of performance overlap to such a degree that it seems prudent to make any decisions on the basis with respect to admissions or selection or treatment in terms of individual differences rather than in terms of group differences, whether they are age differences or sex differences or what-have-you.

MS. GEREENICS. Thank you. Dr. Peltason, I'll be right back with you, but I want to get Dr. Rever on the same subject; I wonder if you could indicate how reliable the testings are in administration in predicting academic performance or success and whether any studies of this predicted reliability have been made to your knowledge?

DR. REVER. Our tentative report which was published in 1973, which I furnished a copy of to your staff, does contain extensive review of the predicted validity of the ACT [American College Testing program] assessment which our college admission and placement test for students was based on; it was done in conjunction with our extensive study of bias in prediction under situations in which selection had to be made among candidates for admission to institutions. For example, we found in general that the tests are predictive for older candidates. This would include—our definition of older was simply a categorical definition of a person 21 years or older. A reason that it was categorical was that the data on older students is simply not in sufficient quantity to be able to do, to break the older student down into finer categories to do a more definitive study of age relationship.

In general, we do predict that the five institutions for which we could identify sufficient data and four of the five institutions—I'm sorry, in all five cases; the correlation coefficients before the four out of five test scores in college grade range from 0.24 to 0.69, which in general are within the acceptable range of a valid test, predicted validity. In general, in at least four of the five cases, the predictive validity of the four test scores for college grades was somewhat less than the predictive validity for younger students, less than 21.

The differences were not significant in terms of practical effect on the selection situation. So our investigation suggests that the test scores are predictive for the older student. Now, we point out that the decisionmaking model that is employed in a selection situation has different effects on older and younger students, and that is discussed also in the technical report, which suggests that there is one model which in using separate progression equations have as roughly comparable effects on the younger and the older, and there's other models which would cause one to select the older students in greater proportion than

they are in the population of applicants, but the effects are enormously complex, and they vary from institution to institution.

MS. GERE BENICS. Thank you. Dr. Peltason, I wonder if you could tell us whether your association has conducted any research showing a relationship between the age of the student and his or her academic performance?

DR. PELTASON. I have to say, not to my knowledge, but I have to qualify that and say I've only been holding my present responsibility for about 25 days. Let me find out—I'm correct, we have not.

MS. GERE BENICS. Do you happen to know from personal experience whether persons from certain age groups can be singled out as performing better or not as well as persons from any other age groups, any noted disparities?

DR. PELTASON. In the general academic work, in my experience personally, I have not observed age being a factor, talking about the kind of ages that we generally get at universities. At the very young and at the very old, I think there are some differences, but the type of people that we see in academic institutions, I don't think age is a factor in determining that performance.

MS. GERE BENICS. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. As the members of this panel recognize, one of the members of the U.S. Commission on Civil Rights comes from your ranks, and I'm going to recognize him very quickly because I know he has some questions that he would like to address to you, but I would like to welcome particularly Dr. Peltason. I had been privileged as serving as Chairman of the American Council on Education for one term, and I noted with great pleasure the fact that you accepted the invitation to come in and serve as president of this very important organization, as I see it, in the life of our nation. I imagine this is about the first hearing that you've attended probably, maybe because there are a lot of hearings around this town.

DR. PELTASON. Kind of you to give me your welcome. This is my second—I'm a veteran—I've appeared once in front of a congressional committee.

CHAIRMAN FLEMMING. Okay. Well, you're probably going to have many, many more opportunities in that particular position.

Commissioner Horn.

VICE CHAIRMAN HORN. My colleague, Commissioner Flemming, amazes me; he's been president of three universities and I think he's trying to forget it since he said that there was one member this panel of this Commission obtained from those ranks—I can understand that.

Now, let me start out with you, Dr. Ryan. At one time in my life for a year and a half I served as a dean of graduate studies in research and therefore got involved in admissions at the graduate level. Is it your experience that admissions to most of, say, the 310 or so doctorate-granting universities in this country is done at the discipline

level with the rare exception of perhaps major professional schools but that would still be the discipline level?

DR. RYAN. I think there was a study conducted in 1969 by the Richard Burns Educational Testing Service. There was a survey of approximately 250-odd graduate schools. In that survey I believe the figure was 54 percent of admission decisions were at the departmental level.

VICE CHAIRMAN HORN. Have you ever served on such an admissions committee?

DR. RYAN. No.

VICE CHAIRMAN HORN. My experience is that there's a wide range of factors, many of which are not quantifiable, that enter into human value judgment at that level. The point I'm trying to make is, even though a university might be opposed officially to age discrimination, it could happen based on various individuals' values operating at those low admissions level points within disciplines that age might creep into it as a factor. Could it not?

DR. RYAN. Yes.

VICE CHAIRMAN HORN. Do you know of cases in American universities where students have not been admitted to, say, Ph.D. programs because there was a feeling on the faculty, well, perhaps they were too old to come into it and they wouldn't have enough time to serve in universities once they received their degree?

DR. RYAN. I have never heard of that particular case, no.

VICE CHAIRMAN HORN. I've heard of a few, this is the reason. This would be 15 years ago—I think attitudes have changed—where students in their thirties were turned down from doctorate programs feeling they were too old to enter the profession, and I suspect there's a tendency for many maybe on the Commission or in society or in Congress to generalize from one or two examples out of the thousands that occur annually in the United States.

What I would like to know from Dr. Messick is, what tests have you run that correlate success in a field with scores on a particular test? Have you run any?

DR. MESSICK. With success in the field?

VICE CHAIRMAN HORN. In a particular discipline.

DR. MESSICK. In a training program, educational program?

VICE CHAIRMAN HORN. Yes.

DR. MESSICK. Yes, there are problems with doing studies of that type because of the difficulty in getting sample sizes. If you want to look at differential predictiveness as a function of age, it is difficult at the college and university level because such validity studies have to take into account institutional differences, so they're usually done separately by college, and it is getting large enough samples at different age groups to look at that question, which is very difficult. It is difficult at the graduate school level for the reason you just mentioned—that is, the admissions question is essentially one of the departmental or

discipline question. And certainly the validity studies would have to be done separately by disciplines, and again it is difficult to get large enough samples of older students.

So there isn't much data; however, there is one setting for which it is possible to get large enough samples and for which the educational experience across institutions is similar enough so that the studies can be run across institutions, and this is with respect to law school performance. And some studies have been done of that type, one of which I can summarize briefly. This was a study in which three age levels were looked at: students were 22 years of age and under, second one is students were 23 to 25, and the third group is 26 years and older. And it examined the predictive validity of the Law School Admission Test, separately and in conjunction with undergraduate grade point average. And the general finding is that the validity of the undergraduate grade point average decreases slightly for the older age group, probably because the undergraduate record is a more distant piece of information for older applicants at that point. But the validity of the Law School Admissions Test is higher slightly for older students, to such an extent that when the validity of the combined predictive-ness, undergraduate grade point average and the Law School Admissions Test, turns out to be virtually identical for older and younger students

VICE CHAIRMAN HORN. So essentially this would be predictions of success in law school as such. In other words, what your testing generally predicts is the ability of the student to conform to the academic mores, if you will, do the work in the manner in which the university offers it. But to what degree would you say the LSAT is at all related to one's success in the profession as a lawyer beyond law school?

DR. MESSICK. There are studies underway now.

VICE CHAIRMAN HORN. Now, I would like to refer to Dr. Ruud.

DR. RUUD. Well, Dr. Horn, the Law School Admission Council, our association, the National Conference of Bar Examinations, and the American Bar Foundation began the task, I think about 3 years ago, now called the Lawyer Proficiency Study, and we are trying to determine what the connections are among a group of data, the test and undergraduate law school performance, performance on the bar examination, and then competence or proficiency as a lawyer.

We reject the notion—we don't want to use the word success. We have problems with that. We aren't far enough along to give you any conclusions as to the connection of the first three sets of criteria with the final set of lawyer proficiencies.

It is, I think, in a moment's reflection, along the line that the Commission would understand the immense research difficulties designing what constitutes measures of proficiency, what a lawyer does, which seems like a simple sort of question. We've been doing it for several centuries, but we don't know in real, systematic terms, and we've been

trying to figure out what are those elements. Then how do you measure whether he's good at doing *X* and we know intuitively that there is a relationship among all of those performances; we know it is only a relationship and there are no certainties. That's the kind of preliminary response. I think, funding being available and other things, in a couple of years we ought to have some preliminary answers. We are most interested in it as an association because it may have implications for legal education and its curriculum.

VICE CHAIRMAN HORN. As I listen to your testimony and just based on my own knowledge of the situation, let me sum up my understanding and then pose a question and I'd appreciate your response as to whether I'm on the right track, wrong track, understand the problem or don't understand the problem.

As I listen to this judgment on what our studies in testing show, apparently with the exception of the quantitative skills that are tested, older students do as well as, if not better, than younger students generally in terms of taking the test, but there are differences in quantitative skills. We know over the years, for perhaps cultural reasons, that there have been differences between the sexes in terms of verbal and quantitative skills. Generally, we find no age discrimination requirements written into the admissions practices of the graduate schools. There could be some instances where professors have varying values that they impose which might be *sub rosa* and not obvious but nevertheless imposed.

Given the plateauing of enrollment in American higher education, in fact the decline in the birth rate of those that were born 16 to 22 years ago, which are now coming to the university and college systems, there is capacity in American higher education to provide a wide range of opportunities for older citizens, be they 35 or 85, and some of our universities are doing that already and have been doing that.

The one area that I am leading to where I see a problem where perhaps we have to address the question of what is reasonable and what is unreasonable age discrimination comes in relationship to medical schools. I do not have a medical school, many people say a university president that has one, if he volunteers to get one, has to have a sign of insanity marked on him, but nevertheless it is obviously a necessary function in our society. It is a very scarce resource. Now, what I would pose to you gentlemen is the question I posed to members of Congress this morning because it is the question that this Commission is struggling with as to what is reasonable and what is unreasonable age discrimination in programs that bear some relation to Federal funding.

Let us take the education of medical doctors. One could argue, as educators have with regard to race, that one should reach out to older persons, to educate them to be doctors in order that the older person clientele might be better served, or one could say that extensive State, Federal, and largely private funds in some medical schools are expended in the education of medical doctors and that it is in the public

interest that one who completes such a program should be able to give at least 15, 20, or 25 years' service to that profession, and in the process would greater serve society and thus perhaps the older persons that we all know who need service. Now, given that example, that hypothetical, I would like to know, where would you advise drawing the line or should age ever be a factor in selection for medical school? For example, if a 60 year old applies tomorrow to go to a medical school, should he be admitted as opposed to a 30 year old, a 25 year old, who can render 20, 30, 40 years' service to society when we don't have enough doctors to meet society's needs?

DR. RUUD. I was going to say that the answer—you put it disjunctively, and I would say, yes, as far as the law is concerned, shouldn't the law permit an institution to make either choice? It seems to me that they both are reasonable, and we have it in law school, not to the extent that Dr. Swanson and his colleagues have in medical school. It's a zero sum game. We've got two applicants for each seat, and if we admit a person, that's one other person we can't admit.

I recall myself when I chaired our admissions committee at the University of Texas when we were just early in the period of time in which we really had more qualified applicants than seats, and we had a full colonel from the Air Force—we're close to San Antonio, a lot of Air Force people retire there—my recollection was that he was in his early sixties. His credentials were such that he was sort of in the last group to be admitted. I can't remember the decision I made or the committee made, but I remember being troubled with the question, that the State of Texas was going to invest money in his education and the student pays almost nothing in the State of Texas towards his education. I think the tuition is still \$150 a year, tuition and fees. What were the folks going to get for the return that we put? Whatever may be the ways in which he might use his professional education, whether it be in conventional practice or in organizational work or whatever. It seems to me the law ought not to prohibit an admissions committee from making or using that as one factor, because it seems to me entirely reasonable. It seems to me that I had a responsibility to the taxpayers in the State of Texas to take that factor into account.

VICE CHAIRMAN HORN. Dr. Swanson?

DR. SWANSON. My response along the same lines is from the standpoint of the institution's prerogative of examining the credentials, of the example you gave, and making a decision regarding whether or not the qualifications that the individual candidate brought to the application competition, without regard to age, were such that one could then take into account the age other than in a negative or positive fashion. The extreme example of the 60 year old is probably a difficult one to deal with, but if one is talking about the particular service that an individual older applicant might provide because of his background because of positive factors in his previous experience, education-wise it might be very much in favor of his being selected over younger ap-

plicants. I think it is worth pointing out that the medical schools do admit older applicants. Last year the oldest application was 47—the oldest accepted person was 47; the oldest applicant was 53.

VICE CHAIRMAN HORN. Obviously, what is behind this question, which I didn't feel I had to explain to college and university and educational administrators, is the fear that down the line when we have rigid goals that might be applied in terms of affirmative action for the aged as they are applied perhaps with good reason for protected classes of minorities and women, that we would have a real problem if somebody should generalize that because 10 percent of the American population is over 60 or 65—28 million, I gather, is over 60 out of roughly 220 million—that we should fulfill that goal in all aspects of higher education, and that's why I'm trying to lay the groundwork here as to what is reasonable and unreasonable so Congress will have the benefit of your judgment.

I would assume that Congress will also be holding hearings, and we can deal with some of these things should specificity be recommended in this area. I guess my offhand impression is that it would be unreasonable to require the medical schools of America to include in 10 percent of their class people who were over 65 years of age, unless we thought at least 10 years' service or so—as my own personal minimum—would be given once they have graduated, since they would not be graduated until they were 70—completion of intern and residency, that would mean they would practice from 70 to 80, and I would find that an unreasonable expenditure of the taxpayers' money in terms of the needs of society. That's the only instance I can think of, frankly, in higher education where I'm troubled by some sort of an across-the-board goal for medical schools. Law school doesn't trouble me. They must make money in the university. You can cram more students into lecture rooms. They don't require extensive clinical facilities that a medical school requires, with all due respect to the legal profession.

So I'm trying to look at this from the standpoint of a world of limited resources, where does the society get the greatest payoff and yet how do we do equity to older persons? I don't find it unreasonable to admit them in the forties or maybe in the early fifties. Then what worries me down the line that if one is turned down when one applies at 55 or 60, you have a particular type of lawsuit levied on the university and higher education which one would not get in other criteria that might be relative because they are not protected criteria in terms of the 14th amendment or various civil rights statutes. I wonder if anybody else would like to comment on this particular example.

DR. PELTASON. I concur with the comments that have been made by my colleagues as well as those made by President Horn. I think these are precisely the worries, apprehensions, and advice that you get from most members of the higher education community. I would only mildly dissent from the suggestion that medical school is that unique. We

have in colleges of veterinary medicine even more applicants per scarce resource.

VICE CHAIRMAN HORN. You are correct, and I stand corrected on veterinary medicine.

DR. PELTASON. Some of them graduate, so although President Horn is quite correct, as I often said, law schools are better than medical schools because they're cheaper and they go into the legislature when they graduate, in any event, there are in any year or two. As has been pointed out, the decision to admit somebody these days is a decision to keep somebody out, and that is the troubling problem. They have an entirely different situation, I think, if you have many more spaces than you have applicants. Then I believe, as a citizen, society can afford and should afford to allow people regardless of age to take advantage of those opportunities, but if you have to choose, and other things are being equal, I do not think it is unreasonable to take age into account in the allocation of scarce resources. Sometimes you might wish to favor the older and more mature.

Again, I think, one of the difficulties we have is the word age. I find it somewhat, I suppose, amusing and interesting. We are talking about some of the older people meaning over 21. My perception of older people is slightly different, but—

VICE CHAIRMAN HORN. My perception of those older than I am—

DR. PELTASON. —I think that as the law recognized and most people do, we are concerned about preventing unreasonable discrimination against people because of their age. But it is not quite the same kind of problem as we have in race and sex, because age is more likely to have some relevance to some of the decisions we're making than race or sex are ever likely.

VICE CHAIRMAN HORN. You're quite correct that in some programs we discriminate in favor of older people. A good example, let's say at Harvard University for 30 years is the mid-career program for master's in public administration. When I was there in 1954-55, there were maybe 80 in the program of which only 10 of us were permitted out of the undergraduate school. The rest had to be late thirties or forties, as mid-career people coming back to get a M.P.A. There are programs like this coming back around the country.

DR. PELTASON. In many of our campuses are special programs designed to meet the special needs of women who are returning to the jobs after bringing up families and we have counselors designed to help them get back into the educational programs. I think it is perfectly reasonable to design special programs for those people and to select admission to it to people who meet these standards.

VICE CHAIRMAN HORN. Very good. That's all I have.

CHAIRMAN FLEMMING. I would just like to follow up this dialogue by approaching it maybe in a little different manner. As I see it, in our society step by step we have moved in the direction of saying we're going to judge the individual on her or his merits and not on the basis

of whether the individual does or does not belong to a particular group of persons. The action of the Congress in the area of age discrimination is consistent with that evolutionary development. It has moved from race, color, national origin, over to sex, and we have moved into the area of the handicapped. I frankly am troubled if an educational institution looks at an individual and says to that individual, "We are not going to take a look at your own individual situation in terms of your capacity, in terms of your abilities, but because you have reached a particular age, we're going to decide that you really probably couldn't make a significant contribution to society over a long enough period of time to justify our making any investment in your life."

The question that occurs to me is whether or not when we are confronted with the necessity of making choices, making decisions as between persons, and I recognize that this is true throughout the educational world, if it isn't possible for us to develop criteria for making those choices that rest back on the merits of the individual cases and do not either automatically rule out or give minus points, whichever way we go at it, to a person, a human being, simply because that human being has happened to reach a particular age in his life.

I think that's the base of the issue that we have to confront. I have stated it in such a way as to obviously reflect a conclusion as far as I'm concerned, but I don't want you to feel that I poured anything into the concrete from that point of view, but I do feel that is the issue that confronts us. At the moment, I'll say this, very frankly, I do not see why we should make an exception to judging an individual on his or her merits, rather than on his or her membership in a group as far as age is concerned. I'd be very happy to hear from you.

DR. SWANSON. I think I would agree with you entirely. The chronological age should not be a single sole reason for not considering an individual's role in that individual's application. I do think, however, that the older one is, the greater amount of information there is available to those who would assess his or her application to medical school regarding what they might contribute, and I think that these things are taken into account in the behavior we can see within the admissions committee. And I think the important point is that the institutions in carrying out this heavy responsibility of trying to select from a large pool those who shall occupy a limited number of positions need to be given the responsibility to do this and to do it responsively without necessarily, and I agree entirely, without categorizing people in groups, whether it is an age group or racial group.

CHAIRMAN FLEMMING. I have no objection, obviously, to a very careful analysis of the individual's background. I agree with you there is more evidence available on the older person than on the younger person and that may be a plus or it may be a minus in terms of making a particular determination. The thing that I move away from is at any point in the process saying, because the person has reached a particular chronological age we're either going to rule the person out or we're

going to, in effect, use that as a factor that would have the result of ruling them out. As long as we stay with the merits of the individual, the older person has got to live with what he can show in the way of experience and capacity and that capability and so on. That's fair. That's evidence that can and should be weighed.

DR. PELTASON. I'd like to respond at two levels; as far as our education is concerned, I think your description of what should be is a fairly accurate description of what is. For 3,000 educational institutions, with a variety of different situations, I would be the last to say there are enough people out there who take a different view, but generally speaking, the attitudes of American higher education, I think, conforms to what your description is of what should be. If it didn't in the past, it is quickly doing so today for a variety of reasons, changing of attitudes. Also, we're running out of 18 year olds to educate. We're very pleased to have anybody come, regardless of age.

CHAIRMAN FLEMMING. I recognize there are pragmatic considerations coming into the picture.

DR. PELTASON. As a citizen, however, if I may be prepared to respond at that level, at a philosophical level, and I think maybe having some practical application, I personally would make—there are very few cases that I can ever think of where to categorize people by race or sex, we might be reasonable, except in remedial situations, which is now the famous problem with the country in the Bakke case, but it doesn't seem unreasonable and we owe it to students not to mislead them. We have laws that say you can't drive a car until you're 18. That doesn't seem too inherently unreasonable. It would be to me inherently unreasonable to say that you can't give a man, if your women can and a man can't, and vice versa, or there is a connection between chronological age and ability to drive a car or buy a drink or get married, and therefore I would be very hesitant to treat those categories in the same way. To make it clear, I don't think that it is a really practical problem because I don't think of many cases in higher education in which in fact chronological age does have any bearing, except in those few cases we previously talked about where you have to allocate a scarce resource, and when you have a situation, other things being equal, as they seldom are, if they are, honesty requires us to say that the probability in certain programs older persons will be taken and younger persons will be taken, other things being equal, I would not like to see a public policy that educational institutions wouldn't be given the freedom to try out different kinds of programs, some designed for older people, middle-aged people, and younger people, and I wouldn't like to see them be allowed to design programs on the basis of race and sex.

CHAIRMAN FLEMMING. Let me say I recognize the distinction that you have made in terms of discrimination on the basis of race, color, and national origin and religion, sex, and age, and obviously Congress saw a distinction and when they put in the word unreasonable on dis-

crimination. We have had some very interesting testimony relative to the soundness, validity, of putting the word unreasonable in front of discrimination, and this took place this morning with some of the Members of Congress. But it is clear, I mean, that they were concerned and troubled by the distinction that I think you have made.

I think I follow you up to a point—I'm not yet convinced that having that we should use, as a factor, chronological age as contrasted with applying all the other criteria that we are capable of applying. Let me say I am very wary of cost-benefit concepts applied to the lives of individuals. This has crept into the Federal Government over a period of the last few years, and I have seen it operate in such a way as to, I think, create real injustices. I believe that there should be a better way. We should be able to find a better way of making distinctions between individuals than by finally saying, well, because a person is a particular age or beyond a given age, society is apt to be in a better position if we turn our back on this person, rather than on someone else. I just think that we can make our judgments and our decisions relative to human action in a manner other than by applying cost theory.

We have had presented in one of our field hearings in the area of mental health hypothetical cases—I'm always wary of the hypothetical because they never develop quite the way they're presented—but this was a person running a mental health program. This person said, "If we could serve one person, we have a child, we've got a person middle-aged, we've got a woman 80 years of age, what do we do?" It is clear to me she was kind of addressing the question to me, but it was very clear that she would turn her back on the 80 year old, on the cost-benefit theory.

My response there, certainly in the field of mental health it is possible to develop criteria for making selections of this kind that do not violate the concept of the dignity of the individual and the worth of the individual. Even if you try to apply a cost-benefit theory to that concept, who is there to say that society might not benefit a great deal more from a rehabilitated 80-year-old woman than from some other persons that we can't be sure? We can't make those judgments. So that I felt that that particular professionals in the field of mental health shouldn't be able to develop the criteria for making a choice as among those three that did not base that on age, with age being introduced because of the feeling that society would get more out of investing in the child or the middle-aged person than in the 80-year-old person.

DR. PELTASON. If I may make one brief comment. I do not believe that age discrimination in higher education has denied many people educational opportunities. What has denied them educational opportunities is lack of resources. I think if we wish to expand educational opportunity for the nontraditional student we do not have a problem of universities trying to keep them out, but the lack of adequate programs for them to take advantage of the educational opportunities that are

there. That seems to me to be a much greater problem than a deliberate attempt to keep people out because of their age.

CHAIRMAN FLEMMING. I can agree that is a very important issue, and we do have evidence indicating that the older person does not have the benefit or, let's put it this way, does not sometimes receive their fair share of resources that are made available. Now, on this higher education field, but take the basic education act, 3 percent of the persons that are being served under that are 65 and above, and yet there are many, many, 65 and above who desperately need the kind of a service that could come from that. Now, for some reason or another, they are being discriminated against, and it may be because of lack of resources, but it may be also because in the distribution of the resources that are available, that for some reason or another, they turn their back on that particular group, so that they haven't gotten a fair share. So it is a question of resources, but also a question of whether or not within our existing resources we are distributing or utilizing it in such a manner as not discriminate against the older person.

DR. PELTASON. That's a consequence of the part-time, full-time students problem.

CHAIRMAN FLEMMING. I agree with you there.

VICE CHAIRMAN HORN. I would like to request one additional piece of information that might be relevant. But in leading up to that, I will say, while I think most of us will agree that we should make judgments based on individual rather than group differences, the facts of life are that you have joined with the rest of us in the endeavor to get the Attorney General to file the appropriate brief in the Bakke case for the University of California position as opposed to the Supreme Court of California's position, and that is definitely a group advantage, not an individual advantage, and we do admit people who are members of certain groups to rectify and solve certain problems in society. There were many people with higher individual achievements that are turned down then and now in the graduate and professional schools of the country.

What I'd like to get is on this medical and veterinary situation because those are the only two that frankly bother me. Dr. Swanson, do you have evidence in terms of admissions practices at the medical schools as to the MCAT examination, the GPA [grade point average], etc., of the students rejected by the major medical schools in relation to the students accepted? I would suspect with some of these medical schools that if you admitted a class of a hundred, you couldn't tell much difference between the next hundred that were also to be admitted to the medical school, and the fact is we make arbitrary decisions now that have nothing to do with age, over very qualified people who are rejected simply because we don't have the space to handle them. Do you have such evidence because I would like to file it for the record at this point for development.

DR. SWANSON. We do have evidence along this line. If one looks at the difference in the MCAT scores, particularly the science MCAT, which is heavily used by the admissions committees, and the grade point average between the accepted group overall and the rejected group average outline, the difference is very small. It is less than a standard deviation difference. I think this does support your point that the medical credentials, the finite credentials, that can be put on the tables are only part of the information available which can be acted upon by the admissions committee, and a lot of nonquantifiable judgments are made regarding the personal qualities of the individuals who are applying.

VICE CHAIRMAN HORN. Could I have that inserted at this point in the record.

CHAIRMAN FLEMMING. Without objection that will be done.

I appreciate your reference to the concern that all of us had in the Bakke case and other similar issues. It does seem to me that affirmative action in that area as well as other areas is underlying and is a must in this country in order to make sure that persons who do happen to belong to certain groups are treated as individuals and not as members of those groups as they have been in the past. The whole drive here, I think, is to try to get people considered on their merits. Commissioner Ruiz, do you want to get into that?

COMMISSIONER RUIZ. I just wanted to ask one question to follow up on a question asked by Dr. Horn. Dr. Swanson, does anyone on the panel personally know of an application being made to be admitted to medical school by a person over 60 years of age?

DR. SWANSON. Not to my knowledge.

COMMISSIONER RUIZ. Now, with the exception of medical schools, for example, admission policies appear to make little if any reference to age exclusion in institutions of higher learning. So who are we talking about?

DR. PELTASON. Mr. Commissioner, I think that point is very well taken. I would like to emphasize that, if I may, I do not believe that there is a problem of deliberate systematic or even standards at all. I have to be careful because I don't want to be thought to say that there are not some persons to be discriminated against. It is not a systemic problem in higher education today.

COMMISSIONER RUIZ. Let's get a little bit lower on the list. I mentioned 60 year olds, how about 50 years olds, personal experience?

DR. PELATSON. No.

COMMISSIONER RUIZ. No more questions.

CHAIRMAN FLEMMING. I hate to cut this off at this point, but as you all know there's another panel representing educational organizations that is waiting here, and we're going to call them, but if any of you desire to remain and participate in any way in the dialogue that we'll have with them we'll be delighted to have you do it. We could have called all of the organizations at once, but we thought it would be a

little bit better to break it up in terms of having a discussion. So I am going to ask counsel to call the next witnesses, but I again say there's room around here, if you want to sit at the table here with the idea of possibly participating further, be more than glad to have you do it.

Also, I want to say this, if as a result of the dialogue there's an additional statement that you would like to file with us dealing with some of the issues that have been raised, we would welcome those statements. I would urge you to get them in as soon as possible because we are under obligation to file a report no later than the end of November and that means for practical reasons we'll probably be making up our minds during the month of October, so we'll be more than happy, however, to receive any statements of that kind.

Ms. GEREBENICS. Mr. Chairman, we have a statement here on eight of the organizations represented on these two panels which can be admitted to the record at this time.

CHAIRMAN FLEMMING. Yes, some of the organizations at this point and some of the other panel; without objection we'll enter the statements in the record at that particular point. We appreciate your coming and appreciate your involvement and your help. Now, shall we call the next group?

Ms. GEREBENICS. Dr. Richard Francis, Dr. Harold Delaney, Dr. Thomas Bartlett, Dr. Richard Wilson, and Ralph K. Huitt.

[Dr. Thomas Bartlett, Dr. Harold Delaney, Dr. Richard Francis, Dr. Ralph K. Huitt, and Dr. Richard Wilson were sworn.]

TESTIMONY OF THOMAS BARTLETT, PRESIDENT, ASSOCIATION OF AMERICAN UNIVERSITIES; HAROLD DELANEY, ASSOCIATE EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES; RICHARD FRANCIS, CO-DIRECTOR OF GOVERNMENT RELATIONS, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES; RALPH K. HUITT, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND GRANT COLLEGES; AND RICHARD WILSON, VICE PRESIDENT OF PROGRAMS, AMERICAN ASSOCIATION OF COMMUNITY AND JUNIOR COLLEGES

CHAIRMAN FLEMMING. I'm going to suggest to those who are just leaving may want to listen; also, I'm going to take things a little out of order here; Commissioner Horn and Commissioner Ruiz have to go back to the West Coast tonight, consequently they're going to have to leave very shortly, and I'm going to ask Commissioner Horn if in the next 15 minutes if he has questions that he desires to address to this new panel to do so, then I'll ask counsel to follow up with any question that counsel feels is necessary. Okay, we want to divide the time between Commissioner Horn and Commissioner Ruiz. Commissioner Freeman and I will be here, however. We don't have to fly to the coast. Commissioner Freeman does go to the Midwest, but she and I will be here so that we'll yield time right now to Commissioner Horn and Commissioner Ruiz, and then we'll come back to the counsel and then Commissioner Freeman and myself.

MS. GEREBENICS. Before we begin, Mr. Chairman, can we have witnesses identify themselves and their organization affiliation for the record, beginning with you, Dr. Francis?

DR. FRANCIS. I'm Dr. Richard Francis. I'm director of government relations, National Association of Independent Colleges and Universities. I'm not a Ph.D. although I want it for this purpose, and at the age of 52 I'm presently writing my Ph.D. dissertation, so I can testify that age discrimination has not operated in my case.

DR. DELANEY. I am Harold Delaney. I'm the associate executive director of the American Association of State Colleges and Universities.

DR. BARTLETT. I am Thomas Bartlett. I'm president of the Association of American Universities.

DR. WILSON. I am Richard Wilson, vice president of programs, American Association of Community and Junior Colleges.

DR. HUITT. I'm Ralph K. Huitt. I'm the executive vice president, National Association of State Universities and Land Grant Colleges.

VICE CHAIRMAN HORN. Let me just pose a general question to all of you, and that is, based on your experience as professional educators to what extent, in your judgment, does age discrimination exist in American higher education?

DR. FRANCIS. I can answer from a professional and from a personal statement. I have found very little if any age discrimination.

DR. DELANEY. I would agree with that wholeheartedly.

VICE CHAIRMAN HORN. Is that the consensus of the other panel members? Mr. Huitt?

DR. HUITT. I was just going to say that you know the nature of the enterprise—this does not mean there is not some of that discrimination that was talked about earlier where you get somebody who just doesn't like old people, or may be trying to help his nephew get a job or something of that kind, but as an overall practical thing, no. I would back up, since we're being personal about this. I went to graduate school when I was 33, I got my degree at 36, I talked to the best universities in the country and went to work for the University of Wisconsin at Madison. I am approaching 65 and I have been on leave officially from the office from the University of Wisconsin for 13 years. I don't know how you can do any better.

VICE CHAIRMAN HORN. I was thinking of you, Ralph, when I asked the question. So the feeling is that there is no systemic age discrimination in American higher education, which is the point that Dr. Peltason made on the earlier panel. Of those cases that you are aware of, either personally or by hearsay, is there any pattern to the types of age discrimination or is it just, as Dr. Huitt just suggests, the idiosyncratic individual that might be on an admissions committee that might have a bias one way or the other individually? Is there any generalization we can draw from those cases which you have heard of?

DR. BARTLETT. I don't think that there is a pattern that is of any consequence in the sense that it is the kind of thing that one deals with through an act of national legislation or regulation. There is another problem and it mustn't be confused with systemic age discrimination, and the other problem was addressed by the earlier panel, and that is, there is a problem of rationing of resources, and people will go about that process in the best judgment they can in different ways, unless we are to be told by Federal mandate of some form that we are to ignore any responsibility for allocation of resources. Then it seems to me there will be differing approaches to the problem of how you allocate places when some have to be kept out; but that arises only in a very narrow range of openings in professional education. The vast body of higher education is not in that position today.

VICE CHAIRMAN HORN. Dr. Bartlett, you represent the most distinguished private and public universities in the country, many of the medical schools and a few veterinary schools; can you think of any other examples in higher education where we really face the allocation of scarce resources to the degree that we do in medical and veterinary schools?

DR. BARTLETT. The general answer is no. I can identify, as I think about it, particular small problems in a particular institution at a given time that would suddenly be deluged with students and with interests, but when one is talking about a general pattern in American higher education, those are the cases.

VICE CHAIRMAN HORN. That's my impression. My own university, art of physical therapy and nursing was attacked statewide, but the cost involved is still substantially less than the problems of medical costs. Dr. Huitt?

DR. HUITT. I want to say first I appreciate very much what this Commission is trying to do. I think you are patriotically and honestly attempting to do a job which as far as I can tell can't be done. I think that our basic dilemma here is that we really have hold of the wrong problem. I have great respect for the Government of the United States, but I must say that if I believed that the Government of the United States really cared about aging people, which I don't for a minute believe, then I would expect to see them put some money into some resources which would help older people solve their problems. I would say to them, pay attention to their responsibility to handle the social security system right.

Now, what we do in this country really is to say, and this I think is the social policy of the country, which apparently is underwritten by the Federal Government, that old people can take care of themselves. They must take care of themselves if it's going to be done, unless they have children who can afford to put them in rest homes and have them sedated for the rest of their lives. There are all kinds of things that can be done for old people. We have a blind spot in our government in which every time somebody looks around and sees this some group

is not doing well, or they're being discriminated against, and we will prohibit the discrimination of those people and they will get along all right. We have, as I understand it, 40 percent of young black males who are not employed now, and so somebody, I'm sure, is going to pass another law that says they can't be discriminated against. They won't hire a single kid that age. The problem there is simply not employment of people without technological training, of people who can't do the jobs that society has got.

So I would say that universities and colleges actually are out in front of the Government of the United States and the society in what they're trying to do for older people. I am on the board of the University of Mid-America, which is a consortium of midwestern universities, about nine of them, which are in a sophisticated and very, very well-planned and honest way trying to build up continuing education so that it is possible to get a degree without having to go through a campus at all. Now, they have got some Federal funding. The Institute for Education has been good to give them such funding as they can, a million or two million dollars a year but it's just not the kind of funding that they really need, so they're having, going to have to go a lot slower than they would otherwise.

So I would say that the real problem—and I don't put this on this Commission because it is not your problem; that's not what they have assigned you to do—the real problem is not the universities and colleges are trying to keep old people out—they are not even doing as much as they probably can for that—but that more resources need to be assigned to this if we're ever honestly going to be doing something for old persons and somebody is going to think about.

We usually give this problem, speak of this problem in terms of two alternatives, one, a person continues to work, has a full career, something like that, or he quits, and that is the 65 retirement dilemma. Are you going to let them continue to work as full-time people, or are you going to send them home? There are a lot of things less than full employment which would keep people feeling that they belong in society. I think myself it is nonsense not to admit that, as people get older, they have less endurance—they have less of a lot of things. I know that personally and I don't believe for one minute that I'm unique. I would love to have a 3-day weekend every week—to me that's kind of like eating lemon pie for breakfast, 3-day weekends every week. If there are some ways that things can be worked out that people can continue to serve society in a meaningful way and to feel like they belong to it, which does not at the same time say, all right, you've got to get a Ph.D. or you've got to get a M.D. or you've got to continue full-time at the job you're doing, this is the kind of thing which I think the Congress of the United States ought to be talking about instead of who's keeping whom from going to what community college.

CHAIRMAN FLEMMING. If I could interrupt just a moment: Commissioner Ruiz, just before he leaves, has got a question.

COMMISSIONER RUIZ. Well, it was another one of those questions to the panel. Does any member of the panel have a considered opinion that there is any real danger that medical schools are going to be overflowing with applications by older Americans because older Americans want equality of opportunity and federally-financed services?

DR. HUITT. My answer to that is no. I don't believe for a moment they're going to be overrun with people. Anybody—

COMMISSIONER RUIZ. How about the other members of the panel, do you have the same opinion?

DR. DELANEY. I would not think that. Once you get beyond a certain age, I think most individuals recognize the limitations under any things, has already been suggested, and given the level of energy required to complete a medical training program, I would suspect that very, very few people beyond 50, 55 would expect to undertake that kind of activity.

CHAIRMAN FLEMMING. Commissioner Horn, do you have another one? Okay, I'll ask counsel if she has any questions that she would like to address to any members of the panel and then Commissioner Freeman and I will become involved in the questions. I again urge those who were here sitting in the back to come up to the table where there's a mike, if you can spend any longer.

MS. GERE BENICS. I have a question particularly for Dr. Francis, Dr. Delaney, and Dr. Huitt. I was wondering what efforts, if any, are being undertaken by your member institutions to provide continuing education services to the older, nontraditional students and to persons aged 60 and over who are now starting to attend colleges in record numbers.

DR. FRANCIS. I'm not exactly familiar with how we're handling this on each and every example, because we represent roughly now 1,500 schools. I know we are attempting to provide opportunities outside of what you could call normal school hours. Weekend, special classes for people in the evenings, special programs which can be compressed for people, which can be completed in briefer periods of time, and these are oriented towards working people who are essentially older than the normal, school-age person. We are running into difficulty, I might add, with the Veterans Administration because they have traditional views of what a traditional school week is, so we've been frustrated a little in an effort along these things to help a little more but not necessarily classified as older people. But there is a considerable interest in our schools, independent schools, to interest people outside of that traditional age because we recognize the demographics of the eighties means that fewer and fewer 18- to 22-year-old people and, in order to provide opportunities for our own profession to maintain its proper role, we're going to have to open our doors to as many people as possible, and we certainly aren't going to turn anybody away who can bring in a dollar.

MS. GERE BENICS. Dr. Delaney?

DR. DELANEY. I think pretty much the same sort of statement about the institutions which my association represents. I do have, however, in hand a study which was done, a survey done by the American Association of State Colleges and Universities of the 313 campuses that were members at that time. And it is entitled "Alternatives for Later Life and Learning. Some Programs Designed for Older Persons in State Colleges and Universities." The consequence of that study or survey was that there were 150 campuses out of the 313 that had then active programs of various kinds, and they range all the way from non-degree, nonacademic credit type, to academic degree programs, formal programs. All of the 313 campuses said that they were interested. Some were just getting started. I suppose if we were to do a survey this year we would find that a much larger percentage of those campuses have such programs.

One other comment I should make, that is the fact that some States have already passed legislation requiring the publicly supported institutions to admit persons at zero tuition who are 62 to 65 years of age, provided there is space and the full complement of the traditional registrants has been obtained.

MS. GEREENICS. I wonder if you could provide the Commission with a copy of that study?

DR. DELANEY. Yes, of course.

CHAIRMAN FLEMMING. Without objection it will be entered in the record at this point.

MS. GEREENICS. Dr. Huitt?

DR. HUITT. The association itself does not do very many things. We are a training association for big State universities and land grant colleges, and you know how associations operate and what our chief concerns are, but the structure of the association includes continuing education as one of the key elements. We have a council on continuing education made up of vice presidents for continuing education from all our campuses that meets with regularity and passes resolutions and so forth, and has the representative on the executive committee of the association.

I believe that the institutions are honestly attempting to corral as many people in these continuing education programs as they can. As a matter of fact, there's some possibility of abuse there, because there are institutions that are going out—well, for the present, I'm told, has got 38 separate institutions giving credit courses there on the grounds. Now, somebody has been hustling that place. And I'm not sure there may not be some questions as we go along as to what's legitimate and what's not.

My own belief is that the largest failure so far in this program of continuing education is that the people who are interested in that and are specialists in it, know how to make courses for television and newspapers and all that kinds of thing, have not been adequately married to traditional faculty. Now, I think this is a wedding which would

help both sides because I think the traditional faculty can learn a lot about teaching which it does not now know. Perhaps we'll dispel this notion that the only way people can ever be taught is by somebody standing up behind the rostrum and lecturing and writing on the blackboard, expecting people to memorize it.

On the other hand, these people who are traditional faculty members are the repository of what knowledge there is about these subject matter disciplines, so they ought to be pulled in, better I think than they have been so far into continuing education, so that you be sure that the person who is being taught English history is not being taught by some media specialist, he is being taught by somebody who is an English historian.

MS. GEREENICS. Thank you. Dr. Bartlett, to what extent have the age of applicants and potential of placement in employment played a role in assessing the applicants' credentials? I'm thinking particularly of an instance that was brought up in our study in Florida where the mandatory retirement age for teachers precluded older persons from going into the education field, instances like that. Does age then play a factor in—

DR. BARTLETT. I don't know the case. It sounds as if it almost has to, no point in—I understand the example, people going on with advanced degrees if after graduated, they're already precluded.

MS. GEREENICS. Mandatory retirement ages and the private sector in general, does potential placement preclude different ages, persons of different age categories from being admitted into a certain discipline?

DR. BARTLETT. I think we get back to a conversation that I like to refer to as happened in the last panel, which I think was very well taken, the statement that Commissioner Horn made. You're talking about an enormous system in American higher education, and it is a very decentralized system. It is a system with a lot of characteristics of internal self-government. To my mind these are enormously valuable characteristics of that system, but one of the things that is true is that it therefore becomes terribly hard to generalize. I don't think there's any doubt that one could find cases where particular departments or particular leadership groups in a given institution people would say, it makes no sense for us to produce Ph.Ds who are 50 or 60 or whatever the age may be in their particular view.

On the other hand, the general condition of higher education is that higher education is counting heavily on older students to maintain the student bodies because the traditional age group is declining. In fact, one of the things that has troubled me in recent years is what I think is an unreal degree to which higher education is counting on drawing in people who never thought about higher education in the past to maintain the size of student bodies. I think that feeling is not just an undergraduate phenomenon. I think it goes through all levels, as a generalization. I would certainly never claim, however, that if one

looked one wouldn't find some one institution that acted in one way, another, a second, that reacted in a different way, and a third institution that determined a social mandate in a third way. I don't think, however, that it would be wrong to try to disturb that kind of diversity when the overall result is one in which institutions and good institutions are pursuing students as much as students are pursuing institutions at any age.

MS. GEREBENICS. Thank you. Dr. Wilson, many of our studies lately have concentrated on community and junior colleges which seemed to be particularly suited to serving the needs of older persons as they return to schools. Would you tell us some of the special programs and activities being provided by various community and junior colleges that you know of?

DR. WILSON. I will. I heard the justification of those 60 percent of the community college students are part time. The average age at the community college is now in excess of 30, which suggests quite a few are nearing 40, to 60 and even more. Some CCs have made an extra effort to attract older students. They are admitting them with minimal tuition, or in some cases have reduced tuition costs. CCs work with SCORE [Service Corps of Retired Executives] chapters, which are supported by the Small Business Administration, to bring on to their capacity people who have retired from business and who are now available as volunteers to help business operators. Some CCs work with ACTION programs—this same purpose, to have volunteers who are older available to help other agencies within a community.

One of the things that the association is working with on CCs right now is to make it easier for our people who are retired to work on a part-time basis. Now this can be done in several ways; our interest is in having CCs actually employ retired people on a part-time basis, as part-time teachers, part-time counselors, part-time in the business office, wherever. Another way we can help is to provide short-term training programs for people who are interested in part-time employment and yet they need some very specialized skills and knowledge which they can learn in 4 weeks, 6 weeks, or 8 weeks. So these are just a very few examples I am familiar with. I'm sure when you look at the 1,200 CCs across the country, those are the tip of the iceberg, is the way to put it.

DR. HUITT. One thing which certainly can be done to help the part-time student is to change student assistance programs so it is not necessary to be a half-time student in order to get student help. Why not one "course"? Lots of people want to take courses. Our association now has a policy, we've picked up costs for our people who take one course at a time. I think that is centrally is an intelligent policy for the association which pretends to be committed to higher education, that you think higher education is a good thing for your own people. Well, I think that there would be a lot more people if they could get student assistance for one course or two courses.

MS. GEREBENICS. I have no further questions, Mr. Chairman.

CHAIRMAN FLEMMING. Commissioner Freeman.

COMMISSIONER FREEMAN. Gentlemen, I have listened with a great deal of interest to this panel and also to the earlier panel's response to the question of whether there is discrimination on the basis of age at the university. Each of you has to some point been a member of a faculty or an administrator of a university. It reminds me of the fact that as a lawyer I have handled some litigation on the basis of alleging discrimination on the basis of either race and sex, and in all of these instances, each time it was very, very sharply denied that there was any discrimination. So I think that probably I agree we would have to take into consideration your perceptions, which are based on where you are. If you are part of the policy, you are part of the administration, and it would be probably very interesting for you to listen to what the applicant and what the student and what the applicant who is denied and what the applicant who is admitted says. We have found that discrimination occurs in so many subtle forms.

I have a case now in which a student was admitted but was denied all financial assistance solely because he was black, and if a person who is 45 is admitted and needs financial assistance and can't get that financial assistance—I'm not talking about community colleges; I'm talking about universities—and the personnel office or the person committing the aid makes a decision to deny the financial assistance, then that person cannot proceed. So this is a form of discrimination which the registrar would say, "You are admitted," but because of the lack of financial assistance, a person could not go. This is the discrimination that is as pernicious as any other.

DR. FRANCIS. Can I comment on that?

COMMISSIONER FREEMAN. Yes, Dr. Francis.

DR. FRANCIS. People make value judgments based on a whole range of concepts that they have gotten over the course of their lives, and when you talk about this, it's one of these things that people don't see being done. One of my greatest gripes, if I can use the expression, about higher education is when I was a person trying to get an education, was the admissions process itself. I find it was much easier to take the class than it was to get admitted to it, simply the process of going through tables and forms and this, that, and the other thing. I suppose one could say that to a person who is a little unfamiliar with the college scene, who drops in on a college admissions office and says, "I'd like to take a course," and then the admissions person, "Well, you need this transcript and that birth certificate," and this and that and the other thing, might tend to be discouraged. And I suppose the age of the person would have been involved simply because, what does that old person want to fool around with education in that first place?

So I will admit that as a possibility. But I don't think—it's not necessarily discrimination based on age, but discrimination based on perceptions that people have on both sides of the fence, so to speak, and as to what education is all about and what value it has to each person. I think you're probably right when you say that.

COMMISSIONER FREEMAN. This is what I'm talking about. This society has built in a set of attitudes that it is now true that actually many of the universities are themselves the problem. You see, they are turning out the professors and the other people who are carrying on and prolonging the systemic discrimination that we're trying to get rid of.

Then, of course, there is a special group. We are just talking about aging in the totality, but then within that, the handicapped and women, there are minorities, and I happen to be at this point, I'm in three categories. I'm black, I'm female, and I'm an older American. I'll never get rid of all the discrimination. I would hope that some day I would have at least total equality of opportunity, but I haven't had it yet. What I'm saying is that as long as—well, you know, even the panel was all male.

DR. FRANCIS. I noticed that.

COMMISSIONER FREEMAN. And I know that I would not ask of any when you were members of a faculty to at least identify the administration and have a cross-classification breakdown of the faculty administrators and the board of trustees by race and sex. The answer to most of it would be zero. So what I'm saying is, this same philosophy carries itself over to our attitudes and our treatment of the older people, so I'm just taking issue with both panels when you say there is one. I want you to get my message. What I'm saying is to examine the day-to-day operations in some of the individual actions that are taken to broaden your view and your perceptions so that they may change, and you will be able to see that there are many instances, there are many acts of discrimination on the basis of age.

DR. BARTLETT. I would like to make two kinds of comments in response. One is that it seems to me there are distinctions to be drawn, and I think Jack Peltason tried to do that earlier, between discrimination as we have tried to understand it and deal with it in race and sex, and age. There are different kinds of factors at work.

Let me then just make that assertion and go on for a moment to proceed to another point. There are lots of things in education that work in such a way that it is better for one age than another. The most discriminatory institution of all in education is the kindergarten. That is an institution of total discrimination. Not that people are forbidden from joining kindergarten, it is just that the chairs are too small, the curriculum is boring, and the people with the person who directs it unsatisfactory. That's subtle but very pervasive and very powerful age discrimination. In presenting the case it seems to me I am also presenting an absurdity, but it illustrates, I think, an important point, and that is that education has characteristics which are different from the kinds of problems of discrimination that we get when we're talking about race and sex, because education has characteristics which are more suitable in some forms for certain ages than other ages in other forms.

Now the only way to get rid of that that I can imagine would be a system in which we said every institution must have every program

of every sort for every age, because otherwise there will be—the effects of programs which are not discriminatory by age in their intent and will have the result of being better suited for one age than another. Now, if that is our objective, to have a situation which every person has the same impact in every institution, then the only way to do that is make all institutions have the same programs with the same opportunities for every age, but again it seems to me that to do that reduces the problem to absurdity. But it is the only way I can imagine to get away from every subtle impact of age in education. Yet to do so seems to me would be to carry a principle which has great application in other contexts into a context to produce a situation which would be very destructive. What I'm suggesting is that it is unreal to use the criterion that the result must be the same for every age in every program or it is age discriminatory. It doesn't seem to me that works.

DR. HUITT. One time, Commissioner, my wife and I were fortunate enough to be invited to the White House for lunch. My wife said that she sat at the table with the distinguished black bishop from the South, and they were talking about the kinds of problems that you have been talking about. My wife shocked him until he almost fell over and she says, "Well, the real solution is for you and me to die." Now, he didn't know what she meant; she knew what she meant. And that was that certain things that have happened to him and certain perceptions are those which he is going to have while he lives, no matter how he tries to change it, and certain of her perceptions are the same.

Now, the older I get, the more I believe in the mortality of man. A lot of problems cannot be solved anyway except for a lot of people to just pass on. As I go down into the South, we have 167 historically black public colleges in our association. I visit them. The first thing I did as executive director was to go down and meet with five of those presidents. I see things which, when I was a kid growing up in East Texas, I thought never would happen and never could happen, which is the way to integrate those schools, and it is working successfully when it is followed, is to raise the quality of the colleges, the white kids come.

If a kid wants to be an engineer and he can go to North Carolina A&T University which he can where they are qualified and accredited as a professional engineering school, and he can get a degree there and he lives 80 miles away, he goes. And so their white population is going up, not because the judge said that they have got to do it, but because here's a new generation which does not have the perceptions that, say, my generation had. If you were to say to me that I have some perceptions, that I have some bigotries which I will have until I die, even though I've tried to eradicate them, I'll say I'm guilty, of course, we are all part of the product we have been. I think some of these things you're talking about, which this Commission can't do anything about, and which these white males up and down here can't do anything about either, nor the black males for that matter.

COMMISSIONER FREEMAN. They could comply with the law.

DR. HUITT. I think they do. The law is stupid. It says prohibit discrimination on the basis of sex. Now, that's not going to get at what you're talking about if somebody is sitting here and he votes against somebody because he doesn't like him.

CHAIRMAN FLEMMING. I think we're getting away from the basic thrust of this law.

DR. HUITT. I don't doubt it.

CHAIRMAN FLEMMING. If I can come back a moment, if you yield, Commissioner Freeman. Dr. Bartlett's comment, what we're dealing with here is chronological age, and admittedly various programs within the educational world are worked out with the needs of certain chronological age groups in mind, but there are persons who are outside of those chronological age groups who need what those programs can provide them and who can benefit from those programs. Discussion has proceeded a good deal today around this question of admissions and the factor of age in connection with it. That grows out of the fact that to some extent that issue was raised in our field hearings, and in San Francisco and Denver and Miami.

I think really the question that we're raising is, if an individual of a chronological age beyond that for which the program has been designed feels the need, makes application, and it can be determined by utilizing other criteria that he or she has the capability of participating in the program, should an admissions committee, an admissions office just follow the line of least resistance and instead of going in and examining that individual on her or his own merit, simply say, sorry, we don't take people into this program dealing with chronological age that are spastic, or high blood pressure, above 35 or above 40, or whatever the case may be. The test has been uniform from both panels to the effect there's very little of that going on, very few instances that anyone can identify.

There's also, in response to Commissioner Ruiz' question, there seems to be agreement on the fact that if everybody understood that age was not going to be used as a disqualifying factor, no institution would be swamped, no medical school, would be swamped, no law school, and so on. So that being the case, I'm wondering why the field of education couldn't simply say, "Look, we've got our admissions standard, we've got our admission requirements, and so on. They're designed to determine whether or not a person can profit from participating in the program and we're going to apply those standards, and we're just not going to disqualify a person solely because of the fact that person is above a particular age group." I mean, I think there's opportunity here for the educational world to say that we know that chronological age should not become the controlling or the determining factor. As far as I can see that's what we should define "unreasonable" as: arbitrary and capricious. That suggestion has been made because those are words of art that have meaning in the field

of law. I have the feeling that if you're dealing with an individual for admission to any of the professional graduate schools or undergraduate schools and you say to yourself that person is capable, he can profit from it or she can profit from it, but he or she is above the age where we would normally admit, but that's kind of arbitrary and capricious.

DR. BARTLETT. I hope we don't end up fighting the last war, Mr. Chairman. I think the time when that concern would have had a good deal of basis in practice is over. It seems to me the issue doesn't arise at the undergraduate level. The question is, does it arise at the graduate professional level? At the graduate level I think it is necessary to keep restating the extent to which programs need people and need money. Those things to some extent go together. The problem in most of those programs is not to figure out ways to keep people out. I agree with you. I think the problem has redefined itself fairly dramatically in the last decade. In fact, it exactly reversed.

There is always one qualification that keeps coming up. I suspect it ought to be kept in the picture. I don't know how to deal with it; all I can do is repeat it. You mentioned the standard of admissions as being those who are able to benefit from participation in the program. That's the standard that we in higher education would like to use. It is a standard that we think is the right social ideal, and it is one which we can support very strongly, isn't always possible for us, and medicine and veterinary have to be put in as footnotes because there we have been given another problem. I don't think it is a problem we've asked for. I think it is a problem which we have, however, and that is there are more people who could benefit from participation in those programs than there is any possibility of the programs admitting them, and then we come to the problem which society has given us, which isn't what is the educational issue. They've said you have to make judgments about allocating a resource. If we were told we are not to take into consideration resource allocation issues and resources will be provided, the last thing in the world higher education will want to worry about is any implication at all of age, because obviously there's no advantage from the point of view of the professional higher education. The problem comes that society has given us in some sense a second responsibility by not providing the capacity to do what we can say, those who can profit by participation are welcome.

CHAIRMAN FLEMMING. Let me say, first of all, that I agree with your initial statements to the effect that the issue that we're discussing in most instances has ceased to be an issue, and that, however, means there's no problem in complying with the kind of an objective that is set forth in the law.

Now, when you come to your second classification, I recognize that there is a problem there. I recognize that if you have limited resources, that you do have to make a decision as to who is going to participate in the use of those limited resources. My feeling is the criteria should be developed to make those determinations which do not include the

question of a person's chronological age, that the decision should be made on the basis of other criteria because the minute you make it on the basis of chronological age, you say to the individual, "We're not considering you as a person, your merits, your economy, your ability, and so on. We're considering you as a person who has reached the chronological age of examination," whatever that chronological age may be. That is where I'm troubled when the decision comes to that particular point.

It seems to me that we have the capacity and the capability of developing criteria which will really lead to fair and equitable decisions without resorting to that, because after all, in terms of making a decision, that's one of the simplest ways to make it, simply say, "Well, this person has reached this particular chronological age, therefore, he's out."

Now, it normally it isn't that simple. Normally a lot of criteria are being considered. Usually this is posed, "everything else being equal." But everything else isn't equal when we're applying a criterion of this kind. And my feeling is that we should not come down to that point where we say everything else is equal, therefore, we will decide against this individual because of the chronological age.

I always have problems keeping on the schedule here with these panels particularly when we get into this kind of a very basic fundamental dialogue. I appreciate very much your points of view that have been expressed, your willingness to come to grips with this. Again, as I said to the other panel, if this dialogue has brought to mind some issues that you would like to address yourselves to, such as in an informal memorandum, we'd like to have it, sometime very early in October. So I guess at that point we'll move on to the next panel, but thank you very, very much. We appreciate it.

Counsel will call the next witnesses.

MR. DORSEY. Rev. Laura Jervis, Rev. Msgr. Charles J. Fahey.
[Mgr. Charles J. Fahey and Rev. Laura Jervis were sworn.]

TESTIMONY OF CHARLES F. FAHEY, NATIONAL CONFERENCE OF CATHOLIC CHARITIES; AND LAURA JERVEY, CHURCH AND SOCIETY, NATIONAL COUNCIL OF CHURCHES

CHAIRMAN FLEMMING. Delighted to have you both with us. Counsel, I think, probably has some questions, and then Commissioner Freeman and I have some.

MR. DORSEY. I would ask, starting with the Reverend Jervis, if you will please state your full name and position and organizational affiliation for the record?

REV. JERVIS. I'm a United Presbyterian minister. I'm here representing the National Council of Churches. I'm a practitioner in the field of aging, and am associate director of the West Side Ecumenical Ministry to the Elderly located in New York. I'm also the director of the West Side Federation to Senior Housing, also in New York.

CHAIRMAN FLEMMING. Which unit of the National Council?

REV. JERVIS. Actually, I'm here representing Church and Society.

CHAIRMAN FLEMMING. We're delighted to have you.

MSGR. FAHEY. My name is Charles Fahey. I'm representing the National Conference of Catholic Charities, and my basic job is being director of Catholic Charities in the Diocese of Syracuse, New York.

CHAIRMAN FLEMMING. I might also say that Father Fahey is also the third member of the Federal Council on Aging that's with us today. Nelson Cruikshank started the day, and John Martin was here earlier. Father Fahey has been a member of the Federal Council on Aging from the beginning.

MR. DORSEY. I would like to begin with you, Father Fahey, and ask you this question, are there barriers which you believe prevent older persons from having access to social services and, if so, could you identify them and suggest possible changes to make them more successful?

MSGR. FAHEY. Well, would you like today, tomorrow, and the next day?—"briefly," you should have put at the end of that.

Well, of course, we have many social services that are age related to start with, and within that context, I suppose, there are a number of barriers that exist even to those, knowledge of the services, cultural barriers, barriers of transportation, the attitudes of the providers—all of these kinds of things are problems in virtually all of our social service programs. A major problem that I'm sure you have had brought to your attention previously would be the myriad of jurisdictions under which social services are provided, under both the public and voluntary sector, and the system itself sometimes becomes a barrier, the people just find it so overwhelming to try to deal with the various bureaucracies that are involved. And the corollary of that would be we need to create more technique persons. Whenever the hurting person comes in contact with anyone of the systems, should all the systems come in, there is an examination or eligibility for other programs, both from a fiscal point of view or a need point of view, not just the one that is the occasion of the presenting problem. In the non-age-related social services programs we find again the same cultural, societal barriers found generally in services where aging people are concerned.

Mental health services generally, can aging people really benefit from the mental health programs? That seems to be implicit in many of the community mental health type of programs with which we know.

When we talk about family life, enrichment programs, people seem to forget that grandparents and great grandparents are parts of families. We find that constantly in our various programs under voluntary as well as public auspices.

I think in a number of programs we find, particularly in the planning facet of it, that the providers tend to become very quickly involved, and by that reason elderly people do not have a significant voice often-

times in those planning mechanisms that are available in communities whether they be public, quasi-public, or voluntary. Pick out just, for example, I suspect elderly are not sufficiently represented on United Way kinds of planning bodies and so on. I suspect in the new HSA [health system agency] elderly people are virtually nonparticipative despite the enormous powers the HSAs will have in the future health care in the United States. I think elderly in some States did become active participants in the Title XX kind of processes, perhaps even some instances to bring them to a standstill, but obviously in the more ordinary political process of the revenue sharing they have not had a voice and the bottom line is they are not participant unless we would say that the property tax stabilizes and the elderly benefit.

These are just a few of the things that come to me, but obviously we can talk at length about any one or all of them and more of them.

MR. DORSEY. I would like to have Reverend Jervis' reflections on that same question in terms of possible barriers to services for the elderly people.

REV. JERVIS. I think Father Fahey has covered them, but I would just like to highlight the fact that no other segment of our population is so dependent on the public sector for their survival as the elderly. Every new program, every alteration in a Federal program requires them to face the bureaucracy once again, and as so often happens, the major entitlement programs most of the elderly are familiar with. I think, in New York City, for example, 88 percent of the people understand about their social security benefits, the other entitlement programs, like food stamps. And the constant recertification that is necessary even for social security, and particularly for food stamps, is a continual burden to them, and as the bureaucracy increases in terms of the systems that they have to negotiate with, their sense of frustration and isolation also increases, and so that we no longer look at them as persons, as individuals, part of that process and for whom that process was created, but as pawns with that. It is a very critical issue facing particularly low-income elderly.

MR. DORSEY. I would like to follow up with some of the activities that the National Council of Churches sponsors in attempting to address the needs of the elderly and the possible problems that may be encountered in terms of dealing with the Federal bureaucracy in attempting to implement those activities?

REV. JERVIS. Well, as you are very well aware, we always have a Church-State tension in any kind of programming for the elderly. The representative denominations of the National Council of Churches seek to work that out in their own way. I think that, as voluntary agencies which most of the major denominations sponsor to serve the specific needs of the elderly, we do it as in a stopgap fashion. We find ourselves filling in for, in ways that Federal programs, the title programs particularly, aren't able to do. We're filling in gaps. That is a problem because we're responding to the needs. Many of the major

denominations are not part of the total planning process. This is why this is such a good opportunity for the National Council to be represented here. We can begin to see ways which we might plan together for a more comprehensive programming and delivery of services for the elderly. Right now, we're responding. We're trying to fill in the gap situations.

MR. DORSEY. Father Fahey, in terms of one of our primary responsibilities—that is, to make recommendations to Congress as to the implementation of the Age Discrimination Act—do you have any comments in terms of recommendations that would make the act more responsive to dealing with the problems that you have enumerated before?

MSGR. FAHEY. I suspect most of the things that I was talking about tend to be rooted more in professional behavior and in the various statutory programs as opposed to the act itself. It is also societal attitudes. I'm not just too sure whether under the rubric of civil rights we would be able to talk about in terms of better access to services. I think that, as Commissioner Flemming has done constantly during his tenure and encouraged others to do, I think virtually all the statutes under which programs, whether they be social services programs for the generic population or specifically for the elderly, they have to be examined in the light of, do they really contain techniques so they'll be accessible to elderly people? Are there techniques so elderly will get their fair share? Are there techniques so that the elderly will be represented on decisionmaking bodies? I sense that the larger problem, when it comes to the delivery of social services and the accessibility, will be dealing with the individual statutes which bring these things into being, as opposed to the civil rights statutes.

MR. DORSEY. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. I would like to ask each of you to comment from your own experiences the problems that the organizations have had with respect to vocational rehabilitation with the older adults. We have received testimony earlier that seems to indicate the need not only for possible changes in the statute under which we are holding this hearing, but perhaps there needs to be recommendations for revision in the legislation for vocational rehabilitation, and I wonder if you could comment on that.

MSGR. FAHEY. Well, I think as soon as you develop the vocational rehabilitation within the context of work to get somebody back into the work force, off welfare rolls, etc., etc., and you couple that with the notion that, "well, older persons can't work very long," I think that's the implicit problem they're in. And it is a problem. I see it over and over again in our agencies, that the emphasis on the vocational rehabilitation is on the young people are going to have a productive work life over a longer period of time and the tendency to the programs be targeted implicitly or explicitly are for younger people almost

exclusively. I must admit I don't feel a great deal of competence other than from an antitechnological, episodic point of view in this particular area.

REV. JERVIS. I just would like to add our experience with vocational rehabilitation in terms of the Title X program in New York City has been very successful and we have had older New Yorkers working in a variety of situations, particularly with other older New Yorkers. In terms of friendly visiting, just a myriad of programs, but we are always under the constant pressure that program is going to be eliminated or decreased in terms of its funding.

COMMISSIONER FREEMAN. Do you have a brochure that describes the program because maybe this is the kind of positive program that ought to be included in the record at this time because some of the testimony has been negative, and if you've got, if your agency has this experience—

REV. JERVIS. I'd be happy to supply you with that.

COMMISSIONER FREEMAN. I would like to offer it for the record at this point.

CHAIRMAN FLEMMING. That will be done.

COMMISSIONER FREEMAN. The other point that I would like to pursue is the compounding of age with the discrimination by the handicapped on the part of the handicapped doer and also the discrimination that has to be endured by black and other minorities as well as women. What has been your experience has been in working with older adults and the subgroups within the category of age?

REV. JERVIS. My experience particularly has been that's certainly true, particularly with ethnic minorities, that the discrimination of age is so complicated, particularly in terms of those persons being able to acquire the services and the entitlements that are theirs. It is a difficult problem to attack or to stimulate the resources to help that. It is attitudinal in terms of the local agencies working with older people providing services. It is such a cultural thing. As you are well aware, black and particularly Spanish older people have much less life expectancy, so that we find discrimination in all areas of age from childhood to older adulthood. It is—all I can say it really does complicate the issue, and we have found no significant impact by any particular Federal program to make any positive change in that area. I think it is critical and it is tragic.

COMMISSIONER FREEMAN. Monsignor Fahey.

MSGR. FAHEY. Well, taking various pieces of it if I may. If we look at the institutional care of elderly people, the blacks particularly, but also Spanish-speaking Americans are incredibly underrepresented in the institutional picture, and this is equally true of voluntary agencies as it is of public agencies perhaps; I say that shamefacedly, I became president of the Association for the Aging which is the voluntary sector. It is one which we're becoming aware of and are trying to institute a positive affirmative action program within our own organization in

this regard—that's wearing another hat. But that's with regard to a problem that black and Spanish-surname people find it difficult and there are lots of reasons for it. Historically, many of the voluntary facilities for aging tend to serve their own faith and if you get down into that, there is proportionate representation even there that discriminates, and there is need for positive action on the part of these groups.

When it comes to the delivery of social services to elderly people of minorities, that gets more complicated and is less clear that there is discrimination. As a matter of fact, in certain areas it may be the reverse the true. There is a study, again wearing a different hat, that the Government Accounting Office [GAO] is doing quite extensively in Cleveland with the Federal Council on Aging, is utilizing quite extensively particularly in and our frail elderly project, that would indicate because of the concentration of Title XX service and Medicaid services and income-related services in inner cities, and because of the flight of the white from the inner city, there may actually be more access to a number of social services for poor minority persons than for poor white persons. It is a very complicated area, access to services being a very significant element in whether or not people receive it. The fact is that many public services are now being concentrated in urban areas in cities where there's a disproportionately high representation of minority groups, so it isn't quite as clear. One of the challenges that we seem to face is a better distribution of various social support services out of, in addition I should say—right in the very beginning the GAO study indicates everybody is underserved. It isn't as if everybody is having more services than they need, but rather if you look at it relatively, there might be relatively more intervention, at least in Cleveland, with older minority groups than there are with nonminority groups.

COMMISSIONER FREEMAN. Does the GAO study indicate the extent to which housing and employment discrimination would be reflected in this panel which you described?

MSGR. FAHEY. I'm not sure I understand the impact of that. Would you want to rephrase that so maybe I can try to answer?

COMMISSIONER FREEMAN. You indicated that the minorities reside in the city and the whites had moved to the suburbs. Our experience has been from the studies that we have found that there was housing discrimination that has kept many minorities out of the suburbs. Employment discrimination has kept them from having the money to buy the house and there has been no ability to purchase those things for which a person needs to improve the quality of life. These people are left on the welfare rolls, and if they had equality of opportunity they wouldn't be there.

MSGR. FAHEY. That is correct.

COMMISSIONER FREEMAN. And the question that I asked was, if the GAO study reflected this?

MSGR. FAHEY. In the sense of that reflecting that there are more minority persons in the city, yes, but the study is not geared at the basic patterns of where people live at this time. It is taking people where they are and whether or not they are receiving either informal or formal services that they need to be able to maintain themselves. It is not a value judgment on whether that is right. It is just saying who is getting what at this stage of the game.

COMMISSIONER FREEMAN. I would like to ask the staff if they would at least obtain the copy of the study for the record. At least when we make the analysis of the testimony we'll be able to make a judgment.

MS. BRADLEY. We have a copy of that study, Commissioner.

CHAIRMAN FLEMMING. Coming back to the act and purposes of the act, of course, Congress in enacting it felt that they identified situations where older persons were denied access to services by reason of their age, and their objective is to outlaw that, say that if older persons are denied access on the basis of age, this is in conflict with the law and it provides for the imposition of sanction. What we have been endeavoring to do, of course, through field studies, hearings, and so on, is to identify areas where there appears to be at least a *prima facie* case on the basis of the evidence, pointing to discrimination against persons because of their age.

Both of you are having not only national experiences but local experiences. We have already made reference to mental health. I just ask both of you if your contact with the mental health resources of your community, both public and private, and maybe more specifically the community mental health clinics, would point to the conclusion that by and large they turn their backs on the older persons and make no real effort to involve themselves. Is that a fair statement?

REV. JERVIS. That's an accurate statement.

MSGR. FAHEY. Yes, without any question. Of course, this is so pervasive professionally in the field of mental health generally that mental health services are not needed for older persons, which, by the way, if I may also say hypothetically even the Medicaid law does not recognize sufficiently the need for mental health services, whether it be ambulatory or even ironically where we have in our facilities for aging, let's say, maybe as many as 40 or 50 or 60 percent of the people suffering to some degree at least ostensibly chronic brain syndrome. The reimbursement of psychiatric services within these facilities ordinarily is not available. Just incredible.

CHAIRMAN FLEMMING. Well, now, when we had witnesses, people who are in the mental health area and were operating in a local agency, they would admit in most instances that they had not carried on an outreach program directed to older persons, and the excuse, the reasons, partly was, "We don't have the money," and then come to the next point, "Even if we did happen to carry it on, we found some older persons that wanted access to it, we haven't got enough money to treat them or to handle them as patients." What we feel the law

is saying in a situation of that kind is, "Look, if within your present resources you are discriminating against older persons, you've got an obligation to correct that situation within your existing resources." They are very quick to say "We'll correct it if we get us some money." That doesn't represent any commitment as far as they're concerned relative to older persons, and, as you see it, as you became familiar with this law, how would you react to that kind of an approach, as far as the Commission is concerned?

REV. JERVIS. I think that many of the voluntary agencies see themselves constantly in the role of advocate in just this kind of situation, and I think we need to remind ourselves that this is a primary role for us and that we need to constantly bring pressure to bear so the services are more adequately delivered.

CHAIRMAN FLEMMING. I'm glad to hear you say that because if this law is going to become meaningful in the lives of older persons, first of all, it has to be monitored effectively within government, and we have discussed earlier today the role that the Federal Council on Aging may play along that line, but in addition to that it has to be monitored from the private sector. I mean, it is the private sector that will detect more quickly than any other a failure to or a continuation of discrimination against older persons.

I'm thinking in terms of the National Council of Churches. Do you think it is possible for the general board to take note of the fact that this kind of a law is about to go into effect, take note of the fact that if you work down through the communities down to the local churches and parishes, that there are real possibilities there of monitoring and identifying the kind of facts and so on that will enable those who really want to enforce the law to go to work on enforcing it? Having asked the question—of course, I do it from background of experience and having that, not in this particular instance, but in other instances as president of the National Council, I know how difficult it is. Yet I feel that there is a resource there for monitoring that could be very significant. Do you think we have got any chance?

REV. JERVIS. I think we do. I agree with you it is the responsibility of the council to begin filtering down in all its myriad of steps by position papers but also very specific, action-oriented programs.

CHAIRMAN FLEMMING. That is right. How to do it right.

REV. JERVIS. Right.

CHAIRMAN FLEMMING. How about the situation, Father Fahey, as far as the National Conference of Catholic Charities is concerned?

MSGR. FAHEY. I think I would be another school. Actually I think you would be pleased to know, coming out of the White House Conference in '61, we did put together almost as a direct result, Bishop Gallagher put together a total commission on aging that has had a significant advocacy role in the organization ever since. And we have revamped our organizational conference to be considerably more democratic in the past several years, it is now being held and governed

by a house-delegate type of activities, and in each of the past 3 years have identified elderly and the frail elderly as being matters of priority for the conference as a whole and for its individual units, and it goes down that every diocese, every diocese can go down, and I am pleased in trying to do a little homework for this to be contained, although this may be part of the function of better statistics, but in '74, we had 505,000 cases that involved elderly. This is apart from institutional care. We went up in 1976 to almost 2 million cases, reflecting, I think, a substantial commitment largely coming, pushed from the top down but obviously responding to a need out there in the field, that a difference is being made by a national organization taking some leadership trying to assist its constituency.

In the past year the national conference has also taken on as a matter of priority the extension of our professional services into the 8,000 parishes of the country, as hopefully as part of the neighborhoods and so on. In this parish outreach activity, a substantial part of the training is going in specific terms of dealing with elderly people, so I kind of hope, again, using the act in conjunction with these things, that are professional developments and further institutional complements would be very helpful and we could do something for that instrumentality.

CHAIRMAN FLEMMING. We appreciate both of you being with us. It's been very helpful.

Counsel will call the next witnesses.

Thank you for being with us. It's been very helpful.

MR. DORSEY. Ronald Brown, Esq., and John Wesley Davis, Esq.
[Mr. Ronald H. Brown and Mr. John Wesley Davis were sworn.]

**TESTIMONY OF RONALD H. BROWN, DEPUTY EXECUTIVE DIRECTOR,
NATIONAL URBAN LEAGUE; AND JOHN WESLEY DAVIS, DIRECTOR, EEO LAW
PROJECT, NATIONAL BAR ASSOCIATION**

CHAIRMAN FLEMMING. We're delighted to have both of you with us. We appreciate your being here.

MR. BROWN. Thank you very much. We're also particularly delighted because we're the last witnesses of the day.

CHAIRMAN FLEMMING. It's been a very fascinating experience.

MR. DORSEY. I would ask that each of the witnesses state your full name, organizational affiliation, and title for the record, starting with Mr. Brown?

MR. BROWN. I'm Ronald H. Brown, deputy executive director of the National Urban League. I also receive a directive from the national director of the Urban League in the Washington bureau.

MR. DAVIS. I am John Wesley Davis, director, EEO law division, National Bar Association.

MR. DORSEY. Thank you. I'd like to start with Mr. Brown, a little introduction if I can. We have had substantial testimony not only in

this particular hearing in Washington but also in the hearings and study throughout the country that some of the Federal programs specifically designed to reduce unemployment in those groups experiencing the highest rates of unemployment have not really addressed that problem. In some cities where we have conducted field work there is an astronomically high youth unemployment rate, particularly minority youth, which has caused some prime sponsors to attempt to respond to the need. I would like your reflections based on your experience as to the lack of responsiveness and how that is reflected in terms of, in your view, the ability to meet the needs of these high unemployment groups?

MR. BROWN. There's no question that we have not responded to the unemployment problem as if it were a crisis, and indeed it is a crisis, and in fact the National Urban League believes that the crisis is far more critical than the Department of Labor through its Bureau of Labor Statistics quarterly reports indicates. In fact, we have what we call a hidden unemployment index. By using that hidden unemployment index, we believe unemployment in this country is in fact approximately twice what the Bureau of Labor Statistics says it is.

Now, this is not a fly-by-night survey that we do with unqualified individuals going out and finding information from unknown sources. This is information that we glean from the unpublished data that the Bureau of Labor Statistics gathers but does not use in compiling its unemployment rates. Basically, there are two major categories of individuals left out of the Bureau of Labor Statistics' published data. One, there are those millions of Americans who because they have become so frustrated and exhausted by beating their heads and fists against closed doors of employment have just given up, dropped out of the labor market. Those people are not included in the statistics, nor are those all Americans who are working part-time but need and seek and want full-time employment in order to effectively feed and house and clothe their families. Those individuals are not included. When you put those two categories back in the total data, what you find is that the unemployment rates in this country are in fact double what the Bureau of Labor Statistics says they are, so in fact black unemployment is not now 14 percent, but 28 percent, and white unemployment is not 6.5 percent, but 13 percent. So we are really dealing with a much greater crisis than I think our action indicates we believe we are dealing with.

I would agree with the premise that is at the base of your statement, that the response to the groups of our population that are hardest hit—that is, disproportionately hit—has been inadequate. I think the tragedy of it has really been based on what I consider misguided economic policies. That is, we know that we live in a nation that has a cyclical economy, with hills and valleys, we can identify ahead of time who those individuals and who those groups are who are going to be most affected by an economic downturn, yet we do nothing to

intervene in that economy in such a way as to cause for at least an equal sharing of the burden, and in fact the same groups of people, the people that you mentioned in your question, are constantly faced with bearing the heaviest burden.

I think in the program, such as the CETA program which you made reference to, there has been an attempt in some cases because there has been considerable pressure from civil rights organizations and others, the whole issue of targeting and making sure that funds are in fact spent for those that the law indicated they should be spent for; that is, those who are hardest hit. The reason for that is at the beginning of that program and under similar programs we found that the money was not going where it should be going. In fact, city administrations were oftentimes rehiring people who had been laid off, so in fact the so-called hard core unemployed—individuals who had been unemployed for longer periods of time—were never touched by those programs, and that included some of the young people that we need to reach most effectively and we need to reach immediately if they're going to be saved.

So that is a support of your initial question, which really speaks to the lack of responsiveness. We are hopeful now because additional pressure has been brought to bear on the administration that there will be a response. As you know, the President met with the Black Caucus just about two weeks ago and made some commitments. I think the need for those commitments was heightened by the unemployment data that was released shortly thereafter, which indicated in fact although white teenage unemployment dropped over the summer, black teenage unemployment had risen, which is another signal that the programs were not reaching those that needed it the most.

MR. DORSEY. I would like to follow up for a moment. In terms of what you refer to as the hidden unemployment index, is there any indication from your understanding of that unpublished data as to whether or not the unemployed that are represented in that group are disproportionately young or disproportionately old?

MR. BROWN. I'm not sure I am prepared to answer that question. My suspicion would be that they would be disproportionately young. I am not prepared to verify that this afternoon. I'd be glad to provide all the base data to you, though. We publish on a quarterly basis a quarterly economic report which, although it is unofficial, we believe it is more accurate than the Bureau of Labor Statistics report, and I'll be glad to furnish not only copies of that but information that would help you to determine what that answer would be.

MR. DORSEY. I appreciate that, and I would ask that it be admitted into the record when supplied, at this point.

CHAIRMAN FLEMMING. Without objection, that will be done.

COMMISSIONER FREEMAN. I would like to ask, Mr. Chairman, if we could, the individual Commissioners, could receive copies before that, without having to wait for the completion of the record.

MR. BROWN. Sure.

MR. DORSEY. Mr. Davis, given your extensive background in Title VII of the Civil Rights Act of 1964 and particularly with respect to enforcement, I would like to ask if you have suggestions in terms of various mechanisms that could be included in the act, the Age Discrimination Act, which would make it a more effective enforcement vehicle for the prevention or the correction of age discrimination? As you know, we have a fairly unique opportunity here. We have a civil rights act in which Congress has given us an opportunity to have input to make it better as opposed to having to wait down the line and having experience problems with implementation after the fact, and I wonder if you have some comments or suggestions in that regard?

MR. DAVIS. The preliminary screen that we've made of the act itself, the discrimination provisions, really find that what is there is rather hollow. There is no enforcement mechanism specified within the act nor, based on the number of commissions they allow, is there one to be contemplated. It would seem to me if it were going to be effective at all, it would have to be some kind of mechanism wherein the Title VI basis kinds of protection that are offered within the act have an enforcement procedure that would be similar to that with EEOC, where individuals or groups would file in either their own behalf or groups or on behalf of third parties with a civil rights agency or some administrative body within either the Administration on Aging or within, let's say, sections within HEW Office for Civil Rights to invoke the powers of the act. They could file on behalf of either someone who is aggrieved or their own selves if they are aggrieved.

It would be an investigative mechanism whereby an investigation would commence a certain number of days after the complaints were filed. There would be findings made. After the findings are made in favor of a complainant and if there's a finding, and if in fact there has been a discrimination occurring, there will be a show-cause order issued to the respondent in the action if the respondent is in fact an agency or organization that is receiving Federal funds.

We haven't had the opportunity to respond a lot of times on this, but it seems like the basic provisions don't provide for, first of all, who is covered, to what extent that coverage is, and what the actual enforcement mechanism is in terms of who would receive the complaints, and who would investigate them. That would have to be spelled out really in detail to provide for, first, adequate protection under the act, and second, to provide for due process protection of any respondents that will be receiving funds.

CHAIRMAN FLEMMING. If I could interrupt a minute, in other words, you don't see any body comparable to EEOC in this picture?

MR. DAVIS. I don't see any enforcement mechanism whatsoever.

CHAIRMAN FLEMMING. HEW is the lead agency as far as regulations are concerned, and then the head of each department has the responsibility to follow through and enforce through. There's no way whereby complaints could be processed, for example, by an impartial body?

MR. DAVIS. There's no complaint processing mechanism, nor does it seem to be one of the responsibilities of this Commission, which would be to ensure that the standards that are set are such that it would be more than a nondiscrimination provision, but rather it would be a provision whereby the recipients of these funds would be required to take affirmative action to ensure that persons are not discriminated against and the benefits of the services flowing from these programs on the basis of their age, and from the perspective of the National Bar Association on the basis of their race.

We are very concerned about that fact that older blacks especially have been most disenfranchised and most discriminated against in the history of this country, such that many of the persons who are in their forties or fifties now, who could be benefiting from these programs and are persons who spent a great deal of time advocating for the rights of other people, and at the same time the laws have been passed within the last 12 to 15 years and the court decisions that have been rendered do not provide adequate protection for these people such that opportunity is created for which a number of people, especially blacks, have had some opportunities approved to because of legislation and court decisions, but in the persons from, let's say, 40 to 65 seemed to be locked in.

COMMISSIONER FREEMAN. May I interrupt you to ask if the National Bar Association would at least do something for this Commission. We know that come January 1979, this act prohibiting age discrimination will become law. We already have Title VI and we also have the laws prohibiting discrimination on the basis of sex. In other reports we have found that one of the biggest problems is the lack of coordination. If perhaps in your capacity as a director of this project, you might want to make a submission to this Commission of how all of the prohibitions can be handled, the procedure for handling all of the prohibitions, and so that those persons who were alleging or who believe they themselves to be victims of one jeopardy or double jeopardy or triple jeopardy could at least have a process or an agency that would be able to deal with all of them. Would you believe that the National Bar Association could make a submission to the Commission within the next 2 weeks?

MR. DAVIS. We intend in fact to. In tendering our supporting statement to our testimony to the Commission, we would like to include that kind of mechanism. We have given that some thought.

COMMISSIONER FREEMAN. We certainly would find it very helpful to have a specific recommendation as to proposed regulations, proposed changes in the law, or any of the laws that you feel could be changed. This would certainly help the Commission to make its report complete.

MR. DAVIS. Fine.

CHAIRMAN FLEMMING. Back to you, counsel.

MR. DORSEY. Mr. Davis, again, I'm curious as to whether or not there is any data available of which you are aware on the dual effect

of age and race. You alluded to that problem which Commissioner Freeman has on many occasions alluded to. There is obviously a double, triple—as many times as you can be discriminated against, you can compound it for sure. Data on that would be extremely valuable if in fact you have it available.

MR. DAVIS. We have gotten some things together preliminarily and in the statement which we are submitting there is going to be a bibliography of sorts, but two sources that we've come across that we found at least statistically to be excellent, are, one, the report of the Senate Special Committee on Aging. I think that report was issued in 1972, although the report itself, the hearings were held in 1971. We will furnish you with a copy of those if you like, and also a report put out by the U.S. Bureau of Census in 1975 called *Social and Economic Status of the Black Population*, which again has some very excellent statistics. We apologize for not having our statement prepared; however, we've been working on a couple of cases in work and have not had the opportunity to get this together.

MR. DORSEY. I appreciate that. One other thing—

MR. DAVIS. I might say that there is—several source materials primarily on race and sex. There is an annotated bibliography put out by the Senior Center on Black Aged, from which we've been able to pull most of our references.

MR. DORSEY. Getting back for a moment to one of the things you alluded to about older blacks and the fact that many of them were participants in the earlier movement towards civil rights that led to such enactments as the 1964 Civil Rights Act and others. Is it your opinion that in terms of the double jeopardy that they particularly might be subjected to, that now that there is a mechanism provided specifically to deal with the areas of employment and access in many areas, including affirmative action programs, that those very people that worked so hard for those to become a reality are now at a point where although they are protected by virtue of antidiscrimination process on the basis of race, they are now in a category called aged which includes the possibility for discrimination that is over and above what they are protected from in terms of that antidiscrimination provision on the basis of race?

MR. DAVIS. My initial answer is yes. But to elaborate on that, there are a couple of things involved, first of all because of the fact of Title VII of the Civil Rights Act of 1964 which provides coverage on the race, sex, color, religion, national origin, but not age. There is protection for persons in employment on the basis of their age under the Age Discrimination Act of 1967, which is an amendment to the Fair Labor Standards Act of 1938, and is enforced by Wage and Hours Administration in the Department of Labor.

However, if you were to poll a substantial number of black people, a number of them, a significant percentage, might be aware of protections offered by EEOC which administers Title VII, but most, espe-

cially those who are aged, would be unaware that they are protected under the Age Discrimination Act because of two reasons, one of which is the Department of Labor does not widely advertise its services, and, two, those people who would be most aware of any kinds of protections, benefits, and services, etc., available to senior citizens would be those persons who are in organized groups and who have some access to the system.

Traditionally you will find that most older blacks have had to bear a larger share of discrimination in this country. People who are senior citizens today saw the dimensions of the twenties and thirties and bombings and what-have-you. At the same time whereas many white senior citizens are organized into groups based on their aged status, the American Association of Retired Persons, the National Retired Teachers Association, even the telephone system, which I guess is the largest private employer in the country, has a lot of local chapters of retired persons, retired telephone company employees, so that frequently you have persons who are retired organized into groups either around specific occupations they held or specific employers for whom they worked or just the fact that they are retired or of a certain age, and those groups have traditionally excluded blacks. In the case of American Association of Retired Persons, not necessarily has there been any formal exclusion, a kind of overt exclusion, but in some cases it has been a kind of covert kind of thing, people's memberships have to be approved and what-have-you. In the case of those people who belong to associations or organizations where the purpose of the organization was organized around a specific employment activity or a specific employer, obviously, blacks were excluded from jobs. Today you still find massive discrimination in employment but blacks discriminated against in certain kinds of occupations, such as teaching, working for the telephone company, what-have-you. It stands to reason that blacks are not going to be numbered among the retired employees of that particular employer, that particular occupation.

MR. DORSEY. I would give some hope to you in case you're not aware that we have had testimony from national organizations of black elderly persons that had united and do exercise a considerable advocacy role.

I have no further questions.

CHAIRMAN FLEMMING. Reference is being made there to the National Caucus on the Black Aged and the National Center for the Black Aged, with which you obviously are familiar.

MR. DAVIS. And both organizations are very, very recent conceptions.

CHAIRMAN FLEMMING. That's right. Mr. Brown, in connection with the Urban League, as you know it, your associates have been a great help to the Administration on Aging in connection with certain aspects of the Older Americans Act. As you see this law and contemplate its going into effect, do you feel that the Urban League can be of help

in monitoring it, identifying the situations where in fact there are violations?

MR. BROWN. I think we certainly can, and I think a lot of help is going to be needed. There certainly is a lot of vagueness in the law. I think there's a tremendous amount that needs to be done in the area of public education. There's no question that older Americans find themselves in an unenviable position, because there is very little sensitivity to their plight. When we talk about enforcement or we talk about the potential impact of a new law, one of the things we need to be concerned about is what is the state or level of public awareness. We have been involved for the last several years in some advocacy efforts of which you are very well aware of in trying to at least provide a voice for those citizens to be able to effectively speak for themselves, to sensitize other private organizations and agencies, including our own local affiliates that for too long have in fact themselves been ignoring the problems of the elderly, or almost ignoring them. So I think we would not only expect to but would be pleased to because we along with many others have probably been remiss in not paying attention to the problems of older Americans.

CHAIRMAN FLEMMING. In that connection I certainly appreciate Mr. Davis's suggestion just in thinking about that. We really, of course, this law, as you appreciate, parallels to some extent Title VI, and Title VI is a little bit deficient at some of the points that you have identified, and we're all aware of that and we all know the consequences of that. So really, growing out of your experience on Title VI, we ought to think about making some recommendations for improvement of this law which instead would carry it a step beyond Title VI, and I mean there's an opportunity here, it seems to me, to do that and maybe have an impact on Title VI at the same time.

COMMISSIONER FREEMAN. I just want to say I express my appreciation to both of you. Yes, it is true that you are the last witnesses. We've been here since 7:50 Monday morning, but your contribution to the record has been very significant. All we need for you to do is follow through and submit to us the documents which we requested and that you promised to make because they will certainly be a major aspect of our findings, conclusions, and recommendations.

CHAIRMAN FLEMMING. I agree with Commissioner Freeman. I picked up an idea or two here that hadn't been surfaced up until now. In view of the fact that you are the two final witnesses, I'd like the record to show that my judgment, and I'm sure my colleagues share this point of view, that our staff has done a superb job in the preliminary work that goes on prior to 3 days of hearings in getting facts and figures together, and interviewing people and working with them on the issues they would like to see them cover, many points of view, and I think they've done an extremely satisfactory hearing and goes along with our feeling that the field hearings provided us with a record which I feel sure we'll be able to utilize in such a way as to make findings and

recommendations to the President and to the Congress which, if considered carefully, can move us forward in the area of coming to grips with this business of discriminating against older persons.

COMMISSIONER FREEMAN. I would just like to state for the record that the record should remain open for the submission of the documents which are coming from those witnesses in addition to these from other witnesses, as indicated.

CHAIRMAN FLEMMING. It will remain open for that purpose. As far as the public hearing itself is concerned, at this point I will—

MS. BRADLEY. Before we adjourn, I just would like, as director of this panel, to pay a special note of thanks to Fred Dorsey and Gail Gerebenics, along with the responsibilities and the Office of General Counsel, who have in my opinion grasped volumes of material which I don't think any human being could have grasped in the short time. However, they have disproved any assumption in their significant contribution to us as a staff and to the study, I'm sure, in its final report. I wish to thank them on the record.

CHAIRMAN FLEMMING. As a result of what they have done along that line, as a result of all they absorbed, they can now regard themselves from here on out as gerontologists.

With that, the hearing is adjourned. /*

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